COMMISSION DECISION

of 13 November 2014

on the Early Warning System to be used by authorising officers of the Commission and by the executive agencies

(2014/792/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ([1]), and in particular Article 56(1) thereof,

Having regard to Council Regulation (EC) No 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund ([2]), and in particular Article 17 thereof,

Having regard to Regulation (EU, Euratom) No 883/2013 of European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 ([3]), and in particular Article 7(6) and Article 11 thereof,

Whereas:

(1) The Commission, which is responsible for executing the general budget of the European Union and any other funds managed by the Union with due regard to the principle of sound financial management set out in Articles 30 to 33 of Regulation (EU, Euratom) No 966/2012, is under an obligation to counter fraud and any other illegal activities affecting the financial interests of the Union. In order to ensure that the authorising officers of the Commission and of the executive agencies are fully informed of threats to the Union's financial interest, it is necessary to lay down internal rules in addition to Commission Decision C(2014) 2784 ([4]).

(2) In order to counter fraud and protect the financial interest of the Union, the Commission uses the Central Exclusion Database (CED) referred to in Article 108 of Regulation (EU, Euratom) No 966/2012 and Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database ([5]) and the Early Warning System (EWS) of Decision 2008/969/EC, Euratom of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies ([6]). Pending the adoption by the legislative authority of the proposal on the amendment to the Financial Regulation ([7]), it is necessary to ensure that the EWS remains efficient.

(3) In the interim period, the purpose of the EWS should remain the same in substance. It should ensure, within the Commission and its executive agencies, the circulation of restricted information by means of registration of warnings in the EWS concerning persons who could represent a threat to the Union's financial interests and reputation or to any other fund managed by the Union.

(4) Given that the Directors of executive agencies have the status of authorising officer by delegation of the Commission for the implementation of operational appropriations, they should have access to the EWS in the same manner as Commission services for the management of the administrative and operational appropriations.

(5) Given that the Heads of Union Delegations acting as Commission authorising officers by subdelegation in accordance with Article 56(2) of Regulation (EU, Euratom) No 966/2012 have the status of authorising officer by delegation of the Commission for the implementation of operational appropriations, they should have access to the EWS in the same manner as Commission services for the management of the administrative and operational appropriations.

([1]) OJ L 298, 26.10.2012, p. 1.
([2]) OJ L 78, 19.3.2008, p. 1.
([3]) OJ L 248, 18.9.2013, p. 1.
([4]) Commission Decision C(2014) 2784 of 30 April 2014 on the Internal Rules on the implementation of the general budget of the European Union (European Commission section) for the attention of the Commission departments.
([5]) OJ L 344, 20.12.2008, p. 12.
([6]) OJ L 344, 20.12.2008, p. 125.
([7]) COM(2014) 358 of 18.6.2014.

(6) The European Anti-Fraud Office (OLAF) has the obligation under Article 7(6) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 to provide information to the Commission services concerned without delay concerning investigations in progress where they show that it might be appropriate to take precautionary administrative measures to protect the Union's financial interests. It has also the obligation under Article 11 of Regulation (EU, Euratom) No 883/2013 to draw up a report on completion of an investigation and to make recommendations which indicate, where appropriate, any action to be taken, in particular by the institutions. In order to enable the authorising officer responsible to request a warning, it is necessary to lay down which information OLAF is to submit to the Commission.

(7) OLAF should have access to the EWS for pursuing its regulatory investigation tasks and its intelligence and fraud prevention activities exercised under Regulation (EU, Euratom) No 883/2013.

(8) For reasons of simplification, the functioning of the EWS should be simplified, the number of warning categories should be reduced, their scope clarified and the name of warnings should be self-explanatory.

(9) Verification warnings based on the information transmitted by OLAF should be proposed by the Authorising officer responsible after consultation of the Directorate-General for Budget and the Legal Service, in close cooperation with OLAF.

(10) Exclusion warnings should be proposed by the Authorising officer responsible to the Commission and should be assessed in a centralised manner by the Directorate-General for Budget and the Legal Service where appropriate. When these exclusion warnings are proposed on the basis of information transmitted by OLAF, they should be assessed in close cooperation with OLAF. The same procedure should apply when the authorising officer responsible envisages taking any act that might adversely affect the rights of the person concerned.

