

*(To be filled out in the EDPS' office)*  
**REGISTER NUMBER: 1166**

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**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 23/09/2013**

**CASE NUMBER: 2013-1050**

**INSTITUTION: EACI**

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

**INFORMATION TO BE GIVEN<sup>2</sup>**

1/ NAME AND ADDRESS OF THE CONTROLLER

William Gillett  
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Executive Agency for Competitiveness and Innovation, COV 2,10/56  
Belgium, Brussels

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Head of Unit 2, IEE Energy Efficiency  
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Jose Puigpelat Valls,  
Head of unit 4, Network Operations  
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COV 2, 12/77  
Belgium, Brussels

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<sup>1</sup> OJ L 8, 12.01.2001.

<sup>2</sup> **Please attach all necessary backup documents**

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

Units 1, 2, 3, 4 and 5

3/ NAME OF THE PROCESSING

Name under which processing is organised:

Personal data gathered by the EACI in the framework of the calls for proposals include applications for funding by organisations and subsequent evaluations, grant contract negotiation and management and follow-up of the Intelligent Energy Europe (IEE) programme, Eco-Innovation (Eco-I), Enterprise Europe Network (EEN) and Marco Polo.

Short description of the processing:

Under the IEE, Eco-I, EEN and Marco Polo programmes managed by the EACI for submission and evaluation of proposals, contract negotiation and management.

Applications for getting funded are processed by the EACI under the IEE, Eco-I, EEN and Marco Polo programmes of the European Union are submitted in response to calls for proposals.

The EACI works with two kinds of agreements:

(a) Grant agreements for an action, whether they are with a single beneficiary or with multiple beneficiaries. In the framework of the IEE, Eco-I, ENN and Marco Polo, in general, agreements are concluded with multiple beneficiaries. In the framework of Eco-I and Marco Polo however, agreements may be concluded with only one beneficiary. These beneficiaries are always legal entities and never natural persons.

(b) Framework Partnership Agreements (FPAs) which are implemented through Specific Grant Agreements (SGAs). This is in particular the case in the field of the ENN. The FPAs are long term cooperation mechanisms between the EACI and the beneficiaries.

The FPA, in the form of an agreement, specifies the common objectives, the nature of actions planned on a one-off basis or as part of an approved annual work programme, the procedure for awarding specific grants and the general rights and obligations of each party which are further specified in the SGA.

Again the beneficiaries (called "partners" in the framework of the FPAs) are legal entities and not natural persons.

In the particular case of EEN, a call for proposals was launched in 2006 by the European Commission. As a result, 92 Framework Partnership agreements covering a period of 6 years (2008-2013) were signed and complemented by 3 successive Specific grants Agreements with the partners, which allowed for creating what is now the Enterprise Europe Network. In addition, 8 calls for proposals were launched from 2008 until 2013 allowing partners of EEN to participate in support specific projects.

In general, in the programmes managed by EACI, applications have to be submitted by legal persons or entities, in representation of the organisations applying for the funding.

During the programme cycle, the EACI requests the provision of personal data, namely, it gathers information on administrative details and qualifications of staff that would take part in the action.

In the calls for proposals, the EACI only requests the data that are necessary for establishing contact and for evaluation.

Information on the application process, guidance for drawing up of proposals and other relevant information on the calls for proposals (including the model grant agreements) can be found here:

- IEE: <http://ec.europa.eu/energy/intelligent/getting-funds/call-for-proposals/how-to-apply/indexen.htm>
- Eco-I: <http://ec.europa.eu/environment/leco-innovation/>
- EEN: <http://een.ec.europa.eu/>
- Marco Polo: <http://ec.europa.eu/transport/marcpolo/>

#### 4/ PURPOSE OR PURPOSES OF THE PROCESSING

The data collected by the EACI has the purpose of allowing the EACI to manage the proposals for funding under the IEE, Eco-I, EEN and Marco Polo Programmes all along the programme life cycle, in particular:

- Proposal evaluation and ranking including the assessment of the technical capacity of the applicants and the composition of the team.
- Communication with the applicants.
- Proposal negotiation and award decision.
- Contract preparation, generation, validation, execution and monitoring, including possible amendments.
- Financial transactions to and from the Commission's accounting system for further validation and processing.
- Publication of project summaries on the programme website, in project databases and through newsletters.
- Statistics, reporting and information relating to management, monitoring and mid-term and final assessment of programmes and initiatives (includes project information storage for statistics and auditing purposes).

