



ANNUAL ACTIVITY REPORT 2018

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

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I - INTRODUCTION

The Investigation and Disciplinary Office of the Commission (IDOC) Mission Statement - Ensure by enforcement measures and prevention activities that staff members 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. IDOC seeks to ensure that all staff members comply with their statutory obligations by conducting administrative inquiries, pre-disciplinary proceedings, disciplinary and suspension proceedings in an impartial, transparent, and timely manner.

IDOC also plays an important role in outreach and prevention, including awareness-raising and training for staff on the ethical principles and rules in place and guidance provided on their practical application. The IDOC Annual Report informs staff of activities in the area of disciplinary matters, reminds them of their obligations to protect the standards and reputation of the institution, and underlines that wrongdoing can have serious disciplinary consequences.

The report gives a statistical overview of the administrative inquiries and disciplinary proceedings and a summary of cases in which a disciplinary 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 members 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 - CASES REGISTERED IN 2018 - OVERVIEW

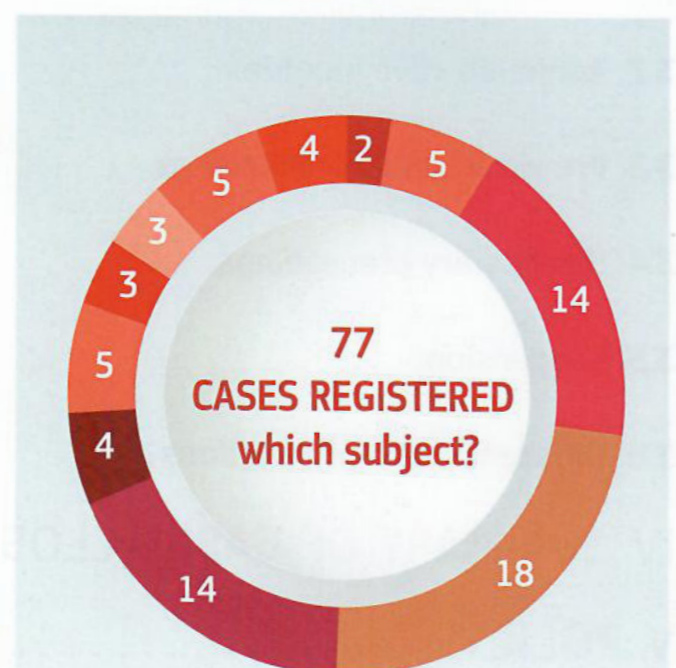
Information about potential statutory breaches comes from a variety of sources, including other Commission services, the European Anti-Fraud Office (OLAF), the European External Action Service (EEAS), executive agencies, requests for assistance filed under Article 24 of the Staff Regulations, as well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

77 new cases were registered in IDOC in 2018. 15 of them had their origins in requests made under Article 24 of the Staff Regulations. In addition to the new cases, IDOC continued to deal with on-going cases registered previously.

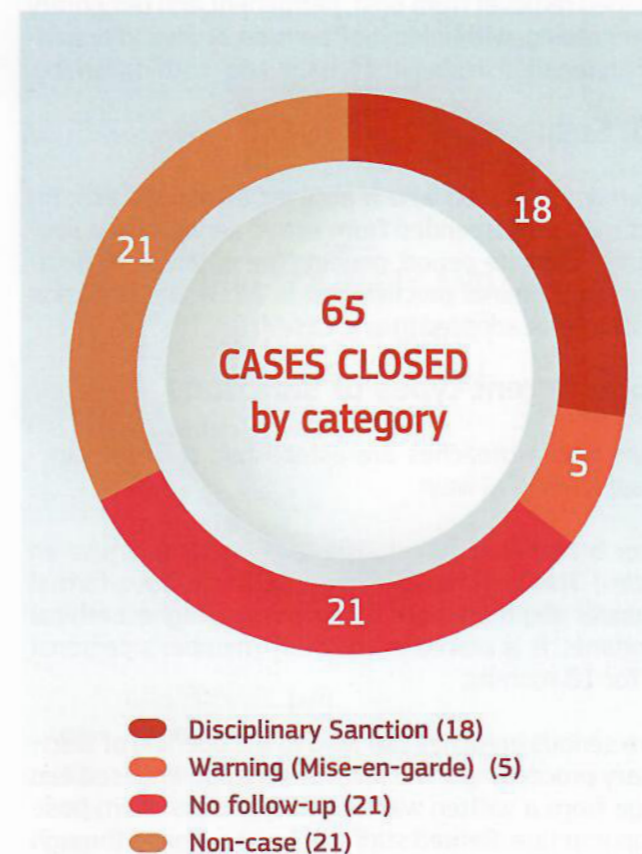
IDOC has Service Level Agreements (SLAs) with the EEAS, the executive agencies, and the European Data Protection Supervisor. Under the terms of the SLAs, IDOC carries out an equivalent service as for the Commission, including in particular, administrative inquiries and disciplinary proceedings conducted on the basis of mandates provided by the Appointing Authority in each of these Institutions and Agencies.

