



# Renouveau & Démocratie

*Syndicat de la fonction publique européenne*

## The revised Anti-Harassment Commission Decision of Dec 12, 2023

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### Analysis and expectations

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# For R&D, staff deserve the best !

For R&D, when it comes to the anti harassment procedures, staff in all EU Institutions, Agencies and JUs deserve the highest quality support and efficient procedures in line with best practice in Member States.

Indeed, the European civil service's leading trade union, R&D has set up a multidisciplinary team of specialists, drawing on the best experts in each field, organising many conferences and webinars, and providing all the assistance that victims of moral and sexual harassment and other inappropriate behaviour deserve.

With the help of these specialists:

- R&D has successfully defended victims in almost all cases harassment detected at the Commission, EP, Council, EESC, CoR, F4E and several Agencies.
- Taking into account the best practices of the Member States and the lessons learned from the successful handling of all the cases monitored, R&D has drawn up its proposal for the reform of procedures to combat all forms of moral and sexual harassment.



## Key shortcomings to be addressed

**R&D** requested, negotiated and obtained the adoption by the Commission of a new decision against all forms of harassment, to be applied *mutatis mutandis* by the Agencies and the Joint Undertakings, in order to remedy the following shortcomings:

- In particular :
  - **The proliferation of empty slogans about so-called “zero tolerance”** and empty promises that are not followed up when a case arises, especially when a manager is involved
  - **Failure to protect the victims during the investigation and afterwards** in terms of compensation for the consequences suffered if the allegations are found to be true.
  - **Unacceptable over-indulgence with those responsible** in relation to the practices of Member States, often with a single-minded view that the manager is always right, placing the burden of proof solely on the victim.



## Key shortcomings to be addressed

- **Tolerance of the “omertà” of managers and witnesses**, in breach of the obligation under Article 21 and 22a of the Staff Regulations
- **Investigations conducted without the necessary guarantees of professionalism and independence**
- **Obstacles to the involvement of OLAF** in the conduct of investigations
- **Procedural obstacles** and lack of information to victims regarding the **transfer of cases to national judicial authorities**
- **Lack of central coordination of the various initiatives**, both in the management of individual cases and in training and awareness-raising activities
- All too often, the management of the sufferance imposed, sometimes with dramatic consequences, on the victims of harassment or inappropriate behaviour **is carried out in a purely bureaucratic manner, entrusted to "bureaucrats" who have no specific skills or experience**, and who are often only concerned with avoiding any publicity that might jeopardize their reputation or that of their department preventing the intervention of external and professional investigators.



