



EUROPEAN INNOVATION COUNCIL AND SMES
EXECUTIVE AGENCY (EISMEA)

RECORD OF PERSONAL DATA PROCESSING ACTIVITY

Based on Article 31 of the Regulation (EU) No 2018/1725¹ on the protection of natural persons with regards to the processing of personal data by the Union Institutions, bodies, offices and agencies and on the free movement of such data, each responsible EISMEA data controller has to maintain a record of the processing activities under his/her responsibility.

Record No: R-2019-18-02

Initial approval by Data Controller: *see date of Ares signature*

Previous Notification (if applicable): DPO 5-2013

Update (s) (if applicable): October 2023

NAME OF THE PROCESSING ACTIVITY

Use of the Early Detection and Exclusion System (EDES) by EISMEA

IDENTIFICATION OF THE DATA CONTROLLER

European Innovation Council and SMEs Executive Agency (EISMEA), the Director, who may delegate the handling of EDES cases to the EISMEA Head of Department C- Compliance, People and Budget.

GROUND FOR THIS RECORD (select relevant ground)

- Record of a new type of processing activity of personal data (before its implementation)
- Record of a processing activity of personal data that is already in place (ex-post)
- Change/Amendment/ Update of an already existing previous record (or previous notification to DPO)

DESCRIPTION OF THE PROCESSING ACTIVITY

The Early Detection and Exclusion System (EDES) is the data base of the European Commission to reinforce the protection of the Union's financial interests and ensure sound financial management, by early detection of persons or entities which may represent a risk to the financial interests of the Union, to exclude persons or entities which are in an exclusion situation referred to in the EU Financial Regulation, to impose a financial penalty if applicable, to publish on the European Commission's public website information of exclusion and financial penalties, if applicable, to reinforce the deterrent effect (previous Early Warning System (EWS) and the Central Exclusion Database).

The processing activity is based on Articles 135 to 144 of the EU Financial Regulation (FR) and is centralised in the EDES-database (EDES DB) set up and managed by the European Commission.

The information is entered in the EDES DB by the competent authorising officer responsible of the Agency, by Commission Services or other EU Institutions, bodies, offices and agencies. The European Commission controls and validates the cases. The information on possible EDES registration is incorporated in the Legal Entity Files ("LEF"), for all entities (legal and natural persons) with whom the Commission and the Agency have financial dealings (such as contracts, payments, grants etc.).

In absence of a final judgment or final administrative decision related to the exclusion, the competent authorising officer responsible refers a case to the EDES Panel for a central assessment or to the application of a financial penalty (Article 143 FR). The EDES Panel issues recommendations, including on its duration and their publication and ensures the rights of defence of the economic operator.

¹ 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 (OJ L 295/39 of 21.11.2018).

1. INFORMATION ON THE PROCESSING ACTIVITY

of the use of the Early Detection and Exclusion System (EDES) by EISMEA

This processing activity is performed in accordance with **Regulation (EU) No 2018/1725** on the protection of individuals with regard to the processing of personal data by the Union, institutions, bodies, offices and agencies and on the free movement of such data.

1.1. The Data Controller is:

The European Innovation Council and SMEs Executive Agency (EISMEA), Director who may delegate the handling of EDES cases to the Head of Department C- Compliance, People and Budget and can be contacted at EISMEA-EDES@ec.europa.eu.

1.2. The following entity(ies) is/are acting as Processor(s):

DG BUDG for the EDES data base and the EDES panel.

1.3. The legal basis for the processing based on Article 5(1) of Regulation (EU) 2018/1725:

- (a) the processing is necessary for the **performance of a task carried out in the public interest** or in the exercise of official authority vested in the Union Institution or body³;
- (a2) the processing is necessary for the **management and functioning** of the Union Institutions or bodies (Recital (22) of Regulation (EU) 2018/1725;
- (b) the processing is necessary for **compliance with a legal obligation** to which the controller is subject⁴;
- (c) the processing is necessary for the **performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (d) the data subject has given **consent** to the processing of his or her personal data for one or more specific purposes;
- (e) the processing is necessary in order to protect the **vital interests** of the data subject or of another natural person.

1.4. The purpose of this processing is to reinforce the protection of the Union's financial interests and ensure sound financial management, by means of detection of risks and imposition of administrative sanctions. Pursuant to article 135 (1) of the EU Financial Regulation (FR), the European Commission has set up and operates an early-detection and exclusion system to facilitate:

- the early detection of risks threatening the Union's financial interests;
- the exclusion of persons or entities which are in one of the exclusion situations listed in Article 136(1) FR;
- the imposition of a financial penalty on a recipient of EU funds pursuant to Article 138 FR;
- the publication on the Commission's public website of information on the exclusion and where applicable the financial penalty, in order to reinforce their deterrent effect (Article 140 FR)⁵.

1.5. The categories of data subjects concerned by this processing are:

1. Natural persons that are persons on which the EDES applies under the meaning of Article 135(2) FR;
2. Natural persons who are members of the administrative, management or supervisory body of the person or entity referred to in Article 135(2) FR, 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(1) (c) to (h) FR, pursuant to Article 136(4)(a) FR;

² [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 247/2002/EC (OJ L 295/39 of 21.11.2018).

