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**COMMISSION STAFF WORKING DOCUMENT**

**Early Detection and Exclusion System (EDES) - Panel referred to in Article 143 of the  
Financial Regulation**

*Accompanying the document*

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

**31<sup>st</sup> Annual Report on the protection of the European Union's financial interests - Fight  
against fraud - 2019**

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## Table of Contents

|                                                                                                             |    |
|-------------------------------------------------------------------------------------------------------------|----|
| 1. INTRODUCTION .....                                                                                       | 2  |
| 2. THE PANEL .....                                                                                          | 3  |
| 2.1. The Composition of the Panel .....                                                                     | 3  |
| 2.2. Role of the Panel .....                                                                                | 4  |
| 2.3. The recommendation of the Panel .....                                                                  | 8  |
| 3. THE PUBLICATION OF SANCTIONS IMPOSED ON PERSONS AND ENTITIES .....                                       | 9  |
| 4. INCREASED COOPERATION WITH OLAF .....                                                                    | 10 |
| 5. FIRST INTER-INSTITUTIONAL PANEL PROCEDURES.....                                                          | 11 |
| 6. NOTIFICATION OF ADVERSARIAL LETTERS .....                                                                | 11 |
| 7. AWARENESS RAISING WITH INTERNAL AND EXTERNAL STAKEHOLDERS.....                                           | 12 |
| 8. OVERVIEW OF CASES .....                                                                                  | 12 |
| ANNEX 1 - SUMMARY OF ANONYMISED CASES REFERRED TO THE PANEL OF ARTICLE 143 OF THE FINANCIAL REGULATION..... | 15 |
| ANNEX 2 – CHARTS .....                                                                                      | 26 |

## 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). EDES is a strong tool for reinforcing the protection of the EU's financial interests against unreliable persons and entities and fraudsters (*e.g.* exclusion from participation in obtaining EU and/or European Developments Funds (EDF) funds).

EDES provides for a broad range of sanctionable practices. It ensures an independent and transparent central assessment of administrative sanctions and the respect of the fundamental rights of the persons and entities 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 by delegation<sup>2</sup> of EU institutions, agencies, offices and bodies. These recommendations are addressed to the requesting authorising officers by delegation who remain sole competent to take the decision to exclude persons or entities and/or to impose a financial penalty on them.

2019 was the first full year in which the Panel operated under the revised Financial Regulation. The latter has brought further improvements to the system. In particular, the provisions related to the system have been streamlined and clarified, the competence of exclusion and/or imposing a financial penalty by authorising officers has been extended to the whole of indirect management<sup>3</sup> and new grounds of exclusion have been introduced.

While the extension of EDES to the whole of indirect management is a procedural rule applicable at once, the additional grounds of exclusion are substantive rules, which only

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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, responsible for implementing revenue and expenditure in accordance with the principle of sound management, including through ensuring reporting on performance, and for ensuring compliance with the requirements of legality and regularity and equal treatment of recipients of EU funds.

<sup>3</sup> Previously the competence of authorising officers was limited to indirect management with third countries, in case the latter were not in a position to exclude themselves unreliable persons and entities.

apply to the future effects of situations which arose when the earlier rules applied or to situations arisen after the entry into application of the revised Financial Regulation.

This Staff Working Document presents the fourth year of activity of the EDES Panel and also includes the first semester of 2020.

## **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>4</sup> are appointed by the Commission and are independent in the performance of their duties<sup>5</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 Szałasewski who is Principal Advisor in the Secretariat General of the Commission, and

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<sup>4</sup> The rules applicable to the Deputies are to be found in the Rules of Procedure of the Panel. They are *mutatis mutandis* those applicable to the Chair.

<sup>5</sup> Article 144(3) of the Financial Regulation.

Mr. Olivier Waelbroeck, Director of the Central Financial Service in the Directorate-General for Budget<sup>6</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 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.

The Panel has its own Rules of Procedures which are established by Commission Decision 2018/1220<sup>7</sup>. These rules aim to govern the way the Panel organise its work and to make them clear for all parties involved, including the persons or entities subject to an exclusion procedure. They implement and supplement the rules of Article 143 of the Financial Regulation.

## **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 unreliable persons and entities have to first request a recommendation of the Panel. The grounds for exclusion which require a Panel recommendation are the following:

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<sup>6</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.

<sup>7</sup> Commission Decision (EU) 2018/1220 of 6 September 2018 on the rules of procedure of the panel referred to in Article 143 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 226, 7.9.2018, p.7).

## SWD REPORT ACTIVITY 2019

- 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>8</sup> and;
- in 2018, two additional grounds for 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 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 meetings. In the first one, 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 given the possibility of submitting observations in writing. In the second one, the Panel examines the written observations, if any, and adopts its recommendation which is addressed to the requesting authorising officer. It should be noted that in view of the situation created by COVID-19, the Panel proceedings have mostly continued under written procedures over the first half of 2020. In doing so, the Panel has taken particular care to comply with its obligations, in particular with regard to the respect of the right of

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<sup>8</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.*"

defense of the persons and entities concerned and the conditions surrounding its deliberations.

As a general rule, the Panel must adopt this recommendation within three 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.*, and foremost to ensure that the right to be heard is respected. However, in urgent important cases, provided that the fundamental right to be heard is fully maintained, the Panel is flexible and can act more swiftly, where for instance a long duration of the procedure can result in difficulties for the administrative operation of the Commission or institution or EU body concerned. By way of consequence, the requests of recommendation addressed to the Panel, also taking into account other measures needed for permitting it to start its proceedings, are not necessarily processed in the order in which they are submitted through the secretariat.