## ***Why is it so urgent for F4E to adopt the new Commission decision***

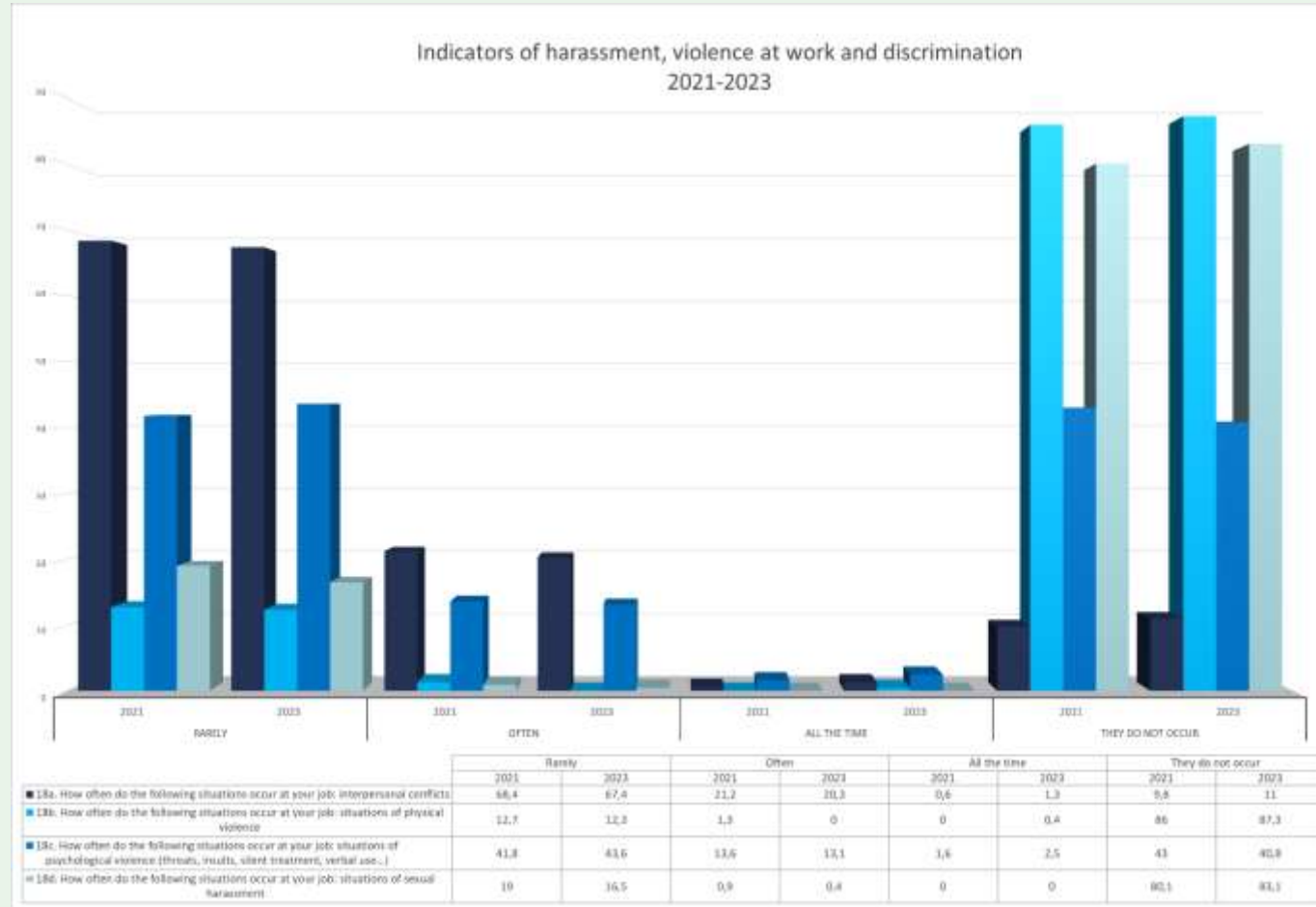
At the conference held in 2024, Marie Peze and the other experts who had been mobilized by R&D and who successfully dealt with the cases of suicide and harassment in France in the context of the France Telecom and La Poste cases, particularly in view of the results of the staff consultation, **confirmed the dramatic seriousness of the findings concerning F4E and the extent of the psycho-social risks to which F4E personnel were exposed.**

**They made the following very alarming findings :**



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In 2023, only 11% of staff believe that there are no interpersonal conflicts. Concerning situations of physical violence, 12.7% believe that they are present. For 59.2% of staff, situations of psychological violence (threats, insults, silence, verbal, etc.) are present at different degrees of risk. 16.9% of staff also responded that they face situations of sexual harassment at different degrees of risk (see graph: indicators of harassment, violence at work and discrimination 2021-2023).



- They underlined their full support to one of the conclusions of the external experts' report was that F4E should urgently :
  - *“ review the processes implemented for harassment, violence at work and discrimination, and the particularities highlighted in the report to improve the performance of F4E in these situations and the results obtained”*.
- Recalling that any refusal to recognise the seriousness of the problems identified and to implement the necessary corrective measures, systematically produces a climate of impunity that can only worsen the situation and provoke further accidents.



## Benchmarks taken into account

Working closely with the best European experts who have supported us in our negotiations, requests for investigation and assistance to victims, R&D has analysed the best practices of Member States and international organisations in order to propose to the Commission to adopt measures that could finally provide a viable response to the unacceptable denial of reality in relation to any case of harassment.

