

Guidance on Identifying, Managing and Monitoring Conflicts of Interest within ERDF and ESF



Related Documents

Terms of Reference for the Growth Programme Board (Programme Monitoring Committee)	ESIF-GN-2-010
Conflicts of Interest Statement of Requirements for Intermediate Bodies v1	ESIF-GN-1-015
ESIF National Procurement Requirements	ESIF-GN-1-001
PIV (Non CFO) Form v5	ESIF-Form-4-004

1. Introduction

- 1.1 This guidance is intended to outline principles relating to the identifying, managing and monitoring of conflicts of interest in the expenditure of funding under the European Regional Development Fund (ERDF) and European Social Fund (ESF).
- 1.2 Conflicts of interest can arise in a range of environments and are a common and unavoidable part of management. However, failure to properly identify, manage and monitor a conflict of interest can compromise the decision-making process and lead to reputational damage; loss of confidence in the integrity of the institutions or individuals involved; the risk of legal challenge; and, in some cases, the application of a financial sanction.
- 1.3 In the context of ERDF/ESF, conflicts of interest can arise in a number of scenarios. This guidance is primarily concerned with (i) decisions on the allocation of funding by the Managing Authority and Intermediate Bodies (as advised by European Structural Investment Fund (ESIF) Committees) and (ii) procurement by all grant recipients including non-contracting authorities.
- 1.4 The consequences of failing to manage a conflict of interest in the expenditure of funding under the ERDF/ESF can be significant. In the first scenario, the failure to properly manage a conflict could lead to the application of a financial sanction on the Managing Authority and a judicial review of the funding decision resulting in the decision being overturned. In the second scenario, the failure to properly manage a conflict could lead to the application of a financial sanction on the grant recipient under the Department's guidance on corrections. It is therefore essential that all stakeholders fully understand how to identify, manage and monitor conflicts of interest.
- 1.5 Conflicts of interest are not necessarily criminal offences such as theft, fraud, bribery & corruption or misconduct in public office. However, some conflicts of interest, if not identified and managed appropriately, can reach this criminal threshold. This applies equally to both the public and private sectors. If you have any concerns around fraud, theft, bribery & corruption or misconduct in public office in relation to expenditure under the ERDF this must be reported in line with the ERDF Counter Fraud Strategy or by contacting erdffraud@communities.gov.uk. Under ESF this must be reported in line with the ESF Counter Fraud Strategy or by contacting ESFENGLAND.ANTIFRAUD@DWP.GSI.GOV.UK.

2. Definition: what is a conflict of interest?

- 2.1 The National Audit Office (NAO)¹ defines a conflict of interest as a:
“set of circumstances that creates a risk that an individual’s ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest.”

As the definition highlights, a conflict can arise even if the individual doesn’t actually benefit from the conflict, it is sufficient that the circumstances create a risk that their ability to make a decision may be impaired or influenced by a secondary interest. Secondary interests might include direct or indirect financial interests; non-financial or personal interests (such as gifts or hospitality) and competing loyalties between an organisation the decision-maker owes a duty to and some other person or entity.

- 2.2 In the context of the ESIF, Article 57(2) of Regulation No 966/2012 (the Financial Regulation) places an obligation on financial actors and other persons involved in budget implementation and management, audit or control not to take any action which may bring their own interests into conflict with those of the European Union. Conflicts of interest in the spending and management of the EU’s budget are defined as existing:

“2. ... 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 interest or any other shared interest with a recipient.”

2.3 For public procurement, there is a further obligation under domestic legislation (section 24 of the Public Contract Regulations 2015) on contracting authorities to take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators. Section 24(2) states:

“...the concept of conflicts of interest shall at least cover any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.”

- 2.4 For the purpose of this guidance, a conflict of interest is defined as any situation where an individual or organisation can exploit a professional or official role for financial or personal interest (including family, emotional life, political or national affinity, economic interest or any other shared interest with the recipient who may benefit) or where they have competing loyalties. This applies equally to both Contracting and Non-Contracting Authorities managing ESIF projects.