The person or entity concerned by the procedure is granted three weeks as a general rules to submit observations. By way of exception, following a reasoned request by the person or entity concerned, the deadline may be extended, by no more than half the period initially granted. In practice, the Panel takes particular care of ensuring full compliance with the observance of the right to be heard, nonetheless since it allows it to adequately inform its recommendations, making a balance between incriminating and exonerating circumstances.

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 therefore principally relies on:

- a) facts established in the context of audits or investigations carried out by the European Public Prosecutor's Office<sup>9</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;

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<sup>9</sup> It will be operational at the earliest in November 2020.

- c) facts referred to in decisions of persons and entities implementing Union funds under indirect management;<sup>10</sup>

information transmitted by entities implementing Union funds under shared management with Member States and;

- 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 person or entity 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 need to exclude the economic operator concerned and, in that case, the recommended duration of such an exclusion;
- b) the need to publish the information related to the economic operator which is excluded and/or subject to a financial penalty;
- c) the possibility and the need to impose a financial penalty and its amount and;
- 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.

In practice, the Panel rarely recommends the imposition of financial penalties. The main reason for this is that the Panel sees its mission as protecting the EU financial interests and image as in the first place being of a preventive nature rather than a repressive one. The very purpose of the system of exclusion is to prevent unreliable persons and entities to have access to EU financing and not merely to punish them.

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 giving grounds for his recommendations, the Panel systematically weighs all these circumstances.

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<sup>10</sup> E.g. by the European Central Bank, the European Investment Bank, the European Investment Fund or international organisations.

In particular, after an assessment of the remedial measures the Panel may decide to recommend imposing no sanctions on the person or entity. This is based on the procurement Directives<sup>11</sup> in order, where the economic operator has “cleaned up” 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 person or entity for receiving and spending Union funds in future. In addition, excluded persons or entities can take remedial measures after being excluded and/or fined. In such case, the competent authorising officer shall *ex officio* or on request from that person or entity, refer a case to the Panel which may revise its former recommendation, where it concludes that new elements have been submitted that demonstrate that the exclusion situation does no longer exist. In such case, the burden of proof is reversed, and the person or entity concerned has to demonstrate to the Panel that the measures taken are sufficient for ensuring its recovered reliability and that the situation of exclusion does no longer exist.

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

In the light of the principle of proportionality<sup>12</sup> and the remedial measures taken by the economic operator concerned<sup>13</sup>, if any, the Panel can recommend:

- The exclusion of the person or entity concerned for up to three years (up to five years in the case of fraud, corruption and any similar activities punishable under criminal 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>14</sup> of maximum 10 % of the total value of the contract on a person or entity that 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;

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<sup>11</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>12</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>13</sup> Where remedial measures demonstrate the recovered reliability of the economic operator, no sanctions can be imposed on it.

<sup>14</sup> Article 138 of the Financial Regulation.

(i) either as an alternative to a decision to exclude the person or entity, 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 person or entity has adopted a systemic and recurrent conduct with the intention of unduly obtaining Union funds<sup>15</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>16</sup>.

With due 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 strictly followed the Panel recommendations without deviations.

### **3. THE PUBLICATION OF SANCTIONS IMPOSED ON PERSONS AND ENTITIES**

The publication of the sanctions is a powerful tool to ensure a deterrent effect and to prevent misuse of EU funds. Currently, there are 10 sanctions 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 to cooperate with investigations or audits, or the recurrence of a conduct. In addition, the publication can only intervene three months after the decision is taken by the authorising officer, by

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<sup>15</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>16</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.

which time the decision may have been challenged before the General Court. In some cases<sup>17</sup>, the publication will only take place after the judgment of the General Court or that of the Court of Justice, if there has been an appeal, have been delivered, should the last judgment uphold the decision of the Authorising Officer. Following this rule, there are [4] decisions waiting for publication.

#### **4. INCREASED COOPERATION WITH OLAF**

The use of information resulting from OLAF investigations and reports is key to the exclusion system and the success of the protection of EU financial interests.

In the light of the OLAF Regulation<sup>18</sup>, the Financial Regulation (FR) and the Rules of Procedure of the Panel, it has been clarified at Commission level how the competent authorising officers may use information contained in OLAF reports and other information stemming from or relating to OLAF investigations, in the context of EDES procedures. Based on the information contained in an OLAF report or other information transmitted by OLAF, it has been confirmed that it is the responsibility of the competent authorising officers to decide on any actions to be undertaken, including requesting a recommendation on an administrative sanction from the Panel.

In this respect, information related to the preservation of the confidentiality of the investigations conducted or coordinated by OLAF, including the protection of whistle-blowers, and that of national investigations or judicial proceedings or those by the European Public Prosecutor's Office cannot be disclosed.

In compliance with the principles of the rights of defence and that of 'equality of arms', during administrative proceedings, in line with Article 13 of the Rules of Procedure of the Panel only documents which the person or entity concerned has been able to examine are taken into account by the Panel in its recommendation on sanctions and by the competent authorising officer in the ensuing administrative decision. This means that the information communicated to the person or entity concerned in the context of the adversarial procedure may be redacted, in which case, the Panel will only take into consideration the redacted version of the OLAF report.

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<sup>17</sup> This depends on the legislation applicable at the time the misconduct occurred. For facts that took place from 2016 onwards, the publication is made three months after its notification to the person or entity concerned, notwithstanding the lodging of an action contesting the decision. This means that the deferral of the publication of cases should gradually disappear over time.

<sup>18</sup> 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 (OJ L 248 18.9.2013, p. 1).

