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EUROPEAN INNOVATION COUNCIL AND SMES EXECUTIVE AGENCY (EISMEA)

Letter of intent

Co-operation between the European Innovation Council and SMEs Executive Agency (EISMEA) and the European Patent Office (EPO)

1. Cooperation partners EISMEA and EPO, the signatories

1.1.

The European Innovation Council and SMEs Executive Agency (“EISMEA”), established in April 2021, is an executive agency of the European Commission responsible for implementation of the European Innovation Council (EIC) and the management of other EU programmes focusing on SMEs support, innovation and the single market.

1.2.

The European Patent Office ("EPO") is the executive organ of the European Patent Organisation an intergovernmental organisation with, at the time of signing the letter of intent, thirty-nine contracting States, as established by the Convention on the Grant of European Patents ("the European Patent Convention", Ref.: https://www.epo.org/law-practice/legal-texts/epc.html).

2. Purpose of the cooperation

2.1. Objectives

The aim of this Letter of Intent is to establish a framework for strengthening the operational partnership between the cooperation partners. The cooperation partners will develop specific activities, projects or programmes to be implemented in a spirit of co-operation and common commitment, to pursue notably the following objectives:

- Supporting innovators and entrepreneurs across Europe in turning their ideas into products and services, thus creating highly-skilled jobs and economic growth.

- Increasing patent valorisation and commercialisation by innovative SMEs, disruptive start-up and spin-off companies, research organisations and universities through awareness-raising, outreach, training initiatives and support services.

Without prejudice to any future collaboration of the cooperation partners in other possible areas, the cooperation partners hereby agree to cooperate through activities that may include but are not limited to areas of cooperation outlined in Sections 2.2 to 2.4.

2.2. Horizon Scanning

This action will support efforts of the European Innovation Council (EIC) Programme Managers (and Strategic Intelligence Team) to develop and strengthen the evidence base for targeted interventions in the form of EIC Challenge calls in current and future EIC Work Programmes of the current MFF. The following activities are considered within scope of this action:

- Participation of EPO experts in workshops and discussions convened by the EIC Programme Managers to understand and contextualise the EU’s relative positioning and areas of competitive strengths based on emerging trends in patenting activity

- Agreeing a shared taxonomy for the mapping of technologies with a view to future alignment of information between the cooperation partners on trend analysis in patents and more.

- Mapping of trends in patent filing to publication and/ or public funding activity by geographies, while accounting for the relative time-lag associated with the application for, and subsequent award of patents.

- Analysing the type of organisations filing patents (private enterprises, universities, research organisations etc.) including identification of the most active, and associated trends.

- Identifying high-value inventions for which patent protection has been sought in more than one country (IPFs).

2.3. Education and Training

This action will focus on supporting awareness raising efforts to increase patent valorisation and commercialisation by innovative SMEs, disruptive start-ups and spin-off companies, research organisations and universities through joint awareness-raising actions, outreach, training initiatives and support services. Activities within scope:

- Targeted education and training activities (including e-learning and webinars) to enhance the knowledge of EIC beneficiaries and support the professional development of EIC agency staff.

- Development of IP awareness raising material and associated tools of the EPO Academy.

- Organisation of joint topical events in relation to EIC activities, such as for example on best practice for licencing and technology transfer case studies, patent valuation methods alongside Inventor talks.

2.4. Support for the evaluation of EIC proposals

This action will support EIC efforts to identify proposals with the highest potential for impact based on the technological novelty, the inventive merit and the proposed future strategy of projects shortlisted for support following calls for proposals under the EIC's Work Programmes.

Specific calls will be identified and agreed by the cooperation partners annually before the closing of the calls following the guidelines for co-operation described in Annex 1. EPO patent examiners will act as employees of the EPO and perform the evaluation in compliance with all its provisions and legal obligations under applicable EU, international and national law regarding the non-disclosure of any confidential information obtained in the course of an evaluation activity[1].

[1] It is therefore recalled that permanent staff of European Patent Office (EPO), even after leaving service, are subject to a statutory obligation under article 12 of the European Patent Convention and article 19 of the Service Regulations for permanent employees of the European Office not to use or disclose to any unauthorised person any fact or information coming to their knowledge in the course of or in connection with the performance of their duties, including officially organised interviews. Each EPO patent examiners or staff members involved in this activity will also have to sign the attached Declaration of Confidentiality and absence of conflict of interest (Annex II).

