Activity Report of the Investigation and Disciplinary Office of the Commission (IDOC)
2012

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I. **GENERAL**

1. IDOC's dual mission

The Investigation and Disciplinary Office of the Commission (IDOC) was set up¹ to carry out a dual mission: to conduct impartial administrative inquiries to determine whether there has been a failure to comply with the obligations incumbent on Commission officials and to carry out disciplinary procedures on behalf of the Appointing Authority (AA).

2. Facts examined or followed up

The facts examined or followed up by IDOC are extremely diverse and vary from year to year. During 2012 the Office dealt with a wide range of cases including claims for undue financial benefits, behaviour which was inappropriate or contrary to the dignity of the office, situations of conflict of interest, unauthorised external activities, non-declaration of gainful employment of the spouse, improper use of Internet access, unjustified absence, breach of financial rules, breach of the obligation to respect confidentiality, breach of rules relating to sick leave or to the protection of personal data, unauthorised publications and other breaches related to the carrying out of duties.

The facts gathered by IDOC come from a variety of sources. The European anti-fraud Office (OLAF) investigation reports are one of the main sources. Other departments in the Directorate-General for Human Resources (DG.HR) may also refer information to IDOC for verification or follow-up. This is the case for the Security Directorate and 'Appeals and Case Monitoring Unit' (HR.D2) in connection with requests for assistance. The Paymaster's Office (PMO) also sends IDOC information about any irregularities it encounters while determining financial entitlements. In some cases, the Directorates-General report matters to IDOC which lead to the opening of an inquiry or a pre-disciplinary procedure. Examples include cases of irregular absence or improper use of the Commission's internet system. Sometimes information is supplied by external sources (The European External Action Service (EEAS), agencies, judicial authorities, press or private individuals).

3. Carrying out inquiries on behalf of the EEAS and the executive agencies

Under a Service Level Agreement between the EEAS and DG HR, IDOC may also be mandated to carry out inquiries, conduct hearings prior to a possible disciplinary procedure or conduct disciplinary procedures in respect of EEAS staff. In 2012, IDOC dealt with 18 cases on behalf of the EEAS.

Similarly, the Executive Agencies may, on the basis of Service Level Agreemenst with DG HR, ask IDOC to carry out inquiries, conduct hearings prior to a possible disciplinary procedure or conduct disciplinary procedures in respect of a member of their staff. In 2012, IDOC dealt with 3 cases on behalf of the Executive Agencies.

Commission Decision of 19 February 2002, replaced by final decision C (2004) 1588 of 28 April 2004 laying down general executive measures relating to inquiries and disciplinary procedures.

4. Workload in 2012

IDOC'S workload varies from one year to the next. 104 cases were closed in 2012, 36 of them culminating in a caution², a disciplinary measure or termination of contract.

100 new cases were also registered and assessed to see if the reported facts justified the opening of an administrative inquiry or, if they were sufficiently well-established, a hearing prior to launching a disciplinary procedure. A third were deemed to be non-cases following a preliminary assessment.

The tables at the end of this report provide a breakdown of the workload of IDOC during 2012.

II. ADMINISTRATIVE INQUIRIES

1. Administrative enquiries closed in 2012

During 2012, IDOC completed 4 administrative inquiries, which had been opened in 2011, and transmitted a final report to the AA.

2. The facts in question

Two of the inquiries concerned psychological or sexual harassment. One was opened following a request for assistance under Article 24 of the Staff Regulations, the other was conducted jointly by representatives of IDOC and of two Executive Agencies to verify the allegations made by a member of staff of one of the agencies against a former colleague.

In cases of this type, the methodology used consists of carrying out a detailed analysis of each of the facts reported in the light of the cumulative criteria set out in Article 12a of the Staff Regulations. In both cases, the inquiry concluded that the reported facts did not, either individually or collectively, constitute harassment in the sense of Article 12a of the Staff Regulations. They were therefore closed without any further action being taken. Another inquiry concerned fraud allegations relating to a competition organised by the European Personnel Selection Office (EPSO). The administration was informed that one of the successful candidates had submitted false information to the selection board regarding the professional experience required to sit the tests. Following checks on the eligibility conditions for candidates and the information and documents submitted by the person in question, the inquiry concluded that the fraud allegations were without substance. The inquiry was therefore closed without further action.

The fourth inquiry related to misuse of the internet by a staff member who had sent hurtful and offensive messages to a person outside the Commission. The inquiry was launched as a result of a complaint by the national authorities concerning invasion of privacy. As the

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² A 'warning' in terms of Article 3 of Annex IX of the Staff Regulations

nature of the messages indicated the possibility of inappropriate behaviour on the part of their author, the staff member was asked to attend a hearing under Article 3 of Annex IX to the Staff Regulations with a view to possible disciplinary action. However, no further action was taken as there was insufficient evidence that the messages had been sent from a Commission computer.

3. New administrative inquiries

In the course of 2012, the Director-General of DG HR in her capacity as AA (or the EEAS, in cases concerning its staff) mandated IDOC to conduct five new administrative inquiries.

Four of the five requests for inquiry concerned psychological harassment and inappropriate behaviour. One inquiry concerned false information submitted in connection with a competition organised by EPSO.

Once a mandate has been granted, the staff member concerned is informed that an investigation has been launched and of its purpose. He is also informed at the end of the inquiry of the provisional conclusions arrived at by the IDOC investigators and is invited to submit any comments on the facts before the final inquiry report is transmitted to the AA.

4. Duration of inquiries

The length of inquiries conducted by IDOC depends on many factors, notably the complexity of the case, the number of hearings to be carried out and the availability of the people to be heard. The average length of inquiries conducted by IDOC in 2012 was 10 months³.

III. <u>PRE-DISCIPLINARY PROCEDURES</u>

1. Purpose

The pre-disciplinary procedure laid down by Article 3 of Annex IX of the Staff Regulations includes a hearing of the staff member about whom allegations have been made. Its purpose is to enable the AA to decide whether the case should be closed without follow-up or a caution should be addressed to the staff member concerned, or whether disciplinary proceedings should be initiated with or without referral to the Disciplinary Board.

