

DECISION AB N°06/2017

**OF THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF
ENERGY REGULATORS**

of 16 March 2017

**on the Agency for the Cooperation of Energy Regulators'
policy on protecting the dignity of the person and preventing psychological harassment and
sexual harassment**

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF
ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Articles 1d, 12 and 12a of the Staff Regulations concerning behaviour which may infringe human dignity and Articles 10, 11, 80 and 81 of the CEOS,

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators², (hereinafter referred to as the "Agency"), and, in particular, Article 28(2) thereof,

Having regard to Communication C(2014)6543 final of 26 September 2014 from Vice-President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof,

Having regard to Decision No AB 03/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2010 on the Rules of Procedure of the Administrative Board, and, in particular, Article 9(2) thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2016) 6595 of 20 October 2016,

After consulting the Staff Committee,

¹ OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15.

² OJ L 211, 14.8.2009, p.1.

Whereas:

- (1) Psychological harassment and sexual harassment at work are serious problems which the Agency is continuing to strive to stamp out by promoting a culture free of all forms of violence in the workplace in which such harassment is unacceptable.
- (2) Psychological harassment and sexual harassment stem from different issues but have certain similarities. An informal procedure common to these two forms of harassment should therefore be opened through the network of confidential counsellors and arrangements laid down applicable to the common formal procedure under Articles 24 and 90 of the Staff Regulations³.
- (3) Steps should therefore be taken to:
 - introduce a common policy of prevention of psychological harassment and sexual harassment within the context of the Staff Regulations;
 - introduce an informal and formal procedure relating to psychological and sexual harassment;
 - take appropriate action (if necessary, disciplinary measures) in accordance with the Staff Regulations against any person who is found guilty of psychological or sexual harassment at the end of a formal procedure.
- (4) In the interest of clarity and legal certainty, the Decision No AB 01/2013 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 10 January 2013 on the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment should be repealed and replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

The document entitled “Policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment” annexed to this Decision is hereby adopted.

Article 2

Decision No AB 01/2013 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 10 January 2013 on the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment is hereby repealed.

³ Applicable to temporary staff by virtue of Articles 11 and 46 of the CEOS respectively and to contract staff by virtue of Articles 81 and 117 of the CEOS respectively.

Article 3

This Decision shall take effect on the day following its adoption.

Done at Ljubljana, on 16 March 2017

SIGNED

ANNEX

AGENCY FOR THE COOPERATION OF ENERGY REGULATORS' POLICY ON PROTECTING THE DIGNITY OF THE PERSON AND PREVENTING PSYCHOLOGICAL HARASSMENT AND SEXUAL HARASSMENT

1. INTRODUCTION

As an employer and to protect its staff, the Agency for Cooperation of Energy Regulators (further 'the Agency') must guarantee respect for the dignity of women and men at the workplace. It has committed itself wholeheartedly to preventing such harassment and to condemning such behaviour. The Staff Regulations explicitly condemn psychological and sexual harassment (Article 12a⁴). It is important to identify and put a stop to such situations as they always have a serious impact and cause grave distress.

In fact, psychological harassment and sexual harassment fall within the broader issue of violence in the workplace and are a serious problem in the working environment. They require greater attention as well as proactive measures to stamp them out. Conditioned by a range of socio-economic, organisational and cultural factors, violence of different forms in the workplace is part of the reality of working life and of the professional environment⁵. Awareness has developed of the potential scale of the human, economic and social costs of violence at work. Data collected in a number of Member States confirm just how widespread this problem is.

In this general context, all staff working for the Agency must refrain from any form of psychological or sexual harassment. Management (at both middle and senior level) play a key role. As managers, it is their job to cultivate a working environment that is not conducive to psychological harassment and sexual harassment, or at least one in which they can be dealt with as swiftly as possible if they arise.

The purpose of this document is to set up a policy on the prevention of psychological harassment and sexual harassment, to take account of the provisions in the Staff Regulations (Article 12a⁶).

2. DESCRIPTION

Psychological harassment and sexual harassment stem from different issues but have certain similarities. In some cases, moreover, these two forms of harassment may be closely linked⁷.

Offensive conduct of this type often stems from abuse of power or maliciousness, and can be perpetrated by both individuals and groups. Harassment, be it psychological or sexual, may come from colleagues on an equal footing, as well as superiors and subordinates.

⁴ Applicable to temporary and contract staff by virtue of Articles 11 and 81 of the CEOS respectively.

