

Reply by the European Commission to the European Ombudsman's Own Initiative Inquiry - ref. OI/5/2023/KR

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 9 December 2022, the Commission received a request from the Ombudsman regarding measures in place to ensure that there are no conflicts of interests with external independent experts involved in evaluating project proposals under the European Defence Fund (EDF).

In its reply submitted on 27 April 2023, the Commission informed that it had put in place robust procedures for the EDF, more stringent than those applied for other EU funding programmes, to regulate conflict of interests management. Moreover, the Commission explained the reasons for not publicly disclosing the identity of the independent experts involved in the EDF evaluation and ethics assessment.

On 13 November 2023, the Ombudsman informed the Commission that she had decided to open an own initiative inquiry to examine how the Commission ensures that there are no conflicts of interest with external experts who assist in project proposal evaluations, ethics assessments and costs estimations under the EDF.

II. EUROPEAN OMBUDSMAN'S OWN INITIATIVE INQUIRY

The Ombudsman requested clarification on the participation of external independent experts in the evaluation of project proposals under the EDF and in particular on the measures applied by the Commission to avoid conflict of interests 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 interests of the appointed experts. The Ombudsman asks six specific questions, which are listed below together with the Commission's answers.

III. THE REPLY OF THE EUROPEAN COMMISSION

In order to provide a comprehensive reply to the Ombudsman inquiry on management of the experts' conflict of interests (CoI), the Commission presents below all the steps followed in the process of selecting, recruiting, and using the independent experts that assist in the ethics screening and assessment of the EDF proposals (in compliance with the Financial Regulation applicable to the Union Budget² and the provisions in the EDF Regulation). The EDF proposals' assessment is performed by two sets of experts: "independent evaluation experts" and "ethics experts"³. For both groups of independent experts, the selection and appointment are carried out according to the conditions set out in Article 26 of the EDF Regulation.

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.

³ For the sake of completeness, the Commission might be assisted by financial experts, that are used in a later stage after the evaluation is concluded, to confirm specific eligibility of the indirect costs proposed in the lump sum model of grants.

Recognising the importance of an effective management of conflicts of interest for the integrity of the evaluation and selection of proposals under the EDF programme, in all the interactions with the experts, the Commission applies rules and safeguards in the programme that are more stringent than the corporate-wide practice in order to mitigate the legislatively required non-publication of selected experts, and in particular:

1. First step: Call for expression of interest

An open Call for expression of interest⁴ published on the Europa website is addressed to experts with skills, experience and knowledge relevant to the EDF calls. The call establishes among its conditions that experts not holding a Personnel Security Clearance will be excluded. The call also refers the candidates to the EU Experts Code of Conduct⁵ where the requirement of performing the work impartially is stressed and the principles of CoI explained. The experts are invited to register his/her candidature by filling in detailed information in the Commission's Funding &Tenders portal. The rules on CoI are embedded in the application. Once registered, the experts are expressing their interest in the involvement in the EDF evaluations by sending emails with their CV to a functional mailbox of the EDF programme.

2. Second step: submission of the survey

The Commission replies to the candidates by email and further invites candidates with relevant expertise to fill in an on-line survey to provide further information on their thematic (specific defence technology or area) and general expertise. Each candidate must declare at this stage absence of conflict of interests. The survey includes a request regarding potential CoI: *"In order to guarantee the impartiality of the evaluation process, we must look into any potential conflicts of interest (CoI) of evaluators. Do you, to your current knowledge, expect to be in a situation of conflict of interests in relation to any proposal."* And *"If the answer provided is yes/maybe, please explain:"* The survey again highlights a link to the corporate-wide EU Experts Code of Conduct to help the candidates understand what is considered as conflict of interests.

The on-line survey is requested from experts before each round of evaluations (both from new candidates and from those candidates already included in the EDF list of experts).

3. Third step: assessment of the survey

The Call Coordination Team receives responses to the survey and assesses the CoI or potential CoI declared by the candidates on a case-by-case basis. The Commission may ask the expert for further clarifications of his/her CV if considered necessary to clarify possible CoI.

At this stage, experts are normally not recused as the CoI is unlikely to apply to all the EDF proposals, but only to certain, to which she/he would not be allocated.

