



RECORD OF PERSONAL DATA PROCESSING ACTIVITY

In accordance with Article 31 of the Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (Regulation), individuals whose personal data are processed by the Research Executive Agency (REA or Agency) in any context whatsoever are to be protected with regard to the processing of personal data and the Agency has to keep records of their processing activities.

Record No: 34
Created on (date): 30 July 2019
Last update (date): 20 December 2019

NAME OF THE PROCESSING ACTIVITY

Use of the Early Detection and Exclusion System (EDES) in the REA

1. MANDATORY RECORD UNDER ARTICLE 31 OF THE REGULATION

1.1. Name and contact details of controller

The controller is the Research Executive Agency (REA). For organisational reasons, the role of data controller is exercised by the Head of Unit FINANCE. The controller may be contacted via functional mailbox: REA-ANTI-FRAUD@ec.europa.eu.

1.2. Name and contact details of the Data Protection Officer (DPO)

BRUNET COMPANY Maria Francisca (REA-DATA-PROTECTION-OFFICER@ec.europa.eu).

1.3. Name and contact details of joint controller(s) (where applicable)

For this processing activity the REA is considered as a joint controller with the DG BUDG (BUDG-EDES-DB@ec.europa.eu). In that respect, the REA acts as a primary contact point (where applicable) for data subjects wishing to obtain information on the processing activity and the data processed in that context.

1.4. Name and contact details of processor(s) (where applicable)

The database for the EDES is set up and operated by the Commission (Controller: Maria Victoria GIL CASADO, Head of Unit BUDG.D.2): budg-edes-db@ec.europa.eu.

1.5. Purpose of the processing

The purpose of the processing activity is the protection of the Union's financial interests by means of detection of risks and imposition of administrative sanctions.

Pursuant to article 135(1) of the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (hereinafter "the Financial Regulation")¹, the purpose of entering data subjects in the EDES is:

- The early detection of persons or entities referred to in Article 135(2) of the Financial Regulation, which pose a risk to the financial interests of the Union;
- The exclusion of persons or entities referred to in Article 135(2) of the Financial Regulation, which are in one of the exclusion situations referred to in Article 136(1) of the Financial Regulation;
- The imposition of a financial penalty on a recipient pursuant to Article 138 of the Financial Regulation;
- The publication of the Commission's internet site of information related to the exclusion and where applicable the financial penalty in order to reinforce their deterrent effect (Articles 140(1) and 140(2) of the Financial Regulation.

The procedure relating to the EDES is the following:

- Information on early detection and/or exclusion and/or financial penalty is entered in the EDES database by the REA. The DG BUDG of the European Commission controls and validates the cases that the REA creates.

Description:

¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.07.2018

Pursuant to article 142 of the Financial Regulation, which entered into force on 2 August 2018, a database is set up by the Commission for the purposes of the early detection and exclusion system (hereinafter "EDES"). The EDES replaces the previous Early Warning System (hereinafter EWS) and the previous Central Exclusion Database (hereinafter CED) for which the EDPS issued opinions respectively on 6 December 2006 (Case 2005-120) and 26 May 2010 (Case2009-0681).

The content of the previous databases (EWS and CED) did not automatically migrate to EDES regarding the verification warnings. A re-assessment of cases took place in order to feed the content of the EDES database.

i. Exclusion

The grounds for exclusion pursuant to article 136 of the Financial Regulation are the following:

The authorising officer shall exclude economic operators as defined in article 2 of the Financial Regulation (such as tenderers, candidates, contractors, grant applicants, beneficiaries, experts, etc.) where:

- the person or entity is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law, pursuant to article 136(1)(a) of the Financial Regulation;
- it has been established by a final judgment or a final administrative decision that the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law pursuant to article 136(1)(b) of the Financial Regulation;
- it has been established by a final judgment or a final administrative decision that the person or entity is guilty of grave professional misconduct (article 136(1)(c) of the Financial Regulation), including in particular of:
 - a. fraudulent misrepresentation of information,
 - b. distortion of competition,
 - c. violation of intellectual property rights,
 - d. influence of the decision making process within a procurement procedure,
 - e. attempt to obtain confidential information that may confer undue advantages in a procurement procedure;
- it has been established by a final judgment that the person or entity is guilty of any of the following (article 136(1)(d) of the Financial Regulation) of:
 - a. fraud;
 - b. corruption;
 - c. participation in a criminal organisation;
 - d. money laundering or terrorist financing;
 - e. terrorist related offences;
 - f. child labour or trafficking of human beings;
- have shown significant deficiencies in complying with main obligations in the performance of a contract financed by the Union's budget (article 136(1)(e) of the Financial Regulation);
- it has been established by a final judgment or final administrative decision that the person or entity has committed an irregularity (136(1)(f) of the Financial Regulation).

For grounds under 136 (1) (c), (d) and (f), in the absence of final judgement or final administrative decision, as well as in case under 136(1)(e) (following checks, audits or

investigations by OLAF etc.), economic operators shall be excluded on the basis of a *preliminary classification in law* of a conduct referred to in those points, having regard to other established facts or other findings contained in the recommendation of the panel referred to in article 143 (article 136(2) of the Financial Regulation).

ii. Early Detection

In cases of presumed grave professional misconduct, irregularity, fraud, corruption or serious breach of contract, this information is transmitted by the entities referred to in article 142(2) of the Financial Regulation (such as OLAF, an authorising officer, another Institution) to the Commission for the early detection of risks threatening the Union's financial interests.

iii. Financial penalty

In cases of article 136 (1) (c), (d), (e) and (f) (such as grave professional misconduct, fraud, irregularity, corruption, criminal organisation, serious breach of contract etc.) and in order to ensure a deterrent effect, the authorising officer may impose a financial penalty on the economic operator in question, as an alternative to a decision to exclude or in addition to an exclusion, under the conditions mentioned in article 138 of the Financial Regulation.

After the decision on exclusion and/or financial penalty has been taken and in order, where necessary, to reinforce their deterrent effect, the Commission will publish on its internet site the relevant information, subject to a decision of the authorising officer (article 16 (16) of the Financial Regulation).

The database

The database is set up and operated by the Commission (Article 142 of the Financial Regulation).

The content of the EDES database is expected to concern mainly legal persons (around 90% of the cases) and much less natural persons (10% estimated cases) with a very concise description of what you intend to achieve, meaning the reason and objective(s) for processing the personal data.

1.6. Legal basis for the processing

Articles 135 to 145, 196, 208 and 237 of the Financial Regulation;

Article 50 of the Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies;

Council Regulation (EC) N°58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes;

Commission Decision 2008/46/EC of 14 December 2007 setting up the 'Research Executive Agency' for the management of certain areas of the specific Community programmes People, Capacities and Cooperation in the field of research in application of Council Regulation (EC) No 58/2003.

1.7. Categories of data subjects

Categories of data subjects, whose personal data is processed in the EDES are the following:

1. natural persons that are economic operator within the meaning of article 2 of the Financial Regulation that could represent a threat either to the financial or reputational interest of the Union arising directly from their financial transactions (budget implementation) or in connection with them;
2. pursuant to article 136(4)(a) of the Financial Regulation, natural persons who are members of the administrative, management and supervisory body of the

economic operator, or who have powers of representation, decision or control with regard to the economic operator which is in one or more of the situations listed in points c to h of article 136(1);

3. pursuant to Article 136(4)(b) of the Financial Regulation, natural persons who assume unlimited liability for the debts of that economic operator which is in a situation listed in Article 136(1) (a) or (b);
4. pursuant to Article 136(4)(c) of the Financial Regulation, natural persons who are essential for the award or for the implementation of the legal commitment are in one or more of the situations referred to in points (c) to (h) of Article 136(1).

As far as the tasks of the REA are concerned, the above categories include:

- the remunerated experts/evaluators/monitors (article 237 of the Financial Regulation);
- the legal representatives of legal entities grant applicants or public procurement tenderers/
- the legal representatives of the legal entities grant beneficiaries;
- the legal entity appointed representatives (LEAR);
- public procurement contractors who meet the conditions of recipients;
- natural persons participating in prize contests.