¹ ‘Conflicts of interest’, National Audit Office, accessible at: <https://www.nao.org.uk/wp-content/uploads/2015/01/Conflicts-of-interest.pdf> (p. 6).

3. Identifying conflicts of interest

3.1 In the context of the ESIF, conflicts of interest can arise when an individual or organisation:

- is providing recommendations on funding decisions while also working, or consulting, for grant recipients (ESIF Committees);
- is responsible for making funding decisions while also being a grant recipient or for monitoring compliance by grant recipients to which they may be linked (Intermediate Bodies); and
- is responsible for awarding contracts to organisations to which they may be linked (procurement by grant recipients).

Annex 1 contains further examples of these scenarios.

3.2 Identification procedures will depend on the type of activity in question:

- For recommendations by ESIF Committees, see the [Terms of Reference for the Growth Programme Board \(Programme Monitoring Committee\): ESIF-GN-2-010](#).
- For decision making by Intermediate Bodies, see [Conflicts of Interest Statement of Requirements for Intermediate Bodies v1: ESIF-GN-1-015](#).
- For procurement by grant recipients, see paragraph 3.4 below.

3.3 Grant recipients must ensure that all stages of a procurement process undertaken (preparation, implementation or closure)² are free from conflicts of interest. The model declaration contained in Annex 2 or a similar form of declaration must be signed by the project manager at the start of the procurement process and retained on file for audit purposes. This states that there are no known conflicts.

3.4 If at this point, or later in the process, a conflict is identified it should be immediately reported to the Managing Authority and dealt with in line with section 4 below.

4. Managing conflicts of interest

4.1 Management of the conflict will depend on the type of conflict at issue:

- If the conflict relates to recommendations by ESIF Committees, see the [Terms of Reference for the Growth Programme Board \(Programme Monitoring Committee\): ESIF-GN-2-010](#).
- If the conflict relates to decision-making by Intermediate Bodies, see [Conflicts of Interest Statement of Requirements for Intermediate Bodies v1: ESIF-GN-1-015](#).
- If the conflict relates to procurement, grant recipients must take the steps set out in paragraphs 4.2 – 4.5 below.

² This includes: head of the contracting authority and anyone to whom they delegate their duties; staff (internal or external experts) contributing to preparing the tender documents; staff (internal or external experts) evaluating the bids.

- 4.2 Where, following the completion of a declaration in line with paragraph 3.4 above, a person declares any conflict of interest or if there are any doubts about their impartiality, grant recipients shall ensure this person no longer participates in the procurement exercise or responsibilities are re-allocated between staff. If, due to exceptional circumstances, it is not possible to exclude this person, grant recipients should ensure the decision taken is fully transparent and based on transparent and fair evidence. Clear limits should also be placed on the person's input.
- 4.3 If a conflict of interest has already compromised the decision-making process, grant recipients should cancel and re-run the procurement exercise. Where a conflict appears to be criminal in nature, grant recipients should follow the process laid out in paragraph 1.5 above.
- 4.4 Grant recipients should ensure that procurement processes are continually reviewed to capture any change in conflict in interests over time. It is the Grant Recipients responsibility to ensure procurement processes remain free from conflicts of interest.
- 4.5 To increase staff awareness grant recipients are also urged to maintain continuous training on the identification, managements and monitoring of conflicts of interest. The grant recipient is also responsible for ensuring that any delivery partners are aware of their obligations to follow this guidance.

5. Monitoring conflicts of interest

- 5.1 It is important to maintain internal controls and independent oversight to prevent and detect the existence of any conflicts of interest. Monitoring procedures will depend on the type of conflict at issue:
- If the conflict relates to recommendations by ESIF Committees, see the [Terms of Reference for the Growth Programme Board \(Programme Monitoring Committee\): ESIF-GN-2-010](#).
 - If the conflict relates to decision-making by Intermediate Bodies, see [Conflicts of Interest Statement of Requirements for Intermediate Bodies v1: ESIF-GN-1-015](#).
 - If the conflict relates to procurement, grant recipients are recommended to take the steps set out in paragraphs 5.2 – 5.3 below.
- 5.1 Grant recipients should put in place procedures for storing and monitoring declarations, such as a special register or management information system for each procurement exercise. A member of staff who is not involved in the procurement exercise should be designated to monitor the declarations and ensure up to date records are maintained.
- 5.3 Grant recipients must also conduct additional checks where they received any information about a potential conflict of interest from outsiders with no connection to the procurement exercise.

