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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**

**30th Annual Report on the Protection of the European Union's financial interests - Fight  
against fraud - 2018**

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## 1. INTRODUCTION

The European Commission manages the Early Detection and Exclusion System (EDES). EDES was set up in 2016 and is rooted in the Financial Regulation applicable to the EU budget revised in 2018<sup>1</sup> (Articles 135 to 145). Since 2016, EDES has reached maturity and has proven to be a strong tool for reinforcing the protection of the EU's financial interests against unreliable economic operators and fraudsters (*e.g.* exclusion from participation in obtaining EU funds).

EDES provides for a broad range of sanctionable practices. It ensures an independent and transparent central assessment of contemplated administrative sanctions and the respect of the fundamental rights of the economic operators concerned. The Financial Regulation provides for rules that centralise the exclusion process for all EU institutions, agencies, offices and bodies. In particular, Article 143 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 by delegation<sup>2</sup> who remain sole competent to take the decision to exclude an economic operator and/or to impose a financial penalty on it.

On 29 January 2019, the Chair of the Panel presented to and had an exchange of views with the Committee on Budgetary Control of the European Parliament on the applicable legislation, the role of the Panel, its operation and an overview of its activities over 2016 to 2018.

Another notable point in the period under review, is the entry into force in August 2018 of a revised Financial Regulation, which brought further improvements to the system.

This Staff Working Document presents the third year of activity of the EDES Panel and also extends to the first semester of 2019.

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<sup>1</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1.

<sup>2</sup> Authorising officers by delegation are the persons, generally with the rank of Director-General or Director, who are responsible in the Union institution or EU body concerned for implementing revenue and expenditure in accordance with the principle of sound financial management, including through ensuring reporting on performance, and for ensuring compliance with the requirements of legality and regularity and equal treatment of recipients.

## 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 143 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<sup>3</sup> are appointed by the Commission and are independent in the performance of their duties<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 Commission. Their term of office is five years. The current 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 Court of Justice of the European Union (Civil Service Tribunal).

The two permanent Members of the Panel representing the Commission are Mr. Hubert Szlaszewski who is 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. The observers do not take part in the adoption of the recommendations. Representatives of OLAF also participate in the Panel meetings as observers 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

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<sup>3</sup> The rules applicable to the Deputies are in accordance with the rules of procedure of the Panel similar *mutatis mutandis* to those applicable to the Chair.

<sup>4</sup> Article 144(3) of the Financial Regulation.

<sup>5</sup> Deputies of the Permanent Members are: Mr Olivier Dandoy, an official of the Directorate-General for Communication 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.

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;
- 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> and;
- since 2018, two additional grounds of exclusion have been added in the Financial Regulation, *i.e.* the creation of entities in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the

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<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.

<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.*"

jurisdiction of its registered office, central administration or principal place of business, and such entities created themselves.

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 3 months from the date the Chair has verified the readiness of the file, after requesting additional measures of verification or examination, where applicable. This period may be extended by the Chair in order, *i.a.*, to ensure that the right to be heard is respected. However, in urgent important cases, the Panel is flexible and can act more swiftly, as it did in 1 case in 2018 where a long duration of the procedure would have resulted in difficulties for the administrative operation of the Commission. In that case, it took 2 months to complete the procedure from the opening by the Panel to the adoption of the recommendation .

The economic operator concerned by the procedure is granted 3 weeks as a general rules to submit observations. By way of exception, following a reasoned request by the economic operator, the deadline may be extended, by no more than half the period initially granted.. 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 European Public Prosecutor's Office<sup>8</sup>, 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) facts referred to in decisions of persons and entities implementing Union funds under indirect management;<sup>9</sup>
- d) information transmitted by entities implementing Union funds under shared management with Member States and;

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<sup>8</sup> It will be operational at the earliest in November 2020.

<sup>9</sup> *E.g.* by the European Central Bank, the European Investment Bank, the European Investment Fund or international organisations.

- e) 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 assessments:

- a) the possibility and the need to impose a financial penalty and its amount;
- b) the need to exclude the economic operator concerned and, in that case, the recommended duration of such an exclusion;
- c) the need to publish the information related to the economic operator which is excluded and/or subject to a financial penalty;
- d) the remedial measures taken by the economic operator, if any and provided that the misconduct is not related to fraud, corruption, criminal organisations, money laundering, terrorist financing or offences, child labour or other offences concerning trafficking in human beings;

All of those assessments are made in the light of the principle of proportionality as recalled in Article 136(3) of the Financial Regulation, so as to duly consider aggravating and/or mitigating circumstances.

