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REGISTER NUMBER: 901

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 27/09/2012

CASE NUMBER: 2012-0831

INSTITUTION: EUROPEAN RESEARCH COUNCIL EXECUTIVE AGENCY (ERCEA)

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

**THEODORE PAPAZOGLU
HEAD OF UNIT ERCEA A.1 "SUPPORT TO THE SCIENTIFIC COUNCIL"
EUROPEAN RESEARCH COUNCIL EXECUTIVE AGENCY (ERCEA)
COV2 24/165, PLACE CHARLES ROGIER 16, 1210 BRUSSELS**

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

Unit A1 "Support to the Scientific Council (ScC)".

3/ NAME OF THE PROCESSING

Transfer of data to the Scientific Council

4/ PURPOSE OR PURPOSES OF THE PROCESSING

According to Annex III to Commission Decision 2011/12/EU, amending Decision 2007/134/EC, establishing the European Research Council (hereinafter the "ERC Decision", see annex A, 4th indent), the ERCEA "shall provide the Scientific Council with documents and data necessary for the performance of the tasks entrusted to the Scientific Council". To comply with this duty the Agency has been delegated by the Commission to collect and compile the appropriate data

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

as per requests of the Scientific Council and within the limits explained in Annex III: "*as long as this is done in compliance with and within the limits of the obligations on confidentiality, security and protection of personal data as provided by the European Union law*".

The Scientific Council uses the data provided to fulfil the tasks it has been entrusted with: on the one hand strategy development and on the other hand monitoring and quality assurance of the implementation of its funding strategy. This includes for example the analysis of:

- funded projects in comparison with non-funded projects to assess the balance in the funding portfolio of selected panels or research domains and to take corrective measures, for example, with regard to the composition of the scientific panels (in the beginning the ERC had 20 scientific evaluation panels, currently it has 25 panels),
- success rates by career stage and age distribution to decide on the creation of new grants or changes in eligibility windows in existing grants,
- project results and research performance of ERC funded researchers (in comparison to non-funded projects and non-funded researchers) to assess the "frontier research" character of funded projects and, if needed, provide better guidance to scientific panels or changes evaluation criteria.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

ERC grants applicants, ERC grant holders (Starting Grants, , Consolidator Grants, Advanced Grants, Synergy Grants, Proof of Concept scheme, CSAs), other people involved in ERC-funded projects (team members of any kind), expert evaluators, reviewers, ERCEA staff members and contractors.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

Depending on the subject of the task for which the ScC needs data, requests of the ScC may involve the processing of the following personal data:

- Last name, first name;
- Title, gender;
- Contact persons in Host Institution (HI)/department/faculty/institute/laboratory of the Principal Investigator(s) (PI);
- Nationality;
- Age;
- Country where the applicant is legally resident at the time of the application;
- Project summaries (if they contain personal data);
- Contact details of participants (e.g. phone, fax, email, postal address, location of their professional affiliation);
- Host Institution, nationality and gender of reviewers
- Curriculum Vitae of candidates for high level job profiles at the ERCEA.

The "*Guidance Note on the handling of requests of access to ERCEA's data and documents by the Scientific Council*" of 30 March 2011 (hereinafter the "Guidelines" - (Ref. Ares(2011)346722, attachment E), in section 2 specifies limits and gives examples of cases in which the data provision request has to be denied or certain data hidden/blackened out in a

document. Throughout the review process, the ERCEA Data Protection Officer is available for guidance and advice.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

ERC grant applicants are informed about confidentiality and data protection rules, for instance in the Guide for Applicants for each call (see attachment H) and on the ERC website. In the Proposal Submission Form that is part of each Guide for Applicants that applicant PIs have to fill in, applicants are asked to indicate whether they agree with the possible processing of data appearing in their proposal and its evaluation, including their personal data, under the following circumstances:

"The Scientific Council of the ERC has developed a monitoring and evaluation strategy in order to help it fulfil its obligations to establish the ERC's overall strategy and to monitor and quality control the programme's implementation from the scientific perspective. The Scientific Council has initiated a range of projects and studies to support this strategy as set out in the Annual Work Programmes of the ERC which can be found here [the web address is updated according to the specific call and work programme] (under the part "Coordination and Support Actions" from WPs 2007 - 2010 and "Other Activities" from 2011 - 2013). Do you consent to allow the third parties commissioned to carry out these projects and studies to process the content of your proposal including your personal data? The privacy statement on grants [a link is provided] explains further how your personal data is secured. This consent is entirely voluntary and refusal to give it will in no way affect the evaluation of your proposal."