⁵ The European Foundation for the Improvement of Living and Working Conditions defines violence as "incidents where persons are abused, threatened or assaulted in circumstances related to their work, involving an explicit or implicit challenge to their safety, well-being and health".

⁶ See footnote 3.

⁷ This is the case where sexual harassment translates into psychological harassment, for instance after rejection of a request of a sexual nature.

2.1. Psychological harassment

Under the Staff Regulations **psychological harassment** means 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 person⁸.

Psychological harassment can manifest itself in various forms, in particular by:

- offensive or degrading comments, in particular in public, bullying, antagonism, pressure, offensive behaviour, even refusal to communicate;
- insults relating to someone's personal or professional competence;
- insulting or threatening remarks, both oral and written;
- belittling someone's contributions and achievements;
- being isolated, set apart, excluded, rejected, ignored, disparaged or humiliated by their colleagues;
- impairing their social relations;
- setting unrealistic working objectives;
- not giving someone any work, or systematically giving them work which does not meet the profile of their job and/or function.

Such behaviour, while unacceptable, may in isolation appear of little consequence. When occurring on a regular basis, however, such conduct can cause serious harm to the person at whom it is directed.

Some kinds of behaviour may hurt certain people without constituting psychological harassment. A remark, a dispute, a clash of personalities at work, a management decision which is difficult to accept (allocation of new tasks, for instance), a duly substantiated negative assessment, even repeated, cannot therefore necessarily be considered psychological harassment.

2.2. Sexual harassment

Under the Staff Regulations, **sexual harassment** means 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 may take different forms (physical, verbal, written or other), and involve persons of the different sex and of the same sex. The essential characteristic of sexual harassment is that it is unwanted by the recipient; it is therefore for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although, unlike psychological harassment, a single incident may constitute sexual harassment if it is sufficiently serious⁹. Anyone who is guilty of such behaviour knows or should know that it affects

⁸ See point 2.4 (in particular the second paragraph) for a definition of the concept of the victim.

⁹ For example: groping, torn clothing, etc.

the dignity of women and men at the workplace. Sexual harassment is also treated as discrimination based on gender.¹⁰

A range of different types of behaviour can be considered sexual harassment, such as:

- promises of some kind of reward (favourable career moves, etc.) in return for sexual favours, or threats of reprisals if such requests are turned down;
- repetition of coarse or suggestive remarks, or sexual innuendo;
- use of crude and obscene language and gestures;
- repeated and exaggerated compliments on the appearance of a work colleague;
- physical contact, rubbing against someone, pinching, deliberate unwanted kisses;
- acts of voyeurism or exhibitionism;
- use of pornographic material.

2.3. Consequences of conduct constituting psychological harassment or sexual harassment

Psychological harassment or sexual harassment might have various consequences for the person who suffers it or feels they are being subjected to it:

- they become isolated and social relationships tend to deteriorate;
- they make more and more mistakes, can no longer concentrate, become less productive, are demotivated, etc.;
- their professional development is hindered, career jeopardised, their very job put on the line;
- they suffer mental and physical health problems such as stress, anxiety, shame, demoralisation, humiliation, disorientation, somatic disorders, depression or increasingly serious physical and psychological disorders, which may, in extreme cases, lead to suicide.

The adverse consequences do not just affect the victims, but also impact on other colleagues and on the institution itself: loss of expertise, staff transfers, fall in productivity, absenteeism, harming the image of the institution, etc.

2.4. The concept of the “victim” in the context of psychological or sexual harassment¹¹

Cases of psychological harassment are dealt with differently in the informal or the formal procedure.

At the formal level, in line with the Staff Regulations, psychological harassment will only be considered to exist if the conduct of the alleged harasser is regarded as abusive, intentional, repetitive, sustained or systematic and has the effect of, for instance, discrediting or undermining

¹⁰ See Article 12a(4) of the Staff Regulations, applicable to temporary and contract staff by virtue of Articles 11 and 81 of the CEOS respectively.

¹¹ Notwithstanding terms used in this Decision, a "victim", or a "harasser" should be understood as such only after a formal procedure which results in recognition of harassment. Otherwise, persons concerned should be understood as "alleged victim", or "alleged harasser".

the person concerned. These criteria are cumulative. Objective facts will help verify whether these criteria have actually been met and if action can be taken.

