Europejski Rzecznik
Praw Obywatelskich

Decyzja w sprawie 560/2019/KR dotycząca domniemanych konfliktów interesów między ekspertami, którzy uczestniczą w mechanizmie doradztwa naukowego Komisji Europejskiej

Decyzja
Sprawa 560/2019/KR - **Otwarta** 06/06/2019 - **Decyzja z** 30/03/2020 - **Instytucja, której sprawa dotyczy** Komisja Europejska (Nie stwierdzono niewłaściwego administrowania) |

Sprawa dotyczyła kwestii, czy Komisja Europejska wprowadziła odpowiednie procedury celem zapewnienia, aby specjaliści naukowi udzielający porad Komisji nie mieli żadnych konfliktów interesów.

Skarżący, organizacja społeczeństwa obywatelskiego, podał w wątpliwość niezależność specjalistów naukowych, którzy brali udział w sporządzaniu sprawozdania doradczego w przedmiocie środków ochrony roślin (potocznie znanych jako pestycydy).

Rzecznik stwierdziła, że Komisja posiada właściwe systemy służące dokonaniu oceny niezależności ekspertów. Przez wzgląd na polepszenie owych systemów Rzecznik zwróciła się jednak do Komisji o zapewnienie, aby wszystkie odpowiednie interesy finansowe były zawarte w deklaracjach interesów ekspertów oraz aby deklaracje te zostały ocenione i opublikowane. Rzecznik zamknęła sprawę, przedstawiwszy te dwie sugestie dotyczące poprawy.

Background to the complaint

1. The Commission created the Scientific Advice Mechanism (SAM) in 2016 to provide it with "*high quality, timely and independent scientific advice",* thus strengthening its policy-making. [1] [Link] The Commission states that the permanent Scientific Advisors who work in SAM must have no conflicts of interest. To this end, the Commission requires them to declare all their relevant interests. The Commission assesses these declarations to ensure that there are no conflicts of interest, and makes them public on its expert groups' register [2] [Link].

2. When the Scientific Advisors require specialised scientific input, evidence and analysis on specific issues, they can consult outside experts, including through the Science Advice for Policy by European Academies consortium (SAPEA) [3] , which receives EU funding.

3. SAPEA experts participate in the following types of meetings:
- 'Working groups', in which they co-author and peer-review 'evidence review reports' that contribute to and precede the completion of reports from the Scientific Advisors.
- 'Coordination groups', in which Scientific Advisors coordinate work in the working groups on the evidence review reports.
- 'Sounding boards' with Scientific Advisors, which aim to provide feedback on advice prepared by Scientific Advisors [4] [Link].

4. On 9 July 2018, the complainant, a civil society organisation [5] [Link], wrote to the Commission to raise concerns about the objectivity of a report by the 'Group of Chief Scientific Advisors' entitled *EU authorisation processes of Plant Protection Products from a scientific point of view* [6] [Link]. Specifically, the complainant alleged that one of the SAPEA experts involved in preparing the report had a conflict of interest.

5. On 19 July 2018, the Commission responded to the complainant that the SAPEA expert had no conflicts of interests.

6. On 1 August 2018, the complainant asked the Commission for the declaration of interests of the SAPEA expert in question. The Commission provided this to the complainant (along with the declarations of interest of the other experts who contributed to the report).

7. On 6 December 2018, the complainant wrote to the Commission raising what it considered to be shortcomings in the declarations of interests of six SAPEA experts. In its view, the Commission had not dealt properly with the possible conflicts of interest of these SAPEA experts.

8. Dissatisfied with the response of the Commission, on 22 March 2019, the complainant turned to the Ombudsman.

The inquiry

9. The Ombudsman opened an inquiry into **systemic issues** raised in the complaint, notably how the Commission ensures that experts contributing to the work of the Scientific Advisors act independently and in the public interest.

10. In the course of the inquiry, the Ombudsman asked the Commission a number of questions [7] and received its reply [8] [Link]. Subsequently, the complainant commented on the Commission's reply [9] .

Arguments presented to the Ombudsman

By the Commission:

11. According to the Commission, the Scientific Advisors are independent of institutional or political interests. When they publish advice, all evidence on which this advice is based must be publicly available. Where the Scientific Advisors consult external experts, this is normally recorded and made public. The interests of experts who participate in the meetings described above must be appropriately and transparently assessed. If a potential conflict of interest is uncovered, this must be dealt with.

12. As such, experts who provide advice to Scientific Advisors must submit a 'declaration of interests' to the Commission. They must declare, on their honour, that their declarations are complete and accurate, to the best of their knowledge. [10] The form that the Commission uses for this purpose is identical in substance to the declaration of interests completed by Scientific Advisors, in the sense that it records information in the same categories.

13. The Commission assesses the declarations to determine whether any of the declared interests are relevant in the given context; namely, if they could compromise, or be reasonably perceived to compromise, the expert's independence in the context of their contribution.

14. The Commission's assessment contains:
- the results of an initial internet search on the prospective experts, prior to receiving their declaration of interests;
- the completed and signed declaration of interests; and
- an up-to-date CV of the expert.

