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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

**on the Methodology and Terms of Reference to be used for the Review to be carried out
by independent experts concerning the European Research Council Structures and
Mechanisms**

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1. INTRODUCTION

The European Research Council (ERC), established under the Specific Programme "Ideas", defines a new scientific component of the 7th research Framework Programme and a far-reaching departure from earlier Community research activities. Supporting frontier research carried out by individual teams, on the basis of open competition across Europe on the sole criterion of excellence, it aims to make a substantial contribution to the development of Europe's research capabilities at the very highest level.

The ERC reflects, as well, a pattern of novel institutional design introduced under the 7th Framework Programme, which encompasses also, for example, the Joint Technology Initiatives (JTIs) established under Article 171 of the Treaty. It brings important innovations to implementation methods, through an independent Scientific Council and autonomous programme execution by a dedicated implementation structure in the form of an Executive Agency of the Commission.

The new objectives and implementation methods introduced by the ERC are motivated, on one hand, by the political and economic imperative of the European Research Area and the Lisbon process, Europe's capabilities in frontier research being considered core to its future prospects in a globalised world; and, on the other, by the EU's concern to improve the institutional basis of policy execution, while assuring efficiency and probity in the use of Union funds.

The Commission's responsibility for implementing the Specific Programme "Ideas" is combined with a duty to assure the ERC's full autonomy and integrity. To the extent that the ERC is successful as a new model for EU research funding, it has the capacity to inspire further progress towards more effective, externalised management across the Framework Programme.

This is the context of the present Communication, which sets out the Commission's proposal on the methodology and terms of reference to be used for the review of ERC structures and mechanisms (referred to in what follows as "the review"), as set out in the legislation on the 7th Framework Programme. It fulfils the Commission's commitment to come forward with such a Communication by mid-2008¹.

¹ *"In the context of the progress report referred to in Article 7(2) and preceding the interim evaluation, the Commission will present to the European Parliament and the Council by mid-2008 a Communication on the methodology and terms of reference to be used for the review to be carried out by independent experts concerning the ERC's structures and mechanisms. If necessary the Commission will present a proposal for the adaptation of the Framework Programme"* (OJ L 412; 30 12 06)

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The key principles on which the ERC should operate - scientific excellence, autonomy, efficiency and transparency - were established and confirmed during the political debate leading up to the Commission proposal for the Specific Programme "Ideas". During the subsequent negotiations, in which the European Parliament and Member States expressed broad support for the concept of the ERC, the nature of its implementing structure was intensively discussed. The Commission's proposal that the body should be an Executive Agency was substantially debated and accepted, subject to a later review of performance, to ensure that the ERC is able to operate in the longer term under the most optimal conditions:

The implementation and management of the activity will be reviewed and evaluated on an ongoing basis to assess its achievements and to adjust and improve procedures on the basis of experience. In the context of the interim evaluation referred to in Article 7(2) of the Framework Programme, an independent review will also be carried out of the ERC's structures and mechanisms, against the criteria of scientific excellence, autonomy, efficiency and transparency and with the full involvement of the Scientific Council. This will include the process and criteria for the selection of the members of the Scientific Council. The review will explicitly look at the advantages and disadvantages of a structure based on an Executive Agency, and a structure based on Article 171 of the Treaty. On the basis of this review, these structures and mechanisms should be modified as appropriate. The Commission will ensure that all the necessary preparatory work, including any legislative proposals which it considers necessary, is undertaken and presented to the European Parliament and the Council, as required by the Treaty, with a view to a transition to any modified structure required, as soon as possible. To this end the Framework Programme will be adapted or supplemented in co-decision pursuant to Article 166(2) of the Treaty. The progress report referred to in Article 7(2) of the Framework Programme, preceding the interim evaluation, will give initial findings on the functioning of the ERC².

The Commission is committed to conducting the review on the basis of evidence and in a fully independent and transparent manner, to assure the trust and confidence of the stakeholders³, and to take the necessary steps, consistent with due process and sound management, to put its conclusions into effect. It is essential, therefore, that the review should conclude with the identification of improvements that can be implemented within the framework of EU legislation and administrative practice.

3. CURRENT STATE OF PLAY IN THE DEVELOPMENT OF THE ERC

Rapid progress has been made in establishing the ERC and setting up its funding operations, and much has already been learnt regarding the effectiveness of structures and mechanisms and interfaces with the internal and external environment.

