



ACTIVITY REPORT

of the Investigation
and Disciplinary Office
of the Commission
(IDOC) 2017

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INTRODUCTION

IDOC's Mission Statement - *Ensure by enforcement measures and prevention activities that officials maintain high standards of ethics and integrity in compliance with their statutory obligations.*

The Commission requires high standards of ethics and integrity from its staff. The Commission's Investigation and Disciplinary Office (IDOC) seeks to ensure that all staff members comply with their statutory obligations by conducting administrative inquiries, pre-disciplinary procedures, and disciplinary procedures in an impartial, transparent, and timely manner.

In addition to this role, IDOC is also active in outreach and in prevention (including awareness-raising and training). The IDOC Annual Report informs staff of activities in the area of disciplinary matters, reminds them of the rules in place, and underlines that wrongdoing can have serious disciplinary consequences.

The report gives an overview of the cases in which a sanction decision was taken in the course of the year. These cases are presented with a view to illustrating the broad scope of the cases that IDOC manages, as well as to inform staff about the consequences that can result from breaches of statutory provisions.

The disciplinary authority has wide discretion to decide on the appropriate follow-up and on the sanction to be imposed, so as to reflect the nature, the particular circumstances, and the seriousness of the breach established.

II - CASELOAD IN 2017 - OVERVIEW

Information about potential statutory breaches comes from a variety of sources, including other Commission services, the European Anti-Fraud Office (OLAF), the European External Action Service, Executive Agencies, requests for assistance filed under Article 24 of the Staff Regulations, as well as external sources like complaints and media reports.

63 cases were registered in IDOC in 2017. In addition, IDOC continued to deal with cases registered previously. 12 cases had their origins in requests made under Article 24 of the Staff Regulations.

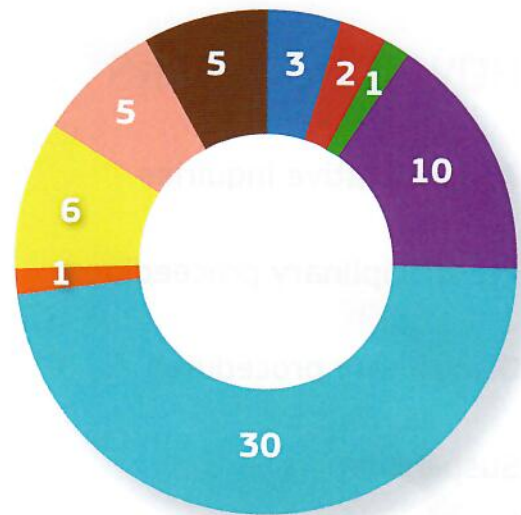
All cases undergo a preliminary assessment, which can then lead to a case being taken further, or to it being closed as a non-case. During 2017, 17 cases were closed as non-cases.

IDOC has Service Level Agreements (SLAs) with the European External Action Service (EEAS), the EU Executive Agencies, and the European Data Protection Supervisor (EDPS). Under the terms of the SLAs, IDOC provides support in administrative inquiries and in disciplinary proceedings.

Of the 63 cases registered in 2017, 7 concerned the EEAS, and 5 the Executive Agencies.

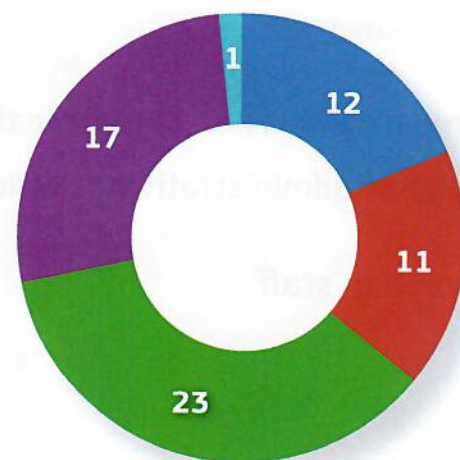
While there are no SLAs with the Regulatory Agencies, IDOC provides a helpdesk function, and continues to encourage the agencies to make use of an inter-agency network of investigators.