Of the 77 cases registered in 2018, 8 concerned the EEAS, and 5 the executive agencies.

For the decentralised agencies, IDOC provides a helpdesk service, and continues to encourage the agencies to make use of an inter-agency network of investigators.



- Non respect of financial rules (4)
- Abuse of ICT services (2)
- Conflict of interest (5)
- Irregular declarations (14)
- Inappropriate behaviour (18)
- Harassment (14)
- Unauthorised absence (4)
- Unauthorised external activity (5)
- Non respect of rules on confidentiality (3)
- Occupational disease (3)
- Miscellaneous (5)



- Disciplinary Sanction (18)
- Warning (Mise-en-garde) (5)
- No follow-up (21)
- Non-case (21)

III - HOW IDOC WORKS

3.1. Preliminary assessments

All cases registered, which have not been the subject of an OLAF investigation, undergo a preliminary assessment, which can then lead either to the opening of an administrative inquiry, or to the case being closed as a non-case. During 2018, 21 cases were closed as non-cases.

3.2. 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 proceeding 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 line with Administrative Notice No 15 of 4 April 2018, in 2018 IDOC carried out administrative inquiries under the new procedure for occupational disease requests under Article 73 of the Staff Regulations.

In 2018, IDOC received mandates from the Appointing Authority to open 42 administrative inquiries. They concerned allegations of harassment and inappropriate behaviour, irregular declarations, unauthorised outside activity, unauthorised absence, conflicts of interests, non-respect of the rules on confidentiality, the abuse of ICT services, as well as inquiries under the new procedure for handling occupational disease requests.

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 2018, IDOC conducted 143 hearings in the course of the administrative inquiries, which represents an increase as compared to the previous year.

28 administrative inquiries were closed in the course of the year. In 15 of these cases the Appointing Authority decided that no disciplinary follow-up was merited.

3.3. Pre-disciplinary proceedings

In 2018, IDOC received mandates from the Appointing Authority to open 19 pre-disciplinary proceedings.

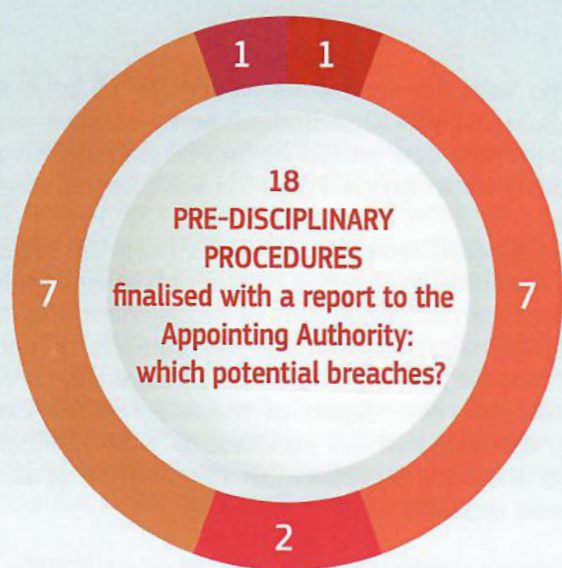
In cases where the Appointing Authority decides to pursue the case, the person concerned is given the opportunity to comment on all the evidence of the case. Following a pre-disciplinary hearing with the person concerned, the Appointing Authority can then decide: (1) to close the case; (2) to issue a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

In 2018, 18 pre-disciplinary proceedings were finalised with a report sent to the disciplinary authority. The disciplinary authority subsequently decided:

- in 5 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 proceedings involved minor shortcomings, with no budgetary impact, or harm to the Institution's image and reputation;

- in 13 cases to open a disciplinary proceeding.

