



Decision No 26-2017 on the policy for maintaining a satisfactory working environment and combating psychological and sexual harassment

Explanatory note

INTRODUCTION

1. The Court of Auditors' policy on wellbeing at work must include respect for the dignity of people working at the institution and measures to maintain a satisfactory working environment. The Court seeks to promote a working culture free of all forms of violence in the workplace, and one in which psychological and sexual harassment are simply not tolerated.

THE CONCEPTS OF PSYCHOLOGICAL AND SEXUAL HARASSMENT

2. Whether psychological or sexual, harassment may take various forms, and therefore a single all-encompassing definition is not possible. However, Article 12a of the Staff Regulations, the case-law of the European courts and legislation already in force in the Member States all provide guidelines on the definition of harassment, especially that it is undesirable and creates an atmosphere of intimidation, isolation and hostility or humiliation. It is important to note that certain types of behaviour, while not actually harassment, are inappropriate and should be avoided, either because they undermine professional dignity, because they are unethical or because, quite simply, they are damaging to the working environment.
3. Article 12a of the Staff Regulations defines **psychological harassment** as "*any improper 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*".

Psychological harassment always includes the following:

- persistent and repetitive acts;
- acts targeting a specific individual or group of individuals;
- acts the purpose or effect of which is to harm others by undermining their rights or their dignity, by impairing the conditions in which they work or jeopardising their professional future through an intimidating, hostile, degrading, humiliating, offensive or ostracising atmosphere, and/or by causing damage to their physical or mental health.

It is irrelevant whether or not the behaviour perceived by the alleged victim to be harassment is deliberate.

Harassment may occur in a range of situations, for example:

- from a superior to a subordinate;
- from a subordinate to a superior;
- towards a colleague, an auditee, a supplier, etc.;
- through scapegoating of an individual within a group.

Some examples of psychological harassment, where the behaviour concerned is recurrent by nature:

- inappropriate or offensive comments (especially in public), bullying, negativity, pressure, antagonism, or just refusal to communicate;
 - intimidation, whether spoken, unspoken, written or physical;
 - spoken or written insults or threats, in particular regarding the victim's personal or professional qualities;
 - disparagement of the victims' contributions and achievements;
 - isolation, separation, exclusion or rejection from the group, withholding of information, belittlement or humiliation by comparison with colleagues;
 - assignment to tasks not corresponding to the victim's job description, or systematic assignment of tasks/objectives not matching the victim's abilities;
 - over-surveillance;
 - serious allegations, where unfounded or made in bad faith, and the forwarding of any such allegations in disregard of the conditions set out in Articles 22a and 22b of the Staff Regulations.
4. Where allegations of psychological harassment are made without good reason, they may be damaging to the persons against whom they are laid and contribute to a worsening atmosphere in the workplace. They may themselves constitute harassment. It is therefore important to distinguish between harassment and action taken by Members or staff in their capacity as a line manager or appointing authority, or by other staff and officials in performance of their duties under the Staff Regulations:
- the allocation of work;
 - conclusions reached or decisions taken by a line manager or the appointing authority on a matter within their responsibility;
 - measures to monitor staff absences and working time;
 - the setting of performance requirements corresponding to a job description;
 - performance assessment;
 - disciplinary measures;
 - the exercise by an official or member of staff of their duties under Articles 21a to 22b of the Staff Regulations.
5. While interpersonal conflicts in the workplace do not necessarily constitute harassment, they must nonetheless be resolved as soon as they arise. The same applies to cases of psychological distress. Staff are encouraged to seek support, *inter alia*, from their management, a contact person, the medical officer and/or the mediation service even when there is no suggestion of harassment. By virtue of their position, managers have a key role in establishing and maintaining a satisfactory working environment.
6. Article 12a of the Staff Regulations defines **sexual harassment** as "*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 shall be treated as discrimination based on gender.*"

Some examples of sexual harassment:

- promises of reward (e.g. a favourable career move) or threats of reprisal in connection with sexual requests;
- repeated coarse or suggestive remarks or sexual innuendo;
- crude and obscene language and gestures;

- repeated overblown compliments on a colleague's personal appearance;
- physical contact, brushing against someone, pinching, unwanted kissing;
- voyeurism or exhibitionism;
- use of pornography.

A single incident involving an act of sexual assault is enough to ask for urgent action by the appointing authority. Such acts may have criminal consequences. It is extremely important that incidents of this sort be reported to the appointing authority as quickly as possible, with a view in particular to any contact with the national judicial authorities.

