

## **MINUTES**

**30<sup>th</sup> ACER Administrative Board meeting**

**Thursday, 16 March 2017, 9.00 – 16.00**

**Ljubljana, Trg republike 3, 6<sup>th</sup> floor meeting room**

### **Present:**

Dr Romana Jordan, Chair, Member,

Mr Jochen Penker, Vice-Chair, Member, with proxy from Mr Guy Lentz,

Mr Georgios Shamas, Member,

Mr Piotr Woźniak, Member,

Mr Rene Tammist, Member,

Ms Agnieszka Kaźmierczak, Member, with proxy from Mr Dominique Ristori,

Mr Uwe Leprich, Alternate member, without voting right,

Mr Alberto Pototschnig, Director of ACER, Observer,

Lord John Mogg, Chair of the Board of Regulators, Observer,

Ms Annegret Groebel, Vice-Chair of the Board of Regulators, Observer,

Ms Marie-Christine Jalabert, Adviser,

Ms Rosalind Bufton, Adviser.

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### **Main conclusion of the meeting**

1.) The Board discussed the practical arrangements on the conflict of interest. It was decided that immediately after the approval of the agenda, the AB members will be asked to declare any interest which may be relevant for the items in the agenda. The AB meeting agenda will have a standing item for this purpose.

2.) The document management and archiving policy will be discussed at the next meeting.

3.) The Board endorsed in principle points 1 and 4 of the draft position paper outlining the Board's views regarding the proposed recast of the Agency Regulation. On point 3, the Board concluded that the Chair and the Director



<p>would finalise the draft Position paper by using a text that does not encourage the promotion of opening of local offices in other Member State(s), while allowing to maintain the implicit option of seconding staff to another location (eg Brussels) by the Director.</p>
<p>4.) The Revised Programming Document 2017 was adopted.</p>
<p>5.) The Administrative Board took note of the oral presentation from the Commission appointed AB member on the Roadmap for the selection of the next ACER Director. It will revert to this point at the next AB meeting.</p>
<p>6.) The Board adopted the proposed amendment of the AB Rules of Procedure (ANNEX 1), allowing the AB members who are not receiving any salary or compensation for their high-level contribution to the Agency's work to receive an indemnity, following a separate director's decision.</p>
<p>7.) The Administrative Board adopted the Model decision on the policy on protecting the dignity of the person and preventing psychological and sexual harassment (ANNEX 2).</p>
<p>8.) The next AB meeting has been postponed to 28 June from 14h-18h, so as to facilitate AB members' attendance to the Agency's Annual Conference which will be held the next day.</p>

## Opening

The Chair welcomed Ms Rosalind Bufton, in her forthcoming role of the alternate member appointed by the Commission, pending the formal decision. She also welcomed Ms Annegret Groebel, the Vice-Chair of the BoR.

Lord Mogg informed about his letter that was sent to the Chair the day before, informing her about the outcome of the BoR's conflict of interest panel, which took place on 14 March 2017.

## 1. Approval of the Agenda

The Commission appointed member requested to change the point 6 from "AB position on the Winter Package - for adoption" to "Views of the AB on the recast of the Agency Founding Regulation as proposed in the Winter Package - for endorsement". Following the agreement of members, the Board approved the following agenda:



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**DRAFT AGENDA V4**

Agenda Topics	Accompanying documents	Rapporteur
<b>Opening</b>		
<b>1.</b> Approval of the agenda	Doc 1 for approval	AB Chair
<b>2.</b> Minutes of the 29 <sup>th</sup> ACER Administrative Board	Doc 2.1 for approval Doc 2.2 for information	AB Chair
<b>Reporting on developments</b>		
<b>3.</b> Report on the written procedure(s)	Oral update	ACER Director
<b>4.</b> Report on AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010	Docs 4.1 and 4.2 for information	AB Chair
<b>5.</b> Report on ACER developments (including budget implementation) and on the activities of the Board of Regulators	Oral update	ACER Director BoR Chair
<b>General ACER work</b>		
<b>6.</b> Views of the AB on recast of the Agency Founding Regulation as proposed in the Winter Package	Doc 6 for endorsement	AB Chair
<b>7.</b> Revision of the Programming Document 2017	Doc 7 for adoption	ACER Director
<b>8.</b> Roadmap for the selection of the new ACER Director	Oral update	Commission
<b>9.</b> Draft ACER discharge report for 2015	Doc 9 for information	ACER Director
<b>Administrative Work</b>		
<b>10.</b> Amendment of the AB Rules of Procedure (Financial compensation to members)	Doc 10 for adoption	ACER Director Commission



Agenda Topics	Accompanying documents	Rapporteur
<b>11.</b> AB Decision on the policy on protecting the dignity of the person and preventing psychological and sexual harassment - Model decision for agencies	Doc 11 for adoption	ACER Director
<b>12.</b> AB Decision on the appointment of two members as reporting officers and an appeal assessor for the assessment of the annual performance of the Director	Doc 12 for adoption	ACER Director
<b>AOB</b>		
<b>13.</b> Appointment of the new Accountant	Oral information	ACER Director
<b>14.</b> Annual Conference 2017	Oral information	ACER Director
<b>15.</b> Letter from the Slovak Presidency	Oral information	AB Chair
<b>16.</b> Information on the 2018 budget	Oral information	Commission
<b>17.</b> EU DSO	Oral information	ACER Director

The Col Review Panel is taking place in the margins of the Administrative Board meeting.