At the informal level, however, the aim is to provide psychosocial assistance. Here, the perception of harassment is subjective and depends on the situation as perceived by the person concerned. The goal is to bring an end to the distress generated both by a “proven” situation of psychological harassment and by a situation that is perceived as such. The key characteristic of psychological harassment in this case is that the person subject to it considers it undesirable conduct¹².

As regards sexual harassment, the formal definition in the Staff Regulations covers the subjective perception of such behaviour (unwanted conduct).

In the informal procedure, therefore, the term “victim” refers to any person who defines themselves or identifies themselves as such. However, it is important to remember that there is a fundamental legal distinction between a person “who feels they are the victim of harassment” and one “who has actually suffered harassment” and is therefore recognised as a victim on the basis of proven facts, having gone through the formal procedure. **No stage of the informal procedure may prejudice the outcome of the formal procedure.**

3. THE AGENCY’S POLICY ON PSYCHOLOGICAL HARASSMENT AND SEXUAL HARASSMENT

The Agency’s policy on psychological and sexual harassment, which will promote the development of an organisational culture in which every member of staff feels personally bound to respect and protect the dignity of their colleagues. In a professional environment in which different languages and cultures coexist, generating a huge variety of interactions, these phenomena of violence may take a variety of forms and be perceived in a variety of ways. However, any conduct which does not respect the dignity of the person must be condemned.

The Agency will take the necessary steps to prevent and punish, under the Staff Regulations and the relevant EU legislation, any conduct that prejudices the dignity of its staff and undermines its good name¹³. Any conduct deemed to constitute psychological harassment or sexual harassment is regarded by the Agency as unacceptable and will be punished regardless of the rank of individuals formally recognised as guilty of such conduct¹⁴.

The goals of the Agency’s harassment-prevention policy are:

- to promote a culture in which psychological and sexual harassment, like other forms of violence in the workplace, are considered unacceptable and are neither tolerated nor ignored;
- to broaden the policy of preventing psychological harassment or sexual harassment by raising awareness among staff, and providing information, training and counselling;
- to introduce simple and effective procedures to protect the dignity of each and every person working at the Agency;

¹² See Court judgments in Cases T-549/93 D v Commission [1995] ECR-SC II-43, para. 76, and T-242/97 Z v European Parliament [1999] ECR-SC II-401.

¹³ See Articles 12 and 12a of the Staff Regulations, applicable to temporary and contract] staff by virtue of Articles 11 and 81 of the CEOS respectively.

¹⁴ See Article 86 of the Staff Regulations and Article 9 of Annex IX and Article 50(a) of the CEOS as regard temporary staff, applicable by analogy to contract staff by virtue of Article 119 of the CEOS.

- to take appropriate action (if necessary, disciplinary measures) in accordance with the Staff Regulations against any person who is found guilty of psychological harassment or sexual harassment.

4. GENERAL PRINCIPLES FOR DEALING WITH REQUESTS

4.1. Respect of dignity

As an employer and pursuant to the duty to have regard of the welfare of staff, the Agency must guarantee that its staff is treated in all circumstances with respect and dignity.

4.2. Principle of protection of the victim and the possible witness

The policy to combat harassment is a protection tool for persons employed within the Agency. In this context, the victims and the possible witnesses will benefit from the Agency's protection guaranteed under Article 24 of the Staff Regulations¹⁵.

Moreover, Article 12a of the Staff Regulations¹⁶ states that: “An official who has been the victim of psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution. An official who has given evidence on psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution, provided the official has acted honestly.”

4.3. Principle of confidentiality

Concerning the administration, confidentiality is guaranteed during and after the informal procedure, as well as during and after the formal procedure. Compliance with the legislation on the protection of personal data¹⁷ applies within both the formal and informal procedures.

4.4. Principle of the presumption of innocence

The presumption of innocence is fully guaranteed to alleged harassers.

4.5. Principle of promptness

In both the formal and the informal procedures, all requests for assistance by a person complaining of psychological harassment or sexual harassment will be dealt with as quickly as possible. However, if an administrative inquiry is opened as part of the formal procedure, the timeframes for handling the request will be longer.

5. PREVENTIVE MEASURES

The policy on prevention of psychological harassment and sexual harassment is based on an overall plan of preventive measures, comprising a number of different stages.

Specific prevention consists of developing a strategy of information and training; both individual and collective, to avoid and reduce the risk of psychological or sexual harassment.

¹⁵ See footnote 3.

¹⁶ See footnote 3.