THE COURT OF AUDITORS' POLICY REGARDING HARASSMENT

7. The Court's policy in this area is as follows:

- Zero tolerance: the Court of Auditors will tolerate no acts of harassment by or towards its staff or Members.
 - Prevention of harassment through information, awareness-raising and training. The aim is to promote a culture in which harassment in any form is deemed unacceptable and not just ignored, and to afford all persons working at the Court a safe and healthy working environment without obstacle to their professional duties.
 - Effective support for complainants: help with all requests for assistance by a person complaining of harassment, as well as protective measures and legal support.
 - Support for persons accused of harassment: verification of harassment allegations to ensure that they do not, in turn, become a means of harassing the accused person, and legal support.
 - A responsive environment built on respect and the promotion of voluntary and amicable conflict resolution mechanisms except in cases of physical assault; amicable resolution should be encouraged because it is faster and allows problematic situations to be defused. In some cases, the perpetrator of acts perceived by the alleged victim to be harassment is simply not aware of the impact of his/her conduct. Sometimes it may be enough for the alleged victim to explain clearly that the behaviour in question is undesirable, offensive and potentially detrimental to the alleged victim's health or performance. However, if it is too difficult for the alleged victim to take this step alone, he/she must be able to rely on third parties to help find a solution on an informal basis.
 - Punishment: opening of disciplinary proceedings against any person responsible for psychological or sexual harassment or obstructing due procedure.
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THE EUROPEAN COURT OF AUDITORS

HAVING REGARD TO the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, and in particular Article 12a thereof (hereinafter “the Staff Regulations”);

HAVING REGARD TO the Staff Committee’s opinion No 08/16;

HAVING REGARD TO the Court’s deliberations at its meeting of 6 April 2017;

WHEREAS it is necessary to update and consolidate the established policy on harassment, focusing on simplification of the procedures for protecting the dignity of each and every person working at the Court of Auditors and on the amicable resolution of interpersonal conflicts;

HAS DECIDED:

Article 1: Definitions

The following definitions shall apply for the purposes of this Decision:

- Alleged victim: any person who feels they are the victim of psychological or sexual harassment in the workplace within the meaning of Article 12a of the Staff Regulations; the alleged victim may be a Member of the Court, a member of the Court’s staff, or employed by a contractor to the Court or by an audited body.
- Person accused of harassment: a person against whom allegations have been made of psychological or sexual harassment in the workplace within the meaning of Article 12a of the Staff Regulations; this person may be a Member of the Court, a member of the Court’s staff, or employed by a contractor to the Court or by an audited body.
- Mediator: one or more persons, belonging to or authorised by the Court’s Legal Service and trained in mediation to resolve interpersonal conflicts in particular, to whom the alleged victim and the person accused of harassment agree to submit their dispute with a view to an amicable resolution; also the mediation service organised within the Legal Service.
- Contact person: a member of the Court’s staff who has received special training and whose name appears on a list drawn up by the Secretary-General to include, if possible, people from all Court departments. The list of contact persons shall be brought to the attention of all people working at the Court. Contact persons shall counsel those asking for help and present them with the options of informal procedures and formal complaint.
- Appointing authority or authority empowered to conclude contracts of employment (“the appointing authority”): for cases of harassment, irrespective of the identity of the alleged victim or the person accused of harassment, the appointing authority shall be the Secretary-General. If the latter is prevented by a conflict of interests, the appointing authority for cases of harassment shall be the President.
- Investigating officer: a person chosen by the appointing authority to pursue, alone or with others, an investigation of the evidence for and against a charge of harassment in connection with which a request for assistance has been made. Investigations shall proceed in accordance with Court Decision No 99-2007 laying down general implementing rules for conducting administrative investigations. Investigators may be appointed from the Court’s staff or from outside. In the latter case, they must first sign a declaration of confidentiality and absence of conflicts of interest.

Article 2: Principles

- 2.1. Every person has the right to be protected against offensive, abusive or inappropriate behaviour amounting to psychological or sexual harassment.

- 2.2. Every person working at the Court shall endeavour to foster an atmosphere of trust, support and mutual respect. Persons in a managerial position in particular must establish and maintain a working environment that discourages any behaviour which might undermine the dignity of the persons subject to their authority, and must respond quickly and effectively if such behaviour occurs.
- 2.3. The Court has put in place several channels for counselling and the amicable resolution of interpersonal conflicts, as well as a mechanism for formal complaints and sanctions.
- 2.4. It is for alleged victims to decide whether they want to report harassment and seek an amicable solution to the problem, or make a formal complaint through a request for assistance in line with Article 24 of the Staff Regulations.
- 2.5. Whatever option an alleged victim takes, every effort shall be made to protect their interests and those of any witnesses, as well as the interests of the institution in maintaining or restoring a satisfactory working environment and protecting the rights of persons against whom a complaint is made.
- 2.6. All proven cases of harassment shall be taken to disciplinary proceedings and, where appropriate, brought to the attention of the relevant judicial authorities.
- 2.7. Allegations of harassment that are unfounded or made in bad faith may themselves result in disciplinary proceedings and where appropriate, brought to the attention of the relevant judicial authorities.
- 2.8. The main principles governing the procedure shall be:
 - a hearing for all parties on the basis of the presumption of innocence;
 - confidentiality at all times, both for the alleged victim and for the person accused of harassment, save where all parties authorise disclosure of their identity or this is a requirement in the context of criminal proceedings;
 - the right to a defence;
 - objectivity at every stage of the dispute;
 - measures in proportion to the charges.