² Council Decision concerning the specific programme "Ideas" implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013). (2006/972/EC) OJ L 54, p.88, 22.2.2007

³ The review will be conducted in line with the evaluation standards established by the Commission: "Responding to strategic needs: reinforcing the use of evaluation" SEC(2007)213

In co-operation with the Commission, the Scientific Council has worked with commitment and energy since October 2005 to develop the ERC's scientific strategy, including the grant schemes and peer review methodology, and to identify peer reviewers of the necessary quality and experience.

It is now important to move forward to a stable and predictable longer term structure as soon as possible. For this reason, the Commission proposes to organise the mid-term review as early as possible, according to a timetable that will enable it to be conducted substantially within the term of the present European Parliament and completed within the term of the current Commission.

As set out in the Commission's Annual Report⁴, the ERC came officially into existence on 2 February 2007, by a Decision of the Commission⁵, in accordance with the Decisions of Council and Parliament on the 7th Framework Programme⁶ and Rules for Participation⁷, and the Decision of the Council on the Specific Programme "Ideas"⁸. The Specific Programme "Ideas" defines the overall governance structure of the ERC, setting out the roles of Scientific Council, dedicated implementation structure and Commission, stating that the Commission is responsible for the implementation of the "Ideas" programme and for guaranteeing the ERC's full autonomy and integrity. Detailed design and implementation has been characterised by a highly creative and productive interaction between the Scientific Council and the Commission services, particularly in view of the need to adjust procedures which were not designed with the ERC in mind.

The first year of operation (2007) was associated with the implementation of the "Starting Grant" scheme for investigators in the process of establishing their independence. The call was perceived as a major success by external stakeholders in terms of the large number of applications processed (more than 9000) resulting in approximately 300 grants. Moreover, a number of Member States have announced that they will use the outcome of the ERC evaluation to finance young researchers who were not supported by the ERC due to budgetary constraints. The second year has seen a reinforcement of the scientific agenda with the addition of a second "Advanced Grant" scheme for established, independent investigators, as well as substantial developments towards the creation of the Executive Agency.

The ERC Executive Agency is at the preparatory stage. The Commission Decision establishing the ERC Executive Agency was adopted on 14 December 2007⁹, following a positive opinion on the draft proposal by the Member States' Regulatory Committee on Executive Agencies and a positive vote by the Budgetary Committee of the European Parliament in November 2007. The Delegation Act is expected to be adopted by the Commission in September 2008 as will the Decision nominating members of the Steering Committee. Pending appointment of the Director, a major recruitment exercise for agency staff is currently being conducted, alongside further development of the executive agency's

⁴ Annual Report on the European Research Council operations and realisation of the objectives in the Specific Programme "Ideas" in 2007, COM(2008)473

⁵ 2007/134/EC; OJ L 57, 24.02.2007, p.14

⁶ 1982/2006/EC of 18.12.06, OJ L 412, 30.12.2006, p.1

⁷ 1906/2006/EC of 18.12.06, OJ L 391, 30.12.2006, p.1

⁸ 2006/972/EC of 19.12.06, OJ L 400, 30.12.2006, p.243 and corrigendum OJ L 54, 22.02.2007, p.81

⁹ Commission Decision of 14 December 2007 setting up the "European Research Council Executive Agency" for the management of the specific Community programme "Ideas" in the field of frontier research in application of Council Regulation (EC) n° 58/2003. OJ L 9 p.15 12.1.2008

operations and infrastructure, under the authority of DG Research. Recruitment for the ERC is being carried out with the specific requirements of scientific excellence in mind; the Director and senior management will be appointed taking into account the views of the Scientific Council, as specified in the Specific Programme “Ideas”.

Independent of the review of structures and mechanisms, the ERC is designed to be a "learning organisation"¹⁰, developing and adapting to ensure it delivers its objectives in an efficient and effective manner. In this spirit, the Commission has already taken steps to adjust some aspects of implementation on the basis of early experience, in consultation with the Scientific Council. In addition, and without prejudice to the conduct and outcome of the mid-term review, the Commission is investigating the possibility of taking a number of further steps to improve substantially the ERC's operations via technical adjustments within the provisions of the existing legislation of Council and Parliament. The areas in which such improvements may be envisaged are set out in the annex.

