

## **Privacy Statement for the database of the Early Detection and Exclusion System (EDES)**

### **1. Description of the processing operation**

Pursuant to article 142 (1) of the Regulation (EU, Euratom) 2018/1046<sup>1</sup> of the European Parliament and of the Council (hereinafter "the Financial Regulation" or "FR") 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") with a view to make available information to all persons or entities involved in the implementation of the budget and so to enable them to protect the European Union's financial interests.

A Panel is set-up to assess requests and issue recommendations for exclusion and financial penalty referred to it by an authorizing officer of any Union institution, Union body, Executive Agency or other agency, European office or body or person entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU (Article 143(1) of the Financial Regulation). The competent authorising officer will refer a case to the Panel for a central assessment where there are no final judgments or final administrative decisions related to the exclusion and its duration or to the financial penalty, and their publication. The Panel will also be competent to ensure the rights of defence of the person or entity.

Information on early detection or exclusion will be entered in the EDES database by the competent authorising officer after notifying the person or entity concerned, except in cases where there are legitimate compelling grounds in exceptional circumstances to preserve the confidentiality of an investigation or of national judicial proceedings. The European Commission controls and validates the cases prepared by the competent authorising officer before the activation in the database.

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

### **2. What personal information do we collect, for what purpose and through which technical means?**

Categories of personal data that will be processed in the EDES on a case-by-case basis are the following:

For natural persons falling under Article 135(2) of the Financial Regulation (hereinafter referred to as "person"):

- 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 (if existing) with a legal entity file kept in the accounting system of the Commission;
- Data on exclusion or early detection or financial penalty;

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<sup>1</sup> 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.

- Ground of early detection or exclusion or financial penalty in accordance with article 136 (1) of FR;
- Data on the duration of the exclusion or early detection: starting date, ending date, extension;
- Data on the panel (143(1) of FR): if the case is submitted to the panel, date of the panel, if observations were submitted by the person, if the recommendation of the panel was taken into account, revision of the panel's recommendation, etc.
- Data on the financial penalty: amount, if the amount was paid;
- Authorising officer responsible for the case;
- Contact person responsible for the case.

For natural persons who are members of the administrative, management or supervisory body of the person or entity referred to in Article 135(2), or who have powers of representation, decision or control with regard to that person or entity and who are in a situation listed in article 136, paragraph 1, points (c) to (h) of the Financial Regulation, pursuant to article 136, paragraph 4 (a) of the Financial Regulation:

- 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 that person or entity: identification of the person or entity 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 that person or entity.

For natural persons who are essential for the award or for the implementation of the legal commitment and who are in a situation listed in article 136, paragraph 1, points (c) to (h) of the Financial Regulation, pursuant to article 136, paragraph 4 (c) of the Financial Regulation:

- 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 a person or entity falling under Article 135(2) FR.

For natural persons who assume unlimited liability for the debts of the person or entity referred to in Article 135(2) and who are in a situation listed in article 136, paragraph 1, point (a) or (b) of the Financial Regulation, pursuant to article 136, paragraph 4 (b) of the Financial Regulation.

- 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 that person or entity: identification of the person or entity and if the natural person is a person who assumes unlimited liability for the debts of that person or entity.

Pursuant to article 140(1) of the FR, the following data may be published subject to the decision of the authorising officer responsible:

- Identification data: name and address of the person or entity concerned;
- Data on exclusion and grounds of exclusion (article 136 (1) of the FR);
- 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 FR, 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 responsible, shall be published without delay.

Special categories of personal data may be processed, pursuant to article 136 (1) of the Financial Regulation.

- 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, conduct related to a criminal organisation, money laundering, offences linked to terrorist activities, child labour or other offences concerning trafficking in human beings;
- Data relating to significant deficiencies in complying with main obligations in the implementation of a legal commitment;
- Data relating to an irregularity;
- Data relating to creation of an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business.

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

In particular, the purpose of the EDES database is:

- the early detection of risks threatening the Union's financial interests;
- the exclusion of a person or entity which is in one of the exclusion situations listed in Article 136(1) of the FR;
- the imposition of a financial penalty on a person or entity pursuant to Article 138 of the FR;
- 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 (140 of the FR).

### 3. Who has access to the information and to whom is it disclosed?

In addition to the controller and the staff managing the EDES database, duly authorised persons (persons from the Commission or from other institutions, offices, bodies, agencies and entities referred to points (c), (d), (e) of article 142 (2) of the Financial Regulation) have access to the information contained in the EDES database.