2. Procedure

The pre-disciplinary procedure may be launched on the basis of the conclusions of an OLAF or IDOC investigation. It may also be initiated directly if the facts reported to the AA clearly establish the existence of a possible failure to comply with the Staff Regulations. The hearing is intended to provide an opportunity to check the veracity of the reported facts, to

This represents the actual duration of the inquiry, from the conferring of the mandate to IDOC until the transmission of the final report to the appointing authority, that is the time during which the progress of the inquiry was not interrupted by any legitimate cause for suspension, such as the non-availability of the person concerned or any essential witness for medical reasons.

determine the precise circumstances in which they occurred and to give the person concerned the opportunity to put forward an explanation of the alleged behaviour. Before being heard, the staff member is granted access to all the evidence in his file in order to be able to present any elements which could exonerate him or could otherwise lead the AA to decide not to open a disciplinary case, even where breaches may have been established.

IDOC may also carry out complementary checks, in other Commission services or elsewhere, as part of the pre-disciplinary procedure, or hear persons other than the staff member about whom allegations have been made. Where the results of these checks contradict the testimony of the person in question, he may be heard again in order to provide further explanations.

3. Pre-disciplinary procedures closed in 2012

In the course of 2012, IDOC closed 40 pre-disciplinary procedures by submitting a report on the preliminary hearing to the AA.

In 11 of these, the case was closed without follow up. In 14 cases, the Director-General of DG HR, in her capacity as AA, decided to address a caution under Article 3 of Annex IX to the Staff Regulations to the staff member concerned, and in 14 cases decided to open disciplinary proceedings⁴. This caution, which does not constitute a disciplinary sanction, is placed in the staff member's personal file for a period of 18 months.

The AA may also decide to send a letter of admonition to any current or former member of staff whose conduct has given cause for concern, but which does not justify the opening of a procedure under Article 3 of Annex IX to the Staff Regulations. Three admonition letters for conduct subject to criticism were issued in 2012.

4. Pre-disciplinary procedures opened in 2012

IDOC initiated 35 new pre-disciplinary procedures at the request of the AA.

IV. <u>DISCIPLINARY PROCEDURES</u>

The AA may decide, on the basis of the report on the hearing under Article 3 of Annex IX to the Staff Regulations, that the breach of the Staff Regulations justifies the opening of disciplinary proceedings.

1. The two types of procedure

Annex IX of the Staff Regulations makes a distinction between disciplinary proceedings that involve the Disciplinary Board and those that do not. The choice of procedure is up to the AA on receiving the report of the pre-disciplinary hearing. More serious misconduct is referred

⁴In one case a decision was taken to follow the case up in 2013.

to the Disciplinary Board, which gives an opinion on whether the factual allegations are established and, where applicable, the sanction which it considers the misconduct to merit.

2. Choice of sanction

The disciplinary measures put in place by the Staff Regulations do not establish a fixed relationship between the penalty and the failure to fulfil obligations⁵. The AA therefore has wide discretion in choosing which sanction to impose. It must be proportionate to the seriousness of the misconduct. The AA takes into account all mitigating or aggravating circumstances and comes to a decision with particular regard to the factors set out in Article 10 of Annex IX to the Staff Regulations (nature of the misconduct; the extent of the damage to the integrity, reputation or interests of the Institution; the degree of intent or negligence; motives for the misconduct; the grade and seniority of the official; their personal responsibility; the level of their duties and responsibilities; potential repeated actions or misbehaviour and the conduct of the official throughout their career). The AA also assesses the seriousness of the offence in the light of the principles and values inherent in the obligations of employees under the Staff Regulations, in particular the duty of loyalty to the Institution and respect for its image and reputation.

3. <u>Disciplinary procedures closed</u>

In 2012, 18 disciplinary sanctions were imposed. In 11 of these cases, the Director-General of DG HR, in her capacity as AA, issued a written warning or reprimand for the misconduct. In 7 other cases, the "triparty" AA, consisting of the Director-General of DG HR, the Director-General of the official concerned and a third Director-General designated by the Secretary General, decided, following a procedure before the Disciplinary Board, to impose sanctions ranging from downgrading to reduction in pension or invalidity allowance for former officials.

4. Disciplinary procedures opened

Fourteen disciplinary procedures were opened in 2012, six of which went before the Disciplinary Board.

5. The duration of disciplinary procedures

The length of disciplinary procedures varies according to whether or not they involve referral to the Disciplinary Board. The average length of disciplinary procedures closed in 2012 was 14 months without referral to the Disciplinary Board, and 20 months with referral⁷.

⁵ Case T-12/94 *Daffix* v *Commission* ECR-SC I-A-453 and II-1997, point 89: Case F-71/09 *Nijs* v *Court of Auditors*, not yet published.

⁶Or Deputy Director General.

⁷ Total duration of the procedure, from launch to final decision (penalty or closure without further action).

V. CASES IN WHICH SANCTIONS WERE IMPOSED

1. <u>Different procedures for different sanctions</u>

The AA may sanction misconduct in different ways. In some cases, it may decide to issue a caution to the staff member concerned following the pre-disciplinary procedure. Although it is not a disciplinary measure, such a caution is a formal reminder which is placed in the staff member's personal file for a period of 18 months. In other cases, the AA may decide to initiate disciplinary proceedings with or without referral to the Disciplinary Board. A disciplinary decision is then taken which remains in the staff member's personal file for a period of either 3 or 6 years⁸. The AA has a wide margin of discretion in deciding whether or not to open disciplinary proceedings and, in doing so, on the penalty to be imposed. The decision of the AA is made on a case-by-case basis, taking account of all the relevant circumstances of each case.

Misconduct by a member of the temporary or contract staff may also be sanctioned by termination of their contract, either following disciplinary proceedings or after a specific procedure in which the person concerned is invited to explain their actions. In the former case, IDOC conducts the disciplinary proceedings, in the latter, it participates in the fact gathering needed to help the authority responsible for concluding contracts of employment (AECE) decide whether to terminate the contract.