(11) The Authorising officer responsible should decide on consequences needed to protect the Union's financial interest, in close cooperation with OLAF and should inform OLAF of this decision.

(12) The authorising officer responsible should be responsible for requesting entry, modification or removal or renewal of warnings. In order to preserve an adequate level of control, such requests should be made at the hierarchical level set out in the Commission Decision C(2014) 2784.

(13) The accounting officer should ensure the appropriate technical arrangements for an effective application of the EWS through the central accounting system of the Commission.

(14) Detailed information on the recovery orders and attachment orders will be made available to all Commission services and executives agencies via the central accounting system of the Commission. The warnings W3a (attachment order) and W4 (recovery order) foreseen under Decision 2008/969/EC, Euratom should be discontinued. This sole information does not systematically justify a warning. It requires an analysis of all the specific circumstances of the case by the authorising officer responsible in order to decide whether a warning is necessary or not.

(15) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [1] provides that the processing of personal data by the Commission must respect the lawful processing requirements and the requirements relating to the transfer of data laid down therein, and that such processing is subject to prior checking by the European Data Protection Supervisor following notification by the Commission Data Protection Officer.

(16) Data protection provisions should lay down the rights of the persons whose data is or could be introduced in the EWS.

(17) Certain data protection rights are subject to exceptions laid down in Article 20 of Regulation (EC) No 45/2001, which have to be analysed on a case by case basis and applied temporarily. The service responsible for requesting entry, modification, including rectification or removal of relevant information should decide on the applications of these exceptions.

[1] OJ L 8, 12.1.2001, p. 1.

(18) The person subject to a possible exclusion warning should be given the opportunity to express its views in writing before the request of registration of the warning relating to that person in the EWS is made. The same opportunity should be given when the authorising officer responsible envisages taking any act that might adversely affect the rights of the person concerned.

(19) This opportunity should be exceptionally deferred to preserve the confidentiality of the investigation or of the national legal proceedings if there are compelling legitimate grounds.

(20) Decision 2008/969/EC, Euratom should continue to apply until 1 July 2015 in so far as it is necessary to ensure the respect of the Council regulations on restrictive measures, taken on the basis of Article 215 of the Treaty on the Functioning of the European Union (TFEU), until the accrual based accounting (ABAC) system takes into account the information contained in the relevant database of the service responsible for Foreign Policy Instruments. This takes the form of the registration of a W5b warning referred to in Decision 2008/969//EC, Euratom.

(21) Decision 2008/969/EC, Euratom should continue to apply to W3a and W4 warnings until 1 July 2015, which should be until then assimilated to verification warnings for the application of Section 4 of this Decision.

(22) Implementation of this decision requires regular assessment of the functioning of the EWS and its effective contribution to the protection of the Union's financial interests.

HAS DECIDED AS FOLLOWS:

SECTION 1

GENERAL PROVISIONS

Article 1

Subject matter, scope and aim

1. This decision establishes the Early Warning System (the 'EWS') to be used by authorising officers of the Commission and of the executive agencies when they implement the general budget of the European Union and any other fund managed by the Union.

2. The EWS contributes to the protection of the Union's financial interests and the safeguard of the Union's image, the fight against fraud and the sound financial management.

3. The aim of the EWS is to:

(a) inform by means of registration of warnings the authorising officers responsible of the Commission and of the executive agencies that a person could represent a threat to the Union's financial interests and image or to any other fund managed by the Union; and

(b) enable the authorising officer responsible to make verifications or take appropriate measures, including those referred to in Section 4 on the basis of warnings.

4. The information contributes to ensure:

(a) the prevention of risks by means of verification on the basis of early information on a person for suspicion of or findings related to any of the following acts:

— substantial error or irregularity;

— professional misconduct;

— serious breach of contract; or

— fraud, corruption or any illegal activity detrimental to the Union's financial interests as referred to in Article 141 of Delegated Regulation (EU) No 1268/2012 ([1]);

([1]) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

(b) The exclusion of a person under Articles 106(1) and 109(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (the 'FR').

