

(To be filled out in the EDPS' office)

REGISTER NUMBER: 1239

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NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 16/05/2014

CASE NUMBER: 2014-0538

INSTITUTION: 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

European Research Council Executive Agency (ERCEA)
COV2
B-1049 BRUSSELS
BELGIUM

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

European Research Council Executive Agency (ERCEA),
represented by Pablo Amor (Director), COV2 24/130, B-1049 Brussels

Part of the institution or body entrusted with the processing of personal data:

José Labastida (Head of Department B “Scientific Management” and Chair of the Integrity Standing Committee), COV2 22/127, B-1049 Brussels

Contact person:

Víctor Losada Gonzalez, COV2 22/163, B-1049 Brussels, Victor.Losada-Gonzalez@ec.europa.eu,
0032(0)2.29.67923

Processors:

- Members of the Scientific Council in their function as experts contracted by the European Commission and
- Other external experts contracted by the ERCEA on a case-by-case basis. The ERC Standing Committee on Conflict of Interest, Scientific Misconduct and Ethical Issues (CoIME, consisting of

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

dedicated members of the ERC Scientific Council (ScC)) may nominate external independent experts for appointment by the ERCEA Director to advise the ERC in dealing with specific cases of scientific misconduct. The ERC model contracts for experts that include confidentiality and privacy provisions govern the relation with the experts and clearly explain their obligations and duties (see annex 3 of this notification).

3/ NAME OF THE PROCESSING

Procedure on how to deal with information on scientific misconduct

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The objective of this procedure is to treat allegations of scientific misconduct, including conflicts of interest, received by the ERCEA related to proposals submitted to the ERC or projects financed by an ERC grant and to determine potential follow-up actions. Although the scope of "scientific misconduct" to date is not commonly agreed and defined in the European Union legislation, it is understood as a common risk to the science community to be prevented and mitigated.

This procedure aims to avoid that scientific misconduct jeopardises the value of science and in particular the reputation of the scientist in the scientific community, as well as of the bodies funding or hosting this scientist.

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

Any party allegedly involved in a case of possible scientific misconduct and the informant(s).

- Allegations may concern any person involved in a proposal's or project's life cycle, regardless of their functions, such as applicants (during the selection, evaluation and grant award procedures), grant beneficiaries (a Principal Investigator or research team members) or independent experts (during both, the evaluation phase or project follow-up).

- Informants that provide information may be anybody inside or outside the agency, even anonymous sources. Particularly concerned are ERCEA staff, members of the Scientific Council (ScC), panel members and other independent experts, applicants, beneficiaries, principal investigators, team members or any third parties concerned.

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

- Identity and contact details (e-mail, phone, fax, postal address) of the informant and of parties allegedly involved in possible scientific misconduct

- Additional specific personal data as the case may be, such as their personal identification numbers, professional path/career data, information on the data subject's family, leaves and absences, travels, publications or other data related to the allegations. The information processed relates to the different forms of scientific misconduct that may be encountered by the ERCEA and varies on a case-by-case basis.

Scientific misconduct covers cases a large variety of possible cases of fraud and more. In the context of proposals submitted to the ERCEA or projects financed by an ERC grant, the impact of scientific misconduct must be interpreted in a broad sense and be applicable whenever such a behaviour may jeopardise the value of science and in particular the reputation of scientists in the scientific community, as well as of the bodies funding or hosting these scientists.

Fraud³ relates to the following intentional acts concerning the expenditure side of the budget:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of EU funds;
- non-disclosure of information in violation of a specific obligation;
- the misapplication of such funds for purposes other than those for which they were originally granted.

Scientific misconduct further goes beyond financial implications as defined above and also includes:

1. Falsification or fabrication of data or documents by applicants or beneficiaries when proposing, conducting or publishing research, plagiarism, unauthorised appropriation of authorship, unauthorised exploitation of the ideas of others, breach of confidentiality rules;
2. Elimination of primary data or non-elimination of data;
3. Inappropriate research methods, non-compliance with ethical standards;
4. Sabotage of research activities;
5. Unauthorized exploitation or communication of data or insights gained from reviewing confidential materials;
6. Breach of conflict of interest rules by independent experts;
7. Double funding
8. Other cases.