In particular, after an assessment of the remedial measures the Panel may decide to recommend imposing no sanctions on the economic operator. This is based on the procurement Directives<sup>10</sup> in order, where the economic operator has “cleaned” its situation, to avoid its exclusion altogether. The non-exhaustive list of measures referred to in Article 136(7) of the Financial Regulation must be sufficient to demonstrate the reliability of the economic operator for receiving and spending Union funds in future.

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

In the light of the principle of proportionality<sup>11</sup> and of possible remedial measures taken by the economic operator concerned<sup>12</sup>, the Panel can recommend:

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<sup>10</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>11</sup> This principle is enshrined in Articles 49 and 52 of the Charter of Fundamental Rights of the European Union and recalled in the Financial Regulation.

<sup>12</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, corruption and any similar activities punishable under penal law)) 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<sup>13</sup> of maximum 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;
  - (i) either as an alternative to a decision to exclude the economic operator, where such an exclusion would be disproportionate or;
  - (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>14</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>15</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. This explains why since the outset of the Early Detection and Exclusion System in 2016, authorising officers have up to now followed the Panel recommendations without deviations.

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<sup>13</sup> Article 138 of the Financial Regulation.

<sup>14</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>15</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.



### **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. Currently, there are 8 sanctions against 7 economic operators published on the europa website:

[http://ec.europa.eu/budget/edes/index\\_en.cfm](http://ec.europa.eu/budget/edes/index_en.cfm)

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 challenged before the General Court. In some cases<sup>16</sup>, the publication will only 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**

Until July 2018, the exclusion rules and more largely the EDES system have been included in the procurement chapter of the Financial Regulation, as they stemmed from the procurement Directives. In the new Financial Regulation, the rules on the EDES system are part of the new Common Rules applying to all spending instruments (procurements, grants, prizes, selection of experts, financial instruments, etc.). The EDES system was already being applied to these instruments by means of cross references spread over the Financial Regulation. The regrouping of these rules under the Common Rules chapter will increase their coherence and readability.

#### **4.2. Additional grounds 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.

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<sup>16</sup> This depends on the legislation applicable at the time of the commission of the misconduct.

This new ground will ensure a better coverage of the protection of the financial interests and the image of the European Union against some unreliable economic operators. In the light of the general principle of legal certainty, these provisions will apply to such facts that will have occurred 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>17</sup> or recipients of Union funds must submit as part of a procedure of application for EU funds. In this respect, participants<sup>18</sup> will also have the obligation to disclose their beneficial ownership structure (Article 137(2)(b) FR).

#### **4.3. Procedure before 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 person or entity concerned 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 the right of defence of the persons or entities subject to a Panel procedure and the legal soundness of the ensuing decisions on sanctions.

#### **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 was solely competent to assess cases of misconducts committed by economic operators. In parallel, other panels set up in EU institutions had also to assess financial 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, the competences of these former panels have been merged into the EDES Panel. This means that the EDES Panel will now be competent to also assess cases of internal financial irregularities<sup>19</sup> (Where it acts in this respect, the Panel 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.

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<sup>17</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>18</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.

<sup>19</sup> See Article 93 of the Financial Regulation.

## **5. REVISION OF THE RULES OF PROCEDURE OF THE PANEL**

Following on the adoption of the new Financial Regulation and also in the light of the lessons drawn from the first 2 years of operation of the Panel, the Commission adopted new Panel rules of procedure in the second semester of 2018.

These rules provide among others for:

- an improvement of the conditions under which the right to be heard of economic operators is ensured;
- practical arrangements for close cooperation between the Panel and OLAF;
- specific provisions on the exercise of the consultative powers where financial irregularities on the part of the members of EU staff have been committed.

## **6. AUDIT OF THE EDES SYSTEM BY THE INTERNAL AUDIT SERVICE OF THE EUROPEAN COMMISSION**

The overall objective of the audit was to assess whether the Commission has designed and implemented an effective and efficient control system for the management of EDES aimed at protecting the EU budget, in line with the legal provisions. The audit also covered the effectiveness and efficiency of the EDES Panel, a key actor in the process, assisted in fulfilling its tasks by the EDES secretariat, which is provided by the Commission.

The audit found that EDES has undeniable strengths:

- It uses good practice from the World Bank suspension and debarment system;
- The Commission had been able to attract high-level individuals as Chair and Vice-Chair. Together with the internal standing members, this ensures that the Panel has the necessary expertise and experience to carry out its tasks effectively;
- It is well integrated in local IT system notably in the research: the electronic workflow and grant management system in place checks whether an economic operator receiving funds from Horizon2020 programmes is registered for early detection or exclusion in EDES.