¹⁷ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

5.1. Information

Information to staff will consist of:

- awareness campaigns comprising for instance talks, discussions, workshops, brochures and posters explaining to staff the Agency policy of preventing psychological and sexual harassment (understanding the different forms of violence at work, spotting problem behaviour, etc.);
- the provision of clear and precise information to help staff find out quickly and easily how to obtain support, advice and guidance and how to lodge a complaint, using for instance:
- the Intranet site: <http://s-intranet/Pages/ConfidentialCounselors.aspx?RootFolder=%2FDrive%2FPublic%2FCCs> and/or
- the specific e-mail address: ACER-harassment@acer.europa.eu.

5.2. Training

The training plan to support a policy of prevention of psychological and sexual harassment comprises:

- raising staff's awareness of psychological harassment and sexual harassment issues when they join the service;
- management participation in specific training and seminars to improve awareness of psychological and sexual harassment issues and to help them manage such situations. Managers shall attend such courses;
- specific training courses on psychological harassment and sexual harassment issues for staff and particular target groups as and when required;
- specific training courses, both initial and ongoing training, in the interests of the service, for all confidential counsellors;

6. PARTIES INVOLVED

6.1. Human Resources Team of the Agency

The Human Resources Team of the Agency is responsible for drawing up and monitoring the implementation of the policy relating to psychological and sexual harassment. The contact person(s) in the Human Resources Team are the central correspondent(s) who staff can approach in the event of psychological or sexual harassment, for information on policy and procedures and to contact the confidential counsellors, hereinafter 'central service' (see point 6.2. for details). The contact person(s) in the Human Resources Team, all along the procedure, shall be bound by the duty of confidentiality.

Central service will oversee initiatives allowing the implementation of the informal procedure, and the different aspects associated with the operation of the confidential counsellor network, including allocating the cases of psychological or sexual harassment submitted to it to specific confidential counsellors. It will provide an overview of cases submitted to the network of counsellors, in

accordance with the arrangements that will be laid down in the Manual of procedures of confidential counsellors.

This policy (training measures, information campaigns, coordinating the prevention plan) will be implemented and developed on the basis of close cooperation between the various departments concerned: Human Resources Team, Agency medical officer.

The operational links between the various departments and networks concerned will be overseen by Human Resources Team.

6.2. Confidential counsellors

The appointment of confidential counsellors is based on an open call for applications and selection criteria which will be published by the Agency *or* group of agencies in an administrative notice (prior training, necessary seniority, any exclusion criteria, etc.). Confidential counsellors are selected by a panel made up of representatives of Human Resources Team and the Staff Committee. The panel's choice is submitted to the Head of the Agency as referred to in the act(s) establishing the Agency ('the Director') who officially appoints the confidential counsellors. The Human Resources Team will ensure, as far as possible, a broad representation of the different categories of staff. It will also ensure a gender balance. Counsellors are to be appointed on a voluntary basis and, to ensure continuity within the network, appointments will be for two years, renewable twice only. Before being appointed, counsellors will receive special training in targeted modules. They will subsequently receive ongoing training and appropriate supervision for such counselling work.

If, in the framework of the informal procedure the confidential counsellor finds appropriate to visit the person who feels a victim of harassment, that meeting shall be considered as a mission. To that effect, Agencies shall ensure the financing of these missions.

The confidential counsellors operate within the context of the informal procedure (see point 7.2.). The departments are advised to take account of the tasks of confidential counsellors and to help them carry out their work as far as possible (by giving them access to meeting rooms, for instance). The operational procedures for the network will be described in a Manual of procedures for confidential counsellors drawn up by Human Resources Team in consultation with the network of confidential counsellors. The arrangements for exchanges of information between confidential counsellors and the Human Resources Team will be laid down in this Manual.

In carrying out their function and mandate confidential counsellors may not suffer any prejudice from the Agency, provided that they have acted in good faith and in accordance with the Manual of procedures¹⁸.

6.3. The network of confidential counsellors (in the Agency and/or between Agencies)

The network is the key forum for meeting and for exchanges of good practice and points of view of its members in accordance with the arrangements that will be laid down in the Manual of procedures. It offers a framework for reflection and effective action. It is also intended to provide an operational response contributing to the implementation of specific rules to stamp out psychological harassment or sexual harassment. It plays a role in evaluating, monitoring and, where necessary, modifying procedures.

¹⁸ The mandate of individual confidential counsellors may be withdrawn by the appointing authority in accordance with the procedures that will be laid down in the Manual.

