

<p style="text-align: center;">ACTIVITY REPORT OF THE INVESTIGATION AND DISCIPLINARY OFFICE OF THE COMMISSION (IDOC) 2010</p>

The Investigation and Disciplinary Office of the Commission (IDOC) was established by a Commission Decision of 19 February 2002¹.

The first task of the Office is to carry out impartial administrative inquiries with a view to establishing whether potential breaches of the Staff Regulations have occurred.

The Office also carries out preliminary hearings prior to the opening of disciplinary procedures which allow officials concerned to comment on the facts of their case following an inquiry by IDOC or The European Anti-Fraud Office (OLAF) or where the facts have been sufficiently established.

The Office also conducts disciplinary procedures on behalf of the Appointing Authority (AA).

The workload of the Office therefore depends on the number of mandates for inquiries and preliminary hearings issued by the AA as well as the number of disciplinary procedures opened as a result of those inquiries and hearings. The statistical data at the end of this report summarise the division of the workload of IDOC during 2010.

The facts examined or followed up are extremely diverse and also vary from year to year. During 2010, the Office dealt inter-alia with cases of abusive behaviour intended to achieve undue financial benefits, alleged cases of harassment, situations of conflict of interest, acceptance of unauthorised gifts, unauthorised external activities, abusive use of informatics and telephone equipment of the Commission, behaviour constituting a legal offence and cases of inappropriate behaviour with respect to the high standards of ethics and integrity expected of staff members of the Commission, including in their private lives.

Within the framework of its dual mission, the Office operates in liaison with different services of the Directorate General for Human Resources & Security (DG HR) and with other Directorates General. In certain cases, those services are the source of the administrative inquiries carried out by IDOC. This is the case notably for the Security Directorate of DG HR, DG HR/D2 (Appeals and Case Monitoring) with regard to complaints and requests for assistance in cases of harassment, and for the PMO with regard to rights to financial allowances or for determining the origins of professional invalidity. In some cases, the Directorates General refer cases to IDOC leading to the opening of an inquiry or a pre-disciplinary procedure. Examples include cases of irregular absence or abuse of the Commission's internet system.

IDOC is also in regular contact with OLAF, either to determine which of these two offices will conduct a potential inquiry, or to ensure the appropriate disciplinary follow-up of an OLAF investigation.

¹ Replaced by final decision C(2004) 1588 of 28 April 2004 laying down general executive measures relating to inquiries and disciplinary procedures. For further information regarding past activities and IDOC procedures, see (http://myintracomm.ec.europa.eu/hr_admin/en/idoc/Pages/index.aspx)

ADMINISTRATIVE INQUIRIES

New Inquiries

1. 11 mandated inquiries referred to IDOC in 2010

During the course of 2010, The Director General of DG HR in her capacity as AA, granted IDOC a mandate to conduct **11 administrative inquiries**. These inquiries gave rise to **153 hearings** comprising both officials/agents concerned by the inquiries and also those heard as witnesses.

From the receipt of the mandate for inquiry, the staff member concerned in the case is informed of the opening of the inquiry and of its purpose. S/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 before the final inquiry report is transmitted to the AA.

2. The facts in question

Among the 11 new inquiries opened in 2010:

- 6 concerned allegations of **psychological harassment** and 1 of **sexual harassment**.

These cases involved carrying out more than 80 hearings of witnesses in order to determine whether or not the alleged behaviour could constitute harassment in accordance with Article 12a of the Staff Regulations.

4 of these cases originated from requests for assistance made under Article 24 of the Staff Regulations, 1 case was transmitted to IDOC by the Security Directorate of DG HR following alleged acts of violence committed in the workplace and 1 case was transmitted by the PMO in the context of a request for recognition of a professional illness under Article 73 of the Staff Regulations.

- 1 inquiry related to the potential criminal behaviour of an official, which, had it been proved would have been contrary to the obligation to "*refrain from any action or behaviour which might reflect adversely upon his position*" under Article 12 of the Staff Regulations.
- 1 inquiry related to the alleged **abusive use of the Commission's internet service** which was picked up by the service of the user in question.
- 1 inquiry related to alleged **irregularities and acts of favouritism relating to internal competitions**, brought to the attention of IDOC by the Central Staff Committee.
- 1 inquiry related to the ethical conduct of officials, suspected of having benefited from various **favours from companies submitting bids for tenders** to the Commission. The info was transmitted to IDOC by OLAF for follow-up and potential disciplinary action.

Closed Inquiries

1. 11 administrative inquiries closed by IDOC in 2010

During 2010, **IDOC closed** 11 administrative inquiries with a final report transmitted to the AA the majority of which had been opened during the preceding year.