Article 2

Definitions

For the purposes of this decision, the following definitions shall apply:

(a) 'the accounting officer' means the accounting officer of the Commission or the subordinate member of staff to whom the accounting officer has delegated certain tasks pursuant to Article 69 of Regulation (EU, Euratom) No 966/2012;

(b) 'the authorising officer responsible' means the authorising officer by delegation of the Commission within the meaning of Article 65 of Regulation (EU, Euratom) No 966/2012 responsible in accordance with the internal rules for the implementation of the general budget of the European Union ('the budget'), including directors of executive agencies, authorising officers by subdelegation within the meaning of Article 65 of that Regulation exercising the function of director, and the Heads of Union Delegations acting as Commission authorising officers by subdelegation in accordance with Article 56(2) of that Regulation;

(c) 'data subject' means an identifiable person as referred to in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data;

(d) 'findings' means established facts discovered during the implementation of a legal commitment, or recorded in the context of audits or investigations carried out by the Court of Auditors, the Anti-Fraud Office (OLAF), the Internal Audit Service (IAS) or any other audit or control made under the responsibility of the authorising officer responsible;

(e) 'legal commitment' means a commitment entered into by the Commission under Titles V to VIII of Part 1, and Part 2 of Regulation (EU, Euratom) No 966/2012;

(f) 'person' means any natural person or any legal person or any association without legal personality as listed below:

— a recipient as defined in Article 2(i) of Regulation (EU, Euratom) No 966/2012,

— a candidate or a tenderer,

— a grant applicant,

— a participant in a prize contest,

— a remunerated external expert under Article 204 of Regulation (EU, Euratom) No 966/2012,

— a person with powers of representation, decision-making or control over another legal person referred to in Article 106(1)(b) and (e) of Regulation (EU, Euratom) No 966/2012;

(g) 'professional misconduct' means violation of laws or regulations or of ethical standards of the profession to which the person belongs, as well as any wrongful conduct which has an impact on its professional credibility;

(h) 'Subcontractor' means an economic operator who is proposed by a candidate or tenderer or contractor to perform part of a contract, while the contracting authority has no direct legal commitment with it;

(i) 'substantial error or irregularity' means a substantial error or irregularity as defined in Article 166(2) of Delegated Regulation (EU) No 1268/2012;

(j) 'warning contact person' means the person within the service responsible for the request who is in charge of the warning file until its removal.

Article 3

Functioning of the EWS

1. The accounting officer shall ensure appropriate technical arrangements for an effective functioning of the EWS and its monitoring.

The accounting officer shall enter, modify, renew or remove EWS warnings requested by the authorising officer responsible.

2. The accounting officer shall adopt implementing measures concerning technical aspects and define associated procedures, including in the field of security.

The accounting officer shall notify those measures to the Commission services and the executive agencies.

Article 4

Power and procedure to request, modify, renew or remove a warning

1. Only the authorising officer responsible may request registration, modification, renewal or removal of warning.

2. The authorising officer responsible shall address the request for registration, modification, renewal or removal of warnings to the accounting officer. The authorising officer responsible shall use the form set out in the Annex of this Decision.

3. The warning contact person referred to in Article 8 verifies that the requirements of Article 11 or 12 are fulfilled before transmitting the request to the accounting officer.

Article 5

Access to the EWS

The Commission services and executive agencies shall have direct access to the information contained in the EWS via the central accounting system of the Commission.

The Commission services or executive agencies responsible for a local system may use that central accounting system to access the information stored in the EWS, if data-consistency between the local system and the central accounting system is guaranteed.

Article 6

The use of the EWS

Information stored in the EWS may be used only for the purpose of the implementation of the budget or of any other fund managed by the Union. This shall not affect the information contained in the central exclusion database (hereinafter 'CED') referred to in Article 1(2) and (3) of Regulation (EC, Euratom) No 1302/2008 ([1]).

OLAF may use the information contained in the EWS and the CED for its investigations pursuant to Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by OLAF and repealing Regulation (EC) No 1073/1999 ('OLAF Regulation'), and for fraud prevention activities, including risk analysis.

Article 7

Timing of the consultation of the EWS

The authorising officer responsible shall verify if there is a warning in the EWS concerning a person at the following stages:

(a) before an individual budgetary commitment is entered;

(b) before a global budgetary commitment is entered if the person is known at that stage;

([1]) Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database (OJ L 344, 20.12.2008, p. 12).