6.4. Human resources manager(s) and line managers

Human resources manager(s) and line managers are in principle the first people who may be contacted by anyone encountering psychological harassment or sexual harassment. Responsibility for actively promoting and applying the policy lies with them, since they represent the tier of management that is in direct contact with staff. It is up to them to take steps to prevent psychological harassment or sexual harassment, raise awareness and inform their staff of existing procedures, and play a role in any transfers of staff that may be required. They must also, in close collaboration with the various parties concerned, ensure the rapid and fair handling of any incident or complaint on this issue.

6.5. Staff

Each and every person working at the Agency, regardless of grade or contract of employment (this includes the trainees and all those working under a contract under national law), may, if they feel they are the victim of psychological harassment or sexual harassment by a member of staff of the Agency, initiate an **informal procedure**. However, only staff covered by the Staff Regulations¹⁹ and seconded national experts²⁰ have access to the formal procedure, as described in Chapter 7. **Any person not covered by the Staff Regulations working under a contract under national law** and wishing to lodge a complaint concerning psychological harassment or sexual harassment against a member of Agency staff may do so under **national legislation**. However, they may also bring the events which are the subject of their complaint to the attention of Human Resources Team. If the information provided is sufficiently serious, an administrative inquiry may be opened.

Any person who is made aware of, or is a witness to, conduct which appears to be improper according to the above descriptions has both the right and the duty to so inform whichever of the parties mentioned in this point (central service in Human Resources Team, confidential counsellors, human resources manager(s), line managers). They are also obliged to cooperate in the smooth running of all enquiries carried out as part of the formal procedure.

7. PROCEDURES FOR DEALING WITH PSYCHOLOGICAL HARASSMENT AND SEXUAL HARASSMENT CASES²¹

7.1. General advice

Some people are not always aware of the impact of their behaviour. If a certain type of conduct is felt to be inappropriate or embarrassing, it is advisable to make this clear. In the event of sexual harassment in particular, ambiguous behaviour should be set straight. It is important to react immediately, setting limits politely but firmly. In some cases, simply making it clear that the victim of such conduct finds it offensive and liable to undermine their performance at work or even their health could be sufficient to put an end to the situation.

If unwanted behaviour continues, a written record should be kept of all incidents: dates, circumstances, description of events, potential witnesses, personal reactions at the time and afterwards, any psychosomatic consequences.

¹⁹ Staff covered by the Staff Regulations refers to staff covered by the Staff Regulations and the CEOS (officials, temporary staff, contract staff, local staff, special advisers).

²⁰ Following Decision No AB 02/2011 laying down rules on the secondment of National Experts to the Agency.

²¹ For a summary of the rights and responsibilities of those who are victims of psychological and sexual harassment and of alleged harassers, see Annex I.

Any person²² who feels they are the victim of psychological harassment or sexual harassment is entitled to submit a request for assistance either informally or formally. As a first step, staff are strongly advised to seek resolution of the problem through conciliation, via the informal procedure, with the assistance of a confidential counsellor. Anyone who feels they are the victim of psychological harassment or sexual harassment is, however, free from the outset to initiate a formal procedure under the Staff Regulations, involving longer timeframes. The informal procedure can also lead to a formal procedure if it proves impossible to find a solution. Passage to the formal procedure is understood to automatically involve closure of any informal procedure underway. The advantage of the informal procedure over the formal procedure lies in the possibility of finding an amicable solution and possibly avoiding a formal procedure. The advantage of the formal procedure is that it establishes the facts and, on the basis thereof, ends in the potential adoption of a penalty against a person found guilty of psychological harassment or sexual harassment at the end of a disciplinary procedure.

Any person accused of psychological harassment or sexual harassment may also request information (e.g. on current policy or procedures or those to be followed) or advice from the Human Resources Team or human resource manager(s). These services may usefully advise the alleged harasser of the options for resolving the conflict, depending on the seriousness of the accusations. However, in compliance with the principle of confidentiality and in the absence of the consent of the victim, such information shall not refer to specific cases of harassment, in particular those launched via informal procedure.

7.2. Informal procedure

Someone who feels they are a victim of harassment may contact a confidential counsellor through the informal procedure. Depending on the case, emergency measures may be considered. The informal procedure allows monitoring and may lead to an amicable resolution. However, it does not involve formal recording of the facts or the application of penalties: this is done in the formal procedure (see point 7.3).

