

7TH MEETING OF THE EXPERT GROUP ON THE CPR FUNDS (CPR EXPERT GROUP)

ONLINE MEETING – 29 NOVEMBER 2022 (10:00 – 13H00)

WORKSHOP CONFLICTS OF INTEREST –

COMMISSION’S AUDIT FINDINGS, LESSONS LEARNED, GOOD PRACTICES

SPEAKER	REGIO-ASSISTANT TO DAC DIRECTOR
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DISCLAIMER

This working document was prepared by/expresses the view of the Joint Audit Directorate for Cohesion (DAC) and does not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

LEGAL BASIS

Article 61 of the Financial Regulation

1. *Financial actors within the meaning of Chapter 4 of this Title and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Union. They shall also take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests.*
2. *Where there is a risk of a conflict of interests involving a member of staff of a national authority, the person in question shall refer the matter to his or her hierarchical superior. Where such a risk exists for staff covered by the Staff Regulations, the person in question shall refer the matter to the relevant authorising officer by delegation. The relevant hierarchical superior or the authorising officer by delegation shall confirm in writing whether a conflict of interests is found to exist. Where a conflict of interests is found to exist, the appointing authority or the relevant national authority shall ensure that the person in question ceases all activity in the matter. The relevant authorising officer by delegation or the relevant national authority shall ensure that any further appropriate action is taken in accordance with the applicable law.*
3. *For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interests or any other direct or indirect personal interests*

1. CONFLICT OF INTEREST – OVERALL ENVIRONMENT

The findings below refer to the overall Management and Control environment around the conflict of interest ('CoI') area.

Finding 1.1 No systematic Risk Analysis

CoI audits have revealed that there is no systematic Risk Analysis in place on the overall control environment dedicated to the issue of CoI. Some Managing Authorities (and AAs to a less extent) focus their CoI risk analysis mostly on issues of public procurement without recognising that CoI can occur in other aspects of the Union's budget implementation. Since the issue of CoI is broader and does not only reflect public procurement, the DAC auditors are of the opinion that a systematic Risk Analysis process should be established at the level of both the MA and AA and focus on a more holistic review of CoI.

Finding 1.2 Insufficient Prevention and Detection mechanism

During our CoI audits, we observed that there are various (and sometimes only sporadic) CoI declaration forms in place. However, any kind of control on the appropriateness of these declarations through comparison with external resources and hard evidence (and any subsequent actions, for example prohibition of a person to participate in future projects or exclusion of a person etc) is either not performed on time or not performed at all and as such cases of CoI may occur and go unattended.

Finding 1.3 Incomplete and diverge system of controls

It transpired during our audit work on CoI that the level of controls differ from authority to authority within the same Member State. Some authorities collect the documents / declarations indeed but do not perform any control of any nature. Others perform some light sporadic controls, whereas others have very recently started reviewing thoroughly the CoI declarations.

We have seen some evidence on the use of data mining and risk scoring tools, but not in a consolidated manner. A robust system would not be based on sporadic checks on the totality of the population, but to where the high risks are recognised, reflecting a proper Risk Analysis at least on an annual basis.

2. CONFLICT OF INTEREST - REPORTING

Finding 2.1 Not straightforward process on reporting of conflict of interest

Our audit work has revealed that despite the fact that the protection of the whistle blower is established by national law, this is not evident in the reporting tools. Hence, potential whistle blowers do not know their rights, nor how their anonymity will be granted.

Finding 2.2 No proper reporting on ancillary employment

The DAC auditors observed that reporting on ancillary (and part time) employment is not complete. Hence there are cases that for example researchers in universities may participate on EU funded projects as personnel (or equivalent staff cost) via funded entities that they work part time without properly declaring this to their predominant employer and as such be in conflictual situation on the implementation of the Union's budget.

3. CONFLICT OF INTEREST – PUBLIC PROCUREMENT ISSUES

Finding 3.1 Relatively high level of rejection of bidders

We noticed in some instances the relatively high level of rejection of bidders (i.e out of 5, 7, 8 bidders, only one bidder finally ranked) and this was due to the strict and formal application of the rules, as some of the rejections could have been avoided with request for clarifications.