

ACTIVITY REPORT OF
THE INVESTIGATION AND DISCIPLINARY OFFICE OF THE COMMISSION
(IDOC)

2008

IDOC in 2008

INQUIRY ACTIVITIES

What are they?

The administrative inquiries conducted by IDOC are a fact-finding exercise intended to allow the appointing authority (AA) to assess any situation that could lead to possible disciplinary action. These inquiries by IDOC take account of all aggravating and extenuating factors, which means that all the facts are sought in an objective and impartial way. The inquiries are generally launched to check whether the conduct in question is a breach of the Staff Regulations, but experience shows that only a minority of these inquiries end up identifying breaches. Most detect no breach of the rules and are closed without further action.

ADMINISTRATIVE INQUIRIES OPENED

17 administrative inquiries and 102 hearings

The AA gave IDOC **mandates** to conduct **17 administrative inquiries**, which gave rise to **102 hearings** to establish the facts and, if necessary, determine if there was any breach of the obligations to which officials and other agents of the Commission are bound.

CONDUCT CONCERNED

Physical aggression
Unauthorised outside activity
Unauthorised disclosure of confidential information
Falsification and use of false documents
Psychological harassment
Irregularities in relation to a competition procedure
Irregularities in relation to the payment phase of Community funds
Mistreatment of children in a Commission *crèche*
Improper language
Irregular use of the diplomatic bag

ADMINISTRATIVE INQUIRIES CLOSED

18 administrative inquiries and 17 files closed without further disciplinary action

18 administrative inquiries produced a final report, which was submitted to the AA for appropriate action.

In **17 cases**, the AA decided that no charge could be brought against the official concerned and that the file therefore had **to be closed without further disciplinary action**.

The duration of the administrative inquiries depends on various factors, such as the complexity of the case, the number of hearings to be conducted and the availability of the persons to be heard. **Leaving aside all these differences, the average duration of the administrative inquiries closed during 2008 was 7.7 months¹**. This average is considered reasonable, but IDOC aims to reduce it, in particular by speeding up its investigations of the simplest cases.

ACTIVITIES LINKED TO DISCIPLINARY PROCEEDINGS

PRE-DISCIPLINARY HEARINGS

24 mandates issued by the appointing authority

IDOC received **24 mandates** from the AA to carry out the preliminary hearing provided for in Article 3 of Annex IX to the Staff Regulations before a decision is taken on whether to initiate disciplinary proceedings or not. The majority of these hearings followed a final inquiry report from OLAF or IDOC. In some cases, however, the facts had been established sufficiently to leave no need for an administrative inquiry.

CONDUCT CONCERNED

Unjustified absences
Unauthorised outside activity
Physical aggression
Falsification and use of false documents
Inappropriate behaviour and breach of the duty of loyalty
Conflict of interest
Psychological harassment
Irregularities in the handling of medical expenses claims
Irregularities in the management of contracts
Improper language
Irregular use of the diplomatic bag

RESULTS

3 cases closed without follow-up

4 warnings

In the light of the reports on the preliminary hearings carried out by IDOC, the AA decided **to close 3 cases without further action** because no charge could be brought against the official concerned due either to lack of sufficient evidence of a breach of the Staff Regulations or to specific circumstances which could clear the person concerned.

¹ This means the actual duration of the inquiry, from issuing the mandate to IDOC to transmission of the final inquiry report to the AA. The actual duration excludes any time during which the inquiry is suspended on legitimate grounds, such as unavailability for medical reasons of the person concerned or of a key witness.

In **4 cases** in 2008 the AA decided to issue a warning to the official concerned (in accordance with Article 3 of Annex IX to the Staff Regulations). Although a warning is not a disciplinary penalty, it confirms a minor violation of the obligations under the Staff Regulations. It is recorded in the personnel file of the person concerned and remains on the record there for 18 months.

Conduct leading to a warning

Filing claims for undue reimbursement of medical expenses for a low amount

Financial irregularities in award and performance of study contracts

On-line advertising of consultancy services in a field of activities directly linked to the tasks performed by the member of staff in the department where he is employed

Irregular use of the diplomatic bag to send undeclared personal belongings

Filing claims for undue reimbursement of medical expenses for a low amount. This conduct was considered contrary to the obligations enshrined in Articles 11 and 12 of the Staff Regulations, which require officials to conduct themselves solely with the interests of the Communities in mind and to refrain from any action or behaviour which might reflect adversely on their position. The AA decided, however, not to open disciplinary proceedings against the official concerned because the medical claims in question concerned a very small amount (€150), which had been reimbursed, and the official concerned had committed no previous breaches of the Staff Regulations.

