



Activity Report

of the Investigation
and Disciplinary Office
of the Commission
(IDOC) **2020**

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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 plays a key role in ethics enforcement by conducting administrative inquiries, disciplinary proceedings, suspension proceedings and proceedings related to waivers of immunity of staff. IDOC aims to carry out its tasks in a fair, transparent and timely manner.

Despite the COVID pandemic, IDOC continued to work in a very efficient manner, using electronic and virtual means throughout the whole process, where necessary, while fully respecting the fundamental rights and the procedural guarantees of all persons involved.

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 all activities of IDOC 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 2020 – 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.

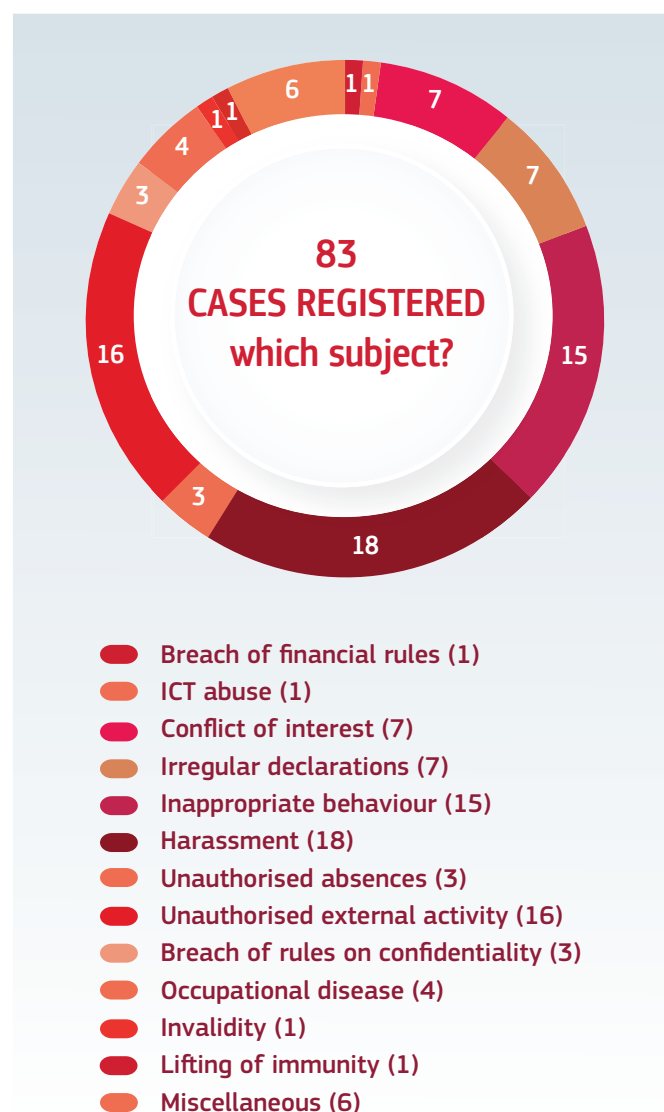
83 new cases were registered in IDOC in 2020, representing a stable trend in comparison to 2019. 11 of them had their origins in requests submitted under

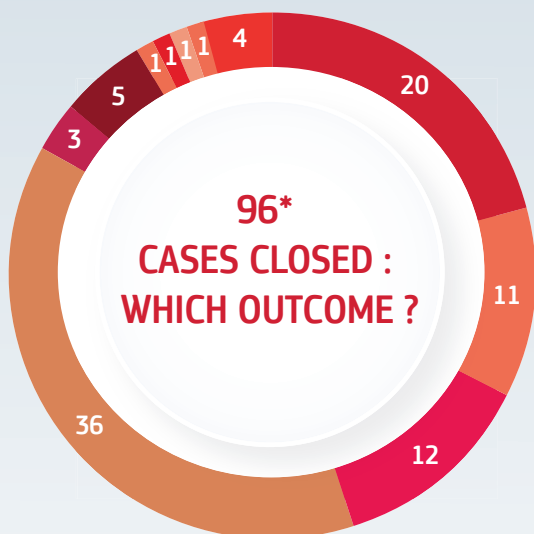
Article 24 of the Staff Regulations. In addition, IDOC continued to deal with on-going cases registered in previous years.

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

Out of the 83 new cases registered in 2020, 9 concerned the EEAS, 1 the EDPS and 2 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.