³ *EISMEA Establishment Act*: Commission Implementing Decision (EU) 2021/173 of 12 February 2021 establishing the European Innovation Council and SMEs Executive Agency (OJ L 50/9 of 15.2.2021).

Act of Delegation: Commission Decision C (2021)949 delegating powers to the European Innovation Council and SMEs Executive Agency with a view to the performance of tasks linked to the implementation of Union programmes in the field of Innovative Europe, Single Market and Interregional Innovation Investments comprising, in particular, implementation of appropriations entered in the general budget of the Union.

⁴ *EU Financial 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, in particular its Articles 135 to 144 FR

⁵ see Commission Record [DPR-EC-04410.2](#)

3. 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 (1) (a) or (b) FR, pursuant to Article 136 (4)(b) FR.
4. Natural persons who are essential for the award or for the implementation of the legal commitment and who are in one or more of the situations referred to in Article 136 (1) (c) to (h) FR, pursuant to Article 136(4)(c) FR.

1.6. The following personal data are collected on a case-by-case basis:

1- For natural persons who fall under the meaning of Article 135(2) FR:

- 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;
- Ground (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 FR): if the case is submitted to the panel, date of the panel, if observations were submitted by the data subject, 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.

2- For natural persons who are members of the administrative, management or supervisory body of the person or entity referred to in Article 135(2) FR, 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(1) (c) to (h) FR, pursuant to Article 136(4)(a) FR:

- 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 entity or person: identification of the linked excluded 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 the person or entity.

3-For natural persons who assume unlimited liability for the debts of the person or entity referred to in Article 135(2) FR and who are in a situation listed in Article 136 (1) (a) or (b) FR, pursuant to Article 136, (4)(b) FR:

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

4-For natural persons who are essential for the award or for the implementation of the legal commitment and who are in one or more of the situations referred to in Article 136 (1) (c) to (h) FR, pursuant to Article 136(4)(c) FR:

- 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 person or entity: identification of the linked excluded person or entity, and if the natural person was essential for the award or the implementation of the legal commitment.

Pursuant to Article 140 FR, the following data **may be published** subject to the decision of the authorising officer:

- Identification data: name of the data subject;
- Data on exclusion and grounds of exclusion (Article 136 (1) 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) 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, shall be published without delay.

Where a financial penalty has been imposed, the publication shall also indicate whether that penalty has been paid.

Some data processed contains **sensitive data** under Article 11 of Regulation (EU) 2018/1725 'criminal convictions and offences', which may be processed, pursuant to Article 136 (1) FR:

- 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;
- Data relating to the 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.

Such data may be processed only on the basis of the relevant provisions of the EU Financial Regulation (Articles 135 to 144 FR). The rights of defence of the person or entity are strictly respected in line with Article 143(5) FR. Other provisions relevant to personal data and providing for appropriate safeguards for the rights and freedoms of data subjects are Article 140(1), 5th subparagraph FR, Article 140(2)(c) FR and Article 143(6), 2nd subparagraph FR.

The above mentioned personal data are **mandatory** for the purpose(s) outline above.

1.7. The recipients to whom of the personal data will or might be disclosed on a “need to know” basis and in accordance with confidentiality obligations in application of Art 142(4) (5) FR are:

1-Within the EU organisations:

- competent persons within the Agency, including in particular the Director, relevant staff members involved in the EDES file, like Financial or Project officer/advisor, competent Head of Sector /Head of Unit / Head of Department, EISMEA EDES Central point, Legal Advisors, Anti-fraud Team, DPO.
 - authorised persons within the Commission and other 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 EDES Panel referred to in Article 143 FR;
 - authorised persons from all entities participating in the implementation of the budget in accordance with Articles 62 FR (see article 142 (5) FR) only **for exclusion decisions**:
 - (a) authorised persons from the Member States, managing funds under shared management;
 - (b) authorised persons from entities managing funds under indirect management:
 - the European Investment Bank (“the EIB”) or the European Investment Fund (“the EIF”) or both of them acting as a group (“the EIB group”);
 - Union bodies referred to in Articles 70 and 71 FR;
 - public law bodies;
 - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - 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;
 - 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 delegation agreements.

2-Outside the EU organisation: Authorised persons in entities implementing the budget under indirect management (Articles 142(5) and Article 62(1)(c) FR):

- (i) third countries or the bodies they have designated;
- (ii) international organisations and their agencies;
- (iii) public law bodies;
- (iv) bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- (v) 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.

3- the Public for cases which are made public on the website of the EDES related to exclusion and where applicable, the financial penalty (Article 140 FR). According to Article 140, 5th subparagraph 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. Pursuant to Article 140 (2) (c) FR 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 Regulation (EU) 2018/1725.

4-As well as bodies in charge of monitoring and inspection tasks in application of Union or national law (eg internal audits, Court of Auditors, European Anti-Fraud office (OLAF), European Public Prosecutor's Office (EPPO), law enforcement bodies).