5. Informants

When the information on the suspicion or the findings triggering the use of the EDES procedure is external to the REA, the data processing will cover personal data of the person providing that information called the "informant", unless the information is received on an anonymous basis.

1.8. Categories of personal data

Under the EDES system the following personal data categories are processed:

1. For natural persons that are economic operator within the meaning of article 2 of the Financial Regulation that could represent a threat either to the financial or reputational interest of the Union arising directly from their financial transactions (budget implementation) or in connection with them:
 - Identification data: Name, surname, address (including e-mail address), country, and other identification or contact data of the persons to whom the EDES case refers to;
 - data on the link (if existing) with a legal entity file kept in the accounting system of the Commission;
 - data on exclusion or early detection or financial penalty;
 - grounds (in the case of exclusion): the grounds of the exclusion are mentioned under article 136 (1) of the Financial Regulation, such as final judgement that the data subject is guilty of fraud, corruption, etc;
 - data on the duration of the exclusion or early detection: starting end, ending date, extension;
 - data on the panel (article 143 of the Financial Regulation): if the case is submitted to the panel, date of the panel, if observations were submitted by the economic operator, if the recommendation of the EDES Panel was taken into account, revision of the panel's recommendation, etc;
 - data on the financial penalty: amount, if the amount was paid;

- data on the authorising officer requesting the registration and on the contact persons responsible for the case: name, surname, business telephone number and professional email.
2. For natural persons who are members of the administrative, management and supervisory body of the economic operator, or who have powers of representation, decision or control with regard to the economic operator which is in one or more of the situations listed in points c to h of article 136(1)
 - Identification data: Name, surname, address, country, identity card number/passport number/driving license (or other document proving identity), issuing country, date of birth, place of birth;
 - Data on the link with an excluded economic operator: identification of the linked excluded economic operator, and if the natural person is a person with power of representation, decision making or control or if the person is a member of the administrative, management or supervisory body of the economic operator.
 3. For natural persons who assume unlimited liability for the debts of that economic operator which is in a situation listed in Article 136(1) (a) or (b):
 - Identification data: Name, surname, address, country, identity card number/passport number/driving license (or other document proving identity), issuing country, date of birth, place of birth;
 - Data on the link with an excluded economic operator: identification of the linked excluded economic operator, and if the natural person is a person is a person who assumes unlimited liability for the debts of that economic operator.

Pursuant to article 140 of the Financial Regulation, the following data may be published subject to the decision of the authorising officer:

- identification data: name and address of the economic operator;
- data on exclusion and grounds of exclusion (article 136 (1) of the Financial Regulation);
- duration of exclusion;
- data on financial penalty: amount and if it was paid.

Where the decision on the exclusion and/or financial penalty has been taken on the basis of a preliminary classification as referred to in article 136 (2) of the Financial Regulation, the publication shall indicate that there is no final judgment or, where applicable, final administrative decision. In those cases, information about any appeals, their status and their outcome, as well as any revised decision of the authorising officer, shall be published without delay.

Special categories of data:

Special categories of personal data may be processed, pursuant to article 136 (1) of the Financial Regulation, which lists the exclusion criteria and exclusion situations.

- data relating to insolvency or winding-up procedures, or an analogous situation;
- data relating to the non-payment of taxes or social security contributions;
- data relating to grave professional misconduct (fraudulent misrepresentation of information, distortion of competition, violation of intellectual property rights, attempt to influence the decision making process of the contracting authority during a procurement procedure, etc.);

- data relating to fraud, corruption, participation in criminal organisation, money laundering, offences linked to terrorist activities, child labour or other forms of trafficking in human beings;
 - data relating to significant deficiencies in complying with main obligations in the performance of a contract;
 - data relating to an irregularity.
4. For informants:
- Name, surname, addresses (including e-mail address) and telephone number of the informant where available.

1.9. Retention time (time limit for keeping the personal data)

The information on early detection will have a maximum duration of 1 year (pursuant to article 142(4) of the Financial Regulation) from the moment that the relevant case is validated by the Commission. The information is automatically removed at the end of the period. If, during the retention period of information on early detection, the authorising officer requests the panel referred to in Article 143 to issue a recommendation in an exclusion case, the retention period may be extended until such time, when the authorising officer has taken a decision.