The most significant benchmarks taken into account, are the France legislation and case law and the procedure in force at the World Bank with the provision of a Chief Confidential Counselor.





Brussels, 12.12.2023  
C(2023) 8630 final

COMMISSION DECISION

of 12.12.2023

on the prevention of and fight against psychological and sexual harassment, and  
repealing Decision C(2006) 1624/3

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# The main aspects of the Commission Decision



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# Definition of psychological and sexual harassment

- Based on definition in SR
- Examples of definition in recitals



## Psychological harassment

“Psychological harassment is a conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional<sup>5</sup> and that may undermine the personality, dignity or physical or psychological integrity of any person.” (Art.12a, paragraph 3 SR)

***“Such conduct may, for instance, include, belittling, ridiculing someone or calling into question their professionalism, isolating someone, hostile or inappropriate comments or messages, stalking, threats, using vulgar or insulting language, undermining someone, as well as setting unrealistic working objectives, not giving to the person enough work or giving them work that does not meet their profile, if it takes place over time, is repetitive or systematic and fulfils also the other conditions of Article 12a of the Staff Regulations”.  
(Recital 8)***

## Sexual harassment

“Sexual harassment is a conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment is to be treated as discrimination based on gender”. (Art. 12a, paragraph 4 SR)

***“It may, for instance, include making promises of reward in return for sexual favours, or threats and/or reprisals if these demands are rejected, making sexual or offensive comments or gestures, showing sexually suggestive visuals, inappropriate physical contact, or sending or showing inappropriate obscene content or making inappropriate jokes”.*** (Recital 9)



# Sexual Harassment

- According to the decision sexual harassment should be treated like gender discrimination. According to current EU legislation this means a reversal of burden of proof.
- The consequence of the reversal of the burden of proof is that in case the victim has established “facts from which it may be presumed that harassment has taken place”, it needs to be proven that no harassment has taken place.
- **This an essential part of a victim-centred approach**



## Key principles of the Commission decision

- **Obligation to Whistleblow ! End of the code of silence!**
- **Appointment of a Chief Confidential Counsellor (CCC)**
- **Olaf also in charge of the investigations**
- Prevention of any risk of intimidation and retaliation
- “Victim centred approach”
- Mandatory training for managers



## Obligation to Whistleblow !

- The individual responsibility of everybody is reflected in the LEGAL OBLIGATION of any staff member witnessing behaviors that may qualify as harassment, TO REPORT this under the whistle blower provision in the Staff Regulations.
- Recital 13 of the Decision ***“Staff members who have witnessed directly a behavior that could qualify as harassment should act in accordance with Article 22a of the Staff Regulations”***
- This means the staff member ***“shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European AntiFraud Office (OLAF) directly.”*** (Art. 22a SR).
- **This is a far-going obligation which any staff member must be aware of.**
- **It means not to be a simple “bystander”.** Much too often, we have been observing situations where colleagues turned a blind eye instead of taking the side of the victim and reporting harassment.



# Managers Responsabilites

- Reminder of the obligations under Article 21 of the SR :
- ***“An official in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibilities”***

Much too often we have been observing situations where managers try to absolve themselves of their responsibilities by claiming that their subordinates are solely responsible of the mistakes detected,