This rule will be applicable *mutatis mutandis* for information stemming from the European Public Prosecutor's Office, once the latter has started assuming the investigative and prosecutorial tasks conferred on it. Also, the same principle applies to all documents used by the Panel, in particular audit reports.

## **5. FIRST INTER-INSTITUTIONAL PANEL PROCEDURES**

Most cases are referred to the Panel by Commission departments or executive agencies, which bear responsibility for implementation of operational expenditure under direct and indirect management covered by the general budget of the EU. However, in line with Article 317 of the Treaty on the Functioning of the European Union and Article 59 of the Financial Regulation, EU institutions other than the Commission are responsible for the implementation of their respective administrative expenditure.

For the first time in 2019, a case was referred to the Panel by a EU institution other than the Commission, in the context of a tender procedure related to its administrative expenditure. In this case, in addition to the Commission, six other EU institutions and two decentralised agencies were concerned by the case and were invited as observers to the proceedings.

This case has shown that the Panel, when it proceeds to its assessment, may need useful information stemming from various authorising officers from different institutions and EU agencies and bodies helping it in arriving to its assessment. In particular, the Panel attaches great importance to having a detailed knowledge of the situations concerned and of the surrounding circumstances.

## **6. NOTIFICATION OF ADVERSARIAL LETTERS**

It is settled case-law that a decision is properly notified within the meaning of the sixth paragraph of Article 263 and the third subparagraph of Article 297(2) of the Treaty on the Functioning of the European Union if it reaches the addressee and puts the latter in a position to take cognisance of it<sup>19</sup>.

It is also common ground that unreliable and fraudulent persons and entities may try to conceal themselves either in a contractual context in order to not reimburse unduly received funds or in jurisdictional or administrative procedure in order not to be sanctioned.

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<sup>19</sup> See in particular judgment of 21.2.2018, C-326/16, not yet published,

In this respect, in cases, where, despite all efforts made by the Panel secretariat to notify the adversarial letters to entities or persons, there is a high probability that they have received them, even though they have continuously and deliberately not acknowledged their receipt, the Panel cannot rely on a presumption that the notifications have been properly effected. Obviously, authorising officers meet the same difficulties when notifying decisions of exclusion.

While it affects the conduct of some proceedings before the Panel, this situation is in the end mostly potentially detrimental to the efficient protection of the financial interests of the EU.

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

In 2019, the Commission has continued its efforts to raise awareness all over the board. In particular:

- by 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, by strengthening the internal cooperation with the Office at senior level, including as regards the monitoring of OLAF administrative and financial recommendations and;
- by developing a targeted communication strategy.

## **8. OVERVIEW OF CASES**

In 2019, 19 referrals<sup>21</sup> to the Panel were made through its permanent secretariat by authorising officers. In addition, 3 cases sent to the permanent secretariat in 2018 are considered in the present report, since they were, once the respective files had been completed, dealt with by the Panel in 2019 and early 2020. One case submitted in early 2020 has also been taken into consideration.

Out of these 23 referrals, the Panel issued a recommendation to exclude economic operators from EU funds in 10 occurrences. This was based on various legal grounds,

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

<sup>21</sup> Admissible from the administrative point of view.

including fraud, grave professional misconduct and significant breaches with complying with main obligations in the implementation of a contract.

In 5 out of the 10 cases, the Panel also recommended to register in the EDES database “*persons with power of representation, decision-making or control*” over the excluded company, as linked to the exclusion. The purpose of this registration is to inform all authorising officers that these individuals were personally involved in the related situations of exclusion of the entities concerned.

In 2 cases, the Panel recommended not to impose sanctions, in 1 since the conditions for the application of Article 136(4) of the Financial Regulation<sup>22</sup> were not met and in the other, in application of the principle of proportionality.

In 7 cases, the Panel did not adopt recommendations mostly because the cases were definitively or temporarily inadmissible for – somewhat complex – legal motives.

In 2 cases, the requesting authorising officers withdrew their referral. 2 cases referred in 2019 are still under instructions and should be soon submitted to the Panel.

As regards the 10 recommendations adopted so far, [8] decisions have been taken by the authorising officers concerned. Two further decisions should have been adopted at the date of publication of this report. All decisions already adopted follow in full the corresponding recommendation of the Panel.

In addition, out of the 10 recommendations, the Panel recommended in 7 cases<sup>23</sup> that the sanctions were published. The publication was justified by *e.g.* the inherent gravity of the violations and the high impact of the EU financial interests and/or image.

Overall, out of the [83] cases referred to the Panel so far<sup>24</sup> since its setting-up, the Panel has adopted 43 recommendations, including in 5 cases a recommendation of non-exclusion. This has led until now to [33] exclusion decisions taken by authorising officers.

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<sup>22</sup> This provision provides *i.a.* that a person or entity shall be excluded where ‘a natural or legal person who is a member of a member of the administrative, management or supervisory body of the person or entity subject to exclusion, or who has powers of representation, decision or control with regard to that person or entity is in one or more of the most prominent situations of exclusion.

<sup>23</sup> Up to now, [x] out of these 7 cases have been already published.

<sup>24</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.

## SWD REPORT ACTIVITY 2019

The following table presents an overview of the cases where the Panel issued a recommendation in 2019 and 2020 for the cases submitted to it in 2018 and where the recommendations were issued in the first semester of 2020. 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 contested before the EU Court of Justice.

