

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

2009

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 which could lead to possible disciplinary action. These inquiries by IDOC take account of all inculpatory and exculpatory 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 120 hearings.

The AA gave IDOC **mandates** to conduct **17 administrative inquiries**, which gave rise to **120 hearings** to establish the facts and, if necessary, determine if there was any breach of the obligations by which officials and other servants of the Commission are bound.

ADMINISTRATIVE INQUIRIES CLOSED

19 administrative inquiries and 10 files closed without further disciplinary action.

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

In 10 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**.

DURATION

The duration of 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 2009 was 8.8 months¹.**

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.

ACTIVITIES LINKED TO DISCIPLINARY PROCEEDINGS

PRE-DISCIPLINARY HEARINGS

41 mandates issued by the appointing authority

IDOC received **41 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.

RESULTS

9 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 9 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.

In **4 cases**, 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 giving rise to a warning

Unauthorised disclosure outside the Commission of information received in the line of duty. As the information was requested in the course of a dispute between the Commission and one of its officials and was disclosed only as part of those proceedings, the AA decided not to open disciplinary proceedings for this violation of Article 17 of the Staff Regulations.

Conflict of interests of an official acting as a go-between for his wife in order to send and receive documents concerning the contract between the official's wife and the department to which she was assigned. As the conduct in question did not have any financial implications and had been tolerated by the department concerned for several years before a complaint was made, the AA did not open disciplinary proceedings against the official concerned.

Use of a removals firm working for the Commission to move items belonging to an official who came into contact with the firm in the course of his duties. As the official concerned had himself informed OLAF of the services provided by the removals firm, as the cost of these services was low and as the official expressed his apologies, the AA did not open disciplinary proceedings for this violation of Article 11 of the Staff Regulations.

Incorrect declaration made to the administration in an application for a dependent child allowance. As there was no proven intent to mislead the administration, the AA did not open disciplinary proceedings against the official concerned.

DISCIPLINARY PROCEEDINGS OPENED AND CLOSED

Disciplinary proceedings opened in 2009

Following preliminary hearings conducted pursuant to Article 3 of Annex IX to the Staff Regulations, some of which took place before 2009, the AA decided, **in 21 cases, to open disciplinary proceedings** against the officials concerned, **of which 11 proceedings went before the Disciplinary Board.**

Pursuant to 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 could entail financial consequences for the person concerned. The average length of disciplinary proceedings closed in 2009 was 11 months if the Disciplinary Board was not involved and 24.5 months if it was². This average duration includes proceedings which were opened before 1 January 2009 in view of the fact that these proceedings were closed in the course of 2009. In several 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.

For the first time since 2002, the average duration of disciplinary proceedings was considerably shortened (by approximately a third) compared to previous years and to 2008 in particular. The number of inquiries and disciplinary proceedings closed in 2009 exceeded the number of such cases opened in 2009, thus reducing the backlog of cases which are pending and which were opened in previous years. This result has been achieved following an analysis conducted by IDOC in 2008 of the reasons for delays in the course of disciplinary proceedings and a decision adopted by the Commission in April 2009 amending the Table of AAs in order to facilitate tripartite AA meetings responsible for hearing the person concerned and deciding the appropriate penalty. The benefits of this procedural simplification are likely to be felt even more strongly in 2010.

DISCIPLINARY DECISIONS TAKEN

30 disciplinary decisions

In 2009, the AA adopted **30 disciplinary decisions**, ranging from a written warning to removal from post, **16 of which were taken without consulting the Disciplinary Board beforehand** (written warning or reprimand), and **14 of which were imposed following the procedure before the Disciplinary Board** (penalties with financial implications: deferment of advancement, relegation in step, downgrading, removal from post or, in the case of a former official, reduction of pension entitlements).

RESULTS

² This means the total duration of the proceedings, from when they are opened to the final decision to close them (penalty decision, warning or closure without further action).

9 written warnings
7 reprimands
2 deferments of advancement
1 relegation in step
5 downgradings
3 removals from post
3 reductions of pension entitlements

Conduct giving rise to a written warning

Failure of a staff representative to comply with the terms of his secondment for staff representation purposes. The AA took the view that an official seconded as a staff representative for 50% of his working time could not devote 100% of his time to these duties when the terms of his secondment required him to devote 50% of his time to the department to which he was assigned.

Receiving services free of charge from a removals firm contracted by the Commission to provide services. The AA took the view that the services provided free of charge by the firm with which the official in question was in contact because of the nature of his duties were comparable to a gift received by the official without the permission of the administration (permission being required under Article 11(2) of the Staff Regulations). As the cost of these services was low and did not have an impact on the Community budget, and given the particular circumstances of the case, the AA did not impose a heavier penalty on the official for misconduct liable to reflect adversely upon the image of the institution.