## 2. Minutes of the 29<sup>th</sup> ACER Administrative Board

The Chair reported that, by the closing date for comments, 25 January 2017, the Agency has received comments from the Vice-Chair, Mr Penker, and from Ms Aba-Garrote. Their comments have been included in the final version of the minutes.

The Chair also examined the implementation of the conclusions from the last meeting and concluded that all actions were implemented or are in the final process of being finalised (the new ACER organigramme will be circulated as soon as it is finalised internally).

Conclusion: The Administrative Board approved the final version of the 30<sup>st</sup> AB meeting minutes.



### **3. Report on the written procedure(s)**

The Director reported on the only written procedure since the last meeting, on the adoption of the Agency's 2018 draft Programming Document (draft PD 2018), which contains a Multi-Annual Outlook for the period 2018 - 2020 and the 2018 Annual Work Programme. The draft PD 2018 includes an overview of the Agency's human resources and budgetary needs for 2018. The Agency estimates that 30 additional posts are needed in 2018 in order to ensure that it can effectively perform its tasks and fulfil its mandate. It should be noted that the 2018 Work Programme contained in the draft PD 2018 was based on the current Agency's mandate and on the assumption that the Agency would be assigned the resources required effectively to deliver on its mission. Should these additional resources not be assigned to the Agency, the 2018 Work Programme will have to be revised in line with the level of resources actually available and the priorities indicated in the document.

The draft PD 2018 was presented to the Board of Regulators and the Administrative Board for a strategic discussion in December. The Agency then slightly updated the document, also on the basis of an informal consultation with the Directorate-General for Energy of the European Commission.

Following the endorsement the draft PD 2018 by the Board of Regulators, and its supportive opinion on the proposed budget, on 18 January, the Administrative Board was invited to adopt the draft PD 2018, in view of its submission to the Institutions by 31 January.

By the closing of the period for raising objections on 26 January 2017, no objection to the proposed draft 2018 Programming Document of the Agency was raised, therefore the draft 2018 Programming Document (Decision AB No 02/2017) was adopted.

Conclusion: The Administrative Board took note of the Director's oral report on the recent written procedure.

### **4. Report on AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010**

The Chair reported on the appointment decisions she has taken since the last AB meeting, in line with the delegation of the AB to the Chair via Decision AB 05bis/2010 of 21 September 2010:

On 19 January she appointed the new Slovenian BoR member, Ms Duška Godina, and the new alternate BoR member, Mr Bojan Kuzmič.

On 13 February she appointed the new Latvian BoR alternate member, Mr Valentins Hitrovs.



Conclusion: The Administrative Board took note of these appointments.

## **5. Report on ACER developments (including budget implementation) and on the activities of the Board of Regulators**

The Director updated the Administrative Board on the Agency's administrative and regulatory activities. He informed about the ACER 2017 Annual Conference, which will take place at Brdo Congress Centre on 29 June.

On staffing, he presented the numbers according to category and department: a total of 107 staff members, of 22 nationalities, are currently employed by ACER. He presented the ongoing selection procedures and reported that the Accounting officer has left the Agency on 15 March 2017. Based on an agreement with SESAR, where she is currently working, she nevertheless continues to act as Accounting officer at ACER, until the new Accounting officer joins. The Director is aiming at recruiting the new Accountant at AD8 level, pending the resolution of the establishment plan issue. The EASO shortlist would also be examined.

He presented the ACER organigramme, explaining that some changes are underway, following the need to adapt the Agency's job titles to the Sysper 2 tool the Agency will be using in the future.

He presented the comparison between the 2016 and 2017 (requested and granted) ACER budget. The approved 2017 Agency's Budget is 16.4% lower than the approved Budget for the previous year and 33.2% lower than what was requested by the AB, on the basis of a proposal from the Director and the supportive opinion of the BoR.

Lord Mogg, the BoR representative, added that the current SNE seconded from Ofgem to the Brussels office will be replaced and a new SNE will be seconded for a period until September 2017.

On regulatory issues, the Director reported that the last of the 14 network codes will soon be voted in comitology. An event to celebrate the network code implementation will take place on 3-4 May in Brussels, co-organised by the European Commission, the Agency, ENTSO-E and ENTSOG. The implementation work has started and is likely to involve a heavy workload for the Agency. In fact, the adopted network codes and guidelines envisage a large number of subordinate decisions, on terms and conditions or methodologies, which, if not agreed upon by all NRAs, or NRAs in a specific region, should be taken by the Agency.



