

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

The Commission received a request from the Ombudsman regarding measures in place to ensure that there are no conflicts of interest with external experts involved in evaluating project proposals under the European Defence Fund (EDF).

II. EUROPEAN OMBUDSMAN'S STRATEGIC INITIATIVE

The Ombudsman requests clarification on the participation of external experts in the evaluation of project proposals under the EDF and in particular on the measures applied by the Commission to avoid conflict of interest in the context of the appointment of experts. The Ombudsman recognises that the EDF Regulation¹ derogates from the principle of publishing the lists of experts assisting in the evaluations, which increases the importance of carrying out a robust assessment of conflict of interest of the appointed experts. The Ombudsman asks two specific questions, which are listed below together with the Commission's answers.

III. THE REPLY OF THE EUROPEAN COMMISSION

Question i: Could the Commission please set out the measures in place to ensure that the involvement of external experts in the ethics screening and the evaluation of projects does not give rise to risks of conflicts of interest?

Answer:

The Financial Regulation applicable to the Union budget² sets out a robust framework for avoiding conflicts of interest covering any financial actor involved in preparing, implementing, monitoring or controlling the EU budget. These actors have to take appropriate measures to prevent a conflict of interests from arising and to address situations which may objectively be perceived as a conflict of interests. The Commission issued guidance in 2021 to raise awareness and promoting a uniform interpretation and application of the rules on avoidance of conflicts of interest. The guidance includes practical examples, suggestions and recommendations aiming to provide EU institutions and Member States' authorities with guidance and tools to assist them in the avoidance of conflicts of interest.

The EDF Regulation establishes in Article 26 that *"The Commission shall appoint independent experts to assist in the ethics screening and assessment as referred to in Article 7 of this Regulation and in the evaluation of proposals pursuant to Article 237 of the Financial Regulation"*

Therefore, in the assessment of the actions to be carried out under the EDF, two sets of experts are used: 1) "independent ethics experts" that perform the ethics screening and

¹ Regulation (EU) 2021/697 of 29 April 2021 establishing the European Defence Fund and repealing Regulation (EU) 2018/1092; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0697&from=EN>.

² Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, PE/13/2018/REV/1, OJ L 193, 30.7.2018, p. 1–222.

assessment of proposed actions in line with the requirements established in Article 7.2 of the EDF Regulation, and 2) “independent evaluation experts” to assist in the evaluation of the proposals. For both groups of independent experts, the selection and appointment is carried out according to the conditions set out in Article 26 of the EDF Regulation. They are selected through calls for expression of interest on the basis of their skills, experience and knowledge relevant to the assigned tasks. They are nationals of as broad a range of Member States as possible and their security credentials must be validated by the relevant national authorities.

The independent evaluation experts assist the Commission during the evaluation of project proposals against the award criteria, involving all the proposals, excluding only those declared inadmissible. After the evaluation against the award criteria, and an initial ethics pre-screening performed by the Commission staff, the independent ethics experts screen the proposals that are on the ranking list and the first ones of the reserve list, before the signature of the grant agreement.

Both groups of experts are chosen from the corporate experts’ database of the Commission, EMI, where they register themselves in response to calls for expression of interest³, including the one specifically launched for the EDF programme⁴.

When the project officer appointed in charge of a dedicated topic(s) pre-selects the experts from EMI, a preliminary check of absence of conflict of interest is performed.

The Commission applies a corporate approach regarding conflict of interest management. Such approach includes the acknowledgment of the code of conduct in the contract the experts sign, before starting to work, and the confirmation, for each proposal the experts are evaluating, that there is no conflict of interest by signing a declaration in the Funding & Tenders Portal electronic exchange system.

For the evaluation and ethics screening of the proposals received under the European Defence Fund, the experts are duly informed about potential conflicts of interest and several checks are executed at subsequent stages of the evaluation process. Therefore, the rules and safeguards applied in the EDF programme go beyond the corporate-wide practice, and in particular:

1. In the first contact with the expert, prior reception of project proposals, each expert must declare their absence of conflict of interest by email. Below an extract from emails sent to experts:

(...) It is initially considered that your declared expertise could be relevant as regards the topics included in these calls. However, you should know that in order to participate in the evaluation as independent expert, two important conditions must be met.

- a) *Hold a valid Personnel Security Clearance (PSC) at least at a level equivalent to ‘EU Confidential’ (e.g. ‘NATO Confidential’ is equivalent) or above.*
- b) *Absence of Conflict of Interest as regards the undertakings involved in the proposals.*

³ E.g. Call for Expression of Interest, Funding & Tenders Portal Expert Database 2021-2027:

https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/experts/call-for-expression-of-interest_en.pdf

⁴ Defence industry- call for experts to assist the European Commission with the evaluation of proposals submitted for funding under the European Defence Fund (2021-2027), available on DEFIS website: https://defence-industry-space.ec.europa.eu/calls-tenders/defence-industry-call-experts-assist-european-commission-evaluation-proposals-submitted-funding_en

According to the information available to our services, for what concern point a), you are in possession of a relevant PSC. Please inform us if this situation is changed (e.g. if you have changed job/assignment).