The audit also made recommendations:

- Finalisation and regularly update of the dedicated corporate guide;
- Increase of awareness of EDES;
- In shared management, analysis of access to EDES Database by Member States' authorities to target awareness raising efforts, and assess cost/benefits of use of other databases;
- Improve the follow-up of OLAF reports and recommendations and;
- Monitor length of Panel procedure and identify steps that could lead to delays.

## **7. AWARENESS RAISING WITH INTERNAL AND EXTERNAL STAKEHOLDERS**

Following on the audit, the Commission has stepped up its efforts for raising awareness all over the board. In particular, it is being:

- spreading information and disseminating good practice among others Commission services, EU Delegations and CSDP missions, including at senior and middle management level and this by various communication tools, including instructions given to services, dedicated workshops and training<sup>20</sup>;
- with due respect to the independence of the investigative function of OLAF, strengthening the internal cooperation with the Office at senior level, including as regards the monitoring of OLAF administrative and financial recommendations;
- participating in events with international organisations where EDES has been highlighted and acknowledged as an important tool for sanctioning fraud and serious misconducts and;
- developing a targeted communication strategy.

## **8. OVERVIEW OF CASES**

In 2018, 6 admissible cases, all coming from the Commission were referred to the Panel through its permanent secretariat by authorising officers. In addition, 4 cases sent to the permanent secretariat in 2017 are considered in the present report, since they were, once the respective files had been completed, dealt with by the Panel in 2018,

Out of these 10 cases, the Panel issued a recommendation to exclude economic operators from EU funds in 7 occurrences. This was based on various legal grounds, including fraud and significant breaches with complying with main obligations in the implementation of a contract.

In 1 case, 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 2 cases, the Panel did not adopt recommendations for the following reasons:

- The case was suspended for reasons of confidentiality of national investigations;

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<sup>20</sup> Some of them in narrow collaboration with OLAF services.

- The non final national administrative decision that was the source of findings of the case was annulled by a national jurisdiction before the opening of the adversarial procedure by the Panel with the economic operator.

As regards the 7 recommendations adopted so far, 7 decisions have been taken by the authorising officers concerned. All decisions already adopted follow in full the corresponding recommendation of the Panel.

In addition, out of the 7 recommendations, the Panel recommended in 5 cases<sup>21</sup> the publication. The publication was justified by *e.g.* the refusal of controls or audits, the refusal to reimburse the misused EU funds, the non-replacement of a guarantee issued by a non-authorised guarantor, or the inherent the gravity of the violations.

It should be noted that the Panel recommended in 2018 the first two exclusions on the grounds of fraud on the basis of the preliminary classification in law by the. 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.

Overall, out of the 52 cases referred to the Panel so far<sup>22</sup> since its setting-up, the Panel adopted 29 recommendations, including in 3 cases a recommendation of non-exclusion. This has led up to now to 25 exclusion decisions taken by authorising officers.

The following table shows an overview of the cases where the Panel issued a recommendation in 2018 and of those cases submitted to the Panel in 2017 and where the recommendations were issued in the first semester of 2019. 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.

Full judicial review at EU level: decisions taken by the EU Institution/agency/body on the basis of the Panel recommendation may be appealed before the EU Court of Justice.

The Court of Justice has upheld the validity of EDES system established in 2016 both concerning the early detection (Judgment of the General Court of 24 October 2018 in Case T-477/16, Epsilon International SA v European Commission) and the exclusion part (Judgment of the General Court of 8 November 2018 in Case T-454/17, “Pro NGO!” v Commission). A number of appeals have been dismissed as inadmissible<sup>23</sup>.

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<sup>21</sup> Up to now, 2 out of these 5 cases have been already published.

<sup>22</sup> This discrepancy also results from the facts that a number of cases have been referred closely before the adoption of this document and are not covered herein.

<sup>23</sup> See *i.a.* Orders of the General Court of 28 September 2017, in Case T-207/16, Aristoteleio Panepistimio Thessalonikis v European Commissions and of 18 September 2018 in Case T-664/17, eSlovensko/Commission.

Two other cases have allowed – without questioning the validity of the EDES – to clarify certain procedural issues, such as the retroactive application of the more lenient law in favour of the economic operator despite the existence of a stricter substantive law in force at the time of the facts<sup>24</sup> and the non admissibility of electronic proof of receipt as evidence that the economic operator has effectively become aware of the notification.<sup>25</sup> The Commission is taking full account of this judgment, while seeking at the same to ensure that unreliable economic operators cannot escape sanctions by not acknowledging the notification of legal acts addressed to them.