4. ORGANISATION AND CONDUCT OF THE REVIEW

4.1 Selection of independent experts

The credibility of the review and its outcomes will depend primarily on the integrity, breadth of understanding and reputation of the experts selected to conduct it. The Commission proposes to appoint a Panel comprising a Chair and four further members, as well as a rapporteur, and will keep the key stakeholders informed. . The Panel would be established to meet, overall, the following main criteria:

- Expert knowledge of research policy and management at a national, European and/or international level;
- Breadth of competence to assess the European Research Council from scientific, administrative¹¹, legal and other appropriate perspectives.

Other criteria that will be taken into consideration in the choice of members are:

- Appropriate balance between academia and other stakeholders (including European Research Foundations) to ensure both institutional understanding and technical competence ;
- Appropriate gender balance;
- Breadth and diversity of experience across the European Research Area.

The Panel may be assisted by additional experts who, on its request, provide specialised independent information and analysis.

¹⁰ In line with the provisions of the Specific Programme: "... [...] *The implementation and management of the activity will be reviewed and evaluated on an ongoing basis to assess its achievements and to adjust and improve procedure on the basis of experience*"

¹¹ Including for example organisational financial control or internal audit etc.

4.2 Scope

The review will have a decisive influence on the future of the ERC; it must be sufficiently broad-ranging to provide definitive conclusions. The review also needs to take into account the various different levels of legislation and administrative practice which, in addition to the legal framework of the Executive Agency as the dedicated implementation structure, define or condition the ERC's modes of operation. This will be of particular importance when identifying where and how improvements are needed, including by means of changes to the legislation, and when examining the advantages and disadvantages of possible structures (e.g. an Executive Agency, a structure based on Article 171 of the Treaty, or any other option), since the operation of any structure will be affected by the broader context. Of interest here will be, for example:

- The Specific Programme "Ideas", which establishes the essential structure of the ERC¹², *inter alia* the rights and obligations of the Scientific Council and dedicated implementations structure as well as other implementation arrangements, and the legislation on the 7th Framework Programme, including the Rules of Participation.
- The various structures which operate for decision making, liaison and programme implementation (notably the Scientific Council, its Secretary General, and the Commission), including those defined in subordinate legal acts to the primary legislation, in particular the Commission's Decision establishing the ERC.
- The more general context of the administration in a Community Institution or Community bodies, in particular the Financial regulation and the applicable Staff regulations as well as various regulations, guidelines and established administrative practices for implementing these acts.¹³

The ERC being a new entity, involving different principles and methods from earlier Framework Programmes, it inevitably raises many implementation challenges in the start-up phase. The review must, therefore, differentiate between these challenges which are transitory and to which solutions have been or are being found, and issues that, on the other hand, can be attributed to enduring structural aspects of the ERC and will have an impact on its functioning over a longer term perspective.

The review must accommodate the ongoing developments in the ERC (for example, the steps towards the Executive Agency's administrative autonomy and the process to appoint future members of the Scientific Council), drawing on all the quantitative and qualitative evidence and experience that have accumulated, dating back to the start of the Scientific Council's work in October 2005. It should also, as stated in the legislation, consider the process and criteria for the selection of the members of the Scientific Council.

¹² " [...] independent Scientific Council composed of scientists, engineers and scholars of the highest repute representing the European research community in all its breadth and depth, supported by a lean and cost-effective dedicated implementation structures which would be set up as an Executive Agency...),

¹³ ERC personnel policy and recruitment fall within the provisions of the Conditions for other servants of the European Union (OJ L 056, 04/03/1968 P. 0001-0007). These conditions, which have been reaffirmed on multiple occasions by the legislator, are the basis for any EU instrument for research support, including the JTIs, whether this is done via executive agencies or a structure under Article 171.

Given the stakes for European research policy and its institutional development, it is imperative to assess the performance of the ERC against benchmarks which reflect the very highest standards worldwide, in particular as regards comparable agencies in the Member States and other advanced countries of the world, as well as the EU's research programmes managed by the Commission. In this context, experience of other external structures set up under the 7th Framework Programme, such as the JTIs, or in adjacent areas, such as the European Institute for Innovation and Technology (EIT) will also be relevant. The review should also take note of the Commission's broader review of external structures, such as the evaluation reports that are prepared on the first three years of operation of each Executive Agency, as well as the audit on the performance of all the Executive Agencies, including the ERC, that the Court of Auditors will launch during 2008 with a report on their findings by December 2008.