7.2.1. Confidential counsellor procedure

Any person who feels they are the victim of psychological harassment or sexual harassment may contact a confidential counsellor, by:

- contacting the Human Resources Team, directly by phone, in person or email/ in one of two ways:
 - either sending an e-mail to the Human Resources Team mailbox : ACER-harassment@acer.europa.eu or
 - calling the central telephone number: consult the reception for the phone number; or
- contacting the confidential counsellor of their choice directly by consulting the list published on the Agency intranet.

In the first case, contact person(s) in the Human Resources Team direct(s) the victim towards a confidential counsellor who, wherever possible, meets the key criteria (language, gender, departments, etc.) specified. As a matter of principle, the confidential counsellor will be from another, wherever possible department or Agency.

²² See point 6.5 for the differences between the categories of staff.

The first objective of the confidential counsellor is to recognise and alleviate the victim's suffering by receiving them and listening to them without preconceptions and without passing judgment. The confidential counsellor will inform the victim of the existing procedure and of their rights. They will accompany and guide the victim, examining with them the various options and structures that will help find a satisfactory solution to the problem (directing them towards and placing them in contact with the Agency's medical officer, human resource manager(s), training coordinators, etc.). **Any action taken by confidential counsellors in the informal procedure may only be carried out with the prior agreement of the victim and must remain within the framework of the mandate given to them.**

The confidential counsellor may meet the other party and play a conciliatory role in an attempt to reach an amicable solution. In all cases, confidential counsellors shall strive to listen carefully to the two parties, remain objective, clarify the facts and ensure good communication. Confidential counsellors have a period of one month within which to deal with the problem. This may be extended to two months if necessary. If no solution can be found in this period, counsellors may propose that the victim lodge a formal request for assistance (see point 7.3).

In the formal procedure, confidential counsellors are limited to providing support for the victim. Under this procedure, and depending on the requirements of the inquiry, confidential counsellors may also be called as witnesses, to testify to facts relevant to the inquiry which they have been informed of during the informal procedure.

7.3. Formal procedure²³

Any person in the Agency²⁴ who feels they are the victim of psychological harassment or sexual harassment is entitled under the Staff Regulations to initiate a formal procedure: either immediately, without first going through the informal procedure, or in the course of²⁵ or at the end of the informal procedure.

The Staff Regulations explicitly condemn any form of psychological harassment or sexual harassment by any staff member. Sexual harassment is, moreover, treated as discrimination based on gender (Article 12a(4) of the Staff Regulations²⁶).

A formal procedure can be initiated on the basis of a request for assistance under Article 24 of the Staff Regulations²⁷ (concerning the Agency's obligation to assist its staff). When the administration has taken the appropriate steps, for example by carrying out an inquiry to establish the facts at the origin of the request in collaboration with the author of that request, this signifies that this request has been followed up and has not been implicitly rejected (absence of reply after 4 months)²⁸. If the request is rejected, either explicitly or implicitly, the person concerned can lodge a complaint under Article 90(2) of the Staff Regulations²⁹ and - if it is rejected - submit an appeal to the competent Union Court.

Requests for assistance must be submitted to Human Resources Team or the appointing authority, which is responsible for initiating the procedure. The appointing authority can then instruct the

²³ Application of the Staff Regulations, Articles 24 and 90, applicable to temporary staff by virtue of Articles 11 and 46 of the CEOS respectively and to contract staff by virtue of Articles 81 and 117 of the CEOS respectively.

²⁴ See footnote 19 for the definition of the staff concerned, to which seconded national experts should be added.

²⁵ Proceeding to the formal procedure implicitly involves automatic closure of any informal procedure pending.

²⁶ See footnote 3.

²⁷ See footnote 3.

²⁸ See Court judgment in Case T-254/02 *L v Commission*, ECLI:EU:T:2005:88, para. 105 and other references.

²⁹ Applicable to temporary and contract staff by virtue of Articles 46 and 117 of the CEOS respectively.

investigation team/expert/investigator to carry out an administrative inquiry to determine the facts of the case and apportion any responsibility. Any person who feels they are the victim of sexual harassment must provide all details which might support their allegations. In the case of psychological harassment, a degree of evidence must be provided by the complainant. The person bringing a request for assistance of psychological harassment or sexual harassment may be accompanied at the hearings by a person of their choice, provided that person cannot be called as a witness in the course of the inquiry. At the end of its administrative inquiry the investigation team/expert/investigator will present its report, proposing either that the case be closed without further action or that disciplinary proceedings be opened.

