

Anti-corruption data in Brazil

Administrative Responsibility Procedure ("PAR")



Since the Anti-corruption Law (Law 12,846/2013) was enacted in 2013, the fight against corruption has been intensified in Brazil. Anti-corruption regulation was taken further in 2015 after Decree 8,420/2015 was enacted. Since then, we witness an exponential growth in investigations and on the application of sanctions arising from the Anti-corruption law.



Law 12,846/13 and Decree 8,420/2015 brought about an innovation in the Brazilian legal system to the extent that they provided for the strict liability of private companies' harmful acts against the domestic and foreign Public Administration.



The Administrative Responsibility Procedure ("PAR") was provided for in Decree 8,420/2015 and the General Controller's Normative Instruction 13/2019. It aims to ascertain the administrative liability of the private company involved in the illegal practices described in the Anti-corruption law.



For this presentation, Mattos Filho analyzed the data about PAR initiated by the Federal Government and by the General Controller's Office ("CGU").

OVER THE SIX YEARS OF THE ANTI-CORRUPTION LAW THE FOLLOWING SANCTIONS HAVE BEEN APPLIED:



BRL 22,347,335.95 in fines to private companies



16,749 sanctions against private companies



1,905 restrictions on contracting with the public administration remain in force.

The General Controller's Office ("CGU") – Administrative Responsibility Procedure ("PAR")

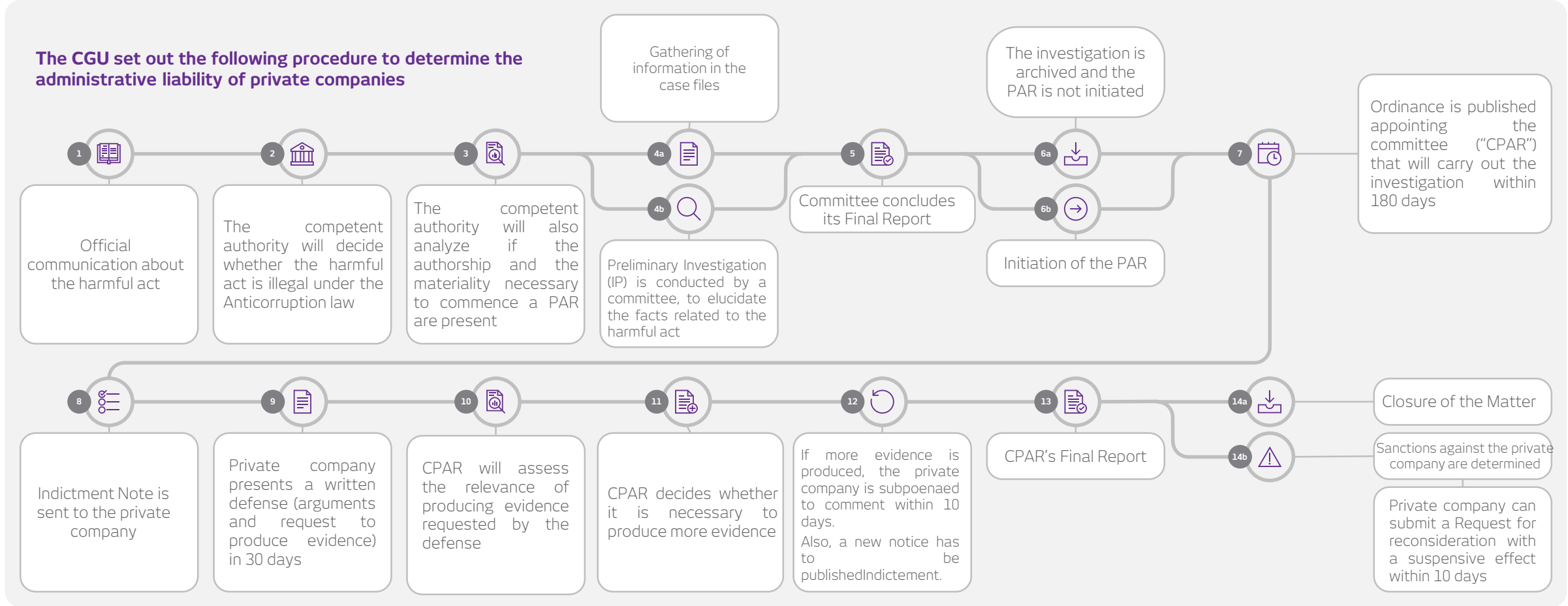
Since the **Anti-corruption law** came into force, private companies could be held strictly liable for harmful acts against the Public Administration (domestic and foreign) that were performed by any individual or legal entity in their interest or benefit.

Prohibited conducts under the Anti-corruption law

- payment of undue advantage to a public official or a related third party
- Bid-rigging
- financing of unlawful acts under the law
- obstruction of investigation or inspection activity
- use of third parties to conceal interests

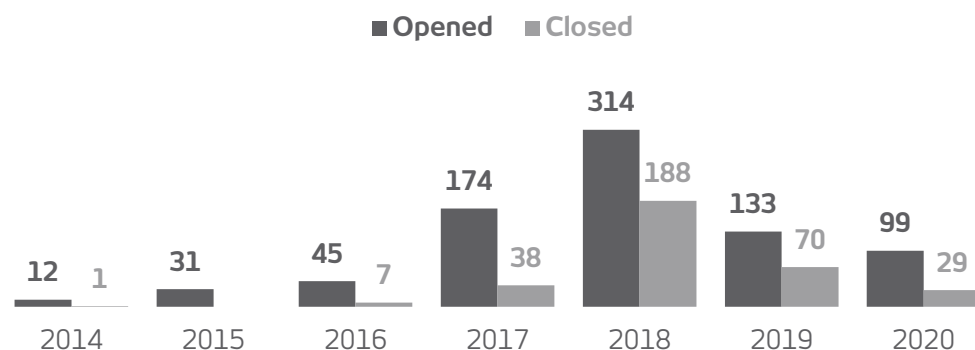
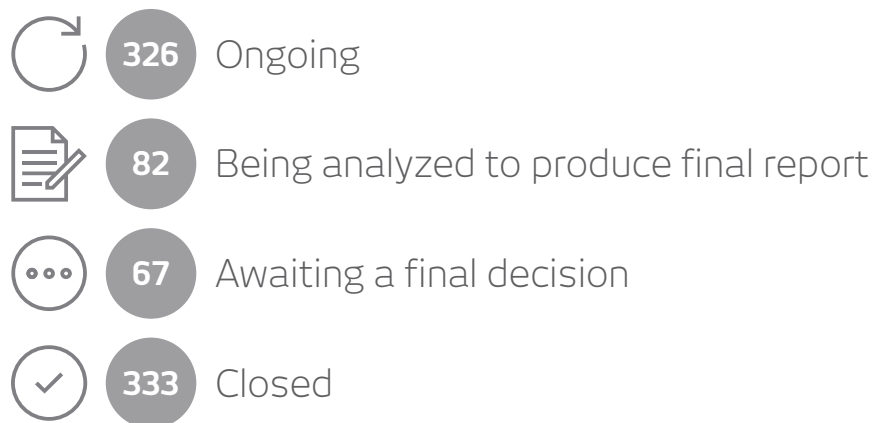
Administrative penalties

- Fines ranging from 0.1% to 20% of gross revenue from the last financial year prior to the opening of the administrative procedure, never less than the amount of the advantage received.
- Extraordinary publication of the condemnatory decision.

