

*(To be filled out in the EDPS' office)*

**REGISTER NUMBER: 1295**

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**NOTIFICATION FOR PRIOR CHECKING**

**DATE OF SUBMISSION: 20/01/2015**

**CASE NUMBER: 2015-0061**

**INSTITUTION: ERCEA**

**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

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

ERCEA, represented by Pablo Amor (Director), COV2 24/130, B-1049 Brussels

Co-Controller: María Oliván Avilés (Head of Unit D3 – Legal Affairs and Internal Control), COV2 20/090, Place Rogier, B-1049 Brussels

3/ NAME OF THE PROCESSING

Handling internally and reporting potential fraud and irregularities

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The objective of this processing is to distinguish, within the Agency, the information on potential fraud that must be transmitted to OLAF for information, possible investigation or expert assistance, from irregularities that need to be corrected directly by the Agency. The ultimate purpose is therefore to protect the financial interest of the European Union, as managed by the ERCEA.

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

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

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

Any data subject having a financial interest in the ERC, in particular, although not exclusively, ERC applicants, ERC independent experts (including Scientific Council members), ERC tenderers and contractors, ERCEA staff members, representatives of hosting institutions, ERC principal investigators and research team members.

#### 6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA

*(including, if applicable, special categories of data (Article 10) and/or origin of data)*

The personal data collected are the name, surname and, depending on the case, the application or grant number, contract number or staff number of the data subject.

Data concerning health or suspected offences might also be processed in certain cases.

Data concerning the data subject private sphere, such as payments, family details, career details or social benefits, might also be processed if relevant for the investigation.

#### 7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

Section 2.5 of the ERCEA procedure (see Annex I) specifies the following: "*Data subjects are to be informed about a case that relates to them via the Specific Privacy Statement attached to the procedure (annex VII) and regularly updated on the important steps in the proceedings. As foreseen by Article 20 of Regulation (EC) 45/2001, the provision of such information can be deferred, in case of potential fraud or irregularity so as to not jeopardise the process and possible future OLAF investigation. If the information is deferred, it must still be provided to the data subject at the later stage. A specific privacy statement that explains the rights of data subjects is provided in Annex VII and is also published on the ERCEA Intranet.*"

Accordingly, a specific privacy statement is published in ERCEA intranet (Annex VIII) even if the data subjects involved in potential fraud cases might be informed at a later stage by OLAF according to its procedures, in order not to jeopardise the possible OLAF investigation.

If the assessment concludes that there is merely an irregularity, and/or precautionary or conservatory measures are envisaged, the data subject will be informed about its rights in accordance with the applicable ERCEA procedure (for instance, grant amendment, contract termination or recovery orders).

If the information on potential fraud or irregularity follows from a case of scientific misconduct, the data subject will have been informed about his/her rights according to the modalities of the related procedure on scientific misconduct (see Specific Privacy Statement annexed to the EDPS notification on scientific misconduct C-2014/0538 – Annex IX to this notification).

Similarly, if the information on potential fraud follows from an audit, the data subject would have been informed via the specific privacy statement for audit that some of his/her information might be disclosed to OLAF (see Specific Privacy Statement annexed to the ERCEA DPO Notification 11-2012 on Audit and Ex-posts controls – Annex X to this notification).

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS  
(Rights of access, to rectify, to block, to erase, to object)

To exercise his/her right of rectification and its right of access the data subject can contact the controller by sending an email to the functional mailbox [ERC-LEGAL-MATTERS@ec.europa.eu](mailto:ERC-LEGAL-MATTERS@ec.europa.eu) .

Direct contact with the DPO and/or EDPS concerning the rights under Regulation (EC) 45/2001 is promoted in the different Privacy Statements.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

In the course of ERCEA operations, information or allegations of potential fraud or irregularities may be discovered by the ERCEA staff or received from members of the ERCEA Integrity Standing Committee<sup>3</sup> or from external informants (independent experts, applicants, beneficiaries, principal investigators, or any third party concerned, including anonymous information).

Any member of the ERCEA staff is requested to report the case to the Head of Unit D3 using a template which includes the following personal data: name, surname, application, grant, contract numbers or staff number (see annex II to this notification). The template is also used as a basis to draft the advanced notification of the case to the Director (annex III).

The case is then assessed by the Irregularity & Fraud Assessment Group (IFAG). The IFAG is composed of:

- the Head of Unit D3 (Legal Unit)
- the Head of the operating Unit concerned by the reported case;
- the Head of Unit C4 (External Audit) and/or the Team Leader of the IAO (Internal Audit Service)<sup>4</sup>, depending on the type of information analysed; and
- the EWS correspondent, if needed.