(c) in the case of provisional budgetary commitments, before concluding the legal commitment giving rise to an entitlement to subsequent payments unless it concerns payment of staff and the reimbursement of travel expenditure related to participation in meetings and competitions;

(d) in the case of procurement or grant award procedures, prize contests and calls for expression of interests, at the latest before the award decision;

(e) in the case of procurement, if the contracting authority limits the number of candidates invited to submit a tender, before the selection of candidates has been completed;

(f) before any payment unless it concerns payment of staff and the reimbursement of travel expenditure related to participation in meetings and competitions.

Article 8

Warning contact person

The warning contact person shall:

(a) prepare the request for registration of a warning;

(b) transmit the request and any other information related to the warning to the accounting officer;

(c) provide the information allowing other authorising officers responsible to make verifications or decide on the consequences referred to in Section 4.

SECTION 2

INFORMATION ENTERED IN THE EWS

Article 9

Categories of warnings

1. EWS warnings shall be divided into the following two categories:

(a) 'verification warnings', where a person is suspected or subject to findings of fraud, corruption or any illegal activities affecting the Union's financial interests as referred to in Article 141 of Delegated Regulation (EU) No 1268/2012, of substantial errors or irregularity, of professional misconduct or of serious breach of contract;

(b) 'exclusion warnings', where a person is excluded in accordance with the grounds of exclusion provided for in Articles 106(1) and 109(1) of Regulation (EU, Euratom) No 966/2012.

2. A person may be subject to distinct warnings registered for different grounds.

Article 10

Information contained in the EWS warnings

EWS warnings shall contain the following information:

(a) the identification of the person;

(b) the type of warning;

(c) the duration of the warning;

(d) the grounds for which a person represents a threat to the Union's financial interests and image or to any other fund managed by the Union;

(e) the information related to the contradictory procedure;

(f) the name of the authorising officer responsible;

(g) the name of the warning contact person referred to in Article 8 of this Decision.

Article 11

Verification warnings

1. The authorising officer responsible may request a verification warning where either of the following conditions is fulfilled:

(a) OLAF has informed the authorising officer responsible in accordance with Regulation (EU, Euratom) No 883/2013, where its investigations show that it might be appropriate to take measures to protect the financial interests of the Union;

(b) the European Court of Auditors has transmitted information to the Commission or the IAS has transmitted information to the authorising officer responsible indicating fraud, corruption or any other illegal activity affecting the Union's financial interests as referred to in Article 141 of Delegated Regulation (EU) No 1268/2012, or substantial errors or irregularity, or professional misconduct or of serious breach of contract in relation to a person;

(c) the authorising officer responsible has carried out a check, an audit or a control indicating fraud, corruption, any other illegal activity affecting the Union's financial interests as referred to in Article 141 of Delegated Regulation (EU) No 1268/2012, substantial errors, irregularity or professional misconduct or of serious breach of contract in relation to a person or has received information on such a check, audit or control.

2. A verification warning shall have a maximum duration of one year. It shall be removed when an exclusion warning is requested, or when there is no longer a need for verification.

3. At the end of the period referred to in paragraph 2, the verification warning shall be automatically removed.

4. The authorising officer responsible may request renewal of the verification warning where OLAF informs it that the conclusions on investigations referred to in paragraph 1 have not yet been drawn up but that the investigations justify maintaining the verification warning. The authorising officer responsible may also request renewal of the verification warning where the conditions set out under paragraph 1 (b) and (c) are still fulfilled.

5. The authorising officer responsible shall provide the reasons why the renewal is necessary for the protection of the Union's financial interests and image.

6. A renewal shall be regarded as a new request for a verification warning.

Article 12

Exclusion warnings

1. The authorising officer responsible shall request an exclusion warning for the cases referred to in Article 106(1) or 109(1) of Regulation (EU, Euratom) No 966/2012.

2. An exclusion warning shall be removed at the end of the exclusion period.

3. An exclusion warning shall be automatically entered in the CED from the EWS.

Article 13

Information transmitted by OLAF

When OLAF transmits information in accordance with Article 7(6) of Regulation (EU, Euratom) No 883/2013 in order to assist the authorising officer responsible in deciding to take precautionary measures for protecting the financial interests of the European Union or in accordance with Article 11 of Regulation (EU, Euratom) No 883/2013, this information shall include:

(a) the identity of the person concerned;

(b) a summary of the facts in question and of the risks identified by the investigation. The summary shall be sufficient to allow the person to be effectively heard under Article 16 of this Decision;

(c) any special measures of confidentiality recommended, in particular in cases entailing the use of investigative measures falling within the competence of a national judicial authority or, in the case of an external investigation, within the competence of a national authority in accordance with the national rules applicable to investigations.