Article 3: Informal procedures

- 3.1. Persons who feel they have been subjected to harassment should not have to bow to the situation, and should do all they can to bring it to an end. They shall be encouraged to seek counselling and support, *inter alia*, from a manager, a contact person, the medical officer or a mediator, with a view to reaching an amicable settlement of the conflict with the person they accuse of harassment.
- 3.2. The persons consulted by an alleged victim may neither rule that harassment has taken place nor adopt sanctions. However, they may advise the appointing authority to take protective measures as a matter of urgency.
- 3.3. Pursuant to Articles 22a and 22b of the Staff Regulations, the persons consulted by an alleged victim shall not be authorised to disclose the facts of which they have become aware.
- 3.4. Contact persons shall be the first port of call for a person enquiring whether the acts of which they regard themselves as a victim could constitute psychological or sexual harassment and/or seeking support to express their disapproval to the perpetrator and bring the behaviour in question to an end.
- 3.5. Any person who feels they have been subjected to harassment may consult the medical officer if they consider that the situation is or could be detrimental to their health.

- 3.6. Mediators shall focus in particular on finding an amicable solution to conflicts arising from alleged harassment and shall seek to re-establish an acceptable working environment. With the consent of those affected by the conflict, the medical officer and the line manager may also be party to mediation. No action shall be taken or contact made with third parties without the prior consent of the person concerned (except in cases of danger, sexual assault or suicidal behaviour).

Article 4: Formal complaints by way of a request for assistance

- 4.1. Persons wishing to complain of harassment must do so formally in writing by sending the appointing authority a confidential request for assistance under Article 24 of the Staff Regulations.
- 4.2. This Article shall apply by analogy to Members of the Court who feel they have been subjected to harassment.
- 4.3. Requests for assistance must include evidence for the alleged psychological or sexual harassment. If alleging psychological or sexual harassment, the complainant must prove to what degree the repeated nature of the alleged acts contributed to an intimidating, ostracising, humiliating and degrading atmosphere and thus constituted psychological harassment. Medical certificates or reports pointing to a situation of harassment and issued by the alleged victim's practitioner shall not constitute sufficient evidence of the existence of harassment.
- 4.4. The appointing authority shall make every effort, in response to a request, to decide promptly whether to grant or refuse assistance.
- 4.5. If the appointing authority considers that the behaviour described in a request does not, *prima facie*, constitute harassment, or if he/she considers that the complainant is blatantly in bad faith, he/she shall refuse to grant assistance.
- 4.6. If the person accused of harassment is a Member of the Court, the appointing authority shall forward the request to the President, who shall refer it to the Ethics Committee established by Court Decision No 14-2015. The Ethics Committee shall issue an opinion to the appointing authority as to whether to open an administrative investigation.
- 4.7. Having taken note of the Ethics Committee's opinion, if the appointing authority considers that the behaviour described in the request does not, *prima facie*, constitute harassment, or if he/she considers that the complainant is blatantly in bad faith, he/she shall refuse to grant assistance.
- 4.8. In all other circumstances, the appointing authority shall order, as soon as possible, a fair and impartial administrative investigation to determine whether harassment has taken place, whether it was committed by the person identified as such by the complainant, and whether or not the complainant is acting in good faith. The complainant shall be required to cooperate with the designated investigating officer(s).
- 4.9. The Secretary-General shall inform the person accused of harassment that an investigation has begun and shall explain the accused person's rights and obligations.
- 4.10. Without awaiting the outcome of the investigation, the appointing authority may issue a provisional reply to the request for assistance and take measures to protect the complainant or any other measure designed to maintain a satisfactory working environment.
- 4.11. At the end of the investigation, the investigator shall draw up a report and send it to the parties concerned and to the appointing authority. If the person accused of harassment is a Member of the Court, the appointing authority shall submit the investigation report to the President or, if the President is the Member concerned, to the Member next in order of precedence under Article 5 of the Court's Rules of Procedure. The report shall not contain any confidential medical information without the express authorisation of the person concerned.