4.3 Working methods

To ensure the necessary breadth and depth of evidence, the Commission proposes a "Commission of Inquiry" format involving examination, in confidence, of documentary and oral evidence, which may derive from a wide range of key stakeholders' perspectives, including for example, the ERC Scientific Council; the research community (academia, research institutes, research foundations, industry); Member States; EU Institutions; DG RTD and other Commission services.

Detailed working methods will be for the Panel itself to determine, however it is expected that the Panel may:

- solicit oral and written evidence from stakeholders;
- analyse existing evidence including monitoring and evaluation studies on the "Ideas" Specific Programme;
- conduct *ad hoc* analyses, for example of statistical information and relevant policy documents and reviews.

The Commission will provide the Panel with all necessary information and the Commission services may, at the request of the Panel, convene *ad hoc* expert meetings on particular issues. Consistent with the above provision for its full involvement, the Scientific Council has indicated that it intends to submit a summary of its experience to date and suggestions for improvements, also considering international best practice of Research Councils.

4.4 Criteria

The criteria for the mid-term review – scientific excellence, autonomy, efficiency and transparency - reflect key principles on which the ERC is founded. The following sections analyse and provide commentary on each criterion in turn. It should be stressed however that these criteria must also be considered in a holistic way, since they involve interacting requirements; for example the quality of scientific management cannot be divorced from considerations of efficiency. The criteria should also be applied taking account of appropriate benchmarks, for example the arrangements in research agencies in the EU or in other advanced countries. Furthermore, the fundamental requirement for irreproachable integrity in the ERC's operations must underpin the analysis against each and all criteria.

4.4.1 Scientific Excellence

Scientific and scholarly excellence is both an objective to be achieved by the ERC and a motivation underlying all aspects of its operation. Essential questions to be considered in the review should include:

- *To what extent is the ERC succeeding in promoting scientific excellence within the European research area?*
- *To what extent do the ERC's strategy, administrative implementation and programme execution work in the interests of scientific excellence?*
- *Is the principle of scientific excellence embedded in the culture and processes of the ERC?*

4.4.2. Autonomy

Autonomy involves the following facets which should be considered by the review:

- *Do the conditions of operation of the ERC enable the scientific strategy to be determined effectively and independently according to scientific requirements?*
- *Is the scientific strategy independently devised by the Scientific Council respected as the basis for implementation by the dedicated implementation structure?*
- *Do the conditions of operation of the dedicated implementation structure allow the latter to follow strictly, efficiently and with the necessary flexibility, the scientific strategy established by the Scientific Council and requirements of the Specific Programme "Ideas"?*
- *To what extent are the structures and procedures that the Commission has established for the ERC adequate to guarantee its full autonomy in the long term?*

4.4.3 Efficiency

The ERC operates not as an isolated entity but as a component of the European system of research. Efficiency therefore involves considerations not only of the proportion of its overall use of resources but also on its ability to use these resources effectively, for example attracting the best applicants and peer reviewers. Assessing its efficiency therefore raises the following types of questions:

- *Are the ERC's overall expenditures on administration within the parameters set for it and consistent with best practice in research agencies worldwide?*
- *To what extent does the separation of tasks between Commission and ERC efficiently avoid duplication of activities and to what extent does it permit efficient operation of the ERC?*
- *Are the roles of the actors in the ERC's governance structure (Scientific Council, Secretary General, Dedicated Implementation Structure, Commission) and the relationships between them sufficiently well defined, distinct and appropriately coupled to achieve highly efficient organisation and management?*

- *Do the systems and procedures adopted by the ERC allow objectives to be achieved in a manner that is economical in the use of resources (personnel and financial)?*
- *Are the ERC's operations (calls, proposals, evaluation, granting etc.) sufficiently simple, flexible and user-friendly to attract the best applicants and peer reviewers?*

4.4.4 Transparency

The ERC is intended to operate with a high level of autonomy and to the highest standards of integrity. In this context, the concept of transparency is rather straightforward. The key questions to be addressed are:

- *Does the ERC communicate information to citizens and other stakeholders of sufficient substance and quality for them to understand its operations and have confidence in the use and effective control of its budget?*
- *Does the ERC provide information to the EU Institutions of sufficient substance and quality for them to exercise their responsibilities for oversight?*

4.5 Timetable and Deliverables

Consistent with the objective of conducting the review as soon as possible, an indicative timetable is as follows:

- Nomination of experts - February 2009
- First meeting of the expert panel - February 2009
- Submission of oral and written evidence: February – May 2009
- Final report - July 2009
- Initial Commission response - September 2009

The Panel will prepare a final report in which it will provide recommendations and conclusions. This should include an analysis and evaluation of the adequacy or deficiencies of the existing structures and mechanisms and whether any changes needed can be regarded as "technical fixes" (for example, adjustments to the Executive Agency model) or are regarded as substantive organisational and /or legal issues.

