



Activity Report

of the Investigation and Disciplinary Office of the Commission (IDOC) 2016

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I. INTRODUCTION

IDOC's Mission Statement - *Ensure by enforcement measures and prevention activities that officials 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. The Commission's Investigation and Disciplinary Office (IDOC) seeks to ensure that all staff members comply with their statutory obligations by conducting administrative inquiries, pre-disciplinary procedures, and disciplinary procedures in an impartial, transparent, and timely manner.

In addition to this role, IDOC is also active in outreach and in prevention (including awareness-raising and training). The IDOC Annual Report informs staff of activities in the area of disciplinary matters, reminds them of the rules in place, and underlines that wrongdoing can have serious disciplinary consequences.

The report gives an overview of the cases in which a 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 about the consequences that can result from breaches of statutory provisions. The disciplinary authority has wide discretion to decide on the appropriate follow-up and on the sanction to be imposed, so as to reflect the nature, the particular circumstances, and the seriousness of the breach established.

II. CASELOAD IN 2016

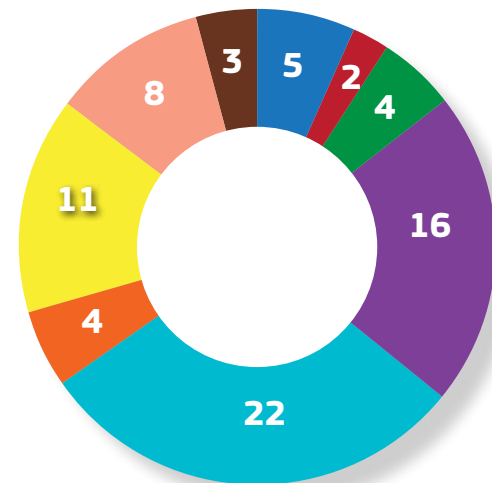
Overview

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, Executive Agencies, requests for assistance filed under Article 24 of the Staff Regulations, as well as external sources like complaints and media reports.

All new cases coming into IDOC undergo a preliminary assessment. This assessment may lead to a case being closed with no further action, or to it being taken further.

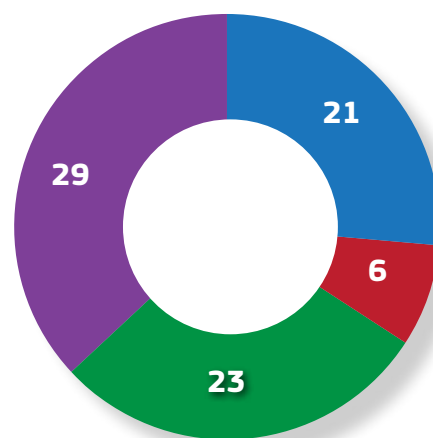
IDOC closed 79 cases in 2016 – some of which may have been opened in previous years – and registered 75 new cases. Opened cases included those dealing with irregular declarations, allegations of harassment, inappropriate behaviour, unauthorized external activity, and irregular absences. Under Service Level Agreements, IDOC provides support in the area of investigations and disciplinary issues to the European External Action Service (EEAS) and to the Executive Agencies. Of the 75 new cases opened in the course of the year, nine involved the EEAS, and two the Executive Agencies.

75 cases registered - which subject?



- Non respect of financial rules (5)
- Abuse of ICT services (2)
- Conflict of interest (4)
- Irregular declarations (16)
- Harassment/Inappropriate behaviour (22)
- Irregular absence (4)
- Unauthorised external activity (11)
- Non respect of rules on confidentiality (8)
- Miscellaneous (3)

79 cases closed by category



- Sanctions (21)
- Caution (Mise en garde) (6)
- No follow-up (23)
- Non case (29)

Administrative inquiries

Where there is evidence that a breach of 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 procedure 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 an opportunity to comment on the facts established by the inquiry.

In 2016, IDOC received mandates from the Appointing Authority to open 32 administrative inquiries. 24 inquiries were closed in the course of the year.