Engaging in an outside activity of a commercial nature during CCP without obtaining the Commission's permission. The AA accepted, in the official's defence, that he had informed the administration in writing beforehand that he intended to engage in an activity during CCP, albeit without saying what the activity involved, and that the administration had failed to ask him for further information.

Failure to comply with instructions from superiors, inappropriate language and misuse of departmental expertise to deal with a personal matter. The AA accepted, in the staff member's defence, that there had been a deterioration in relations between him and his superiors, that he had demonstrated a willingness to restore a relationship of trust with his superiors and that the actions giving rise to the complaint had taken place some time ago.

Failure to comply with the rules governing access to car parks in Commission buildings and insulting behaviour towards staff responsible for applying these rules. The AA imposed a penalty for such behaviour on two occasions in 2009.

Failure by a project manager to declare a conflict of interests to the relevant AA concerning projects involving an entity headed by a person of his acquaintance. In order to reduce the penalty imposed, the disciplinary AA took into account the fact that no favouritism had been shown towards the entity in question.

Insulting comments posted on a newspaper blog by an official during his working hours from his Commission IP address.

Failure of an official on maternity leave to provide the relevant AA with prior warning of her intention to stand for elected office.

Conduct giving rise to a reprimand

Engaging in an unauthorised commercial activity during CCP and continuing to engage in this activity after being reinstated at the Commission. The AA took into account, in the official's defence, the fact that the rules which applied at the time were not unambiguous and that the official's involvement in the activity in question after CCP had come to an end had been of short duration.

Enlisting the services of an employee of a cleaning firm under contract with the Commission to clean the private vehicle of a building manager in a Commission car park.

Engaging in undeclared employment for two years after retirement. In order to reduce the penalty, the AA took into account the fact that the employment in question was of short duration.

Falsification of school certificates and use of these certificates to facilitate the enrolment of a child at a school. In spite of the harm done to the Commission's image as a result of the complaint filed by the school with the national police authorities, the AA took into account, in the staff member's defence, the fact that his actions were not premeditated and that his family circumstances were difficult.

Creation of a non-profit-making organisation in order to take part in a call for proposals organised by the Commission without requesting permission to do so.

Financial irregularities committed in connection with a call for tenders and a conflict of interests on the part of the chairman of the tender evaluation committee. The AA noted, in the defence of the former official concerned, that the irregularities in question were the result of negligence as opposed to any fraudulent intent. Given how much time had elapsed since the events had occurred, the duration of the investigation procedure at OLAF (seven years) and the consequent duration of the penalty proceedings, the AA did not consult the Disciplinary Board with a view to reducing the official's pension entitlements.

Misuse of the Internet for private purposes as regards the type of sites visited and the frequency of such visits during working hours.

DISCIPLINARY DECISIONS TAKEN AFTER CONSULTING THE DISCIPLINARY BOARD

Conduct giving rise to the deferment of advancement to a higher step

Conduct giving rise to the deferment of advancement to a higher step

Hitting a colleague at the workplace. As proposed by the Disciplinary Board, the AA imposed a 12-month deferment of advancement to a higher step on the official concerned. The personal situation of the staff member responsible and his apologies to the victim were accepted by the AA as extenuating circumstances which obviated the need for a heavier penalty.

A violent altercation between two officials in a Commission building, with one being injured by the other. A 12-month deferment of advancement to a higher step was the penalty imposed on the official implicated in this private quarrel. As the Disciplinary Board was of the opinion that not all of the acts were intentional, the AA followed the Disciplinary Board's recommendations regarding the penalty which should be imposed for this conduct, which reflected adversely upon the official's position.

Conduct giving rise to a relegation in step

Falsification of a document in order to be reclassified in a higher step. The penalty imposed was relegation by one step. The AA acted in accordance with the opinion of the Disciplinary Board, noting that, although the submission of a falsified document constituted serious misconduct for which a heavier penalty could be warranted, it was possible to accept as extenuating circumstances the personal situation of the official concerned at the time of the events and the official's prompt admission of responsibility. Moreover, the official's grade meant that the AA was not able to impose a heavier financial penalty.

Conduct giving rise to downgrading

Deliberate assault and battery giving rise to a suspended prison sentence. Once the criminal proceedings had been concluded, a disciplinary penalty of downgrading was imposed on the member of staff concerned. The AA took the view — agreeing in this respect with the Disciplinary Board — that the conviction of an official by a national criminal court for a serious offence had the potential to adversely affect the image of the institution to a serious degree and therefore constituted behaviour which reflected adversely upon the official's position.

