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(Only the Swedish version is authentic)

The rules of the Swedish Competition Authority's Council for Research Issues in respect of disqualification due to conflicts of interest

1. General information regarding the function of the rules

The rules in respect of conflicts of interest (COI), like other rules in respect of a public authority's administrative procedures, have two aims: firstly, to govern how the authority's work is organised and conducted, in order to guarantee objective and impartial case handling; and secondly, to give the general public and any concerned parties confidence that the authority is carrying out its duties in an impartial manner. With regard to the first aim, the COI rules place responsibility on both the authority itself and on its employees; with regard to the second aim, the COI rules work in conjunction with other rules that are described briefly below, in section 4.

2. The conflict of interest rules are established in the Administrative Procedure Act (1986:223)

Regulations regarding disqualification due to conflicts of interest can be found in Sections 11 and 12 of the Administrative Procedure Act, which is general legislation that applies to all public authorities.

3. Specification of the rules with regard to the tasks of the Council for Research Issues (the Council)

The Administrative Procedure Act is formulated in general terms and applies to all government authorities. The Council's activities differ in many ways from those of other authorities, primarily perhaps through the fact that the majority of its representatives are appointed on behalf of the group of researchers that will be directly affected by the Council's decisions. This creates a particular risk for disqualification for reasons of discretion and delicacy. There is therefore good reason to establish internal guidelines for how Council members should act in order to prevent infringement of the COI rules. Since conflicts of interest fundamentally constitute the inability of an individual to handle a case with impartiality, it is difficult to find objective criteria for them and consequently it is

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also difficult to practically enforce guidelines which precisely capture the situations where conflicts of interest, in the legal sense, exist.

The Council's work should therefore be formulated in such a way that not only COI situations, in their strictest sense, can be prevented, but also ambiguous and sensitive situations, as far as this is possible. This can be achieved by identifying general, typical situations where there is a particular risk of COIs and/or situations which could be perceived as presenting a risk in respect of public confidence in the authority.

3.1 Situations that should be avoided due to risk of conflict of interest or which present a risk in respect of public confidence

It is the individual researchers (and in some cases organisations) applying for grants who are the most likely to become injured parties as a result of the Council's decisions. And it is primarily the Competition Authority's case handlers, if they are themselves academically active, who risk finding themselves in a COI situation.

The following general situations should be considered as being sensitive, since they can be thought to constitute a particular risk for COI and/or can be perceived as presenting a risk in respect of public confidence:

- when a case handler at the Competition Authority participates in the Council's preparatory work,
- when a case handler is affiliated to the same institution or equivalent economic unit as an applicant,
- when a Council member involved with a certain case is in another context potentially dependent on an applicant who is also involved with the case, for example, if the latter has the task of evaluating the Council member's competence, their grant application, the institution or subject
- when a Council member has an ongoing or recently completed collaboration, for example, in the form of a teacher/pupil relationship, or they have conducted research together with an applicant.

3.2 Guidelines for preventing conflict of interest situations

Lists of applications should be sent to Council members at an early stage along with a request that the members provide notification of those applications where a conflict of interest, or a particular risk of a conflict of interest exists. The Council members should be asked to pay particular attention to individual cases where there might be a specific risk for disqualification for reasons of discretion and delicacy other than those specifically mentioned in 3.1.

When applications are distributed to members, sensitive situations such as those mentioned above should be avoided as far as possible. No-one should be appointed to be one of the main assessors for applications where a conflict of interest or similar situation exists.

3.3 Rules of procedure where a conflict of interest exists

The guidelines above cannot always prevent a COI situation from arising. The most common cases are the following:

- A Council member applies for a grant themselves.
- A Council member applies for a grant themselves and the project subject is such that the application cannot be transferred over to another main assessor.
- An application falls within a field that is so specialised that it is impossible to find main assessors who do not have a close relationship with the applicant.

In these and other cases where a conflict of interest exists, written statements should be obtained from at least two external experts. When a case is addressed, the disqualified person is to leave the premises. A disqualification due to a conflict of interest is to be noted in the minutes of the meeting. Cases where possible conflicts of interest have been examined but found not to exist are also to be recorded in the minutes. Even if minutes are not generally taken at the meetings, conflicts of interest are still to be recorded.