63 cases registered: subjects



- Non respect of financial rules (3)
- Abuse of ICT services (2)
- Conflict of interest (1)
- Irregular declarations (10)
- Inappropriate behaviour/ Harassment (30)
- Irregular absence (1)
- Unauthorised external activity (6)
- Non respect of rules on confidentiality (5)
- Miscellaneous (5)

64 cases closed by category



- Sanctions (12)
- Warning (Mise en garde) (11)
- No follow-up (23)
- Non case (17)
- Non renewal of contract (1)

III - HOW IDOC WORKS

3.1. Administrative inquiries

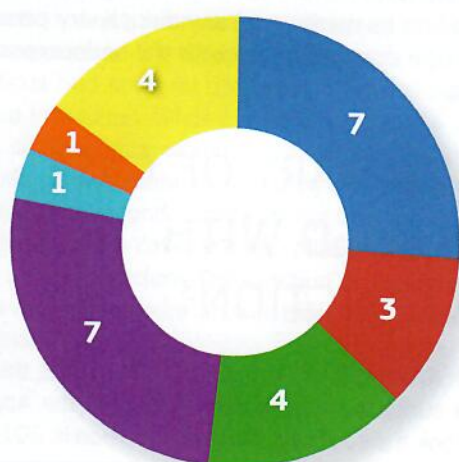
Where there is evidence that a breach of the Staff Regulations may have occurred, the Appointing Authority may decide to open an administrative inquiry. Inquiries aim to establish the facts related to a situation that may involve a breach of statutory obligations. Inquiries allow the Appointing Authority to take a decision on whether to launch a pre-disciplinary procedure based on established facts and the degree of responsibility of the staff member(s) concerned ("person concerned"). Before finalising an inquiry, the person concerned is given the opportunity to comment on the facts established by the inquiry.

In 2017, IDOC received mandates from the Appointing Authority to open 45 administrative inquiries, which represents an increase of 40 % compared with the previous year.

In order to establish the facts, investigators make use of a range of measures, including carrying out on-the-spot investigations, obtaining documents and information, and conducting hearings of the persons concerned, of the alleged victims and of witnesses, which are an essential part of the administrative inquiry.

In 2017 IDOC conducted 115 hearings in the course of the administrative inquiries.

27 Pre-disciplinary procedures finalised with a report to the Appointing Authority: potential breaches



- Non respect of financial regulations (7)
- Conflict of interest (3)
- Irregular declarations (4)
- Inappropriate behaviour/harassment (7)
- Irregular absence (1)
- Unauthorised external activity (1)
- Non respect of rules on confidentiality (4)

33 administrative inquiries were closed in the course of the year. In 16 of these cases the Appointing Authority decided that no disciplinary follow-up was merited.

3.2. Pre-disciplinary proceedings

In 2017, IDOC received mandates from the Appointing Authority to open 23 pre-disciplinary procedures.

In cases where the Appointing Authority decides to pursue the case in this manner, the person concerned is given the opportunity to comment on all the evidence of the case. Following a pre-disciplinary hearing with the person concerned, the Appointing Authority can then decide: (1) to close the case; (2) to issue a non-disciplinary penalty in the form of a warning (*mise en garde*); or (3) to open disciplinary proceedings.

In 2017, 27 pre-disciplinary procedures were finalised with a report sent to the disciplinary authority. The disciplinary authority subsequently decided:

- in 11 cases to issue a non-disciplinary penalty in the form of a warning (*mise en garde*) reminding the person concerned to pay more attention in future to their statutory obligations. These procedures involved minor shortcomings, with no budgetary impact, or harm to the Institution's image and reputation;
- in 15 cases to open a disciplinary procedure.
- in 1 case on non-renewal of contract.