Pre-disciplinary proceedings

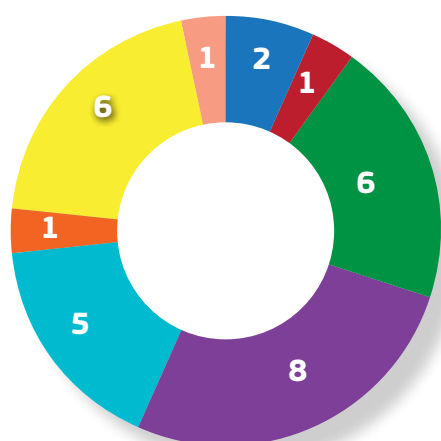
In cases where the Appointing Authority decides to pursue the matter, the person concerned is given an opportunity to comment on all the evidence of the case.

Following a pre-disciplinary hearing with the person concerned, the Appointing Authority can then decide either: (1) to close the case; (2) to issue a formal warning (*mise en garde*); or (3) to open disciplinary proceedings.

In 2016, 30 pre-disciplinary procedures were finalised with a report sent to the disciplinary authority. The disciplinary authority subsequently decided:

- in seven cases to close the procedure without follow-up;
- in six cases to issue a formal warning (*mise en garde*) reminding the person concerned to pay more attention in future to their statutory obligations. These procedures involved minor shortcomings, with no budgetary impact, or harm to the Institution's image and reputation;
- in 17 cases to open a disciplinary procedure.

30 Pre-disciplinary procedures closed: which potential breaches?



- Non respect of financial regulations (2)
- ICT abuse (1)
- Conflict of interest (6)
- Irregular declarations (8)
- Inappropriate behaviour/harassment (5)
- Irregular absence (1)
- Unauthorised external activity (6)
- Non respect of rules on confidentiality (1)

III. DISCIPLINARY PROCEDURES

There are two types of disciplinary proceedings.

A simplified procedure – 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.

Where it considers the alleged wrongdoing to be sufficiently serious as potentially to warrant a financial sanction, the Appointing Authority refers the case to the Disciplinary Board, which hears the person concerned. The Board acts as a 'fresh pair of eyes' on the facts and circumstances of the case and makes a recommendation for a sanction. However, the final decision is taken by the Appointing Authority.

In 2016, 17 disciplinary proceedings were opened, six without referral to the Disciplinary Board, and 11 with referral to the Board.

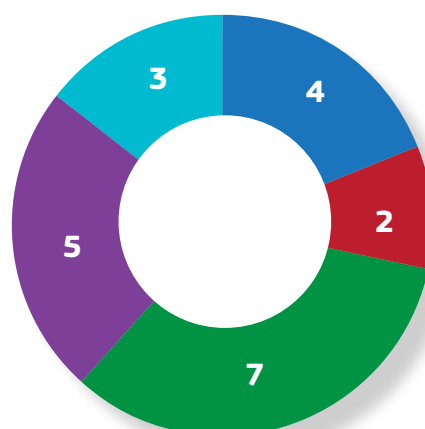
Disciplinary sanctions adopted in 2016 included one written warning, six reprimands, and 14 financial penalties. There were also six formal warnings (*mise en garde*).

DIFFERENT TYPES OF SANCTIONS

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

Minor breaches may give rise to a warning ("*mise en garde*"). This is not a disciplinary sanction, but a formal reminder on the need to observe the highest ethical standards. It is placed in the staff member's personal file for 18 months. In 2016, six such warnings were issued.

21 Disciplinary sanctions: which breaches?



- Non respect of financial rules (4)
- Abuse of ICT services (2)
- Irregular declarations (7)
- Inappropriate behaviour/harassment (5)
- Irregular absence (3)

27 Disciplinary and non-disciplinary sanctions imposed: which type?



DISCIPLINARY

- Dismissal (4)
- Withholding pension or invalidity allowance (2)
- Downgrading (6)
- Reduction in step (2)
- Reprimand (6)
- Written warning (1)

NON DISCIPLINARY

- Non-disciplinary warning (Mise en garde) (6)

More serious breaches can lead to the opening of disciplinary proceedings. The level of sanction imposed can range from a written warning to dismissal, as appropriate. Retired staff can be sanctioned through a reduction in their pensions for a designated period of time. The disciplinary sanction is placed in the personal file of the person concerned for a period of between three and six years. In 2016, 21 disciplinary sanctions were imposed.

