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ASSISTANT SUPERVISOR

Mr Giuseppe BAMBARA
European Research Council
Executive Agency (ERCEA)
Acting Data Protection Officer -
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GB/UK/mch/ D(2013) 625 C 2012-0831
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Dear Mr Bambara,

On 27 September 2012, the European Data Protection Supervisor (EDPS) received a notification for prior-checking on the "Transfer of Data to the Scientific Council" by the ERCEA under Articles 27(2)(b) and 27(2)(c) of the Regulation 45/2001 (the Regulation). Together with the ERCEA, the Scientific Council (ScC) is one of the two components of the European Research Council (ERC). Following several requests for clarifications, a meeting took place on 18 February 2013.

According to the notification (as last modified on 12 February 2013), the purpose of the processing operation in question is to provide the ScC with data held by ERCEA, which are required for the performance of the ScC's tasks, which include inter alia¹ monitoring of the "quality of operations" and evaluating the "programme implementation and achievements" of the IDEAS Specific Programme (IDEAS) and making "recommendations for corrective or future actions"².

In the context of the "Transfer to the Scientific Council", the ERCEA automatically provides the ScC with a *standard dataset*³ consisting of data provided to the ERCEA in grant applications (proposals) or during the preparation of grant agreements⁴. A request from the ScC

¹ See Article 5 and Annex 1 (L 400/261+262) of Council Decision 2006/972/EC, which also refer to controlling scientific misconduct and providing views in appointing senior staff of the ERCEA, which according to clarifications provided by ERCEA on 12 November 2012 are tasks not covered by the notification.

² See Annex 1 to Council Decision 2006/972/EC.

³ See "Guidance Note on the handling of requests of access to ERCEA's data and documents by the Scientific Council", ARES(2011)346722 of 30 March 2011, p. 2.

⁴ Last name, first name, title, gender, nationality, age and contact details of applicants/Principal Investigator(s) (e.g. phone, fax, email, postal address, location of their professional affiliation); Contact persons in host institution (department/faculty/institute/laboratory) of the Principal Investigator(s); Country where the applicant is legally resident at the time of the application; Project summaries (some of which contain personal data). Principal Investigator(s) are natural person(s) representing the applying institution.

can, however, go beyond the above standard dataset (broader dataset): "...complementary justified needs can be raised or identified by the Scientific Council during the performance of its tasks, and the ERCEA might be asked to provide extra documents and data..."⁵.

Based on the information provided in the modified notification as well as during the meeting on 18 February 2013, it appears that the "Transfer of Data to the Scientific Council" by the ERCEA is not intended to "evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct" under Article 27(2)(b) of the Regulation. Data subjects of the notified processing operation are ERC grant applicants and grant holders of all ERC funding schemes⁶. As highlighted in the Proposal Submission Form, "*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...*", which are not *personal* aspects relating to the *data subjects*. Although the tasks of the ScC include inter alia the control of scientific misconduct or providing views in appointing senior staff of the ERCEA, according to clarifications provided by ERCEA on 12 November 2012, these tasks are not covered by the notification. We therefore understand that the activities concerned by the present processing do not involve, either directly or indirectly, the evaluation of individuals for the purpose of Article 27(2)(b).

Moreover, Article 27(2)(c) subjects to prior checking any processing operation allowing linkages not provided for pursuant to national or EU legislation between data processed for different purposes. Article 27(c) presupposes that two sets of personal data collected and processed for two different purposes are subsequently linked. In the case at hand, the personal data provided consists of data initially provided to the ERCEA in grant applications (proposals) or during the preparation of grant agreements, i.e. data provided to prepare an individual decision on grants by the ERCEA in the context of IDEAS. Following their transfer to the ScC, these data are then used under IDEAS for the evaluation and monitoring of an entire programme (IDEAS). It therefore seems that in the present case it is the same set of data that is used for potentially different purposes.

The EDPS therefore considers that the notified processing in question should **not be subject to prior checking by the EDPS**. However, if you believe that there are other factors justifying prior checking of the notified processing, we are ready to re-evaluate our position.

Having analysed the modified notification and the documents enclosed, the EDPS would make the following **recommendations** in order to ensure that there is no breach of the provisions of the Regulation regarding the processing operation in question:

1. Consent by data subjects, Article 5(d) of the Regulation

Applicants are asked to indicate whether they agree with the possible processing of data appearing in their proposal and its evaluation in the Proposal Submission Form, which also reads "*This consent is entirely voluntary and refusal to give it will in no way affect the evaluation of your proposal*". It further provides a link to the Privacy Statement on IDEAS - Proposals Evaluation and Grants Management, which contains all elements required under Article 11 of the Regulation⁷ and explicitly refers to "*nationality*" and "*year of birth*".

⁵ See ARES(2011)346722 of 30 March 2011, p. 3.

⁶ Clarifications on the range of data subjects were provided on 12 November 2012 and 12 February 2013.

⁷ EDPS Opinion on ERCEA's Proposals Evaluation and Grants Management of 21/11/2011 in case 2011-0845.

Under Article 5(d) of the Regulation, personal data may also be processed if "*the data subject has unambiguously given his or her consent*". Under Article 2(h) of the Regulation, 'the data subject's consent' "*shall mean any freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed*".

In case of a request from the ScC for a *broader dataset* (see above) and regarding personal data not supplied by the applicants themselves in that context, the EDPS recommends ensuring that data subjects receive all information as required under Article 12 of the Regulation in addition to the information contained in the Proposal Submission Form and the Privacy Statement on IDEAS - Proposals Evaluation and Grants Management.

2. The right to access and the right to rectify

Article 4(1)(d) of the Regulation provides that personal data must be "*accurate and when necessary, kept up to date*". In addition, "*every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified*".

Any personal data provided to the ScC is taken from ERCEA databases that are updated continuously, based on information the ERCEA receives from the data subjects⁸. According to the notification, however, "*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*".

The EDPS considers that all personal data covered by the processing operation (see above) remains personal data of the data subject, i.e. regardless of the degree to which it is summarised, it remains information relating to an identified or identifiable natural person in the sense of Article 2(a) of the Regulation. Against this background, it is not obvious why the nature of this data should prevent the data subject from exercising his/her data subject's rights.

The EDPS therefore invites the ERCEA to ensure the quality of the data transferred to the ScC by ensuring that the data subject has the right to access and the right to rectify his/her personal data concerned.

I would appreciate if you could share these recommendations with the relevant representative of the controller and inform the EDPS of the respective follow-up measures taken.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc : Mr Theodore PAPAZOGLU, HoU A 1 "Support to the Scientific Council" - ERCEA

⁸ EDPS Opinion on ERCEA's Proposals Evaluation and Grants Management of 21/11/2011 in case 2011-0845.

Ms Nadine KOLLOCZEK, Data Protection Officer - ERCEA