It may also be the case that misconduct by a member of the temporary staff is brought to the attention of the administration after the end of his or her contract. The person concerned is then invited to explain the allegations. If, despite these explanations, misconduct is deemed to have taken place, the person concerned is informed that they may not be recruited again by the Commission for the next six years (blacklisting). In 2012, a former member of the temporary staff and two former contract agents were the subject of this procedure.

It may also be the case that a member of the temporary or contract staff continues to benefit from residual rights under their former contract. Where it is found that the contract was concluded fraudulently, the administration has the right to remove the entitlements from which the former staff member was benefiting. This exceptional situation occurred in 2012, in the case of a member of the temporary staff on invalidity pension.

2. <u>Dismissal of a member of the temporary or contract staff for disciplinary reasons</u>

The AECE may dismiss a member of the temporary or contract staff on disciplinary grounds. The administration is entitled to dismiss with notice a staff member who has committed an offence serious enough to result in a breakdown of the relationship of trust between them and the Institution. In 2012, two contract staff members were dismissed in this manner.

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⁸ 3 years in the case of a written warning or reprimand, 6 years in all other cases.

The administration can also terminate the contract of a temporary or contract staff member without notice on disciplinary grounds in serious cases of failure to comply with obligations under the Conditions of Employment of other Servants of the Commission (CEOS). In 2012, a contract agent was dismissed following disciplinary proceedings before the Disciplinary Board.

In addition, a contract must be terminated if, when taking up a job, a staff member deliberately submitted false information either as to professional competencies or the requirements of Article 12(2) of the CEOS and where this false information was a determining factor in his or her engagement. In the latter cases, the contract is terminated after the disciplinary procedure under Annex IX to the Staff Regulations has been followed.

3. Sanctions imposed

3.1 Failure to fulfil the duty of loyalty

Article 12 of the Staff Regulations together with Articles 11 and 21, encompass the duty of loyalty of the official to the Institution. The official must conduct himself in a manner that is above suspicion so that the relationship of trust between the Institution and the official is at all times maintained.

The following breaches of duty of loyalty were sanctioned: the more serious cases following disciplinary procedures, and in one less serious case, a caution was issued following a hearing under Article 3 of Annex IX of the Staff Regulations.

Agents under the CEOS who failed to fulfil the duty of loyalty, were also subject to disciplinary sanctions, in one case resulting in the termination of employment while respecting the period of notice, and in another case, an agent on invalidity whose contract had come to an end, lost all his rights to invalidity allowances.

➤ A lack of vigilance with regard to the right to obtain a financial allowance amounts to a breach of the duty of loyalty to the Institution that has as a result made undue payments.

An official working in a delegation who had unduly received a rental allowance over a period of several years was sanctioned by the withholding of a substantial part of his pension for a period of three years.

The AA of the EEAS took this disciplinary measure after several irregularities were found. The fact that the staff member concerned was a very senior and experienced official meant that he could not have been unaware of the rules applicable to officials assigned to delegations. Although no fraudulent intent was established, his negligence, discovered by chance, resulted in the undue payment of substantial sums. The subsequent reimbursement by the

official of the amounts unduly paid, in accordance with the provisions of Article 85 of the Staff Regulations, was not considered to be a mitigating circumstance.

Furthermore, the proven failure to fulfil this duty of loyalty could have adversely affected the integrity and reputation of the Institution had it been rendered public. The AA therefore concluded that the person concerned was also in breach of Article 12 of the Staff Regulations.



An official claiming the benefit of a financial allowance must ensure for himself his entitlement to it. The obligation of loyalty to the Institution requires the staff member to be particularly vigilant where the benefit has a bearing upon the budget of the European Union. Every staff member is deemed to be familiar with his rights under the Staff Regulations and its implementing provisions. If there is any uncertainty as to the scope of these rights, the official must seek clarification with the competent services in order that no benefits are unduly granted. The AA is entitled to consider the high grade and seniority of the official as aggravating circumstances.

➤ False statements made as to the place of residence in order to benefit from a favourable weighting of the correction factor, constitute a failure in the duty of loyalty towards the Institution.

An official in receipt of the invalidity allowance who falsely claimed to be living in the United Kingdom after leaving the Commission had his allowance substantially reduced for a period of three years. A series of corroborating elements proved that the statements and supporting documents submitted to the Institution regarding the individual's permanent or habitual residence did not correspond to that which he had claimed. Furthermore, this failure to fulfil the duty of loyalty could have adversely affected the integrity and reputation of the Institution had it been rendered public. The AA therefore concluded that the person concerned was also in breach of Article 12 of the Staff Regulations.

The AA decided to increase the sanction proposed by the Disciplinary Board in view of the fact that the person concerned fully understood the rules applicable to his situation and persisted in his claims to the administration with the sole purpose of receiving financial benefits to which he was not entitled.



It is for the person receiving a pension or invalidity allowance to prove that the Member State declared for weighting purposes as the place of residence, indeed corresponds to his actual centre of interests. The duty of loyalty to the Institution requires that full and precise information is given in order to allow the Institution to take an informed decision. Omitting relevant information therefore constitutes a failure to fulfil the duty of loyalty. The administration may avail itself of various elements of evidence to demonstrate that the individual had full knowledge of the facts of his situation.

Fraudulent statements made in order to benefit from child and education allowances constitute a failure to fulfil the duty of loyalty to the Institution.

A member of staff, who over a period of four years omitted to declare the professional activity of his son and therefore continued to receive family and education allowances plus medical reimbursements for this child, was sanctioned following his retirement by having his pension substantially reduced for a period of three years.

Following an investigation report by OLAF, disciplinary procedures were opened in 2009, but suspended in accordance with the provisions of Article 25 of Annex IX to the Staff Regulations, pending a final judgement under national criminal law pursuing the same facts. The disciplinary procedure was reopened following conviction of the person concerned in December 2011.

In order to determine the severity of the sanction, the AA took account of the fact that the behaviour of the individual was deliberate and persistent and only stopped after having been discovered by the administration.



Facts resulting in a conviction under national criminal law may also subsequently give rise to a disciplinary sanction.