Staff members subject to the Conditions of Employment of Other Servants (CEOS) who are found to be in breach of their statutory obligations can have their contract terminated. Contracts can be terminated either 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 sanction to be applied in a particular case, the Appointing Authority takes into account a number of factors set out in the Staff Regulations: (1) the nature and circumstances of the misconduct; (2) the extent to which the misconduct has an impact on the Institution; (3) whether the misconduct involves intent or negligence; (4) the motives for the misconduct; (5) the grade and seniority of the staff member concerned; (6) the degree of the staff member's personal responsibility; (7) the level of the staff member's duties and responsibilities; (8) whether the misconduct was a one-off

incident or whether it involved repeated action or behaviour; (9) the staff member's conduct throughout his career.

In short, there is no 'tariff' of sanctions, and each case must be assessed on its merits, and any disciplinary penalty imposed must be commensurate with the seriousness of the misconduct.

IV. Summary of cases closed with a sanction

In line with Article 10 of Decision C(2004) 1588, this report provides a summary of the cases in which the Appointing Authority took a disciplinary sanction decision in 2016. In order to protect the anonymity of the persons concerned, and in the interests of simplicity, persons concerned are referred to in the 'he' form. For the sake of simplicity, the term Appointing Authority is used throughout.

CASES

Irregular and false declarations

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

An official was dismissed for having participated in a fraud scheme which involved requests for reimbursements of medical expenses from the Commission's sickness insurance scheme. The scheme was found to have been in operation over a number of years with the involvement of persons from outside the Institution, generating a significant fraudulent benefit, which the official reimbursed once the fraud had been detected. The facts had been investigated by OLAF and had been acknowledged by the official. The Appointing Authority found that these repeated breaches of the duty of loyalty meant that the relationship of trust between the staff member and the Institution had broken down completely.

An official who was found to have made false declarations and produced fake documents in order to obtain financial allowances was permanently downgraded.

Following a legal separation, the official supplied false information to the Administration about the relationship, which suggested that there had been reconciliation, and that he could therefore continue to receive a number of allowances (household allowance, installation allowance, medical insurance).

The Appointing Authority considered that this behaviour was a serious breach of Articles 11 and 12 of the Staff Regulations. The facts were investigated by OLAF. The sums in question were subject to a recovery order.

In contrast to the Disciplinary Board, the Appointing Authority considered that the official's behaviour was characterized by gross negligence. The official was aware that his former partner was engaged in a remunerated activity, and that he had provided misleading information to the Administration on this fact. For this reason, the Appointing Authority decided to impose a heavier sanction than that recommended by the Board.

An official was permanently downgraded after he was found to have made a number of false declarations relating to claims for medical expenses involving family members. The official also failed to declare his spouse's employment status as well as family allowances received from other sources, in breach of Articles 67(2) and 74(3) of the Staff Regulations. As a result of these actions, the Commission's health insurance scheme provided primary health coverage, rather than top-up coverage, as should have been the case. In the course of the disciplinary process, the staff member began to refund the amounts which had been unduly received. The Appointing Authority considered that the staff member had placed his interests above those of the Institution, in breach of the duty of loyalty set out in Article 11 of the Staff Regulations. The circumstance that he might have been partly driven to this course of action because of his spouse's health problems did not mitigate his responsibility given that he had at his disposal numerous means to provide health coverage for his spouse. For this reason, the sanction imposed was more severe than that proposed by the Disciplinary Board.

An official holding management responsibilities was temporarily downgraded after it was found that he had acted in breach of the rules on importing goods for his personal use while serving in an EU Delegation. The events had been the subject of an OLAF investigation. The facts concerned the importation of a boat which belonged to another member of staff serving at the same Delegation. The staff member concerned made false declarations to the Institution and to the authorities of the host country in which he stated that the boat was his property. Even though he received no financial benefit from his actions, the Appointing Authority found that the conscious failure to respect the rules concerning removals of personal belongings was a breach of the duty of loyalty, and also exposed the Institution to the risk of damage to its reputation.

An official was temporarily downgraded for breaking the rules on importing goods for personal use into the country to which he had been posted. The official asked two expatriate staff members at the same Delegation to pretend that two motorbikes and a boat belonged to them, and to make declarations in this sense to the Institution and to the national authorities. In this way the items concerned were shipped as if they belonged to the two other officials. The Appointing Authority considered that the official gained a financial advantage, because the Institution paid for a removal which he himself would have had to pay for. His actions also

exposed the Institution to a risk of damage to its reputation. Lastly, the official himself was in charge of ensuring that the rules on removals were respected. For these reasons, the Appointing Authority considered that the official had acted in breach of Articles 11, 12, and 21 of the Staff Regulations.

