



Decision No 50-2022 on the European Court of Auditors' policy for ensuring a respectful and harassment-free workplace

THE EUROPEAN COURT OF AUDITORS,

HAVING REGARD TO the Charter of Fundamental Rights, and more precisely Article 31(1), which states that 'every worker has the right to working conditions which respect his or her health, safety and dignity';

HAVING REGARD TO the Staff Regulations of Officials of the European Union (Articles 1d, 12a and 24) and the Conditions of Employment of Other Servants of the European Union (Article 11), as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 ('the Staff Regulations');

HAVING REGARD TO the Code of Conduct for the Members and former Members of the Court;

HAVING REGARD TO the European Parliament resolution of 16 December 2021 on MeToo and harassment – the consequences for the EU institutions (2021/2986(RSP));

HAVING REGARD TO the Staff Committee's opinion No 8/2022;

HAVING REGARD TO the Joint Committee on Equal Opportunities' (COPEC's) opinion No 01/2022;

HAVING REGARD TO the Court's deliberations at its meeting of 15 December 2022;

WHEREAS the previous decision on the policy for maintaining a satisfactory working environment and combatting psychological and sexual harassment¹ contained a clause providing that the policy should be reviewed three years after its implementation;

WHEREAS the ECA's HR strategy for 2021-2025, a principal pillar of which is the RESPECT™ model, aims to place employee engagement at the core of its HR Development Plan, and respect at the core of its organisational culture;

WHEREAS new Decision No 74-2021 on hybrid working, which entered into force on 1 January 2022, introduced a new approach to working that calls for new definitions and framing of all possible types of harassment;

¹ Decision No 26-2017, April 2017.

HAS DECIDED:

Article 1

The ECA strives to create a working environment in which dignity, respect, trust and care are paramount. To prevent any kind of harassment, the ECA commits to a culture of respect, taking an inclusive, integrated and non-discriminatory approach. Should any alleged incident of harassment prove to be founded, however, the ECA will show zero tolerance. It will protect and support the victims and witnesses, sanction the perpetrators, and offer rehabilitation measures to all parties involved.

Article 2

To this end, the ECA hereby adopts the policy for ensuring a respectful and harassment-free workplace that is set out below. The policy details the procedures to be followed in the event of alleged harassment, and forms an integral part of this Decision.

Article 3

This Decision repeals and replaces ECA Decision No 26-2017 on the policy for maintaining a satisfactory working environment and combatting psychological and sexual harassment.

Article 4

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

Done at Luxembourg, 16 December 2022

For the Court of Auditors

Tony Murphy
President



EUROPEAN
COURT
OF AUDITORS

The ECA's policy for ensuring a respectful and harassment-free workplace

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1. The ECA's commitment

01 The ECA strives to create a working environment in which dignity, respect, trust and care are paramount. To prevent any kind of harassment, the ECA commits to a culture of respect, taking an inclusive, integrated and non-discriminatory approach. Should any alleged incident of harassment prove to be founded, however, the ECA will show zero tolerance. It will protect and support the victims and witnesses, sanction the perpetrators, and offer rehabilitation measures to all the parties involved.

2. General aspects

02 Under this policy, the **approach** adopted by the ECA is an inclusive, integrated and non-discriminatory one, where:

- an 'inclusive approach' involves adopting a broad range of measures that give everyone at the ECA the right to a respectful and harassment-free workplace. Furthermore, information, tools and training must be available in accessible formats, so that they are truly inclusive;
- an 'integrated approach' is one in which several areas are covered: human resources, occupational health and safety, legal services, data protection, etc. It includes the need for measures at several levels: prevention and protection, enforcement and remedies, and training, guidance and awareness-raising;
- a 'non-discriminatory approach' involves addressing all forms of harassment, regardless of power relations, including that based on gender, ethnicity, race, disability, sexual orientation, age, religion or beliefs.

2.1. Principles

03 Every person working at the ECA¹ should endeavour to foster an atmosphere of trust, support and mutual respect. ECA Members and staff in managerial positions in particular must establish and maintain a working environment that discourages any behaviour that undermines the dignity of persons who are subject to their authority, and respond quickly and effectively where such harmful behaviour occurs.