1.8. Personal data may be transferred to third countries or international organisations.

Authorized persons in entities implementing the budget under indirect management (Articles 142(5) and Article 62(1)(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:

- (i) third countries or the bodies they have designated;
- (ii) international organisations and their agencies;
- (iii) public law bodies;
- (iv) bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- (v) 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.

All international organisations that implement EU funds are bound by Agreements with the EU (contribution agreements, delegation agreements, financial framework partnership agreements, etc.) subject to appropriate safeguards (Article 48(2) and (3) regulation 2018/1725), a legally binding and enforceable instrument between public authorities or bodies or a transfer based on an International agreement (Article 49) regulation 2018/1725. Derogation(s) for specific situations in accordance with Article 50(1) (a) - (g) Regulation 2018/1725 apply.

In the absence of an adequacy decision, or of appropriate safeguards, transfer of personal data to a third country or an international organisation is based on the **derogation** for specific situations in accordance with Article 50(1) (d) regulation 2018/1725.

Entities implementing the budget under indirect management (Articles 142(5) and Article 62(1)(c) of the Financial Regulation) will have access to the information on exclusion decisions, to enable them to verify whether there is an exclusion in the system with a view to taking this information into account, as appropriate and on their own responsibility, when awarding contracts in budget implementation. This qualifies as an important reason of public interest, since the ultimate purpose of EDES is the protection of the Union's financial interests. No natural persons are currently excluded in the EDES Database, so for the moment there are no international transfers of personal data outside the EU.

1.9. The processing of this personal data **will not include** automated decision-making (such as profiling).

1.10. The following technical and organisational security measures are in place to safeguard the processing of this personal data:

All personal data are stored on the servers of the European Commission. All processing operations are carried out pursuant to the [Commission Decision \(EU, Euratom\) 2017/46](#) of 10 January 2017 on the security of communication and information systems in the European Commission.

In order to protect personal data, the Commission has put in place a number of technical and organisational measures. Technical measures include appropriate actions to address online security, risk of data loss, alteration of data or unauthorised access, taking into consideration the risk presented by the processing and the nature of the personal data being processed. Organisational measures include restricting access to the personal data solely to authorised persons with a legitimate need to know for the purposes of this processing operation.

1.11. The personal data concerned will be kept for the following periods:

For Early detection:

Pursuant to Article 142 (4), 3rd subparagraph FR, information is registered for a maximum duration of **1 year** from the validation by the Commission and automatically removed at the end of this period.

If, during this period, the Authorising Officer requests the Panel referred to in Article 143 FR to issue a recommendation in an exclusion case, the retention period may be extended until the Authorising Officer has taken a decision (Art 142(4) FR).

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

For Exclusion the duration of the exclusion shall not exceed:

- a) **Five years** for cases referred to in Article 136 (1) (d) FR (in cases of fraud, corruption, participation in criminal organisation, money laundering, offences linked to terrorist activities, child labour or other forms of trafficking in human beings);
- b) **Three years** for the cases referred to in Article 136(1) (c), (e) to (h) FR (grave professional misconduct, significant deficiencies in complying with main obligations in the performance of a contract and irregularity);
- c) The duration, if any, set **by the final judgement or the final administrative** decision of a Member State; In the cases of Article 136(1) (a) and (b) 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 FR on the proposed duration of the exclusion shall be made in compliance with the principle of proportionality (Article 136 (3) FR). A published information on exclusion will be removed as soon as the exclusion has come to an end (see Article 140, 4th subparagraph FR).

For Financial Penalty, if the relevant information has been published, the publication shall be removed **six months** after payment of that penalty (Article 140, 4th subparagraph FR).

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, in line with Article 75 FR.

1.12. Data Subjects are informed on the processing of their personal data via a **data protection notice on their rights** in the respective calls for tenders, calls for proposals and calls for expression of interest/ invitations to for experts and in their respective contracts as well as I the notification from the EDES panel and the authorising officer responsible on how:

- to access their personal data held by a controller;
- to request their personal data held by a controller to be corrected;
- to obtain in some situations erasure of their personal data held by a controller, e.g. when data are held unlawfully (right to be forgotten);
- to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
- **of recourse** at any time to the **EISMEA Data Protection Officer** at EISMEA-DPO@ec.europa.eu and to the **European Data Protection Supervisor** at <https://edps.europa.eu>.

Request from a data subject to exercise a right will be dealt with in **one month** unless for very complex cases. All request have to be made in writing and any modification to an existing EDES case will have to be duly justified and will be subject to the approval of the European Commission.

The right to information, access, rectification, erasure, restriction or objection to processing, communication of a personal data breach or confidentiality of electronic communications may be restricted only under certain specific conditions as set out in the **applicable Restriction Decision** in accordance with Article 25 of Regulation (EU) 2018/1725.

Any queries concerning the processing of personal data, have to be addressed to the Data Controller responsible for the procedure identified in the applicable Data protection notice (for EISMEA at EISMEA-EDES@ec.europa.eu).

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DRAFT pending formal approval