2. The facts concerned

The alleged facts investigated concerned:

- **exercising external activities** without prior authorisation required by Article 12b of the Staff Regulations;
- **publication of texts** relating to activities of the Union without prior notification to the AA in violation of Article 17 of the Staff Regulations;
- **failure to declare the gainful activity of one's spouse** in breach of Article 13 of the Staff Regulations;
- **allegations of psychological harassment** arising from a request for assistance under Article 24 of the Staff Regulations;
- **misuse of sick leave**;
- **a malicious accusation** concerning acts of favouritism;
- **acceptance of favours from a company participating in a call for tenders**;
- **criminal behaviour likely to reflect adversely on the position of the official concerned**;

On the basis of the conclusions of the inquiries, the AA decided in 8 cases, to close the case without further action because the facts were not proven, and informed both the officials concerned and the persons heard as witnesses of the outcome.

In 3 cases, the AA decided, in view of the conclusions of the inquiries, to hear the persons concerned under Article 3 of Annex IX of the Staff Regulations, considering that the facts established by the inquiries could constitute disciplinary breaches.

3. The length 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 persons to be heard. The average length of inquiries by IDOC during 2010 was six months.²

HEARINGS PRIOR TO THE OPENING OF DISCIPLINARY PROCEDURES

² 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 AA, 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.

The hearing prior to the possible opening of a disciplinary procedure, under Article 3 of Annex IX of the Staff Regulations, is intended to enable the AA to decide whether to close the file without further action, to send a warning to the official concerned or to open disciplinary proceedings against him or her with or without referral to the Disciplinary Board.

The hearing takes place following the conclusions of a report on the inquiry conducted either by IDOC or by OLAF. The hearing may also be held without any prior inquiry where the facts are sufficiently established. Before being heard, the official is afforded access to all the evidence in his/her file in order to be able to present any elements which could exonerate him or her or could otherwise lead the AA to decide not to open a disciplinary case, even in the case where breaches may have been established.

1. 46 mandates and 47 hearing reports

During 2010 IDOC received **46 mandates** from the AA to conduct hearings under Article 3 of Annex IX of the Staff Regulations and transmitted **47 hearing reports** to the AA.

In 8 cases, the file was closed without further action. In 5 cases, the Director General of DG HR, in her capacity as AA, decided to address a warning to the official concerned. In one case, the decision was taken by the Commissioner in charge of Human Resources, in accordance with the AA Tables.³ This warning, which does not constitute a disciplinary sanction, is retained in the official's personal file for a period of 18 months, after which period s/he may request its deletion.

2. Acts giving rise to a warning – (non disciplinary)

2.1 Aggressive attitude and verbal aggression towards a subordinate

The inquiry, opened on the basis of a request for assistance by the alleged victim, did not corroborate the allegations in terms of psychological harassment, but concluded that there had been a breach of Article 12 of the Staff Regulations according to which *"An official shall refrain from any action or behaviour which might reflect adversely upon his position"*. The AA took the view that an experienced member of management should be able to conduct interpersonal relationships within his team calmly and be able to adopt preventive measures in order that a difficult situation does not degenerate.

2.2 Failure to request prior authorisation to create a non-profit making association

Given that the facts of this case, which constitutes a breach of Article 12, paragraph 3 (former) of the Staff Regulations occurred a considerable time ago, and in light of the general nature of the objectives of the association in question, the AA chose to issue a warning in place of opening a disciplinary procedure.

2.3 Disseminating unverified information potentially harmful to the individual concerned

The dissemination of unverified allegations against a member of staff to different authorities and officials of the Commission was sanctioned by a warning.

³ <http://myintracomm.ec.europa.eu/infoadm/en/2010/Pages/ia10013.aspx>

These allegations, which were not of a defamatory nature, could however be harmful to the individual targeted and, in the absence of any proof of their validity, should have been brought to the attention of the administration for verification with a measure of discretion and restraint.

2.4 Acceptance of an honorary title in a private non-profit making organisation

Article 11 of the Staff Regulations forbids, without prior authorisation by the AA, the acceptance of any honour, decoration, favour, gift or payment of any kind whatsoever, in order to avoid a situation of conflict of interest. In this case the absence of prior authorisation before accepting the title of Honorary President of a non-profit making organisation constituted a breach of Article 11, particularly in view of the fact that the activities of the association were linked to the duties exercised by the individual within the Commission.

This statutory breach was dealt with by a warning, because the AA took account of the good faith of the individual, the absence of personal profit or conflict of interest in relation to his involvement with the association, and his cooperation during the procedure.