Lord Mogg explained the fundamental difficulties of reaching an “all NRAs” decision by unanimity and the subsequent requirement for unanimous implementation by the very limited deadline. The system placed a heavy burden on NRAs and, given the often short timescale, the Agency.

The Director clarified that guidelines in the context of implementation are actually network codes requiring an extra step, however they should not be mixed with the framework guidelines.

On other regulatory activities, he reported that since the last AB meeting, the Agency adopted Opinions on the Draft ENTSO-E Work Programme 2016 through December 2017, ENTSO-E draft TYNDP 2016, First update of the Manual of Procedures for the ENTSO-E Central Information Transparency Platform, ENTSO-E Winter Outlook Report 2016/2017 and Summer Review 2016, Draft ENTSO-E CBA methodology, and on ENTSG Winter Supply Outlook. Most of these opinions were adopted following the favourable opinion received from the BoR.

The Director reported on the status of the two appeals to the General Court against the Peer Review Opinion (on XBCM in the CEE Region), one appeal to the Board of Appeal against the Agency Decision No 06/2016 (CCRs Decision), and one appeal to the General Court concerning the BoA’s proceedings on the appeals against the CCRs Decision. He underlined that the case adds to the already heavy workload of the Agency.

On Remit, he reported that the Agency changed its outsourcing strategy, also due to the budgetary cuts: the Agency has decided to buy the currently used equipment from the current hosting provider’s two sites and to host the two sites in-house, with the support of IT consultants. As regards the cases, their number is on the increase (12 in 2017 so far, 48 in 2016). Only recently the Agency started to identify cases from its surveillance activity using the purposely-developed surveillance software, once data quality issues have been addressed. When asked, the Director also informed about the fines imposed so far in two cases. Finally, the Director informed the AB members that a colleague, ACER staff member, passed away the week before.

Lord Mogg, the BoR representative, updated the AB on the work of the BoR, especially as regards a number of regulatory white papers on the Winter package in the pipeline, and highlighted the challenges.

#### Conclusion:

The Board took note of the Director’s Progress report. The Board discussed the practical arrangements on the conflict of interest. It was decided that immediately after the approval of the agenda the AB members would be asked to declare any interest which may be relevant for the items in the agenda. The AB meeting agenda will have a standing item for this purpose. The document and data management and the retention and archiving policy will be discussed at the next meeting.



## **6. Views of the AB on recast of the Agency Founding Regulation as proposed in the Winter Package**

The Chair recalled that on 30 November 2016 the European Commission presented a package of measures to keep the European Union competitive as the clean energy transition is changing the global energy markets. The Commission presented the Clean Energy for All Europeans Package, in particular its Proposal for a revised Regulation on a European Agency for the Cooperation of Energy Regulators, to the Administrative Board members at the December meeting. At that meeting, the Board requested that the Secretariat circulate the Agency's summary of Winter package proposals and the presentation of the Commission. The AB also asked the Director draft a Position paper, based on the discussion made during the AB meeting, to allow the Board to prepare its position regarding its independence and the Agency's governance and HR issues.

The Chair underlined the internal nature of the Position paper and clarified its purpose, which was to raise attention to several issues of particular importance for future functioning of the Agency. She invited a discussion on main points of the draft prepared by the Director.

On 1.) independence of the Agency and of its Administrative Board, the Commission appointed member explained the reasons for removing the requirement for the members of the Administrative Board to act "without seeking or following any political instruction" from the proposed recast of Regulation (EC) No 713/2009, in article 19(8) (formerly article 12(7)). While being open to improve the text, the Commission clarified that it is not against the principle as such; the main reason for the removal was simply to distinguish the specific nature of the Commission appointed members – who, the Commission clarified are appointed as a function and not ad personem and must therefore follow the instructions of the institution they represent – from the position of the other members of the Administrative board.

Conclusion: The Board fully endorsed the views raised in the draft Position paper, but recognised the specificity of the two Commission appointed members in the Board. It was also concluded that the Commission circulates additional reasoning supporting its specific status on the Board.

On 2.) the role of "Appointing Authority" and of "Authority Empowered to conclude a Contract of Employment" within the Agency, the proposed recast of the Agency's founding Regulation, while maintaining these powers directly with the Director (article 25(i)), also envisages the same powers to be vested in the Administrative Board (article 20(1)(h)), even though with the requirement that the Administrative Board delegates these powers to the Director.

The Commission appointed member explained that the proposed new provisions emanate from the Common Approach and are based on a similar set-up in the Commission. She confirmed that such modality would not entail the Administrative Board appointing individual staff members. Instead, the provision would help the Administrative Board to supervise the implementation of the delegated powers in HR



to the Director, and in case necessary, to withdraw such delegation to protect the Agency. This provision is already implemented in other EU decentralised agencies and it works well.

The Commission appointed member also clarified that the double regime – whereby the same powers were vested directly on the Director, but also through delegation from the Administrative Board - was an unintended inconsistency now removed in the corrigendum adopted by the Commission.

Conclusion: The Board dropped provision 2.) on the role of “Appointing Authority” and of “Authority Empowered to conclude a Contract of Employment” within the Agency from its views paper.