Furthermore, EPO patent examiners who will be engaged in this type of activity will carry out their tasks in compliance with the attached guidelines for cooperation on the evaluation of proposals submitted under the agreed EIC calls for proposals (Annex I)

2.5. Framework for the collaboration

This letter of intent represents the terms for the intended cooperation between the cooperation partners, completed by its annexes.

The collaboration will not involve any financial transaction between the cooperation partners and will be carried out in full compliance with the respective data protection rules (see in particular "Data protection notice applicable to Expert Evaluators in the Funding and Tenders Portal" and Annex 3).

An annual working plan implementing the activities foreseen under 2.2 to 2.4 will be agreed each year and regular meetings will be organised between the representatives of the cooperation partners to check the progress made.

This letter of intent will be reviewed, if need be, to consider future requirements, the direction of the co-operation and possible other areas not provided for under points 2.2 to 2.4 thereof.

2.6 Intellectual property rights

The cooperation partners commit to inalienably respecting any existing IP rights owned by the other cooperation partner. The cooperation partners will refrain from using distinctive features and/or graphical representations of the other cooperation partner's signs, logo, or emblem for purposes not covered in this letter of intent and possible specific arrangements arising from it, unless express prior permission has been specifically granted by the other cooperation partner in writing. In addition, for the use of such afore-mentioned items, the cooperation partners will co-ordinate with each other in advance, to allow the use to be undertaken is in accordance with the communication guidelines of each cooperation partner.

The cooperation partners understand that the cooperation activities between them under this letter of intent may result in joint work products in which the cooperation partners will share intellectual property rights, unless otherwise expressly discussed and agreed in writing in a separate document between the cooperation partners. In the latter case, the nature of the cooperation activity concerned, a quantification or assessment of the respective intellectual contributions and of the other resources provided by each cooperation partner, as well as possible divergence of views between the cooperation partners will be specified in such a document.

In any case, patent data and/or patent-related data as well as all existing materials separately developed and produced by its experts, staff or consultants remain the exclusive property of the EPO, and their disclosure to or sharing with and processing by EISMEA will not confer any rights, including any intellectual property rights, on EISMEA. The same applies to materials of EISMEA, including those produced by its own experts, staff or consultants, or to the materials of (grant) applicants, disclosed to EPO and its staff in the context of the present agreement.

The cooperation partners will share a non-exclusive and non-transferable right to use, for an indefinite period, joint work products resulting from cooperation activities between them under this letter of intent. Such use includes but is not limited to publication, distribution or sharing, including free-of-charge, reproduction, editing, adaptation or modification, translation, storage or recording on

to any media or data carriers, electronic, magnetic and/or optical, analogue and/or digital media or data carriers, and use in websites, databases or computer programmes, accessible to either of the cooperation partners and third parties, including via internet. The right of use also includes the right for either of the cooperation partners to separately use the joint work products as a working basis for and by themselves on their own or possibly by a third party that they may respectively engage to carry out specific customisation work for either of them alone.

In any case, the cooperation partners jointly understand that neither of them will impede or forbid the other cooperation partner from using joint work products resulting from cooperation activities between them under this letter of intent for the non-for-profit purposes related to the mission and objectives they respectively pursue.

3. Final provisions

3.1 Duration

This letter of intent shall enter into force on the date of the last signature of the Parties and it shall remain in full force and effect until the end of Horizon Europe Framework Programme.

Each Party may terminate the present letter of intent with a prior written notice of two (2) months indicating the date of termination.

3.2 Amendments

This letter of intent may be amended only in writing by the cooperation partners hereto. Any amendment to the Letter of intent shall constitute an integral part of it.

3.3 Dispute settlement

This letter of intent shall be governed by its own terms as interpreted by general principles of equity as complemented by the law of the European Union. Without prejudice to the right of the cooperation partners to terminate this letter of intent, they shall endeavour to settle amicably any disputes or complaints relating to the interpretation, application or validity of this letter of intent.

This letter of intent and its annexes constitute the entire letter of intent between the cooperation partners relating to the matters contained herein, superseding the provisions of all other contracts or agreements between the cooperation partners, whether oral or written, that conflict with the provisions hereof.

Signed in duplicate in English.