When the inquiry concludes to the closing of the case and, consequently, to the rejection of the request for assistance, the principle of good administration requires that the applicant be afforded the possibility to be heard on the facts concerning him or her³⁰.

If the report proposes the opening of disciplinary proceedings, the appointing authority may decide, once it has heard the person or persons concerned, to open such proceedings and apply the ensuing penalties if there is confirmation of the wrongful act³¹. If the misconduct involves repeated action or behaviour this will be taken into account in determining the seriousness of the misconduct and deciding on the appropriate disciplinary measure as well as a possible hierarchical relationship³².

If the procedure results in recognition of psychological harassment or sexual harassment, victims will receive compensation for the damage suffered under the terms set out in the Staff Regulations (second paragraph of Article 24³³) where appropriate.

If the procedure ends in no action, all those who have been interviewed will be informed. If the complaint proves to have been formulated in an abusive manner or in bad faith, the appointing authority may take disciplinary measures, either on its own initiative or at the request of the wrongfully accused person.

7.4. Emergency measures

The main concern of any victim of psychological harassment or sexual harassment is to stop that harassment as quickly as possible. Where there are signs of psychological or sexual harassment, one option which may be envisaged is to move one of the parties concerned within the department or to another department. This measure may take the form of a reassignment in the interests of the service, and may involve the victim (preferably with his or her agreement) or the alleged harasser (following an interview with the appointing authority). The aim of such a measure is to separate the two parties and may be proposed to the appointing authority by confidential counsellors or requested directly by one of the parties concerned.

Emergency measures, which must take account of the needs of each particular situation, can be taken immediately. These are precautionary measures designed to put an end to a given situation. They are also intended to give the victim a chance to recover. These measures may of course also be taken within the framework of the formal procedure, at the request of the alleged victim or on the initiative of the appointing authority.

³⁰ See, for instance, Case F-43/10, *Cerafogli v European Central Bank*, EU:F:2012:184, para. 92, and Case F-34/15 *De Loecker v European External Action Service*, EU:F:2015:153, para. 43.

³¹ See, for temporary and contract staff, Article 50a of the CEOS applicable by analogy to contract staff by virtue of Article 119 of the CEOS.

³² See Article 10(h) of Annex IX to the Staff Regulations, applicable by analogy to temporary staff by virtue of Article 49 of the CEOS and to contract staff by virtue of Article 119 of the CEOS.

³³ See footnote 3.