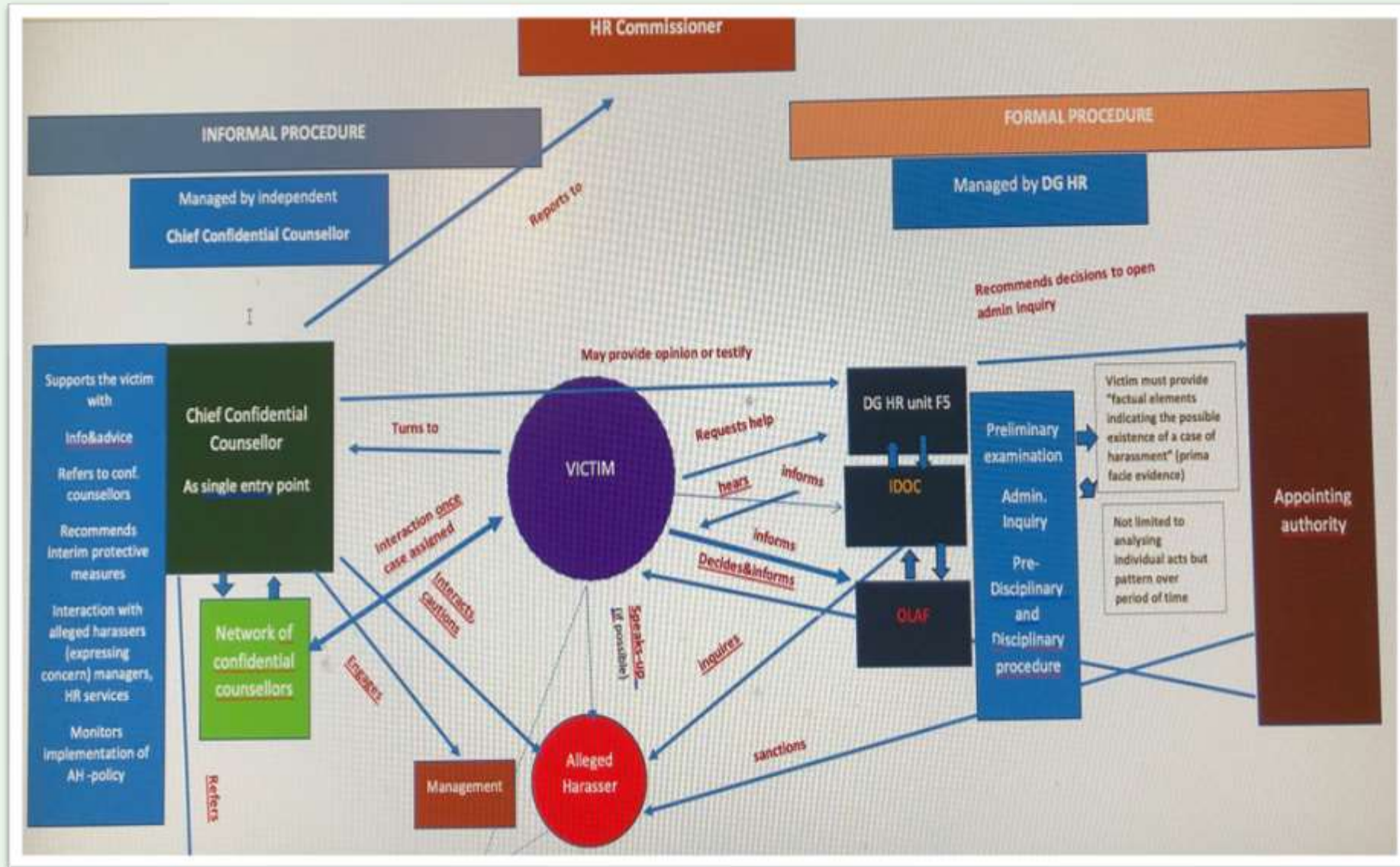


## Risk of intimidation and retaliation

- The new Decision underlines in Art. 9.3 that particular attention shall be given to the risk of intimidation, retaliation, secondary and repeat victimisation and to the need to protect the dignity and physical integrity of the victims.
- According to Art. 6.4 of the Decision person who has communicated information on alleged harassment in any of the procedures **shall be protected against any acts of retaliation.**



# Graph - Actors



## **New feature: Chief Confidential Counsellor, Grade AD 15**

**(The World Bank's Anti-Harassment Coordinator as a model)**

- **Article 11 of the Decision “*Function of Chief Confidential Counsellor*” :**

***“The Chief Confidential Counsellor shall report directly to the Member of the Commission responsible for Administration with respect to the responsibilities set out in this Decision and shall report annually to that Member of the Commission on the fulfilment of their mandate.*”**