For the European Patent Office	For the European Innovation Council and SMEs Executive Agency

António Campinos
President of the EPO

[date]

Munich,

Jean-David Malo
Director of EISMEA

[date]

Brussels,

ANNEX 1

Guidelines for co-operation on the evaluation of proposals submitted to EIC Calls for Proposals

1.1. These guidelines facilitate a pilot activity to enable EPO patent examiners to provide input on the technological novelty, the inventive merit and the proposed future strategy of EIC proposals shortlisted for Jury interview following EIC calls for proposals.

1.2. EPO patent examiners will act as employees of the EPO and will perform the evaluation in compliance with all its provisions and legal obligations under applicable EU, international and national law regarding the non-disclosure of any confidential information obtained in the course of the current pilot activity. It is therefore recalled that permanent staff of European Patent Office, even after leaving service, are subject to a statutory obligation under article 12 of the European Patent Convention and article 19 of the Service Regulations for permanent employees of the European Office not to use or disclose to any unauthorised person any fact or information coming to their knowledge in the course of or in connection with the performance of their duties, including officially organised interviews. (Ref.: https://www.epo.org/about-us/office/service-regulations.html).

1.3. EPO patent examiners will be required to sign a 'Declaration of Confidentiality and Absence of Conflict of Interest' to access the confidential information submitted by applicants shortlisted for interviews under the calls agreed as part of the annual work programme between EISMEA and the EPO.

1.4. The patent examiners will not participate directly in the evaluation process but will provide their assessment to the Jury as material 'for information'.

1.5. The assessment by the patent examiners will not be binding and the Jury assembled by EISMEA will have complete freedom to decide on its relevance.

1.6. Input from the EPO examiners should be at the equivalent length of one page addressing: - Technological novelty - Competing technologies, and - Possible lines of inquiry at interview

1.7. The process for the pilot evaluation will be as follows:

- EISMEA will share the Abstracts of all projects submitted to the agreed EIC competitions following call closing, with the nominal EPO leads for this initiative: EPO VP1 LSO and EPO DG1 Operation.

- The EPO will provide a shortlist of potential examiners that may be called to assess projects under the pilot and each of these examiners will sign the declaration of confidentiality with EISMEA.

- The relevant examiners will receive access to the full proposals shortlisted for interview following completion of the remote evaluation step, and at least 10 working days before the scheduled jury interviews.

- The examiners will perform their assessment on the platform, using the dedicated text box and the evaluation report will be restricted to 4000 characters (equivalent to a 1-page report).

- The EPO examiners will have to submit their assessment at least 5 working days before the scheduled interviews

1.8. The collaboration will not involve any financial transaction between the two cooperation partners and will be carried out in full compliance with the respective data protection rules.

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ANNEX 2

EUROPEAN INNOVATION COUNCIL AND SMES EXECUTIVE AGENCY (EISMEA)

European Innovation Council

DECLARATION OF CONFIDENTIALITY AND ABSENCE OF CONFLICT OF INTEREST

Last name/ first name:
Organisation or Entity / Function:
Contact details:
For the period: dd/mm/yy to dd/mm/yy
Call reference: **HORIZON-EIC [xxxxxxxxxxxxxx]**

By signing this declaration, I undertake not to reveal any information concerning the EIC [Transition Challenge] applications for which I will receive access for comment. In particular, I will not reveal or disclose any information or document of any proposal and project of which I become aware of, even incidentally.

I understand that confidentiality of the information provided for comment is of utmost importance. As EPO staff, I am fully aware of my statutory obligations to secrecy under Art. 12 EPC and Art. 19 Service Regulations and of possible disciplinary consequences of their breach. I will therefore observe strict confidentiality in relation to my role and, in particular:

* treat confidentially any information and documents, in any form (i.e. paper or electronic) that have been disclosed in writing or orally in relation to the interview
* not discuss projects with others (including other experts or EU staff not directly involved in the interview), except during formal discussions in meetings with the knowledge and approval of the responsible staff
* not disclose any details about the outcome or the projects for any purpose
* not disclose details about the assessment of the project
* not communicate with the applicants (including linked third parties or other entities involved, etc.)
* return, erase or destroy all confidential documents or files
* comply with the rules for confidentiality when seeking further information (for example, through the internet, specialised databases, etc.)
* not disclose the names of other persons participating in the project

I am aware that I will not attend the interviews and will not take part in the decision procedure.

