



COUR DE JUSTICE
DE L'UNION EUROPÉENNE

DÉLÉGUÉ
À LA PROTECTION DES DONNÉES

Registre des activités de traitement des données personnelles

*(Article 31 du règlement (UE) 2018/1725 du Parlement européen et du Conseil
du 23 octobre 2018, abrogeant le règlement (CE) no 45/2001 et la décision no
1247/2002/CE)*

Dernière mise à jour : 19/06/2019

Référence : 28

EDES (Early Detection and Exclusion System)

DOMAINE D'ACTIVITÉ : ADMINISTRATIVE

Coordonnées

*Responsable du traitement ou
Responsables conjoints du traitement :*

Directeur du budget et affaires
financières

Commission européenne

Délégué à la protection des données :
DataProtectionOfficer@curia.europa.eu

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<i>Coordonnés de contact</i>	marchéspublics-contrats@curia.europa.eu	
<i>Service traitant :</i>	All persons involved in budget implementation in accordance with Article 62 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 (OJ L193 30 July 2018) hereafter "the FR" who have been granted access, in particular authorising services of public procurement procedures.	
<i>Sous-traitant :</i>	Not applicable	

Description du traitement

1) <i>Finalité du traitement</i>	<p>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.</p> <p>In particular, the purpose of the EDES database is:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the early detection of risks threatening the Union's financial interests; <input type="checkbox"/> the exclusion of an economic operator which is in one of the exclusion situations
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listed in Article 136(1) of the FR;

- ☐ the imposition of a financial penalty on an economic operator pursuant to Article 138 of the FR;
- ☐ the publication, in the most severe cases, 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 (Art. 140 of the FR).

The main objective is to avoid that a third party excluded from participation in a procurement or in an award procedure by the Commission/other institution participates in a procurement or in an award procedure organized by the Court of Justice of the European Union (hereafter " the Court") and vice versa. This objective can be attained by checking the details of third parties included in the early detection and exclusion system (EDES) following Article 142 of the FR (third parties who are in one of the situations described in Articles 136 and 141 of the FR).

The processing ensures that restricted information concerning third parties who could represent a threat to the European Unions' financial interest and reputation or to any fund administered by the European Union is used in a targeted manner. This prevents the Court or other institutions from entering a contractual/conventional relationship with these third parties.

Lawfulness of the processing operation

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 body (Art. 5 (a) of Regulation (EU) 2018/1725).

Processing is necessary to comply with a legal obligation to which the controller is subject (Article 5 (b) of Regulation (EU) 2018/1725): respect of Art- 135-145 FR.

2) *Description du traitement*

Pursuant to article 142 of the FR, a database has been set up by the Commission for the purposes of the early detection and exclusion system (hereinafter "EDES") with a view to make information available to all entities who participate in the implementation of the budget and 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 authorising officer of the Commission or of its executive agencies, by other Institutions and bodies or European offices (an authorising officer by delegation is an official or member of the temporary staff to whom the Court has delegated powers to perform operations, in accordance with the provisions of the FR and the Staff Regulations, connected with the implementation of the general budget of the European Union). The competent authorising officer will refer a case to the Panel for a central assessment in the absence of 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 economic operator.

Information on early detection or exclusion will be entered in the EDES database by the relevant authorising officers. The Commission controls and validates the cases that the other Institutions create.

The EDES database is set up and operated by the Commission; the Court has been granted access to consult the database and to enter information on early detection or exclusion. The Commission ensures the administration of the EDES and makes appropriate technical arrangements.

Third parties are excluded from participation in a procurement procedure where they are in one of the situations listed in Article 136 of the FR.

The procedure to exchange information between the Court and the Commission and

vice-versa is defined pursuant to Article 142 of the FR.

In order to ensure the functioning of the EDES database the institutions, offices, bodies, agencies and entities referred to in points (c), (d) and (e) of Article 142 (2) of the FR shall designate authorised persons: they shall be granted access in accordance with paragraphs 4 and 12 of Article 142 of the FR.

All persons involved in budget implementation in accordance with Article 62 of the FR shall be granted access to the information on decisions on exclusion pursuant to Article 136 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.

Where applicable, these authorised persons shall provide the information referred to in Article 142 (3) of the Financial Regulation.

The procedure established by the administration of the Court to use the information from the EDES is as follows:

i) Use of the EDES:

- Every time a third party is involved in a procurement procedure or in the framework of a contract or procurement procedure to be awarded by the Court, the authorising officer by sub-delegation (AOSD) of the Court submits a standard form to the contact point [authorized person of his service or contact point/deputy contact point of the institution];
- o Upon reception of the completed form, the contact point consults the EDES database to verify if the legal/natural person mentioned in the form is included in the database.

If the legal/natural person is included in the database, the contact point transmits to the concerned AOSD the following information: the name and telephone number of the person at the Commission/other institution who requested the activation of the warning, the expected date of de-activation and the reason for activation. The AOSD of the Court may receive additional information by contacting directly the person who requested the activation of the warning. The AOSD then decide on the appropriate action to take. The AOSD of the Court is also informed if the third party is not included in the EDES.

ii) Notification to the Commission of the exclusions under Articles 136 and 137 of the FR:

- If an AOSD of the Court has identified a third party as being under one of the exclusions described in Articles 136 or 137 of the FR, the AOSD informs the contact point and provide the relevant details in order to allow him/her to check if the third party is already included in the EDES. If the third party is not included, the contact point of the Court enters the relevant data in the database.

Upon written request of a third party who have duly proved its power of representation, the Commission, as well as the contact point of the Court, shall communicate to this third party the information registered in the EDES related to the company in accordance with Article 142 of the FR.