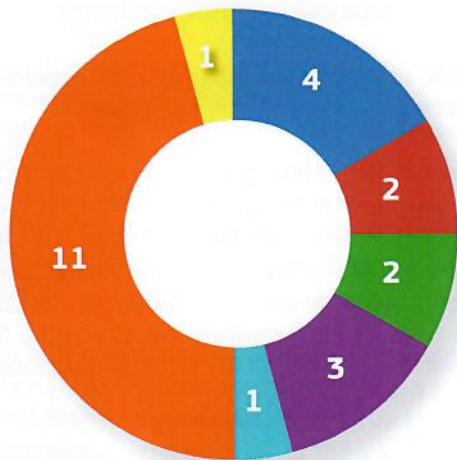
3.3. Disciplinary procedures

There are two types of disciplinary proceedings.

A procedure without referral to a Disciplinary Board can apply when the Appointing Authority considers that the facts in principle do not merit a sanction more severe than a written warning or a reprimand. In these cases a disciplinary report, setting out the facts and an assessment of the misconduct in the case, is sent to the person concerned. After hearing the person concerned, the Appointing Authority decides on the outcome of the case.

Where it considers the alleged wrongdoing to be sufficiently serious as potentially to warrant a financial sanction, the Appointing Authority refers the case to the Disciplinary Board. A disciplinary report setting out the facts and an assessment of the misconduct in the case is sent to the Disciplinary Board and the person concerned. The Disciplinary Board then hears the person concerned. The Disciplinary Board acts as a 'fresh pair of eyes' on the facts and assessment of the case and makes a recommendation for a sanction. However, the final decision is taken by the Appointing Authority, after hearing the person concerned.

24 Disciplinary and non-disciplinary sanctions imposed



DISCIPLINARY (12)

- Downgrading (4)
- Withholding pension or invalidity allowance (2) *
- Deferment of advancement in step (2)
- Reprimand (3)
- Written warning (1)

NON DISCIPLINARY (12)

- Non-disciplinary warning (Mise en garde) (11)
- Non-renewal of contract (1)

*one case EEAS

In 2017, 15 disciplinary proceedings were opened, 5 without referral to the Disciplinary Board, and 10 with referral to the Disciplinary Board.

Disciplinary sanctions adopted in 2017 included permanent downgrading, withholding of pension or invalidity pension, deferment of advancement in step, reprimand and written warning.

3.4. Suspension

A person concerned who is accused of serious misconduct may be suspended from active service, for a specific or indefinite period, pending the outcome of disciplinary or criminal proceedings. In 2017 a suspension decision was adopted in one case¹.

3.5. Different types of sanctions

Cases where breaches are established may be sanctioned in several ways:

Minor breaches may give rise to a warning (*"mise en garde"*)². This is not a disciplinary sanction, but a formal reminder about the need to observe the highest ethical standards. It is placed in the staff member's personal file for 18 months. In 2017, 11 such warnings were issued.

More serious breaches can lead to the opening of disciplinary proceedings. The level of sanction imposed can range from a written warning to dismissal, as appropriate. Retired staff can be sanctioned through a reduction in their pensions for a designated period of time. The same approach applies to staff in receipt of an invalidity allowance. The disciplinary sanction is placed in the personal file of the person concerned for a period of between three and six years.

Staff members subject to the Conditions of Employment of Other Servants (CEOS) who are found to be in breach of their statutory obligations can have their contract not renewed, or terminated. Contracts can be not renewed or terminated either following disciplinary proceedings or after a specific procedure in which the person concerned is invited to explain his or her actions before the competent authority.

In deciding on the disciplinary sanction to be applied in a particular case, the Appointing Authority takes into account a number of factors set out in the Staff Regulations: (1) the nature and circumstances of the misconduct; (2) the extent to which the misconduct has an impact on the Institution; (3) whether the misconduct involves intent or negligence; (4) the motives for the misconduct; (5) the grade and seniority of the staff member concerned; (6) the degree of the staff member's personal responsibility; (7) the level of the staff member's duties and responsibilities; (8) whether the misconduct was a one-off incident or whether it involved repeated action or behaviour; (9) the staff member's conduct throughout his career.