If anyhow I became aware that I have a direct or indirect link or any other vested interest with a proposal or project, such as reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest, or I am in some way connected with a proposal or project, I must immediately declare such facts to the responsible EISMEA staff as soon as I become aware of this and comply with the measures decided.

Personal data must be processed in compliance with Regulation (EU) 2018/1725[2] and according to the Record related to the EIC applications and evaluations of the Commission/Agency (accessible in the DPO register[3]), and under the instruction of the competent data controller.

Any sensitive information or material that qualifies as EU classified information under Decision C(2015)444[4] must comply with specific rules.

I will be required at all times to comply strictly with any rules defined by the EISMEA staff for ensuring the confidentiality. Failure to comply with these rules may result in my exclusion from participating in this pilot evaluation exercise.

The Hague, [date] Signature:

[2] OJ L295, 21.11.2018, p.39

[3] Funding and Tenders Opportunities Portal - Expert management privacy statement (europa.eu)

[4] OJ L 72, 17.3.2015, p. 53.

ANNEX 3

Data protection statement on the processing of personal data within the framework of the "pilot activity" of the collaboration between the European Patent Office and the European Innovation Council and SMEs Executive Agency (EISMEA).

Protecting your privacy is of the utmost importance to the European Patent Office (EPO). We are committed to protecting your personal data and ensuring respect for data subjects' rights when performing our tasks and providing our services. All data of a personal nature that identify you directly or indirectly will be processed lawfully, fairly and with due care.

The processing operations described below are subject to the EPO Data Protection Rules (DPR).

The information in this statement is provided in accordance with Articles 16 and 17 DPR.

1. What is the nature and purpose of the processing operation?

This data protection statement describes how and why EPO staff members' (i.e. the data subjects) personal data will be processed to enable their participation in the pilot activity of the EPO and EISMEA collaboration.

a) In the context of the pilot activity of this collaboration, the EPO will receive from the EISMEA requests to assess the proposals submitted under the Transition Call funding programme. These proposals are technical documents, defining the scope of the research and development activities that would be carried out by a given party, following potential funding by EISMEA. Although they are not strictly following the format of a patent application, they also generally comprise the definition of a problem to be solved, and how they intend to solve it. Upon receiving EISMEA requests, the EPO will offer examiners the opportunity to participate in assessing the technicalities of the received proposal according to criteria set by EISMEA.

b) The pilot phase will basically comprise proposals in the areas of energy and health, which are clearly identified within DG1 technical communities to given directorates.

c) The directors of the relevant units will be informed by the contact persons following preliminary routing. Teams having the required technical expertise will be identified. The technical mapping inherent to DG1's structure will be used in this step.

d) Once the competent teams are identified, the contact persons and with the support of the respective director and/or team manager identify the competent examiner based on a technical match between the content of the proposals received from EISMEA and the available examiner skills, based on classification and/or technical profiles.

e) The selected examiners' personal data will be collected by the DG1 contact persons and shared with the contact persons in EISMEA via e-mail to inform EISMEA of the individuals that will have access to the proposals.

f) The contact persons will have to register with the relevant platform provided by EISMEA from where they will be able to access all the technical files needed for carrying out the assessments. Whenever necessary, access may be granted to the participating examiners.

g) When registering with the platform the personal data processed by EISMEA, and the following privacy statement will be (re-)brought to the attention of any eventual assessor https://webgate.ec.europa.eu/cas/privacyStatement.html.

The EPO examiners participating in the assessments and the technical proposals that they analysed will be accessible by the contact persons.

Personal data are processed solely for the following purposes:

- Identification, assessment of technical expertise and selection of examiners who would like to participate to the pilot activity
- Providing the contact details of the selected examiners to EISMEA when necessary
- Identification of which examiner performed which evaluation

Please note that the processing is not intended to be used for any automated decision-making, including profiling.

Your personal data will not be transferred to recipients outside the EPO which are not covered by Article 8(1), (2) and (5) DPR unless an adequate level of protection is ensured. In the absence of an adequate level of protection, a transfer can only take place if appropriate safeguards have been put in place and enforceable data subject rights and effective legal remedies for data subjects are available, or if derogations for specific situations as per Article 10 DPR apply.