04 The ECA recognises that harassment can constitute a human rights violation or abuse, as well as a threat to equal opportunities, both of which are unacceptable and incompatible with a respectful workplace.

¹ Members of the ECA, members of the ECA's staff (including trainees and Seconded National Experts), and any person employed by a service provider (including interim staff and other staff working on ECA premises) or an auditee.

05 The ECA promotes a working environment based on equality and non-discrimination, where every person has the right to be protected against offensive, abusive, harmful or inappropriate behaviour.

06 The ECA has put in place several channels for counselling and the informal resolution of interpersonal conflicts, as well as a mechanism for lodging formal complaints and imposing sanctions. It is for alleged victims to decide whether they want to choose an **informal approach** (where they may seek support from a confidential counsellor or occupational psychologist, or opt for a mediation procedure) or the **formal procedure** (aimed at establishing the facts and adopting appropriate measures).

07 Irrespective of which option is chosen by the alleged victim, the ECA will make every effort to protect the interests of all the parties involved and restore a satisfactory working environment, paying particular attention to avoiding secondary victimisation, which 'occurs when the victim suffers further harm not as a direct result of the criminal act but due to the manner in which institutions and other individuals deal with the victim'². Secondary victimisation may be caused by, for instance, repeated exposure of the victim to the perpetrator, repeated questioning about the same facts, the use of inappropriate language, or insensitive comments made by all those who come into contact with the victim.

08 In all proceedings and interactions, the following principles, and the fundamental rights of all the parties involved, must be upheld: confidentiality, presumption of innocence, the right to be heard, the right to defence, impartiality, objectivity, and proportionality.

2.2. Definition of a respectful and harassment-free workplace

09 Respect is one of the most important values to the ECA, as expressed in those adopted³ by the Secretariat-General: [respect is to] '*foster a culture of dignity and personal respect in all the relations we have at work with colleagues, stakeholders and external providers; nurture a culture of trust, collaboration and strong team relationships; grant autonomy to staff members; listen to staff and create a safe environment for questioning and two-way communication*'.

10 A respectful and harassment-free workplace is one that allows all its participants, irrespective of their role, function, age, gender, sexual orientation, race or ethnic origin, political or religious beliefs, and ability or disability, to thrive, bring their best, give and receive respect and appreciation for who they are, be valued, feel safe and be treated with fairness.

² EIGE, <https://eige.europa.eu/thesaurus/terms/1358>.

³ Staff Notice 12/2021, Secretariat-General: priorities for 2021-2025.

2.3. Definition and examples of harassment

11 Harassment may take various forms, and it is therefore impossible to provide a single, all-encompassing definition. However, the relevant binding definition of harassment at the ECA is that laid down in Article 12a of the Staff Regulations, as further interpreted in the case-law of the Court of Justice of the EU:

- Article 12a of the Staff Regulations defines **psychological harassment** as *‘any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person’*;
- Article 12a of the Staff Regulations defines **sexual harassment** as *‘conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment shall be treated as discrimination based on gender’*;
- According to the case-law of the Court of Justice, harassment is behaviour that is undesirable and creates an atmosphere of intimidation, isolation and hostility or humiliation.

12 Psychological harassment refers to a range of unacceptable types of behaviour and practices that includes the following:

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

Intent on the part of the perpetrator is not necessary for an act to cause harm; hence, unintentional – but not accidental – behaviour could also qualify as harassment.

Psychological harassment may take various forms, e.g.:

- of a subordinate by a superior;
- vice versa;
- of a colleague, auditee, service provider, active senior, etc.;
- scapegoating of an individual within a group.

Examples of recurrent behaviour that could constitute psychological harassment are as follows:

- inappropriate or offensive comments (whether in private (face to face) or in public), bullying, hostility, pressuring, antagonism, or simply refusal to communicate;
- intimidation, whether spoken, unspoken, written or physical;
- spoken or written insults or threats, in particular regarding the person's personal or professional qualities;
- spreading false rumours;
- disparagement of the person's contributions and achievements;
- isolation, separation, exclusion or rejection from the group, withholding of information, belittlement, and humiliation;
- systematic assignment of tasks/objectives not matching the person's grade and/or job description;
- over-monitoring.