The Court of Justice has again upheld the validity of the early-detection and exclusion system (Judgment of the General Court of 13 May 2020 in Case T-290/18, “AGMIN” v Commission). In its judgment the General Court has, in particular, confirmed the validity of the respective roles of the Panel and the authorising officers, and that the adversarial procedure led by the Panel had fully respected the right to be heard of the entity concerned. Since, the Panel has started its proceedings in 2016, 8 applications against exclusion decisions based on its recommendations have been lodged. In 1 case, the decision was annulled for procedural reasons and had to be adopted again. In 3 cases, the Court rejected the applications, and 4 cases are pending.

# SWD REPORT ACTIVITY 2019

## ANNEX 1 - SUMMARY OF ANONYMISED CASES REFERRED TO THE PANEL OF ARTICLE 143 OF THE FINANCIAL REGULATION

| CASE NUMBER         | FACTS                                                                                                                                                                                                                           | CLASSIFICATION IN LAW (exclusion ground)                                                                                                                                                       | Date of The Panel Recommendation | RECOMMENDED SANCTIONS             | RECOMMENDED PUBLICATION                                                                                                                           | Date of decision of the Authorising Officer |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| <b>Case 2018/01</b> | <p>Failure to ensure that payments were made to the other beneficiaries on the project.</p> <p>Failure to submit reports and financial accounts relevant for receiving the financial contribution.</p> <p>Misrepresentation</p> | <p><i>"Significant deficiencies in complying with main obligations in the implementation of the contract"</i></p> <p><i>"Grave professional misconduct"</i></p> <p><i>"Irregularities"</i></p> | <b>26.11.2019</b>                | Exclusion for a period of 3 years | Publication of the exclusion, given the high amount involved, the misrepresentation of information, the serious breach of contractual provisions. | <b>16.12.2019</b>                           |

SWD REPORT ACTIVITY 2019

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|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| <b>Case 2018/01/a</b> | <p>of information to the Contracting Authority</p> <p>The parent company is in an exclusion situation established by a final administrative decision</p>                                         | <p><i>“Exclusion of a natural or legal person with powers of representation, decision or control with regard to that person or entity that is in one or more exclusion situations”</i></p> | <b>15.05.2020</b> | Exclusion period aligned with the sanction to the parent company | No                                                                                                                                 | <b>(About to be adopted)</b> |
| <b>Case 2018/05</b>   | <p>Serious breach of the contractual provisions on the eligibility of costs charged to the EU funded project.</p> <p>Irregularities concerning the use of EU funds.</p> <p>Misrepresentation</p> | <p><i>“Significant deficiencies in complying with main obligations in the implementation of the contract”</i></p> <p><i>“Grave professional misconduct”</i></p>                            | <b>13.11.2019</b> | Exclusion for a period of 3 years.                               | Publication of the exclusion, given the seriousness of the facts, the intentionality of the conduct and the high financial impact. | <b>20.02.2020</b>            |

# SWD REPORT ACTIVITY 2019

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|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|                     | of information during the tender procedure.                                                                                                                                                                             |                                                                                                                                                                 |                   |                                                |                                                                                                                                                                                              |                   |
| <b>Case 2019/01</b> | <p>Situation of conflict of interest.</p> <p>Manipulation of tender procedure.</p> <p>Obstruction to audit and verification by the Contracting Authority.</p> <p>Ineligible costs charged on the EU funded project.</p> | <p><i>“Significant deficiencies in complying with main obligations in the implementation of the contract”</i></p> <p><i>“Grave professional misconduct”</i></p> | <b>18.07.2019</b> | Exclusion for a period of 2 years              | Publication of the exclusion, given the high impact on the image and reputation of the European Union as well as the fact that the economic operator has not undertaken any remedial action. | <b>16.10.2019</b> |
| <b>Case 2019/02</b> | Activities of anti-Semitic nature, inciting to violence, and                                                                                                                                                            | <i>“Grave professional misconduct”</i>                                                                                                                          | <b>11.10.2019</b> | Exclusion for a period of 1 year and 6 months. | No                                                                                                                                                                                           | <b>04.11.2019</b> |

# SWD REPORT ACTIVITY 2019

|                     |                                                                                                                                                                                                                                   |                                        |                   |                                                  |                                                                                                                                                                                          |                   |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|-------------------|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|                     | constituting a wrongful conduct which ultimately impacted on the image and reliability of the economic operator.                                                                                                                  |                                        |                   |                                                  |                                                                                                                                                                                          |                   |
| <b>Case 2019/03</b> | <p>Violation of rules governing the procurement procedures by obtaining information conferring upon it undue advantage in the award procedure.</p> <p>Misrepresentation of information to the Contracting Authority as to the</p> | <i>“Grave professional misconduct”</i> | <b>14.11.2019</b> | Exclusion for a period of 1 year and six months. | Publication of the exclusion. The publication is considered justified due to the seriousness of the misconduct, as well as the impact on the image and reputation of the European Union. | <b>22.01.2020</b> |

SWD REPORT ACTIVITY 2019

|                     |                                                                                                                                                                                                                                                                     |                                                                                                                                                                 |                   |                                    |                                                                                                                                                                                                                                                                                                                                      |                   |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|                     | presence of conflict of interest situation.                                                                                                                                                                                                                         |                                                                                                                                                                 |                   |                                    |                                                                                                                                                                                                                                                                                                                                      |                   |
| <b>Case 2019/04</b> | <p>Leak of confidential information related to an ongoing tender procedure.</p> <p>Misrepresentation of information to the Contracting Authority as to the presence of a conflict of interest situation.</p> <p>False declarations during the tender procedure.</p> | <p><i>“Significant deficiencies in complying with main obligations in the implementation of the contract”</i></p> <p><i>“Grave professional misconduct”</i></p> | <b>14.11.2019</b> | Exclusion for a period of 2 years. | Publication of the exclusion given the seriousness of the misconduct, as well as the impact on the image and reputation of the European Union. In particular, the manipulation of the procurement procedure by collusive practices led to the non-respect of principle of equal treatment and non-discrimination between applicants. | <b>03.02.2020</b> |

