



Activity Report

of the Investigation
and Disciplinary Office
of the Commission
(IDOC) **2019**

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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 Activity Report informs staff of activities in the area of disciplinary matters, reminds them of their obligations to respect the standards and to protect the 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.

II - CASES REGISTERED IN 2019 – 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.

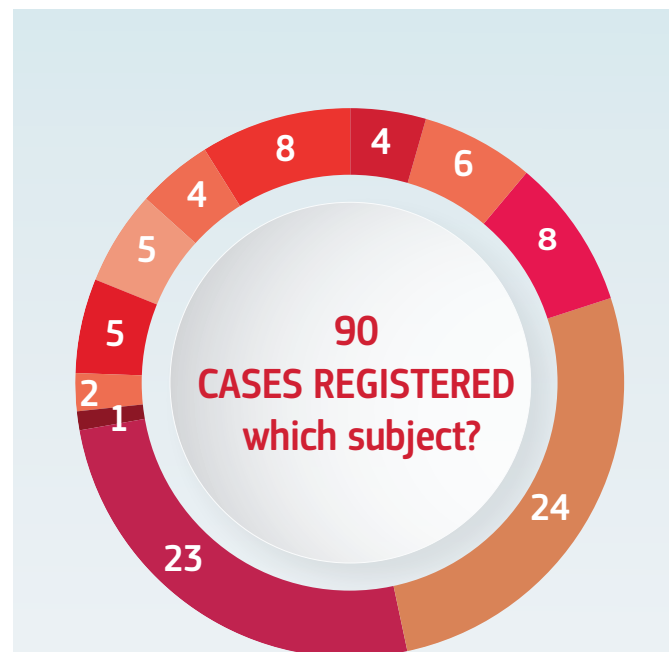
90 new cases were registered in IDOC in 2019. 19 of them had their origins in requests submitted under Article 24 of the Staff Regulations. In addition, IDOC continued to deal with on-going cases registered in previous years.

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

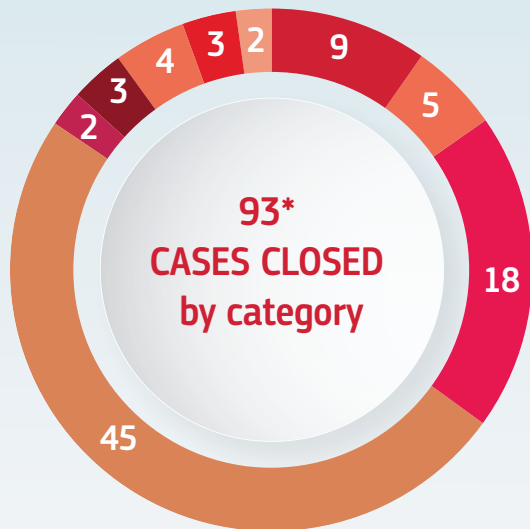
basis of mandates provided by the Appointing Authority in each of these Institutions and Agencies.

Of the 90 cases registered in 2019, 8 concerned the EEAS and 8 concerned the executive agencies.

For the decentralised agencies, the European Committee of the Regions, the European Economic and Social Committee and some joint undertakings, IDOC provides a helpdesk service, and continues to encourage the agencies to make use of an inter-agency network of investigators.



- Breach of financial rules (4)
- Conflict of interest (6)
- Irregular declarations (8)
- Inappropriate behaviour (24)
- Harassment (23)
- Criminal offence (1)
- Unauthorised absences (2)
- Unauthorised external activity (5)
- Breach of rules on confidentiality (5)
- Occupational disease (4)
- Miscellaneous (8)



* 3 cases were joined and led to 1 single warning

- Disciplinary penalty (9)
- Warning (5)
- No follow-up (18)
- Non-case (45)
- Termination of contract (2)
- Article 73 report (3)
- Sent to OLAF (4)
- Reassignment to another service/AA (3)
- Devoid of purpose (2)

III - HOW IDOC WORKS

3.1. Preliminary assessments

All cases registered, which have not been 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 2019, 45 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 2019 IDOC carried out administrative inquiries under the new procedure for the recognition of the occupational disease under Article 73 of the Staff Regulations.

In 2019, IDOC received mandates from the Appointing Authority to open 41 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, unauthorised disclosure of information in legal proceedings, non-respect of the obligation to notify the intention to stand for public office, as well as inquiries under the procedure for handling occupational disease requests.