⁴ The current call was opened in August 2021 and runs until December 2027; https://defence-industry-space.ec.europa.eu/calls-tenders/defence-industry-call-experts-assist-european-commission-evaluation-proposals-submitted-funding_en

⁵ https://ec.europa.eu/research/participants/data/support/expert/expert_code_of_conduct.pdf

However, according to the Expert Code of Conduct for Evaluators and Monitors⁶ and specificities of the EDF programme defined in the EDF Evaluation Methodology⁷, certain categories of experts are directly excluded either from all calls or topics concerned:

- EDF Programme Committee Members,
- National Focal Points⁸,
- former staff members within three years after having left the Commission,
- experts that may already in advance have too many vested interests in the calls such as representatives of industry groups, or staff of horizontal offices (EDF coordination) in defence companies,
- individuals involved in the harmonization of the topics of the EDF work programme are excluded from evaluating the topic they were involved in the harmonization of.

The candidate's reply to the potential conflict of interests question in the survey is flagged in the internal EDF expert database and project officers must check for the potential CoI before allocating her/him to the evaluation of proposals under a topic.

4. Fourth step: selection of the experts in the list

Project officers in charge of specific EDF proposals preselect from the list of candidates' experts with profile best suited to evaluate these proposals. Such pre-selected experts constitute the "pool of experts". In the planning of allocation of a call or topic to an expert, project officer responsible ascertains the lack of CoI by cross-checking the CV and the list of entities forming the project consortia (i.e. not to have the same employer) and may ask the expert for further clarifications of her/his CV if considered necessary to clarify possible CoI. If deemed necessary, to avoid any potential CoI, the expert can be reassigned by the Call Coordination Team to another call or topic within the call or limit her/his evaluation to certain proposals (within the topic or the call) as defined in the Expert Code of Conduct.

Project officers document the pre-selection of experts in internal notes⁹ validated by management (responsible Head of Unit). The notes detail the rules and principles the project officer followed for the selection of the experts, individually and as a whole. These rules and principles (defined in the EDF Evaluation Methodology) 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 interests;
- Diversity of background(s) to maximise the coverage of the overall value-chain and relevant area of the call/topic;

⁶ https://ec.europa.eu/research/participants/data/support/expert/expert_code_of_conduct.pdf

⁷ Official internal document adopted by the Responsible Authorising Officer in order to set the rules and principles for the process of EDF proposals evaluation; the document covers the selection of experts

⁸ EDF points of contact in the administrations of Member States and Norway

⁹ Since the names of experts are linked with concrete proposals, the note is classified to protect the integrity of the evaluation process

- Minimum of 3 experts per proposal (4 in case of complex projects) and panels ensuring 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 rules above are in addition to the requirements established in the EDF Regulation. Their objective is to further 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 CoI (that cannot be perceived by the expert themselves as such).

It is important to stress that the Commission either deliberately allocates a higher number of experts than the minimum number required in the EDF Evaluation Methodology or has a back-up list of experts ready to replace experts with potential conflict of interests. This allows minimising the risk of CoI as an expert can be immediately excluded when CoI is suspected without undermining or delaying the evaluation process.

5. Fifth step: signature of contract

The experts allocated to evaluate a proposal sign a contract with the Commission that includes the Expert Code of Conduct as an Annex, therefore committing to abide by it. Only after signing the contract, the expert can have access to the proposals.

6. Sixth step: briefing and opening of proposals

After the signature of the contract, the Commission provides a targeted briefing to the selected experts on the rules that apply to CoI and the procedure to follow if detecting a potential CoI. The briefing consists of a standard set of slides highlighting the importance of maintaining the absence of a conflict of interests and contains in particular a targeted presentation of: i) main conflict of interests described in the code of conduct; ii) a list of potential cases of conflict of interests where the Commission would investigate in 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.

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 interests that would prevent them to participate to the evaluation of the call-topic or the proposal. They have to sign a “Declaration on conflict of interests and Non-disclosure” for all the proposals they evaluate under the same call-panel. This document is signed and registered.

If after the reception of the proposals an expert reports potential CoI, the project officer, in consultation with the Call Coordination Team, assesses the situation of possible CoI based on all elements provided by the experts and will draft a note detailing the conclusions of the assessment. In line with the Expert Code of Conduct, the conclusion may be: a) no conflict of interests and the expert is maintained, b) exclusion from the evaluation for a proposal, c) exclusion from the evaluation for a proposal and for all proposals competing for the same call budget-split, and d) exclusion from the evaluation (termination of the contract).