In accordance with the provisions of Article 85 of the Staff Regulations, reimbursement of payments unduly received does not preclude the AA from subsequently imposing a disciplinary sanction, the level of which should be proportionate to the misconduct and the circumstances under which it was committed.

➤ Forgery of documents and the use of such documents with a view to falsely claiming to fulfil conditions for recruitment constitute fraud which results in the nullity of the contract and all benefits thereunder.

A former temporary agent who submitted a forged diploma and a false letter of recommendation in order to prove that he satisfied the conditions of recruitment had his contract terminated as it had been obtained on the basis of these false documents.

Although the individual left on invalidity pension at the end of his contract, he continued to receive benefits in the form of invalidity allowance, family allowance and medical reimbursements. The decision taken by the AA in this case put an end to all of these allowances.



The administration may retroactively terminate a contract which has been obtained by means of fraud and may consider itself released from all residual benefits linked to that contract. The decision is taken by the Authority authorised to conclude contracts of

employment (AECE) after hearing the person concerned, or after allowing him by any other means to exercise his rights of defence.

➤ A false statement made at the time of recruitment constitutes a failure to comply with the duty of loyalty towards the Institution that may result in termination with notice of the contract of employment.

A contract agent, who at the time of recruitment failed to disclose the existence of a serious illness of which he could not have been unaware and which could have resulted in grounds for invalidity, had his contract terminated with notice by the AECE.



The decision to terminate employment, on the basis of the failure to fulfil the duty of loyalty, in this case, was taken by the AECE without referral to the Disciplinary Board; the person concerned having had the opportunity to be heard on the allegations.

➤ Various and repeated failures to comply with obligations under the Staff Regulations constitutes a failure to fulfil the duty of loyalty to the Institution.

The disciplinary measure of downgrading was taken with respect to a staff member (i) whose absence was unauthorised and recognised as such on several occasions, (ii) who failed to inform the AA of the professional activity of his spouse, (iii) who published an article without seeking prior authority, and (iv) who engaged in external activities without obtaining prior permission.

The AA increased the sanction recommended by the Disciplinary Board after taking into consideration the overall conduct of the person concerned who demonstrated a clear and continued failure to comply with his statutory obligations and the consequences these failings could incur on the image and reputation of the Institution.



It is for the AA to determine the sanction according to the seriousness of the misconduct after a global evaluation of all mitigating and aggravating circumstance. The AA is not bound by the sanction recommended by the Disciplinary Board.

➤ The introduction of false statements in order to obtain the undue reimbursement of removal expenses constitutes a failure to fulfil the duty of loyalty.

A staff member, who at the time of his retirement made false statements to conceal the fact that his removal indicated as a return to his place of origin was in fact a removal to several different locations, was sanctioned by the withholding of a substantial amount of his pension for a period of two years. The conduct of this former official had a substantial financial impact upon the budget of the European Union.

The AA also took into consideration the fact that the former staff member made an agreement with the removal company to cover up the real situation. This conduct harmed the image of the Institution and was therefore in breach of Article 12 of the Staff Regulations.

Due to the seriousness of the conduct, the AA decided to increase the sanction proposed by the Disciplinary Board which had been to limit the withholding of the amount of pension to one year.



A conscious attempt to receive an undue benefit to the detriment of the Institution constitutes a breach of the duty of loyalty. False statements knowingly made to obtain undue benefits are considered as aggravating circumstances.

The knowing submission of an altered medical certificate is a failure of the duty of loyalty.

A staff member who introduced a medical certificate which had been altered without the knowledge of the practitioner received a reprimand. Although it could not be established that the person concerned modified the certificate himself, he knew at the time of submission that the modification, which he himself had requested, had been refused by the medical practitioner.

Furthermore, the staff member also publicly made some insulting remarks towards the medical practitioner. The AA considered that this conduct adversely reflected upon the official's position.

The AA recognised that the circumstances in which the remarks were made, to some extent, could explain the staff member's behaviour towards the practitioner. However, these circumstances could not justify the submission of an altered certificate to the administration without indicating the alteration.



The duty of loyalty towards the Institution demands complete transparency in dealing with the administration. On introducing a document entitling him to a benefit, for example a sick leave, it falls to the official to ensure that the administration receives all of the information necessary in order to verify that the conditions to receive the benefit have been met.

➤ A lack of vigilance in following the procedures on reimbursement of removal expenses is a failure to fulfil the duty of loyalty to the Institution.

Two staff members who failed to verify that the procedures to obtain the reimbursement of removal expenses were in order were sanctioned, one by a written warning, the other by a caution. Both staff members had left it to their spouses to make the practical arrangements for the removal.

The AA considered that being the beneficiary of the reimbursement, the official has himself to verify that the rules have been complied with. Therefore his liability is implicit, even if the irregularities, in this case the failure to submit cost estimates from several removal companies, were committed by the spouse.

In the first case, the AA concluded that the staff member, on submission of the estimates to the administration, had validated the irregularities of his spouse. In the second case, the AA of the EEAS found that the estimate which had been irregularly obtained from the removal company had not in fact been submitted to the Institution.



Where the applicable rules provide for the reimbursement of expenses incurred, the official, being the holder of such a right, has to verify whether the procedures have been complied with. The fact that the irregularities were committed by a third party, entrusted by the official with the practical arrangements, does not constitute a waiver of liability of the official, particularly if he was aware of the irregularities committed, and did nothing to remedy the situation.

3.2 <u>Inappropriate conduct adversely reflecting upon the position of the official</u>

Article 12 of the Staff Regulations stipulates that an official shall refrain from any action or behaviour which might reflect adversely upon his position. This obligation is intended to preserve the integrity and reputation of the Institution and its staff. It therefore goes beyond the actual exercise of his function and extends to conduct in his private life, including events occurring before recruitment by the Institution. The Institution is entitled to expect nothing less than irreproachable conduct from its staff. This particularly high level of conduct demanded of staff justifies the sanctioning of behaviour likely to be perceived, both inside and outside the Institution, to be inappropriate on the part of officials and agents of the Commission.