SWD REPORT ACTIVITY 2019

|                |                                                                                                                          |                                                                                                                                                                                                                                   |                                                                                              |                                                  |                                                                               |                   |
|----------------|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|--------------------------------------------------|-------------------------------------------------------------------------------|-------------------|
| <b>2019/05</b> | Failure to comply with the provision on the rule of origin for supplies contracts.                                       | <i>"Grave professional misconduct"</i>                                                                                                                                                                                            | <b>18.12.2019</b>                                                                            | Exclusion for a period of 1 year and six months. | No                                                                            | <b>21.02.2020</b> |
| <b>2019/06</b> | Misrepresentation of information during the tender procedure.<br><br>The subsidiary company is in an exclusion situation | <i>"Grave professional misconduct"</i><br><br><i>"Exclusion of a natural or legal person with powers of representation, decision or control with regard to that person or entity that is in one or more exclusion situations"</i> | <b>None.</b> Panel reply of 24.9.2019 instead: case inadmissible (limitation period reached) | No                                               | No                                                                            | <b>No</b>         |
| <b>2019/07</b> | Serious breach of contractual provisions on the eligibility of costs                                                     | <i>"Significant deficiencies in complying with main obligations in the</i>                                                                                                                                                        | <b>13.11.2019</b>                                                                            | Exclusion for a period of 1 year.                | Publication of the exclusion, given the seriousness of the misconduct and the | <b>04.02.2020</b> |

# SWD REPORT ACTIVITY 2019

|                |                                                                                                                                |                                                                                                            |                                                                                                                              |                                      |                                                                            |                      |
|----------------|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|----------------------------------------------------------------------------|----------------------|
|                | charged to an EU funded project.                                                                                               | <i>implementation of the contract"</i>                                                                     |                                                                                                                              |                                      | impact on the financial interests of the European Union.                   |                      |
| <b>2019/08</b> | Failure to comply with contractual provisions on accounting reports and eligibility of costs.<br><br>Irregular subcontracting. | <i>"Significant deficiencies in complying with main obligations in the implementation of the contract"</i> | <b>None.</b> Panel reply instead: inadmissible since outside the legal scope <i>ratione personae</i> of the exclusion system | No                                   | No                                                                         | <b>No</b>            |
| <b>2019/09</b> | Poor performance of the contract.                                                                                              | <i>"Significant deficiencies in complying with main obligations in the implementation of the contract"</i> | <b>None: case withdrawn</b>                                                                                                  | No                                   | No                                                                         | <b>No</b>            |
| <b>2019/12</b> | The entity promised and paid sums to high-level officials in a third                                                           | <i>"Corruption"</i><br><br><i>"Grave professional misconduct"</i>                                          | <b>[xx.06.2020]</b>                                                                                                          | Exclusion for a period of four years | Publication of the exclusion, given the seriousness of the misconduct, the | <b>To be adopted</b> |

# SWD REPORT ACTIVITY 2019

|                |                                                                                                                                                   |                                                                                                                                                                                     |                             |                                                                                                  |                                                                                                            |           |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-----------|
|                | country in order to be awarded EU funded contracts.<br><br>Misrepresentation of information as part of the offer submitted in a tender procedure. |                                                                                                                                                                                     |                             |                                                                                                  | recurrence of the misconduct throughout two contracts [and the high amount of the two contracts involved.] |           |
| <b>2019/13</b> | The entity was involved in tender manipulation.                                                                                                   | <i>"Grave professional misconduct"</i>                                                                                                                                              | <b>None: case withdrawn</b> | No                                                                                               | No                                                                                                         | <b>No</b> |
| <b>2019/15</b> | The parent company is in an exclusion situation established by a non-final administrative decision.                                               | <i>"Exclusion of a natural or legal person with powers of representation, decision or control with regard to that person or entity that is in one or more exclusion situations"</i> | <b>13.11.2019</b>           | Non-exclusion due to the non-final character of the decision on exclusion of the parent company. | No                                                                                                         | <b>No</b> |

# SWD REPORT ACTIVITY 2019

|                |                                                                                                         |                                                                                                                                                                                     |                                                                                                                                    |    |    |           |
|----------------|---------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|----|----|-----------|
| <b>2019/16</b> | The subsidiary company is in an exclusion situation established by a non-final administrative decision. | <i>“Exclusion of a natural or legal person with powers of representation, decision or control with regard to that person or entity that is in one or more exclusion situations”</i> | <b>None:</b> Panel reply of 28.1.2020 instead: inadmissible as long as the exclusion of the parent company is not yet final        | No | No | <b>No</b> |
| <b>2019/17</b> | The subsidiary company is in an exclusion situation                                                     | <i>“Exclusion of a natural or legal person with powers of representation, decision or control with regard to that person or entity that is in one or more exclusion situations”</i> | <b>None:</b> Panel reply of 28.1.2020 instead: inadmissible as the competence to exclude did not yet exist when the facts occurred | No | No | <b>No</b> |
| <b>2019/18</b> | Manipulation of tender procedure.                                                                       | <i>“Grave professional misconduct”</i>                                                                                                                                              | <b>None:</b> Panel reply of 28.1.2020 instead: inadmissible as the competence to exclude did not                                   | No | No | <b>No</b> |