The lack of CoI is further re-confirmed during the detailed evaluation of proposals. The software used for the management of the evaluation of proposals further requires the experts to reaffirm the lack of CoI. The expert cannot start filling in the Individual Evaluation Report (IER) form for the evaluated proposals without a prior explicit confirmation that they have no conflict of interests; the list of conflict of interests is flagged on the first page of the IER, above the confirmation field for the expert. Once finalised, each IER is signed by the expert and registered.

7. Continuous monitoring of CoI during the evaluation

Project officers are instructed to pay particular attention during the evaluation to any symptom of potential CoI or any other external aspect that could bias the evaluation and to take immediate action if that were the case. Experts are also encouraged to bring to the attention of project officer the suspicion of CoI of another expert. In such case, the Call Coordination Team would be informed and duly investigate the case.

8. Ex-post checks on CoI

The contracts signed with experts allow the Commission to perform checks and audits. This could be done especially in case of an ex-post doubts regarding the impartiality during the evaluation¹⁰.

It is important to clarify that the list of independent experts participating in the evaluation 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. The Commission, however, provides the list of contracted experts assisting in the evaluation of the EDF proposals on a yearly basis to the Members of the Programme Committee (experts from the Member States) and thus is subject to their scrutiny.

Question 1

In the context of previous correspondence on the subject of the European Defence Fund, the Commission explained that Commission staff members in charge of dedicated European Defence Fund topics conduct preliminary checks of absence of conflict of interests when pre-selecting experts from the Expert Management Internal (EMI), a database with experts' profiles ('pre-selection stage'). It further explained that Commission staff members report internally, to the responsible head of unit, on the method followed for the pre-selection screening of experts, individually and as a whole. This includes aspects such as verifying expertise, availability, apparent absence of conflicts of interest, and diversity of backgrounds.

Before proposals for projects under the European Defence Fund are assigned to external experts for their evaluation, Commission staff members check, based on the experts' CVs, that the experts appointed to assess proposals do not have the same employer as those applying for funding (pre-receipt of proposals stage).

¹⁰ No such audit has been performed yet

a. May Commission staff members involved in these assessments:

- **ask for additional information from potential experts to better understand whether there are risks of conflicts of interest? If so, please provide some examples.**
- **use publicly available material to cross-refer or verify aspects or do they rely solely on the information provided by (or in the response of) the experts?**

Answer:

The assessment of possible CoI by the Commission staff is embedded into all steps of the expert selection process as described above.

The Commission staff members may ask for additional information from potential experts and use publicly available material, as indicated in steps 3 and 4. Some examples of the additional information asked in the process are:

- Working in the Ministry of Defence as expert in underwater warfare, have you participated in the call text harmonization of the concerned topic?
- This topic is a follow-up of a topic addressed in 2020. Even if your company is not in the consortium applying to this year, did your company participate in the previous project awarded in 2020? Have you been directly involved?
- Your company does not apply to this topic but the company X, which applies, seems to be a spin-off of your company even if there is no legal relation anymore. Are you aware of that? Have you been involved in any project with company X?
- The University of X applies to this topic. It seems that your company has links with that University as regards research projects. Have you been involved in those projects?
- Confirm the name of the employer (translated into a different language in the CV) to make sure that the employer does not participate in one of the proposals.

As regards the second question, the Commission may also consult external material at this stage: publicly available material (e.g., LinkedIn) is used to verify relations expert-entity or entity-entity in such exceptional cases, but also personal contacts in entities and Ministries of Defence to clarify potential CoI while some references about the quality of the expert are requested.

b. What information do experts need to fill in when registering online? Please provide the relevant template. If experts are required to upload a CV, does the Commission prescribe a certain format/minimum information to be provided?

Answer:

As indicated in step 1 above, the experts must create an “expert profile” in the Funding&Tenders portal of the Commission. The information regarding their personal data, education, areas of expertise and professional experience with actual and former employers, key words and publications is requested.

DG DEFIS also specifically asks to explain any potential conflicts of interest regarding the current EDF calls from the experts it requests to fill in the survey in step 2.

As regards the CV, the Commission does not prescribe any specific format.

c. Could the Commission please elaborate on how the elements provided under chapter 2 on ‘Impartiality’ of the applicable code of conduct for experts are assessed at pre-selection stage?

Answer:

The Commission involves experts independent from the institutions and/or entities that participate in our programme and remunerates them for their work in their personal capacity to ensure their independence and impartiality. The assessment of the elements on impartiality of the experts have been explained above and to avoid repetition, we refer to that part of our reply.