2.5 Financial irregularities in a grant procedure

Backdating of a grant contract that was signed in the year following the financial commitment constitutes a violation of Article 77, paragraph 2 of the Financial Regulation. This financial irregularity is the responsibility of the official authorised to sign the contractual agreement.

The AA in this case followed the opinion of the Financial Irregularities Panel (FIP), taking into account as a mitigating circumstance the weakness of the internal financial control system in place at the time of the events. Consequently, the official concerned was given a mere warning.

2.6 Involvement in a judicial investigation in a third country

This case, which concerned an official in a Delegation involved in a case of tax fraud linked to the resale of vehicles imported under diplomatic conditions, was sanctioned by a warning.

The actual infringement of tax laws in the host country was not proven. The AA however considered that the lack of circumspection shown by the official leading to his involvement in the judicial inquiry had had negative repercussions on the reputation of the Commission, due to the media coverage of the affair in the local press.

DISCIPLINARY PROCEDURES

On the basis of the results of the hearing under Article 3 of Annex IX of the Staff Regulations, the AA may decide that the breach of statutory obligations justifies the opening of a disciplinary procedure.

Cases where the proposed sanction does not have a financial impact (written warning or reprimand) the procedure takes place without consultation of the Disciplinary Board. Where the sanction under consideration would have a temporary or lasting impact on the career of the official in question (suspension of step advancement, relegation in step, downgrading,

classification in a lower function group or removal from post or would affect the amount of retirement pension or invalidity allowance (temporary reduction of the pension amount or the allowance), the AA must consult the Disciplinary Board which must in turn give a reasoned opinion as to the whether the facts are established, and as to any penalty to which these facts should give rise.

The sanction imposed should be proportionate to the seriousness of the misconduct. The AA takes into account all possible mitigating or aggravating circumstances and comes to its decision with particular regard to the points set out in Article 10 of Annex IX of the Staff Regulations (nature of the misdemeanour; the extent of the damage to the integrity, reputation or interests of the Institution; the degree of intent or neglect; motives leading to the breach; the grade and seniority of the official; his/her personal responsibility; the level of his/her functions and responsibilities; possible recidivism of the act or misdemeanour and of the conduct of the official throughout his/her career).

1. Disciplinary procedures opened in 2010

In 32 cases, the AA decided to open a disciplinary procedure against the official concerned, 8 of which were referred to the Disciplinary Board.

2. Disciplinary procedures closed in 2010

In the course of 2010, 19 disciplinary sanctions were imposed. In 9 cases, the Director General of DG HR decided in her capacity as AA to issue a written warning or reprimand for the offences. In 10 other cases, the tripartite AA, consisting of the Director General of DG HR, the Director General of the official concerned and a third Director General⁴ designated by the Secretary General, decided following the procedure before the Disciplinary Board, to impose sanctions ranging from relegation in step to dismissal.

3. 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 the disciplinary procedures closed in 2010 was from 12 months without referral to the Disciplinary board, to 14 months with referral.⁵

4. Written warnings or reprimands

- 4.1 The fact of having sent in false education certificates, without first checking their authenticity, in order to benefit from an education allowance, constitutes conduct contrary to Article 12 of the Staff Regulations and was sanctioned in disciplinary terms by a **written warning**.

In imposing such a light sanction, the AA took account of the fact that there was no evidence that the official, who was cooperative throughout the procedure, was personally aware that the certificates were false, and all undue amounts received had been duly reimbursed.

⁴ or Deputy Director General

⁵ Represents the total length of the disciplinary procedure, from its opening to final closing (sanction decision or closure without further action)

- 4.2 It is not in line with the duty of loyalty, as set out in Article 11, first paragraph of the Staff Regulations for an official of the Commission to respond to the request from an employee of a company applying for a tender managed by another Institution, or to supply informal information for use in connection with the tender, without verifying that such information has been made public.

This negligent conduct of the official was sanctioned by a **written warning**. The AA took account of the lack of personal interest which led one staff member to provide the requested information and of the absence of intent to compromise the tender procedure.

- 4.3 A financial officer led his superior into error by making him sign a legal undertaking after the end of the financial year of the budget commitment. This constitutes a breach of Article 21 under which *"an official, whatever his rank, shall assist and tender advice his superiors; he shall be responsible for the performance of the duties assigned to him"*. This breach was sanctioned by a **written warning**.

The breach of Article 77 (2) of the Financial Regulation as found by the Financial Irregularities Panel (FIP) in this case was partly due to the weaknesses in the internal control system in place at the time. The AA, in not inflicting a heavier sanction in this case, took into account the good faith of the individual and the fact that he acted under the authority of his direct superior.