In other cases, as soon as it is no longer justified, the information on early detection is closed by the authorising officer.

Pursuant to Article 139(1) of the Financial Regulation, the duration of information on exclusion shall not exceed:

- a. the duration, if any, set by the final judgement or the final administrative decision of a Member State;
- b. in the absence of a final judgment or a final administrative decision:
 - i. five years for the cases referred to in point (d) of Article 136(1) of the Financial Regulation;
 - ii. three years for the cases referred to in points (c) and (e) to (h) of Article 136(1) of the Financial Regulation.

A person or entity referred to in Article 135(2) shall be excluded as long as it is in one of the exclusion situations referred to in points (a) and (b) of Article 136(1) of the Financial Regulation.

Pursuant to Article 136(3) of the Financial Regulation, any decision of the authorising officer or any recommendation of the panel referred to in article 143 of the Financial Regulation on the proposed duration of the exclusion shall be made in compliance with the principle of proportionality.

Pursuant to Article 140(1) of the Financial Regulation, the information published shall be removed as soon as the exclusion has come to an end. In the case of a financial penalty, the publication shall be removed six months after payment of that penalty.

The publication shall indicate that there is no final judgment or, where applicable, final administrative decision. In such cases, information about any appeals, their status and their outcome, as well as any revised decision of the authorising officer responsible shall be published without delay.

Removed information on early detection, exclusion and/or financial penalty shall be accessible for audit, investigation purposes and for the purposes of the preliminary classification in law due to the fact that the "recurrence" is a criterion to be taken into consideration for the recommendation of the panel referred to in article 143 (pursuant

to article 136(3) of the Financial Regulation). The removed information shall not be visible for the users of the EDES database.

When related to personal data, the additional period that this information will remain in the early detection and exclusion system database shall not exceed five years after the removal of the information. This is in line with Article 75 of the Financial Regulation.

As an executive agency the REA keeps the EDES files (electronic and paper) for the administrative retention period of 5 years after the file has been closed, pursuant to the Commission Common Retention List (SEC(2019)900), point 4.2.3.bis "Management of the Early Detection and Exclusion System (EDES)". EDES files are considered closed when the final financial transactions involving the data subject are completed.

The personal data of the informant of the facts potentially giving rise to the registration of a case in the EDES will be deleted where possible by the REA before the elapse of a period of 5 years (after the first contact), unless necessary for budgetary discharge control or audit purposes. Regarding the latter, the information will be retained for a period of 5 years after the file has been closed.

Removed cases and their corresponding supporting files shall be only accessible for audit and investigations purposes and they shall not be accessible to other services in the REA than those involved in those functions. However, the personal data contained in the EDES cases referring to natural persons will have to be deleted five years after the removal of the warning.

Following the retention period, the paper files are destroyed.

Is any further processing for historical, statistical or scientific purposes envisaged? **No**

1.10. Recipients of the data

Recipients of the data of the EDES are the following (article 142 to 144 of the Financial Regulation):

- Authorised persons within the Commission and of the Executive Agencies (articles 142 and 143 of the Financial Regulation) for information concerning early detection, exclusion and financial penalty. All authorised staff members of the REA having access to ABAC, SyGMA for processing commitments, payment files, or for controlling, auditing have access to the information stored in the EDES because of the synchronisation of the databases.
- Authorised persons within all other Institutions, bodies, European offices and agencies (article 142 and 143 of the Financial Regulation) for information concerning early detection, exclusion and financial penalty;
- Members of the Panel referred to in article 143 of the Financial Regulation: a high level independent chair, 2 representatives of the Commission and a representative of the requester authorising officer;
- Authorised persons from all entities participating in the implementation of the budget in accordance with articles 63 and 154 of the Financial Regulation (see articles 142 to 144 of the Financial Regulation) only for exclusion decisions;
- Public for cases which are made public on the website of the EDES related to exclusion and where applicable, the financial penalty. In this respect, it is noted that according to article 140 of the FR, where personal data is concerned the authorising officer shall inform the economic operator of its rights under the applicable data protection rules and of the procedures available to exercise those rights. In addition, where a natural person is concerned, personal data shall not be published, unless the publication of personal data is exceptionally justified, inter alia, by the seriousness of the act or its impact on the Union's financial interests. In such cases, the decision to publish the information shall duly take

into consideration the right to privacy and other rights provided for in the Regulation;

- European Court of Auditors, European Anti-Fraud office (OLAF) for all data that are in the EDES database for audit and investigation purposes.