*As specified in the Guidance Note (Annex E), in case of a request of data from the ScC (Scientific Council) going beyond the dataset of evaluation results which the Agency is requested to provide to the President of the Scientific Council in order for him/her to officially sign of the evaluation, the DPO is contacted for guidance and advice. S/he can therefore recommend implementing specific measures on a case-by-case basis (e.g. request informed consent to be given by the applicants' before access is given to certain data).

*Any personal data provided to the Scientific Council is taken from ERCEA databases that are updated continuously, based on information the ERCEA receives from the applicants/Principal Investigators/Host Institutions. Please see particularly notifications DPO 5-2011 on "IDEAS - Proposals Evaluation and Grants Management", prior checked by the EDPS (case No. 2011-0738) and DPO 6-2011 on " (Specific Programme) IDEAS - Experts Selection and Management" for further details on how data subjects are informed and the data is kept up-to-date.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

Personal data provided to the ScC is always based on the most recent sets of data available to the Agency. A number of measures are in place to allow data subjects to ensure their data is recent and access is permissible. Due to the nature of the data, which is a summary of data originally provided to manage proposals and grant agreements, data subjects cannot have direct access or any other direct right concerning the sets of data that are provided to the ScC.

Data subjects are, however, when they submit their proposal to the ERCEA, informed that their personal data may be provided to the ScC so it can perform its tasks (see section 7 for further details). They are free to not agree to such processing, and their choice will be taken into account.

Please see particularly notifications DPO 5-2011 on "IDEAS - Proposals Evaluation and Grants Management", prior checked by the EDPS (case No. 2011-0738) and DPO 6-2011 on "(Specific Programme) IDEAS - Experts Selection and Management" for further details on how data subjects are informed and the data is kept up-to-date.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

As provided for by Article 4.3 of Council Decision 2006/972/EC concerning the specific programme Ideas, the ERC Scientific Council is one of the two components of the ERC, the other one being the ERC Executive Agency. The ScC is composed of scientists, engineers and scholars of the highest repute, appointed by the European Commission, and acting in their personal capacity, independent of any outside influence. It is tasked with establishing the overall scientific strategy of the ERC. Its tasks cover, in particular, the establishment of the Annual Work Programme, the establishment of the peer review process, as well as the monitoring and quality control of the implementation of the Specific Programme "Ideas" including participation in the recruitment of high level ERCEA staff members.

The ERCEA is subsequently delegated to "*collect, process and distribute data, and in particular compile, analyse and transmit to the Commission and the Scientific Council all information required to guide implementation of the specific programme Ideas as well as policy development in the field of frontier research,...*" (Article 6.1 (a) of Commission Decision, C(2008) 5694 of 8 October 2008, Delegating powers to the ERCEA).

The ERC Decision, and in particular its Annex III, (see annex A, 4th indent) defines the working relationship between the ERCEA and the ERC Scientific Council (ScC), that in certain cases may involve access of ScC members to ERCEA data under limited conditions.

Access to ERCEA data is further defined in the Guidelines (attachment E) that establish:

- The ERCEA unit responsible for the coordination of any answer to a ScC data request: A1.
- The procedure to be followed: all requests have to be made in writing and registered in ARES. Unit A1 forwards the request to the appropriate operational unit, usually the unit where the requested documents or data are located. The verification of a request is performed by the operational unit which owns the data, with the legal assistance of unit D3. Unit A1 transmits the outcome of this verification, it being positive or negative, and the requested data/documents (in case of a positive response) back to the member of the Scientific Council that issued the request.

The operational unit, based on Annex II of the Guidelines, verifies:

- a) That the request concerns the performance of a task entrusted to the Scientific Council;
- b) That there is no limit that prevents the granting of access with regard to confidentiality, security, public interest reasons, access to documents and protection of personal data issues. In case of doubt, ERCEA Unit D.3 (legal sector) must be consulted. In some cases, explicit consent of the person whose data may be transferred is required.
- c) If access to data is denied, the reasons for the denial that must be provided in writing and the document registered in Ares.

d) If access is granted Unit A1 ensures that the requested documents or information is sent to the Scientific Council.

- The kind of data provided: according to Annex III to the ERC Decision, the ERCEA "*shall provide the Scientific Council with documents and data necessary for the performance of the tasks entrusted to the Scientific Council as long as this is done in compliance with and within the limits of the obligations on confidentiality, security and protection of personal data as provided by the European Union law.*" This includes standard information on the evaluation of proposals submitted in the framework of a call according to a determined path and timing (see Ares(2011)40861, Procedure for the Communication of Evaluation Results, attachment G) but extended information may be requested in specific cases.

Requests going beyond the standard batch of documents have to be examined according to the principles described above.