- 4.4 The failure by a reporting officer to comply with the rules in establishing a probation report was considered as a lack of the duty of care with respect to the person being evaluated and a breach of Article 21 of the Staff Regulations. This was sanctioned by a **written warning**.

The AA considered that even though the individual concerned had not received specific training on the subject, the nature of the duties and the personal experience as a manager should have led the official to seek out the necessary information in order to correctly apply the rules in this matter.

- 4.5 A repeated attempt on the part of a contractual agent to be reimbursed for medical expenses for a third party was sanctioned by a **reprimand**.

The individual invoked humanitarian reasons to justify his actions. The AA considered the extremely modest amount of the medical expenses in question was not a mitigating circumstance since the individual concerned could easily have covered the cost of those expenses without attempting to charge them to the Union budget.

- 4.6 A financial officer (the superior of the person mentioned in 4.3) led his superior to sign a legal undertaking after the end of the year of the budget commitment. Again, this constitutes a breach of Article 21 of the Staff Regulations and was sanctioned by a **reprimand**.

The breach of Article 77 (2) of the Financial Regulation as found by the FIP in this case was partly due to weaknesses in the internal control system in place at the time. The AA took account of this mitigating circumstance together with the absence of any personal interest in committing the breach in question. The AA however found that

the individual had extensive experience in the field of finance, was in fact aware of the error being committed, and had induced the authorising officer into error.

- 4.7 A member of a tender evaluation panel failed to indicate that one of the submitting companies was linked to the professional activities of her partner. This was sanctioned by a **reprimand**. The situation of potential conflict of interest of the official concerned by the role both as tender evaluator and operational verifying agent of any subsequent contracts resulting from the tender constituted a breach of both Article 11a of the Staff Regulations and Article 52 of the Financial Regulation.

The AA following the opinion of the FIP concluded that the official in question should have been aware of the situation of potential conflict of interest and should have informed the relevant AA. However, the heavy workload of the official and the lack of supervision by the superior were taken into account as mitigating circumstances.

- 4.8 A superior should have been aware that a subordinate, who was carrying out tasks as a financial officer, had an outside activity in a company which was providing services for the Commission. This constitutes gross negligence on the part of the official concerned and was sanctioned by a **reprimand**. The AA took into consideration as mitigating circumstances the heavy workload of the official in question and the fact that the lack of attention could have been influenced by the misleading behaviour of the subordinate in question.

- 4.9 The consultation, from the Commission workplace, of internet sites with a sexually explicit content constitutes an abuse of the internet access at the disposal of Commission personnel for professional purposes, and was sanctioned by a **reprimand**.

The guidelines on the use of Commission ITC equipment, published in Administrative Information no. 45-2006 of 15 September 2006 set out the framework for the use of information equipment, electronic mail, internet access, use of telephone, mobile phone and fax equipment. The instructions to staff given on the Commission website set out the limits of use of Internet for private purposes from the workplace: the Commission server may not be used to consult websites whose content is offensive, racist, discriminatory, sexually explicit, or any other site with improper content, or any personal use beyond a reasonable limit.

5. Sanctions having a financial impact

- 5.1 Another case of abusive use for personal purposes of telephone and informatics equipment available to staff in order to carry out their tasks was sanctioned by a **relegation in step** as recommended by the Disciplinary Board.

The abuse was characterised by private communications which were indicated as being service calls, repeated consultation of dating sites from the Commission computer, and by exchanges of emails with the persons encountered on those sites using the Commission email.

The content of the messages exchanged and the type of sites visited were of a nature likely to harm the image of the Institution and its officials and was therefore a breach of Article 12 of the Staff Regulations.

The fact that the official concerned persisted in this behaviour in spite of several warnings from his superior also resulted in a breach of Article 21, first paragraph of the Staff Regulations.

- 5.2 A case of disturbing behaviour towards colleagues during a public reception in a Commission building, being implicated in an attempted theft and a fight in a public place was sanctioned by a **temporary downgrading of one grade for a period of eight months**.

Such behaviour constitutes a flagrant breach of Article 12 of the Staff Regulations for which the Disciplinary Board, after establishing the facts, recommended a temporary downgrading for a period of three months.

The AA considered that the seriousness of the misconduct and the circumstances in which it had occurred justified a heavier sanction than that recommended by the Disciplinary Board and consequently extended the period of the temporary downgrading to eight months. Several elements were taken into account, particularly:

- the fact that alcohol dependence could not be considered a mitigating circumstance unless real efforts had been made to overcome the dependence;
- damage to the image of the Institution due to the fact that at the time of the facts the individual could easily be identified as a member of the Commission staff.