Only data relevant for the specific case is retained.

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

A specific privacy statement will be published on the ERC website. The alleged party/ies is/are informed of the procedure concerning him/her through an email or letter inviting him/her/them to provide clarification and enclosing the specific privacy statement ((Annex 3 of the “*ERC procedure to deal with information on scientific misconduct*”) as soon as a case has been determined to be possibly *significant*. If a case is considered *insignificant*, the alleged party/ies are not informed of the proceedings.

The initial assessment of information determines if a case is considered significant or insignificant. The assessment is based on an evaluation of the facts available and as a minimum includes a verification of the basic facts of the allegation. It is considered if the grounds for suspicion are sufficiently founded on reviewable facts and serious enough to warrant a formal assessment of the allegation (*significant case*), or if the charge can be considered insignificant and disregarded (*insignificant case*).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

³ Defined in Article 1(1) of the Convention on the protection of the European Communities' financial interests.

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

Please see part 9 for the details.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

1. Receipt of initial information

The ERCEA may at any time receive information or allegations concerning a possible case of scientific misconduct in relation to a specific proposal submitted to the ERC or a project financed by an ERC grant in whatever form (written, oral, or any other) and from whomever.

Any allegation is analysed and handled with the utmost confidentiality throughout the entire assessment process.

The person who has received the information sends it by e-mail, where possible using SECEM (any staff member might receive relevant information. However, though we train our staff accordingly, not every staff member may immediately be aware of the need to use SECEM in such cases), to the functional mailbox (FMB) maintained for that purpose by the ERCEA Integrity Standing Committee (ISC) that is located in the Department of Scientific Management. The Chair of the ISC immediately informs the ERCEA Director, the Chair of the ERC Standing Committee on Conflict of Interest, Scientific Misconduct and Ethical Issues (CoIME) and the ERCEA Legal Unit on any allegation received, by e-mail via the FMB. The Chair of the ISC then sends by e-mail and through the FMB an acknowledgement of receipt of allegation (appendix 2 of the procedure on scientific misconduct, annex 1) to the informant that made the allegation (if known). Any e-mail exchange from or to the FMB is sent by using SECEM (where possible) or by marking the e-mail as “private”.

2. Initial assessment of allegation

The initial assessment of the allegation is carried out by the ISC on behalf of the ERCEA Director, in consultation with the CoIME. The ISC may, if needed, delegate parts of the case analysis to other appropriate agency staff members. Communication with third parties is organised solely through the use of the FMB and under control of the ISC. If needed the ERCEA Legal Unit is consulted at this early stage already.

The initial assessment of information is based on an evaluation of the facts available. As a minimum, the assessment includes a verification of the basic facts of the allegation. It must be considered if the grounds for suspicion are sufficiently founded and serious enough for the case to be considered *significant* or rather *insignificant*⁴ and disregarded. For insignificant cases or cases where the basic facts cannot be successfully verified, the Chair of the ISC, in consultation with CoIME, writes a note for the file on the conclusions that led to the closure of the case. This note will be registered in ARES and stored in a safe box in the office of the Chair of the ISC. Where the initial assessment suggests that the received allegations point to a significant case, the ISC will inform the ERCEA Director, the CoIME and the ERCEA Legal Unit by e-mail.

The Chair of the ISC or the ERCEA Director, after consultation with the ERCEA Legal Unit, will send an initial request for information and, where applicable, clarification by email via the FMB by which the parties possibly involved in the alleged scientific misconduct receive the opportunity to comment on the alleged facts.

3. Formal assessment of the allegations

The CoIME, in close collaboration with the ERCEA Director and supported by the ISC and the ERCEA legal Unit, will assess the case and consider whether the evidence from the initial

⁴ See section 7 for the definition of *significant* and *insignificant* cases.

assessment is sufficient or whether additional review of the information is needed in order to decide whether a breach of research integrity occurred. If necessary the CoIME, supported by the ISC, may consult other members of the ERC Scientific Council and other ERCEA staff members. The CoIME may also nominate external independent experts that are then appointment by the ERCEA Director to advise the ERC in dealing with specific cases of scientific misconduct.