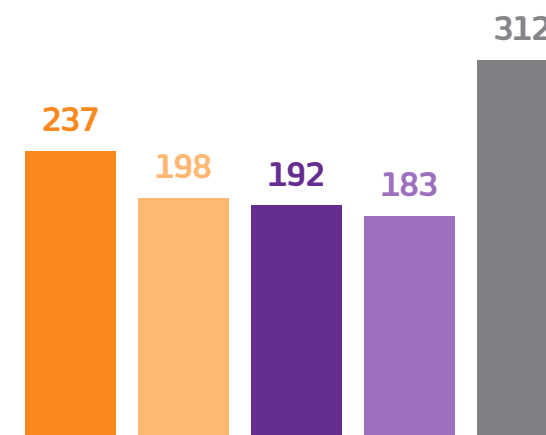


Overview of PARs

The Federal Government and the CGU initiated 808 PARs.
Of that total, there are:



The types of harmful acts investigated in those PAR's were:



Payment of undue advantage or its direct or indirect offer to a public agent or related third party	237
Unjustified failure to comply with clauses in a contract concluded with the public authorities	198
Fraud in public administration bidding procedure	192
Disreputable behavior	183
Others	312

The same PAR can be initiated based on more than one matter

Heat Map: ranking of ministries

LOWER RATES OF PARS INITIATED

MINISTRY OF HEALTH ("MS")

48 total PARs initiated

4 Under production of evidence
6 Awaiting final report and decision
38 Closed

MINISTRY OF INFRASTRUCTURE ("MI")

31 total PARs initiated

23 Under production of evidence
4 Awaiting final report and decision
4 Closed

MINISTRY OF CITIZENSHIP ("MC")

7 total PARs initiated

3 Under production of evidence
4 Awaiting final report and decision
0 Closed

MINISTRY OF JUSTICE AND PUBLIC SAFETY ("MJSP")

56 total PARs initiated

21 Under production of evidence
10 Awaiting final report and decision
25 Closed

MINISTRY OF AGRICULTURE, LIVESTOCK AND SUPPLY ("MAPA")

52 total PARs initiated

46 Under production of evidence
4 Awaiting final report and decision
2 Closed

MINISTRY OF SCIENCE, TECHNOLOGY, INNOVATION AND COMMUNICATIONS ("MCTI")

52 total PARs initiated

23 Under production of evidence
14 Awaiting final report and decision
15 Closed

LARGEST RATES OF PARS INITIATED

MINISTRY OF ECONOMY ("ME")

203 total PARs initiated

115 Under production of evidence
25 Awaiting final report and decision
63 Closed

MINISTRY OF EDUCATION ("MEC")

187 total PARs initiated

27 Under production of evidence
26 Awaiting final report and decision
68 Closed

GENERAL CONTROLLER'S OFFICE ("CGU")

119 total PARs initiated

47 Under production of evidence
27 Awaiting final report and decision
45 Closed

Leniency Agreements

11 signed
22 in negotiation
13,67 Billions recovered

MINISTRY OF MINES AND ENERGY ("MME")

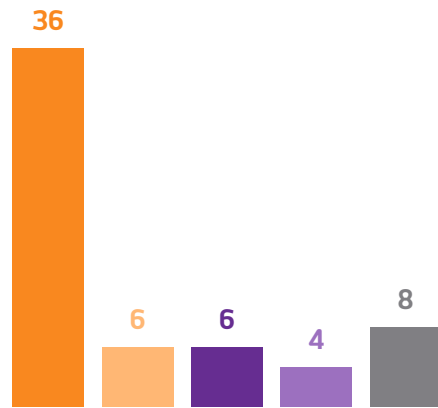
119 total PARs initiated

38 Under production of evidence
6 Awaiting final report and decision
75 Closed

 Click on the public bodies for more information

Ministry of Health data

Harmful acts that were investigated

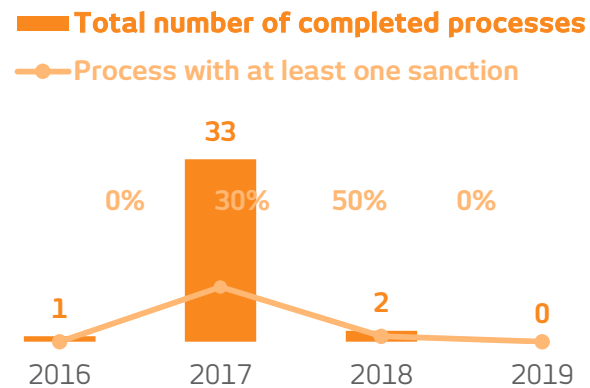


Payment of undue advantage or its offer, directly or indirectly, to a national public agent or related third party	36
Diresputable behaviour	6
Fraud in national public administration bidding procedure	6
Fraud in an administrative contract with the national public administration	4
Others	8