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<sup>24</sup> Judgment of the General Court of 27 June 2017 in Case T-151/16, NC v Commission. It should be noted that, although the material EDES rules already applied when the challenged Commission decision was adopted, the related exclusion procedure had taken place before the setting-up of the Panel. This means that the latter was not involved in the adversarial procedure and did not issue a recommendation.

<sup>25</sup> Judgment of the General Court of 7 December 2018 in Case T-280/17, GE.CO.P. v Commission.

**Annex 1 - Summary of anonymised cases referred to the Panel of Article 143 (ex-108) of the Financial Regulation**

CASE NUMBER	FACTS	CLASSIFICATION IN LAW (exclusion ground)	Date of the Panel recommendation :	SANCTIONS	PUBLICATION	Date of the decision of the authorising officer:
Case 2017/09	False information and documentation presented in the tender procedure.	<i>"Fraud"</i> .	26.03.2018	Exclusion from EU and EDF funding for a period of 3 years.  Given his personal involvement in the misconduct, 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.	Publication given the gravity of the conduct and its impact on the outcome of the procurement procedure concerned, as well as the repeated false statements.	12.06.2018

CASE NUMBER	FACTS	CLASSIFICATION IN LAW (exclusion ground)	Date of the Panel recommendation :	SANCTIONS	PUBLICATION	Date of the decision of the authorising officer:
Case 2017/01	<p>Situations of conflict of interest</p> <p>Non-respect of rules governing procurements.</p> <p>Irregularities concerning the use of funds (eg absence of supporting documents).</p>	<i>"Serious breaches of contractual obligations"</i>	<b>18.04.2018</b>	Exclusion from EDF funding for a period of 2 years	NA	<b>02.07.2018</b>



CASE NUMBER	FACTS	CLASSIFICATION IN LAW (exclusion ground)	Date of the Panel recommendation :	SANCTIONS	PUBLICATION	Date of the decision of the authorising officer:
Case 2017/11	<p>Failure in providing a pre-financing guarantee, despite numerous reminders.</p> <p>Non-replacement of a performance guarantee issued by a non-authorized guarantor</p> <p>Severe delays in delivery and implementation of the contract.</p>	<i>"Serious breaches of contractual obligations"</i>	<b>26.01.2018</b>	Exclusion for a period of 3 years	The publication of the exclusion decision is justified by the number of grave contractual violations, compounded by the lack of cooperation of the entity concerned, in particular with regard to the replacement of a guarantee issued by a non-authorized guarantor.	<b>07.03.2018</b>

<b>CASE NUMBER</b>	<b>FACTS</b>	<b>CLASSIFICATION 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 2018/8</b>	Frequent use of false information to disguise the criminal nature of the operator activities in exchange for economic benefits.	<i>"Grave professional misconduct"</i>	<b>22.01.19</b>	Exclusion for a period of 2 years	The Panel recommends not to publish the exclusion	<b>12.02.2019</b>
<b>Case 2017/08</b>	Violation of contractual obligation refusing to grant access to OLAF in order to establish whether there had been committed crimes affecting the interests of the European Union.	<i>"Serious breaches of contractual obligations "</i>	<b>30.05.2018</b>	Exclusion for a period of 2 years	The publication of the exclusion decision is justified by the gravity of the conduct carried out by the economic operator, who obstructs OLAF verifications.	<b>29.06.2018</b>

CASE NUMBER	FACTS	CLASSIFICATION IN LAW (exclusion ground)	Date of the Panel recommendation :	SANCTIONS	PUBLICATION	Date of the decision of the authorising officer:
Case 2018/02	The administrative decision concerning the behaviour of two different economic operators under the antitrust perspective has been cancelled by a judicial decision	<i>“Distorsion of competition rules”</i>	<b>The request of recommendation has become devoid of purpose – the Panel replied by letter on 14.11.2018</b>	The situation of exclusion has not been legally established	No	No

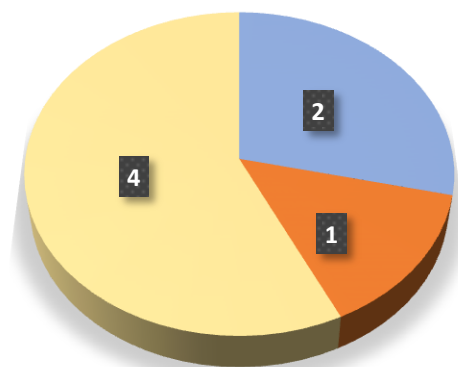
CASE NUMBER	FACTS	CLASSIFICATION IN LAW (exclusion ground)	Date of the Panel recommendation :	SANCTIONS	PUBLICATION	Date of the decision of the authorising officer:
Case 2018/03	<p>Non conformity and significant failure to perform the works in compliance with the contractual obligations.</p> <p>Failure to comply with the monitoring program, planned to address the lack of performance.</p> <p>Obstruction of the calling of the guarantees.</p>	<i>“Serious breaches of the contract”</i>	24.5.2019	Exclusion for a period of 3 years	<p>The Panel recommends to publish the exclusion.</p> <p>The publication is justified by the high financial impact on the EDF interests and the impact on the image of the EU development programme in a third country as well as from the fact that the economic operator obstructed the calling of the guarantees.</p>	12.07.2019