***The Chief Confidential Counsellor shall be selected from among persons with an established and proven record of relevant knowledge and professional experience and whose integrity, independence, impartiality, and probity are beyond doubt.***

***They shall be appointed for a period of 5 years, renewable once, after the approval of the Member of the Commission responsible for Administration.***

***The Chief Confidential Counsellor shall be independent in their work and shall neither receive nor accept any instructions about their work.***

## Overall horizontal role of the CCC

- **Article 15 of the Decision:**
- **2. The Chief Confidential Counsellor shall:**
- **(a) be the principal entry point for victims to provide prompt and confidential advice, information on available services, and support to the victims during the informal procedure and its aftermath;**
- **(b) at the request of the victim, provide their opinion on aspects of the preliminary examination in accordance with Article 39(2);**
- **(c) in accordance with Article 38(4) of this Decision, provide elements or documents relevant to the preliminary assessment, which they have been informed of during the informal procedure, or testify as witness on the facts relevant to the administrative inquiry conducted by IDOC or, upon its invitation, OLAF or the pre-disciplinary proceedings and/or disciplinary proceedings, in accordance with Commission Decision C(2019) 4231. The Chief Confidential Counsellor may ask to be called as witness;**
- **(d) establish, where appropriate, temporary structures to listen to staff members concerned and help to facilitate the implementation of interim protective measures and accompanying measures in accordance with Chapter VI;**
- **(e) advise and support managers on preventing harassment within their teams;**
- **(f) respond to situations indicating potential harassment brought to their attention pursuant to Articles 6 and 22; (g) manage the network of confidential counsellors in accordance with Articles 11, 12 and 13, Article 27(1), point (d), and Article 28(3); (h) provide support to victims on an individual basis**

## CCC: Role in informal proceedings

- First point of contact for victims
- Managing a network of confidential counsellors
- Recommendations for interim protective measures
- Right to contact the alleged harasser to express concerns
- Setting up listening chambers (chambres d'écoute)



## CCC: involvement in formal proceedings

- Right to issue an opinion if the preliminary assessment suggests a "non-case"
- Provide elements or documents relevant to the preliminary assessment that arise during the informal procedure
- Right to testify as a witness relevant to the administrative inquiry conducted by IDOC
- Receive and listen to victims involved in formal proceedings, give advice



## Informal procedure

- Main actors: CCC and Network of Confidential Counsellors (CCs)
- CCC is entry point and assigns cases to confidential counsellors
- 25 new counsellors have been selected and are undergoing training.
- Mandate starts 1 Feb 2025.
- Role of CCs: listen, support, inform and guide victims
- Must be "neutral" and "objective".
- CCCs may act as CCs
- Time limit: 2 months after the first interview with the CC.
- Weak position of CCs - but strong position of the CCC to whom they report
- Incompatibility: anyone who is a member of a de facto or de jure organisation that helps colleagues in harassment situations is excluded from becoming a CC.



# Formal procedure

The three means of lodging a complaint against harassment:

- a) Request for assistance (art. 24 SR)
- b) Harassment complaint directly to IDOC (in case of SLA concluded with IDOC)
- c) Harassment complaint directly to OLAF





# Formal procedure – Art. 24 request

## Art 24 request for assistance

- To be submitted to the Appointing Authority (AA) with all the evidence at the victim's disposal.
- The AA forwards it to IDOC for its preliminary assessment and carries out a preliminary investigation, taking into account IDOC's opinion.
- During this period, fact-finding activities may be organised (meeting with the victim or persons suggested by the victim).
- Only if the AA comes to the conclusion that there is *prima facie* evidence, an administrative investigation is launched.



## Formal procedure – Complaint to IDOC

- Direct appeal to IDOC possible (explicitly mentioned) AA not involved.
- Preliminary assessment completed with assessment note. Either recommendation to open administrative inquiry or to close case.
- Decision taken by AA.