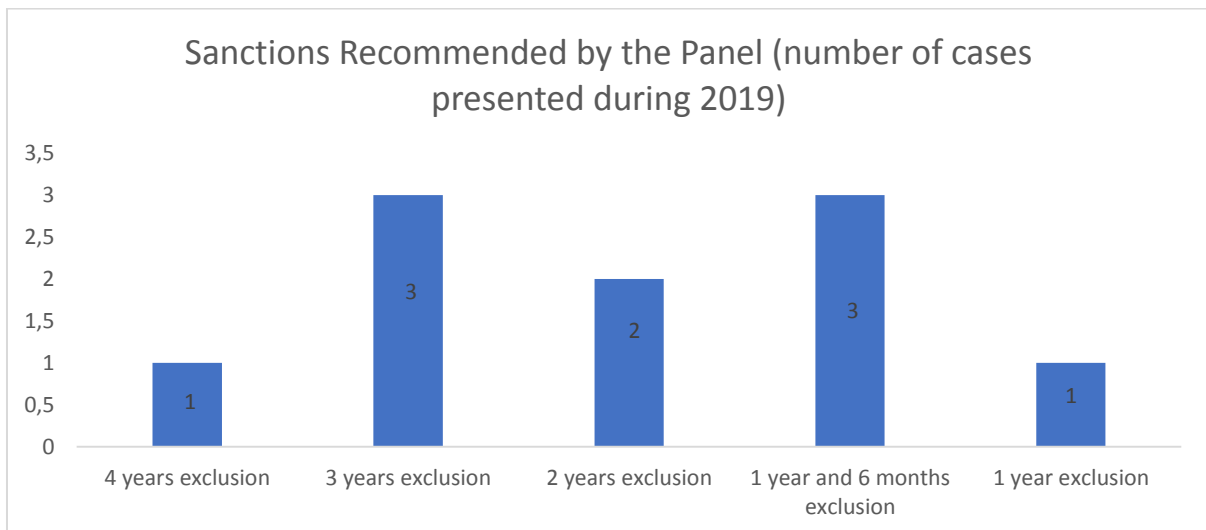
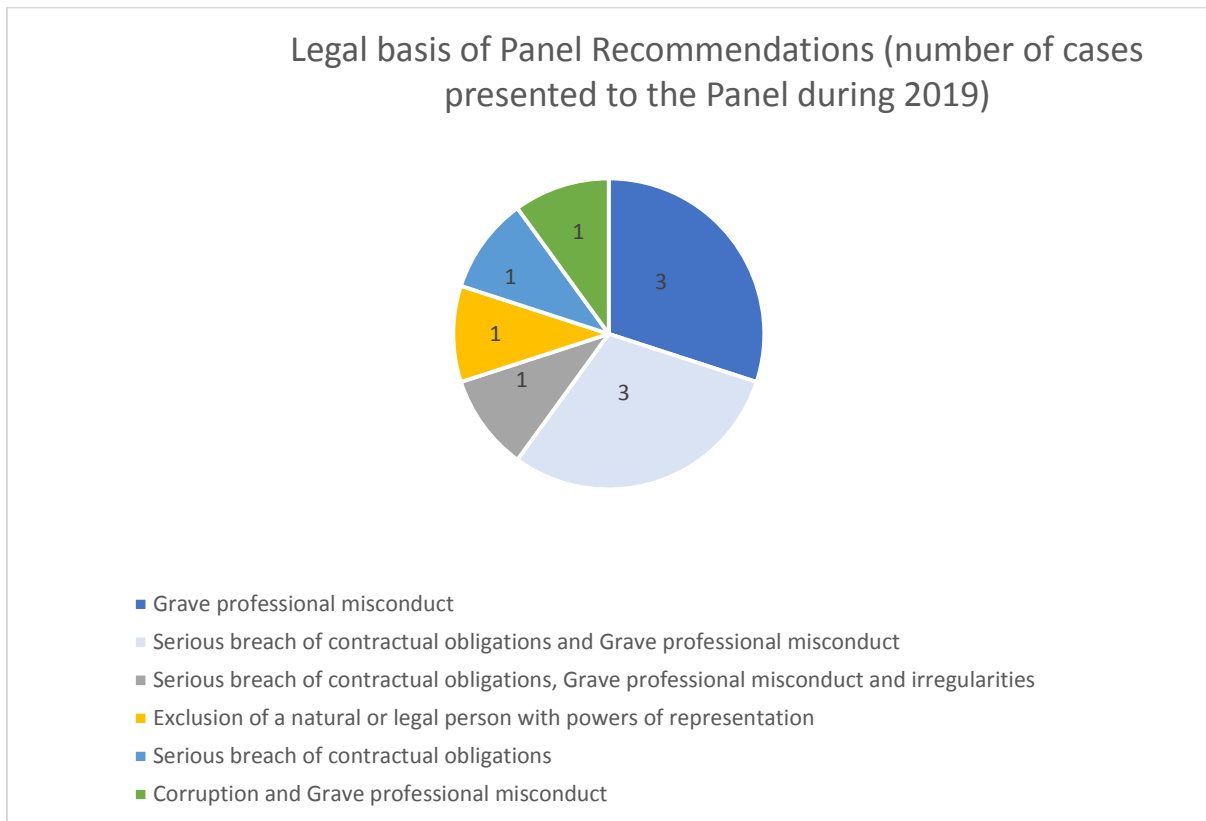
# SWD REPORT ACTIVITY 2019

|                |                                                                                                                                                                                 |                                        |                                                                                                       |                                                                  |    |           |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|-------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|----|-----------|
|                |                                                                                                                                                                                 |                                        | yet exist when the facts occurred                                                                     |                                                                  |    |           |
| <b>2019/19</b> | Violation of rules governing the procurement procedure.                                                                                                                         | <i>“Grave professional misconduct”</i> | <b>None.</b> Panel reply of 28.1.2020 instead: inadmissible as the limitation period has been reached | No                                                               | No | <b>No</b> |
| <b>2019/20</b> | Non-final decision of a national competition authority according to which the entity has entered into an agreement with other companies with the aim of distorting competition. | <i>“Grave professional misconduct”</i> | <b>29.05.2020</b>                                                                                     | Non-exclusion by application of the principle of proportionality | No | <b>No</b> |

