



Brussels, 10 July 2023

**Note for the attention of Mr. Johannes HAHN,  
Commissioner for Budget and Administration**

**Subject: Request for political concertation on the draft decision on the prevention of and fight against psychological and sexual harassment**

The nine meetings of administrative concertation and the two technical concertation held on 8 June, 12 June and 3 July 2023 on the draft decision on prevention and fight against psychological and sexual harassment, conducted in a spirit of exemplary cooperation with Mr C. Roques, Deputy Director General, and then with Ms G. Ingestad, Director General, enabled significant progress to be made and a number of compromises to be reached.

This is a complete U-turn on the unacceptable approach that formed the basis of the concertation initiated in 2019 on this filed, aimed at making purely cosmetic changes at the decision in an irresponsible and "self-congratulatory" approach in relation to the procedures in force.

We would also like to underline the extremely fruitful collaboration established with the departments of the Directorates-General responsible for handling this dossier, as well as the essential contribution of our colleagues of the Harassment Watch Network.

Nevertheless, given the specific nature of this decision, which has repercussions for the health and well-being of our staff as well as for the reputation of our institution, it is absolutely essential that you give a final political impetus to the implementation also in this field of the "culture of trust" that you have quite rightly placed at the heart of your action, and which the Alliance supports with the greatest conviction.

Indeed, it is crucial to gain the trust and support of staff for this decision **by sending out a clear signal of novelty**, in order to overcome staff's lack of confidence in existing procedures and to dispel fear of a lack of determination in prosecuting potential harassers, particularly when they are members of senior management.

It is important to overcome, once and for all, the skepticism and resignation of staff, which colleagues are constantly telling us they feel, considering that within our institution there are also "untouchables" who are "more equal than others".

The result is that victims are discouraged, even frightened, from defending themselves because they are convinced of the unfavorable outcome of their complaints, and witnesses are too often refusing to support them for fear of reprisals.

It is against this background that the Alliance is **calling for a political consultation** to discuss and obtain your support, in particular on the following aspects.

- 1. The absolutely crucial role of the Chief Confidential Counselor (hereinafter "CCC") must be confirmed.**

The Alliance stresses the absolutely crucial importance of the CCC, which responds to the request we have made on several occasions in the past, drawing inspiration from best practices, in particular from the World Bank, and which constitutes one of the most significant, if not the most significant, elements

of real innovation in this draft decision. This, even if we would have preferred it to be called anti-harassment coordinator.

In this respect, we confirm our satisfaction with the acceptance of our requests to confirm the role of the CCC as a "single entry point".

In addition, it was important to approve the amendment of the draft decision in such a way to allow the CCC, in agreement with the victim, to contact the alleged harasser and also to be able to give its contribution within the framework of formal proceedings, not being limited to simple procedural questions, and also being able to be called as a witness.

Nevertheless, it is not only crucial to establish the CCC's mandate and responsibilities with the utmost clarity, but above all to ensure **a selection procedure** that enables the candidate with all the skills, specific experience and therefore the credibility to take on such an essential role, to be chosen.

There can be no doubt that the choice of candidate for the position of CCC will largely contribute to the credibility of the new system put in place to finally effectively fight all forms of harassment within our institution.

It is therefore essential to absolutely **provide very specific and targeted selection criteria** and to ensure **the widest possible publicity** for this vacancy notice, which can attract the best **candidates by means of also an external publication of the vacancy.**

**These are all essential conditions for entrusting the tasks to a genuine specialist with specific skills in harassment and solid experience in this field.**

If the filling of this post ends up being a purely bureaucratic operation involving a candidate with no real experience or skills in such a complex and highly specialized field, it will be impossible to overcome the current lack of confidence among staff.

In this respect, we ask that, as it is already the case for the Mediator, **the Central Staff Committee will be consulted for its opinion before the final selection of the candidate.** In this respect, case law has already recognized the importance and the added value of the opinion of the CSC and it is important that **the vacancy notice for this post should also be submitted to the CSC** before publication.

**This is in no way an attempt to co-manage the appointment procedure, for which the Appointing Authority remains solely responsible, but simply to enable it to rely on the opinion of staff representatives in its choice, which can only strengthen the confidence of colleagues and the credibility of the candidate ultimately selected for the post of CCC.**

## **2. Strengthening the role of staff representatives in preventing and combating harassment**

We must remember that staff representatives are key players in combating and preventing harassment, as confirmed by the results of the "*Survey on respect in the Workplace - May 2022*". We must not forget that through staff representation, our institution can also benefit from the expertise of the best experts that the Alliance and other Trade Unions mobilize as part of the assistance provided to colleagues.

The **Alliance therefore proposes that the role of the staff representatives be strengthened** in this decision and made even more visible, by confirming *inter alia* their power to:

- Assisting and advising the victim while respecting the confidentiality of the facts reported
- Supporting the victim throughout the process, whether during the informal and/or formal procedure
- Suggesting preventive action where necessary
- Being involved in reviewing the decision, drawing up the guide and implementing the action plan.