It is important to distinguish between harassment, and the legitimate action taken by Members of the ECA, its staff in their capacity as line managers, the Appointing Authority, and other staff and officials performing their duties in accordance with the Staff Regulations, and which should not be seen as harassment, such as:

- work allocation;
- conclusions reached or decisions taken by a line manager or the Appointing Authority on a matter for which they are responsible;
- monitoring staff absences and working time;
- setting performance requirements (objectives and actions to be accomplished) that correspond to a person's job description;
- assessment of performance in terms of efficiency, ability, and conduct in the service;
- disciplinary measures;
- the exercise by an official or member of staff of their duties under Articles 21a to 22b⁴ of the Staff Regulations.

It is important to note that while certain types of behaviour in the workplace do not actually constitute harassment, they are, nonetheless, inappropriate and must be avoided, either because they undermine professional dignity, are unethical, or are damaging to the working environment.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:01962R0031-20140501&from=EN#toclid39>.

13 While interpersonal conflicts in the workplace do not necessarily constitute harassment, they must be resolved as soon as they arise. The same applies to cases of psychological distress. Staff are encouraged to seek support from, inter alia, their management, a confidential counsellor, the medical officer and/or a mediator, even when there is no suggestion of harassment. By virtue of their position, managers have a key role in establishing and maintaining a satisfactory working environment, and should thus be offered and attend training in this regard.

14 Sexual harassment is sexual behaviour and language that is unwanted, unwelcome, unreturned, offensive and causes harm. It is irrelevant whether there is intent on the part of the perpetrator; what matters is the effect that the behaviour has on the victim.

In a broader sense, any unwelcome or offensive conduct towards a person because of their sex or gender, or affecting a person of a particular sex or gender disproportionately, is considered gender-based harassment.

Sexual or gender-based harassment can occur in a number of ways, such as on the part of a superior towards a subordinate, vice versa, and towards or by a colleague, visitor, active senior, auditee, external service provider, etc.

Examples of sexual or gender-based harassment are:

- offensive remarks and gender-derogatory nicknames;
- demeaning, discriminatory or insulting conduct that conveys a negative attitude towards a particular gender, and is based on gender stereotyping;
- promises of reward (e.g. a favourable career move) for acceding to sexual requests, or threats of reprisal for refusing them;
- coarse or suggestive remarks and sexual innuendo;
- crude and obscene language and gestures, offensive comments, sexual comments, repeated unwanted stories, and inappropriate jokes;
- repeated overblown compliments, or criticism of a colleague's personal appearance;
- repeated and unwanted non-work-related invitations;
- intentional and inappropriate physical contact, brushing against someone, pinching, and unwanted kissing;
- voyeurism or exhibitionism in the workplace;
- using pornography in the workplace.

15 Any act of **sexual assault** is a criminal act and calls for urgent action. Such acts may have legal consequences. It is extremely important that incidents of this nature are reported to the security service and/or Appointing Authority as soon as possible, so that the national police force and/or judicial authorities may be contacted immediately, where necessary, and the requisite administrative measures are taken.

16 Psychological and sexual harassment can take place both on and off ECA premises, during missions, while commuting, during internal or external training sessions, at ECA events, etc. Harassment can also take the form of **online (cyber) harassment**, where such acts are perpetrated through work-related ICT communications (emails, chats, videos, file or message deletions, abusive use of someone's identity, comments on the intranet or the phone, etc.). With the introduction of hybrid working measures, and thus of increased remote/virtual interactions between staff, the ECA should reinforce the prevention of potential cyber harassment.

17 Where allegations of psychological or sexual harassment are made in bad faith, they may be damaging to the persons against whom they are levelled and contribute to a deteriorating atmosphere in the workplace. The allegations may themselves constitute psychological harassment.