In order to establish the facts, the case-handlers make use of a range of measures, including 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 2019, IDOC conducted 178 hearings in the course of the administrative inquiries, which represents a 25% increase as compared to the previous year.

43 administrative inquiries were closed in the course of the year. In 15 of these cases, the Appointing Authority decided to close the case without disciplinary follow-up. In 1 case it was decided to terminate the contract of the person concerned in accordance with Article 47 of the Conditions of Employment of Other Servants (CEOS).

3.3. Pre-disciplinary proceedings

In cases where the Appointing Authority decides to pursue the case further after the administrative inquiry, the person concerned is heard and given the opportunity to comment on all the evidence of the case. Following the pre-disciplinary hearing with the person concerned, the Appointing Authority can then decide: (1) to close the case without follow-up; (2) to issue a non-disciplinary measure in the form of a warning (*mise en garde*)¹; or (3) to open disciplinary proceedings.

In 2019, the Appointing Authority gave IDOC mandate to open pre-disciplinary proceedings in 29 cases. 27 of these pre-disciplinary proceedings were closed in 2019, as follows:

¹ The Staff Regulations makes a distinction between this non-disciplinary warning (*mise en garde*) and a written warning, which does constitute a disciplinary sanction (*avertissement par écrit*).



- 17 pre-disciplinary proceedings were finalised with a report sent to the disciplinary authority;
- in 6 cases² the Appointing Authority decided to issue a non-disciplinary measure in the form of a warning (*mise en garde*) reminding the persons 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;
- 3 cases were closed with no follow-up;
- in one case, the contract of the person concerned was terminated in accordance with Article 47 of the CEOS.

3.4. Suspension

A person concerned who is accused of serious misconduct may be suspended from active service, for a specific or indefinite period, pending the outcome of disciplinary or criminal proceedings. In 2019, no suspension decision was taken.

3.5. 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 is 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 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 both the facts and the 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 2019, 18 disciplinary proceedings were opened, 9 without referral to the Disciplinary Board and 9 with referral to the Disciplinary Board.

In 2019, 9 cases were closed with a disciplinary sanction. The sanctions imposed by the Appointing Authority included removal from post, withholding of pension, termination of contract and reprimand.

One disciplinary proceeding was closed with a non-disciplinary measure, i.e. with a warning.

3.6. Different types of sanctions

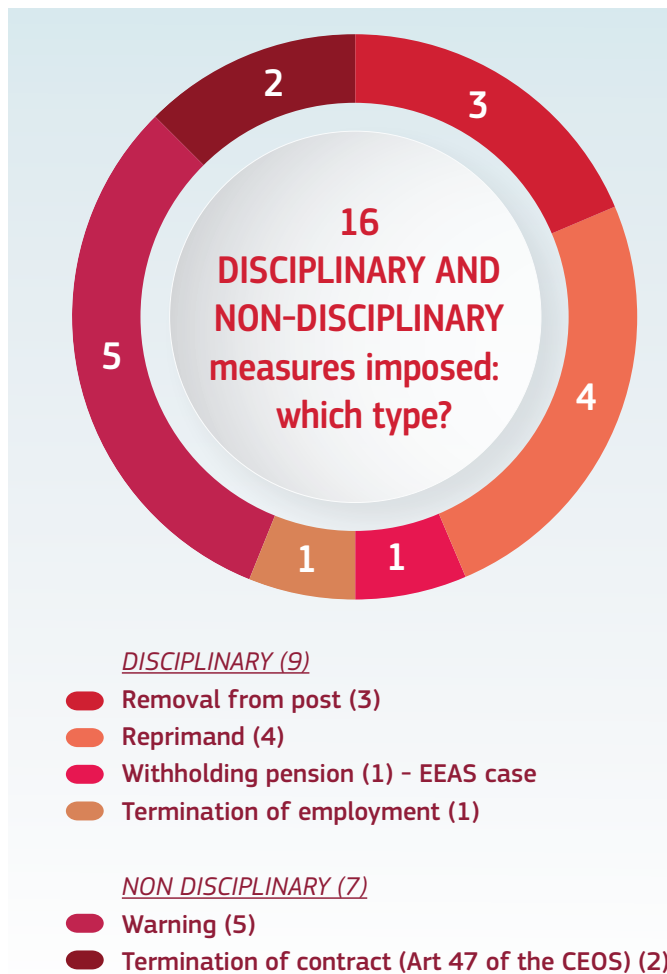
Cases where breaches are established may be sanctioned in several ways:

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 between three and six years.