Having reached a conclusion, the CoIME will inform the ERCEA Director in writing about its opinion regarding the seriousness of the case and will offer recommendations on how to handle it and the follow-up actions.

Having received these conclusions and recommendations, the ERCEA Director, after consultation with the ISC and the ERCEA Legal Unit, will take the final decision on the case and on the follow-up actions to be taken according to his/her own discretion and judgement.

4. Notification to OLAF and to the Commission

Where appropriate (i.e. suspicion of fraud, corruption and any other illegal activities affecting the financial interests of the European Union), the ERCEA Director shall notify the suspicions to OLAF, as soon as they come to his/her attention. To this end, the ERCEA will send via the ERCEA OLAF contact point a note registered in ARES and marked as confidential-personal to the OLAF Director-General and the Head of Unit OLAF/01; alternatively an e-mail may be sent by using SECEM to the Head of Unit OLAF/01. A simultaneous confidential notification is sent to the Director General of the parent DG.

The notification should explain the facts of the allegation and, if possible, follow-up actions envisaged by the ERCEA with copies of relevant documents. During the assessment procedure by OLAF, the latter may contact the ERCEA OLAF contact point in order to obtain clarifications and further documentation concerning the initial information.

5. Follow-up actions

Depending on the outcome of the formal assessment, and taking into account the recommendations or the feedback from OLAF (if any), the ERCEA Director may decide to put in place one or several of the following actions. These actions can take place already before OLAF's final report has been issued (where applicable) and do not depend on each other; they can be undertaken simultaneously or separately depending on the case.

5.1 Exclusion of applicants' proposals

The ERCEA Director may exclude any proposal during the submission, evaluation, or award procedure. Grants may not be awarded to applicants who at the time of the grant award procedure are found guilty of misrepresentation or false declaration in supplying the information required by the contracting authority as a condition of participation in the procedure as per Articles 106(1) (c) and 107(1)(b) of the Financial Regulation.

For applicants excluded from the award of a grant, the ERCEA Director may additionally decide to explore, at a later stage, the possibility of having administrative or financial penalties imposed in accordance with Articles 106(1) (c) and 109 of the Financial Regulation.

A request for exclusion of the applicant from future contracts and grants financed by the EU budget can be submitted to the College, following consultation of the Commission's Legal Service and DG BUDG, and a contradictory procedure. For the purpose of the latter, and according to the Financial Regulation (FR) /Rules of Application (RAP), the applicant shall be given the possibility to explain in writing why, according to him/her, he/she did not commit any misconduct, which the ERCEA complies with by way of the information/consultation letter sent to the alleged misconductor.

5.2 Termination of expert's contract or task

In compliance with the contractual obligations (e.g. confidentiality rules, conflict of interest etc.) deriving from the contract or assignment of tasks, an independent expert's appointment may be

immediately terminated if violation of these rules is detected during the performance of his/her services.

5.3 Termination of the grant

In compliance with contractual obligations deriving from the FP7 ERC Grant Agreement (Article II.35.1 and II.37.1 of the Single-Beneficiary and Multi-Beneficiary General Conditions respectively) and the FP7 ERC CSA Grant Agreement (Article II.38), as well as Horizon 2020 ERC Grant Agreement (Articles 34(1)(a), 34(4) and 50.3.1), the ERCEA may decide to terminate the grant or the participation of one or more beneficiaries (see annexes 4 and 5 to this notification with examples of representative ERC model grant agreements).

5.4 Activation of an Early Warning System (EWS)

Depending on the outcome of the assessment, the ERCEA Director may decide to activate an appropriate EWS 'warning' on the person(s) concerned by the allegation (i.e. experts, PIs, beneficiaries, grant applicants and, if they are legal entities, persons who have powers of representation, decision-making or control over them).

5.5 Other possible follow-up actions

The ERCEA Director might also take other measures ranging from letters to the host institution (HI), asking for a withdrawal of the ERC's name and funding from pending publications, notifying specific persons who may be affected by the misconduct or requesting cancellation of dissemination activities involving the parties concerned. Such requests shall clearly state the time-frame for their implementation by the HI.