The same PAR can be initiated based on more than one matter

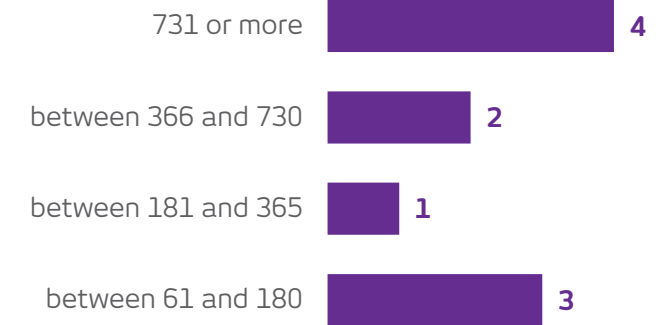
Results

Cases with at least one sanction



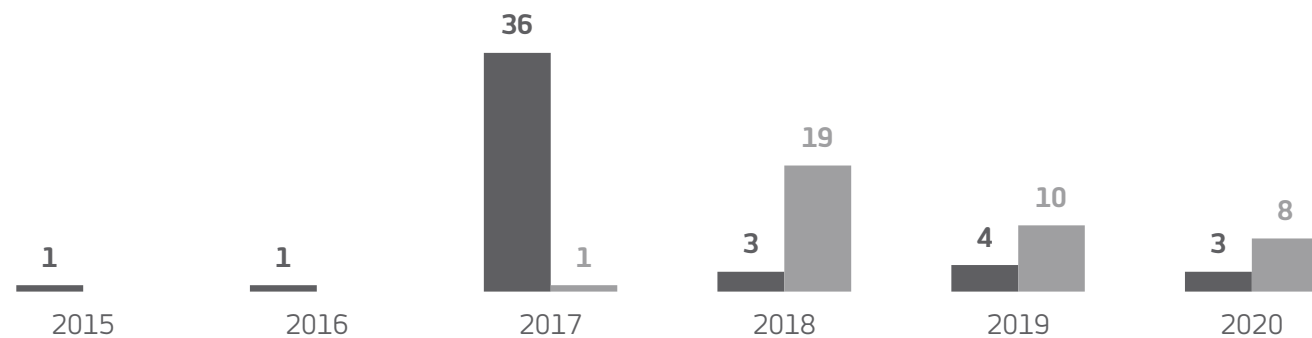
Duration of proceedings

Ongoing processes per range of days



PAR per year

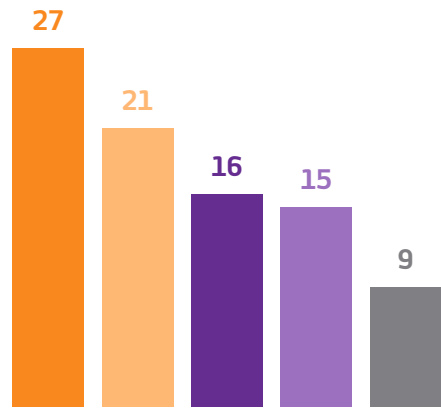
■ Initiated ■ Closed





Ministry of Infrastructure data

Harmful acts that were investigated

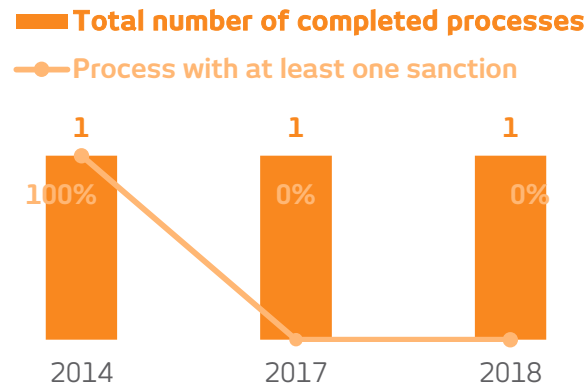


Fraud in national public administration bidding procedure	27
Direputable behaviour	21
Fraud in an administrative contract with the national public administration	16
Payment of undue advantage or its offer, directly or indirectly, to a national public agent or related third party	15
Others	9

The same PAR can be initiated based on more than one matter

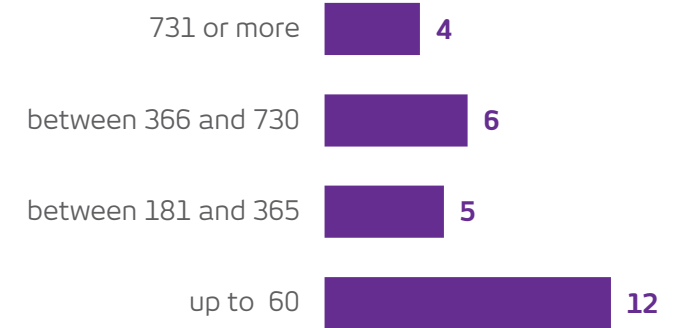
Results

Cases with at least one sanction



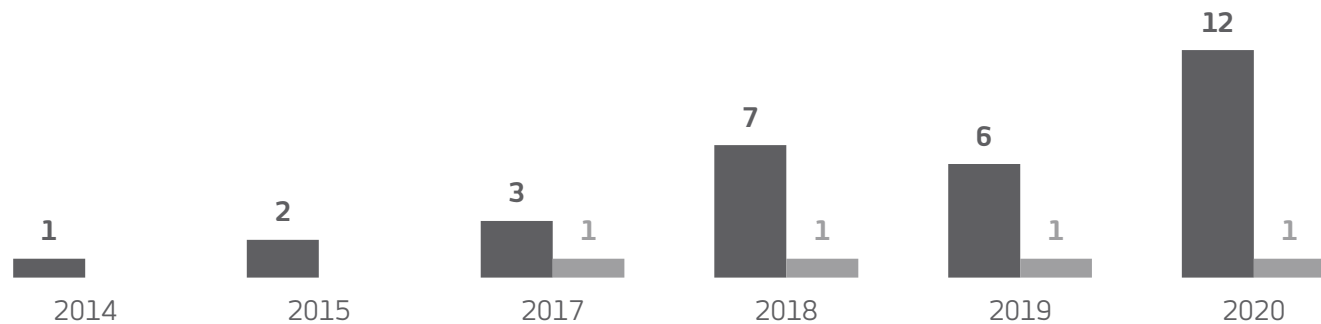
Duration of proceedings

Ongoing processes per range of days



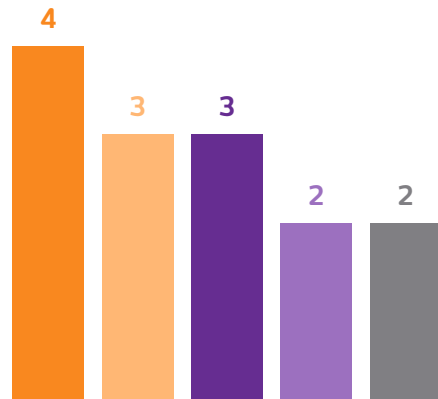
PAR per year

■ Initiated ■ Closed



Ministry of Citizenship data

Harmful acts that were investigated



Disguised use of an intermediary to obtain an undue advantage with the national public administration	4
Direputable behaviour	3
Tax fraud practice	3
Payment of undue advantage or its offer, directly or indirectly, to a national public agent or related third party	2
Others	2

The same PAR can be initiated based on more than one matter

Results

Cases with at least one sanction

■ Total number of completed processes

● Process with at least one sanction

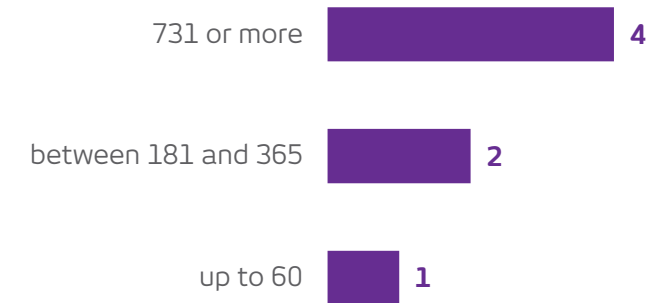
There is no data as PAR's have not yet been concluded.