Staff members subject to the Conditions of Employment of Other Servants (CEOS) who are found to be in breach

² Three cases were joined and led to one warning.



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: the nature and circumstances of the misconduct; the extent to which the misconduct has an impact on the Institution; whether the misconduct involves intent or negligence; the motives for the misconduct; the grade and seniority of the staff member concerned; the degree of the staff member's personal responsibility; the level of the staff member's duties and responsibilities; whether the misconduct involved repeated action or behaviour and 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 sanction

imposed must be commensurate with the seriousness of the misconduct.

IV - SUMMARY OF CASES CLOSED WITH A DISCIPLINARY SANCTION³

In line with Article 45 of Decision C(2019) 4231, this report provides a summary of the cases in which the Appointing Authority imposed a disciplinary sanction in 2019. 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 the position of the staff member.

The Appointing Authority decided to reduce by 50% the net retirement pension of a retired official for two years, for serious infringements of national legislation, committed outside work. The official concerned submitted to the national authorities false declarations, infringed repeatedly specific national veterinary legislation, and was in illegal possession of arms.

Even if the official acted erroneously outside the working environment, the Appointing Authority considered that he was in breach of Article 12 of the Staff Regulations, given the gravity of the infringements and the high level of integrity expected by staff of the EU Institutions.

The Appointing Authority imposed a reprimand on an official who sent aggressive e-mails in his work environment, including messages relating to race and religion. In addition, the official repeatedly refused to follow the instructions of his hierarchy and did not inform the hierarchy of his sick leaves.

The Appointing Authority considered that the official's behaviour amounted to breaches of Articles 12 and 21(1) of the Staff Regulations. It considered as extenuating circumstances the facts that certain of his inappropriate behaviour happened a long time before the disciplinary proceeding took place, and that the behaviour of the official showed some improvement over time.

³ Out of these cases, one concerned the EEAS.

The Appointing Authority imposed a reprimand on a manager who behaved inappropriately towards his colleagues. He sent abrupt e-mails to some colleagues and seriously undermined the work of another colleague.

While the Appointing Authority acknowledged the significant workload of the service and the professional competences of the manager, it considered that the official's behaviour amounted to a breach of Article 12 of the Staff Regulations.

Duty of loyalty

In line with Article 11 of the Staff Regulation, the duty of loyalty requires staff members to carry out their duties and conduct themselves solely with the interests of the Union in mind and that they do not take instructions from anyone outside the institution. It also requires that the staff members carry out the duties assigned to them objectively and impartially.

The Appointing Authority decided to remove from post an official who privately negotiated important terms of a contract with an external company, without any authorisation from his hierarchy. Both the Disciplinary Board and the Appointing Authority considered that this behaviour seriously damaged the image of the institution and reflected adversely upon his position.

Moreover, the official openly recommended the company of his partner as a subcontractor to the Commission, which resulted in that company effectively acting as a subcontractor, without the knowledge of the hierarchy. The official furthermore participated in the management of the contract binding the company of his partner to the contractor of the Commission. All this constituted a serious conflict of interest.

The Appointing Authority concluded that the official seriously breached Articles 11, first paragraph, 12 and 21 of the Staff Regulations, as well as Article 52 and 79 of the Financial Regulation.

Irregular and false declarations

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

The Appointing Authority imposed a reprimand on an official who provided an irregular medical certificate

when applying to receive financial support. The official did not ensure that the information he provided to the doctor, for issuing the medical certificate, accurately described the facts and circumstances of his situation.

The Appointing Authority considered as an extenuating circumstance the difficult personal situation of the official.

It considered that the official's behaviour amounted to breaches of Article 11, first paragraph and Article 12 of the Staff Regulations.

The Appointing Authority decided to terminate without notice the employment of a contract agent who submitted requests for reimbursement of medical costs that did not correspond to the actual amounts paid or to the actual medical care. The documents were provided by members of his family.

The Appointing Authority considered that the contract agent's behaviour amounted to breaches of Articles 11 and 12 of the Staff Regulations, which apply by analogy to contract agents by virtue of Articles 11 and 81 of the CEOS.

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 who failed to respect numerous obligations incumbent on Commission staff members. The official was systematically and continuously absent from work over a long period of time. In addition, when he was present at work, he did not follow the instructions of the hierarchy and did not execute the tasks required by it. Moreover, the official adopted inappropriate behaviour towards his colleagues and hierarchy. Finally, by refusing to be present at his last work post over a long period of time, the official deliberately and unilaterally breached the relationship of trust with the institution.