Finally it must be emphasised that the exclusion by the Court of a third party is not only based on the fact that the third party is included in the EDES, but mostly on the additional information received from the Commission/other institutions clarifying the situation of the third party in respect of one of the typified situations listed under articles 136 and 137 of the FR.

<i>Catégorie de personnes concernées</i>	<i>Catégorie de données concernées</i>	<i>Durée de conservation des données</i>
<p>Personal data concerning natural persons included in the EDES database:</p> <p>-natural persons who are economic operators under the meaning of Art.2 (24) of the FR;</p> <p>-natural persons with powers of representation, decision making or control over given legal persons;</p> <p>-natural persons who are subcontractors designated by the candidates/tenderers.</p>	<ul style="list-style-type: none"> • 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 of the economic operator; • Data on exclusion or early detection of financial penalty; • Ground (in the case of exclusion) in accordance with article 136 (1) of the FR; • Data on the duration of the exclusion and concerning the date of the early detection : starting date, ending date, extension of the duration of the exclusion, date of the detection; • Data on the panel (143 of FR): case submitted to the panel, date of the meeting of the panel, observations submitted by the economic operator, follow-up of the recommendation of the panel (implementation, revision of the panel's recommendation, etc); • Data on the financial penalty: amount and information concerning the 	<p><u>Early detection</u></p> <p>Information on early detection is registered for a maximum duration of 1 year from the moment the relevant case is validated by the Commission. It is automatically deleted 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 to allow such recommendation to be issued.</p> <p><u>Exclusion</u></p> <p>The duration of the exclusion shall not exceed:</p> <p>a) Five years for cases referred to in point (d) of paragraph 1 of article 136 of the FR (in cases of fraud, corruption, participation in criminal organization, money laundering, offences linked to terrorist activities, child labour or other forms of</p>

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	<p>payment;</p> <p>Other categories of personal data may be processed, pursuant to article 136 (1) of the FR.</p> <ul style="list-style-type: none"> • 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. 	<p>trafficking in human beings);</p> <p>b) Three years for the cases referred to in points (c), (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 contract, irregularity and creation of entities to circumvent tax, social or other legal obligations;</p> <p>c) The duration, if any, set by the final judgement or the final administrative decision of a Member State.</p> <p>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).</p> <p>Any decision of the authorising officer or any recommendation of the panel on</p>
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		<p>the proposed duration of the exclusion shall be made in compliance with the principle of proportionality (article 136 (3) of the FR).</p> <p><u>Financial Penalty</u></p> <p>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].</p> <p>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. The removed information shall not be visible for the users of the EDES database, such as the users of the Court.</p> <p>Removed information on early detection, exclusion and/or financial penalty shall however be accessible for audit, investigation purposes and for the purposes of the preliminary classification in law due to the fact that the</p>
Staff of the institution	<ul style="list-style-type: none"> • Authorising officer responsible for the case; • Contact person responsible for the case; 	

		"recurrence" is a criterion to be taken into consideration for the recommendation of the panel referred to in article 143.
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<i>3) Destinataires</i>	
<i>a) Au sein de l'institution</i>	<p>The contact points of the Court are the only responsible for cross checking the information received from the AOSDs of the Court with the data available inside the EDES database.</p> <p>Recipients of the data of the EDES are the following:</p> <p>AOSDs of the Court (they receive confirmation from the contact points concerning verification and exclusion warnings);</p> <p>The representative of the Court as Member of the Panel referred to in article 143 FR;</p> <p>The President and the Registrar of the Court of Justice and the officials who assist them in their responsibilities conferred by Article 20, paragraph 4, of the Rules of Procedure of the Court of Justice.</p>
<i>b) À l'extérieur de l'institution</i>	<p>Authorised persons from all entities participating in the implementation of the budget in accordance with article 62 FR will have access to the information on exclusion decisions also for the part of the database not open to the public [see article 142 (5) of the FR].</p> <p>The public is the recipient of decisions regarding cases which are available on the public website of the EDES related to exclusion and where applicable, financial penalty. 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</p>

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	consideration the right to privacy and other rights provided for in Regulation (UE) 2018/1725.
4) <i>Transfert à un pays tiers ou une organisation internationale</i>	<p>Authorised persons from all entities participating in the implementation of the budget in accordance with art. 154 FR will have access to the information on exclusion decisions; those entities are the following (art. 62 FR)</p> <ul style="list-style-type: none"> (i) third countries or the bodies they have designated; (ii) international organisations or their agencies, within the meaning of Article 156; (iii) the European Investment Bank ('the EIB') or the European Investment Fund ('the EIF') or both of them acting as a group ('the EIB group'); (iv) Union bodies referred to in Articles 70 and 71; (v) public law bodies, including Member State organisations; (vi) bodies governed by private law with a public service mission, including Member State organisations, to the extent that they are provided with adequate financial guarantees; (vii) 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; (viii) bodies or 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.
5) <i>Mesures de sécurité</i>	The internet site which gives access to the Court to the EDES database is created and managed by the European Commission under its sole responsibility. The database benefits from the applicable security measures in the 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/EU Login). Administrative

	measures include the obligation of all authorised users to be registered and access to the EDES database is recorded (logfile). The contact points can only access the database to introduce/consult warnings through the use of EU Login, thus preventing the information from being read or copied by unauthorized persons.
6) <i>Notice d'information</i>	<p>In the context of a procurement procedure at the Court all third parties are informed beforehand that their personal data may be used by the institution not only for internal purposes related to the procurement process but also included in the EDES database and therefore communicated to other institutions. Every third party is informed of the possibility of being excluded from the participation in the procurement process or excluded from the award of a contract, if included in this database.</p> <p>See relevant notification.</p>