In this context, the Commission said it takes account of the experts' limited mandate and the ad hoc and indirect nature of their contribution to the work of the Scientific Advisors.

15. The chairperson of the meeting with Scientific Advisors also assesses whether the interests declared by invited experts could constitute a conflict of interest " *in the light of the role that the expert plays in the context of a given agenda point, as well as the task of the Group* ". [11] If there are concerns, the expert is instructed not to participate in either specific agenda items, the meeting, or the group entirely.

16. The grant agreement between SAPEA and the Commission [12] requires SAPEA to take all necessary measures to ensure that its work is impartial and objective, and not compromised by a conflict of interest. This includes notifying the Commission, without delay, of any situation constituting or likely to lead to a conflict of interest, and immediately taking all the necessary steps to rectify such situations. The Commission may verify that the measures taken by SAPEA to remedy conflicts of interest are appropriate, and may require SAPEA to take additional measures by a specified deadline, if necessary.

17. SAPEA experts taking part in a working group complete and sign a declaration of interests that is then assessed by SAPEA. The form that SAPEA uses is identical in substance to the form used for Scientific Advisors. [13] [Link] When a SAPEA expert is invited to participate in a meeting with the Scientific Advisors, their declaration of interests is forwarded to the Commission.

18. The declarations of interests of experts participating in the meetings of the Scientific Advisors are made public by the Commission for a period of six months following the publication of the Scientific Advisors' opinion to which they contributed. [14] [Link] Publishing at this stage is done so as to avoid external pressure on the experts while the advice in question is being prepared (the deliberation phase).

By the complainant:

19. The complainant contended that some of the declarations of interests of SAPEA experts seem to be incomplete or inaccurate. The complainant illustrated this point by referring to information online about these experts. Furthermore, the complainant said that some of the interests declared were categorised incorrectly. This raised questions about the independence of these experts and of the advice they provide to the Scientific Advisors.

20. According to the complainant, the Commission did not address in detail the information submitted by the complainant related to the shortcomings in the declarations of interests.

The Ombudsman's assessment

21. This inquiry seeks to examine whether the Commission has in place **adequate systems** to ensure the independence of the SAPEA experts consulted in the preparation of scientific advice. **The inquiry did not seek to take a view on the specific cases put forward by the complainant** [15] [Link].

22. The inquiry confirms that there are mechanisms in place to verify the independence of SAPEA experts when they contribute to the work of the Scientific Advisors.

23. First, SAPEA requires that SAPEA experts declare their interests to SAPEA. The experts must sign, on their honour, that these declarations are complete and accurate to the best of their knowledge.

24. The Commission is also able to scrutinise how SAPEA deals with potential conflicts of interest. SAPEA must notify the Commission, without delay, of any situation constituting or likely to lead to a conflict of interest. When SAPEA experts are invited to meetings with the Scientific Advisors, the Commission also assesses their declarations of interests to determine if any of these interests could compromise, or be reasonably perceived to compromise, the expert's independence. Furthermore, the chairperson of the meeting with Scientific Advisors assesses the declaration of interests in light of the role the experts will have in the meeting.

25. All the declarations of interests of invited SAPEA experts are published. This ensures that interested parties can check them if they wish, and raise any concerns they may have with the Commission (as occurred in this case).

26. There are incentives both for SAPEA experts, and SAPEA itself, to comply with the terms of the grant agreement regarding conflicts of interest. SAPEA must take all measures necessary to prevent conflicts of interests. Should SAPEA fail to do so, the grant may be reduced or terminated [16] [Link]. SAPEA experts that submit an incomplete declaration can be excluded from the Scientific Advice Mechanism entirely or from the activities of the Scientific Advisors in particular.

27. It is important that declarations are published, so that interested parties can also check them. As noted above, the Commission publishes **all declarations of interest that SAPEA forwards to it** (as will be addressed below, not all relevant declarations are in fact forwarded to the Commission by SAPEA).

28. As regards whether there are weaknesses in the application of this system, the Ombudsman notes the complainant's concern that the declarations of interests of certain experts did not include all their interests and/or did not correctly categorise declared interests.

29. The Ombudsman's understanding is that certain SAPEA experts, following the guidance given to them by SAPEA, did not declare interests that ceased more than 5 years beforehand, nor did they declare financial interests in fields not linked to the field on which they were consulted, nor did they declare financial interests below a threshold of EUR 10 000.

30. While the first two of these conditions are reasonable, the final one is questionable.

31. An expert's independence could be compromised if they work for, or have *recently* worked for, a company that will be affected by the scientific advice on which the experts are consulted. However, their independence is not compromised by connections that ended many years ago. It is more than sufficient that experts declare who they have worked for in the previous five years.

32. It is also entirely reasonable that declarations do not have to include financial interests that have no connection with the areas the experts give advice on. This is because an expert's independence can be compromised only if they have interests that could be affected by the advice they give.