Unauthorised absences

Article 55 of the Staff Regulations requires officials to be at the disposal of their institution at all times.

Article 59 of the Staff Regulations requires officials to submit medical certificates within five days from the start of an absence on medical grounds. Beyond this time, the absence is considered to be unauthorised, unless the failure to send the certificate is due to reasons beyond his control.

An official was dismissed following repeated and lengthy periods of unjustified absences. The absences began after a period of sick leave. Following checks and visits by the Medical Service, the official was found to be fit to work. However, he did not return to work, and refused to undergo medical checks or cooperate with the Commission Medical Service in the course of these unjustified absences. The events took place against a background of challenging behaviour while the official was at work, including an aggressive and threatening attitude to line management and staff. The Appointing Authority concluded that the official's actions, which, in its view, were breaches of Articles 11, 55, and 59 of the Staff Regulations, had led to an irretrievable breakdown in trust between the official and the Institution.

An official was dismissed following very lengthy periods of unauthorised absences. Following a period of sick leave, - some of which was spent in his Member State of origin without authorisation, in breach of Article 60 of the Staff Regulations - an independent medical opinion had declared the official fit to work. In spite of this, he did not report to work, and failed to take any initiative to clarify his administrative status.

The Appointing Authority considered that the official had effectively abandoned his post, and that the relationship of trust between the Institution and the staff member had irretrievably broken down.

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 an official's position.

An official who was convicted by a national Court for embezzling EU funds was permanently downgraded by two grades. The official, then working in an EU Delegation, had attempted to cash a cheque made out to an EU institution into his own bank account. His bank returned the cheque to the sender. The facts of the case had also been investigated by OLAF. The Appointing Authority found that the official's behaviour, even if it did not cause harm to the EU budget because the cheque in question had been returned to the sender, was in breach of the duty of loyalty, and caused damage to the reputation of the Institution, in breach of Articles 11, 12, and 21 of the Staff Regulations.

A retired official was sanctioned with a significant reduction in his monthly pension for a substantial period of time after it was found that the Delegation to which he was previously posted signed, at his suggestion, a lease agreement with a company that he himself had set up for an apartment which he owned. The official did not inform the Delegation about his vested interest in the company. As a result of these actions, the official received a very substantial amount of rent from the Delegation over a four-year period to which he was not entitled.

The case was investigated by OLAF, and a national judicial procedure resulted in a conviction for intentionally misleading the EU Delegation by not telling them that he was the owner of the company concerned. The court case resulted in a conditional sentence in combination with a fine.

In the course of the case, the Appointing Authority also found that the official had concealed information about the irregular housing situation of a colleague, which was also damaging to the EU's financial interests, and had failed to take steps to bring this situation into line.

The retired official's behaviour was found to be in breach of Articles 11, 12, and 21 of the Staff Regulations.

The Appointing Authority temporarily downgraded an official who had been convicted by a national Court for a serious traffic offence. In addition to this breach of Article 12 of the Staff Regulations, the Appointing Authority considered that the staff member's failure to cooperate with the national judicial authorities in the course of the national proceedings was contrary to Article 23 of the Staff Regulations, and had caused harm to the Institution's reputation.

An official was relegated in step after it was found that he had acted in breach of several provisions of the Staff Regulations.

While on active duty, the official had failed to respect the rules of sick leave; during a period of leave on personal grounds, he had failed to notify the Commission of his intention to publish articles about the EU on his personal blog, in breach of Article 17(a)(2) of the Staff Regulations; in his exchanges with journalists covering a political campaign, he had openly criticised his Institution, in a manner contrary to that expected under Article 12 of the Staff Regulations; he had not informed the Administration of his election as a local councillor, in breach of Article 15 of the Staff Regulations; and he had failed to notify the Administration of an outside activity, in breach of Article 12(b) of the Staff Regulations.

The Appointing Authority considered that the official's multiple breaches of his statutory obligations warranted a more severe sanction than that proposed by the Disciplinary Board.

The Appointing Authority relegated in step an official after it found that he had behaved repeatedly in an improper manner towards staff members under his management. The Appointing Authority based its decision on a number of established incidents against different staff members, in which the official behaved in an unduly aggressive manner that had a negative impact on the staff members concerned. The Appointing Authority considered that this behaviour constituted a breach of Article 12 of the Staff Regulations, and was sufficiently evidenced and serious as to justify a disciplinary sanction.