SECTION 3

PROCEDURAL PROVISIONS FOR REGISTRATION OF A WARNING

Article 14

Prior consultation of central services for verification warnings

Before deciding to request registration of a verification warning on the basis of the information transmitted by OLAF in accordance with Article 7(6) and Article 11 of Regulation (EU, Euratom) No 883/2013, the authorising officer responsible shall consult the Directorate-General for Budget (central financial service) and, where appropriate, the Legal Service, in close cooperation with OLAF in line with Regulation (EU, Euratom) No 883/2013.

Article 15

Assessment of exclusion warnings by central services

Before requesting an exclusion warning for the cases referred to in Article 106(1)(b), (c) and (e) and Article 109(1) proposed by the authorising officer responsible and its appropriate duration a centralised assessment by the Directorate-General for Budget and the Legal Service shall be carried out. Where the exclusion warning proposed by the authorising officer responsible is based on information transmitted by OLAF, this assessment shall be made in close cooperation with OLAF.

Article 16

Right to be heard

1. Registration of warnings is subject to the following rules:

(a) Whenever the authorising officer responsible envisages requesting registration of an exclusion warning or envisages taking any act that might adversely affect the rights of the person concerned, he/she shall first give the person concerned the opportunity to express his/her views in writing. The authorising officer responsible shall give the person at least 14 calendar days to do so. At the same time, the authorising officer responsible shall inform the person that, failing a response, the warning will be registered.

Where appropriate, the authorising officer responsible shall give to the person the opportunity to express his/views on the basis of the information supplied by the OLAF.

(b) If the person submits comments that do not change the assessment of the authorising officer responsible, the latter will request the accounting officer to activate the warning.

If the person submits comments that, in the view of the authorising officer responsible, render a warning disproportionate or unnecessary, the warning will not be activated and the person will be notified accordingly.

The accounting officer will confirm the registration of the warning in the EWS to the authorising officer responsible, as appropriate.

(c) The authorising officer responsible will notify the person of the activation of the warning and of its duration. However, the notification is not necessary if the person has not replied to the invitation to submit its comments in writing.

2. The authorising officer responsible may request registration of an exclusion warning for the cases referred to in Article 106(1)(e) of Regulation (EU, Euratom) No 966/2012 pending the decision on the duration of the exclusion, already before having given the person the opportunity to express his/her views. The authorising officer responsible shall give the person the opportunity to present his/her views on the duration of the exclusion.

3. The authorising officer responsible may request registration of an exclusion warning for the situations referred to in Article 106(1)(a) of Regulation (EU, Euratom) No 966/2012 already before having given the person the opportunity to express his/her views if he/she has an official document establishing the situation. The authorising officer responsible shall notify the person of the registration of the exclusion warning.

4. The authorising officer responsible may exceptionally defer the opportunity given to the person to express his/her views in writing before the request for registration of an exclusion warning or before taking any act that might adversely affect the rights of the person concerned, provided that there are compelling legitimate grounds to preserve the confidentiality of the investigation or of the national legal proceedings while still proceeding with the registration of the warning.

5. When OLAF informs the authorising officer responsible in accordance with Article 13, it shall indicate if the confidentiality of the investigation or of a national judicial proceeding needs to be preserved and if the opportunity given to the person to express his/her views needs to be deferred.

6. The person shall be given the opportunity to express his/her views as soon as the grounds for protecting an investigation or national legal proceedings have ceased to exist.

Article 17

Data protection and rights of data subjects

1. The authorising officer responsible shall inform the data subjects that data concerning them may be included in the EWS and to whom the data may be communicated. This general information shall be communicated in writing, in particular, in the calls for tender, calls for proposals, prize contests and in the absence of calls before awarding contracts or grants.

2. The authorising officer responsible who requests the registration of a warning shall be responsible for the relations with the person whose data are introduced into the EWS. He/she shall respond to requests from a person concerned to rectify inaccurate or incomplete personal data and to any other requests or questions from this person.

3. A person may also request in writing information from the accounting officer on whether he/she is registered in the EWS.

The accounting officer shall provide this information unless the authorising officer responsible, in agreement with OLAF where appropriate decides that restrictions of Article 20(1) of Regulation (EC) No 45/2001 apply.