0%

0

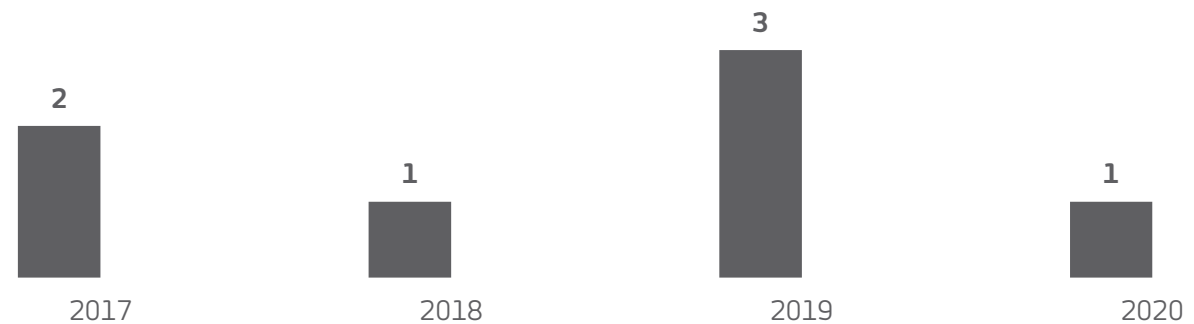
Duration of proceedings

Ongoing processes per range of days



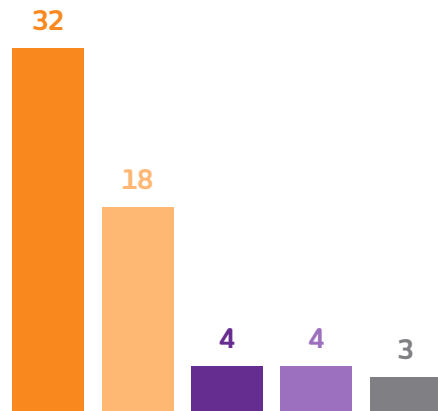
PAR per year

■ Initiated ■ Closed



Ministry of Justice and Public Safety

Harmful acts that were investigated

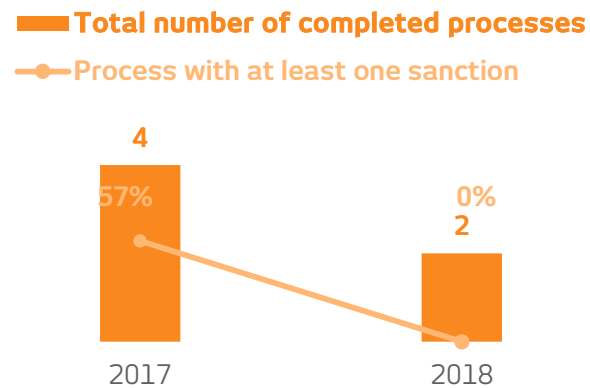


Unjustified failure to comply with clauses in a contract signed with the public authorities	32
Failure to submit documentation within the deadline, failure to maintain the proposal submitted, unjustified refusal to conclude the contract or similar act performed in a bidding procedure	18
Direputable behaviour	4
Fraud in an administrative contract with the national public administration	4
Others	3

The same PAR can be initiated based on more than one matter

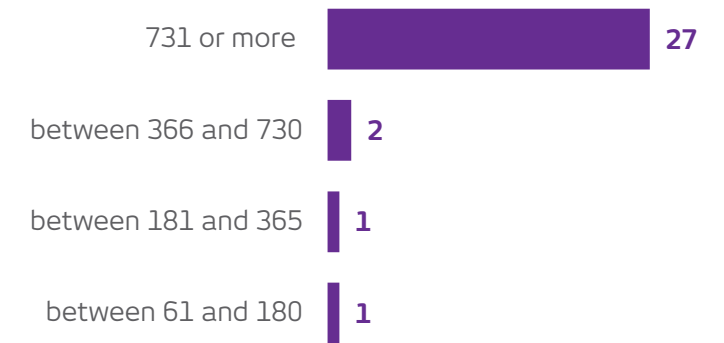
Results

Cases with at least one sanction



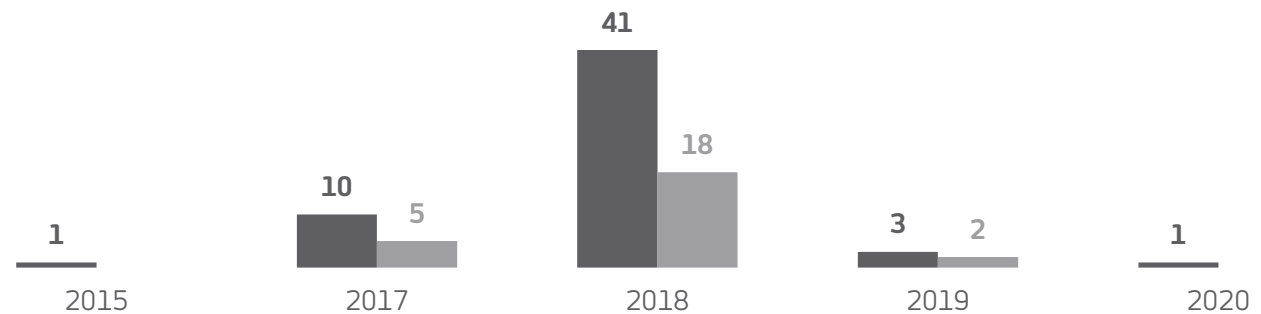
Duration of proceedings

Ongoing processes per range of days



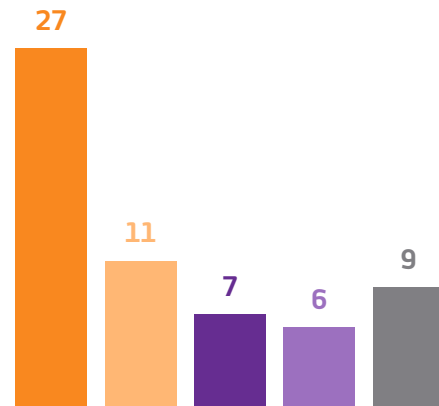
PAR per year

■ Initiated ■ Closed



Ministry of Agriculture, Livestock and Supply data

Harmful acts that were investigated



Payment of undue advantage or its offer, directly or indirectly, to a national public agent or related third party **27**

Disguised use of an intermediary to obtain an undue advantage with the national public administration **11**

Fraud in national public administration bidding procedure **7**

Direputable behaviour **6**

Others **9**

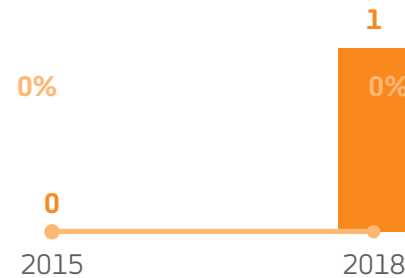
The same PAR can be initiated based on more than one matter

