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**COMMISSION STAFF WORKING DOCUMENT**

**Early Detection and Exclusion System (EDES) - Panel referred to in Article 108 of the  
Financial Regulation**

*Accompanying the document*

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**29th Annual Report on the Protection of the European Union's financial interests - Fight  
against fraud - 2017**

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## 1. INTRODUCTION

The Early Detection and Exclusion System (EDES) was set up in 2016. It ensures an independent and transparent central assessment of contemplated administrative sanctions in the respect of the fundamental rights of the economic operators concerned<sup>1</sup>. Articles 105a to 108 provide for rules that centralise the exclusion process for all EU institutions, agencies, offices and bodies. In particular, Article 108(7) establishes an inter-institutional Panel presided over by a standing high-level independent Chair, whose role is to issue recommendations on administrative sanctions, *i.e.* exclusion and/or financial penalties and, where applicable, the publication thereof, following a request from an authorising officer of EU institutions, agencies, offices and bodies. These recommendations are addressed to the requesting authorising officers which remain sole competent to take the decision to exclude an economic operator and/or to impose a financial penalty on it.

The revised Financial Regulation<sup>2</sup> introduced changes to the system are provisionally expected to enter into force on 23<sup>rd</sup> July 2018<sup>3</sup>.

This Staff Working Document presents the second year of activity (2017) of the EDES Panel and the first semester of 2018.

## 2. THE PANEL

The coherence of the administrative sanctions procedure (*i.e.* exclusion and/or financial penalties and, where applicable, the publication thereof) is ensured by the Panel.

### 2.1. The Composition of the Panel

As laid down in Article 108(7) of the Financial Regulation, the Panel is composed of:

- a standing high-level independent Chair;
- two permanent Member representatives of the Commission as the owner of the system, who express a joint position for the cases submitted to the Panel; and
- one ad-hoc Member representative of the requesting authorising officer.

The Chair of the Panel and his/her Deputy are appointed by the Commission and are independent in the performance of their mandate<sup>4</sup>. They are chosen from among former members of the Court of Auditors, the Court of Justice or former officials who have had at least the rank of Director-General in an institution of the Union other than the

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<sup>1</sup> COM(2014) 358 final of 18.6.2014.

<sup>2</sup> COM/2016/0605 final

<sup>3</sup> see point 4 of this SWD

<sup>4</sup> Article 144(1) subparagraph 2 of Commission Delegated Regulation (EU) 2015/2462 of 30 October 2015 amending Delegated Regulation (EU) No 1268/2012 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).

Commission. Their term of office is five years and is not renewable. The Chair is Mr Christian Pennera, former Jurisconsult of the European Parliament and his Deputy is Ms María Isabel Rofes i Pujol, former Member of the Civil Service Tribunal of the European Union.

The two permanent Members of the Panel designated by the Commission are Mr. Hubert Szlaszewski designated *ad personam*, presently Principal Advisor in the Secretariat General of the Commission, and Mr. Olivier Waelbroeck, Director of the Central Financial Service in the Directorate-General for Budget<sup>5</sup>.

For each case, the additional Member representing the requesting authorising officer is designated in accordance with the rules of procedure and the internal administrative rules of the institution, agency, office or body concerned.

The Panel is assisted by observers and in all cases by a representative of the Legal Service of the Commission. A representative of OLAF participates in the Panel as observer in the cases referred to the Panel on the basis of an OLAF investigation. This status allows the Panel to be informed by OLAF of the facts and findings resulting from its investigations, of an assessment of their preliminary classification in law, their estimated financial impact, of the necessary procedural guarantees, and of the state of exchanges of information between OLAF and the competent authorities of the Member States. The active contribution of the Legal Service of the Commission and of OLAF to the work of the Panel is a key element in providing the Panel with relevant information and allowing it to deliver high quality recommendations in a timely way.

The Panel is supported by a permanent secretariat provided by the Commission and administratively attached to the Directorate-General for Budget.

## **2.2. Role of the Panel**

In the absence of a final national judgment or, where applicable, a final administrative decision, authorising officers who envisage to exclude and/or fine an unreliable economic operator<sup>6</sup> have to first request a recommendation of the Panel. The grounds for excluding economic operators which require a Panel recommendation are the following:

- grave professional misconduct resulting from the violation of applicable laws or regulations or ethical standards of the profession to which the economic operator concerned belongs, or from the engagement in any wrongful conduct which has an impact on the professional credibility where such conduct denotes wrongful intent or gross negligence;

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<sup>5</sup> Deputies of the Permanent Members are: Mr. Olivier Dandoy an official of the Secretariat General of the Commission designated *ad personam* and Ms. Victoria Gil Casado, Head of Unit in the Central Financial Service in the Directorate-General for Budget.

<sup>6</sup> 'Economic operator' means any natural or legal person, including a public entity, or a group of such persons, which applies for EU and/or EDF funds or has already received such funds.

- fraud, corruption, participation in a criminal organisation, money laundering or terrorist financing, terrorist-related offences or offences linked to terrorist activities, and child labour or other forms of trafficking in human beings;
- significant deficiencies in complying with main obligations in the performance of a contract financed by the budget ('serious breach of obligations'), which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an authorising officer, OLAF or the Court of Auditors;
- irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95<sup>7</sup>.