He/she might also decide to suspend the evaluation process for the proposal concerned pending the completion of the assessment of the allegations all parties concerned. He/she might further decide to apply the measures provided for in the relevant ERC Grant Agreement for cases of breach of contractual obligations (suspension of payments, suspension of implementation of the action, reduction of the grant, or issuance of a recovery order).

6. Final decision by ERCEA Director

The ERCEA Director communicates the final decision to the concerned party, including possible follow-up actions, concerning the allegation of scientific misconduct in cases for which a formal assessment of the allegation was carried out. The decision should be duly motivated and include the possibilities for the person(s) to seek redress. The ERCEA legal unit is consulted on the letter to the concerned party.

In addition, the following stakeholders have to be informed of any such decision and thereby of the closure of the case:

- The parent DG will be informed by the ERCEA Director
- Any expert contracted to support CoIME in a scientific misconduct assessment is to be informed by the ISC. At the same time, s/he is requested to eliminate any documentation (electronic or other) provided or drafted for the purposes of the assessment.
- The ISC informs OLAF, in case OLAF has provided a report.
- CoIME orally reports twice a year to the ERC Scientific Council. Before every report, the ERC Scientific Council is reminded of the confidential nature of the information provided and the security measures to take to ensure its continuous confidential treatment.

10/ STORAGE MEDIA OF DATA

The records of significant cases will be maintained in the ARES archive system, with confidentiality markers, depicted by the case number only and with restricted access to ERCEA staff members dealing with the allegations.

Paper files will be stored in a safe box in the office of the Chair of the ISC.

Closed significant files are transferred to the archives (first the ERCEA Central Archives before they are later forwarded to the Commission's central archives).

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

- Regulation (EU) No 1291/2013 of the European Parliament and the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020), Articles 19 and 30;
- Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013), Articles 5 and 6;
- Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for the participation and dissemination in 'Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)' Article 13(3) and 18(5);
- Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 , Articles 32 (2) (d), 66 (8) and Article 131(4) in conjunction with Article 106(1), 107(1) and 109;
- Commission Decision C(2014)2454 of 15.04.2014 adopting ERC Rules for the submission of proposals and the related evaluation, selection and award procedures relevant to the Specific Programme of Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020), sections 3.7 and 3.1;
- Commission Decision C(2013)9428 of 20.12.2013 on delegating powers to the European Research Council Executive Agency with a view to performance of tasks linked to the implementation of Union programmes in the field of frontier research comprising, in particular, implementation of appropriations entered in the general budget of the Union, Article 18;
- Decision of the Steering Committee of the ERCEA of 18 February 2009 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests;
- Commission Decision C (2011)7216 of 5.10. 2011 adopting model appointment letters for the independent experts participating to the peer review evaluation of proposals to the European Research Council (ERC) under the Ideas Specific Programme implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) including the Code of conduct for independent experts in peer review evaluations and scientific follow-up;
- Commission Decision C(2013)8373 of 10.12.2013 on the model contracts for experts for Horizon 2020 – The Framework Programme for Research and Innovation of the European Union (2014-2020), Research and Training Programme of the European Atomic Energy Community (2014-2018) and the Research Fund for Coal and Steel Programme, including the Code of Conduct attached in Annex 1 to the model contract for experts for Horizon 2020;

- H2020 ERC Model Grant Agreement, Article 34(1)(a) and 34(4) on the compliance with research integrity and consequences of non-compliance; Article 50.3.1 (f), (k), (l) and (m) related to the termination of the grant agreement, Article 44 on the recovery, Article 45 on the administrative and financial penalties and Article 46.2 on the liability for damages;
- The European Charter for Researchers.

The process is lawful as per Article 5(a) of Regulation (EC) 45/2001 as it is part of a task carried out in the public interest on the basis of Commission Decision C(2013)9428 of 20.12.2013 on delegating powers to the European Research Council Executive Agency with a view to performance of tasks linked to the implementation of Union programmes in the field of frontier research.