In short, there is no 'tariff' of sanctions, and each case must be assessed on its merits, and any disciplinary penalty imposed must be commensurate with the seriousness of the misconduct.

IV - SUMMARY OF CASES CLOSED WITH A SANCTION³

In line with Article 10 of Decision C(2004) 1588, this report provides a summary of the cases in which the Appointing Authority took a disciplinary sanction decision in 2017. In order to protect the anonymity of the persons concerned, and in the interests of simplicity, persons concerned are referred to in the 'he' form. In the same vein, the term Appointing Authority is used throughout.

¹ And initiated in one more.

² The Staff Regulations makes a distinction between this non-disciplinary warning (*mise en garde*), and a written warning, which does constitute a disciplinary sanction (*avertissement par écrit*).

³ In one of these cases, the Appointing Authority was the EEAS

In line with Article 11 of the Staff Regulations, the duty of loyalty requires members of staff to supply the administration with accurate and complete information, including in the context of submissions relating to requests for reimbursement for medical expenses and requests for financial allowances available under the Staff Regulations.

The Appointing Authority decided to reduce a retired official's pension for a substantial period of time after he was condemned by a national Court for passive corruption. This judgment had been confirmed following an appeal. The facts of the case had been subject to an inquiry by OLAF.

The case concerned the award of contracts relating to buildings management for Commission premises in third countries.

The Appointing Authority considered that the official's behaviour amounted to breaches of Article 11 of the Staff Regulations, as well as of Articles 11(a), 21, and very serious, repeated breaches of Article 12 of the Staff Regulations.

An official was permanently downgraded by two grades after he was found to have deliberately misled the Administration about his citizenship and housing situation in order to receive financial benefits to which he was not entitled. All the financial allowances in question have since been recovered. The official also provided false information about his professional experience during his recruitment to the Institution, with the aid of an outside party. This additional misconduct did not bring the official any financial benefit.

The duty of loyalty, enshrined in Article 11 of the Staff Regulations, requires staff to supply the administration, and in particular during their recruitment, with complete, accurate information about their personal situation and their professional experience. The Appointing Authority considered that the official had severely damaged the relationship of trust with the Institution. While considering that the very serious nature of the facts would merit the sanction of removal from post, the Appointing Authority decided to provide the official with a second chance in light of the particular circumstances of the case, and his collaborative attitude in the course of the procedure. The sanction imposed on the official was nevertheless more severe than that proposed by the Disciplinary Board.

A contract agent was permanently downgraded by two grades after he was found to have omitted to provide certain information in the context of requests for financial allowances for a family member to be treated as if he were a

dependent child. In the context of these requests, the staff member failed to declare income sources and the real estate of the family member concerned, as requested. These repeated omissions led to the staff member receiving substantial financial benefits over several years to which he was not entitled. The sums involved have subsequently been subject to a recovery order. The Appointing Authority considered that the staff member misrepresented the financial situation of his family member, and was grossly negligent in his communications with the Administration in the context of the allowance in question. The staff member's behaviour, in the view of the Appointing Authority, constituted a breach of the duty of loyalty, as set out in Article 11 of the Staff Regulations.

In contrast to the Disciplinary Board, the Appointing Authority did not consider as a mitigating factor the fact that the staff member's primary goal was not unjust enrichment, but to ensure adequate healthcare coverage for his family member. In order to obtain this goal, the official behaved in a grossly negligent manner that was detrimental to the EU budget. In view of this, the Appointing Authority decided on a sanction that was heavier than that proposed by the Board.

An official was permanently downgraded by two grades after it was found that he had failed to provide accurate information about his citizenship, leading to the payment of financial benefits over several years to which he was not entitled. The financial allowances in question are being recovered. The Appointing Authority found that the official had had a number of opportunities to inform the Administration about the situation, but had not done so, which rendered his misconduct even more serious.