Failures to respect Article 12 of the Staff Regulations have been sanctioned as follows. In the most serious cases, following the opening of disciplinary procedures, and for more minor cases, by the issuing of a caution after a hearing under Article 3 of Annex IX of the Staff Regulations. In one case, the seriousness of the misconduct led the AA to suspend the official from his duties for an indefinite period. In another case, the initiation of legal proceedings for serious facts led to the dismissal of the staff member.

➤ A criminal conviction against an official for facts which occurred prior to his entry into service reflects adversely upon the integrity and reputation of the Institution and its staff.

An official on invalidity pension who had been convicted for serious offences which occurred several years before his entry into service was sanctioned by withholding part of his invalidity allowance for a period of seven years.

The AA, contrary to the opinion of the Disciplinary Board, concluded that the mere fact that the circumstances that led to the conviction occurred prior to the entry into the service of the official, did not exclude the conduct of the official from the application of Article 12 of the Staff Regulations. The facts were established and made public by two criminal court decisions after the recruitment of the official. The facts, as well as the criminal conviction, therefore adversely reflected upon the integrity and reputation of the Institution and its staff.

Furthermore, the AA concluded that by not informing the Institution of the on-going criminal proceedings at the time of his recruitment, the official failed to fulfil the duty of loyalty to the Institution.



Article 12 of the Staff Regulations allows the sanctioning of facts which occurred prior to recruitment and come into public knowledge thereafter. The criminal conviction of an official reflects adversely upon the integrity and reputation of the Institution.

➤ The arrest and imprisonment of an official for facts constituting a serious criminal offence reflect adversely upon position of the official.

In one case, the staff member was suspended for an indefinite period. Further to the provisions of Article 24 of Annex IX to the Staff Regulations, his remuneration was reduced to the minimum subsistence level for a period of six months or until the end of the period of detention. Disciplinary proceedings were opened but immediately suspended while awaiting the final decision of the criminal court.

In another case, the staff member was dismissed for serious suspicion of embezzlement committed in the exercise of his functions. The facts had led to an investigation by OLAF and the initiation of legal proceedings against the person concerned.



Under Article 23 of Annex IX to the Staff Regulations, the AA is empowered to immediately suspend an official accused of serious misconduct resulting from a failure to honour his professional obligations or an infringement of the law.

However, the decision to suspend the official does not prejudice the outcome of the disciplinary procedure opened at the same time. This disciplinary procedure will be based on the facts as established by national criminal courts, with all due respect for the rights of defence of the official concerned.

Conduct of a sexual nature at the place of work with respect to a colleague may be considered as inappropriate behaviour, adversely reflecting upon the position of the official, even if it cannot be qualified as sexual harassment.

An official received a reprimand for conduct of an explicit sexual nature towards two colleagues at the place of work.

An administrative inquiry was opened by IDOC after receiving the complaint which referred to facts which occurred several years previously. In the absence of any direct witnesses and confronted with contradicting statements with respect to these facts belatedly reported to the AA, it was not possible to qualify the behaviour with a sufficient degree of certainty as sexual harassment under Article 12a of the Staff Regulations. However, the seriousness of the conduct as such, proof of which could be established, was qualified as conduct adversely reflecting upon the position of the official.

The Disciplinary Board in its opinion acknowledged the serious breach of Article 12 of the Staff Regulations but was not in favour of imposing any disciplinary measure, as the facts referred to were more than eight years old. The AA however did not follow the opinion of the Disciplinary Board, considering that the elapsed time had not affected the rights of defence of the person concerned.



Only upon fulfilment of the conditions referred to in Article 12a of the Staff Regulations, can conduct be qualified as sexual harassment. The qualification of this conduct as "unwanted" is the most difficult to prove, especially where the lapse of time precludes the removal of all reasonable doubt.

Sexually explicit conduct at work, even if not qualified as sexual harassment, can nevertheless be seen as reflecting adversely upon the official's position as it can affect the integrity and reputation of the Institution and its staff.

Verbal and physical aggression towards a colleague constitutes inappropriate conduct, reflecting adversely upon the position of the official.

Physical aggression and insulting remarks towards a colleague cannot be excused by a state of tiredness brought about by intense working conditions. Even if the reputation of the Institution was not adversely affected as there were no outside witnesses to the incident or complaint brought by the victim of the aggression, it was considered that such conduct reflected adversely upon the position of the official.

As the conduct of the person concerned towards other colleagues had previously been the subject of criticism by the hierarchy, a reprimand was imposed in this case.



Article 12 of the Staff Regulations states that an official shall refrain from any action or behaviour which might adversely reflect upon his position. The fact that such conduct is not

witnessed by persons outside the Institution does not preclude the imposing of a sanction, as by its nature, the conduct does not meet the irreproachable standard the Institution is entitled to expect from its personnel in order to preserve its reputation.

➤ The submission of a modified medical certificate constitutes conduct adversely reflecting upon the official's position.

A contract agent received a written warning for submitting a request for medical reimbursement by means of a certificate where the date had been altered.

While the fraudulent intent of the staff member was not established, he nevertheless knowingly modified the date on which the certificate was issued by the medical practitioner in the belief that a material error had to be corrected. The AA decided it was not for the person concerned to modify a certificate to obtain reimbursement of expenses without informing the Institution of the changes made. In deciding not to impose a heavier sanction, the AA took into consideration the small amount in question and the fact that the agent had just been recruited at the time the events took place.



Any modification of a document submitted to the Institution in order to obtain a reimbursement of expenses is liable to disciplinary action even in the absence of any fraudulent intent.

➤ Ironic, insulting and threatening comments towards a colleague, made through social media, constitutes inappropriate behaviour reflecting adversely on the position of the official. The same is true of an electronic message containing insulting remarks mistakenly sent to a former member of staff.

A situation of stress induced by a heavy workload could not excuse messages posted on social media questioning whether the medical absence of a colleague was well-founded. The author of these messages, for which he subsequently apologised, received a written warning.

The author of a message containing insulting remarks, sent mistakenly to a former member of staff, received a caution. As the author of the message spontaneously presented his apologies and had not intended any harm to the recipient, it was decided not to open a disciplinary procedure in this case.