# Formal procedure – Complaint to OLAF

- **Avenue to OLAF now explicitly mentioned in 2023 Decision as requested by R&D also based on F4E's experience!**
- Not regulated by the 2023 Decision, but by the OLAF Regulation (833/2013)
- Director General of OLAF decides whether or not to open an investigation
- Olaf investigation report is handed over to the AA for further handling of the case (e.g. disciplinary procedure) - OLAF is not responsible for sanctions, but only for investigation.



## Formal procedure: new provisions

- **Legal definition of *prima facie* evidence**

*Prima facie evidence of harassment means the establishment of factual elements indicating a possible existence of a case of harassment.*

- **Holistic approach**

*The preliminary assessment and examination shall not be limited to analysing individual acts of the alleged harasser in separation but shall consider whether the acts constitute a pattern over a period of time.*



# Interim protective measures

- Formerly called "emergency measures"
- To be requested by the victim from the CCC
- May include, in particular, the transfer of the alleged harasser or victim to another service.
- CCC must decide whether or not to recommend interim protective measure
- Decision on action to be taken by AA
- CCC also has a role in facilitating the implementation of the interim protective measure
- Recommendation/decision on interim protective measure does not prejudge/affect final decision on whether or not harassment exists



## Procedures before national authorities

- Right of access to remedies before national authorities recognised
- Art. 19 SR: *An official shall not, without permission from the appointing authority, disclose on any grounds whatever, in any legal proceedings, information of which he has knowledge by reason of his duties”*
- Even if there is a need to disclose professional information, the Appointing Authority should in principle grant permission, as access to redress before national authorities is a fundamental right enshrined in the Charter of Fundamental Rights.
- **In cases of sexual harassment or physical violence, NO prior authorisation from the AA required** - Possible financial support for the victim but only if disciplinary proceedings establish that harassment has taken place.



## Statistics, reporting

According to the Decision, the CCC has to report annually to the HR Commissioner.

The report will be comprehensive and include reports in formal and informal proceedings, interim protective measures and the implementation of preventive measures and Art. 24 applications.



## CCC will to make full use of its powers to defend victims, *inter alia* by:

**Advising and warning alleged harassers;**

**Selecting emphatic and committed confidential counsellors**, guiding them to be more than just listeners, and asking them to report back on their cases, especially when CCC intervention is needed;

**Supporting victims in the formal procedure**, *inter alia* by giving advice, giving opinions on aspects requiring further attention, providing elements or documents relevant for the preliminary assessment, testifying as a witness;

**Recommend interim protective measures** (i.e. transfer of the victim **OR** the alleged harasser to another service) where necessary and ensure that their recommendations are properly implemented;

**Monitor the overall implementation of the anti-harassment policy and report annually in a comprehensive manner**, covering all aspects and tools of the anti-harassment policy. This report should be made public;





**Results of Staff Survey** will be duly scrutinized in order to detect any structural concern and directly act accordingly;

**When informed of several cases of sick leave in the same unit** involving allegations of harassment, CCC will make every effort to investigate the circumstances and help put an end to ongoing harassment;

**Ensure that statistics on harassment are substantially improved** in order to increase transparency (e.g. number of Art. 24 requests for harassment allegations, separately for psychological and sexual harassment, number of harassment-related administrative inquiries, number of harassment-related disciplinary proceedings and sanctions). It should be possible to track all Art. 24 requests.



# Conclusion

**There can be no harassment in an organisation that does not allow or tolerate it and that is not satisfied with constantly repeating empty slogans!**

**The failure to implement procedures for reporting and dealing with any harassment case is a factor that encourages the occurrence of such situations...and that's it is the responsibility of the AA.**



## R&D requests

- **In the very unfortunate event that the F4E Director does not do so on his own initiative, R&D calls on the F4E GB and the Commission :**
  - to invite the Director of F4E to adopt *mutatis mutandi* the new Commission decision **as a matter of urgency** and to duly assist F4E in order to ensure and monitor its effective implementation;
  - to ensure that the CCC can provide assistance and support to F4E colleagues who are victims of any act of moral and/or sexual harassment, both in the context of the informal procedure and during any formal investigation.



**We remain at the disposal of any F4E colleague  
that would need our help and specialised assistance**



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