Data regarding the grounds at the origin of the registration of the case may be disclosed to the following recipients:

- The Director of the Agency in his/her capacity of Authorising Officer by Delegation (AOD);
- Authorised members of the REA staff namely the EDES Correspondents of the REA;
- Staff members of the REA requesting the information to the REA EDES Correspondents when about to make a payment or to enter into a commitment with a legal entity;
- Authorised persons within the Commission and of the Executive Agencies (articles 142 and 143 of the Financial Regulation) processing commitments, and payment files.

Information not yet registered in the EDES:

The information initiating the registration of an EDES procedure is known by the staff members who have found the underlying suspicions themselves or have got the information from other sources (e.g. an informant).

For the subsequent processing of the registration of the EDES, the REA's recipients are:

- The EDES Correspondents in REA C.2 unit;
- The heads of unit of the operational units in charge of the relevant grant agreements;
- The anti-fraud correspondents, as well as bankruptcy correspondents of the operational units involved.
- The relevant heads of department;
- The Agency's Director;

Other potential recipients

- Member States of the European Union;
- Economic and Social Committee;
- Committee of the Regions;
- The Court of Justice of the European Union;
- European Court of Auditors;
- Internal Audit Service (IAS)
- European Anti-Fraud Office (OLAF);
- European Ombudsman;
- European Data Protection Supervisor (EDPS);
- Any other institution or entity with responsibility for audits or investigations.

This transmission is restricted to the information necessary for the legitimate performance of tasks within the competence of the recipient. The recipients of the data are reminded of their obligation not to use the data received for other purposes than the one for which they were transmitted.

The restricted information contained in the EDES shall be made available, subject to Article 4 of Regulation 1049/2001 regarding exceptions to public access to EU institutions documents.

1.11. Transfers of personal data to third countries or international organisations

Transfer out of EU/EEA

Authorised persons from all entities participating in the implementation of the budget in accordance with article 154 FR will have access via ECAS to the information on exclusion decisions also for the part of the database that is not open to the public (see article 142(5) and 62 of the Financial Regulation). Those entities are the following:

- a. third countries or the bodies they have designated;
- b. international organisations and their agencies;
- c. public law bodies;
- d. bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- e. persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

1.12. High-level description of security measures

The whole application and database (EDES) (including personal data) is stored in DG DIGIT. The application and database benefit from the applicable general security measures of the European Commission. Concerning unauthorised access to equipment and data, network firewalls protect the logic perimeter of the EDES database and access is filtered to allow solely registered users through European Commission Authentication Service (ECAS). Administrative measures include the obligation of all authorised users to be registered and access to the EDES database is recorded (logfile).

The database for the EDES is set up and operated by the Commission (Controller: Maria Victoria GIL CASADO, Head of Unit BUDG.D.2).

The servers where the EDES database is located have restricted physical access and are under the European Commission's responsibility.

In addition, the REA EDES procedure expressly establishes that:

- The information is circulated on a "need-to-know" basis;
- Any printed information is to be locked in secure cupboards with limited access restriction;
- E-mails with EDES related information containing personal data is sent encrypted using SECEM;
- Any ARES circulation must contain handling restrictions;
- EDES related information containing personal data shall be stored on shared drive with restricted access to the EDES Correspondents of the REA;
- For information provided to persons external to the REA (limited to the data subject and to the above-mentioned list) the data provided may only be processed for the intended purposes and this should be mentioned in the communications.

1.13. Data Protection Notice

A Data Protection Notice (DPN) is available under the REA Intranet (Section "Data Protection").