A contract agent was reprimanded over his behaviour towards a colleague. The Appointing Authority found that the staff member's criticism and contempt towards this colleague was unacceptable and disrespectful. The Appointing Authority considered that the staff member's behaviour amounted to a breach of Article 12 of the Staff Regulations. However, it also recognized as an extenuating circumstance the fact that the behaviour took place against a background of a heavy workload in the service, which had contributed to worsening a relationship that was already conflictual.

In addition, the staff member gave wide circulation to his ideas about how to improve the situation in the service, without either having been asked, or having the authority to do so. By acting in this way, the staff member was considered to have acted in breach of Article 21 of the Staff Regulations.

A contract agent was reprimanded for sending a high number of unsolicited e-mails to a senior official in the Commission. The staff member had been asked on a number of occasions by the addressee and by the Administration to

stop sending the e-mails in which he requested assistance with personal matters and recommended acquaintances for posts inside the Commission. In spite of these reminders, the staff member persisted in this practice. The Appointing Authority found that this behaviour was in breach of Article 12 of the Staff Regulations.

A contract agent was reprimanded after it was found that he had behaved in an inappropriate manner. The facts concerned an allegation of sexual harassment that this staff member had made against another staff member. An administrative inquiry found no evidence to support the allegations of sexual harassment. While the administrative inquiry was ongoing, the staff member continued to make public accusations against the other colleague, and ignored requests from his management to cease in this behaviour, and to respect the presumption of innocence. These actions took place against a background of other disruptive behaviour. The Appointing Authority found that the staff member's behaviour was in breach of Articles 12 and 21 of the Staff Regulations.

The Appointing Authority issued a written warning to a contract agent who had impersonated another colleague in order to gain access to his work email account and delete an email message which he had sent in error. The staff member subsequently informed the colleague whose email account it was about this action, and also apologized to his line management shortly afterwards. Nevertheless, the Appointing Authority found that this behaviour was contrary to the rules on the security of IT systems in the Commission and a breach of Article 12 of the Staff Regulations, but took the particular circumstances of the case into account when deciding on the appropriate penalty.

Unauthorised outside activities

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

An official was dismissed following a number of breaches of the Staff Regulations. The staff member had ignored written instructions from his senior management relating to an outside activity, and had also made use of Commission ICT equipment and services in carrying out this activity. In addition, his use of his work e-mail address in the context of this outside activity had exposed the Institution to a risk to its reputation. The Appointing Authority considered that these facts, which occurred very shortly after the official had already received a disciplinary sanction for very similar behaviour, amounted to breaches of Articles 11, 12, 12b, 21, and 59 of the Staff Regulations, as well as of the rules governing the use of Commission ICT services. The Appointing Authority considered that, more generally, the official's behaviour demonstrated an inability to abide by the rules.

An official received a reprimand after it was found that he had acted as an intermediary and contact person for companies offering mortgages and insurance policies. The official had neither sought nor received authorisation for these outside activities. He had also worked on setting up insurance and mortgage brokerage companies himself. The official's outside activities consisted in contacting officials inside the Institutions – using his Commission e-mail address – as well as outside stakeholders in order to offer the services of the companies concerned. He also acted as an intermediary with the companies with established clients. The Appointing Authority considered that these were commercial activities carried out by an official on active duty. In its view, this activity caused damage to the Institution's image and reputation. The Appointing Authority concluded that these were serious breaches of Articles 12, 12(b), and 21 of the Staff Regulations, of the specific rules in force on outside activities, as well as of the guidelines to staff on the use of Commission ICT services.

This sanction replaced a previous sanction decision from 2014 which had been annulled by the Civil Service Tribunal.

Failure to declare professional activities after termination of service

Under the terms of Article 16 of the Staff Regulations, staff leaving the service continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

The Appointing Authority sanctioned a retired contract agent by reducing his pension after he was found to have exercised an occupational activity without having received prior authorisation to do so, in breach of Article 16 of the Staff Regulations.