2. What personal data do we process?

The following categories of personal data are processed:

- Name
- Surname
- EPO E-mail
- EPO Phone number
- EPO Organisational Unit
- Examiner technical expertise relevant to the proposals
- Information concerning which evaluation did the examiner carry out

3. Who is responsible for processing the data?

Personal data are processed under the responsibility of the Vice President Patent Granting Process, DG 1, acting as the EPO's delegated data controller

Personal data are processed by the contact persons referred to in this statement. The identity of these contact persons will be made available to the selected examiners whose data is processed.

External contractors involved in providing a platform may also process personal data, which can include accessing it.

4. Who has access to your personal data and to whom are they disclosed?

Personal data are disclosed on a need-to-know basis to the EPO director and/or team manager of the directorate and/or team of the examiners to be selected.

Personal data may be disclosed to third-party service providers solely for maintenance and support purposes.

Personal data will only be shared with authorised persons responsible for the necessary processing operations, namely the director and/or team manager of the unit of the examiners selected, the EPO Brussels Office and the contact persons of EISMEA. They will not be used for any other purposes or disclosed to any other recipients.

5. How do we protect and safeguard your personal data?

We take appropriate technical and organisational measures to safeguard and protect your personal data from accidental or unlawful destruction, loss or alteration and unauthorised disclosure or access.

All personal data are stored in secure IT applications in accordance with the EPO's security standards. Appropriate levels of access are granted individually only to the above-mentioned recipients.

For systems hosted on EPO premises, the following basic security measures generally apply:

- User authentication and access control (e.g. role-based access control to the systems and network, principles of need-to-know and least privilege)
- Logical security hardening of systems, equipment and network
- Physical protection: EPO access controls, additional access controls to datacentre, policies on locking offices
- Transmission and input controls (e.g. audit logging, systems and network monitoring)
- Security incident response: 24/7 monitoring for incidents, on-call security expert.

In principle, the EPO has adopted a paperless policy management system; however, if paper files containing personal data need to be stored on EPO premises, they are locked in a secure location with a restricted access. When data are outsourced (e.g. stored, accessed and processed), a privacy and security risk assessment is carried out and the following general statement might be included in this field:

For personal data processed on systems not hosted on EPO premises, the providers processing the personal data have committed in a binding agreement to comply with their data protection obligations under the applicable data protection legal frameworks. The EPO has also carried out a privacy and security risk assessment. These systems are required to have implemented appropriate technical and organisational measures such as: physical security measures, access and storage control measures, securing data at rest (e.g. by encryption); user, transmission and input control measures (e.g. network firewalls, network intrusion detection system (IDS), network intrusion protection system (IPS), audit logging); conveyance control measures (e.g. securing data in transit by encryption).

6. How can you access, rectify and receive your data, request that your data be erased, or restrict/object to processing? Can your rights be restricted?

You have the right to access, rectify and receive your personal data, not to be subject to a decision based solely on automated processing, to have your data erased and to restrict and/or object to the processing of your data (Articles 18 to 24 DPR).

If you would like to exercise any of these rights, please write to the delegated data controller at the EPO at DG1_DPL@epo.org. In order to enable us to respond more promptly and precisely, you always need to provide

certain preliminary information with your request. We therefore encourage you to fill in this form and submit it with your request.

We will reply to your request without undue delay and in any event within one month of receipt of the request. However, Article 15(2) DPR provides that this period may be extended by two further months where necessary in view of the complexity and number of requests received. We will inform you of any such delay.

7. What is the legal basis for processing your data

Personal data are processed on the basis of Article 5(a) DPR, “processing is necessary for the performance of a task carried out in the exercise of the official activities of the European Patent Organisation or in the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the Office's management and functioning”, in the context of assessing and selecting examiners to participate to the pilot activity of the collaboration with EISMEA, as well as keeping track of which assessments were carried out by which examiner.

8. How long do we keep your data?

Personal data will be kept only for the time needed to achieve the purposes for which it is processed. To allow for comprehensive contact with the EISMEA in the event of clarifications, it will be stored from the initial kick-off the project for a period of 36 months.

In the event of a formal appeal/litigation, all data held at the time the formal appeal/litigation was initiated will be retained until the proceedings have been closed.

9. Contact information

If you have any questions about the processing of your personal data, please write to the delegated data controller at DG1_DPL@epo.org. You can also contact our Data Protection Officer at dpo@epo.org.

Review and legal redress
If you consider that the processing infringes your rights as a data subject, you have the right to request review by the controller under Article 49 DPR and, if you disagree with the outcome of the review, the right to seek legal redress under Article 50 DPR.