On 3.) the opening of local offices by the Agency, the proposed recast of the Agency’s founding Regulation introduces new provisions confirming the Director’s responsibility for deciding “whether it is necessary for the purpose of carrying out the Agency’s tasks in an efficient and effective manner to locate one or more staff in one or more Member States”. However, it subjects such a decision to the “prior consent of the Commission, the Administrative Board and the Member State or Member States concerned”.

The Commission appointed member explained that the option of seconding staff to local offices already exists in the Agency’s founding Regulation: as it does not contain any specific provision related to local offices, this is currently a management decision, under the responsibility of the Director.

Their Winter package proposal simply subjects decision to open local offices to the prior consent of the Commission, the Administrative Board and the Member State or the Member States concerned, giving an extra safety to the Member State hosting the Agency.

The Chair was of the opinion that, as the option to open local offices already implicitly exists under the current provisions, the new explicit provisions could be misperceived as promoting the opening of local offices. She therefore supported the argument in the draft Position paper to remove the new article 25(k) and article 17, point 4, 2<sup>nd</sup> paragraph, of the proposed recast Regulation.

Lord Mogg, the BoR representative, underlined the importance of the arrangement whereby one staff member is seconded to the Brussels local office hosted by CEER.

Conclusion: The Board concluded that the Chair and the Director would finalise the draft Position paper by using a text differentiating between the creation of local offices which needs the decision of the AB, while allowing to maintain the implicit option of seconding staff to another location (eg Brussels) by the Director.

On 4.) the Agency’s financial and human resources, at present, article 22(1) of Regulation (EC) No 713/2009, as amended by Article 20 of Regulation (EU) 347/2013, envisages the possibility for the Agency to charge fees, subject to



Implementing provisions to be adopted by the Commission, in respect of exemption decisions and cross-border cost allocation (CBCA) decisions. This option is dropped in the recast Regulation.

Moreover, with respect to the additional tasks and responsibilities proposed for the Agency in the European Commission's "Clean Energy for All Europeans" Package, the Financial Statement envisages the assignment of 18 additional posts to the Agency, 4 of which as Temporary Agent posts and the remaining 14 as Contract Agent posts.

The Commission appointed member explained that increasing the number of temporary agents does not seem feasible in view of the constraints of the EU budget.

The draft Position prepared by the Director suggested that the Agency should:

- be given the possibility to charge fees to Registered Reporting Mechanisms (RRMs) under REMIT, to NRAs and to TSOs;
- be assigned all additional posts as Temporary Agent posts.

The BoR representatives, supported by several other members, expressed strong reservations for the Agency charging fees to the NRAs. Ms Groebel also pointed out to the differences with ESMA's governance structure, therefore discouraging the comparison in the area of fees.

The Commission appointed member explained the context of its proposal, both on human resources and on the fees and underlined that it would indeed be necessary to carry out a clear Cost Benefit Analysis before taking a decision.

The Director agreed with the majority of members on both points and said he would identify activities for which the Agency could charge fees.

Conclusion: Most members endorsed the view that the additional Temporary Agents posts would provide stability to the Agency and attract the high-profile candidates. They also agreed that the Agency should be able to charge fees to RRM and TSOs subject to the conclusion of a cost benefit analysis, but rejected the option of charging fees to the NRAs.



## **7. Revision of the Programming Document 2017**

The Director invited the Board to adopt the revised PD 2017 - 2019. The PD, originally adopted by the Board in September 2016 without prejudice to the budgetary procedure, was based on the assumption that the Agency would be assigned the resources required to effectively deliver on its mission. As the Agency did not receive the additional resources, it has now revised its 2017 Work Programme to the levels of human and financial resources authorised in the EU budget. This has resulted in a revision of the planned activities and a reallocation of resources (Full Time Equivalents), on the basis of the Agency's classification of priorities (critical, important and relevant).

While the revision of the PD was necessary to align the WP 2017 to the resources effectively available to the Agency in 2017, the remaining parts of the PD (multiannual outlook, annexes, etc.) have also been revised to ensure coherence with the draft PD 2018 – 2020, adopted by the AB and submitted to the institutions in January 2017.

The revised PD 2017 – 2019 was approved by the BoR on 7 March 2017.

Two points, compared to the version originally uploaded for the AB meeting, were removed, following comments from BoR members during the electronic approval procedure:

- The paragraph on the risk associated with internal governance of the Agency;
- The paragraph highlighting that the “holistic prioritisation” of activities does not take the legal mandate of the Agency into account.

The Commission appointed member commented that the Programming document is a financing decision and encouraged the Agency to adapt its Work programme earlier in the year to avoid any legal uncertainty. She added that the establishment plan includes changes that have not yet been supported by the budgetary authority. The establishment plan would also need to take account of the reclassification. She also asked the Director to accommodate the 2017 reclassification to the available budget.

Conclusion: The Revised Programming Document 2017 was adopted.