* 2 cases were joined and led to 1 single disciplinary penalty

- Disciplinary penalty (20)
- Warning (11)
- No follow-up (12)
- Non-case (36)
- Termination of contract (3)
- Article 73 report (5)
- Sent to OLAF (1)
- Reassignment to another AA (1)
- Waiver of immunity (1)
- Suspension (1)
- Devoid of purpose (4)

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 2020, 36 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 2020, IDOC received mandates from the Appointing Authority to open 34 administrative inquiries. They concerned allegations of harassment and inappropriate behaviour, irregular declarations, unauthorised outside activities, unauthorised absences, conflicts of interest, non-respect of the rules on confidentiality, the abuse of ICT services, unauthorised access to files, as well as inquiries under the procedure for handling occupational disease requests and for the recognition of an invalidity allowance.

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.

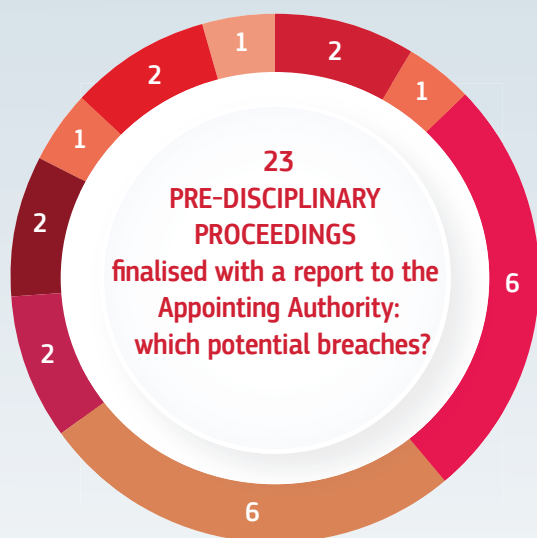
51 administrative inquiries were closed in the course of the year, which is an increase by 19% as compared to 2019. In 12 of these cases, the Appointing Authority decided to close the case without disciplinary follow-up. In 1 case, it was decided to terminate the contract of the person concerned in accordance with Article 47 of the Conditions of Employment of Other Servants (CEOS); in another case the person concerned was dismissed after the probationary period.

In 2020, IDOC received a mandate to carry out 4 administrative inquiries under the procedure for the recognition of the occupational disease pursuant to Article 73 of the Staff Regulations and 1 administrative inquiry pursuant to Article 78 of the Staff Regulations under the procedure for an invalidity allowance. The procedures under Articles 73 and 78 of the Staff Regulations are not of a disciplinary nature, IDOC carrying them out at the specific request of and based on the mandate issued by the respective competent Appointing Authority.

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.

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*).



- ICT abuse (2)
- Conflict of interest (1)
- Irregular declarations (6) *
- Inappropriate behaviour (6) **
- Harassment (2)
- Unauthorised absences (2) ***
- Unauthorised outside activity (1)
- Breach of rules on confidentiality (2)
- Miscellaneous (1)

* 1 Agency case; ** 1 EEAS case + 1 Agency case; *** 1 EEAS case

In 2020, the Appointing Authority gave IDOC mandate to open pre-disciplinary proceedings in 36 cases, which is an increase by 24%. 33 of these pre-disciplinary proceedings were closed in 2020 (representing an increase by 22%), as follows:

- 23 pre-disciplinary proceedings were finalised with a report sent to the disciplinary authority;
- in 9 cases 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 to their statutory obligations in the future. These proceedings involved less serious shortcomings, with no budgetary impact, or no harm to the Institution's image and reputation;
- in 1 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 2020, 1 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 2020, 23 disciplinary proceedings were opened, representing a 25% increase in comparison to 2019; 12 were without referral to the Disciplinary Board and 11 were with referral to the Disciplinary Board.

In 2020, 20 cases were closed with a disciplinary sanction, representing an increase by more than 50% in comparison to 2019. The sanctions imposed by the Appointing Authority included written warnings, reprimands, withholding from pension, temporary downgrading and removal from post.