Financial irregularities in award and performance of study contracts. The facts, which dated back to a dozen years earlier, had been investigated by OLAF, which found that the procedures established by the old Financial Regulation for selecting successful bidders and awarding contracts had not been fully observed. However, the AA decided not to open disciplinary proceedings against the official concerned because the facts dated back a long time, had no impact on the Community budget and had led to no personal advantage for the person concerned and also because the rules applicable at that time were not totally clear and were not backed up by a vade-mecum in the DG concerned.

On-line advertising of consultancy services in a field of activities directly linked to the tasks performed by the member of staff in the department where he is employed. This conduct by an agent in active employment, who was mentioning his status in his on-line CV, was considered to reflect adversely on his position and, therefore, to be contrary to the obligation of loyalty which the first sentence of Article 11 of the Staff Regulations imposes on all officials vis-à-vis their institution and their hierarchy. However, the AA decided not to open disciplinary proceedings against the person concerned, considering the apology made by him and that the website in question had never really worked.

Irregular use of the diplomatic bag to send undeclared personal belongings. This misuse of the immunity conferred on the diplomatic bag under the Vienna Convention of 18 April 1961, following reminders contained in several notes sent to Commission staff, would normally have triggered disciplinary proceedings due to breach of the obligation of loyalty provided for in the first sentence of Article 11 of the Staff Regulations. However, the AA considered that it was not appropriate to open a disciplinary proceeding against an official who had recently retired and whose conduct in the service had always been irreproachable.

DISCIPLINARY PROCEEDINGS OPENED AND CLOSED

15 disciplinary proceedings, of which 8 before the Disciplinary Board

Following the preliminary hearing provided for by Article 3 of Annex IX to the Staff Regulations, the AA decided, **in 15 cases, to open disciplinary proceedings** against the officials concerned, **of which 8 were before the Disciplinary Board.**

CONDUCT CONCERNED

Unjustified absences
Unauthorised outside activity
Physical aggression
Inappropriate behaviour and breach of the duty of loyalty
Conflict of interest
Falsification and use of false documents

Three disciplinary proceedings opened in previous years were **closed** in 2008, **with a penalty (see below).**

One disciplinary proceeding against an official accused of psychological harassment was finally closed with a warning. In this case the AA chose not to impose a disciplinary measure due to the lack of sufficient evidence of behaviour falling within the definition of psychological harassment in Article 12a(3) of the Staff Regulations. However, the AA decided to issue a warning to the person concerned because of inappropriate conduct in his relationships with some of his colleagues.

Another disciplinary proceeding, opened in 2007 against a probationer official, was closed without penalty in 2008, since the person concerned was not established after the probation period. The disciplinary proceeding had been opened following the arrest and conviction of the person concerned for offences linked to child pornography. Based on established case law, the conduct of an official during the probation period must be taken into account in assessing whether it is in the interest of the service to establish the person concerned. Since Article 27 of the Staff Regulations aims at “*securing for the institution the services of officials of the highest standard of ability, efficiency and integrity (...)*”, the conduct to be taken into account for this purpose is not limited solely to the conduct of the probationer official during working hours.

Based on Article 27 of Annex IX to the Staff Regulations, minor disciplinary measures such as written warnings are recorded in the personnel file of the individuals concerned for a three-year period, whereas more serious measures remain on the record there for six years.

The duration of disciplinary proceedings depends on whether they involve the Disciplinary Board or not. This is required when the penalty envisaged entails financial consequences for the person concerned. The average length of disciplinary proceedings closed in 2008 was 15 months if the Disciplinary Board was not involved and 34.5 months if it was². In two cases, this average duration was exceeded because of a parallel criminal prosecution for the same offences before a national court, as the AA cannot adopt a final decision until a final judgment has been given by the court hearing the case.

² This means the actual duration of the procedure, from the time it is opened to the final decision closing it (imposing a penalty, issuing a warning or closing the procedure without further action).

The lengthy duration of disciplinary proceedings is due to the procedural guarantees linked to legitimate exercise of the rights of defence. To ensure good administrative practice, in 2008 IDOC analysed the reasons for delays in the course of disciplinary proceedings, with the aim of eliminating or considerably shortening any unnecessary delays. To this end, changes were decided to facilitate tripartite AA meetings responsible for hearing the person concerned and deciding the appropriate penalty. This simplification will apply from 2009 on and should considerably shorten the average duration of disciplinary proceedings not involving the Disciplinary Board.

DISCIPLINARY DECISIONS TAKEN

3 disciplinary decisions

The AA adopted **3 disciplinary decisions**, ranging from a written warning to removal from post.