- 4.12. On the basis of the investigation report, the appointing authority shall reach a final decision on the request for assistance. He/she shall reject the request if the complaint is unfounded or accept it if he/she deems it to be supported by the evidence, giving due justification in each case.
- 4.13. If the appointing authority accepts the request for assistance, he/she may, as appropriate:
- take measures to protect and support the complainant in cooperation with the medical officer, the complainant's line manager and/or the mediation service with a view to re-establishing and maintaining a satisfactory working environment; and/or
 - propose solutions for the parties to the conflict in cooperation with the medical officer, line managers and/or the mediation service with a view to re-establishing and maintaining a satisfactory working environment; and/or
 - under Article 24, second paragraph, of the Staff Regulations, compensate the complainant for damage suffered as a result of the behaviour deemed to be harassment.

Article 5: Disciplinary consequences

- 5.1. On the basis of the investigation report, if the appointing authority considers that certain acts may constitute psychological or sexual harassment, he/she shall start disciplinary proceedings against the person accused of harassment under Article 86 of and Annex IX to the Staff Regulations.
- 5.2. If the alleged perpetrator is a Member, the Court must invoke Article 4 of its Rules of Procedure.
- 5.3. If a complaint lodged by way of a request for assistance was made in bad faith, the appointing authority may take disciplinary action against the complainant. If the complaint was lodged by a Member, the Court must invoke Article 4 of its Rules of Procedure.

Article 6: Reprisal

- 6.1. After having examined with due care the case, the appointing authority or the Court shall take appropriate action if it appears that involvement in a case of harassment has been prejudicial to the alleged victim, or to a witness, investigator, mediator or contact person.
- 6.2. A person who alleges reprisal in consequence of a decision taken in their regard by the appointing authority, or because the appointing authority has chosen not to adopt in their regard a measure required by the Staff Regulations, may submit a complaint to the appointing authority under Article 90 of the Staff Regulations.

Article 7: Legal costs

- 7.1. The institution may bear the legal costs incurred by the alleged victim and the person accused of harassment if they choose to be assisted by a lawyer in connection with an informal procedure or administrative investigation.
- 7.2. If the case reaches the national courts, the costs to be borne by the institution may include lawyers' fees and procedural costs incurred by both the alleged victim and the person accused of harassment.
- 7.3. The institution may require legal costs which it has borne in this way to be reimbursed if the alleged victim was acting in bad faith or the person accused of harassment is the object of a disciplinary or criminal sanction in connection with the acts concerned.

Article 8: Personal data protection

- 8.1. All data gathered in the context of harassment proceedings shall be processed in accordance with Regulation (EC) No 45/2001 of the Parliament and of the Council on the protection of individuals with regard to the processing of personal data and Appointing Authority Decision No 77-2006 implementing Regulation (EC) No 45/2001 in the context of human resources policies.

- 8.2. Data gathered in connection with a request for assistance under Article 4 and stored for historical, statistical or research purposes shall be rendered anonymous five years after the final settlement of the proceedings.
- 8.3. Contact persons, line managers, the medical officer and the mediation service must destroy all personal data gathered in the course of their duties to provide counselling and conflict resolution in harassment proceedings. For statistical purposes and so that they can report on their own activities, however, they may keep a record of general information, including the number of cases handled each year, the dates of visits and details of the function groups of the persons concerned.
- 8.4. If a complainant who might have acted in bad faith or a person accused of harassment does no longer belongs, to the body of Members, the Court may, after having consulted the Ethics committee, decide to forward personal data to their employer or to another competent authority.
- 8.5. If a complainant who might have acted in bad faith or a person accused of harassment does not belong or no longer belongs to Court's staff, the Secretary-General may, after having consulted the Administrative committee, decide to forward personal data to their employer or to another competent authority.

Article 9: Cooperation with the criminal courts

If the details of a case of alleged harassment in or in connection with the workplace amount to a criminal offence, the appointing authority shall cooperate with the national judicial authorities to whom the case is referred.

Article 10: Preventive action

The Director of Human Resources shall be responsible for implementing measures to prevent harassment in the workplace. These measures must seek to inform the Court's staff of this policy and must raise awareness of harassment issues. They must include specific training for managers and for all persons with a role in formal proceedings or investigations ordered by the Secretary-General.

Article 11: Evaluation

The Court's policy on protecting staff against harassment shall be evaluated every three years by the Secretary-General.

Article 12: Final provisions

- 12.1. This Decision annuls and replaces Court Decisions No 95-2008 and No 61-2006 on the protection of persons working at the Court of Auditors against harassment.
- 12.2. This Decision shall take immediate effect.

Done at Luxembourg, on 6 April 2017

For the Court of Auditors

Klaus-Heiner Lehne
President