Results

Cases with at least one sanction

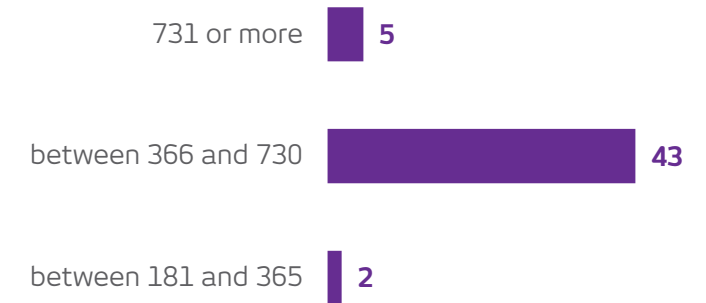
■ Total number of completed processes

—● Process with at least one sanction



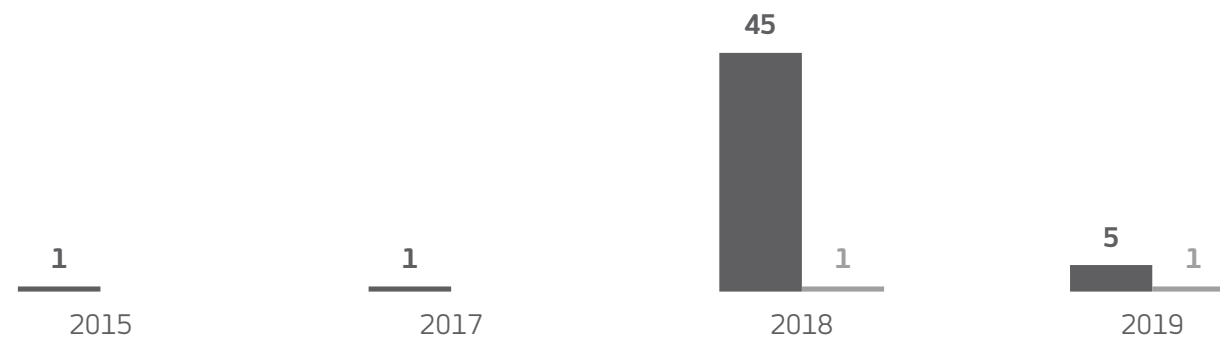
Duration of proceedings

Ongoing processes per range of days



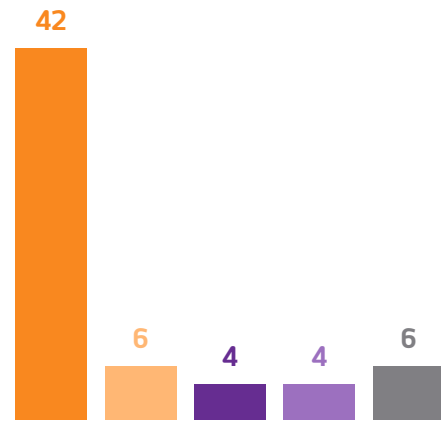
PAR per year

■ Initiated ■ Closed



Ministry of Science, Technology, Innovation and Communications data

Harmful acts that were investigated

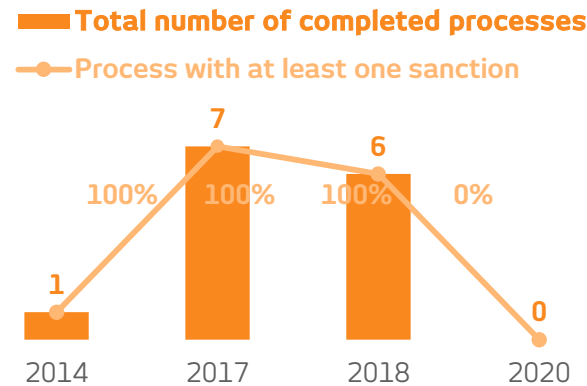


Direputable behaviour	42
Fraud in national public administration bidding procedure	6
Fraud in an administrative contract with the national public administration	4
Payment of undue advantage or its offer, directly or indirectly, to a national public agent or related third party	4
Others	6

The same PAR can be initiated based on more than one matter

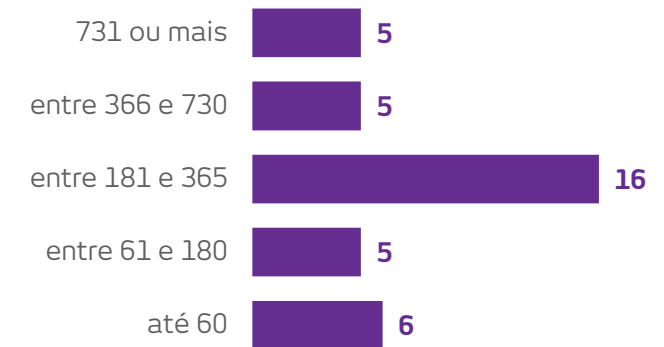
Results

Cases with at least one sanction



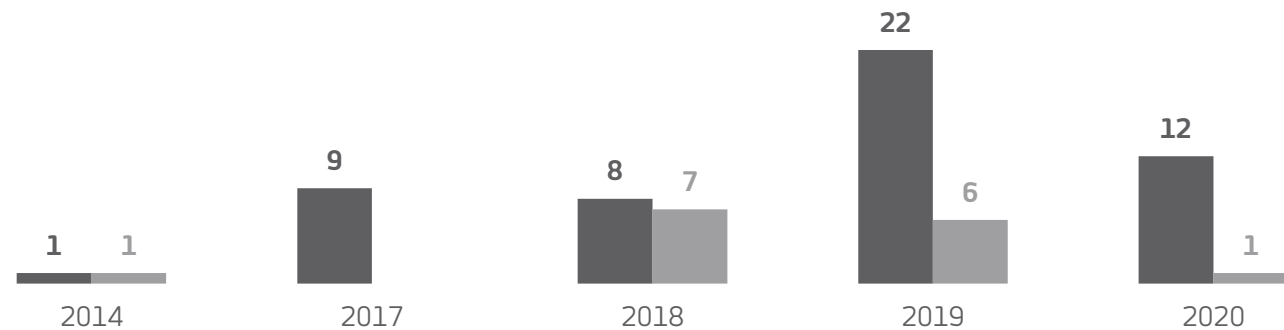
Duration of proceedings

Ongoing processes per range of days



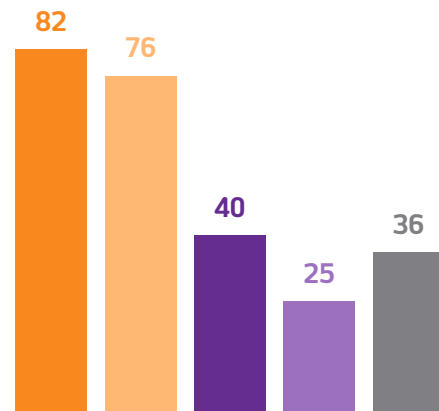
PAR per year

■ Initiated ■ Closed



Ministry of Economy data

Harmful acts that were investigated



Payment of undue advantage or its offer, directly or indirectly, to a national public agent or related third party **82**