CONDUCT SANCTIONED

Failure to inform the AA of a conflict of interest

False information provided at the time of recruitment and failure to inform the AA of a conflict of interest

A prolonged irregular absence

The failure to inform the AA of a conflict of interest was punished by a **written warning** to the chairperson of an evaluation committee who, in the course of a procurement procedure, participated in a selection process in which one of the bidders was a firm belonging to the chairperson's partner.

This omission, which occurred before the reform of the Staff Regulations, was considered contrary to Article 14 of the old version which stipulated that "*Any official who, in the performance of his duties, is called upon to decide on a matter in the handling or outcome of which he has a personal interest such as to impair his independence shall inform the appointing authority.*" In 2004 Article 14 of the old version of the Staff Regulations was replaced by the new Article 11a. Since its content is in any event similar, the offence has therefore not disappeared and the AA was still empowered to punish it.

The circumstances that, in this particular case, the person concerned had no right to vote and had participated neither in the opening of the submissions nor in the deliberations of the evaluation committee were not considered grounds to exonerate him. Instead, in the light of the established case law and bearing in mind the fundamental objectives of independence and integrity pursued by Article 14 of the Staff Regulations (old version) and the obligation incumbent on the official concerned to inform the AA as a precaution, that Article has wide scope. It covers any circumstance which an official called upon to decide on a case should reasonably understand as being of a nature which might appear, to any third party, to be a possible source of compromising his independence in that case. Therefore, the question whether the person concerned was actually able to influence the award of the contract or not was judged irrelevant.

The facts that the firm known by the person concerned was not awarded the contract, that the offence had no financial impact, that the offence dated back a long way into the past and that the person concerned was no longer working explain the low level of the penalty imposed by the AA.

False information provided at the time of recruitment and failure to inform the AA of a conflict of interest led the AA to **downgrade** one temporary agent by **three steps**.

The temporary agent concerned had omitted, at the time of his recruitment, to declare his previous activities within a State security service. His previous employer had dismissed him for the same reason.

In accordance with Article 50(1) of the conditions of employment of other servants, “*The employment of a member of the temporary staff shall be terminated by the institution without notice if the authority referred to in the first paragraph of Article 6 finds: (a) that at the time of his engagement he deliberately furnished false information as to either his professional ability or (...) and (b) that the false information furnished was a determining factor in his being engaged.*”

The Disciplinary Board considered, however, that even if the omission in question was equivalent to false information, as provided for in Article 50(1), it was not proven that, had that information been given to the authority authorised to conclude contracts, the authority would have not recruited the person concerned. Therefore, according to the Disciplinary Board, the conditions set out in Article 50(1) for terminating the contract of the person concerned were not met.

The person concerned used to work on research projects in which the following companies were also participating: (i) as principal contractor, an enterprise in which his wife was working for the director and (ii) as sub-contractor, an enterprise in which he used to work before being recruited as a temporary agent. In this context, the person concerned had committed several irregularities, as pointed out by the Disciplinary Board, in management of the contracts and projects involving the two enterprises in question.

In accordance with Article 49(1) of the conditions of employment of other servants, “... *employment [of a temporary agent] may be terminated without notice on disciplinary grounds in serious cases of intentional or negligent failure of temporary staff to comply with their obligations*”

The Disciplinary Board considered, however, that although this double conflict of interests was in breach of Article 14 of the old version of the Staff Regulations, this violation was not serious enough to warrant termination of the contract. In this context, the Disciplinary Board pointed to certain extenuating circumstances making a minor disciplinary penalty more appropriate, notably the lack of knowledge, on the part of the person concerned, of the financial management rules at that time, the fact that the offence dated back a long way into the past and the environment in which it had been committed. The AA considered it appropriate to share that opinion.

A prolonged irregular absence led the AA to **remove from post** an official who had been absent from work, without explanation, for several years.

The person concerned had stopped providing medical certificates and had no longer been in touch with the European Commission, without providing the slightest explanation, for a very long time.

In accordance with the first paragraph of Article 60 of the Staff Regulations, he had forfeited his salary when his rights to leave had been used up.

The decision to remove him from his post took into account the opinion of the Disciplinary Board and noted this persistent breach of the obligation of loyalty imposed by the first sentence of Article 11 of the Staff Regulations.

OTHER ACTIVITIES

TRAINING AND PREVENTION

IDOC contributes to training on disciplinary matters for information and prevention purposes. In the course of 2008, IDOC participated in around ten training and prevention activities.

ETHICS

IDOC has contributed actively to implementation of the Communication on ethical matters in the Commission, adopted on 5 March 2008³, in particular by coordinating and facilitating the network of ethics correspondents, whose first meeting was held on 3 October 2008 and attended by Vice President Kallas.

³ SEC (2008) 301.

STATISTICAL DATA REGARDING IDOC'S ACTIVITIES IN 2008