The outcome of the review should provide the justifications for the Commission, in consultation with the Scientific Council, to initiate any legislative proposals that are considered necessary.

5. CONCLUSION

The review of ERC structures and mechanisms will have a decisive influence on the future structure of the ERC and as such will be a point of reference for the future development of EU research funding. It is, therefore, vital that the review is carried out properly and effectively,

with the full support of the stakeholders, including the EU institutions and the Scientific Council.

This Communication sets out the proposed basis and timing for a review which is well-informed, wide-ranging and impartial, thus providing firm foundations on which the ERC's longer term future can be built. It also identifies a number of possible areas in which adjustments to improve the ERC's performance may be possible without prejudice to the conduct or outcome of the review.

The European Parliament and Council are invited to provide their observations on the methodology set out here, by December 2008, in order for the Commission to take them into account in establishing the mandate for the independent review.

Following the outcome of the review, the Commission will take appropriate steps to put its conclusions into practice, taking account of the need to ensure continuity of the ERC's operations through any adjustment.

ANNEX

POSSIBLE MEANS TO ENHANCE THE ERC'S PERFORMANCE WITHOUT PREJUDICE TO THE REVIEW OF STRUCTURES AND MECHANISMS

As indicated in Section 3 above, without prejudice to the conduct and outcome of the mid-term review, based on initial experience, the Commission is already considering a number of areas in which it may be possible to improve substantially the ERC's operations via technical adjustments to the terms of its implementation and the operating environment within the provisions of the existing legislation of Council and Parliament. These areas include:

- The functionality and clarity of the interface between the Scientific Council and the dedicated implementation structure. Improvements may be possible regarding the specification of arrangements to assure liaison between the Scientific Council, the Commission and the dedicated implementation structure. This could include further refinement of the role of the ERC Secretary General in relation to the Scientific Council Chair and Vice-Chairs and the role of the Board set up by the Scientific Council in which the Chair, Vice-Chairs and Secretary General meet, inviting also the Director of the dedicated implementation structure. In this context, provisions in the Commission Decision establishing the ERC may be reviewed to recognise the time the Chair and Vice-Chairs of the Scientific Council devote to ERC business. In doing so, risks of conflict of interest, which may for example arise from an effective subsidy of the ERC by the Chair and the Vice-Chairs' host organisations should be considered, as well as the provisions for accountability of the Scientific Council, including the code of conduct and reporting obligations
- Selection and appointment of peer reviewers. In view of the broad scientific scope of the ERC's activities and the necessity for a high number of reviewers, the sound use of resources requires these procedures to be as simple and flexible as possible, consistent with good administrative practice and financial management. Simplifications may be possible as regards both the selection of experts, where there are ambiguities in the role of Scientific Council and Commission regarding the selection of experts for peer review of research proposals and the need for the Executive Agency to prepare a Commission decision for every expert appointed and in the processes for appointment and payment.
- Grant processing. For frontier research proposals, where the outcome of the work is inherently uncertain, it is the principle of the ERC to avoid "negotiation" on grants, which are offered on the basis of approval of the proposal, and specification of the appropriate budget, by the peer review panel (following selection decision). It may be appropriate to review the performance obligations on the Principal Investigator, to ensure that, in circumstances where the peer review panel reduces the budget, there is no necessary requirement to adapt the description of work.
- Tailoring of FP7 IT tools to the specific needs of the ERC. In the early stages of implementation of the 7th Framework Programme, which coincided with the start-up of the ERC, the latter has inevitably relied upon the use of standard tools and configurations of these tools for the 7th Framework Programme as a whole. Progressively, the Commission will consider how these tools - for example the electronic proposal submission system (EPSS) – can be configured specifically for ERC activities, to improve both efficiency and

autonomy, in a way that is consistent with economy and efficiency across the 7th Framework Programme as a whole.