Financing/funding/sponsorship/subsidy of illicit act provided for in the Anticorruption Law (Law no. 12,846/2013) **76**

Fraud in national public administration bidding procedure **40**

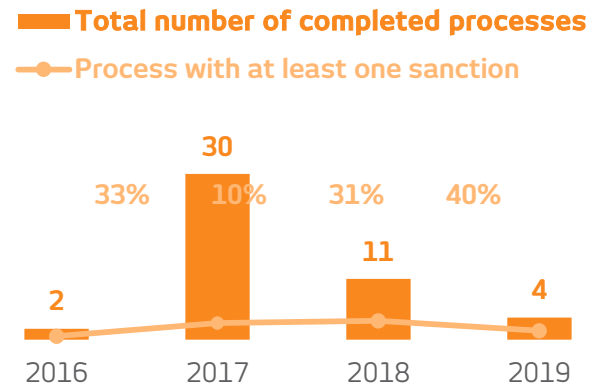
Direputable behaviour **25**

Others **36**

The same PAR can be initiated based on more than one matter

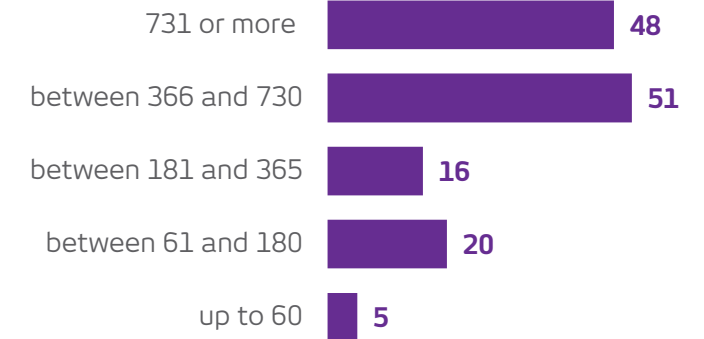
Results

Cases with at least one sanction



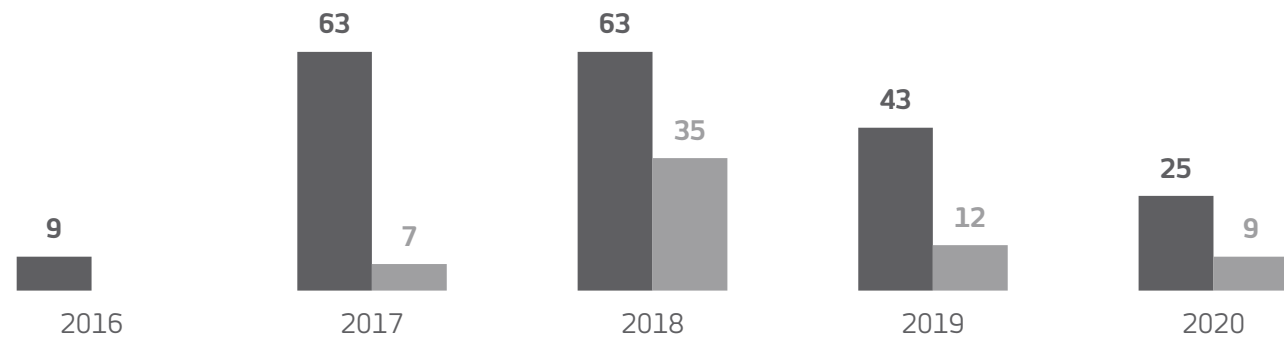
Duration of proceedings

Ongoing processes per range of days



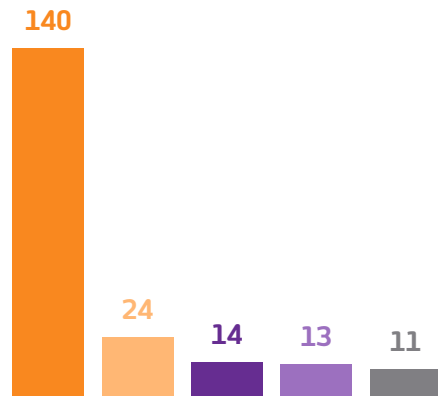
PAR per year

■ Initiated ■ Closed



Ministry of Education data

Harmful acts that were investigated



Unjustified failure to comply with clauses in a contract signed with the public authorities **140**

Failure to submit documentation within the deadline, failure to maintain the proposal submitted, unjustified refusal to conclude the contract or similar act performed in a bidding procedure **24**