# SWD REPORT ACTIVITY 2019

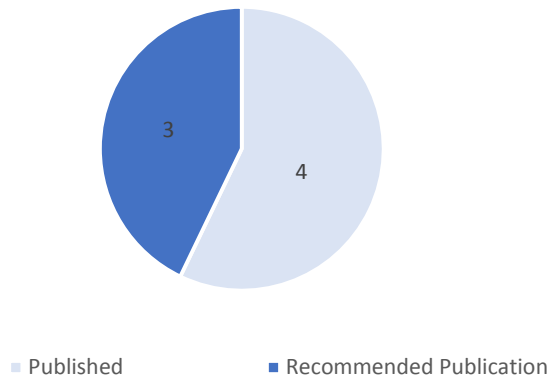
|         |                                                                                                                                                                                                                                                                                                   |                                        |                                                                                                                                                                           |    |    |           |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|-----------|
| 2020/01 | <p>The entity on whose capacity the candidate or tenderer intend to rely is in an exclusion situation.</p> <p>Non-final decision of a national competition authority according to which the entity has entered into an agreement with other companies with the aim of distorting competition.</p> | <i>“Grave professional misconduct”</i> | <p><b>None:</b> Panel reply of 15.5.2020 instead: inadmissible since conditions <i>ratione personae</i> for imposing sanctions not met at the time the facts occurred</p> | No | No | <b>No</b> |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|-----------|