6. What are the consequences of failing to identify, manage and monitor a conflict of interest?

6.1 Where a conflict of interest is identified in recommendations by ESIF Committees or decision making by Intermediate Bodies and is not properly managed and monitored, this will constitute a breach of Article 57 of the Financial Regulation and is likely to result in a financial sanction being applied to the Managing Authority. The decision in question may also be challenged in domestic courts.

6.1 Where a conflict of interest is identified in public procurement and is not properly managed and monitored this could lead to the possible application of a financial sanction to grant recipients (see irregularity no. 21 in the Commission guidance on the application of flat rate corrections for instances of non-compliance with EC procurement Directives (Commission Decision (C) 2013 9527)):

“When a conflict of interest has been established by a competent judicial or administrative body³, either from the part of the beneficiary of the contribution paid by the Union or the contracting authority.”

The suggested level of correction for this irregularity is 100%.

6.3 In relation to Non-Contracting Authorities, the Department has produced guidance which sets out the level of corrections applicable for breaches in procurement practices including conflicts of interest. This can be found in chapter 6 of the ESIF National Procurement Requirements (ESIF-GN-01-001).

7. Counter Fraud & Conflict of Interest

7.1 The managing authority has zero tolerance policy to fraud and corruption, and has in place a robust control system that is designed to prevent and detect, as far as is practicable, acts of fraud and correct their impact, should they occur. Applicants may be required to share their fraud policy and procedure with the managing authority at the appraisal stage and where there are any changes. Applicants are also required to report any suspicions or actual fraud to the managing authority as soon as they are made aware. More information is available in the ERDF Counter Fraud & Conflict of Interest Policy and European Social Fund 2014-20 Programme Anti-Fraud Policy and [European Social Fund 2014 to 2020 responsibilities of beneficiaries in the prevention and detection of fraud](#) on the [GOV.UK](#) website.

7.2 **The project inception visit (PIV)** is an important initial step in checking that grant recipients have, or are putting in place, the required audit systems, staffing, financial arrangements and processes to deliver a compliant project. During this visit the grant recipient will be required to provide their Counter fraud and conflicts of interest policy, including template conflicts of interest register. Annex 3 provides a sample of a conflict of interest template for grant recipients information and to support them in putting a register in place.

³ “Administrative body” includes the national Audit Authorities for the ERDF and/or ESF.

8. Summary

- 8.1 This guidance has set out how conflicts of interest in the expenditure of funding under the ERDF and ESF can be properly identified, managed and monitored. It is the responsibility of members of the ESIF Committees, Intermediate Bodies and grant recipients to ensure they comply with the requirements set out above and any obligations under EU or domestic legislation.

ANNEX 1

Examples of conflicts of interest

A Recommendations by ESIF Committees

An individual (Person A) owns a business which provides paid consultancy advice to organisations looking to submit bids for the ERDF/ESF

Person A also sits on an ESIF Committee which provides recommendations to the Managing Authority in relation to the drafting of calls for funding and the selection of projects for funding under the ERDF/ESF

An organisation that Person A's consultancy business has recently advised, applies for funding.

Person A has a conflict of interest between their role advising an applicant for funding and their role sitting on the ESIF Committee assessing this application. These types of conflicts can be quite common but can be easily managed by parties declaring their interests and, where necessary, absenting themselves in order to avoid any bias in decision making.

B Decision making by Intermediate Bodies

A member of staff working in an Intermediate Body (Person B) is responsible for managing an ERDF/ESF funded Project where a close relative/ friend is employed in a senior position.

A recent monitoring visit identifies a number of irregularities which results in the application of a significant financial penalty to the Project.

Rather than process the irregularities in line with the Department's guidance on corrections, Person B sets about exerting undue pressure on the monitoring team to remove their finding of irregularities and fails to provide any evidence to support their removal.