For what concerns point b), in case of positive reply, please add the following sentence in your answer in the understanding that the below declaration is truthful:

"I declare that I am not involved in any proposal submitted for evaluation under the EDF indicated call(s) for proposal(s) and that I am in possession of a valid personal security clearance at the minimum equivalent to 'EU Confidential' validated by my country of nationality". (....)

2. Prior to the provision of the proposal(s) to the expert, the Commission's project officer responsible for a set of proposals and in charge of setting up a panel of independent experts in a dedicated call-panel:
 - Checks that the expert appointed to assess a proposal does not have e.g. the same employer as any of the applicants (cross-checking of the expert CV with the list of entities submitting the proposals);
 - Prepares an internal note⁵, for the validation of the responsible Head of Unit, that reports and details the principles the project officer followed for the pre-selection of the experts, individually and as a whole. These principles are as follows:
 - Proven and documented expertise in the technical fields related to the topic of the calls;
 - Availability to perform the task and (*prima facie*) absence of conflict of interest;
 - Diversity of background(s) to maximise the coverage of the overall value-chain and relevant area of the call/topic;
 - Panel composed of a minimum of 4 experts; geographical and gender balance;
 - Out of the independent experts involved in the evaluation of the proposal no two experts have the same nationality;
 - None of the experts should have the same nationality as the project coordinator.

The last two principles above are in addition to the requirements established in the EDF Regulation. Their objective is to ensure that there would be no (unconscious) bias based on nationality i.e. a potential preference and sympathy that could be considered as an additional conflict of interest (that cannot be perceived by the expert themselves as such).

3. Upon reception of proposal(s) by the experts, the Commission's project officer organises a briefing meeting with the experts involved in the same panel. A standard set of slides highlighting the importance of maintaining the absence of a conflict of interest is consistently used for these briefing meetings. The slide-deck contains i) a summary of the main conflict of interest stemming from the code of conduct; ii) a list of potential cases of conflict of interest where the Commission would investigate in

⁵ Since the names of experts are linked with concrete proposals, the note is classified to protect the integrity of the evaluation process.

case of doubt by the expert; and iii) information on when to inform the Commission of a potential conflict (at any time during the whole process), the consequences and how it is treated by the Commission.

4. Each expert signs several documents subsequently reconfirming that they have no conflict of interest:
 - Prior to receiving any task, the experts sign their contract including the code of conduct, directly in the Funding & Tenders Portal;
 - Upon reception of the proposal(s) and a first check of its content (particular focus on part A, project abstract and consortium composition), the experts are required to verify that they are not in a situation of conflict of interest that would prevent to participate to the evaluation of the call-topic or the proposal. They have to sign a “Declaration on conflict of interest and Non-disclosure” for all the proposals they evaluate under the same call-panel. This document is signed and registered in ARES;
 - The software used for the management of the evaluation of proposals further requires the experts to reaffirm the lack of conflict of interest. The expert cannot start filling in the Individual Evaluation Report (IER) form for the evaluated proposals without prior ticking a box confirming they have no conflict of interest; the list of conflict of interest is flagged on the first page of the IER, above the box that the expert ticks. Once finalised, each IER is signed by the expert and registered.
5. After reception and reading of proposals, if an expert reports a possible conflict of interest (i.e. case of issue in point 3 above): The Commission’s project officer investigates and with the support of a legal officer recommends (or not) exclusion of the expert. The officers have to provide their conclusion in a note to file, registered in ARES, addressed to the call coordinator and the hierarchy.

Question ii: Which of the codes of conduct included in the model expert contract⁶ referred to in the call for applications of candidate experts applies to experts involved in the Defence Fund?

Answer:

The code of conduct, used in Annex 1 to the contracts of experts, is the option “EVALUATORS — ALL (*except observers*)”.

Additional information from the Commission regarding the management of conflicts of interest

As regards to the point about public scrutiny raised by the Ombudsman, the Commission would like to emphasize two important requirements in Article 26 the EDF Regulation:

- The list of contracted experts assisting the Commission is provided on a yearly basis to the Members of the Programme Committee (experts from the governments) and thus the list is subject to their scrutiny.

⁶ See: https://ec.europa.eu/research/participants/data/ref/h2020/experts_manual/h2020-experts-mono-contract_en.pdf

- All experts appointed in the frame of EDF proposals evaluations are required to have security credentials validated by the relevant Member States. Prior to their appointment, the security credentials of all the experts are being checked with the national security agencies of the Member States. Therefore, each expert is investigated by her/his Member State, accentuating the level of trust of the Member States.

It is important to clarify that the list of independent experts is not disclosed to the broader public to protect the experts, including from possible pressures, and therefore to safeguard their independence. Revealing their names would also expose their specific expertise in the sensitive field of defence industry and undermine their security credentials. Given the limited number of call topics, and sometimes of proposals received under specific topic, the link between an expert and a topic and/or proposal could be traced with negative impacts for integrity of the evaluation process.

IV. CONCLUSION

The Commission is in full agreement with the Ombudsman that an effective management of conflict of interest is of the utmost importance in the evaluations and selection of proposals under the European Defence Fund programme. The Commission has put in place robust procedures for the EDF, even more stringent than those applied for other programmes, to regulate the conflict of interest management at the level of the independent experts as well as, internally, for the Commission staff working on the programme.

*For the Commission
Thierry BRETON
Member of the Commission*