#### 5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

- 1) 'Key personnel' i.e., responsible managers and other staff of the action in the participating organisation;
- 2) Legal representatives;
- 3) Contact persons.

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

The following an overview of the personal data which will be collected:

- First name, last name;
- Contact details (telephone, e-mail, fax);
- Gender;
- Date of birth;
- Nationality;
- Gender;
- VAT number, ID number, passport number
- Curriculum vitae containing the following: the relevant experience, employment history, education, academic background, training, personal skills, competences, languages, technical skills

- Staff category which may include hourly rate;
- Bank account details of the Organisation (Legal Entity Form and Bank Account Form of the European Commission) which can only include the identification data of the authorised representative.
- Declaration on the honour that they do not fall within exclusion criteria (only for the entity)<sup>3</sup>

Data is provided directly by the data subjects.

Staffs collecting these data are aware that only relevant and necessary data may be processed.

Staff collecting these data is instructed that only relevant and necessary data may be processed.

## 7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

### CALL FOR PROPOSALS

- IEE Programme

In the framework of IEE, the data subjects are *given* a privacy statement (see annex I).

Pursuant to Article 11 of Regulation 45/2001, the EACI *provides* the data subject with the following information *via* its privacy statement, which is made available for each call on the IEE website (see the annex to this notification) :

- i) identity of the controller (the EACI),
- ii) purpose for which data is collected (allowing the EACI to assess the technical capacity of the applicants and the composition of the team),
- iii) recipients of the data (staff members of EACI responsible for assessing the proposals submitted in response to the calls for proposals and external expert evaluators),
- iv) voluntary nature of the questions (submission of proposals is done voluntarily),
- v) the existence of the right of access to and right to rectify the data,
- vi) the duration for which the data will be retained.

At the time of signing the "Declaration by the applicant" for the IEE programme, the representative of the organisation is *provided* with information on data protection and the right of recourse:

Your grant application will be processed by computer. All personal data (such as names, addresses, CVs, etc.) will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free *movement* of such data. Your replies to the questions in this form are necessary in order to assess your grant application and they will be processed solely for that purpose by the department responsible for the European Union grant programme concerned. On request, you may be sent personal data and correct or complete them. For any question relating to these data, please contact the EACI to which the form must be returned. Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

- Other programmes

The other three programmes currently managed by EACI do not *have* a privacy statement due to the fact the the programmes will end in 2014. The EACI is waiting for the approval of the delegation act of the Commission that will provide the agency with the new programmes to be managed as of 2014.

<sup>3</sup> No proofs are required in principle.

In 2014, the data protection issues of the programmes delegated to the EACI will be harmonised and updated. Measures such as privacy statement, similar to the one *above*, will be put systematically in future calls for proposals for all the delegated programmes.

In addition, at the time of signing the "Declaration of honour by the applicant" for the Eco-I and Marco Polo programmes, the representative of the organisation is provided with a link to a privacy statement on the processing of personal data in the context of Grant Applications. Also, at the end of the declaration, the organisation is informed that your personal data may be registered in the Early Warning System (EWS) only or both in the EWS and Central Exclusion Database (CED) by the Accounting Officer of the Commission, should you be in one of the situations mentioned in:

- the Commission Decision 2008/969 of 16.12.2008 on the Early Warning System (for more information see the Privacy Statement on

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)), or

- the Commission Regulation 2008/1302 of 17.12.2008 on the Central Exclusion Database (for more information see the Privacy Statement on

[http://ec.europa.eu/budget/explained/management/protecting/protect\\_en.cfm#BDCE](http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm#BDCE))

Moreover, Legal Entity Forms and Bank Account Forms contain a link to the site of the Commission which provides, among other, information on the processing of personal data.

Application forms clearly state whether the information requested is obligatory or voluntary and whether opting for not providing may have consequences, when applicable.