In the above example, the correct process would be for Person B to deal with the irregularities in line with the Department's guidance on corrections. However, Person B allows their close relationship with the Project to interfere with this process which results in biased decision making.

Note: This example relates to an agreed irregularity and does not remove the Project's right to challenge the initial findings of the monitoring team by providing further evidence through a contradictory process.

C Procurement by grant recipients

An organisation (the Grant Recipient) is awarded ERDF/ESF to construct a business centre; the director of the Grant Recipient is also a director of a construction company (Company A).

The Grant Recipient appoints an independent Agent to carry out the procurement process, removing the Grant Recipient from any involvement in the decision making process.

The Grant Recipient later makes a request that the Agent considers including Company A in the procurement process.

Company A eventually wins the contract.

The Grant Recipient's direct involvement in the procurement process by asking the Agent to consider including Company A suggests a potential conflict of interest. Whether there is a conflict of interest depends upon how this request was managed. If the independent Agent assessed Company A to fit the criteria for inclusion in the procurement process and steps were taken to ensure that the potential conflict was appropriately managed, no irregularity for actual conflict of interest will be identified. If, however, Company A did not fit the criteria, or the potential conflict was not appropriately managed, an irregularity is likely to be identified.

ANNEX 2

Model declaration for conflicts of interest⁴

Project Reference: (*) Project Name: (***)**

I, the undersigned, being authorised as a responsible person for the above mentioned ESIF Project, declare I am aware of Article 57 of the Financial Regulation, the Procurement Law Guidance note and the requirements of this Conflicts of Interest guidance note.

For the purposes of this declaration, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, is compromised for reasons involving family, emotional life, political or national affinity, economic interest⁵ or any other shared interest with a recipient.⁶

I hereby declare that, to my knowledge, I nor anyone working on the Project has any conflict of interests with regard to the operators who have applied to participate in this procurement procedure or submitted a tender for this procurement, whether as individuals or members of a consortium, or the subcontractors proposed.

To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, which might call into question the independence of project staff in the eyes of any party.

I confirm that if I discover or should it become apparent during the course of the procurement process (including performance of or amendment to the contract) that such a conflict exists or has arisen, I will declare it immediately to the Department and if a conflict of interests is found, I or any staff directly affected will cease to take part in the process and all related activities.

I also confirm that I will keep all matters entrusted to me confidential. Specifically, I agree to hold in trust and confidence any information or documents disclosed to me or discovered by me or prepared by me in the course of or as a result of the evaluation and I agree that it will be used only for the purposes of this evaluation and will not be disclosed to any third party.⁷

Signed (date and place):

Name:

Function:

⁴ "Identifying conflicts of interests in public procurement procedures for structural actions: A practical guide for managers", European Commission European Anti-Fraud Office (OLAF), endorsed 12 November 2013, accessible at: http://www.esfondi.lv/upload/02-kohezijas_fonds/Lielie_projekti/EK_vadi_par_interesu_konflikta_identif_iepirk_EN.pdf (pp 27-28)

⁵ Contractual relationship or paid or unpaid consultancy currently applicable.

⁶ Including voluntary work, member of a board or directive council.

⁷ The declaration is personal and does not have any impact on the requirements under the Grant Funding Agreement for Grant Recipients to retain and make all relevant documents available for audit

ANNEX 3

Sample conflict of interest register template

This table registers Conflicts of Interests declared by [Organisation name] Board Members.

Name	Position	Date Interest Advised	Interest Disclosed	Nature of potential conflict (and estimated value if known)	Action taken / Recommendations	Date implemented	Review / Comments
<i>EXAMPLE: Mr John Smith</i>	<i>Treasurer</i>	<i>12/9/18</i>	<i>Brother is involved in tender selection for housing project</i>	<i>John is involved in working on the tender with the managers. Funding for the tender is £135,000</i>	<i>To remove any bias on the tender application, the Board has arranged for another staff member to assist the managers.</i>	<i>15/10/18</i>	<i>John had no involvement in the tender process after declaring the conflict.</i>