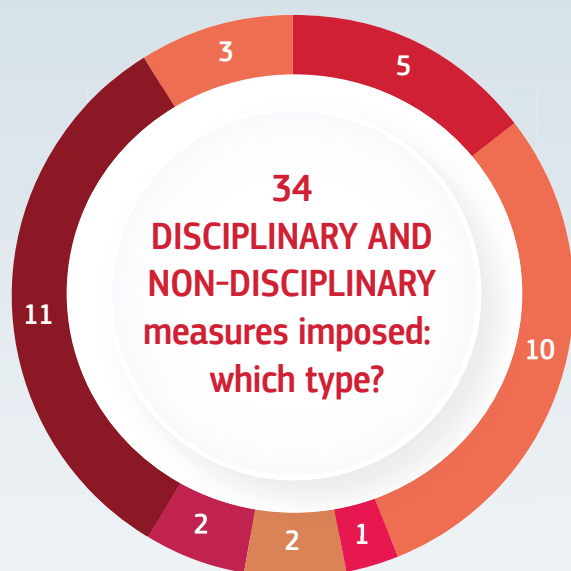
Two disciplinary proceedings were closed with a non-disciplinary measure, i.e. with a warning and one was closed with no further action.

3.6. Different types of sanctions

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

Less serious 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 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



DISCIPLINARY (20)

- Written warning (5)
- Reprimand (10) *
- Temporary downgrading (1)
- Removal from post (2) **
- Withholding pension (2) **

NON DISCIPLINARY (14)

- Warning (11) ***
- Termination of contract, Art 47 CEOS (3) **

* 1 Agency case + 1 EEAS case; ** 1 EEAS case; *** 2 Agency cases

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 CEOS who are found to be in breach 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 SANCTION²

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 2020. In order to protect their anonymity, and for the sake of simplicity, the 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 member of staff.

The Appointing Authority removed an official from post, without reduction from his pension or withholding from his invalidity allowance, for having committed theft and sexual abuse. The Appointing Authority qualified those facts as a serious breach of Article 12 of the Staff Regulations, incompatible with the dignity of public service. In determining the sanction, the Appointing Authority took into account the state of mental health of the official, as an attenuating circumstance.

The Appointing Authority imposed a reprimand on an official who behaved inappropriately towards colleagues. The official adopted a too direct and aggressive style of communication towards several of his colleagues, raised his voice and questioned the professional qualities of a colleague. The Appointing Authority concluded that his behaviour did not correspond to the ethics standards expected from an official pursuant to Article 12 of the Staff Regulations. The official has admitted the facts and has subsequently chosen to follow coaching on communication.

The Appointing Authority imposed a reprimand on an official who did not follow the applicable rules on parking security and the instructions of the security guards advising him on those rules and did not behave

² Out of these cases, three concerned the EEAS and one an executive agency.

appropriately towards them. The Appointing Authority therefore concluded that his behaviour amounted to a breach of Article 12 of the Staff Regulations.

The Appointing Authority imposed a reprimand on an official who behaved inappropriately, using threatening gestures and language during the annual evaluation meeting with his Head of Unit and Deputy Head of Unit, which had a negative impact on them. The Appointing Authority therefore concluded that his behaviour amounted to a breach of Article 12 of the Staff Regulations. The Appointing Authority took into account the fact that the official subsequently improved his behaviour.

The Appointing Authority imposed the sanction of withdrawing EUR 1 400 from the monthly pension, for a period of two years, of a retired official who behaved inappropriately during a disciplinary procedure, related to a separate case concerning the same official. In particular, he used his private email address to insult and defame staff members of the Commission and the EEAS. He sent 56 emails with insulting and defaming content, which reflected adversely on the reputation, honour and dignity of the staff members. Therefore, the Appointing Authority concluded that this behaviour was contrary to Article 12 of the Staff Regulations, as interpreted by the case-law of the Court of Justice of the European Union.

The Authority Empowered to Conclude Contracts of Employment imposed a reprimand on a contract agent who had the tendency to make cynical comments, use an aggressive and disrespectful tone in the interaction with his colleagues, hierarchy or external partners, question the competencies of others or insist on certain positions beyond reason. He equally had a tendency not to share documents or information with his colleagues, causing difficulties for his colleagues and peers in carrying out their own tasks. The Authority Empowered to Conclude Contracts of Employment concluded that the behaviour of the contract agent amounted to a breach of Articles 12 and 21 of the Staff Regulations.

Harassment

Article 12a of the Staff Regulations prohibits any form of psychological or sexual harassment.

The Appointing Authority imposed the sanction of a monthly withholding of EUR 600 from the pension of an official during a period of one year, for psychological harassment and behaving inappropriately towards employees of a company working for the Commission. Moreover, the official breached his duty of loyalty in interfering with the staff policy of that company. The Appointing Authority therefore concluded that

the official has infringed Articles 11, 12 and 12a of the Staff Regulations.