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

- Duly authorised ERCEA staff members including those that are members of the ERCEA Integrity Standing Committee (ISC);
 - Members of the ERC Scientific Council (ScC), some of whom form part of the COIME (ERC Standing Committee on Conflict of Interest, Scientific Misconduct and Ethical Issues);
- A Confidentiality Declaration (appendix 4 to the procedure in annex 2) is signed by authorised ERCEA staff members and any ScC member before receiving any information or case details.

Additionally, as the case may be:

- appointed independent external experts (expert contracts contain a confidentiality declaration and rules concerning the protection of personal data as per Regulation (EC) 45/2001);
- OLAF staff members (as part of the case review or as an auditing body);
- European Commission (staff involved in the case or in its function of control body to the ERCEA);
- General Court and the Court of Justice:
- Ombudsman;
- Court of Auditors;
- competent Member State and/or third countries authorities and bodies (A national/local authority/body could be entrusted with investigation or judicial powers on a case dealt by ERCEA. The latter might have the obligation to provide information/documents. Moreover, also the ERCEA could deem necessary to inform staff of national competent authorities/bodies in line with applicable law.).

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

After a case considered significant has been closed, data are kept

if after informal verification of data the formal assessment is opened and closed with no follow-up action:

- three (3) years for data that concerns a rejected proposal;
- ten (10) years for data that concerns granted proposals and
- ten (10) years for data that concerns experts.

if there is a follow-up action, for 20 years

if a warning is registered in the Early Warning System (EWS), the applicable data retention periods as foreseen in the Commission's Common Retention List SEC(2012)713 are followed.

Case files of insignificant cases are kept only until a case has been declared “insignificant”, thereby effectively closing the case.
Paper files in either case are to be stored in a safe box in the office of the Chair of the ISC in a safe box with access restriction.

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

- Time limit to rule on a request: 15 working days (beginning from the reception of the request).
- Blocking period: On a case-by-case basis. Immediately, if applicable (maximum delay of 5 working days).
- Erasure Period: Maximum delay of 5 working days after the ruling on the request (if applicable).

(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.

Cases of scientific misconduct will be reported in anonymous manner in the ERCEA Annual Activity Report and in the ERC Scientific Council Annual Report.

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

Transfer to other EU institutions and bodies:

- Some personal data may be disclosed, in compliance with the relevant current legislation and established case law, and on a temporary basis to:
 - (a) the General Court and the Court of Justice;
 - (b) the Ombudsman;
 - (c) audit and control bodies such as OLAF, Court of Auditors, the Commission’s Internal Audit Service;
 - (e) authorised staff of the Commission, within the parent DG RTD, the Commission Legal Service and DG BUDG.

Transfer to recipients other than the EU Institutions and bodies

- CoIME may nominate external independent experts for appointment by the ERCEA Director to advise the ERC in dealing with specific cases of scientific misconduct.
- Some personal data may be disclosed, in compliance with the relevant current legislation and established case law, and on a temporary basis to the competent Member States authorities and bodies that might be involved in the assessment of the misconduct.

Transfer to recipients outside the EU:

- Some personal data may be disclosed, in compliance with the relevant current legislation and established case law, and on a temporary basis to the competent third countries authorities and bodies that might be involved in the assessment of the misconduct.

Any contact with third parties takes place while ensuring the confidential treatment of the information provided or exchanged.

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

The processing may be considered to present specific risks due to its processing of possibly sensitive data that may have an impact on the evaluation of project proposals/grants/the Principal Investigator responsible for a project or his team members, or for the continuous cooperation with an expert evaluator or his/her re-appointment.

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)

17/ COMMENTS

Section 6 of the “*ERC procedure to deal with information on scientific misconduct*” is dedicated to the protection of personal data.

Annexes:

- (1) ERC procedure to deal with information on scientific misconduct, including a flowchart, the templates of procedural letters, the privacy statement and the confidentiality declaration.
- (2) The Scientific Council Strategy on Scientific Misconduct
- (3) ERC model contract for experts
- (4) FP7 ERC Grant Agreement
- (5) H2020 ERC Grant Agreement

PLACE AND DATE: *15/05/2014*

DATA PROTECTION OFFICER: *Nadine Kolloczek*

INSTITUTION OR BODY: *European Research Council Executive Agency*