The outcome of the IFAG's assessment, its conclusions and recommendations are then transmitted to the ERCEA Director and his/her final decision on the recommendations are all captured in the same template. Depending on the IFAG's assessment and the Director's decision, some data may be transferred to:

1. The Head of Unit or Head of Department of the Agency in charge of applying precautionary and conservatory measures (such as suspension of payment, termination of contract, or activation of the Early warning system); and/or
2. OLAF, copying the Director General of Research & Innovation (annex V).

The transfer of this information is done on a need-to-know basis, either via secure email using SECEM, or via ARES with handling restrictions, using electronic signataires only and with an anonymised title (annex VI).

Anonymised data (date, origin of the reporting, nature of the case, general description of the facts - without name, Ares reference to the IFAG's assessment results or the nature of follow-up actions) only are kept in the Irregularities and Fraud register (annex VII) for general reporting purposes (Interim Report to Parent DG and Annual Activity Report).

Only electronic copies of the template and of the irregularities/fraud register are kept. In the event of suspected or established fraud, the approval of the reporting template cannot be delegated.

The procedure in part 2.5 specifies the following: "*All information provided in the template will be*

*analysed and handled with the utmost confidentiality and in accordance with Regulation (EC) 45/2001 on the protection of personal data by the Community institutions throughout the entire assessment process. No data shall be collected or processed that is not absolutely necessary for the case, nor shall data collected as part of a specific assessment be used for other purposes."*

#### 10/ STORAGE MEDIA OF DATA

Ares (limited group and anonymised title) and anonymised excel table on D3 shared-drive (Ares numbers), which does not contain any names or other personal references.

#### 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), Article 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, 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; Title V – procurement;
- Commission delegated regulation EU N° 1268/2012 of 29 October 2012 on the rules of application of Regulation EU N°966/2012;
- Commission regulation (EC) N° 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) N°58/2003 laying down the statute for the executive agencies to be entrusted with certain tasks in the management of Community programmes.
- 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(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, Articles 17, 18;
- FP7 ERC Model Grant Agreement, Article II.5.3 (d), II.35.1 (c), (d) and (l) of the Single-Beneficiary General Conditions and Article II.5.3 (d) II.37.1 (d), (e) and (m) of the Multi-Beneficiary General Conditions laying down the provisions on the termination of the grant agreement, as well as in both Single and Multi-Beneficiary Articles II.22.6 of the General Conditions providing the possibility of issuing recovery orders, II.24 related to liquidated damages and II.25 imposing financial penalties;
- H2020 ERC Model Grant Agreement , 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; Article 48 on suspension of payments, Article 49 on suspension of the action.
- **Article 5 (a) and (b) (Lawfulness of processing)** of the 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.

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

Data may be disclosed to the following recipients on a need-to-know basis:

- ERCEA Staff;
- European Anti-Fraud Office (OLAF);
- DG BUDG;
- DG RTD;
- Steering Committee Members.

The procedure is not designed to inform the police or external institutions. OLAF would further deal with the potential fraud case.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

In line with the policy on the retention of material in relation to OLAF case work, data will be kept for a period of twenty (20) years if it is relevant to an OLAF investigation, ten (10) years if it was part of an investigation closed without follow-up and five (5) years if the case was closed by OLAF without investigation. If the case is not relevant to OLAF, related data will be retained in the ERCEA services for a maximum of five (5) years.

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)*

The controller will reply to the data subject's request without delay, as provided for in Article 13 of the ERCEA Steering Committee decision StC241014/5 on the "implementing rules concerning the Data Protection Officer".

However, in application of Article 20 of Regulation (EC) 45/2001, the ERCEA might limit the data subject's right to block or erase his/her personal data if the information has given rise to an on-going OLAF investigation or other correction measures are being applied by the ERCEA.

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)*

Data is kept for statistical purposes but in a form that does not permit identification (Irregularities and Potential Fraud Register – Annex VII).

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

None

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

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

**Related/Relevant documents (SLAs, MoUs, etc.)**

- Annex I – Procedure on Handling internally and reporting irregularities and potential fraud
- Annex II – Internal reporting template
- Annex III – Advanced notification to Director
- Annex IV – Confidentiality declaration
- Annex V – Reporting template to OLAF
- Annex VI – Ares – step by step handling restriction
- Annex VII – Irregularity/fraud register
- Annex VIII – Specific Privacy Statement
- Annex IX - Specific Privacy Statement annexed to the EDPS notification on Scientific Misconduct C-2014/0538
- Annex X – Specific Privacy Statement annexed to the ERCEA DPO Notification 11-2012 on Audit and Ex-posts controls

PLACE AND DATE: BRUSSELS, 20 JANUARY 2015

DATA PROTECTION OFFICER: VANESA HERNANDEZ GUERRERO

INSTITUTION OR BODY: EUROPEAN RESEARCH COUNCIL EXECUTIVE AGENCY  
(ERCEA)