False statements made with respect to the determination of the place of origin and with a view to obtaining an overpayment of the annual travel allowance. The AA downgraded the official concerned, thereby increasing the penalty recommended by the Disciplinary Board, which was a reprimand. The AA did not consider a reprimand to be proportionate to the seriousness of the misconduct in question, which reflected adversely not only upon the official's position but also upon his duty of loyalty towards the institution. In addition to being downgraded, the official was

required to refund to the institution, pursuant to Article 85 of the Staff Regulations, the amount of the allowances which had been overpaid for several years as a result of his false statements.

Offences described in criminal proceedings as living off immoral earnings and keeping a brothel. The official in question was downgraded. Although the judge in the criminal proceedings imposed a suspended sentence at the defendant's request, the AA took the disciplinary action against the official recommended by the Disciplinary Board — the official's conduct being considered to reflect adversely upon his function and upon the image of the institution.

Conflict of interests of a financial officer handling files concerning himself and committing gross errors to the detriment of the Community budget. The AA imposed the penalty of temporary downgrading on the official concerned for a period of 12 months. The Disciplinary Board considered that the actions of which the official was accused constituted simple negligence and recommended that the AA not impose a penalty. The AA was convinced that the official's misconduct was intentional, largely because of his experience and the nature of his duties. However, in order to reduce the penalty, it took into account the shortcomings in the system of control put in place by the institution.

Engaging in an outside activity without permission. The penalty imposed was temporary downgrading for a period of 12 months. The AA took the view that it would not have been possible to grant the official permission to engage in the activity in question, which was commercial in nature and which the official managed with the help of the Commission's computer equipment, if the official had sought to obtain permission and that, in view of the official's experience and grade, the official could not but have been aware of this.

Conduct giving rise to removal from post

Providing information obtained in the line of duty to a national news organisation in exchange for payment. The person responsible was removed from his post without having his pension entitlements reduced. The AA had no hesitation in increasing the penalty recommended by the Disciplinary Board, taking the view that the actions of which the person was accused, which had been committed in the past but reported to the AA recently, were sufficiently serious to mark a permanent breach in the relationship of trust with the institution.

Prolonged unauthorised absence for almost two years. The official in question was removed from his post without his pension entitlements being affected. This was the logical step for the AA to take, as the official had failed to render any services at all during the period in question. The AA, in agreement with the Disciplinary Board, therefore concluded that the relationship of trust with the institution had been permanently broken.

Inappropriate conduct marked by a persistent refusal to carry out the tasks assigned by superiors and an aggressive and insulting attitude towards colleagues and superiors. The official in question was removed from his post. The AA, which had been considering imposing a more lenient penalty on the official, as suggested by the Disciplinary Board, took into account the official's aggressive and insulting attitude during the hearing before the tripartite AA and concluded that the relationship of trust with the institution had been permanently broken.

Conduct giving rise to a reduction of pension entitlements

False statements given by an official concerning his place of residence after ceasing to perform his duties with a view to obtaining a considerable financial advantage. The AA reduced the pension entitlements of the person concerned by a considerable amount for a period of four years, as recommended by the Disciplinary Board. The fact that the misconduct had been intentional, the duration of the misconduct and the nature of the duties performed by the person concerned during his career were considered to be aggravating circumstances, despite the fact that the sums which had been overpaid had been refunded in accordance with Article 85 of the Staff Regulations.

A criminal conviction for acts of paedophilia. The person concerned was penalised by having the pension entitlements which he had acquired in the course of his career reduced to subsistence level for a period of eight years. The AA took the view that, although the crimes had been committed after the person concerned had ceased to perform his duties, they constituted a clear violation of Article 12 of the Staff Regulations, which seeks to protect the image of the institution, whose reputation is liable to be sullied by acts of such seriousness, whether committed by an official in active employment or by a former official.

OTHER ACTIVITIES

TRAINING AND PREVENTION

IDOC contributes to training on disciplinary matters for information and prevention purposes. In the course of 2009, IDOC participated in around ten training and prevention activities.

ETHICS

In 2009, IDOC continued to implement the Communication of 5 March 2008 on enhancing professional ethics in the Commission and to coordinate the Commission's network of 'ethics correspondents' set up as a result. In connection with this network, IDOC replied to a large number of questions from the ethics correspondents of the various DGs and established a system of ethical 'benchmarking' across the Commission's departments. The network was informed and/or consulted about all the draft decisions concerning ethics which the Commission planned to adopt. IDOC also set up and managed a group within the Human Resources and Security DG which was given the task of recasting — on the basis of comments received from the Commission's departments — the draft 'statement of ethical principles' annexed to the Communication of 5 March 2008. This draft statement was finalised and approved by Vice-President Kallas. Lastly, IDOC helped to ensure that the draft 'Audit Report on Ethics in the Commission' of 12 December 2008 was followed through and played an active role in the discussions on the Commission's future policy on ethics.

STATISTICAL DATA REGARDING IDOC'S ACTIVITIES IN 2009