## GRANT AGREEMENTS

Since 2013, all programmes managed by EACI use the grant agreement templates (and calls for proposals) provided by DG BUDG<sup>2</sup>, which contain the following clauses:

- Article 1.6 of the special conditions- on the Data Controller and communication details of the parties (1.8 of the special conditions in the case of Eco-I grants);
- Article 11.5 of the general conditions on Confidentiality (11.4 of the general conditions in the case of Eco-I grants);

*11.5.1 The Commission and the beneficiary shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Agreement and which are explicitly indicated in writing as confidential.*

*11.5.2 The beneficiary shall not use confidential information and documents for any reason other than fulfilling its obligations under the Agreement, unless otherwise agreed with the Commission in writing.*

*11.5.3 The Commission and the beneficiary shall be bound by the obligations referred to in Articles 11.5.1 and 11.5.2 during the implementation of the Agreement and for a period of five years starting from the payment of the balance, unless:*

- (a) the concerned party agrees to release the other party from the confidentiality obligations earlier;*
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;*
- (c) the disclosure of the confidential information is required by law.*

- Article 11.6 of the general conditions on the Processing of Personal Data (1.10 of the special conditions in the case of Eco-I grants).

*11.6.1 Processing of personal data by the Commission*

*Any personal data included in the Agreement shall be processed by the Commission pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.*

<sup>2</sup> <http://www.cc.cec/budg/imp/grants/imp-090014agreementen.html>

*Such data shall be processed by the data controller identified in Article 1.6.1 solely for the purposes of the implementation, management and monitoring of the Agreement, without prejudice to possible transmission to the bodies charged with the monitoring or inspection tasks in application of Union law.*

*The beneficiary shall have the right of access to his/her personal data and the right to rectify any such data. Should the beneficiary have any queries concerning the processing of his/her personal data, he/she shall address them to the data controller, identified in Article 1.6.1.*

*The beneficiary shall have the right of recourse at any time to the European Data Protection Supervisor.*

#### *11.6.2 Processing of personal data by the beneficiary*

*Where the Agreement requires the processing of personal data by the beneficiary, the beneficiary may act only under the supervision of the data controller identified in Article 1.6.1, in particular with regard to the purpose of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his or her rights.*

*The access to data that the beneficiary grants to its personnel shall be limited to the extent strictly necessary for the implementation, management and monitoring of the Agreement.*

*The beneficiary undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:*

*(a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:*

*(i) unauthorised reading, copying, alteration or removal of storage media;*

*(ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;*

*(iii) unauthorised persons from using data-processing systems by means of data transmission facilities;*

*(b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;*

*(c) record which personal data have been communicated, when and to whom;*

*(d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Commission;*

*(e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;*

*(f) design its organisational structure in such a way that it meets data protection requirements.*

## 8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

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

Data subjects are informed of their rights to access, rectify, block, erase and object to data processing in accordance with Regulation 45/2001 via the privacy statement and in the calls for proposals.

If the grant requested is not awarded, the EACI gives the reasons for the rejection of the application, in particular with the reference to the selection and award criteria. Rejected applicants should be informed as soon as possible of the outcome of the evaluation of their application, at the latest within 15 calendar days after information has been sent to successful applicants.

## 9/ AUTOMATED / MANUAL PROCESSING OPERATION

All processing operations have an automated part (e.g. data validation, eligibility criteria etc).

Some of the front-office tools integrated in the Participant Portal are managed by the REA (Research Executive Agency - as the system owner) and implemented by DG DIGIT (as the system supplier). IT support for these systems is provided by DIGIT.

This includes:

- "PDM/URF": Organisations Registration/Verification/Validation;
- "Proposal Submission" SEP Submission;
- FORCE will come next for payments after each reporting period (web based editor for FORM Cs);
- NEF front-office, as the negotiation tool for Eco-I;
- SESAM - manage reports and deliverables;

The scope of the front-office manual processing operations performed by EU personnel or contractors on their behalf is rather limited to certain areas mentioned below. Manually initiated transfer of data between systems is not considered as a processing operation and it is not mentioned here. The following processing operations are considered:

- Organisation of data management of applicants in response to a call;
- Management of unique organisation (participant) IDs;
- Keeping paper documents storage, e.g. on organisation legal status.