- 5.3 The fact of smoking in a Commission building despite the ban imposed by a Commission Decision of 16 July 2003 was sanctioned by a **temporary downgrading of one year** as recommended by the Disciplinary Board.

In spite of several warnings by the official's superior, the individual persisted in smoking in the office, refusing to go outside the building like other colleagues who smoke. This behaviour was considered to be insubordination and contrary to Article 21 of the Staff Regulations.

In addition, the cost of refurbishment of the individual's office which was impregnated by the smell of tobacco was charged to the individual under the disciplinary procedure according to Article 22 of the Staff Regulations.

- 5.4 The failure to respect the limits imposed by the Administration of time spent exercising union activities during working time constituted a breach of Articles 11 and 21 of the Staff Regulations.

The fact that the official in question, despite being previously sanctioned for the same facts, persisted in refusing to comply with the decision of the Administration was considered to be an aggravating circumstance justifying a **permanent downgrading of two grades** in the same function group.

- 5.5 A case in which documents were forged and used to obtain reclassification to a higher grade was sanctioned by a **permanent downgrading of two grades**.

The AA considered that this clear breach of the duty of loyalty to the Institution under Articles 11, 12 and 21 of the Staff Regulations with the sole intention of obtaining a financial benefit and consequent career advantage, deserved a heavier sanction than that proposed by the Disciplinary Board, which was a downgrading to the next lower grade. The AA rejected the argument presented by the Disciplinary Board that the facts occurred some time ago, that is in 2005, since the case was not brought to the attention of the AA until 2009 following an investigation conducted by OLAF.

- 5.6 A false declaration made to obtain a change of place of origin in order to receive undue financial benefits was sanctioned by **classification in a lower function group**.

The Disciplinary Board had recommended a suspension of advancement in step grade for a period of 18 months. The AA considered that this act was in breach of Article 12 of the Staff Regulations and of the duty of loyalty and justified a heavier disciplinary sanction. The AA however took into account certain mitigating circumstances in deciding not to simply terminate the contract of the agent concerned, notably his family situation and the fact that he had initially provided the PMO with accurate information.

- 5.7 The theft of a large sum of money belonging to the Commission from the premises of a Delegation was sanctioned by the **dismissal** of the official concerned. The case gave rise to an inquiry by OLAF, the conclusions of which were communicated to the AA for appropriate follow-up.

The AA found no mitigating circumstances to such a serious breach of the duty of loyalty incumbent on every member of staff. This clear violation of Articles 11, 12 and 21 of the Staff Regulations irrevocably broke the relationship of trust between the official and the Commission and could not be erased by the return of the stolen money by the official in question.

- 5.8 The conviction of an official for committing a criminal offence, unconnected to his function, constitutes a breach of Article 12 of the Staff Regulations justifying in this case a **reduction of the invalidity allowance for a period of 28 months** paid to this former official.

The AA considered that the seriousness of the criminal prosecution and the damage done to the image and reputation of the Institution justified increasing the sanction proposed by the Disciplinary Board by a further ten months reduction of the allowance in question.

- 5.9 The case of a former official who accepted without prior authorisation, that associations representing private interests pay the travel expenses of a family member accompanying the official on mission constituted a breach of Article 11 of the Staff Regulations.

The AA considered that the conduct of the official created a situation of conflict of interest, the more so because the associations concerned were operating in the same

area of activity as the official in question. The AA therefore decided to sanction the offending behaviour by **withholding a substantial amount of the individual's retirement pension for a limited period.**

- 5.10 An official who accepted a lavish retirement reception and gifts of a high value from representatives of private interests was in breach of Article 11 of the Staff Regulations.

The AA decided, in line with the opinion of the Disciplinary Board, to sanction the offending behaviour by **withholding a substantial amount of the individual's retirement pension for a limited period.**

TRAINING AND PREVENTION ACTIVITIES

IDOC was also involved in training on disciplinary matters in the areas of dissemination of information and preventive measures. In 2010 IDOC participated in several training and prevention activities, some of which were developed for newly recruited officials.

The Office has also made presentations to the network of Directors, to the Heads of Unit of Human Resources, and held some specific presentations for certain Directorates General.

In addition, IDOC coordinated the network of Ethics correspondents which was established in 2008 with a view to strengthening awareness of the importance of ethics within the Commission.

More information about the activities of IDOC and activity reports of previous years can be found on the IDOC website:

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

STATISTICAL DATA REGARDING IDOC'S ACTIVITIES IN 2010