¹The 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*).



- Irregular declaration (1)
- Inappropriate behaviour (7)
- Unauthorised absence (2)
- Unauthorised external activity (7)
- Non respect of rules on confidentiality (1)

3.4. Disciplinary proceedings

There are two types of disciplinary proceedings.

A proceeding 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 a tripartite Appointing Authority, after hearing the person concerned.

In 2018, 13 disciplinary proceedings were opened, 6 without referral to the Disciplinary Board, and 7 with referral to the Disciplinary Board.

In 2018, 18 cases were closed with a disciplinary sanction. The sanctions imposed by the Appointing Authority included removal from post, permanent and temporary downgrading, withholding of pension or invalidity pension, relegation in step, reprimand and written warning.

3.5. 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 2018, a suspension decision was adopted in one case ².

3.6. 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»*). 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.

More serious breaches can lead to the opening of disciplinary proceedings. The level of sanction imposed can range from a written warning to a removal from post, 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 either be not renewed or terminated 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, each case must be assessed on its merits, and any disciplinary penalty

² A case of the EEAS.

imposed must be commensurate with the seriousness of the misconduct.



DISCIPLINARY (18)

- Removal from post (3)
- Downgrading (5)
- Withholding pension (1)
- Relegation in step (2)
- Reprimand (6)
- Written warning (1)

NON DISCIPLINARY (5)

- Non-disciplinary warning (mise-en-garde) (5)

IV - SUMMARY OF CASES CLOSED WITH A DISCIPLINARY 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 2018. 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.

Inappropriate behaviour likely to reflect adversely on the official's position

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.

³ Out of these cases, one concerned the EEAS and one concerned an executive agency.

The Appointing Authority decided to remove from post an official who, during leave on personal grounds, was convicted by a national court of a Member State for professional extortion and passive bribery. The Appointing Authority considered that these actions irretrievably damaged the relationship of trust that must exist between an official and the Institution, in serious breach of Article 12 of the Staff Regulations. This article applies both to an official's conduct in active duty, and during periods of leave on personal grounds.

The Appointing Authority decided to remove from post an official who repeatedly refused to follow instructions from the hierarchy, deliberately failed to follow procedures, criticised his colleagues and the hierarchy in an excessive manner and also behaved in an aggressive and threatening manner towards them. In addition, the official had continued to present commercial offers online, without having asked and obtained authorisation for it, despite having been sanctioned in the past for this type of breach. The Appointing Authority considered that the official's behaviour amounted to serious breaches of Articles 12 and 21 of the Staff Regulations.

The Appointing Authority imposed a reprimand on a contract agent who behaved inappropriately towards the colleagues in his sector. It was found that he sent aggressive e-mails and did not cooperate with his colleagues.

The Appointing Authority considered that such inappropriate behaviour was in breach of Article 12 of the Staff Regulations.

The Appointing Authority imposed a temporary downgrading on an official who anonymously posted an inappropriate message containing insulting comments and threats towards a colleague. The official claimed that a third person had entered his office and used his computer for sending the message in question. Contrary to the Disciplinary Board, the Appointing Authority concluded that the facts set out in the inquiry established that it was him who had sent the message.

The Appointing Authority considered that by making insulting remarks which are detrimental to the honour of the person to whom they refer, the official was in breach of Article 12 of the Staff Regulations.

The Appointing Authority imposed a downgrading by one grade on a contract agent who stole a device belonging to an external company in a Commission

building. The device had been left unattended for some time, during which the contract agent took it. He subsequently returned the device to the owner.

The Appointing Authority, like the Disciplinary Board, considered that this behaviour reflected adversely upon his position, in breach of Article 12 of the Staff Regulations.

Irregular and false declarations

In line with Article 11 of the Staff Regulation, 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.