Duty of loyalty

In line with Article 11 of the Staff Regulations, 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 imposed the sanction of a temporary downgrading with one grade for the duration of one year to an official who committed several breaches of the Staff Regulations. He provided favours to a company, which was a regular candidate to calls for proposals for EU projects in the same domain that the official worked in. The company was also involved both directly and indirectly in a large number of EU-funded projects in that same area. Moreover, the official prepared the company's project proposal and the financial liability assessment. The Appointing Authority concluded that those were breaches of Article 11, 12 and 12b of the Staff Regulations. In addition, the official was found to be in breach of Articles 12 and 17 of the Staff Regulations for an unauthorised disclosure of a draft non-public document, and of Article 13 for having failed to declare the gainful employment of his spouse, whose activities could have given rise to a conflict of interest.

The Authority Empowered to Conclude Contracts of Employment imposed a reprimand on a contract agent who made purportedly incoherent and misleading declarations, and tried to present to the institution a narrative, which could have made him eligible to obtain the expatriation allowance in accordance with Article 4 of Annex VII to the Staff Regulations. The Authority Empowered to Conclude Contracts of Employment concluded that the contract agent has breached the duty of loyalty and has therefore infringed Article 11 of the Staff Regulations, which applies by analogy to contract agents. The Authority Empowered to Conclude Contracts of Employment noted that at the time when his misconduct occurred, he was a junior staff member with limited experience in the Commission.

The Authority Empowered to Conclude Contracts of Employment imposed a written warning on a contract agent who, after having worked for an Agency, requested full unemployment allowances from the PMO, even though, for a period covered by his request, he had been employed by two companies. He did not declare his two contracts either to the respective national authorities, which filled out the EU unemployment forms, or to the PMO. The Authority Empowered

to Conclude Contracts of Employment therefore concluded that the contract agent has infringed Article 11 of the Staff Regulations, which applies by analogy to contract agents. However, the Authority Empowered to Conclude Contracts of Employment took into account the fact that both contracts from which the contract agent benefited were of short duration and that he fully cooperated in the disciplinary proceedings.

The Appointing Authority imposed a written warning on an official who requested from an international school, and then provided to the Commission non-official invoices, in order to receive a higher financial support for his child. Although he had already received official invoices from the school, the official chose to submit the non-official ones, on which the overall tuition fees for his child appeared to be higher. The Appointing Authority concluded that by his actions, the official breached Article 11 of the Staff Regulations. In addition, since his behaviour was perceived negatively in the eyes of a third party (the international school), the Appointing Authority concluded that his actions amounted to a breach of Article 12 of the Staff Regulations. The Appointing Authority took into account as an attenuating circumstance the particularly difficult personal situation of the official.

The Appointing Authority imposed a reprimand on an official who provided false declarations in order to benefit from a VAT exemption for the purchase of a car. He provided in administrative forms incorrect and contradictory declarations in relation to his change of residence, impeding the administration to establish accurately the rights and eligibility for entitlements and allocations of the official. The Appointing Authority concluded that the official has infringed Articles 11 and 12 of the Staff Regulations. The Appointing Authority took into account the fact that the official duly cooperated in the disciplinary proceedings and committed to take greater care in the future.

The Authority Empowered to Conclude Contracts of Employment imposed a reprimand on a temporary agent who failed to attend his approved missions for a training course, and instead declared the two missions as completed. The Authority Empowered to Conclude Contracts of Employment found that his behaviour amounted to a breach of Articles 11, 12 and 55 of the Staff Regulations. The staff member undertook to be more careful in the future in order to avoid similar misconducts.

The Appointing Authority imposed a written warning on an official who interfered in the staff policy of a company with which the Commission concluded a framework contract. He was also involved in a situation of conflict of interest related to that company concerning another staff member. It was thus concluded that he breached his duty of loyalty set out in Article 11 of the

Staff Regulations. However, the Appointing Authority took into account as attenuating circumstances the fact that the official has always been very committed to his work, the considerable workload that he had to cope with during the period covered by the decision, and the fact that he fully cooperated during the disciplinary proceedings.

Conflict of interest

Article 11a of the Staff Regulations prohibits staff members from dealing with matters in which, directly or indirectly, they have any personal interest such as to impair their independence, and, in particular, family and financial interests.

The Appointing Authority imposed a reprimand on an official who was in a conflict of interest situation in an activity related to the promotion exercise for officials of the Commission, and who failed to declare that conflict. The Appointing Authority thus concluded that he has infringed Article 11, 11a and 12 of the Staff Regulations. However, the Appointing Authority took into account the fact that he did not abuse access rights and did not act against the interest of colleagues.