7.5. Recurrent cases

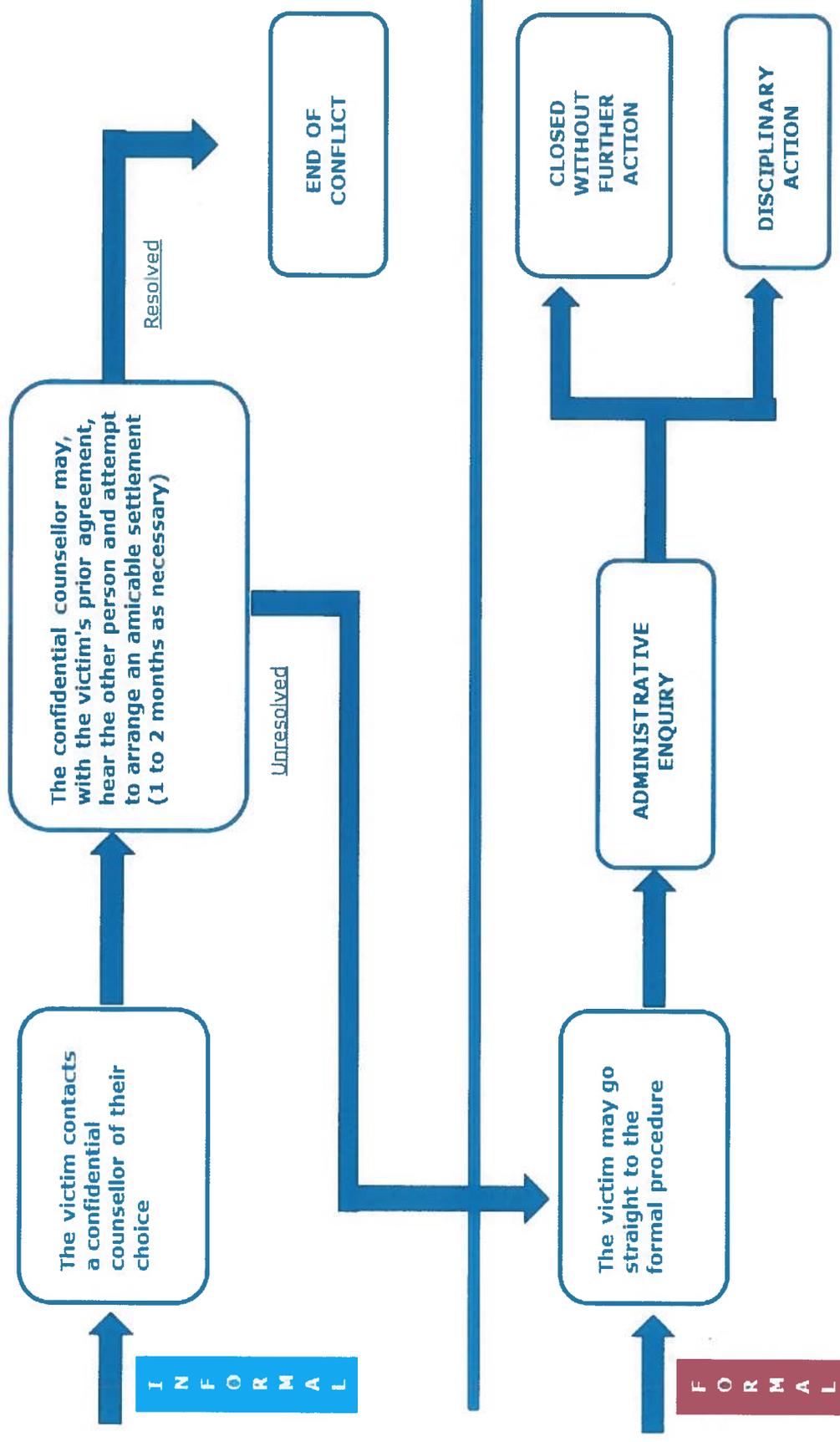
Requests for assistance from different people involving the same individual raise concerns. These will therefore be brought to the knowledge of the Human Resources Team and of the appointing authority of the alleged harasser. The appointing authority will decide on the most appropriate action to be taken. The Human Resources Team will inform the investigation team/expert/investigator of any recurrent cases it identifies. The investigation team/expert/investigator will inform the appointing authority which will, where appropriate, launch the procedures provided for in Annex IX to the Staff Regulations.

8. EVALUATION

Human Resources Team, in cooperation with the Agency's medical officer, will monitor this policy. In this context, periodical activity reports containing statistics will be published in compliance with Regulation (EC) No 45/2001³⁴ by the Human Resources Team. A regular ex-post evaluation and a survey of staff will be carried out. These measures will be carried out in collaboration with the departments involved and the network of confidential counsellors.

³⁴ See footnote 16.

PSYCHOLOGICAL AND SEXUAL HARASSMENT OUTLINE OF PROCEDURES



ANNEX I

Your rights and responsibilities

A. If you feel you are a victim of psychological harassment or sexual harassment

YOU ARE ENTITLED

- to be heard within the informal procedure, by contacting either the Human Resources Team, a confidential counsellor of your choice, uncritically and under the strictest confidentiality;
- to be certain that the confidential counsellor will not take any steps without your agreement;
- within the context of the formal procedure, to submit a request for assistance to the appointing authority without embarrassment or fear of reprisals or indiscretions;
- to be accompanied by a person of your choice during meetings with investigators;
- to be assured of a fair and impartial investigation;
- to be informed of the result of the investigation and, where applicable, of the measures that will be taken.

YOU MUST

- within a reasonable period, make the person you are accusing aware of your disapproval or unease, where necessary accompanied by a confidential counsellor;
- keep a written record of all incidents;
- cooperate with those in charge of the investigation into your complaint.

B. If you have been accused of psychological harassment or sexual harassment

YOU ARE ENTITLED

- to contact, if necessary at the informal procedure stage, the Human Resources Team, your human resources manager to advise you and help you uncritically and under the strictest confidentiality;
- to be informed that an official complaint has been lodged against you and have the opportunity to react to it;
- to be accompanied by a person of your choice during meetings with investigators;
- to be assured of a fair and impartial investigation;
- to be informed of the result of the investigation and, where applicable, of the measures taken.

YOU MUST

- keep a written record of all incidents;
- cooperate with those in charge of the investigation into the complaint against you.