**3. It is crucial to clarify the difference between combating all forms of harassment and managing conflicts in the workplace and, in this context, establish a much clearer separation between the actors and procedures foreseen by this draft decision and the role and tasks of the Mediation Service.**

The role of the Mediation department is crucial in managing and resolving conflicts. Good conflict management makes it possible to limit or even stop cases of harassment whose origin is a conflict in the workplace that has not been defused.

It is undeniable that with its current excessively small size, the Mediation Department is unable to fully carry out its mandate, which has led to discontent among staff and their representatives.

On the one hand, it is essential to strengthen the role and capacity for action of the Mediation department by providing it with the necessary resources.

On the other hand, **it is necessary to distinguish between conflicts at work and moral harassment, which are two very distinct phenomena** that cannot be confused, and which require very specific and different treatment.

Mediation must be used to resolve conflicts in the workplace, but it cannot deal with the complexity of harassment, which involves a number of factors (see the non-exhaustive list in the prevention section) that need to be analysed and managed by a very specific and specialized services, such as the CCC and its team and, where appropriate, those involved in the formal procedure.

**Good cooperation but with the greatest possible clarity and distinction of roles, is absolutely essential to ensure that cases are dealt with as appropriately as possible.**

It is also important to prevent the victim from being induced, for fear of reprisals, to choose the "least conflictual" procedure by considering that the choice of going to the CCC and not to the Mediation service could be considered as proof of an alleged lack of willingness to appease and seek an amicable solution, which could then be held against the victim.

As if the two procedures could be perfectly fungible and not respond to completely different requirements imposing specific treatment and follow-up.

**It is for these reasons that it is essential to drastically reduce in the draft decision the provisions referring to the Mediation service, which have no place in this context, as confirmed by a number of responses to the Interservice consultation.**

If this is not the case, it will inevitably create harmful confusion among staff, which even explicit confirmation of the CCC as a "single entry point" is unlikely to dispel completely.

#### **4. Role of OLAF**

Even if this is simply a question of taking account of the legal framework in force as established by the Staff Regulations, **the explicit provision in the Decision for victims to be able to directly address themselves to OLAF undoubtedly represents another essential and more than welcome novelty in the draft Decision.**

This is an aspect that the Alliance defended with the greatest conviction throughout the negotiations, also on the basis of particularly positive experiences, within other Institutions and Agencies, concerning the handling of cases of harassment and other inappropriate behaviours, by OLAF. And this to the full satisfaction of both victims and witnesses.

It was indeed important to put an end to IDOC's "monopoly", resulting from the MoU signed with OLAF, on the management of cases of this type within our institution.

This in no way calls into question the skills and commitment of IDOC's colleagues, even if, it must be pointed out once again, its assignment under the direct responsibility of the DG HR, and therefore to the Appointing Authority, is certainly not likely to reinforce the perception of its independence.

In this respect, the inclusion in the draft decision of the possibility for victims to refer cases directly to IDOC without necessarily going through a request for assistance addressed to the Appointing Authority under article 24 of the Staff Regulations, is undoubtedly a step in the right direction and one that the Alliance welcomes.

On the one hand, it is important **to strengthen the resources available to OLAF** to take on the new responsibilities arising from the draft decision.

On the other hand, it is clear that, **also in view of the principle of proportionality, OLAF cannot take charge of all cases of this kind, and it is therefore essential to establish clear criteria to define the division of responsibilities with IDOC.** The criteria outlined by OLAF in its response to the interservice consultation, which largely take up those proposed by the Alliance, constitute a very good basis for establishing this clear division, which should be formalized and communicated to the staff.

Indeed, it is indisputable that for the most complex and sensitive cases involving in particular members of the College and senior management or calling into question the functioning of an entire service, or involving major reputational risks for our institution, etc., the legal framework governing the operation and independence of OLAF and the highly specialized profile of its investigators offer all the guarantees needed to reassure victims and witnesses.

In this respect, we support with the greatest conviction OLAF's desire to work "so that all the institutions, bodies, offices and agencies of the Union entrust to us the task of carrying out administrative investigations in their midst concerning failings without financial impact (for example of an ethical nature) by officials and members without distinction".

This is an essential condition for strengthening the confidence of both staff and European citizens in the irreproachable operation of the EU institutions and we undertake to support this request within all the institutions where the components of the Alliance are representative and often play a leading role.

## **5. Obligation to report cases of harassment**

It was essential that the draft decision explicitly provides for the application of Article 22a of the Staff Regulations in cases of harassment. Harassment is a pathology of loneliness which, in extreme cases, leads to suicide.

**Victims must be able at any time to count on the duty of care of the institution, of their hierarchy and their colleagues.**

The aim is not to create a system of denunciation but simply to recall and take into account both the provisions of the Staff Regulations and established case law, thereby reinforcing collective responsibility (victim, witnesses, hierarchy, institution).