In general, each case is examined by the Panel in two succeeding meetings. In a first session, the Panel examines the facts and findings and their preliminary qualification in law. It ensures the right to be heard by sending a letter to the economic operator in which the latter is requested to submit written observations. In a second session, the Panel examines the written observations, if any, and adopts its recommendation which is addressed to the requesting authorising officer.

The Panel must adopt this recommendation within 45 calendar days from the referral of the case to the Panel. This deadline starts once the request for referral of a case is complete. Pursuant to the Financial Regulation, the economic operator should at least be granted 15 calendar days, *i.e.* a minimum of 10 working days, to submit its observations. In practice, despite the tight constraint of the short deadline of 45 calendar days, the Panel grants more time to the economic operator, in light of the rights of defence. The recommendation of the Panel includes a preliminary classification in law of the conduct referred to above, with regard to established facts or other findings. It is important to recall that the Panel has no investigative powers. It will therefore principally rely on:

- a) facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control performed under the responsibility of the authorising officer;
- b) non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;
- c) decisions of the European Central Bank, the European Investment Bank, the European Investment Fund or international organisations;

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<sup>7</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1) which defines irregularity as: "*any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.*"

- d) decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of Union or national competition law.

Where the Panel considers that the economic operator concerned should be excluded and/or that a financial penalty should be imposed on it, its recommendation contains the facts or findings and their preliminary classification in law as well as one or several of the following elements:

- a) an assessment of the need to impose a financial penalty and its amount;
- b) an assessment of the need to exclude the economic operator concerned and, in that case, the suggested duration of such an exclusion;
- c) an assessment of the need to publish the information related to the economic operator who is excluded and/or subject to a financial penalty;
- d) an assessment of remedial measures taken by the economic operator, if any;
- e) an assessment of the proportionality principle as referred to in Article 106(3) of the Financial Regulation so as to retain aggravating or mitigating circumstances.

After an assessment of the remedial measures the Panel may decide to recommend imposing no sanctions on the economic operator. The option to take into account remedial measures was introduced in the 2015 revision of the Financial Regulation, based on the procurement Directives<sup>8</sup> in order to reduce the sanctions imposed on the economic operator or to avoid its exclusion altogether where the economic operator has taken the necessary corrective measures. For this latter case, the measures listed in Article 106(8) of the Financial Regulation must be sufficient to demonstrate the reliability of the economic operator to receive future Union funds.

### **2.3. The recommendation of the Panel**

In the light of the principle of proportionality enshrined in Articles 49 and 52 of the Charter of Fundamental Rights of the European Union<sup>9</sup> and of possible remedial measures taken by the economic operator concerned<sup>10</sup>, the Panel can recommend:

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<sup>8</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.03.2014, p.65) and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.03.2014, p.1).

<sup>9</sup> See also Recital 28 of Regulation (EU, Euratom) 2015/1929 of the European Union and of the Council of 28 October 2015 and Article 106(3) as already quoted under point 2.2 amending regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union, OJ L 286, 30.10.2015, p.1.

<sup>10</sup> Where remedial measures demonstrate the recovered reliability of the economic operator, no sanctions can be imposed on it.

- The exclusion of the economic operator concerned for up to 3 years (up to 5 years in the case of fraud) from participation in all or part of funding procedures, governed by the Union budget in line with the Financial Regulation and award procedures governed by the European Development Funds;
- The imposition of a financial penalty of between 2 % and 10 % of the total value of the contract on an economic operator who has attempted to obtain access to Union funds by participating or requesting to participate in a procurement procedure, while being, without having declared it in one of the exclusion situations mentioned under section 2.2 above;
  - (i) as an alternative to a decision to exclude the economic operator, where such an exclusion would be disproportionate;
  - (ii) in addition to an exclusion which is necessary to protect the Union's financial interests, where the economic operator has adopted a systemic and recurrent conduct with the intention of unduly obtaining Union funds<sup>11</sup>.
- In order to reinforce the deterrent effect of the exclusion and/or financial penalty, the publication on the internet site of the Commission information related to the exclusion and, where applicable, the financial penalty<sup>12</sup>.

Even if they have only a non-binding nature, due to the need to respect the administrative autonomy of the Institutions and other EU bodies, the recommendations of the Panel bear a high weight due to the composition of the Panel and the recognised authority of its high level independent Chair. This is further evidenced by the fact that if the Authorising Officer, who is also a member of the Panel, decides not to follow a recommendation of the Panel, he must inform the latter of the reasons which have led him/her to take a different decision. Since the outset of the Early Detection and Exclusion System in 2016, authorising officers have followed the Panel recommendations without deviations.

### **3. THE PUBLICATION OF SANCTIONS IMPOSED ON ECONOMIC OPERATORS**

The publication of the sanctions is a powerful tool to ensure a deterrent effect and to prevent misuse of EU funds. As of 30 June 2018, there are 8 cases published on the europa website:

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<sup>11</sup> This possibility is not applicable to cases where the conduct consists of significant deficiencies in complying with main obligations in the performance of a contract.