A downgrading by two grades was imposed on a contract agent who produced a number of false invoices for medical reimbursement. In addition, a number of physiotherapy sessions were performed by a member of his family. By doing so, the contract agent seriously breached the duty of loyalty enshrined in Article 11 of the Staff Regulations and the provisions of Article 1(2) of the Implementing Rules on JSIS which prohibit the reimbursement of services performed by members of the family of the staff member. Therefore, like the Disciplinary Board, the Appointing Authority decided to downgrade him.

The Appointing Authority imposed a reprimand on an official who twice submitted the same medical expenses for reimbursement. After the official submitted the first request for medical reimbursement, the PMO refused to reimburse the expenses, because a prior authorisation was required for the medical services in question. Then the official tried to obtain reimbursement for the same expenses under a different entry, for which a prior authorisation was not necessary. The Appointing Authority found that the official's actions violated Article 11 of the Staff Regulations.

Conflict of interest

Article 11a of the Staff Regulations prohibits officials from dealing 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.

The Appointing Authority imposed a reprimand on an official who failed to declare a conflict of interest. In addition, he accessed via the IT system the file of the candidate he was in conflict of interest with, while he was no longer entitled to do so.

The case concerned a European Personnel Selection Office competition, for which the official concerned sat as a member of the jury. Neither the official, nor the candidate derived any benefit from the situation.

The Appointing Authority considered that the official's behaviour amounted to a breach of Article 11a, committed by negligence, and a breach of Article 21 of the Staff Regulations.

The Appointing Authority imposed a written warning on a contract agent who failed to declare a personal interest that could have impaired his objectivity in dealing with project management matters, relating to a person with whom he had personal contacts.

By failing to inform the Appointing Authority about this personal relationship, the agent did not allow the former to assess the existence of a potential conflict of interest and, if necessary, take the appropriate measures, as provided for in Article 11(a)(2) of the Staff Regulations.

The Appointing Authority concluded that the contract agent breached Article 11(a)(2) of the Staff Regulations.

Failure to comply with rules on confidentiality

Article 17 of the Staff Regulations prohibits any unauthorised disclosure of information received in the line of duty, unless this information is already in the public domain.

An official was relegated in step after having sent non-public information to a newspaper from his professional email address. The information was subsequently published. The official was also found to have sent to a former colleague internal Commission documents not intended to be published, which he had received in the context of his professional activities.

By doing this, the official was in breach of Articles 12, 17 and 21 of the Staff Regulations.

The Appointing Authority did not consider that the circumstances highlighted by the Disciplinary Board could mitigate what was a serious breach by an experienced official.

The Appointing Authority imposed a downgrading by one grade on a contract agent who used his professional access rights to consult personal data of a colleague without any instruction by the hierarchy or a professional need to do so. Furthermore, he disclosed the document including personal data to a third person

who had an interest in receiving that document and used it in a legal proceeding.

The Appointing Authority considered that the person concerned seriously breached Articles 17 and 21 of the Staff Regulations and Article 2 of the Regulation 45/2001⁴. Unlike the Disciplinary Board, the Appointing Authority did not consider that there were any attenuating circumstances which diminished the seriousness of the facts and their legal qualification.

Unauthorised absences

Article 55(1) of the Staff Regulations requires officials to be at the disposal of their institution at all times. According to Article 60, first paragraph of the Staff Regulations, an official may not be absent without prior permission from his immediate superior, except in case of sickness or accident.

The Appointing Authority decided to remove from post an official following a protracted unauthorised absence and refusal to work. In fact, after a certain period of medical leave, he stopped coming to work, without producing a medical certificate justifying his absence. The Appointing Authority declared the absence unjustified.

A protracted unauthorised absence severely breaches the fundamental obligation of a European Union official to be at the disposal of the Institution and to carry out the tasks assigned to him. The behaviour of the official constituted a serious breach of Articles 55(1), 60, first paragraph and 21 of the Staff Regulations. Therefore, the Appointing Authority, like the Disciplinary Board, considered that he should be dismissed.

Unauthorised outside activities

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

The Appointing Authority relegated in step an official for having carried out outside activities, without having requested and obtained authorisation from the Appointing Authority.

The activities consisted of providing paid consultancy services for an external company, which was involved in projects in the European Union, in the field of work of the official concerned.