We particularly appreciated the fact that our request to this effect was accepted as part of the technical concertation, and we ask your support in order to ensure that **this aspect is duly highlighted during the communications activities** that will be carried out once the draft decision has been adopted.

## **6. Inclusion of an article on fundamental rights**

We also appreciate that, during the technical consultation, our proposal, like that of DG JUST in response to the CIS, to include an *ad hoc* article on fundamental rights in the text of the Decision, was accepted, thereby enhancing the clarity of the legal framework.

## 7. Specific definition of harassment

The definition of harassment continues to evolve.

All too often, however, there is a tendency to lump together behaviours and situations that are not harassment, trivializing the seriousness of the phenomenon and confusing colleagues.

In order to overcome these difficulties and following the example of the decision currently in force, it is therefore important to include examples of behaviour constituting harassment in the draft decision.

In this respect, the Alliance is delighted that its proposal to this effect was accepted during the technical consultation and confirms its request to take into account the best doctrine on the subject, namely the 5 categories and 45 actions of Prof. Dr. H. Leymann (see appendix). An educational effort in this respect will also have to be made in the guide.

## 8. Prevention

**Clearly, only a whole new impetus for prevention will enable this new package of measures (decision, guide and action plan) to have the desired effect. It certainly won't be enough to put up again posters in the corridors of our buildings declaring our desire for "zero tolerance" in this area.**

It should not be forgotten that Directive 89/391, transposed in art. 1sexies §2 of the Staff Regulations, provides for a **prevention plan under: obligation of the employer under art. 6.2.**

In particular, the prevention of harassment cannot simply consist of individual training efforts, which are certainly important, but must **also have a collective dimension focused on the prevention of psychosocial risks.**

The Commission needs to adopt a **culture of risk prevention** by intervening as far upstream as possible. In this respect, the staff survey is a very good tool, but it needs to be improved and supplemented with additional questions to resolve conflicts internally and, above all, to identify dysfunctions in the organisation.

In particular, it is important to develop complementary efforts in the area of **primary prevention**, otherwise there is a risk that the actions put in place will be short-lived and the problem will persist.

Taking into account the best national legislation and doctrine in the field, and in particular that of Marie-France Hirigoyen, a pioneer in the fight against bullying, as part of **primary prevention it is essential to tackle the causes directly in order to reduce or eliminate them.**

**This involves analysing the organisation and working environment, taking into account absenteeism, staff turnover, the frequency of interpersonal conflicts and complaints: it is necessary to identify organisational dysfunctions and improve managerial practices.**

Without such an effort at institutional level, which requires a very clear political impetus on your part, **both secondary prevention** (tackling only the consequences of the problem with the aim of limiting the negative impact: informing employees, raising their awareness of harassment... training managers in RPS... etc.) and **tertiary prevention** (taking urgent action, providing medical, psychological and social care for employees who are already suffering from a work-related mental health problem and preventing this condition from deteriorating, etc.) will not be enough to achieve the desired result.

**Preventing harassment should be part of an overall approach to preventing psychosocial risks.**

According to the scientific literature, prior to the emergence of cases of moral harassment, determinants frequently associated with its behaviour have been observed, such as: unreasonable workloads, paradoxical injunctions aimed at doing more and more with fewer and fewer resources, leadership

based on fear and blackmail towards non-permanent staff, a detestable social climate, ambiguity of roles, permanent control at work, stress, etc.

**The Alliance proposes that all these aspects be further detailed in the guide and the action plan.**

To this end, taking into account best practices in the field, the Alliance will propose **a specific tool for assessing psychosocial risks, as well as a scientifically-developed questionnaire** for evaluating working conditions and staff health, in order to provide early warning of any situation that could develop into harassment.

The Alliance also calls for an **internal assessment to be** carried out in all cases of recognized harassment and/or inappropriate behaviour in order to establish the origin of the behaviour and to build on experience to prevent similar risk situations.

### **9. More details on implementation, the guide and the action plan, monitoring and benchmarking**

In order to continue to contribute to the policy of preventing and combating harassment, the Alliance is asking to be involved in implementing the decision, drawing up the guide and monitoring the action plan.

To assess the effectiveness of the new decision and any improvements that, where appropriate, need to be made, it would be also important to ensure monitoring and benchmarking over the years concerning harassment allegations reaching the CCC, how many of them going to IDOC, OLAF, comparison with relevant benchmarks with other EU Institutions and International organizations (UN, World Bank, etc.)

### **Conclusion**

In view of the foregoing, the Alliance is confident that, by completing the extensive and very fruitful work already carried out during the administrative and technical consultation meetings, during the political concertation with you, we will be able to provide our staff with the procedures and tools required to finally put in place a fully-fledged policy to prevent and fight all forms of harassment.

Thus, by giving a new concrete and tangible application to the culture of trust that you have quite rightly placed at the heart of your action, and which the Alliance supports with the greatest conviction.

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*(Signed)*

Alliance

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