Article 12 of the Staff Regulations, stipulates that the Institution is entitled to expect irreproachable conduct of its staff including in their private lives. The freedom of expression offered by social media must be reconciled with the obligation for officials to demonstrate outside the Institution behaviour which conforms to the need to respect the high standards of ethics and integrity expected of them.

➤ A contribution in the context of the appraisal procedure, must give a fair and objective overview of the performance of the official being evaluated. Comments that knowingly distort the facts constitute inappropriate conduct.

A caution was given to a Manager, whose contribution to the appraisal exercise of a subordinate, gave a potentially misleading view of the situation.

In view of an interpersonal conflict between the two staff members, each of whom had submitted a request for assistance for psychological harassment against the other, the official in his capacity as reporting officer, should have been particularly careful when drafting the contribution. However, the AA took into consideration the fact that the reporting officer had not intended to harm the interests of the official but wanted to end what in his view was unjustifiable behaviour.



Situations of interpersonal conflicts which could lead to allegations of psychological harassment should be handled with particular care, especially when the investigation examining these allegations has not been finalised.

Personnel in management positions should display irreproachable conduct in order not to harm the image of the Institution.

High standards of mutual respect and moderation apply in interpersonal relations between staff. The AA therefore addressed a caution to a member of the management whose conduct towards his subordinates in this respect could be criticised.



Article 12 of the Staff Regulations requires staff always to conduct themselves in a manner befitting the dignity of their position. This applies in particular to those in a position of management as it is their duty to set an example both within and outside of the Institution in order not to damage its reputation.

3.3 <u>Failure to comply with the obligations of the Staff Regulations in</u> the performance of duties

Article 21 of the Staff Regulations requires that the official shall assist his superiors and that he is responsible for the performance of the duties assigned to him. These duties must be carried out in strict compliance with the applicable rules and the instructions given.

Disciplinary procedures were opened in the most serious cases of misconduct, one of which resulted in the termination of the employment of a contract agent without notice. Other less serious cases gave rise to a caution after a hearing under Article 3 of Annex IX to the Staff Regulations.

> Staff members are responsible for any serious irregularities and repeated negligence in the performance of their duties and in the case of a contract agent may result in the termination of employment without notice.

A contract agent was dismissed without notice following a disciplinary procedure before the Disciplinary Board. Over a number of years the contract agent knowingly committed irregularities in the handling of files for which he was responsible. The contract agent, not only validated incomplete and incorrect applications, but even encouraged staff not to comply with the applicable procedures; despite having an important role to play in ensuring that the procedures were correctly followed. Although the agent had a heavy work load, the AA did not accept any mitigating circumstances that could justify such serious irregularities.



Employment of a contract agent can be terminated without notice following a disciplinary procedure where the seriousness of the agent's failure to comply with obligations has been established. Aside from the possibility of being dismissed for serious breaches, a contract object may be subject to a disciplinary sanction for any breach of his obligations.

A failure to comply with the instructions that govern the performance of certain duties, or the failure to comply with internal procedures, entails the responsibility of the staff member.

A caution was given to a staff member who did not respect the security measures applicable to the handling of confidential files assigned to him. He had been repeatedly reminded of these measures and had also signed a declaration in which the procedures had been laid down. However, in deciding not to open disciplinary procedures, the AA took account of the

fact that a situation of tension could have contributed to the official inadvertently overlooking the procedures in this case.

A written warning was given to a staff member for failing to correctly apply the internal procedures in place for managing the assets of the delegation for which he was responsible. The AA recognised in this case that the administrative environment together with the local conditions made a strict compliance with the applicable rules difficult. However, although the official did not receive any personal advantage from the situation, he was responsible for allowing the continuation of a pre-existent administrative practice that was not compatible with the applicable rules.

➤ A lack of care in the supervision of the implementation of a contract entered into by the Commission with a third party, engages the responsibility of the manager in charge of such a contract.

An caution was sent to a former manager, who despite being warned on several occasions of irregularities, still failed to verify whether the services rendered by a third party under contract to the Commission were in accordance with the provisions of that contract.

The AA in deciding not to open a disciplinary procedure took into consideration the time elapsed since the events took place and the previously irreproachable conduct of the staff member throughout his career.



Under Article 21 of the Staff Regulations, the official is responsible for the performance of the duties assigned to him. The internal procedures and the instructions that govern the performance of certain duties in the service must be complied with. A careful execution of the duties of the official is also required in order to prevent any irregularities taking place.

3.4 <u>Conflict of interest and acceptance of personal benefits without prior permission</u>

Under Article 11 of the Staff Regulations, an official shall conduct himself solely in the interests of the Union. No other interest shall prevail, whether public or private. This obligation is intended to safeguard the independence of the Institution and its staff, who must carry out their duties objectively and impartially. Situations where the image and objectivity of Commission staff could be damaged must be avoided.

Breaches of Article 11 of the Staff regulation were sanctioned in one case by the opening of disciplinary procedures and in two other cases by a caution following a hearing under Article 3 of Annex IX to the Staff Regulations.

Whenever an official, while performing his duties, tries to obtain a personal benefit for a member of his family or a friend, a conflict of interest exists that might adversely reflect upon the reputation of the Institution and its staff.

A staff member who recommended some people he knew, including his sister-in-law to a contracting party of the Commission with a view to obtaining employment for them, received a reprimand. As he was responsible for the execution of the contract, he placed himself in a situation of conflict of interest liable to adversely reflect upon the reputation of the Institution.

A caution was given to another staff member who requested a false invoice for a member of his family under a contract he was responsible for. The isolated nature of the incident was taken into consideration in not opening a disciplinary procedure.

> The acceptance of a personal benefit, granted by a third party, without the prior permission of the Institution while performing his duties, is a failure to fulfil the obligations under Article 11, paragraph 2, of the Staff Regulations.

A caution was given to a staff member who made use of a vehicle owned by a contracting party to the Commission for the transportation of his personal belongings. Although he was responsible for the execution of the contract with the party in question, the very limited nature of the service rendered and the isolated nature of the incident meant that the opening of a disciplinary procedure was not justified in this case.