## **8. Roadmap for the selection of the new ACER Director**

At the last AB meeting, the Chair asked the Commission to present at the next AB meeting a timeline on the process and the tasks of the Administrative Board regarding the appointment of the next ACER Director.

The Commission appointed member underlined that the mandate of Director Pototschnig ends definitively on 15 September 2018 as no further renewals are possible. She orally presented the process, based on Article 16(2) and (3b) of Regulation No 713/2009 and pointed out to the costs ACER will have to cover.



She also explained the options of AB and BoR involvement in the pre-selection.

Conclusion: The Administrative Board took note of the oral presentation on the Roadmap for the selection of the next ACER Director from the Commission appointed AB member. It will revert to this point at its next meeting.

## **9. Draft ACER discharge report for 2015**

The Director reported that the draft discharge report in respect of the implementation of the budget of ACER for the financial year 2015 was presented to the EP Committee on Budgetary Control in February 2017. The final discharge report, including specific recommendations for action, will be adopted in plenary by the European Parliament later in the year.

### **Main points and issues contained therein are:**

#### *Commitments and carry-overs*

The report notes that the carry-overs for operational expenditure were at EUR 1 360 000 (59 %) of its committed appropriations, compared to EUR 1 570 000 (62 %) in 2014; notes, furthermore, that those carry-overs were predominantly related to the long-term nature of the implementation of REMIT.

Points out that carry-overs are often partly or fully justified by the multiannual nature of the agencies' operational programmes and do not necessarily indicate weaknesses in budget planning and implementation nor are they always at odds with the budgetary principle of annuality, in particular if they are planned in advance by the Agency and communicated to the Court; notes the fact that the Agency found it difficult to reconcile the principle of annuality with the multi-annual nature of the REMIT implementation project.

#### *Internal Control Standards (ICS)*

Notes that the Agency complied with the minimum requirements of all the internal control standards and that the Agency evaluated the efficiency of its ICS with a view to finding areas for further improvements in 2015; calls on the Agency to inform the discharge authority of the measures implemented.

#### *Performance*

Notes that in October 2015 the Agency released a study for a methodology proposal to evaluate the impact of the gas network codes and guidelines in terms of implementation and market effects; asks the Agency to keep the discharge authority informed on the matter.



*Prevention of conflicts of interests and transparency*

Notes that the Agency's Administrative Board adopted the policy for the prevention and management of conflicts of interests; notes, furthermore, that the Agency published the declarations of conflicts of interests on its website but points out that some CVs and declarations of BoR members remain missing; notes that in 2016, the Administrative Board detected a potential conflict of interests of one of its members and followed the ad hoc procedure provided for; asks the Agency to provide further information about this issue to the discharge authority.

The Director also indicated that some interesting amendments have recently been proposed by MEPs. Those were only received a day before and have therefore not been circulated to members. The CONT committee was going to vote on the discharge on 22 March.

The Commission appointed member was surprised to read some of the proposed amendments, which appeared to be of internal nature. Even though the Commission will support the dropping of these amendments, she expects the Agency to follow up on the raised conflict of interest issues, as well to address the root causes affecting the internal administrative organisation of the Agency.

The Chair decided not to discuss the amendments, as those were not circulated.

Conclusion: The Board took note of the draft ACER discharge report for 2015.

## **10. Amendment of the AB Rules of Procedure (Financial compensation to members)**

The Director recalled that the AB has been discussing for some time the demanding situation of some members participating in the work of the Administrative Board without any financial compensation. The Commission and the Agency have been exploring options to find a solution for the concerned AB members. At the last AB meeting in December, the Commission did not oppose that the Agency pay a special indemnity to Board members, however they opposed the modality which was proposed.

Following the discussions with the Commission, the Agency (in an updated version since the previous day) proposed an amendment of the AB Rules of Procedures, which foresees that "indemnities shall be paid in compliance with the Agency's rules for the reimbursement of experts".

For the precise setting of the level of reimbursement, existing practice at other European agencies for the payment of Management Board members would be taken as a benchmark, in a separate director's decision.



The Commission appointed member agreed that this modality is a good way to cover the indemnities, in compliance with the Agency's rules for reimbursement of experts. She clarified that experts are reimbursed for travel expenses and subsistence, but with this addition they may also receive an indemnity. Therefore, the AB members who are not receiving any salary or compensation for their high-level contribution to the Agency's work may receive an indemnity, following a separate director's decision.

Conclusion: The Board (ANNEX 1) adopted by unanimity the proposed amendment of the AB Rules of Procedure, allowing the AB members who are not receiving any salary or compensation for their high-level contribution to the Agency's work to receive an indemnity, following a separate director's decision.

## **11. AB Decision on the policy on protecting the dignity of the person and preventing psychological and sexual harassment - Model decision for agencies**

The Director presented the model decision on the policy on protecting the dignity of the person and preventing psychological and sexual harassment and asked the Board formally to adopt it. He explained that this new model decision has been drafted by the Standing Working Party of the EU Agencies, in agreement with DG HR, and that the Agency's Staff Committee has been consulted.

This model decision will repeal Decision AB n 01/2013.

