

***The revised Anti-Harassment Commission
Decision of Dec 12, 2023 which will apply to staff
of Executive Agencies from 1 October 2025***

Analysis and expectations

Cristiano SEBASTIANI

Chair of R&D Federal

EU staff deserve the best !

When it comes to the anti-harrasement procedures, staff in all EU Institutions, Agencies and JUs deserve the highest-quality support and the most efficient procedures, in line with the best practices of Member States.

Indeed, the EU Staff Representation, drawing on leading experts in each field, has organised numerous conferences and webinars, and provides comprehensive support to victims of moral and sexual harassment, as well as other inappropriate behaviour

With the help of the best specialists:

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

Key shortcomings to be addressed

The Staff Representation, working in full synergy and cooperation with the Harassment Watch Network, requested negotiated and obtained the Commission's adoption of a new decision against all forms of harassment.

This decision is to be applied by the Agencies and the Joint Undertakings *mutatis mutandis*, 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 acted upon 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 allegations are proven true.
 - **Unacceptable over-indulgence of those responsible**, in relation to the practices of Member States, often with the 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 obligations under Articles 21 and 22a of the Staff Regulations
- **Investigations are often conducted without the necessary guarantees of professionalism and independence**
- **Obstacles to the involvement of OLAF** in conducting investigations
- **Procedural obstacles** and lack of information for 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 on harassment or of inappropriate behaviour victims, sometimes with dramatic consequences, **is carried out in a purely bureaucratic manner. It is entrusted to "bureaucrats" who have no specific skills or experience**, and who are often only concerned with avoiding any publicity that might jeopardise their reputation or that of their department, thereby preventing the intervention of external, professional investigators.

Benchmarks taken into account

Working also closely with the best European experts in the field, the Staff Representation and the Harassement Watch Network have analysed the best practices of Member States and international organisations, in order to propose to the Commission the adoption of 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 have been the French legislation and case law, and the procedure in force at the World Bank with the provision of a Chief Confidential Counsellor.



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

EN

EN

The main aspects and new features of the Commission Decision

Definition of psychological and sexual harassment

- Based on the definition in the Staff Regulations
- Examples of the definition in the 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 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 the burden of proof.
- The consequence of the reversal of the burden of proof is that, should the victim establish “facts from which it may be presumed that harassment has taken place”, then it must be proven that no harassment took place.

Key principles of the Commission's decision

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

Obligation to Whistleblow !

- Everybody's individual responsibility is reflected in the LEGAL OBLIGATION of any staff member witnessing behaviours that may qualify as harassment TO REPORT them under the “whistle-blower” provision in the Staff Regulations.
- According to Recital 13 of the Decision, *“Staff members who have witnessed directly a behaviour that could qualify as harassment should act in accordance with Article 22a of the Staff Regulations”*
- This means that 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-reaching obligation of which every staff member must be aware.
- It means not being a mere “bystander”. All too often, observed situations in which colleagues have turned a blind eye instead of taking the side of the victim and reporting the harassment.

Managers Responsibilities

- 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”***

All too often we observe situations in which managers try to absolve themselves of their responsibilities by claiming that their subordinates are solely responsible for the mistakes detected

Risk of intimidation and retaliation

- The new Decision emphasises 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, a person who has communicated information on alleged harassment in any of the procedures **shall be protected against any acts of retaliation.**

**NEW FEATURE : Chief Confidential Counsellor,
(The World Bank's Anti-Harassment Coordinator serves as a model)**

- **Article 11 of the Decision “*Function of the 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, pending 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*

The CCC is entitled 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 throughout the formal procedure**, *inter alia* by giving advice, giving opinions on aspects requiring further attention, supplying relevant documents for the preliminary assessment and testifying as a witness;
- **Recommend interim protective measures** (e.g. transferring 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 provide an annual comprehensive report** covering all aspects and tools of the policy. This report should be made public;

- **Results of the Staff Survey** will be duly scrutinised in order to detect any structural concern, and action will be taken accordingly;
- **When informed of several cases of sick leave in the same unit** involving allegations of harassment, the 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** 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.

CCC: Role in informal proceedings

- First point of contact for victims
- Managing a network of confidential counsellors
- Providing 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 and provide advice

Informal procedure

- Main actors: The CCC and the Network of Confidential Counsellors (CCs)
- The CCC is the entry point and assigns cases to the Confidential Counsellors
- 25 new counsellors have been selected and are undergoing training.
- Mandate starts on 6 February 2025.
- Role of CCs: listen to, support, inform and guide victims
- They must be "neutral" and "objective".
- CCCs may act as CCs
- The time limit is: 2 months after the first interview with the CC.
- Stronger position of CCs thank to the strong position of the CCCs 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 submitted directly to IDOC (in case of an SLA concluded with IDOC)**
- c) Harassment complaint directly to OLAF**

Formal procedure – a) Art. 24 request

Art 24 request for assistance

- To be submitted to the Appointing Authority (AA) along with all the evidence available to the victim.
- The AA will then forward it to IDOC for a preliminary assessment, carrying out a preliminary investigation and taking IDOC's opinion into account.
- 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 will an administrative investigation be launched

Formal procedure – b) Complaint to IDOC

- **A direct appeal to IDOC is possible (this is explicitly mentioned) and AA is not involved.**
- A preliminary assessment has been completed and an assessment note has been written. The recommendation is either to open an administrative inquiry or to close the case.
- The decision is taken by the AA.

Formal procedure – c) Complaint to OLAF

- **Avenue to OLAF is now explicitly mentioned in the 2023 Decision, as requested by Staff Representation and based on EESC and 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 reports are handed over to the AA for further handling of the case (e.g. disciplinary procedures) - OLAF is not responsible for sanctions, only for investigations.

Formal procedure: new provisions

- Legal definition of *prima facie* evidence

Prima facie evidence of harassment establishing factual elements that indicate the possible existence of a harassment case.

- Holistic approach

The preliminary assessment and examination shall not be limited to analysing the alleged harasser's individual acts in isolation, but shall consider whether these 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, include the transfer of the alleged harasser or victim to another service, in particular.
- CCC must decide as to whether or not to recommend an 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 measures does not prejudice/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 is required - Possible financial support is available for victims, but only if disciplinary proceedings establish that harassment has taken place.**

Action Plans

DG HR should establish a set of comprehensive and targeted measures, including medium- and long-term action plans for the prevention of harassment, including in the framework of psychosocial risk prevention measures.

Those measures should include information on the rights of the victims of harassment, awareness-raising campaigns, training and learning activities, advice and support.

Those measures should also reflect a systemic monitoring and assessment aimed at identifying and remedying what in the principles of work organisation and relations between staff members is likely to favor or allow the appearance of harassment.

Steering group who will monitor the implementation of the action plans.

The steering group will be chaired by the Chief Confidential Counsellor and will include one representative from each of the following:

- the Mediation Service,
- the Appeals & Case Monitoring Unit in DG HR,
- the Investigation and Disciplinary Office of the Commission (IDOC),
- the DG HR unit dealing with the prevention of psychosocial risks (HR.D7),
- and the Central Staff Committee.

Statistics, reporting

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

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

Conclusion

There can be no harassment in an organisation that does not allow or tolerate it, and that does not limit itself to merely repeating empty slogans!

Failure to implement procedures for reporting and effectively dealing with harassment cases encourages the occurrence of such situations, and it is the responsibility of the AA to address this.

**BREAK
THE
SILENCE**

HarassmentWatch
n e t w o r k

**DON'T
TURN A
BLIND
EYE**

HarassmentWatch
n e t w o r k



Renouveau & Démocratie

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