4. Removed warnings shall be accessible for audit and investigation purposes only and shall not be visible for the users of the EWS.

However, personal data contained in warnings referring to natural persons shall remain accessible for such purposes only for five years after the removal of the warning.

Article 18

Review of the warning

If the person for whom a warning is registered in the EWS provides new elements demonstrating that the grounds for registration do no longer exist, the authorising officer responsible shall request the removal of the warning.

The person for whom an exclusion warning is registered in the EWS may complain to the Ombudsman and seek judicial review.

SECTION 4

CONSEQUENCES OF THE WARNINGS

Article 19

General rules governing the consequences

1. The authorising officer responsible shall ask any relevant information from the warning contact person to be able to decide on the consequences set out in this Section.

2. Where on the basis of information provided by OLAF the authorising officer responsible requests the registration of a verification warning under Article 11, the authorising officer responsible shall follow the procedure set out in Article 14 or 15 of this Decision and decide on the consequences in close cooperation with OLAF in line with Regulation (EU, Euratom) No 883/2013.

3. When deciding on the consequences, the authorising officer responsible shall take into account the following criteria for all warnings:

(a) the risks to the Union's financial interests and image;

(b) the amount and duration of the legal commitment;

(c) the urgency in the implementation of the legal commitment;

(d) the nature of the facts;

(e) the seriousness of the facts; and

(f) the possible consequences on the implementation of the legal commitment.

For exclusion warnings, the authorising officer responsible shall also take into account the nature and seriousness of the grounds for exclusion and the necessity of the continuity of the service.

4. The authorising officer responsible shall, in any case, justify his/her decision on the consequences in writing.

Article 20

Consequence of verifications warnings

1. In case of procurement or grant award procedures or contests for prizes, verification referred may be the following:

(a) the authorising officer responsible may request additional supporting documents as set out in the procurement or grant award procedure or contest for prizes;

(b) for grant award procedure, an analysis of the risk related to pre-financing.

2. In case of a legal commitment, verification referred may be the following:

(a) verification that the action is compliant with the legal commitment, including the respect of deadlines and content of deliverables;

(b) for existing grants, verification of the eligibility of costs before payment or the performance of an audit or of on the spot checks.

Article 21

Right to be heard after a verification warning

The procedure set out under Article 15 of this Decision and the right to be heard set out under Article 16 of this Decision shall also apply when an authorising officer responsible following a verification warning envisages taking any act that might adversely affect the rights of the person concerned.

Article 22

Consequences of exclusion warnings on procedures and legal commitments

1. In case of procurement or grant award procedures or contests for prizes, the authorising officer responsible shall exclude a person subject to an exclusion warning from participating in procurement or grant award procedures, unless the conditions set out in Article 106(2) of Regulation (EU, Euratom) No 966/2012 are fulfilled, when the person is in a monopoly situation.

2. In case of existing legal commitments, the authorising officer responsible shall decide on the consequences, including any of the following:

(a) to proceed with the implementation of the contract or grant and make any appropriate verifications;

(b) to suspend the time limit for payments in accordance with Article 92(2) of Regulation (EU, Euratom) No 966/2012;

(c) to suspend payments in accordance with Article 208 of Delegated Regulation (EU) No 1268/2012;

(d) to suspend implementation of the contract or grant in accordance with Article 116 and Article 135(5) of Regulation (EU, Euratom) No 966/2012;

(e) to terminate the legal commitment if the provision of the legal commitment foresees the termination on the basis of the information for which the warning was registered.

3. If the person is a subcontractor, the authorising officer responsible shall require the tenderer or candidate or the contractor to substitute the subcontractor.

Article 23

Consequences of exclusion warnings on budget transactions

1. In case of an exclusion warning, where appropriate, the authorising officer responsible shall confirm in the accounting system that the payment should be made despite the existence of the warning.

2. Where an exclusion warning is registered, no individual budgetary commitment, no registration of an individual legal commitment in the budgetary accounts based on a global commitment and no conclusion of a legal commitment based on a provisional commitment shall be made, except where the person is in a monopoly situation under the conditions laid down in Article 106(2) of Regulation (EU, Euratom) No 966/2012.

SECTION 5

FINAL PROVISIONS

Article 24

Repeal

Decision 2008/969/EC, Euratom on the Early Warning System for the use of authorising officers of the Commission and the executive agencies is repealed.