The Appointing Authority took the view that the very serious nature of the official's actions would merit the sanction of removal from post. Nevertheless, in light of the particular circumstances of the case, the Appointing Authority decided to provide the official with a second chance by imposing a sanction in line with that recommended by the Disciplinary Board.

Under Article 11(a) of the Staff Regulations, officials cannot deal with matters in which, directly or indirectly, they have any personal interest such as to impair their independence, and, in particular, family and financial interests. If they do find themselves in a potential situation of conflict of interest, officials must immediately inform their superiors, who will then take appropriate measures, and who may, in particular, relieve them from responsibility in the matter.

Three officials were sanctioned over their roles in the management of office refurbishment contracts. The Appointing

Authority found that two of the officials had breached statutory provisions on the management of conflicts of interest, and one had breached the Financial Regulation on the handling of procurement procedures.

The case centred on a series of contracts with an external consultant, who was in a relationship with a staff member who had a role in the management of these contracts.

In line with Article 11(a) of the Staff Regulations, at the same time that the staff member proposed the name of the consultant to carry out the work, he also made a formal declaration to his superior about the nature of their relationship. The superior then took steps to avoid a conflict of interest. The work was not completed at the end of the first contract, and the superior then asked the same consultant to participate in negotiated procedures. However, the precautions that were taken to avoid a conflict of interest in the first contract were not taken in the context of this second procedure, leading to breaches of the Staff Regulations.

The two officials concerned were each sanctioned with a deferment of advancement in step. A third official received a written warning.

In deciding on the sanction to impose, the Appointing Authority took into account the particular circumstances of the project, and notably the intense pressure to ensure that the work was carried out on schedule.

Article 12 of the Staff Regulations prohibits any action or behaviour – whether inside or outside of the Institution – which might reflect adversely on an official's position.

A contract agent was permanently downgraded following an incident in which he physically assaulted another colleague at a public event. The Appointing Authority estimated that this unprovoked assault, which resulted in physical injury to the colleague, reflected adversely on the staff member's position. Like the Disciplinary Board, the Appointing Authority considered this to be a serious breach of Article 12 of the Staff Regulations.

A manager was reprimanded after it was found that he had acted in a hostile and inappropriate manner towards one of the staff members under his responsibility, in breach of Article 12 of the Staff Regulations. However, like the Disciplinary Board, the Appointing Authority considered that the official's improper conduct, which took place during quite a short period of time and was not systematic, did not amount to psychological harassment within the meaning of Article 12(a) of the Staff Regulations.

A manager was reprimanded after it was found that he had placed unjustified limitations on the possibility for another staff member in his unit to carry out the new responsibilities which had been assigned to him, and who eventually left his position. The Appointing Authority considered that the manager's behaviour, although inappropriate, did not amount to psychological harassment, but nevertheless found that he had failed to carry out his management responsibilities, in particular by unduly limiting the staff member's responsibilities and by refusing to involve him in the management of the unit.

Article 12(b) of the Staff Regulations requires staff to seek authorisation from the Appointing Authority before engaging in an outside activity.

The Appointing Authority imposed a sanction in the form of a withholding of an amount from the invalidity allowance of an official who had undertaken a number of outside activities without requesting authorisation to do so.

The events took place over a number of years, including during a period of leave on personal grounds. In addition to a full-time activity for which he had received authorisation, the official undertook part-time activities for which no authorisation was requested, thereby depriving the Appointing Authority from taking a position on whether those activities could constitute a conflict of interest. The activities continued after he returned from leave on personal grounds.

The Appointing Authority considered that the official, who had held management responsibilities, had repeatedly failed to comply with the rules on leave on personal grounds and those on outside activities. In deciding on the sanction, the Appointing Authority did not consider that the circumstances that were highlighted by the Disciplinary Board could mitigate what was a serious breach by an experienced official whose professional background made him particularly capable of appreciating the risks involved in situations of potential conflict of interest.

According to Article 21 of the Staff Regulations, officials are responsible for the performance of the duties that are assigned to them.