Conclusion: The Administrative Board adopted the Model decision on the policy on protecting the dignity of the person and preventing psychological and sexual harassment (ANNEX 2).

## **12. AB Decision on the appointment of two members as reporting officers and an appeal assessor for the assessment of the annual performance of the Director**

The Chair explained that pursuant to Article 1 of Decision AB n° 26/2011 of 22 September 2011, the Director of the Agency is subject to an annual appraisal exercise. The Administrative Board has to appoint two reporting officers to assess the annual performance of the Director. It is highly recommended that one of them is a representative of the European Commission. The reference period for the assessment is from 1 January 2016 to 31 December 2016.

The Commission appointed member asked to postpone the decision as the assessor from the Commission is yet to be proposed.



Conclusion: The Board postponed the decision and agreed that a written procedure will be launched. The Chair declared the urgency.

## **AOB**

### **13. Appointment of the new Accountant**

The Director recalled that, in accordance with Article 50(1) of the Agency's Financial Regulation, the Administrative Board appoints the Agency's accounting officer. Furthermore, pursuant to Article 50(2) of the Agency's Financial Regulation, two or more union body may appoint the same accounting officer. With its Decision AB No 23/2011 of 22 September 2011, the Administrative Board appointed Ms Rodica Mandroc as Accounting and Budget Officer.

The Director informed the members that Ms Rodica Mandroc ceased her duties as a staff member of the Agency on 15 March 2017. Subsequently, on 16 March 2017 she has taken up duties as a Temporary Agent staff member at another EU body, the Joint Undertaking to develop the new generation of the European Air Traffic Management system ('SESAR'). Ms Rodica Mandroc will thus continue to be covered by the Staff Regulations at SESAR.

To ensure business continuity until the new staff member is recruited and takes up the accounting and budgetary duties at the Agency, and given that the conditions specified in Article 50(1) of the Agency's Financial Regulation are fulfilled, the term of duties of Ms Mandroc would be extended until the new accounting officer is able to take up his/her duties. This has also been agreed with SESAR.

The Commission appointed AB member underlined the AB's role in the appointment of the Accountant and said that the Board should be given a choice. She proposed that the Agency uses the Commission's accountant, saving one TA position. She presented the benefits of such decision (The Commission's accountant has a team, 20 EU decentralised agencies already use him, moreover the Accounting officer cannot play a financial role in the Agency, and finally, combining the budget and accountant role is not ideal). In case the Agency would opt for the Commission's accountant, it would only need a CA position for the accountant correspondence (10 % of work) and the budgetary function.

In case the Director insisted to keep the accountant function in the Agency, the Commission appointed member insisted that an AB member is directly involved in the recruitment process.

The Director replied that the Agency has carefully examined the options and came to the conclusion that cost-wise the options does not provide clear benefits. However, when using the Commission's Accountant, the Agency will lose its flexibility in terms of payment processes. The Commission appointed member requested further clarifications.



The Director agreed to invite Ms Bufton in the recruitment panel.

Conclusion: The Administrative Board took note of the information regarding the Accountant of the Agency and will revert to this issue at its next meeting.

## **14. Annual Conference 2017**

The Director provided some further information to the members, informing them that the Agency's Annual Conference 2017 will be held on Thursday 29 June at the Brdo Congress Centre near Kranj, Slovenia. The Conference, under the title "Regions for the Internal Energy market", will be divided into three sessions focusing on the scope, geography and governance of regions. The members were asked to save the date.

The next AB meeting has been postponed to 28 June from 14h-18h, to facilitate the participation of AB members in the Conference.

## **15. Letter from the Slovak Presidency**

The members were informed that on 30 November the AB Chair informed the Council and the Presidency about the outcome of the 2016 Col Review Panel of the AB. On 6 February she received a reply from the Slovak Presidency informing her that the matter was referred to the Maltese presidency. The two letters were circulated to members.

## **16. Information on the 2018 budget**

The Commission informed the members about the budgetary hearing taking place with DG BUDG. She underlined the great pressure on the Commission regarding the EC budget, and the Commission's priorities on migrations issues as well as the European solidarity call (young people and unemployment). She provided some insight in the current budgetary discussions concerning ACER, both on the 2018 budgetary request, as well as on the new SoS Regulation.

The Chair and the Board wished DG ENER all success in the hearings.



## **17. EU DSO**

A member also requested that the Agency look into the creation of a DSO grouping at EU level. The Director replied that the EU DSO entity is currently proposed in the Winter package for electricity. The Agency will have to provide its administrative support. The Agency will start working on this issue once the new legislation is in place, but is available to assist even sooner in case DSOs decide to opt for early voluntary implementation.

The Col Review Panel took place in the margins of the Administrative Board meeting.