<sup>12</sup> Information cannot be published in any of the following circumstances:- where it is necessary to preserve the confidentiality of an investigation or of national judicial proceedings;- where publication would cause disproportionate damage to the economic operator concerned or would otherwise be disproportionate on the basis of the proportionality criteria set out and to the amount of the financial penalty;  
- where a natural person is concerned, unless the publication of personal data is exceptionally justified, inter alia, by the seriousness of the conduct or its impact on the Union's financial interests.

The recommendation to publish must comply with the protection of personal data and be necessary to ensure this deterrent effect. Therefore, the publication is only recommended in serious cases with aggravating factors, for instance the refusal of investigations or audit, or the recurrence of a conduct. In addition, the publication can only intervene three months after the decision is taken by the economic operator, by which time the decision of the authorising officer may be contested before the General Court. If this is the case then the publication will take place after the judgment of the Court, should the judgment uphold the decision of the Authorising Officer.

#### **4. CHANGES BROUGHT BY THE NEW FINANCIAL REGULATION**

##### **4.1. Increased transparency of EDES rules**

To date, the exclusion rules and more largely the EDES system were contained in the procurement chapter of the Financial Regulation, as they stem from the procurement Directives. In the new Financial Regulation adopted in 2018, the rules on the EDES system have been moved from the procurement chapter to the new Common Rules applying to all spending instruments (procurements, grants, prizes, selection of experts, financial instruments). The EDES system was already being applied to these instruments by means of cross reference spread over the Financial Regulation. The regrouping of these rules under the Common Rules chapter will increase their readability.

##### **4.2. Additional ground for exclusion and extension of the information to be disclosed in the declaration on honour**

The revised Financial Regulation introduces new grounds of exclusion related to so-called "letter box" or "shell" companies with the aim to enhance the fight against tax avoidance. To this end, an authorising officer shall exclude (Article 136(1)(g) and (h):

- the person or the entity that *"has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business"*;
- as well as *"an entity that has been created with the intent"* provided for in the previous point.

This new ground will ensure a better coverage of the protection of the financial interests and the image of the European Union against unreliable economic operators. In the light of the general principle of the European Union law of legal certainty, these provisions will apply to such facts that will occur after the entry into application of the revised Financial Regulation. Again, exclusions on these grounds could be applied on the basis of a final judgment or a final administrative decision, or in their absence, on the basis of a preliminary classification in law made by the Panel.



The revised Financial Regulation also requests from economic operators additional information to be submitted in the declaration on honour that participants<sup>13</sup> or recipients of Union funds must submit as part of a procedure of application for EU funds. Under the new Financial Regulation, participants<sup>14</sup> also have the obligation to disclose their beneficial ownership structure (Article 137(2)(b) FR).

#### **4.3. Procedure in front of the Panel**

If the Panel had 45 calendar days from the referral of the case to adopt its recommendation, practice has shown that the deadline given for the economic operator to submit observations was tight, and therefore an extension of the deadline was often requested by the latter to the Panel. The legislator has therefore decided to remove this requirement, which should benefit economic operators subject to a Panel procedure.

#### **4.4. Merger of the specialised financial irregularities panels into the EDES Panel**

Up to the entry into application of the new Financial Regulation, the EDES Panel has been competent to assess cases of "irregularities" committed by economic operators. To date, in accordance with Article 73(6) the 2012 Financial Regulation, other panels existed in EU institutions to assess the irregularities incurred by staff members subject to the Staff Regulations (known under the name of "specialised financial irregularities panel" (or ISIF)). For reasons of efficiency, economy of procedures and use of existing expertise, these Panels have been merged into the EDES Panel. This means that the EDES Panel will now be competent to also assess cases of internal irregularities (see Article 93 of the new Financial Regulation). Where it acts in this respect, it will have the same core composition as in EDES cases with additional ad hoc members. It will retain its independent features and shall not have any investigative powers either.

### **5. OVERVIEW OF CASES**

In 2017, 11 cases, each involving one economic operator, were referred to the Panel through its permanent secretariat by authorising officers, that is 10 from the Commission and 1 from a Joint Undertaking. In addition to these 11 cases, 4 cases sent to the permanent secretariat in 2016 concerning 4 economic operators are added in the present report, since they were referred to the Panel in 2017, once the respective files had been completed.

Out of these 15 cases, the Panel issued a recommendation to exclude economic operators from EU funds in 9 occurrences. This was based on various legal grounds, including

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<sup>13</sup> Pursuant to Article 2 FR, a "participant" is: any entity or person who has applied for grants, procurement, prizes, selection of experts, provision of sponsorship and implementation of financial instruments under direct management and participates in a selection procedure.

<sup>14</sup> And the other persons and entities mentioned in Article 136 (1) (a) and (b) for the situations referred to in points (c) to (h) of Article 136 (1) FR.

fraud and significant breaches with complying with main obligations in the implementation of a contract.