A contract agent received a reprimand after having accessed data relating to the reclassification of staff members in the same function group as him.

The staff member had been granted access to the reclassification database in view of his appointment as a representative to the committee charged with examining requests for reclassification. In the context of this appointment, the administration had explained in writing to all staff having been granted this access that they were not authorized to view

data relating to staff in their own function group. In spite of this, the contract agent consulted this data, including data relating to a staff member with whom he had been engaged in conflictual relations over a lengthy period of time.

The Appointing Authority considered that the contract agent had abused his access to the reclassification database in accessing data which he was not authorised to view. In its view, this behaviour amounted to a breach of Article 21 of the Staff Regulations, given that the conditions of access had been set out explicitly in writing.

V – POLICY

5.1. Information and Communication Technology (ICT) guidelines

Following the adoption of new staff guidelines on the use of Commission ICT services in May 2016, IDOC cooperated closely with DG DIGIT to develop an e-learning training module on these guidelines. The module has been available on the EU-Learn site since December 2017⁴.

5.2. Whistleblowing

The review of the Whistleblowing Guidelines that was finalised in 2016 concluded that it is necessary to increase staff awareness of the rules on whistleblowing. The Commission implemented the review's recommendations, and notably:

- Mainstreaming whistleblowing training into training courses on ethics, in particular those aimed at managers, and including elements on whistleblowing in the e-learning module on ethics;
- Updating and expanding information on whistleblowing on MyIntracomm;
- Creating a contact point in the Commission's psycho-social service for whistleblowers to be able to speak in confidence;
- Launching a survey on staff awareness of the rules on whistleblowing.

5.3. Commission Decision to update the General Implementing Provisions on the conduct of administrative inquiries and disciplinary procedures

Work continued on a new Commission Decision to update the General Implementing Provisions (GIPs) on the conduct of administrative inquiries and disciplinary procedures. Social dialogue with staff representatives began in 2017 and will continue in 2018.

The text aims to replace the current Commission Decision, which has not been substantially revised since it was adopted in 2004. The new draft Decision aims to take into account developments in case-law at the Court of Justice of the EU, as well as practices in the management of administrative inquiries and disciplinary procedures developed since 2004.

5.4. Outreach to staff

While being first and foremost a service geared towards the enforcement of ethical rules, IDOC has also developed a large part of its activities in the area of prevention, including through awareness-raising and training initiatives.

IDOC's outreach activity in 2017 included tailored interactive training and outreach sessions on ethics and disciplinary matters to targeted audiences in DGs and agencies, often organised in conjunction with the ethics unit in DG HR.

Presentations were given to staff in three Cabinets, including the President's, as well as DG ECFIN, DG SCIC, the Spokesperson's Service, the network of ethics correspondents, staff representatives, the European Political Strategy Centre, the Structural Reform Support Service, and three Executive Agencies. In addition, regular presentations were made to staff preparing to be posted to EU Delegations, including to EU Heads of Delegation at their annual conference. Specific presentations were also made to newcomers to DG HR.

IDOC organised its first conference for staff, on 10 November 2017, entitled "*Breaches of Statutory Obligations: Actors and Procedures*". This was an opportunity for staff to get a closer insight into IDOC's work. Some 100 colleagues from across the Commission participated, including many Business Correspondents and Account Management Centre staff, and other associated services, including OLAF, the Legal Service, the Mediation Service, the Medical Service, the Security Directorate, as well as staff representatives.

The conference served to underline both the keen interest of the services in ethics and disciplinary issues, and a common understanding of their importance for members of staff and the Commission itself. Participants also appreciated that the better the issues and procedures involved are known and understood, the better everyone's interests are served.

In 2017, IDOC coordinated DG HR's expertise in the context of a technical assistance project, to carry out training on ethics for staff members of the Tax Department of the Republic of Cyprus.

⁴ <https://webgate.ec.europa.eu/ilp/pages/coursedescription.jsf?courseId=12023025&catalogId=115328>