The Scientific Council uses the data it receives to fulfil its tasks defined in some of the documents mentioned explained in section 4. In particular, Council Decision 2006/972/EC of 19 December concerning the specific programme "Ideas" explains in Annex 1 that the tasks of the Scientific Council include "[to] *monitor [the] quality of operations and evaluate programme implementation and achievements and make recommendations for corrective or future actions.*"

Data on evaluations are compiled by Department B, which also provides standard batches of documents for the President of the ERC.

10/ STORAGE MEDIA OF DATA

Data can be stored in Excel or text format (e.g. applications). Documents are placed into the appropriate directory of the ERCEA's electronic filing system with access privileges to the appropriate units.

The ERCEA's electronic filing system's main server is located at COV2/LSU1; its backup server at CDMA -1/LSU2.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

A. The set of documents constituting the legal basis for the ERC and Specific Programme IDEAS:

- Decision n. 1982/2006/EC of the European Parliament and the Council concerning the Seventh Framework Programme of the European Community for research, technological, development and demonstration activities (2007-2013);
- Regulation (EC) no. 1906/2006 on the rules of participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013);
- Council Decision 2006/972/EC concerning the specific programme Ideas implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013);
- Commission Decision 2007/134/EC establishing the ERC, as amended by Commission Decision (2011/12/EU) of 12 January 2011;
- Commission Decision C(2007) 2286 ERC rules for the submission of proposals and the related evaluation, selection and award procedures for indirect actions under the Ideas

Specific Programme of the Seventh Framework Programme (2007-2013), as amended by Commission Decision (2010/767/EU) of 9 December 2010;

- Regulation (EC) n. 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes ;
- Commission Decision 2008/37/EC setting up the ERC Executive Agency (ERCEA) for the management of the specific programme Ideas in the field of frontier research in application of Council Regulation (EC) N° 58/2003;
- Commission Decision C(2008) 5694 delegating powers to the ERCEA with a view to performance of tasks linked to the implementation of the specific programme Ideas in the field of research comprising in particular implementation of appropriations entered in the Community budget;

B. Public access to Documents – Internal Procedure for implementing the transparency policy into the ERCEA: Encoded in Adonis as ERCEA/D3 D(2010)607301.

C. Document prepared by ERCEA B3 for the "Dissemination of evaluation results" (Ares (2011)254678) (attachment D).

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

Members of the ScC, ERCEA staff members that prepare the answer to the ScC information request.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The storage of data that may be provided to the ScC is regulated by different internal procedures depending on the topic to which the set of data relates. It is partly already notified in separate notifications (e.g. ERCEA DPO 21-2012 on workforce statistics or the follow-up note of the prior checking of a notification of the processing "Ideas proposal, evaluation and grant management" (ERCEA DPO 5-2011, prior checked by the EDPS in case No. 2011-0738), referring mainly to time limits for the storage of applications).

The maximum period of storage is until the end of the administrative completion of FP7 (2018).

(a) A ScC member that receives a set of data from the ERCEA that includes personal data defines in his request the time for which s/he will need the data, depending on the purpose for which the data shall be used. S/he must then assent to delete the data set once the specific period is over.

(b) The set of data provided to a ScC member is stored by Unit A1 and/or the operational unit that provided the data during the same amount of time as the ScC member has been allowed to make use of the data set. It is then deleted from the ERCEA servers and no paper file is kept.

The members of the ScC, after they have received certain information, are requested to also respect data protection rules, including those related to data storage, as stated in their own Rules of Procedures and Code of Conduct. Any request of data from the ScC implies signing further confidentiality clauses. An example is provided in attachment F. Together with the specific data requested, the ScC receives detailed instructions on data storage.

The ERCEA must respect the principle of transparency of all public administrations. It must be able to provide evidence about its work and results but also about scientific misconduct, fraud, maladministration or inefficient administration at any moment, also in the future, for which a database and in the case of the ERCEA, information to the ScC is required.

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

(Please, specify the time limits for every category, if applicable)

Please see section 8 for details.

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

After the end of the administrative completion of FP7 (2018), some data will have to be kept in an encrypted and anonymised form for statistical and historical purposes only.

In the same line, for historical, scientific and statistical reasons, the ERCEA does not fully destroy all personal data it receives once the retention period is over. Data on applications, for instance, are necessary in the short, medium and long term to allow the appropriate follow-up and development of the Ideas programme. The data allows the ERCEA to:

- avoid double funding of projects;
- analyse the long term impact of its funding, from the scientific and societal point of view.

The data analysis, i.e., serves to allow the ERCEA to follow up on projects and researchers and to be aware of having financed (or refused to finance) important research prizes, e.g. nobel prizes laureates, field medallists or other scientific prizes, or of having contributed (or not) to major scientific, economic and societal breakthroughs. It is the ScC's task to follow up on such issues.