Fraud in national public administration bidding procedure **14**

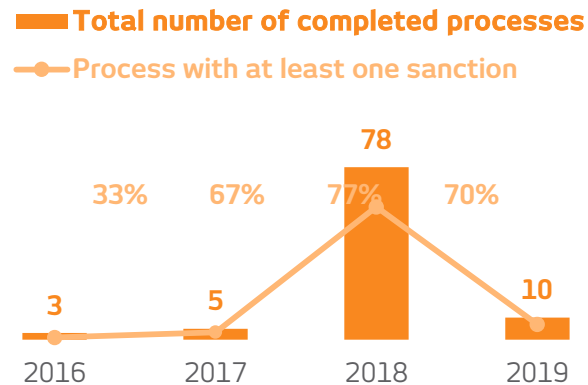
Direputable behaviour **13**

Others **11**

The same PAR can be initiated based on more than one matter

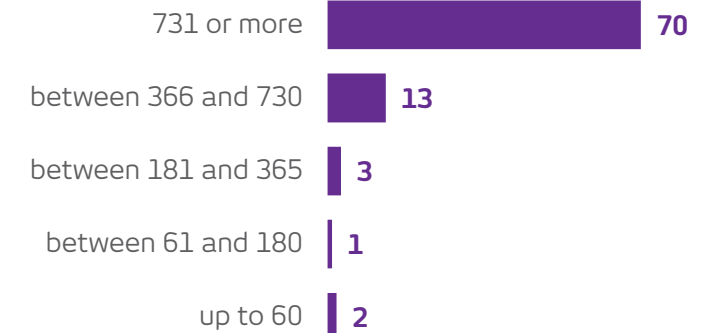
Results

Cases with at least one sanction



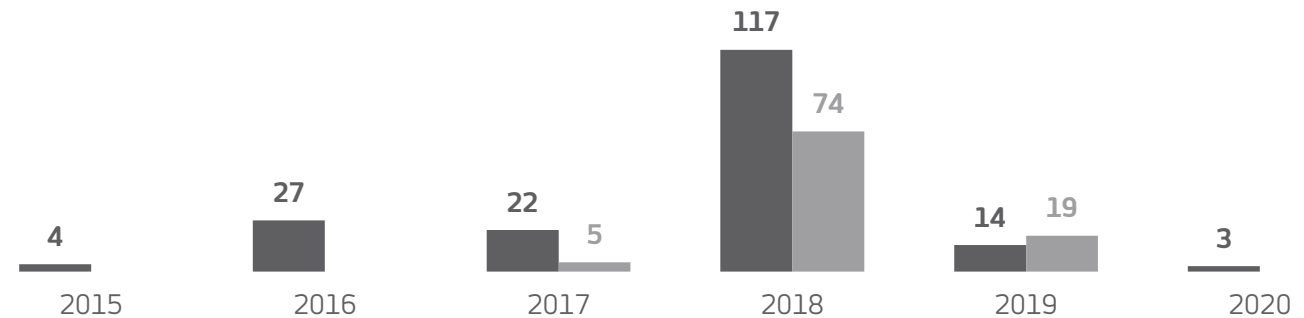
Duration of proceedings

Ongoing processes per range of days



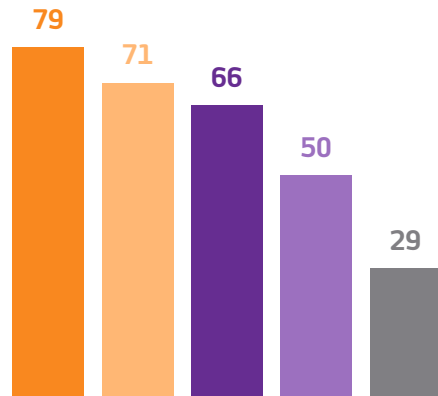
PAR per year

■ Initiated ■ Closed



Ministry of Mines and Energy data

Harmful acts that were investigated

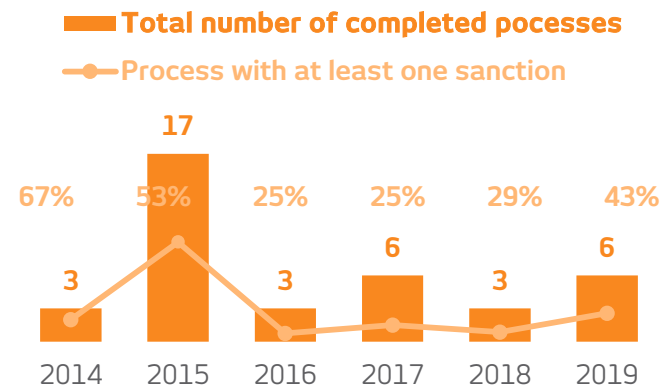


Fraud in national public administration bidding procedure	79
Fraud in an administrative contract with the national public administration	71
Payment of undue advantage or its offer, directly or indirectly, to a national public agent or related third party	66
Direputable behaviour	50
Others	29

The same PAR can be initiated based on more than one matter

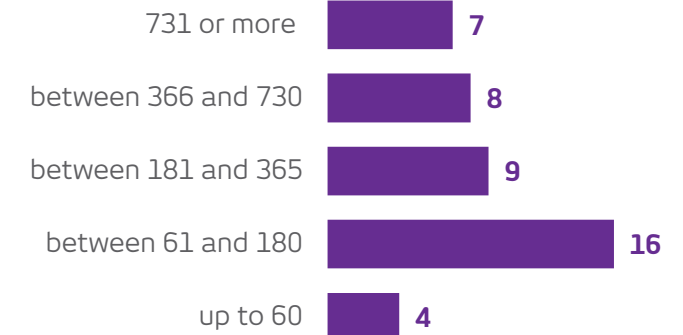
Results

Cases with at least one sanction



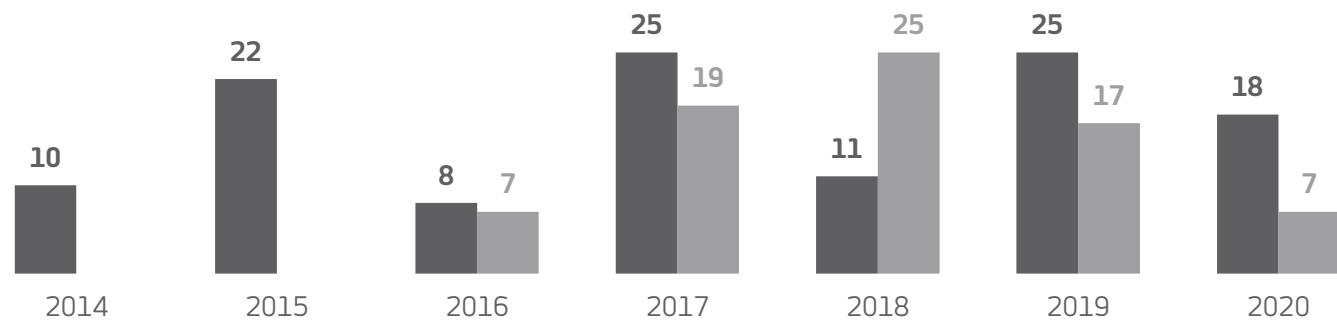
Duration of proceedings

Ongoing processes per range of days



PAR per year

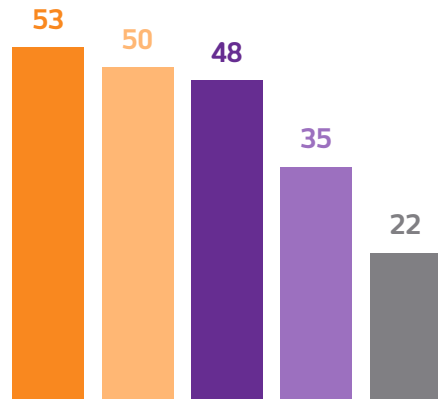
■ Initiated ■ Closed



General Controller's Office ("CGU") data

The Anti-corruption law granted CGU the concurrent jurisdiction to initiate and judge the PAR. CGU also has exclusive authority to sue, examine the regularity of the PAR and enter into leniency agreements with private companies investigated for having committed harmful acts against the Public Administration.