33. As regards the alleged incorrect categorisation of certain interests by SAPEA experts, both the Commission and the chairperson in meetings of Scientific Advisors assess *the entire declaration of experts* when assessing the risks of conflicts of interest. As such, it is hard to see how possible formal errors in how experts categorised their interests will change the outcome of these assessments.

34. The Ombudsman has some concerns, however, about what financial interests are declared.

35. SAPEA experts do not have to declare financial interests below a threshold of EUR 10 000. It may be true that a SAPEA expert's independence will not be compromised if they have only *very limited* financial interests which will be affected by the scientific advice they give. Nevertheless, EUR 10 000 is a significant amount of money. In addition, it is not always simple,

or even possible, to attribute a precise monetary value to financial interests, especially for intellectual property rights and especially in areas where the science is developing. In the Ombudsman's view, it would be more prudent if **all financial interests related to the field of expertise which the expert is called upon to advise on** be included in the declarations. It would then be for SAPEA and the Commission to take a view, on a case-by-case basis, taking into account the nature of the scientific advice requested and the extent of the financial interests, whether the declared interests do or do not compromise the independence of the expert in question. The Ombudsman will make a suggestion to the Commission on this matter.

36. The Ombudsman also notes that not all relevant declarations of interests of SAPEA experts are published. The declarations of interests of experts that contribute to evidence review reports are not published, *unless* the experts are also invited to participate in meetings with Scientific Advisors. [17] SAPEA and the Commission should also ensure that experts contributing to evidence review reports have no conflicts of interest. To this end, the declarations of interests of contributing experts should be published. The Ombudsman will therefore make a second suggestion to the Commission.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The Ombudsman has not found maladministration in this case.

The complainant and the Commission will be informed of this decision **.**

Suggestions for improvement

1. SAPEA experts should be asked to declare all relevant financial interests. SAPEA and the Commission should assess if these interests could compromise the independence of the experts.

2. In the interest of transparency, the Commission should obtain and publish the declarations of interests of experts that worked on 'evidence review reports'.

Emily O'Reilly

European Ombudsman

Strasbourg, 30/03/2020

[1] [Link] See: https://ec.europa.eu/research/sam/index.cfm?pg=hlg [Link].

[2] [Link] See https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3378 [Link].

[3] [Link] Members of the SAPEA consortium include 'Deutsche Akademie der Technikwissenschaften', 'Academia Europaea', 'All European Academies', 'Deutsche Akademie der Naturforscherleopoldina EV', 'Conseil Européen des Applications de la Science et de l'Ingéniérie' and the Federation of European Academies of Medicine, see: https://ec.europa.eu/research/sam/index.cfm?pg=about [Link].

[4] [Link] The Commission said SAPEA experts are invited to sounding boards in exceptional circumstances only, in particular if expertise in a specific scientific field is scarce. At the time of the Commission's reply this had happened once, namely on the issue of Environmental and Health Risks of Micro-plastic Pollution, see https://www.sapea.info/wp-content/uploads/report.pdf [Link]).

[5] [Link] See: https://www.pan-europe.info/about-us/what-we-do [Link].

[6] [Link] Plant protection products are commonly referred to as pesticides. The advice was issued on 4 June 2018 and can be found here:

https://ec.europa.eu/research/sam/index.cfm?pg=pesticides [Link].

[7] [Link]https://www.ombudsman.europa.eu/en/correspondence/en/126269 [Link]

[8] [Link]https://www.ombudsman.europa.eu/en/correspondence/en/126270 [Link]

[9] [Link]https://www.ombudsman.europa.eu/correspondence/126271 [Link]

[10] [Link] The Commission stated that, even if SAPEA experts' participation is on an ad hoc basis, requiring them to sign a declaration of interest is justified and appropriate given that SAPEA experts assist in the preparing opinions of the Scientific Advisors. This goes beyond the activities of invited experts under the Commission's Horizontal Rules for expert groups. See Article 15: https://ec.europa.eu/transparency/regexpert/PDF/C_2016_3301_F1_COMMISSION_DECISION_EN.pdf [Link].

[11] [Link] As per article 12(2) of the rules of procedure of the Scientific Advisors, see: https://ec.europa.eu/research/sam/pdf/sam-hlg_rules_of_procedure.pdf#view=fit&pagemode=none [Link].

[12] [Link] Under grant agreement No 737432. See: https://cordis.europa.eu/project/id/737432 [Link].

[13] [Link] In line with article 35 of the grant agreement, which stipulates that SAPEA must align its rules with the rules applying to Commission expert groups.

[14] [Link] Declarations of interests of SAPEA working group members that are not invited to participate in meetings with Scientific Advisors are not made public on the Commission's website.

[15] [Link] The experts referred to in the complaint participated in a coordination group with Scientific Advisors, and contributed to the corresponding evidence review report drawn up by a SAPEA working group.

[16] [Link] In line with articles 43 and 50 of the grant agreement.

[17] [Link] However, the SAPEA website does provide a 'personal profile' for each SAPEA expert that worked on an Evidence Review Report under 'Working group members', see: https://www.sapea.info/topics/ppp/ [Link].