Recipients of the data of the EDES are the following:

- Authorised persons within the Commission and the Executive Agencies for information concerning early detection, exclusion and financial penalty;
- Authorised persons within all other Institutions, bodies, European offices and agencies for information concerning early detection, exclusion and financial penalty;
- Members of the Panel referred to in article 143 FR: a high level independent chair, 2 permanent representatives of the Commission and a representative of the requesting authorising officer;
- Authorised persons from all entities participating in the implementation of the budget in accordance with articles 62(1)(b) and (c) of the Financial Regulation only for exclusion decisions;
- European Court of Auditors, European Anti-Fraud office (OLAF), Commission Internal Audit Service (IAS) for all data that are in the EDES database for audit /investigation purposes.

The public is the recipient regarding cases which are made available on the public website of the EDES related to exclusion and where applicable, the financial penalty (article 140(1) of the Financial Regulation). However, personal data will not be published, unless their publication 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 duly takes into consideration the right to the protection of personal data provided for in Regulation (EU) 2018/1725<sup>2</sup>.

Authorised persons from all entities participating in the implementation of the budget in accordance with article 62(1)(b) and (c) FR will have access to the information on exclusion decisions also for the part of the database that is not open to the public.

Those entities are the following:

- (i) Member States;
- (ii) third countries or the bodies they have designated;
- (iii) international organisations and their agencies;
- (iv) public law bodies, including Member State organisations;
- (v) bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- (vi) bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
- (vii) 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.

Specific clauses will be inserted in the contribution agreements in order to fully respect article 48 of Regulation 2018/1725.

#### **4. How do we protect and safeguard the information?**

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<sup>2</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, L 295/39

In order to protect personal data, a number of technical and organisational measures have been put in place. The database benefits from the applicable security measures in 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).

## 5. How long do we keep your data?

### Early detection

Information on early detection is registered for a maximum duration of 1 year from the moment that the relevant case is validated by the Commission. It is automatically removed at the end of this period. If, during this period, the authorising officer requests the panel referred to in Article 143 of the FR to issue a recommendation in an exclusion case, the retention period may be extended until the authorising officer responsible has taken a decision.

### Exclusion

The duration of the exclusion shall not exceed:

- a) Five years for cases referred to in point (d) of paragraph 1 of article 136 of the FR (cases of fraud, corruption, conduct related to criminal organisation, money laundering, offences linked to terrorist activities, child labour or other offences related to trafficking in human beings);
- b) Three years for the cases referred to in points (c) and (e) to (h) of paragraph 1 of article 136 of the FR (grave professional misconduct, significant deficiencies in complying with main obligations in the performance of a legal commitment, irregularity and shell companies);
- c) The duration, if any, set by the final judgement or the final administrative decision of a Member State;

In the cases of points (a) and (b) of paragraph 1 of article 136 of the FR, the duration of the exclusion will correspond with the period in which the exclusion ground is valid (bankruptcy, insolvency or winding-up procedures, or an analogous situation, non-payment of taxes or social security contributions).

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

### Financial Penalty

In case of a financial penalty, if the relevant information has been published, the publication shall be removed six months after payment of that penalty (140(1) 4th subparagraph FR).

The information on early detection and/or exclusion will be removed as soon as the time period has elapsed if the authorising officer has not removed it before the end of its duration.

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 FR). The removed information shall not be visible for the users of the EDES database. The additional period that this information will remain in the EDES-DB shall not exceed five years after the removal of the information. This is in line with Article 75 of the FR.

**6.** How can you exercise your rights?

You have the right to access, rectify, erase or restrict the processing of the data we hold regarding the person or entity you are representing or the person or entity for which you assume unlimited liability or regarding your personal data. You, also, have the right, where applicable to object to the processing or the right to data portability. Upon request, you may be sent a copy of these data to correct and complete them. Any such request should be directed to the authorising officer responsible. Regarding data stored in the database you will be informed upon your request to the Commission ([BUDG-EDES-DB@ec.europa.eu](mailto:BUDG-EDES-DB@ec.europa.eu)). You may also contact the Data Protection Officer of the Commission ([DATA-PROTECTION-OFFICER@ec.europa.eu](mailto:DATA-PROTECTION-OFFICER@ec.europa.eu)) in case of any difficulties or for any questions relating to the processing of these data.

**7.** Right to lodge a complaint

You have the right to lodge a complaint with the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)) if you consider that your rights under Regulation 2018/1725 have been infringed as a result of the processing of your personal data in the frame of the EDES.