**SIGNED**





ANNEX 1

**DECISION AB n° 07/2017**

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

**of 16 March 2017**

**amending Decision AB n° 03/2010 of 6 May 2010 on the Rules of Procedure of the  
Administrative Board of the Agency for the Cooperation of Energy Regulators**

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

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 Regulators<sup>1</sup>,  
and, in particular, to Articles 12(5), 12(7) and 13(13) thereof,

HAVING REGARD to the Decision of the Administrative Board of the Agency for the  
Cooperation of Energy Regulators No 03/2010 of 6 May 2010 on the Rules of Procedure of  
the Administrative Board of the Agency for the Cooperation of Energy Regulators, and, in  
particular, Article 17 thereof,

WHEREAS, in particular circumstances, it may be appropriate to foresee an indemnity for  
Administrative Board members to cover costs derived from their contribution to the work of  
the Administrative Board which are not yet covered by any salary or any special allowance,

**HAS ADOPTED THIS DECISION:**

**Article 1**

Article 16 of Decision AB n° 03/2010 is amended as follows:

The following sentence is added to the first paragraph:

*“Indemnities shall be paid in compliance with the Agency’s rules for reimbursement of experts.”*

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<sup>1</sup> OJ L211, 14.8.2009, p.1.



**Article 2**

This Decision shall enter into force on the day of its adoption.

Done at Ljubljana on 16 March 2017.

*For the Administrative Board:*

*Dr. Romana Jordan*

*Chairman of the Administrative Board*



## ANNEX 2

### 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 259/68<sup>2</sup>, 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 Regulators<sup>3</sup>, (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,

<sup>2</sup> 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.

<sup>3</sup> OJ L 211, 14.8.2009, p.1.



Whereas:

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.

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 Regulations<sup>4</sup>.

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.

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.

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<sup>4</sup> 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

*For the Administrative Board:*

*Dr. Romana Jordan*  
*Chair of the Administrative Board*



## ANNEX

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

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#### **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 12a<sup>5</sup>). 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 environment<sup>6</sup>. 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 12a<sup>7</sup>).

#### **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 linked<sup>8</sup>.

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.

#### **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

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<sup>5</sup> Applicable to temporary and contract staff by virtue of Articles 11 and 81 of the CEOS respectively.

<sup>6</sup> 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".

<sup>7</sup> See footnote 3.

<sup>8</sup> This is the case where sexual harassment translates into psychological harassment, for instance after rejection of a request of a sexual nature.



language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person<sup>9</sup>.

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.

### **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 serious<sup>10</sup>. Anyone who is guilty of such behaviour knows or should know that it affects the dignity of women and men at the workplace. Sexual harassment is also treated as discrimination based on gender.<sup>11</sup>

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;

<sup>9</sup> See point 2.4 (in particular the second paragraph) for a definition of the concept of the victim.

<sup>10</sup> For example: groping, torn clothing, etc.

<sup>11</sup> 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.



physical contact, rubbing against someone, pinching, deliberate unwanted kisses;  
acts of voyeurism or exhibitionism;  
use of pornographic material.

### **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.

### **The concept of the “victim” in the context of psychological or sexual harassment<sup>12</sup>**

**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 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 conduct<sup>13</sup>.

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.**

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<sup>12</sup> 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”.

<sup>13</sup> 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.



## 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 name<sup>14</sup>. 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 conduct<sup>15</sup>.

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;
- 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.

## GENERAL PRINCIPLES FOR DEALING WITH REQUESTS

### 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.

### 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 Regulations<sup>16</sup>.

Moreover, Article 12a of the Staff Regulations<sup>17</sup> 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."

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<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> See footnote 3.

<sup>17</sup> See footnote 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 data<sup>18</sup> applies within both the formal and informal procedures.

### **Principle of the presumption of innocence**

The presumption of innocence is fully guaranteed to alleged harassers.

### **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.

## **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.

### **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%2FFCCs>

and/or

the specific e-mail address: [ACER-harassment@acer.europa.eu](mailto:ACER-harassment@acer.europa.eu).

### **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;

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<sup>18</sup> 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).



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;

## **PARTIES INVOLVED**

### **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.

### **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 procedures<sup>19</sup>.

### **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.

### **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.

### **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 Regulations<sup>20</sup> and seconded national experts<sup>21</sup> 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.

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<sup>19</sup> 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.

<sup>20</sup> 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).

<sup>21</sup> Following Decision No AB 02/2011 laying down rules on the secondment of National Experts to the Agency.



## PROCEDURES FOR DEALING WITH PSYCHOLOGICAL HARASSMENT AND SEXUAL HARASSMENT CASES<sup>22</sup>

### 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.

Any person<sup>23</sup> 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.

### 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).

#### *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:

<sup>22</sup> 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.

<sup>23</sup> See point 6.5 for the differences between the categories of staff.



either sending an e-mail to the Human Resources Team mailbox : [ACER-harassment@acer.europa.eu](mailto: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.

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.

### **Formal procedure<sup>24</sup>**

**Any person in the Agency<sup>25</sup>** 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 of<sup>26</sup> 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 Regulations<sup>27</sup>).

A formal procedure can be initiated on the basis of a request for assistance under Article 24 of the Staff Regulations<sup>28</sup>(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

<sup>24</sup> 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.