The Appointing Authority imposed a written warning on an official who was involved in a situation of conflict of interest related to a company that was carrying out tasks for the Commission. Moreover, he did not behave appropriately towards a member of that company. The Appointing Authority therefore concluded that he breached Articles 11, 11a and 12 of the Staff Regulations. However, when taking the decision, the Appointing Authority took account, inter alia, of the quality of the official's work throughout his career.

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 imposed the sanction of removal from post without reduction of the pension on an official who had a large number of unauthorised absences, systematically refused to work and did not respect the instructions of the hierarchy. He continuously refused to perform the tasks assigned to him and to assist his hierarchy. He also sent an internal non-public document to a person outside the institution, without any prior authorisation. The Appointing Authority thus

concluded that his behaviour amounted to a breach of Articles 17(1), 21, 55(1) and 60, first paragraph, of the Staff Regulations.

The Authority Empowered to Conclude Contracts of Employment imposed a reprimand on a contract agent who did not attend Unit meetings and did not inform his hierarchy in advance about his being impeded to attend them. In addition, the contract agent provided contradictory explanations to his hierarchy about his absences. The Authority Empowered to Conclude Contracts of Employment concluded that he has infringed Articles 12, 21, 55 and 60 of the Staff Regulations. The Authority Empowered to Conclude Contracts of Employment noted that during the disciplinary stage of the proceedings, he acknowledged his misconduct and accepted unreservedly the report to the Disciplinary Board.

Insubordination and infringement in connection with the performance of duties

According to Article 21 of the Staff Regulations, officials must assist and tender advice to their superiors and are responsible for the performance of the duties that are assigned to them.

The Appointing Authority imposed a reprimand on an official who failed to cooperate with his hierarchy, to perform the tasks assigned to him, or to perform those tasks within the required deadlines. He also adopted on some occasions a condescending attitude towards some colleagues. The Appointing Authority therefore concluded that he breached Articles 12 and 21 of the Staff Regulations. However, the Appointing Authority took into account as attenuating circumstance the fact that he lacked experience in the field.

Secrecy of the proceedings of a Selection Board

Article 6 of Annex III (Competitions) to the Staff Regulations requires that the proceedings of the Selection Board must be secret.

The Appointing Authority imposed a reprimand on an official who was in contact by email with one of the external candidates in a selection procedure when he worked in an agency, while being the President of the Selection Board in that procedure. The Manual of Selection Procedures of the agency prohibits any contact between the candidates and the members of the Selection Board and sets out an obligation for the members to report any attempt by a candidate to contact or influence them. The Appointing Authority concluded that the official breached Article 6 of Annex III to

the Staff Regulations. At the same time, the Appointing Authority took into account as attenuating circumstances the facts that he acknowledged the alleged facts and that he cooperated loyally during the disciplinary proceedings.

V - POLICY AND COMPLIANCE

5.1. Proceedings on waiving the immunity of staff

IDOC dealt with one request of a judicial authority of a third country for waiving the immunity of a Commission official. In that context, in coordination with all services concerned, IDOC prepared for adoption by the College of Commissioners the Decision concerning the request for waiving of immunity.

5.2. Participation in Inter-service Working Groups

- i) With the launch of the European Public Prosecutor's Office, IDOC became a member of the working group setting up the "Agreement establishing the modalities of cooperation between the European Public Prosecutor's Office and the European Commission". In this context, IDOC actively participated in the working group meetings and drafting of the Agreement that took place in 2020. Work on the draft Agreement will continue in 2021.
- ii) In addition, IDOC participated in the working group dealing with the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations. The Regulation was adopted by the legislator on 23 December 2020 (Regulation (EU, Euratom) 2020/2223) and published on 28 December 2020 (OJ L 437, p. 49–73).

5.3. 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 2020 included tailored interactive training and sessions on ethics and

disciplinary matters, delivered to targeted audiences in DGs. Some of these sessions were organised in conjunction with the “Ethics & Ombudsman” Unit of DG HR. IDOC gave training to the EEAS Finance & Contract Network. Regular presentations were given to staff preparing to be posted to EU Delegations, including to Heads of Administration. A general presentation was given on ethics within the induction training for newcomers to the Commission. Specific presentations were also given to newcomers to the DG HR and to the newly appointed Heads of Unit.