In 3 cases, the Panel also recommended to register in the EDES database "*a person with power of representation, decision-making or control*" over the excluded operator, as linked to the exclusion. The purpose of this registration is to inform all authorising officers that these persons were personally involved in the related situations of exclusion of the economic operators concerned.

In 6 cases, the Panel did not adopt recommendations for the following reasons:

- The company on which administrative sanctions was contemplated did not fall under the definition of "economic operator" in Article 101(1) of the Financial Regulation;
- The referral did not fall within the scope of the competence of the Panel<sup>15</sup>;
- The economic operator had already been registered in the database on the ground that it had been wound-up;
- A further legal analysis by the requesting authorising officer showed that the imposition of the contemplated sanction was not legally founded;
- The adversarial exchange on the recovery of EU funds needed to be completed before envisaging administrative sanctions.

As regards the 9 recommendations adopted so far, 6 decisions have been taken by the authorising officers concerned. [3 further decisions are to be adopted.] All follow in full the recommendation of the Panel.

In addition, in all of the 6 decisions, the sanctions were published. The publication was justified by *e.g.* the refusal of audits, the refusal to reimburse the misused EU funds, the non-replacement of a guarantee issued by a non-authorized guarantor, or the inherent the gravity of the violations.

It should be noted that the first two exclusions on the grounds of fraud on the basis of the preliminary classification in law by the Panel were recommended by the Panel in 2018. The first case<sup>16</sup> results from related-information in an OLAF report and a final judgement and the second is based on a non-final judgment for fraud as well as an OLAF report. The preliminary classification in law for fraud was introduced with the 2015 revision of the Financial Regulation and could therefore not be used on facts committed before 2016, in observance of the general principle of legal certainty.

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<sup>15</sup> 2 cases

<sup>16</sup> Case 2017/07

Overall, out of the 31 cases referred to the Panel so far since its setting-up, the Panel adopted 27 recommendations, including in 3 cases a recommendation of non-exclusion. This has led up to now to 19 exclusion decisions taken by authorising officers.

The following table shows an overview of the cases where the Panel issued a recommendation in 2017<sup>17</sup> and of those cases submitted to the Panel in 2017 and where the recommendations were issued in the first semester of 2018. It contains a summary of facts and findings, their preliminary qualification in law where applicable, the recommended administrative sanction and the date thereof, and if a publication on the website of the Commission was recommended. The cases have been anonymised.

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<sup>17</sup> The first 4 cases on which the Panel issued a recommendation in 2017 were included in the Protection of the European Union's financial interests - Fight against fraud 2016 Annual Report, therefore they are not mentioned in the summary of this report.

**Annex 1 - Summary of anonymised cases referred to the Panel of Article 108 of the Financial Regulation**

| <b>CASE NUMBER</b>         | <b>FACTS</b>  | <b>QUALIFICATION IN LAW (exclusion ground)</b>       | <b>Date of the Panel recommendation :</b> | <b>SANCTIONS</b>                   | <b>PUBLICATION</b>   | <b>Date of the decision of the authorising officer:</b> |
|----------------------------|---|--|---|------------------------------------|--|---|
| Case 2016/17 <sup>18</sup> | <p>Lack of sufficient and appropriate evidence to corroborate the contribution to the project work;</p> <p>Undeclared subcontracting;</p> <p>Operator relied almost entirely on subcontracting to carry out the work on audited projects";</p> <p>No financial or operational capacity to carry out the work.</p> | <i>"Serious breaches of contractual obligations"</i> | <b>14.07.2017</b>                         | Exclusion for a period of 2 years. | Not applicable, facts committed before publication rules entered into force. | <b>10.08.2017</b>                                       |

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<sup>18</sup> Cases 17, 18 and 20 of 2016 are included in this report as they were referred to the Panel after the first semester of 2017 once the respective files had been completed.

| CASE NUMBER  | FACTS  | QUALIFICATION IN LAW (exclusion ground)              | Date of the Panel recommendation : | SANCTIONS   | PUBLICATION  | Date of the decision of the authorising officer: |
|--------------|--|--|------------------------------------|---|--|--|
| Case 2016/18 | <p>Impossibility to reach the operator and therefore no audit could have been carried out.</p> <p>The auditors rejected all costs. Despite numerous efforts made by the Commission, the operator has not paid the total due sum.</p> | <i>"Serious breaches of contractual obligations"</i> | 11.10.2017                         | <p>Exclusion for a period of 3 years of the economic operator</p> <p>Registration in the EDES database of the person with power of representation, decision-making or control over the concerned operator, linked with the exclusion of the operator.</p> | Not applicable, facts committed before publication rules entered into force. | 11.12.2017                                       |

| CASE NUMBER  | FACTS  | QUALIFICATION IN LAW (exclusion ground)              | Date of the Panel recommendation : | SANCTIONS            | PUBLICATION  | Date of the decision of the authorising officer: |
|--------------|--|--|------------------------------------|----------------------|--|--|
| Case 2016/20 | <p>Unreliability of the time recording system, over claimed costs;</p> <p>Absence of adequate evidence to justify cost claimed on audited EU projects;</p> <p>Non-compliance with the specific cumulative eligibility criteria for in-house consultants, personnel cost, subcontracting;</p> <p>Personnel not remunerated according to the normal practices of the beneficiary;</p> <p>Work contribution of one person before recruitment.</p> | <i>"Serious breaches of contractual obligations"</i> | 29.08.2017                         | Exclusion of 3 years | Not applicable, facts committed before publication rules entered into force. | 27.10.2017                                       |

