



Data Protection Notice

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

In accordance with 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), the Research Executive Agency (Agency or REA) collects your personal information only to the extent necessary to fulfil a precise purpose related to our tasks.

1. WHY DO WE COLLECT YOUR PERSONAL DATA?

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 on 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.

2. WHO IS RESPONSIBLE FOR THIS PROCESS?

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.

3. WHAT IS THE LEGAL BASIS TO COLLECT YOUR DATA?

The processing is necessary for the performance of tasks carried out in the public interest or in the exercise of official authority vested in the Union institution or body (Article 5(1)(a) of

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

Regulation); the processing is necessary for compliance with a legal obligation to which the controller is subject (Article 5(1)(b) of Regulation), as established by the following legal acts:

- 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 pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes;
- 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.

4. WHICH PERSONAL DATA ARE COLLECTED?

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 date, 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 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.

5. WHO WILL HAVE ACCESS TO YOUR PERSONAL 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 is known by the staff members initiating the registration of an EDES procedure who have found the underlying suspicions themselves or have the information from other sources (e.g. from 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.

6. HOW LONG DO WE KEEP YOUR 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**

7. WHAT ARE YOUR RIGHTS?

Right of access, to rectify, to block, to erase, to object

Pursuant to article 142(1) of the Financial Regulation and in accordance with the Regulation, the Commission shall upon request inform the person or entity subject to the early-detection and exclusion system, as referred to in Article 135(2), of the data stored in the database relating to that person or entity.

Before an eventual exclusion decision and/or financial penalty and /or the decision on publication of exclusion decision and/or of the financial penalty, the data subject will be notified without delay about the facts in question and their preliminary classification in law pursuant to articles 142 of the Financial Regulation.

This notification may be deferred where there are compelling legitimate grounds to preserve the confidentiality of an investigation or of national judicial proceedings, until such compelling legitimate grounds to preserve the confidentiality cease to exist (see article 142 of the Financial Regulation). This deferral reflects the exception of article 25 of the Regulation, since it foresees that the rights of data subject may be restricted, "when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard: (b) the prevention, investigation, detection and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;"

Pursuant to the Financial Regulation, the information on early detection shall be also notified to the data subjects.

The Financial Regulation ensures the rights of defence, the rights to privacy and to the protection of personal data (see recital n° 11 and Article 5 of the Financial Regulation).

Rights of defence (contradictory procedure)

Data subjects subject to an exclusion decision may submit their observations to the EDES Panel referred to in article 143 of the Financial Regulation. This opportunity may only exceptionally be deferred in order to preserve the confidentiality of an investigation or of national judicial proceedings (see article 142 of the Financial Regulation). This deferral reflects the exception of article 25 of the Regulation.

In addition, when the authorising officer envisages a more severe decision than what was recommended by the EDES Panel, such decision will be taken with due respect to the rules on data protection (articles 142 and 143 of the Financial Regulation).

Finally the Court will have unlimited jurisdiction to review an exclusion decision (article 143(9) of the Financial Regulation).

Rights of access/rectification/erasure/restriction/objection pursuant to the Regulation

The rights of the data subjects enshrined in articles 17 to 20 and in articles 23 and 24 of the Regulation are confirmed by the Financial Regulation (articles 140 and 142) and they are reminded to the data subject when the registration of the information on early detection and/or exclusion and/or financial penalty is notified.

Regarding the data stored in the database, the data subject will be informed upon its request to the Commission (article 142 of the Financial Regulation).

It is the authorising officer who entered into EDES the information on early detection and/or exclusion and/or financial penalty, the responsible for the relations with the person whose data are introduced into the EDES.

To that end, the Head of Unit of the Finance Unit of the REA will respond to requests from the data subject concerned in order to rectify inaccurate or incomplete personal data and to any other requests or questions from those subjects. For these purposes, the name and the contact details of the EDES Correspondents are published on the REA Intranet.

The data subject may send their requests to the data controller responsible for this processing activity using the following email address: REA-BANKRUPTCY-CASES@ec.europa.eu.

8. CONTACT INFORMATION

In case you have any questions about the collection/processing of your personal data, you may contact the data controller who is responsible for this processing activity by using the following email address: REA-ANTI-FRAUD@ec.europa.eu.

Further to the above, the following instances can be addressed:

REA Data Protection Officer (DPO): REA-DATA-PROTECTION-OFFICER@ec.europa.eu

In case of conflict, complaints can be addressed to the European Data Protection Supervisor: EDPS@edps.europa.eu.