The Appointing Authority considered that the official was in breach of Articles 11, 11a and 12b of the Staff Regulations.

⁴ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L8, 12.1.2001, p.1-22.

A contract agent was reprimanded after it was found that he engaged in an outside activity, which continued over a number of years, without him having requested extension of the authorisation from the Appointing Authority. In the meantime, the activity was discontinued.

The Appointing Authority considered that the agent was in breach of Article 12b of the Staff Regulations, applicable by analogy to contract agents by virtue of Articles 11 and 81 of the CEOS.

The Appointing Authority imposed a reprimand on an official who carried out a paid external activity without having asked and obtained authorisation by the Appointing Authority. By not requesting such authorisation, he was found to be in breach of Article 12b of the Staff Regulations.

Furthermore, during that period, he was working part-time. According to Article 3 of Annex IVa of the Staff Regulations, the official may not engage in any gainful activity during the period of part-time work other than standing for public office (Article 15 of the Staff Regulations). Therefore, the Appointing Authority concluded that the official breached Article 3 of Annex IVa of the Staff Regulations.

The Appointing Authority imposed a pro tempore reduction of the monthly pension of a retired official who carried out an outside activity, without having asked and obtained prior authorisation.

While in active service, the official was involved in contract negotiations and course preparations for a company run by his family. By not requesting authorisation from the Appointing Authority for this outside activity, he breached Article 12b of the Staff Regulations. In addition, the company was potentially a partner in a project in which he represented his DG. By not declaring to the Appointing Authority a potential conflict of interest, he breached Article 11a of the Staff Regulations.

The Appointing Authority imposed a reprimand on an official who exceeded his authorisation to exercise an outside activity.

The official made a misleading statement about the nature of his activities and also exceeded the timeframe for which he was authorised to exercise an outside activity, by which he breached Articles 11 and 12(b) of the Staff Regulations, respectively.

The official furthermore had a number of unauthorised absences, in breach of Article 55(1) and Article 60, first paragraph of the Staff Regulations. He also failed to

request authorisation to spend sick leave away from the place of employment which was found to constitute a breach of Article 60 of the Staff Regulations, second paragraph. Taking into account specific attenuating circumstances in this case, the Appointing Authority decided to impose a reprimand.

Infringement in connection with the performance of duties

According to Article 21(1) of the Staff Regulations, an official shall assist and tender advice to his superiors; he shall be responsible for the performance of the duties that are assigned to him.

The Appointing Authority imposed a temporary downgrading by one grade on an official who was found to be in breach of the provisions of the Financial Regulation and therefore of Article 21 of the Staff Regulations.

The official modified a tender after the closing date for the submission of tenders, violating the legal provision on the prohibition to modify a tender after the closing date and the principles of equal treatment and transparency provided for in the Financial Regulation and its Implementing Rules in the framework of a public procurement procedure. The majority of the Disciplinary Board recommended a less severe penalty. A minority issued a dissenting opinion. The Appointing Authority followed the dissenting opinion that the penalty should be more significant, given the seriousness of the breach.

V - POLICY

5.1. Whistleblowing

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

- Launching a survey on staff awareness of the rules on whistleblowing - 2 polls were performed, in March and June 2018.

5.2. Commission Decision updating the General Implementing Provisions on the conduct of administrative inquiries and disciplinary proceedings

Work continued on a new Commission Decision updating the General Implementing Provisions (GIPs) on the conduct of administrative inquiries and disciplinary proceedings.

The text will 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 proceedings developed since 2004.

In 2018, the social dialogue with the Trade Unions, initiated in 2017, was finalised.

5.3. 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 2018 included tailored interactive training and outreach sessions on ethics and disciplinary matters to targeted audiences in Directorates-General and agencies, often organised in conjunction with the Unit 'Ethics and Ombudsman' in Directorate-General Human Resources and Security.

Presentations were given to staff in several Directorates-General and to two 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 Directorate-General Human Resources and Security and to the HR Business correspondents.

In 2018, IDOC also provided a 'Train the Trainers' session on ethics and integrity for the decentralised agencies, aiming at building self-sustainability and to boost the capacity of the decentralised agencies to provide internally training for their staff.