After retiring, the staff member had started to work as a consultant for a company that he had been responsible for evaluating and supervising while working as a project manager in a Delegation. The Administration subsequently drew his attention to his obligations under Article 16 of the Staff Regulations. Following this reminder, he then submitted a request to carry out a different occupational activity. He received the authorisation for this activity on condition that, during a two-year "cooling off" period after leaving the Institution, he should not be involved in certain activities for the company he had evaluated and/or supervised as a project manager. However, in spite of this, the staff member then signed a further contract with this same company, and extended his period of consultancy work with them. The facts had been subject to an investigation by OLAF.

In contrast to the Disciplinary Board, the Appointing Authority considered that this behaviour amounted to a substantive, rather than to a purely formal breach of Article 16 of the Staff Regulations, and thus warranted a disciplinary sanction.

Infringements in connection with the performance of duties

According to Article 21 of the Staff Regulations, officials are responsible for the performance of the duties that are assigned to them.

A retired official, who had been an Authorising Officer by Sub-delegation, received a reprimand over his management of a services contract while in active service. The contract was awarded in breach of the rules applicable to a negotiated procedure and the payment validated in full despite the fact that only part of the service has been provided at the time of the validation. The facts had been subject to an investigation by OLAF. The Appointing Authority found that the official had acted in breach of the Financial Regulation in the attribution and management of the contract. It found that this behaviour amounted to a breach of Article 21 of the Staff Regulations. When deciding on the appropriate sanction, the Appointing Authority took into account the difficult context in which the facts occurred; the absence of financial consequences on the budget; as well as the long and irreproachable career of the staff member.

An official was reprimanded following a number of breaches in the management of a services contract. The official, then serving in a Delegation, had been involved in decisions relating to the award and management of a contract that were found to have been in breach of the Financial Regulation. The facts had been subject to an investigation by OLAF. The Appointing Authority found that this behaviour constituted a breach of Article 21 of the Staff Regulations.

In deciding on the appropriate sanction, the Appointing Authority took into account the difficult working context in which the facts occurred, the fact that this behaviour concerned one contract among the many which came under the supervision of the official concerned, and the absence of financial consequences on the budget.

A contract agent was reprimanded after it was found that he had exposed the Institution to a serious reputational risk by having made a proposal to his hierarchy to invite an expert to an EU-funded workshop in spite of the fact that he was aware that this expert was the subject of judicial proceedings involving allegations of fraud against the financial interests of the EU. The invitation implied that the Commission would reimburse the expert's travelling costs.

The facts had been investigated as part of an inquiry by OLAF into the allegations of fraud. The Appointing Authority considered that the fact that the staff member did not inform his line management that he knew of this expert's judicial proceedings amounted to a breach of Article 21 of the Staff Regulations, in addition to Article 12.

V. POLICY

Information and Communication Technology (ICT) guidelines

New guidelines for staff were published in May 2016 on the use of Commission ICT services. These guidelines updated and expanded on those of September 2006.

The text updates guidance to staff on:

- ensuring that ICT use is in line with Commission rules on information security;
- what constitutes acceptable use of ICT services;
- how staff should handle information that is not classified, but is nevertheless sensitive; and
- the options open to the Appointing Authority in the event of abuse of Commission ICT services (these can include disciplinary sanctions).

Whistleblowing

In close cooperation with OLAF, IDOC concluded a review of how the 2012 Commission guidelines on whistleblowing have worked in practice. Outreach efforts in this area continue.

Commission Decision to update the General Implementing Provisions (GIPs) on the conduct of administrative inquiries and disciplinary procedures

Work continued on a new Commission Decision to update the General Implementing Provisions (GIPs) on the conduct of administrative inquiries and disciplinary procedures. The text aims to replace the current Commission Decision, which has not been substantially revised since it was adopted. The new draft Decision aims to take into account developments in jurisprudence at the Civil Service Tribunal, as well as practices in the management of administrative inquiries and disciplinary procedures developed since 2004.

Outreach to staff

Outreach to staff across the Commission, the EEAS and the Executive Agencies is an important part of the effort to raise awareness of the importance of ethical issues. Outreach activities carried out in the course of 2016 concerned the following DGs and agencies: DG MOVE/ENER, ERCEA, ECFIN, TAXUD, the European Joint Undertaking for ITER - Fusion for Energy, and the Representation of the Commission in France (Paris).

Other presentations were given to DG HR staff: the DG HR Senior Management the network of DG HR's financial officers, and newcomers to DG HR. IDOC also gave presentations to staff leaving to work in EU Delegations (EEAS and Commission).