The Appointing Authority thus considered that the official's behaviour amounted to serious breaches of Articles 55, 60, 21, 11 and 12 of the Staff Regulations.

The Appointing Authority decided to remove from post an official who did not respect the obligation to be present at work and to encode his presences in Sysper, over a considerable period of time, despite the reminders and instructions of his hierarchy. In addition, the official exercised outside activities other than those authorised by the Appointing Authority upon his leaving on personal grounds. An aggravating circumstance in this case was the fact that the official has already been the subject of disciplinary proceedings in the past, for the same breaches, for which he received a reprimand at the time.

The Appointing Authority considered that the trust between the official and the institution was irreparably damaged, and contrary to the Disciplinary Board, considered that a breach of such gravity merited a removal from post.

The Appointing Authority considered that the official's behaviour amounted to serious breaches of Articles 55, 11, 12b and 21 of the Staff Regulations, as well as Decision C(2014) 2502 on working time and Decision C(2013) 9037 on outside activities and assignments, applicable at the time of the facts.

Unauthorised outside activities

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

The Appointing Authority imposed a reprimand on an official who carried-out an outside activity, both in active service and during a period of leave on personal grounds, without prior request and receipt of the authorisation required by Article 12b of the Staff Regulations. Further to the disciplinary proceedings, the Appointing Authority accepted the resignation of the official from his post.

The Appointing Authority considered that the official's behaviour amounted to breaches of Article 12b the Staff Regulations, Article 14 of the Commission Decision C(2004) 1597 on outside activities and assignments, applicable at the time of the facts, and Article 3 of Commission Decision C(2013) 9054 on measures concerning leave on personal grounds.

V – POLICY AND COMPLIANCE

5.1. Whistleblowing

IDOC performed a review of the Guidelines on Whistleblowing (Communication from Vice-President Šefčovič to the Commission on Guidelines on

Whistleblowing of 6 December 2012, SEC(2012) 679 final).

The review concluded that it is not necessary to amend the Guidelines at this stage. The Commission should continue its efforts to ensure that the current rules and procedures are well known to the staff members and are applied appropriately.

5.2. Commission Decision updating the General Implementing Provisions on the Conduct of Administrative Inquiries and Disciplinary Proceedings

On 12 June 2019 the Commission adopted the new Decision laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings C(2019) 4231, which repealed Commission Decision C(2004) 1588.

The main purpose of the new implementing provisions is to: take into account the developments in the case-law of the Court of Justice of the European Union, lay down definitions and general principles guiding the administrative inquiries and disciplinary proceedings, provide a clear description of the various steps of the procedure and reinforce the procedural rights of the persons involved in these proceedings.

5.3. IDOC's new Practical Guide on Procedures in Administrative Inquiries, Pre-disciplinary and Disciplinary proceedings

Following the adoption of the new implementing provisions, IDOC revised its Practical Guide on procedures in administrative inquiries, pre-disciplinary and disciplinary proceedings. The guide is publicly available for staff on the Commission Intracomm site.

5.4. Outreach to staff

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

IDOC's outreach activities in 2019 included tailored interactive training and outreach sessions on ethics and disciplinary matters, delivered to targeted audiences in DGs and agencies, sometimes organised in conjunction with the Unit HR E3 "Ethics and Ombudsman" in DG HR. Nearly 30 presentations were given by IDOC to staff members and management from numerous DGs and executive agencies. Regular presentations were made to staff preparing to be posted to EU Delegations, including to Heads of Delegation at their annual autumn

conference. Specific presentations were also made to newcomers to DG HR.

5.5. Data protection

IDOC complied in a timely manner with the obligation set out in Article 25 of Regulation (EU) 2018/1725 to prepare an act laying down the legal basis for restriction of data protection rights in the context of IDOC procedures.

On 1 February 2019 the Commission adopted the new Decision (EU) 2019/165 laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their data protection rights in the context of administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings.

5.6. Reinforced cooperation with Business Correspondents (BCs) and Account Management Correspondents (AMC)

IDOC launched the Reinforced Cooperation Project with the AMCs and the BCs of all DGs, in order to ensure that, after the modernisation of the HR function, IDOC's cooperation with the AMCs and the BCs is not only maintained, but further developed and made more efficient.