After the call closure, the Call Coordination Team compares the pool of proposals to the pool of experts, by for example searching for matches in expert employers and proposals, or expert email-endings and proposals. Matches and potential CoI are indicated in a table by topic. As explained in step 4 above, due to the limited pool of experts (with specific expertise and holding Personal Security Clearance), it may not be possible to exclude an expert from the entire evaluation, but s/he is excluded from the evaluation of proposals on the same topic as the proposal s/he has a CoI with. To ensure impartiality, the Commission requests 3 times during the expert’ selection process the confirmation from the expert that he/she is not in a situation of CoI (at step 2, at step 5 and at step 6 above).

In case the expert is in a situation of CoI that prevents her/him from participating in the evaluation of a particular proposal or the call, project officer will reallocate all proposals to another expert with a signed contract from the pool still ensuring that there are a minimum of three experts evaluating each of the proposals.

Question 2

In the context of previous correspondence on the subject of the European Defence Fund, it transpired that the Commission applies a “corporate approach” regarding conflict of interest management, which relies largely on the selected experts’ self-declaration of (the absence of any) conflicts of interest.

a. How often have experts self-declared conflicts of interest to date? Please provide data for each annual spending round.

Answer:

The Commission has received in total approximately 300 expressions of interest to participate in EDF evaluations as independent expert. The call for interest is open permanently and it is not related to specific annual spending rounds. When replying to the survey (referred to in step 2), 52 out of them have indicated that they “do” have or “may” have a conflict of interests.

b. Similarly, how often were experts recused from the evaluation of proposals? Please provide data for each annual spending round.

Answer:

The Commission has put in place checks that go beyond the expert's self-declaration. As of the 300 expressions of interest received (that constitute the list of potential experts) some candidates were excluded during the pre-selection and are not included in the pool of experts (step 3 and 4) used for the evaluation of EDF proposals.

The Commission does not keep a register with the exact number of the experts that are not considered suitable already at the pre-selection phase.

As regards the number of experts, included in the pool, that are recused from the evaluation of a topic, due to a direct CoI:

- For the EDF 2021 calls, 2 “evaluation experts” were considered to be in CoI, after having raised a potential CoI at the opening of the proposals, and were not retained for that topic; and 2 “ethics experts” were considered to have a CoI for the ethics review¹¹,
- For the EDF 2022 calls, 4 “evaluation experts” were considered to be in CoI, after having raised a potential CoI during at the opening of the proposals, and not retained for that topic.

Question 3

When a conflict of interests is identified that would normally lead to the exclusion of the expert, Commission staff members may decide to retain the expert, if the following three cumulative conditions are met:

- i. the expert works in a different department/laboratory/institute from the one where the action is to be carried out and*
- ii. the departments/laboratories/institutes within the organisation concerned operate with a high degree of autonomy and*
- iii. the participation is justified by the requirement to appoint the best available experts and by the limited size of the pool of qualified experts.’*

a. How often have experts with conflicts of interest been retained in evaluation panels?

Answer:

Experts with confirmed CoI in a certain call, topic or proposal are not retained in evaluation panels for that call, topic or proposal. The procedure followed is illustrated in step 6 above.

¹¹ Ethics experts were allocated to another call, where no CoI existed

- b. **Similarly, has the Commission issued guidance for staff members involved in managing conflict of interests' situations, including as regards how to exercise discretion for applying the derogation to exclusion? If so, please provide a copy of this guidance with the reply.**

Answer:

The Commission issued guidance¹² in 2021 to raise awareness and to promote 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 Commission trains the project officers involved in the evaluations on the definition of conflict of interests included in the Code of Conduct (that it is repeated during the detailed briefing presented to the experts). The assessment of the CoI cases is made by the project officer, with the assistance of the legal officer, that interprets the conflict of interests according to the guidance. The CoI case is validated by the Call Coordination Team consisting of the call coordinator, assistant call coordinator and the management of the implementing units.

Question 4.