| <b>CASE NUMBER</b>  | <b>FACTS</b>   | <b>QUALIFICATION IN LAW (exclusion ground)</b>       | <b>Date of the Panel recommendation :</b>                | <b>SANCTIONS</b>   | <b>PUBLICATION</b>   | <b>Date of the decision of the authorising officer:</b> |
|---------------------|--|--|--|--|--|---|
| <b>Case 2016/21</b> | Guarantor failure to reimburse the Commission on the basis of the breach of contracts of the contractor                    | <i>"Serious breaches of contractual obligations"</i> | Not applicable – Case withdrawn by the RAO on 22/09/2017 | Not applicable   | Not applicable   | Not applicable  |
| <b>Case 2017/01</b> | Non-compliant procurement procedure and ineligible costs claims;<br><br>Conflict of interest.                              | <i>"Serious breach of contractual obligations"</i>   | <b>18.04.2018</b>  | Exclusion from specific funding programme (EDF) for 2 years. | Not applicable, facts committed before publication rules entered into force. | <b>02/07/2018</b>                                       |
| <b>Case 2017/02</b> | Final judgement concerning agreement with other operators with the aim of distorting competition<br><br>Remedial measures. | No preliminary classification - Panel not competent. | Not applicable   | Not applicable   | Not applicable (non-admissibility of the case).                              | Not applicable.   |

| CASE NUMBER         | FACTS   | QUALIFICATION IN LAW (exclusion ground)  | Date of the Panel recommendation : | SANCTIONS  | PUBLICATION  | Date of the decision of the authorising officer: |
|---------------------|---|--|------------------------------------|--|--|--|
| <b>Case 2017/03</b> | <p>False declarations in grants application as regards professional and financial capacity, leading to the award of the grant;</p> <p>Failed to disclose proper information upon request of the Contracting Authority and OLAF;</p> <p>Lack of cooperation for the audit (obstruction);</p> <p>Refusal of payment of the recovery order</p> | <i>"Misrepresentation of information and serious breach of contractual obligations".</i> | <b>15.11.2017</b>                  | Exclusion of 3 years.  | Recommended based on obstruction of the verifications; refusal to pay the debts. | <b>20.12.2017</b>                                |
| <b>Case 2017/04</b> | Lack of preventive measures to avoid conflict of interest and late disclosure.  | No preliminary classification.<br><br>Case withdrawn.                                    | Not applicable                     | No recommendation.<br><br>Case withdrawn by Authorising Officer based on further analysis. | Not applicable (case withdrawn)  | Not applicable                                   |



| CASE NUMBER  | FACTS   | QUALIFICATION IN LAW (exclusion ground)                                  | Date of the Panel recommendation : | SANCTIONS      | PUBLICATION    | Date of the decision of the authorising officer: |
|--------------|---|--|------------------------------------|----------------|----------------|--|
| Case 2017/05 | <p>Inflation of costs by using fictitious contracts with a sister-company, which appeared as staff resource provider.</p> <p>Suspicion of serious fraud in connection with the issuing of invoices.</p> <p>Misrepresentation of its legal structure.</p> <p>Failure to declare the amount paid to the personnel employed on the EU-funded projects and unreliable information contained in time sheets.</p> | Case suspended until completion of adversarial exchange on the recovery. | Not applicable (case suspended)    | Not applicable | Not applicable | Not applicable                                   |

| <b>CASE NUMBER</b>  | <b>FACTS</b>   | <b>QUALIFICATION IN LAW (exclusion ground)</b>  | <b>Date of the Panel recommendation :</b>  | <b>SANCTIONS</b> | <b>PUBLICATION</b> | <b>Date of the decision of the authorising officer:</b> |
|---------------------|--|---|--|------------------|--------------------|---|
| <b>Case 2017/06</b> | Suspicious of misuse of EU funds after an investigation. | Case closed: company dissolved (registered in the EDES database on the ground of Article 106(1)(a) of the Financial Regulation. | Not applicable - Case closed by the Panel on 15.11.2017 - company dissolved (registered in the EDES database on the ground of Article 106(1)(a) of the Financial Regulation. | Not applicable   | Not applicable     | Not applicable  |

| CASE NUMBER  | FACTS  | QUALIFICATION IN LAW (exclusion ground)           | Date of the Panel recommendation : | SANCTIONS  | PUBLICATION   | Date of the decision of the authorising officer: |
|--------------|--|---|------------------------------------|--|---|--|
| Case 2017/07 | The chairperson of the grant beneficiary used fraudulent means to justify activities that had not taken place: falsifying documents (lists of participants in the training courses, contracts with service providers, invoices for provision of services) and using them, misappropriated, on a grand scale, by fraud an amount of the EU funds. | <i>"Fraud"</i> , established by a final judgment. | 15.11.2017                         | Exclusion for a period of 3 years.<br><br>Registration in the EDES database of the person with power of representation, decision-making or control over the concerned operator, linked with the exclusion of the operator, considering its personal involvement in the situation of exclusion. | Publication recommended given the fact that a final judgment and OLAF have established that the economic operator has misappropriated on a grand scale, by fraud, the amount provided under the contract. | 11.01.2018                                       |