<sup>25</sup> See footnote 19 for the definition of the staff concerned, to which seconded national experts should be added.

<sup>26</sup> Proceeding to the formal procedure implicitly involves automatic closure of any informal procedure pending.

<sup>27</sup> See footnote 3.

<sup>28</sup> See footnote 3.



4 months)<sup>29</sup>. If the request is rejected, either explicitly or implicitly, the person concerned can lodge a complaint under Article 90(2) of the Staff Regulations<sup>30</sup> 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 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 her<sup>31</sup>.

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 act<sup>32</sup>. 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 relationship<sup>33</sup>.

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 24<sup>34</sup>) 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.

### **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.

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<sup>29</sup> See Court judgment in Case T-254/02 *L v Commission*, ECLI:EU:T:2005:88, para. 105 and other references.

<sup>30</sup> Applicable to temporary and contract staff by virtue of Articles 46 and 117 of the CEOS respectively.

<sup>31</sup> 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.

<sup>32</sup> 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.

<sup>33</sup> 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.

<sup>34</sup> See footnote 3.



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.

### **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.

### **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 45/2001<sup>35</sup> 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.

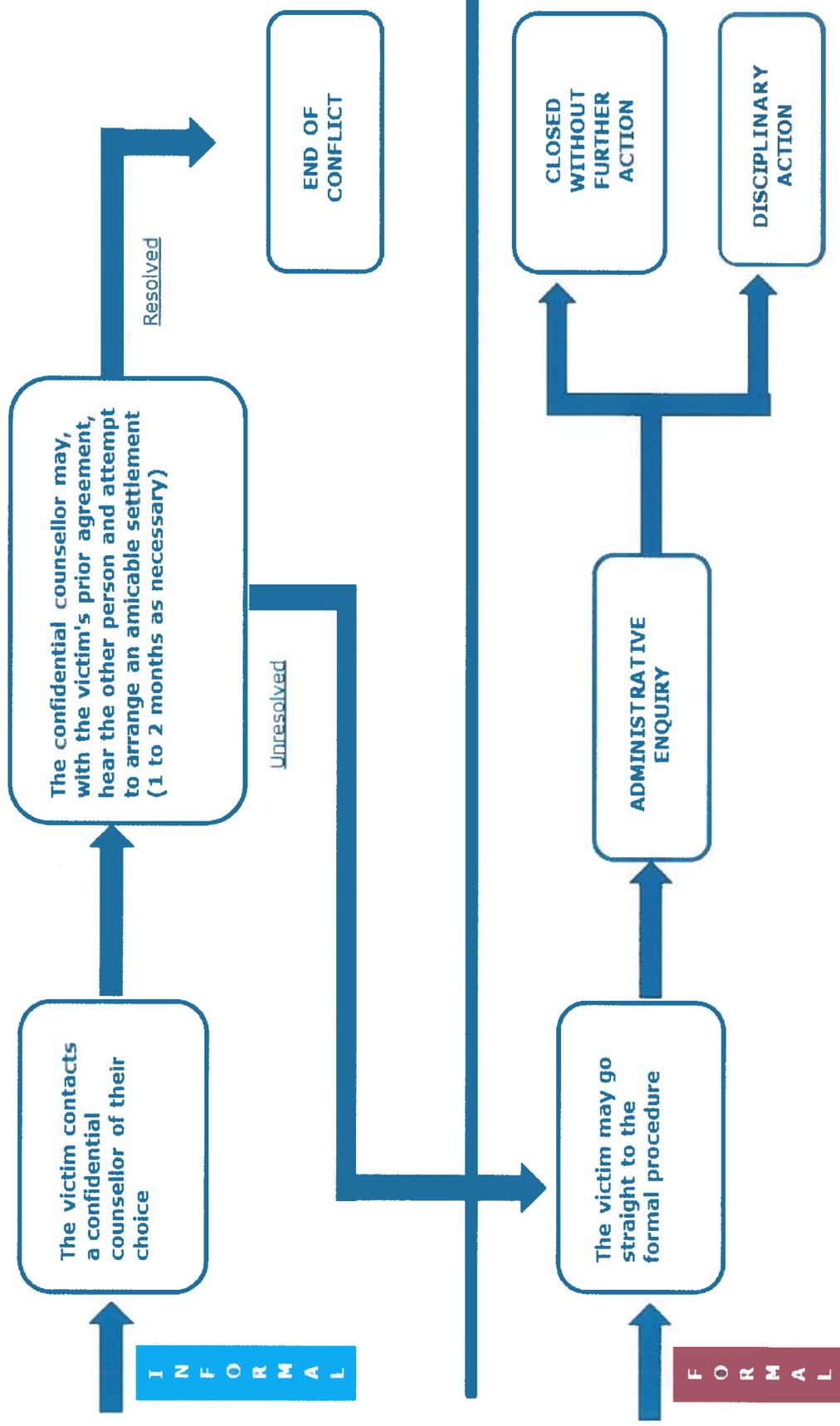
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<sup>35</sup>

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.