The local IT systems and supported back-office processing operation includes to date:

- SEP Evaluation system (RIVET: "Evaluation Support Service system", is currently phasing out and is only used for new projects within the Eco-I programme);
- PMS: "Contract & Project Management" (only used for remaining contracts in the system);
- ePMS (managed and supplied by DG ENER/MOVE): "Contract & Project Management";
- CPM for grant management and PCM (the payment calculation module) in the Eco-I programme;
- NEF back-office, as the negotiation tool for Eco-I;
- CORDA (data warehouse) and SESAM will soon be used for reporting;
- SECUND - user rights and roles in most of the back-office systems;
- SESAM - manage reports and deliverables;
- ESS tools (Rivet, Pinocchio, ROPDB, CPEB, Evama) - the old evaluation tools to be used this year by Eco-I;

The scope of the back-office manual processing operations performed by the Agency includes:

- Evaluation of grant applications with the assistance of external experts
- Managing the selected projects, for further processing, including contract preparation, and initial payments.
- Managing the projects and further processing, including deliverables, contract amendments, and intermediate or final payments.
- Managing reporting requirements for operation at project, unit or Agency level.
- Carrying out projects auditing, to assess whether or not all relevant legal obligations were properly followed.
- Managing publication and dissemination of results.
- Managing Agency's user access to supporting IT systems.

ABAC is used for the processing of data related to payments.

For online submitted proposals an ad hoc committee for checking late online submissions in the system is appointed. This committee only checks that when proposals submitted through the online submission system have not arrived on time, this is not due to technical problems attributable to the EACI. This verification is performed only on the basis of complaints made by those who have submitted a proposal.

The record of the ad hoc online submission committee meeting which shall identify:

- (1) those proposals which did not arrive on time,
- (2) the reasons for the delay,
- (3) the complaint(s) filed with the arguments and
- (4) the conclusion reached by the committee.

The grounds on which proposals were rejected for non-compliance with the deadline shall be given by reference to the method of submission of proposals as mentioned in the call for proposals.

Whenever an online submission system is not available (ie. for the Marco Polo programme) an opening committee is appointed so as to receive and manage the proposals submitted by the candidate organisations. The sole task of this committee is to check whether the formal requirements for the submission of proposals have been complied with:

- (1) that proposals have been submitted on time within the deadline, and
- (2) that they are in sealed envelope and thus the integrity of data is preserved.

Hence the opening committee shall in no way assess the quality of the proposals submitted by reference to the eligibility, selection and award criteria. Any requests for clarifications shall always be made in writing and be recorded in Ares.

The chairperson of the opening committee hands over a copy of all the proposals, including the envelopes, and the report of the opening of the proposals to the secretary of the evaluation committee. On completion of the opening session, applicants are informed in writing whether their applications meet the formal requirements of the submission procedure in order to be further evaluated. Applicants whose proposals have been declared not in order are informed of the reasons for the rejection of the applications.

All proposals which after opening, are found to be in order, are evaluated in an identical and non-discriminatory manner, for which an evaluation committee is appointed. All proposals for a given call for proposals must be evaluated by the evaluation committee as assisted, where necessary, by independent experts and evaluation is based exclusively on the eligibility, selection and award criteria set out in the work programme and the call for proposals, with nothing added, removed or altered. Independent experts, if needed, are appointed by decision of the authorising officer responsible and they must not have conflict of interests.

Each proposal has to fulfil a set of formal eligibility criteria and they will be evaluated in detail (if these eligibility criteria are met) against a set of award criteria. The evaluation committee may ask the applicant in writing to provide additional information or clarify supporting documents submitted in connection with the application but the information or clarification cannot substantially change the proposal.

The results of the evaluation will consist of a list of proposals divided into those considered 'proposed for the award of a grant' and those considered 'not proposed for the award of a grant'. The decision about the selection and award of a proposal will be made by the Director, acting as authorising officer by delegation for the implementation of the operational budget, on the basis of this list and subject to the available budget. This list is sent for Inter Service Consultation (CIS) so as to avoid double funding.

The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the EACI shall give the reasons for the rejection of the application with reference to the selection and award criteria. Applications can also be placed in a reserve list.

Any request for access to documents relating to an evaluation procedure must be looked at on a case by case basis in light of Regulation *1049/2001* of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents<sup>3</sup>.