CASE NUMBER	FACTS	CLASSIFICATION IN LAW (exclusion ground)	Date of the Panel recommendation :	SANCTIONS	PUBLICATION	Date of the decision of the authorising officer:
Case 2018/07	Not honouring the payment of the guarantees	<p><i>“Significant deficiencies in complying with main obligation in the implementation of the contract”</i></p> <p><i>“Grave professional misconduct”</i></p>	24.5.2019	Exclusion for a period of 3 years	The Panel recommends to publish the exclusion. The publication is justified, since the non payment of the guarantees by the economic operator prevented the Contracting Authority from recovering an amount of EUR 10 million.	18.07.2019

## Annex 2 – Statistics concerning the Panel cases

### Legal basis of Panel Recommendations

(number of cases presented to the Panel during 2018)

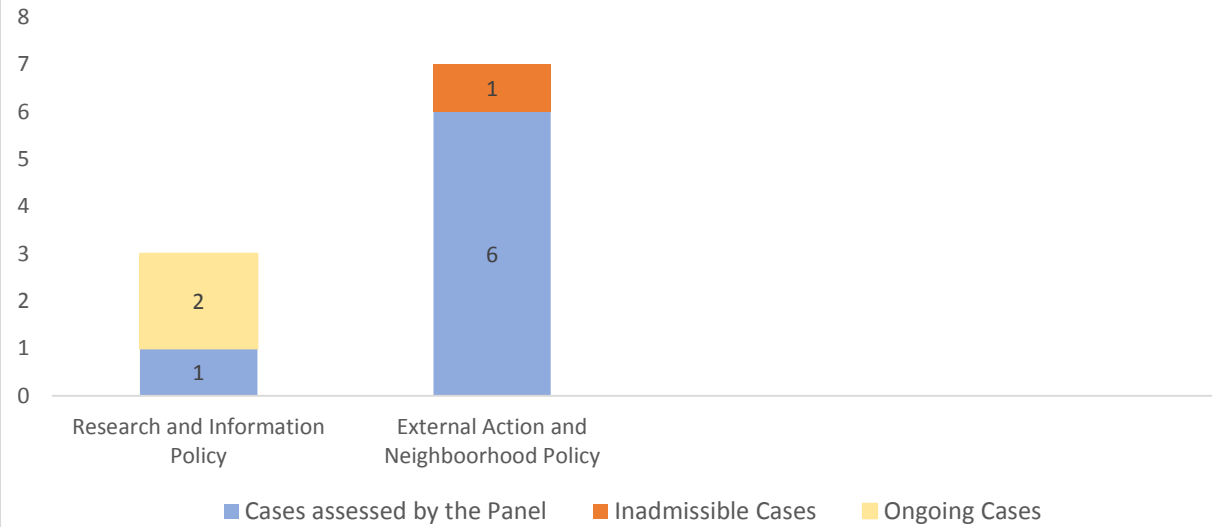


■ 106 c) Grave Professional misconduct

■ 106 d (i) Fraud

■ 106 e) Serious breach of contractual obligations

### Summary of Case Status (number of cases presented to the Panel during 2018)

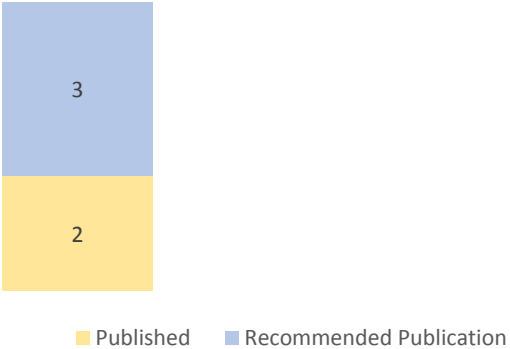


### Sanctions Recommended by the Panel (number of cases presented to the Panel during 2018)





**Recommended Publication** (number of cases presented to the Panel during 2018)



## Summary of Case Status

(number of cases presented to the Panel during 2018)



**Summary of Cases per Year of filing (number of cases presented to the Panel during 2018)**