4. Closely related issues

The confidence of the general public and any concerned parties that the authority is carrying out its duties in an impartial manner is a result not just of observation of the COI rules but also of compliance with other principles that function in harmony with the COI rules. Two such principles are openness and documentation.

4.1 Openness

The Administrative Procedure Act states that "An applicant, appellant or other party is entitled to have access to the material that has been brought into the matter, provided that the matter concerns the exercise of public power in relation to someone ." The Council should demonstrate openness even when it is not exercising public power in relation to someone.

4.2 Documentation

It is essential that the Council documents the information on which it has based its decisions to as large a degree as possible. Section 20 of the Administrative Procedure Act states that “a decision whereby a matter is determined by an authority shall contain the reasons that settled the outcome when the matter concerns the exercise of public power in relation to someone” . However, the reasons can be excluded “if the decision concerns appointment to public office, admittance to non-compulsory education, issuance of diplomas or grades, appropriation of research grants or comparable matters” . If the reasons are to be excluded though, “the authority should at the request of a party set forth the reasons later, if possible” .

The rules are to be considered protection against the individual excluding information that is disadvantageous to others. As long as this interest is preserved, the reasons for the decision should be documented.

ANNEX

Administrative Procedure Act (1986:223)

The terms stated in parentheses below refer to the different types of disqualification due to conflict of interest referred to in the Act, although these terms are not mentioned by name in the text of the Act itself.

Section 11 The person charged with handling a matter is disqualified:

1. if the matter concerns himself or his spouse, parents, children, brothers or sisters or someone else who is closely related to him, or if he or someone closely related to him can expect extraordinary advantage or detriment from the outcome of the matter (disqualification due to ownership, interest and kinship).
2. if he, or anyone closely related to him is the legal representative of someone that the matter concerns or of anyone that can expect extraordinary advantage or detriment from the outcome of the matter (disqualification of a substitute).
3. if the matter has been brought before the authority by an appeal against or the subordination of the decision of another authority or by reason of the supervision of another authority and he had taken part earlier under the auspices of the subordinate authority in the final handling of a matter concerning the same material issue (disqualification due to dual instance).
4. if he as regards the material issue has served someone as a representative or has assisted him for payment (disqualification of a representative and an assistant)
5. if there is some other special circumstance that is likely to undermine confidence in his impartiality in the matter (disqualification for reasons of discretion and delicacy). Disqualification shall be disregarded where the question of impartiality is obviously of no importance .

Section 12 A person who is disqualified may not handle the matter. He may, however, take those steps that cannot be made by someone else without an inconvenient delay. Anyone who knows of any circumstance that could constitute his disqualification is obliged to disclose it on his own motion. If an issue of disqualification has been raised and the person in question has not been replaced, the authority shall decide the issue of disqualification as soon as possible. The challenged person may not take part in the consideration of the issue of his disqualification, unless the authority is not competent to act without him and there is no one available to replace him without an inconvenient delay. A decision concerning an issue of disqualification may be appealed against just in conjunction with an appeal against the decision by which the authority determines the matter.

Comments

The term “case handler” in the context of a conflict of interest encompasses anyone who can influence the outcome of a case, both during its preparation, for example, a research secretary, and at the decision, for example, a Council member.

The COI rules apply to all case handlers.

The term “closely related” in the formulation of the disqualification due to kinship is to be interpreted in its private, rather than professional sense and this can also encompass intimate and close relationships outside of the family in question. A close professional collaboration can however imply disqualification for reasons of discretion and delicacy.

Disqualification of a substitute can exist, for example, for a head of a department, prior to a major application from persons within his own department, even if he is not involved in the project at all. Please note that the substitute themselves is not required to benefit from the decision. Persons employed as, for example, head of department or faculty at a university can therefore easily find themselves in COI situations.

Disqualification due to dual instance requires someone to have participated in the final handling of a case at another authority and, furthermore, that the case was formally referred between the two authorities. Someone who participates in the examination of the same case, albeit it at different levels within the same authority is therefore not disqualified on these grounds; they could however under certain circumstances be disqualified for reasons of discretion and delicacy.

The point regarding disqualification for reasons of discretion and delicacy is a type of general clause and as such is the one most open to interpretation.