| CASE NUMBER  | FACTS   | QUALIFICATION IN LAW (exclusion ground)              | Date of the Panel recommendation : | SANCTIONS                          | PUBLICATION   | Date of the decision of the authorising officer: |
|--------------|---|--|------------------------------------|------------------------------------|---|--|
| Case 2017/08 | [Among various companies implementing several contracts awarded in the framework of an EU funded project], the respective economic operator, suspected of corruption and/or fraud refused to allow access to its data, impeding OLAF to perform its investigative powers. | <i>"Serious breach of contractual obligations"</i> . | <b>30/05/2018</b>                  | Exclusion for a period of 2 years. | Publication recommended, based on the fact that the economic operator impeded OLAF to properly conduct its investigation. | <b>29/06/2018</b>                                |

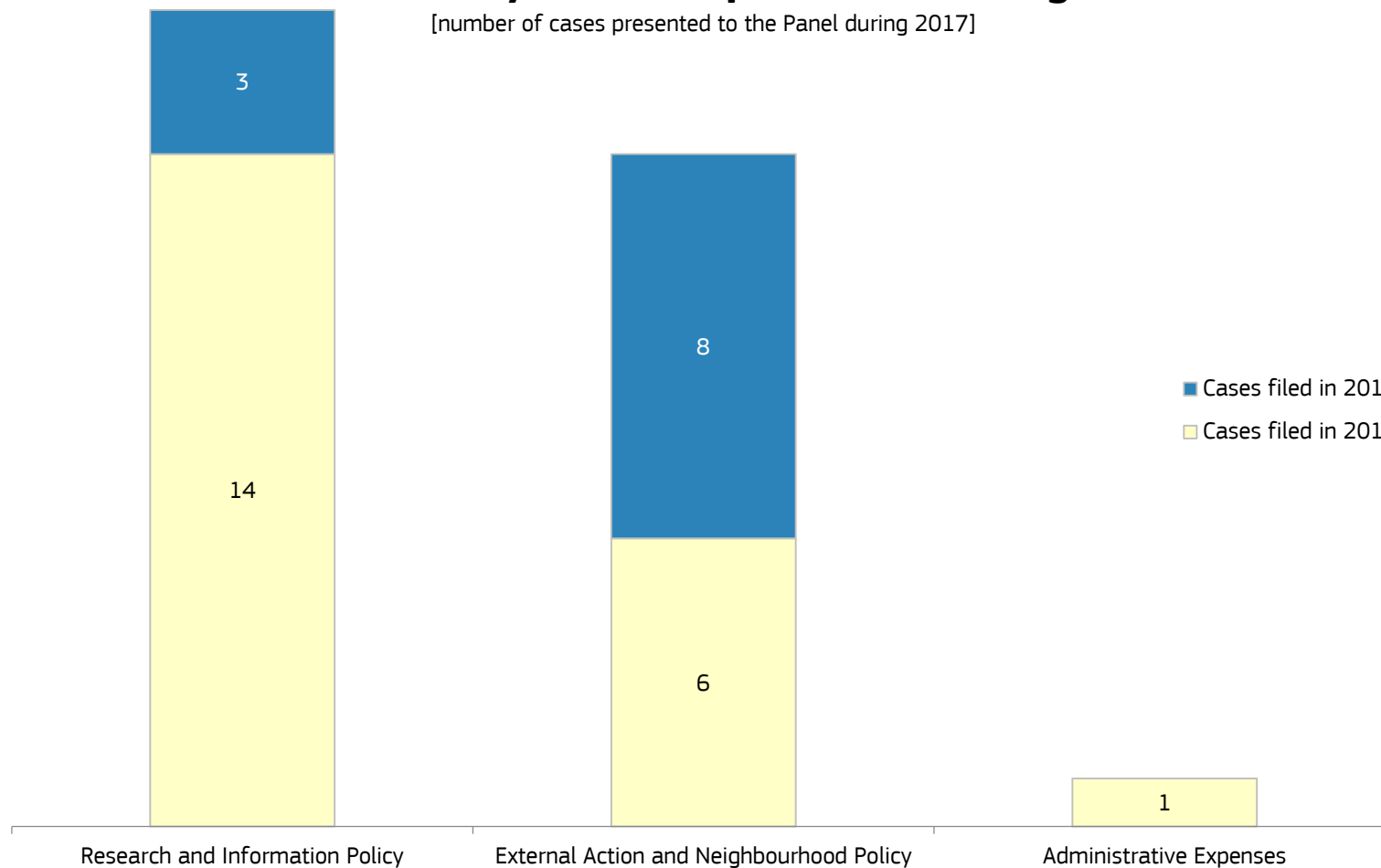
| CASE NUMBER  | FACTS  | QUALIFICATION IN LAW (exclusion ground) | Date of the Panel recommendation : | SANCTIONS  | PUBLICATION   | Date of the decision of the authorising officer: |
|--------------|--|---|------------------------------------|--|---|--|
| Case 2017/09 | A contract was awarded to the economic operator based on false information and documentation presented in its tender. The company repeatedly produced false statements about the actual conditions of production of the equipment delivered, which originated from sources other than those indicated in the tender. | <i>"Fraud"</i>                          | 26.03.2018                         | Exclusion for a period of 3 years.<br><br>Registration in the EDES database of the person with power of representation, decision-making or control over the concerned operator, linked with the exclusion of the operator, considering its personal involvement in the situation of exclusion. | Recommended, justified by the gravity of its conduct and its impact on the outcome of the procurement procedure, as well as the repeated false statements during the implementation of the contract and after the provisional acceptance of the delivery. | 12.06.2018                                       |