The obligation not to accept any personal benefit from a third party be it direct or indirect, unless prior permission is obtained, is intended to safeguard the independence of staff and to avoid situations of conflict of interest. A benefit, however small, obtained without prior permission, may adversely affect the reputation of the Institution, and could therefore lead to disciplinary measures being taken.

3.5 Unauthorised external activities

An official wishing to engage in an outside activity first has to obtain the permission of the AA. This also applies to an official on leave on personal grounds (CCP). This obligation is intended to prevent officials from falling into situations of conflict of interest, or engaging in activities that may reflect adversely upon the reputation of the Institution or affect the performance of their duties.

Commission decision C (2004) 1597 of 28 April 2004 relating to external activities and assignments defines external activities as "all (other) activity, paid or unpaid, that is of an occupational nature or goes otherwise beyond what can be reasonably considered as a leisure activity".

In two cases, disciplinary measures were taken due to a failure to fulfil the obligations under Article 12b of the Staff Regulations and in one case, a caution was given after a hearing under Article 3 of Annex IX to the Staff Regulations.

An official must obtain prior permission not only for any paid outside activity, but also for unpaid activities carried out occasionally whether he is in active service or on leave on personal grounds.

A reprimand was given to an official who organized seminars, for which a fee had to be paid, and who offered his services to the general public via a website. As the organiser of the seminars, his involvement was limited to the collection of payment of the participants in order to pay for the services of the speakers and not for any personal remuneration. However, he did receive payment for the services that he had rendered. The AA took into consideration the limited nature of the services rendered and the fact that the person concerned ceased this activity as soon as he was informed of the procedure in question.

A caution was given to an official who did not request prior permission to engage, as a volunteer, in offering advice and training to a non-commercial association. The decision was taken not to open a disciplinary procedure due to the fact that the voluntary nature of this type of activity normally received a favourable opinion of the AA.

In a third case, a reprimand was given to an official who submitted a request for leave on personal grounds and at the same time, without requesting prior permission, offered his services to the Commission as a remunerated external consultant. The AA also referred to the fact that the offer of the official, by its very nature, might have created a conflict of interest between his work as a consultant and his duties at the Commission.



Under Article 12b of the Staff Regulations, an official wishing to engage in an outside activity, whether paid or unpaid, has to obtain the prior permission of the AA. This is not merely a formal requirement. The request allows the Institution to verify that the activity does not affect the official's duties at the Commission, and that it does not give the impression to the general public that there is a conflict of interest with the official's duties. Furthermore, it allows the Institution to verify whether the activity, by its very nature, does not affect the reputation of the Commission and its staff.

The obligation provided for in Article 12b of the Staff Regulations concerns officials both in active service, as well as those who are on leave on personal grounds or who have introduced such a request.

3.6 <u>Failure to inform the AA of the gainful employment of the</u> spouse

Under Article 13 of the Staff Regulations, an official must inform the AA without delay of the gainful employment of the spouse. This obligation is intended to prevent situations of conflict of interest between the activities of the spouse and the duties to be performed by the official for the Institution.

In one case, a caution was given following a hearing under Article 3 of Annex IX to the Staff Regulations, for failure to fulfil the obligations provided for in Article 13 of the Staff Regulations.

> The late declaration of the gainful employment of the spouse of an official, discovered by the administration itself during a verification exercise, even when the activity has ceased, does not alter the fact that there has been a breach of Article 13 of the Staff Regulations.

A caution was given to an official who failed to inform the Institution of the gainful employment of his spouse over a period of two years, even though the remuneration for the employment was very low and was of an occasional nature.

It was decided not to open a disciplinary procedure, as the employment of the spouse had not resulted in a situation of conflict of interest, and had already ceased at the time it was discovered.



Article 13 of the Staff Regulations is intended to prevent situations of conflict of interest for the official resulting from the activities his spouse. The conditions of Article 13 must be satisfied as soon as the spouse enters into a professional activity, regardless of the level of remuneration or whether the activity is regular or occasional.

3.7 <u>Inappropriate use of the ICT services of the Commission</u>

Commission computer equipment, email, internet access, telephones, mobile phones and fax equipment (ICT) are intended for official use. Private use of this equipment is allowed if it is on a purely occasional basis and does not amount to extensive use of the equipment for private purposes. The Commission's ICT services may not be used for illegal or irregular purposes, nor may they be used in a way that might disrupt the functioning of the service itself, or in a manner contrary to the interests of the Union.

An abuse of internet access was sanctioned following a disciplinary procedure

> The frequent and intensive use of internet access for private use is an inappropriate use of the equipment and services that have been put at the disposal of staff members in order to allow them to perform their duties.

Administrative notice N° 45-2006 of 15 September 2006 sets out the conditions under which the Commission computer equipment, email, internet access, telephones, mobile phones and fax equipment may be used.

A staff member was sanctioned by a reprimand for the frequent and intensive visiting of websites of a sexually explicit nature. The excessive volume of material downloaded as a result of these frequent visits could not be qualified as occasional private use of the equipment. Furthermore, the content of the websites consulted was of a nature to have an adverse effect on the reputation of the Commission externally.



The private use of ICT services put at the disposal of staff in order to allow them to perform their duties, should remain purely occasional and must not generate an excessive amount of electronic traffic. Furthermore, the content of the websites must not be of a nature to adversely affect the reputation of the Institution or its staff.

3.8 <u>Inappropriate processing of personal data</u>

Staff must abide by the rules set out in Regulation 45/2001 with respect to the protection of personal data. Personal data obtained whilst carrying out duties may only be processed for the purposes for which it was obtained.

Failures to comply with this obligation resulted in a caution being given after a hearing under Article 3 of Annex IX to the Staff Regulations.

Circulating the contents of a confidential message from the administration, or the use for private means of information obtained in the course of duty constitute a misuse of personal data.

A caution was given to a staff member who informed the colleagues of his Unit of the reply sent by the AA to the request for assistance of another colleague. This decision was by its nature confidential and contained personal data which could not be disclosed to third parties without the consent of all persons concerned. Furthermore, the presentation that was made of the decision was misleading.