Also, certain fundamental data is kept for historical reasons in an anonymised form.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Not applicable. The ScC is not a separate legal entity but its members act on their own behalf as natural persons.

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING *(Please describe):*

Most data that is requested by the ScC have been provided to the ERCEA in grant applications (proposals), job applications to the ERCEA (e.g. data on ERCEA staff), calls for tenders (e.g. data on contractors) or during the preparation of grant agreements.

These data may be used by the ScC to evaluate and monitor the IDEAS programme's purposes (mainly in the case of proposals), to control scientific misconduct or even to provide views in appointing senior staff of the ERCEA, as stated in the Ideas Specific Programme:

“Role of the Commission

The Commission will act as the guarantor of the ERC's full autonomy and integrity. It will ensure that the ERC acts in accordance with the principles of scientific excellence, autonomy, efficiency and transparency, and that it follows precisely the strategy and implementation methodology established by the Scientific Council. In particular the Commission will:

- *Ensure the establishment of a dedicated implementation structure and the delegation of tasks and responsibilities to it.*
- *Appoint the Director and the Senior Staff of the dedicated implementation structure taking into account the views of the Scientific Council.*
- *Adopt the work programme and the positions regarding implementing methodology, as defined by the Scientific Council.*
- *Ensure that proposals are retained, and projects financed, solely on the basis of their ranking order resulting from the peer review; any change in the rank order of peer review must be explicitly endorsed by the Scientific Council.*
- *Regularly inform the programme committee on the implementation of the programme.*
- *Draw up, in cooperation with the Scientific Council, an annual report on the ERC's operations and realisation of the objectives set out in the Specific Programme and submit it to the Council and the Parliament.”, annex I to Commission Decision (2006/972/EC).*

Therefore it could be considered that the data is processed for additional purposes than for which it was originally provided to the ERCEA, taking into account, however, that applicants have the option to agree – or not – to the processing of their data by the ScC (see section 7).

AS FORESEEN IN:

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

Article 27.2.(b) ✓

Processing operations intended to evaluate personal aspects relating to the data subject,

Article 27.2.(c) ✓

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

Other (general concept in Article 27.1)

Since the processing operations have already been established (the processing started with the creation of the ERC, 27/02/2007), the present notification concerns an ex-post prior check.

The procedure has been applied only once, so far, in order to allow the current President of the ScC, Dr. Helga Nowotny, to do a further analysis of funded Social Sciences and Humanities topics in her capacity as Member of the Scientific Council. The documents related to this request are included in the annexes as an example.

List of attachments:

A. The set of documents constituting the legal basis for ERC and IDEAS:

- Decision n. 1982/2006/EC of the EP and the Council concerning the Seventh Framework Programme of the European Community for research, technological, development and demonstration activities (2007-2013);
- Regulation (EC) n. 1906/2006 Rules of participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013);
- Council Decision 2006/972/EC concerning the specific programme Ideas implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013);
- Commission Decision 2007/134/EC establishing the ERC, as amended by Commission Decision (2011/12/EU) of 12 January 2011;
- Commission Decision C(2007) 2286 ERC rules for the submission of proposals and the related evaluation, selection and award procedures for indirect actions under the Ideas Specific Programme of the Seventh Framework Programme (2007-2013), as amended by Commission Decision (2010/767/EU) of 9 December 2010;
- Regulation (EC) n. 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes;
- Commission Decision 2008/37/EC setting up the ERC Executive Agency (ERCEA) for the management of the specific programme Ideas in the field of frontier research in application of Council Regulation (EC) N° 58/2003;
- Commission Decision C(2008) 5694 delegating powers to the ERCEA with a view to performance of tasks linked to the implementation of the specific programme Ideas in the field of research comprising in particular implementation of appropriations entered in the Community budget;

B. The ScC's Rules of Procedures and Code of Conduct.

C. Public access to Documents – An internal Procedure for implementing transparency policy into the ERCEA (Adonis ERCEA/D3 D(2010)607301).

D. Document prepared by ERCEA B3 for the "Dissemination of evaluation results" (ARES (2011)254678).

E. Guidance Note on the handling of requests of access to ERCEA's data and documents by the Scientific Council of 30 March 2011 (Ref. Ares(2011)346722).

F. Example of a data request from the ScC and its related documents.

G. Procedure for the Communication of Evaluation Results (Ref. Ares(2011)40861).

H. Latest guide for applicants published on the ERC website.

PLACE AND DATE: **BRUSSELS, 25/09/2012**

DATA PROTECTION OFFICER: **NADINE KOLLOCZEK**

INSTITUTION OR BODY: **EUROPEAN RESEARCH COUNCIL EXECUTIVE AGENCY**

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EDPS OPINION

OF DATE:

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FOLLOW UP *(in case of acting measures to be taken)*