| CASE NUMBER  | FACTS  | QUALIFICATION IN LAW (exclusion ground)                                       | Date of the Panel recommendation : | SANCTIONS                          | PUBLICATION  | Date of the decision of the authorising officer: |
|--------------|--|---|------------------------------------|------------------------------------|--|--|
| Case 2017/10 | Collusive practices  | Not applicable: case closed by the Panel on 21.09.2017 – Panel not competent. | Not applicable                     | Not applicable                     | Not applicable   | Not applicable                                   |
| Case 2017/11 | <p>Pre-financing guarantee and a performance guarantee issued by non-authorised entities;</p> <p>Upon several requests of the Authorising officer, the contractor failed to replace the aforementioned guarantees;</p> <p>Late implementation.</p> | <i>"Serious breach of contractual obligations"</i> .                          | <b>26.01.2018</b>                  | Exclusion for a period of 3 years. | Recommended, justified by the number of grave contractual violations, lack of cooperation despite numerous reminders, non-replacement of a guarantee issued by a non-authorised guarantor. | <b>07.03.2018</b>                                |

## Annex 2 – Statistics concerning the Panel cases

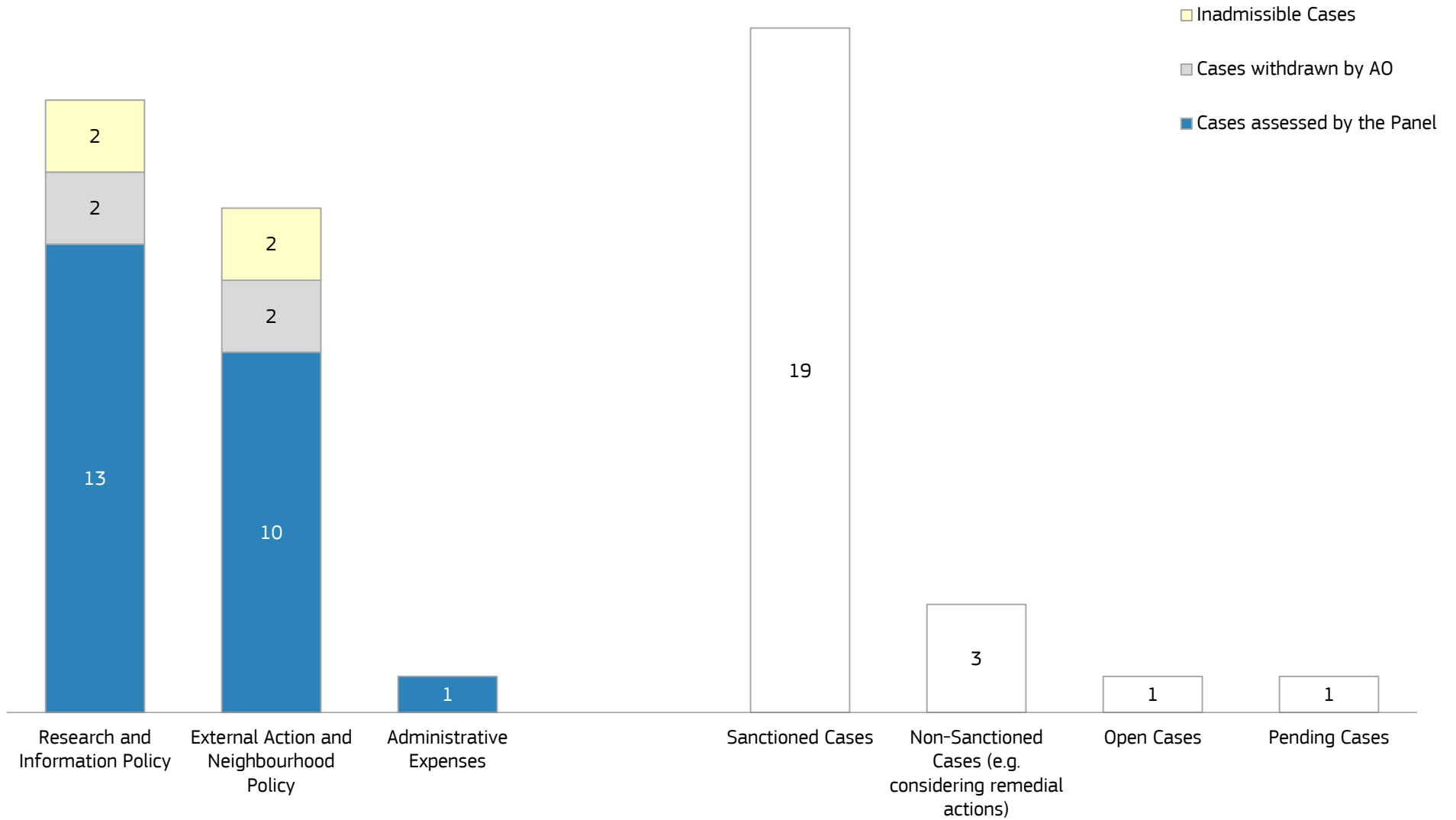
### Summary of Cases per Year of filing

[number of cases presented to the Panel during 2017]



# Summary of Case Status

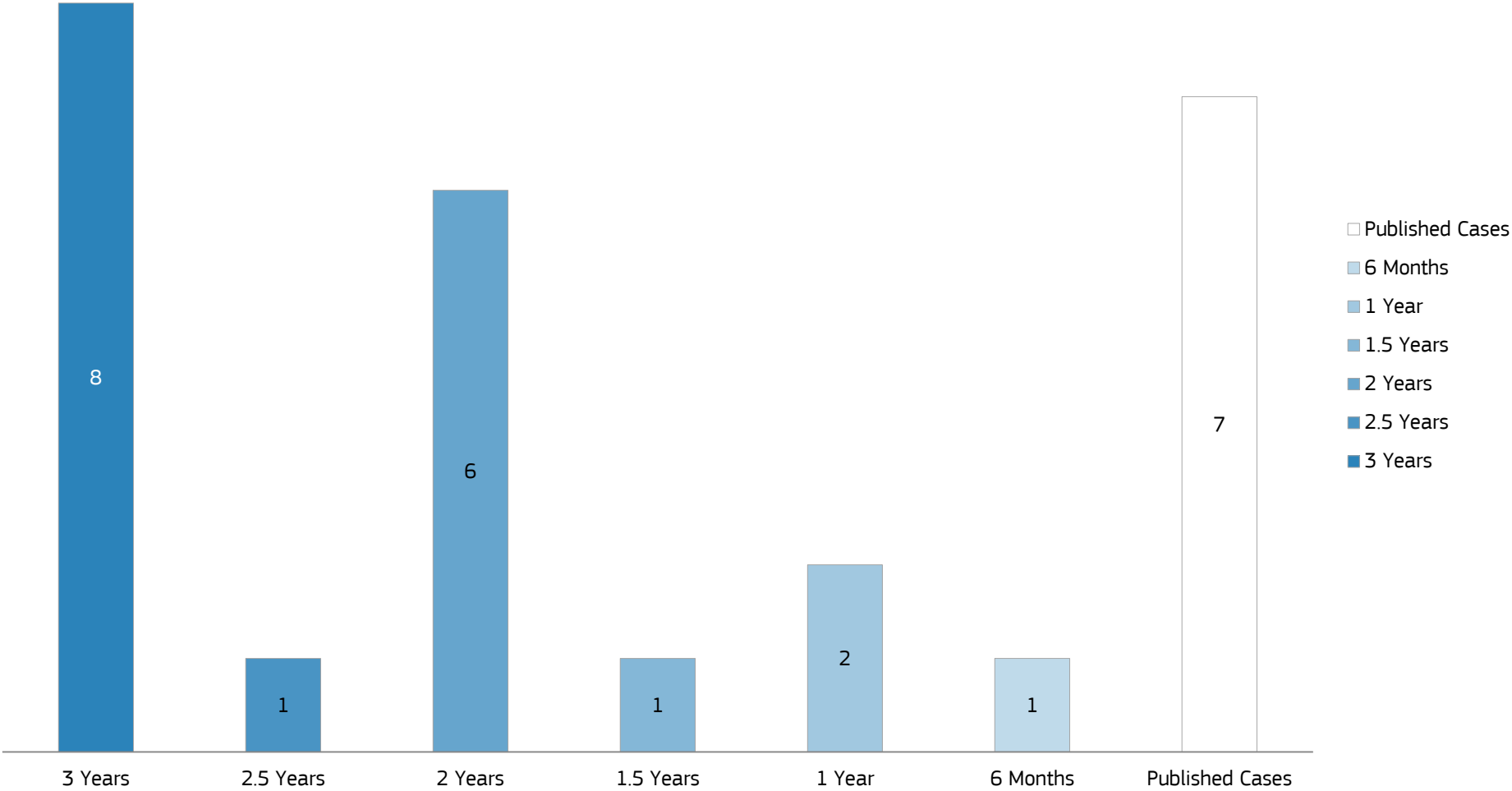
[number of cases presented to the Panel during 2017]





# Sanctions Recommended by the Panel

[number of cases presented to the Panel during 2017]



# Legal basis of Panel Recommendations

[number of cases presented to the Panel during 2017]