The recipient of the decision, who was the subject of the information disclosed, was also given a caution. The fact that he was the recipient of the decision did not authorise him to communicate the contents to his colleague without the prior consent of the other persons concerned. Furthermore, although being in a position to do so, the staff member refrained from rectifying the misleading presentation that was given of the reply before circulating it.

The AA recognised that the tensions which had long existed within the Unit could have influenced the conduct of these two staff members whose motives in this case were not intended to harm. Under these circumstances, a caution was a sufficient sanction for the behaviour of the persons concerned.

In another case, a caution was given to an official who made use of a list of former colleagues, in order to gain publicity for an external activity being carried out while on leave on personal grounds. As the official had received prior permission to carry out the activity, it was decided not to open disciplinary procedures.



Personal data obtained whilst carrying out duties may not be used for any other purpose than that for which it was obtained. Any other use constitutes an improper use of such data under Regulation 45/2001 of 18.12.2000 with respect to 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 L 8, 12.1.2001, p.1).

Further to the provisions of Article 17a of the Staff Regulations, an official has the right to freedom of expression with due respect to the principles of loyalty and impartiality and when exercising these rights is bound by his statutory obligations. These obligations preclude the unauthorised divulgence of personal data protected by Regulation 45/2001.

3.9 <u>Infringement of the rules on sick leave</u>

An official who wishes to spend sick leave away from the place of employment must obtain prior permission from the Medical Service. Failing such permission, the absence is unauthorised and as such, may give rise to disciplinary proceedings.

An official who failed to fulfil this obligation under Article 60 (2) of the Staff Regulations was given a caution following a hearing under Article 3 of Annex IX to the Staff Regulations.

➤ A caution was given to an official who, without prior permission, spent sick leave in a Member State other than his place of employment. The distance prevented the official from reporting for check-up when called upon to do so by the medical officer.

The personal and medical situation of this official at the time of the facts led the AA to impose a caution rather than a disciplinary sanction for this irregularity.



An official on sick leave must remain at the place of employment in order to respond at any time to the request for a possible medical examination. The official may not leave his place of employment without prior authorisation from the AA based on the opinion of the Medical Service.

3.10 Disclosing documents which have not been made public

A member of staff shall refrain from any unauthorised disclosure outside of the Institution of information received in the line of duty unless that information has already been made public or is accessible to the public.

A seconded national expert was reprimanded for failure to fulfil this obligation.

➤ A seconded national expert who disclosed internal documents to the national authorities prior to their approval by the Commission was invited to a hearing with a view to possible termination of his secondment.

Even though the leaking of the documents in question could have been harmful to the Commission, the circumstances in which the events took place were taken into consideration in deciding to impose a reprimand on the person concerned, notably the responsibilities given to this expert and the lack of appropriate supervision by his hierarchy.



Commission Decision (2008) 6866 determines, among other things, the rights and obligations of seconded national experts. A failure to fulfil these obligations may result in the Commission ending the secondment of the individual.

VI. OTHER ACTIVITIES OF IDOC

1. Guidelines on Whistleblowing

In 2012 IDOC together with OLAF prepared guidelines on Whistleblowing which were adopted by the Commission (SEC(2012) 679). These guidelines define clear, safe procedures allowing members of staff to report, in good faith, serious wrongdoings discovered whilst carrying out their duties. The Guidelines also explain measures to be taken to protect staff who have reported such wrongdoings.

2. <u>Communication, training and prevention activities</u>

IDOC's Annual Activity Report, disseminated to all Commission services and available on the Commission's IntraComm is intended not only to inform staff of the activities of the Office, but to increase staff awareness of professional ethical rules and the consequences of breaches of the staff regulations which are brought before the AA throughout the year in question.

These same objectives were pursued by means of presentations by IDOC to various Directorates General, to the European External Action Service, and to Executive Agencies.

IDOC also gave training sessions on disciplinary matters throughout 2012. This training for both information and prevention purposes was also targeted at newly recruited officials and those leaving to work in EU Delegations.

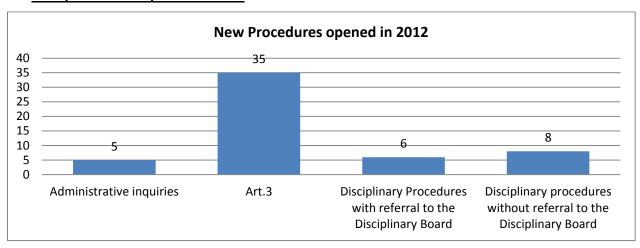
IDOC also contributed to the drafting of rules on ethics, based on its experience in conducting inquiries and disciplinary cases.

More information on IDOC's activities, including Activity Reports from previous years can be found on the IDOC website:

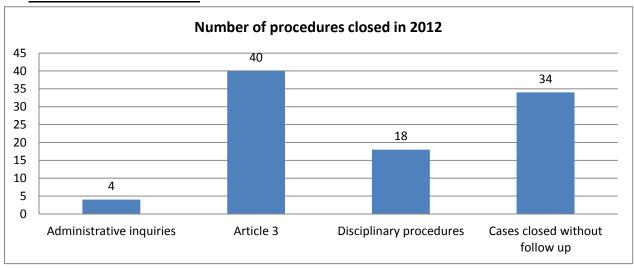
http://myintracomm.ec.europa.eu/hr admin/en/idoc/Pages/index.aspx

VII. Statistical data

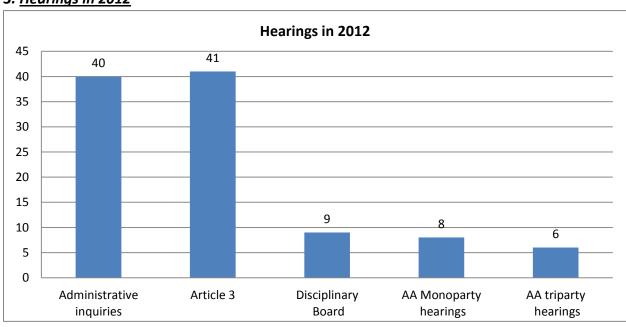
1. New procedures opened in 2012



2. Procedures closed in 2012



3. <u>Hearings in 2012</u>



4. Disciplinary and non-disciplinary measures