Article 25

Transitional provisions

1. Exclusion warnings registered under Decision 2008/969/EC, Euratom shall remain active until the end of their duration in accordance with that decision.

2. W1, W2 and W3b warnings registered under Decision 2008/969/EC, Euratom shall be regarded as verification warnings under this Decision.

3. W3a and W4 warnings shall continue to be registered until 1 July 2015 under the conditions set out in Decision 2008/969/EC, Euratom. For the application of Section 4 of this Decision, warnings W3a and W4 shall be regarded as verification warnings under this Decision. Decision 2008/969/EC, Euratom shall continue to apply to warnings W5b until 1 July 2015.

Article 26

Publication

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 13 November 2014.

For the Commission
Kristalina GEORGIEVA
Vice-President

ANNEX

STANDARD FORM

Request by Authorising officer responsible for data entry into the Early Warning System (EWS) or the central exclusion database (CED), its modification or removal, to address to the accounting officer

NB: one request per warning

Subject: Request for the [registration/removal/modification] of a warning in the [EWS/CED]

Name of the official:

Name of the warning contact person:

Request for

☐ registration of a warning

☐ removal of the warning ([1]) whose introduction was requested by note Ares [xx], dated:

☐ modification of the warning ([2]) (including renewal of an existing registration) whose introduction was requested by note Ares [xx], dated:

concerning the following person:

Name (and, where the person is a natural person, given name) of the person:

Legal form (if legal entity):

Name, given name of the person(s) with powers of representation over the legal person:

Address (if legal person, address of the headquarters): street/no/postcode/place/country

Information related to the Legal Entities File (LEF):

☐ This entity already exists in the LEF under the following(s) key(s): 6 .....

☐ The request for validation of this entity in the LEF has already been made.

I attach the printed ABAC screen of the request made, which has the following key (normally starting with 'ABC'): ..... A supporting document for the validation of the request is enclosed.

☐ The request concerns an entity which does not exist in the LEF and for which information was obtained from an implementing authority or body pursuant to Article 108(2) and (3) of the Financial Regulation (enclosed).

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1) I request introduction of the following warning:

☐ **verification warning for the following reasons:**

If required, indicate reference to the consultation of DG BUDG and, where appropriate, the LS:

☐ **Exclusion pursuant to Financial Regulation (FR)**

☐ **Article 106(1)(a) FR**

☐ **Article 106(1)(b) FR**

Indicate the denomination of the court that rendered the judgment which has the force of *res judicata*:

Indicate the date of the judgment which has the force of *res judicata: DD/MM/YYYY*

([1]) Do not fill in sections 1 to 4.
([2]) Fill in all sections, not only the one concerned by the modification request.

Indicate reference to the assessment of the LS and DG BUDG:

Indicate reference to the contradictory procedure:

☐ **Article 106(1)(c) FR**

Indicate reference to the assessment of the LS and DG BUDG:

Indicate reference to the contradictory procedure:

☐ **Article 106(1)(d) FR**

Indicate reference to the contradictory procedure:

☐ **Article 106(1)(e) FR**

Indicate reference to the assessment of the LS and DG BUDG:

Indicate reference to the contradictory procedure:

Indicate the denomination of the court that rendered the judgment which has the force of *res judicata*:

Indicate the date of the judgment which has the force of *res judicata: DD/MM/YYYY*

☐ **Article 106(1)(f) FR (Penalties of Article 109(1) FR)**

Indicate reference to the assessment of the LS and DG BUDG:

Indicate reference to the contradictory procedure and reference to the decision of the AOR and date:

2) Description of the reasons for the warning request ([1]):

3) Registration duration ([2]):

I certify that the information communicated was established and transmitted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council concerning the protection of personal data.

[Signature of the person authorised to request introduction, removal or modification of the warning]

Copy:

([1]) Where description cannot be given pursuant to confidentiality requirements, indicate: 'not disclosed'.

([2]) The duration of the exclusion pursuant to Article 106(1) points (b), (c), (e) and (f) of the Financial Regulation has to be decided by the authorising officer within the meaning of Article 2 of the decision on the early warning system. The duration of the exclusion pursuant to Article 106(1) points (a) and (d) of the Financial Regulation shall be registered for a maximum of 5 years.