The following situations may be considered as constituting a conflict of interests, if the Commission staff members so decide "in view of the objective circumstances, the available information and the potential risks":

- i. employment of the expert by one of the applicants (or linked third parties or other third parties involved in the action) in the last three years
 - ii. involvement of the expert in a contract, [...] or membership of management structures (e.g. member of management or advisory board etc.) or research collaboration with an applicant, linked third party or other third party involved in the action in the last three years
 - iii. any other situation that could cast doubt on his/her ability to participate in the evaluation impartially, or that could reasonably appear to do so in the eyes of an outside third party.
- a. **Based on the model contract, is it correct that, where one or more of these instances arise, the responsible Commission staff members may decide to exclude the expert from the evaluation of the proposal concerned, or also for competing proposals or the entire call, and, if necessary, to replace him/her and organise a re-evaluation?**

Answer:

Yes, as illustrated in steps 3, 4 and 6.

¹² Guidance on the avoidance and management of conflicts of interests under the Financial Regulation;
https://commission.europa.eu/document/d2bd9c0d-6486-45ab-be49-984844946c17_en

b. How many cases has the Commission identified as falling under points i. to iii. above? Please provide data for each annual spending round.

Answer:

For calls under EDF 2021, after the assessment of the potential CoI raised during the briefing of the project officer to the experts, at the opening of the proposals, the Commission concluded:

- 1 independent evaluation expert fall within ii) above
- 3 independent evaluation experts fall within iii) above

and decided to exclude the experts from the evaluation of those proposals.

For calls under EDF 2022, after the assessment of the potential CoI raised during the briefing by the project officer to the experts, at the opening of the proposals, the Commission, concluded that:

- 1 independent evaluation expert fall within ii) above
- 4 Independent experts fall within iii) above

and decided to exclude the experts from the evaluation of those proposals.

c. In how many of these cases were experts with conflicts of interest excluded from the evaluation panels? Please provide data for each annual spending round.

Answer:

In all these cases the experts were excluded from evaluating the proposals where a potential CoI was identified.

d. Has the Commission issued guidance for staff doing this conflict of interests assessment, including as regards how to exercise discretion for retaining potentially conflicted experts on the evaluation panels? If so, please provide a copy of this guidance with the reply.

Answer:

The Responsible Authorising Officer adopted the EDF Evaluation Methodology, an internal document setting out the rules and principles for the process of EDF proposals evaluation, including the selection of experts. This compulsory methodology guides project officers and Call Coordination Team in the management of CoI. Moreover, the Commission uses a detailed briefing to inform the project officers and experts on key aspects of the evaluation, including conflict of interests.

Question 5

a. Did the Commission receive alerts, for example from other experts, applicants or third parties, as regards risks of conflict of interests, aside from self-declarations of experts? If yes, please provide examples and data for each annual spending round.

Answer:

For EDF 2021 and 2022 calls, we did not receive any alerts.

b. Does the Commission provide for other possibilities to raise such alerts with it?

Answer:

During expert briefing, the project officer asks the expert evaluators to contact the call coordinator if they suspect a conflict of interests by a fellow evaluator.

c. Are experts informed about the applicable whistleblowing rules? If so, how?

Answer:

The Commission (Call Coordinator) gives a general briefing to all the independent experts before their evaluation starts. The Call Coordinator explains to all the independent experts that in case of any suspect of misconduct (e.g. doubts or concerns regarding the possible CoI of another independent expert evaluating the proposal), they should contact the Call Coordinator, whom contact details are provided in the slides.

d. Is it possible for the Commission to carry out audits or ex post reviews to ensure that the experts appointed are not conflicted?

Answer:

Article 12 of the expert contract indeed allows the Commission to carry out checks and audits to verify that the expert has met all his/her obligations, including CoI rules.

2.1. The Commission may — during the implementation of the Contract or afterwards — carry out checks and audits to verify the proper implementation of the work (including reports and deliverables) under the Contract and whether the expert has met all his/her obligations. Checks and audits may be started up to two years after the last payment is made. The Commission may carry out audits directly (using its own staff) or indirectly (using external persons or bodies appointed to do so). The expert must provide — within the deadline requested — any information (including deliverables and reports already submitted) to verify compliance with the Contract. For on-the-spot visits, the expert must allow access to sites and premises where the work under the Contract is or was performed.

Question 6

Does the Commission report on any issues related to conflicts of interest outside the Commission, for example, to the Programme Committee (representatives of EU Member States) or to the European Parliament?

Answer:

The Commission will document the experience with the external independent experts and the related aspects of COI in its mid-term evaluation of the EDF programme that will be presented to the European Parliament and the Council.

*For the Commission
Thierry BRETON
Member of the Commission*