Applicants whose proposal has been evaluated favourably will be sent an invitation to enter into an adjustment phase, announcing the launching of negotiations. Typically, it would lead to the conclusion of a grant agreement, which determines the rights and obligations of the contracting parties, preceded by the

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<sup>3</sup> Together with the Steering Committee Decision Decision No IEEA/4/03, of 15 July 2006. laying detailed rules for the implementation of the above mentioned Regulation.



establishment of an individual budgetary commitment. EACI draws up agreements taking as basis the model of the Commission<sup>4</sup> with any specific adjustments in order to reflect particularities of the programmes.

The financial officer appointed within the operational unit prepares a draft grant agreement using the standard templates and the data resulting from the adjustments which were duly encoded in the project management system, when applicable, by the responsible project officer (PO) and FO. Then, the PO and FO responsible for the project encode and validate in the project management system, when applicable, the necessary information relating to the special conditions of the grant agreement.

Once the agreement is first signed by EACI and then by the beneficiary (co-beneficiaries) for signature, the FO encodes the signature date of the grant agreement in the ABAC commitment and in the project management system, when applicable. The FO makes a copy of the cover letter and of the grant agreement on which he/she puts a stamp 'corresponding to the original signed' and his/her visa and files it in the grant agreement's 'master file', whereas the original grant agreement is kept in a safe and locked place under the supervision of the responsible authorising officer by sub delegation (AOSD).

During the lifetime of the contract, the EACI staff members responsible for the project perform (POs and FOs) a close technical and administrative follow-up of the contract (progress in the implementation of the tasks, queries of the beneficiaries, protection of EU interest and verification of the financial implementation).

#### 10/ STORAGE MEDIA OF DATA

Data is stored on a computer with restricted access and in locked cupboards.

#### 11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

.. Article 5 (a) of Regulation EC 45/2001: processing is necessary for the performance of a task carried out in the public interest.

- Article 5 (b) of Regulation EC 45/2001: processing is necessary for compliance with a legal obligation to which the controller is subject.

This is the obligation to implement:

- The IEE, Eco-I and EEN programmes (see *Commission Decision 2007/372/EC, of 31 May 2007, amending Decision 2004/20/EC in order to transform the 'Intelligent Energy Executive Agency into the Executive Agency for Competitiveness and Innovation; and Decision 1639/2006/EC of the European Parliament and of the Council, of 24 October 2006, establishing a Competitiveness and Innovation Framework Programme (2007 - 2013).*
- *The Marco Polo programme (see Regulation (EC) No 1692/2006 of the European Parliament and of the Council of 24 October 2006 establishing the second Marco Polo programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo /I Regulation) and repealing Regulation (EC) No 1382/2003 as amended).*

*Together with the corresponding annual or multi-annual work programme.*

The obligation to analyse CVs is also in order to assess the technical capacity in accordance with Article 132 of the Financial Regulation and Article 202 of the Rules of Application.

- Article 5 (d) of Regulation EC 45/2001: the data subject has given his or her

<sup>4</sup> Pursuant to Articles 5(1) (b) and 6(3) of Decision C(2007) 3198 of 9 July 2007 delegating powers to the EACI.

unambiguous consent.

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

- EACI staff members responsible for evaluating proposals submitted in response to calls for proposals (project officers and financial officers).
- Legal officers of EACI.
- Director of EACI.
- Relevant staff members of parent DG responsible for evaluating proposals submitted in response to calls for proposals.
- External expert evaluators.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The files of successful applicants are kept for up to seven years after the end of the particular programme.

The files of unsuccessful applicants are kept for up to five years after the end of the procedure.

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)*

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.*

Two weeks.

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

Not applicable.

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

AS FORESEEN IN:

0 Article 27.2.(a)

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

X Article 27.2.(b)

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

0 Article 27.2.(c)

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

0 Article 27.2.(d)

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

0 Other (general concept in Article 27.1)

17/ COMMENTS

Annex to the notification: privacy statement on the IEE calls for proposals

PLACE AND DATE: Brussels 13 September 2013

DATA PROTECTION OFFICER: Elena Fierro Sedano

INSTITUTION OR BODY: : Executive Agency for Competitiveness and Innovation (EACI)