Harmful acts that were investigated

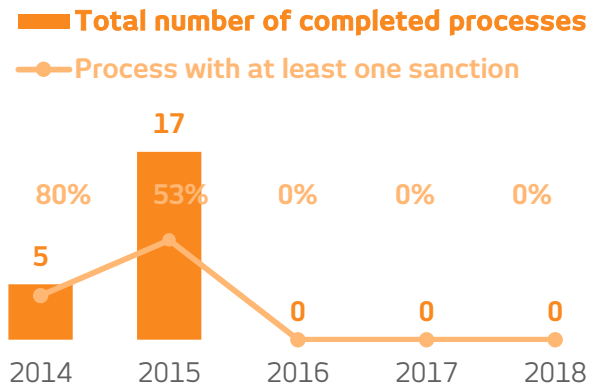


Payment of undue advantage or its offer, directly or indirectly, to a national public agent or related third party	53
Fraud in national public administration bidding procedure	50
Direputable behaviour	48
Fraud in an administrative contract with the national public administration	35
Others	22

The same PAR can be initiated based on more than one matter

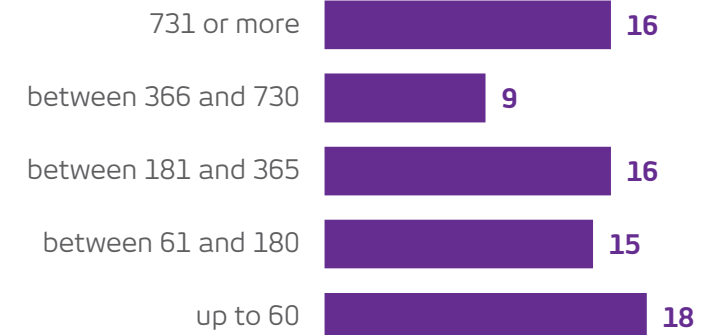
Results

Cases with at least one sanction



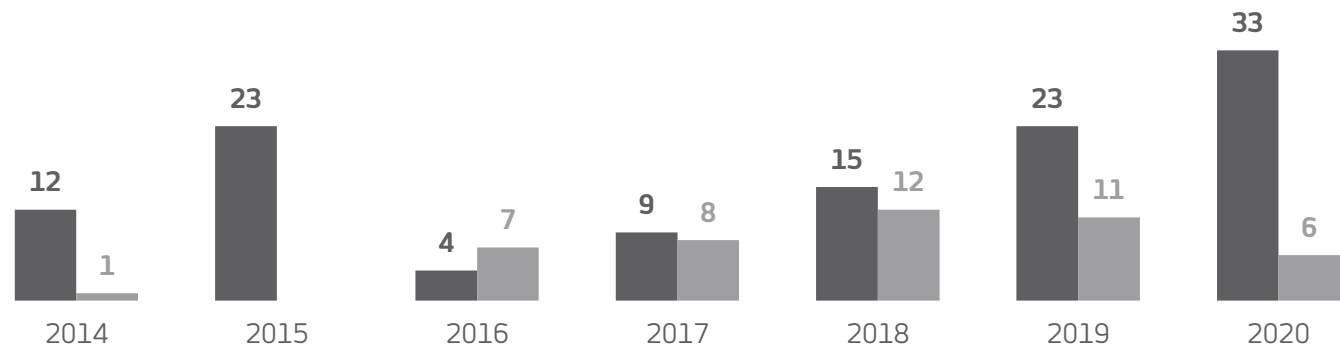
Duration of proceedings

Ongoing processes per range of days



PAR per year

■ Initiated ■ Closed



Leniency Agreements



By entering into a Leniency Agreement, a private company can have financial penalties imposed against them reduced, as well as become exempt from other penalties provided in the Anti-corruption law. However, there is a condition for having those benefits: companies must commit to assisting in the negotiation, with the identification of others involved in the harmful acts. They also have to submit evidence that proves the illegality, pay damages to compensate for the undue advantages obtained and implement or improve their Compliance program.

Leniency Agreements

Company	Amount settled	Amounts Paid
SBM Offshore***	BRL 1,286,038,200.00	BRL 751,096,652,29
OAS	BRL 1,929,257,982.37	-
Nova Participações S/A	BRL 516,301,313.70	BRL 1,523,329,27
Bilfinger****	BRL 11,036,345.49	BRL 11,036,345,49
UTC Participações S/A	BRL 547,658,165.21	BRL 36,600,038,93
Camargo Corrêa**	BRL 1,396,128,458.76	BRL 377,919,910,34
Mullenlowe e FCB Brasil	BRL 50,000,000.00	BRL 53,985,613,81
Andrade Gutierrez**	BRL 1,489,361,135.28	BRL 375,783,802,90
Odebrechet**	BRL 2,727,039,997.64	BRL 113,921,532,70
Braskem S/A**	BRL 2,872,038,787.73	BRL 1,577,419,819,20
Technip Brasil e Flexibras	BRL 819,794,768.79	BRL 313,079,412,83
Total	BRL 13,671,855,155.97	BRL 3,612,366,457.76

* The amount represents the transferred amounts on the respective payment date.

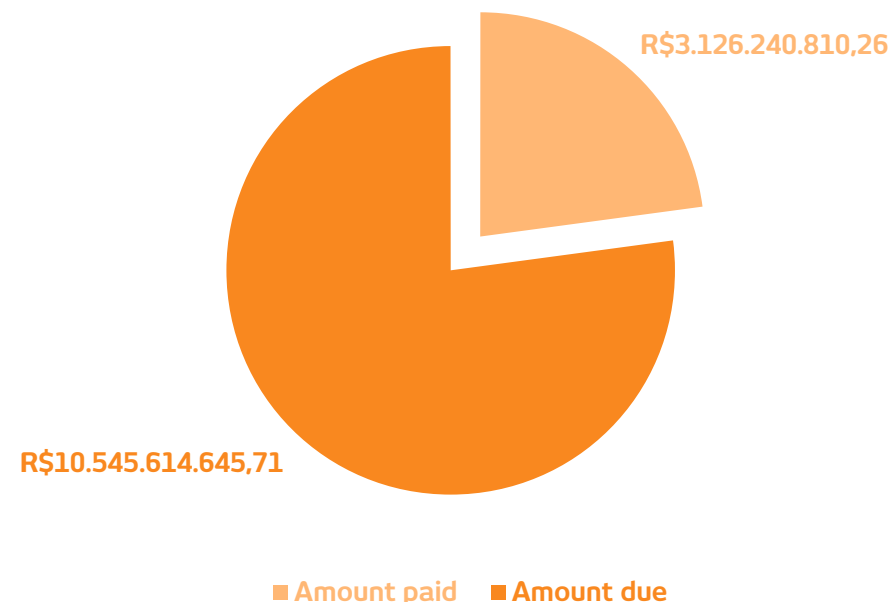
** The agreements signed with Braskem, Camargo Correia Andrade Guitierrez and Odebrecht provide that amounts paid under the agreement signed by these companies with the Public Prosecutors Office (MPF) may depend on a court decision to be transferred to the final recipients

*** SBM Offshore agreement was partly signed in foreign currency

**** Bilfinger Agreement was signed in foreign currency

Amounts Paid

Amounts in leniency agreements (CGU)



MATTOS FILHO >

Mattos Filho, Veiga Filho,
Marrey Jr e Quiroga Advogados

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