ANNEX 2 – CHARTS

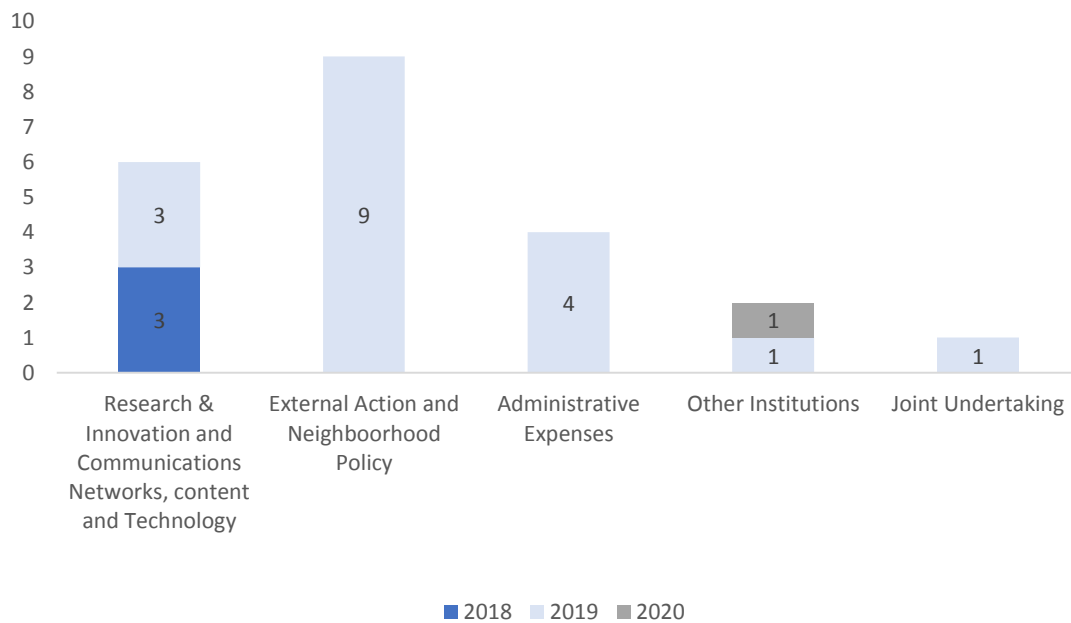


## SWD REPORT ACTIVITY 2019

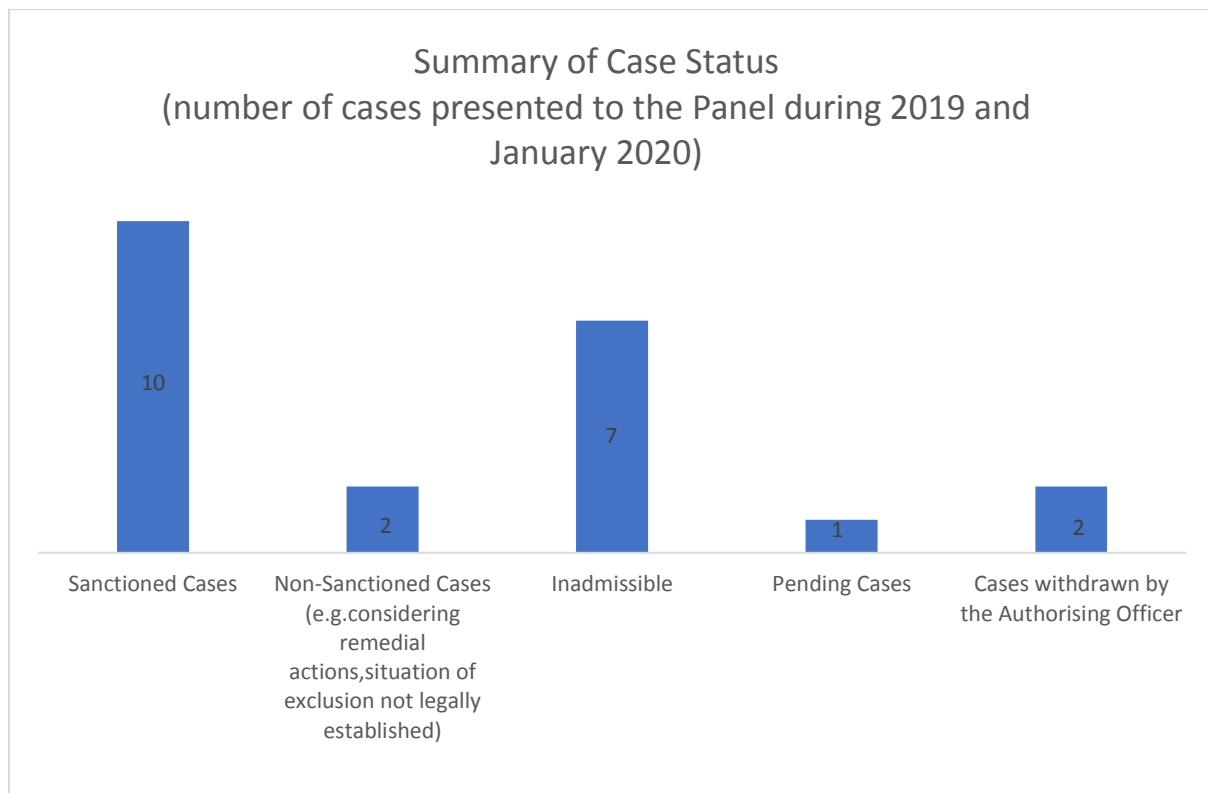
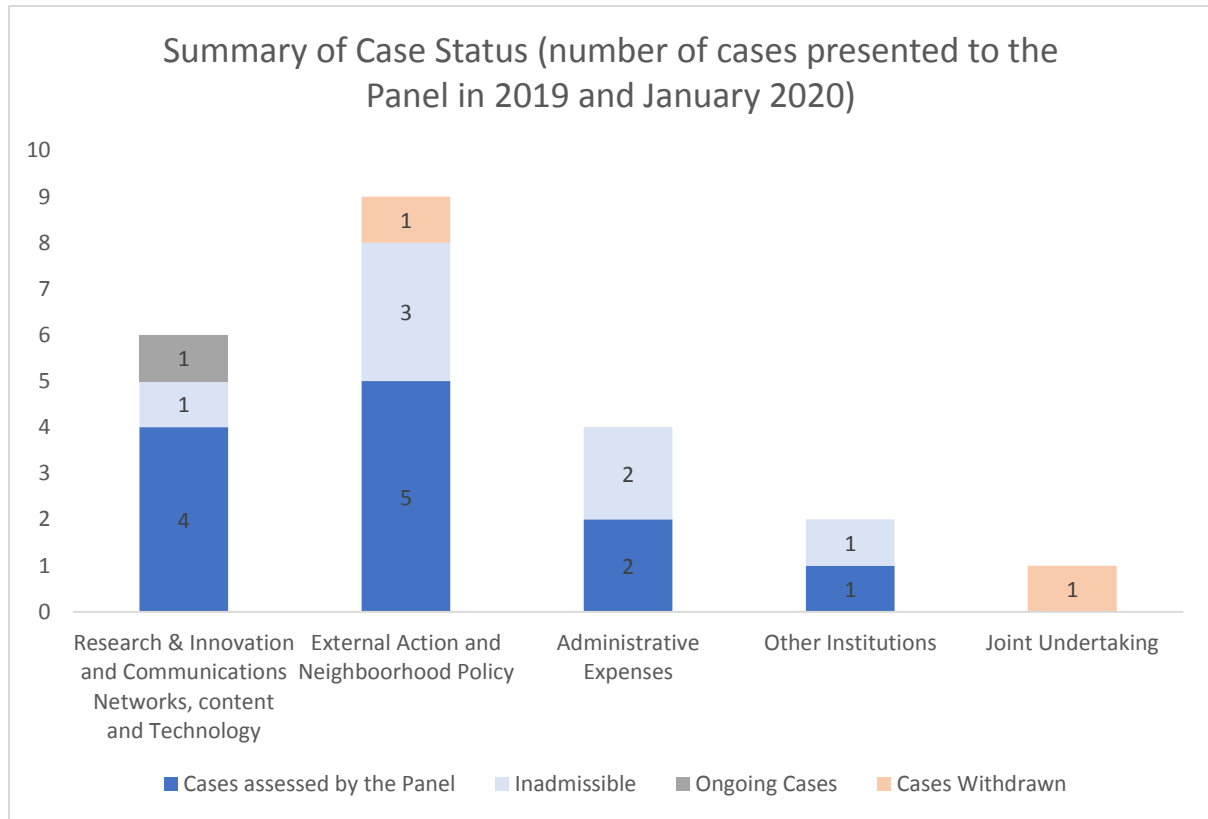
Recommended Publication (number of cases presented to the Panel during 2019)



Summary of Cases per Year of filing (number of cases presented to the Panel during 2019 and January 2020)



## SWD REPORT ACTIVITY 2019



## SWD REPORT ACTIVITY 2019

Sources of triggering the Panel Cases presented in 2019 and January 2020