2.4. Other definitions

18 The following definitions shall apply for the purposes of this policy:

- **Alleged victim:** any person who feels they are the victim of psychological or sexual harassment in the workplace; the alleged victim may be a Member of the ECA, a member of the ECA's staff (including trainees and Seconded National Experts), or a person employed by either a service provider to the ECA (including persons working on ECA premises, and interim staff) or an auditee.
- **Person accused of harassment:** a person against whom allegations of psychological or sexual harassment in the workplace have been levelled; this person may be a Member of the ECA, a member of the ECA's staff (including trainees and Seconded National Experts), or a person employed by either a service provider to the ECA (including persons working on ECA premises, and interim staff) or an auditee.
- **Mediator:** a person with the relevant certification to whom the alleged victim and the person accused of harassment agree to refer their dispute with a view to an amicable resolution.
- **Confidential counsellor:** a person who has received special training and whose name appears on a list drawn up by the Secretary-General.
- **Investigating officer:** a person, internal or external to the ECA, appointed by the Appointing Authority to investigate, alone or with others, the evidence for and against a charge of harassment in connection with which a request for assistance has been made. Investigations must proceed in accordance with the ECA's provisions for conducting administrative investigations.
- **Occupational psychologist:** an independent psychologist who provides counselling and advice on work-related psychological matters to ECA staff.

- **Witness and bystander:** witness means a person who personally and directly sees or hears an event or has knowledge of a fact and is able to provide evidence, including testimony, whereas a bystander, although physically present at the event, was not involved in it or might not have noticed it and cannot provide evidence.

3. Prevention measures

19 Disrespectful behaviour and harassment can not only have a huge impact on an individual's engagement, but also a lasting negative effect on a team's morale and, if not properly addressed, on trust in our institution and its culture, potentially leading to diminished performance and reliability at all levels.

The ECA is therefore determined to guarantee a respectful working environment, and prevent harassment by focusing on increased awareness-raising, conducting training, and leading by example, which are paramount to achieving and maintaining an institutional culture of respect, dignity and trust.

3.1. Awareness-raising

20 The ECA's intranet will have a webpage dedicated to this policy that details the decision, the different parties, and the various attractive and easily comprehensible communication materials available (including visual tools, guides and flyers), in an accessible format.

21 The Secretariat-General will also run regular communication/awareness-raising campaigns on topics related to respect, dignity, trust, etc. for the purpose of fostering a safe, healthy and harmonious workplace culture, and reinforcing positive behaviour and attitudes.

22 Every year, the Secretariat-General will organise an event with the various actors under this policy (confidential counsellors, mediators, Legal Service, Human Resources Department, occupational psychologist, Medical Service, etc.), in order to increase ECA staff's awareness of these services and their role.

23 Managers should be encouraged to address topics relating to harassment prevention and a respectful workplace during their team meetings, so that they create a culture of open exchange and information sharing, such that teams feel that these topics form part of their professional lives.

3.2. Training

24 The ECA's training offer shall include:

- mandatory induction training on a respectful workplace and combatting harassment, as well as in the ECA's Ethical guidelines, which is given to all newcomers;
- mandatory training on the ECA's policy on a respectful workplace and combatting harassment, as well as in ethics, which is given to newly appointed Members;
- mandatory training concerning a respectful workplace and combatting harassment for newly appointed managers;
- regular career-long training in topics such as harassment prevention, conflict resolution, non-violent communication, constructive feedback, combatting sexist behaviour, ethics, etc. for all staff, to whom it will be strongly recommended that they attend at least one such training course every three years;
- regular, interactive (workshop format) exchange opportunities for line, middle and senior managers on the topics cited;
- mandatory and specific inception training for newly appointed confidential counsellors and mediators;
- yearly refresher training for confidential counsellors and mediators.

3.3. Role models

25 ECA Members and staff in managerial positions should be held to the highest standards of conduct and lead by example to ensure a respectful and harassment-free workplace. Moreover, staff who have a formal role in preventing and combatting harassment (such as senior and middle managers, confidential counsellors, mediators, etc.) or hold a position that, by its nature, confers more visibility (team leaders, project managers, heads of task, ethical advisors, mentors, trainee supervisors, front-office staff, protocol staff, etc.) should also act as examples to be followed.

26 While 'setting the tone' at the upper levels of the institution is key, it is very important to disseminate the message to all line managers, as they have most contact with staff and can promote respect by setting an example.

27 All managers are expected to foster an inclusive, respectful workplace that is free of any form of harassment and, by their actions and behaviour, set an example to others.

4. Early warning and detection, and the principle of non-retaliation

28 As mentioned above, every person working at the ECA is to do their best to foster an atmosphere of trust, support and mutual respect. Similarly, it is the duty of any person working at the ECA who witnesses behaviour or has knowledge of a fact that is perceived to be disrespectful, and/or could qualify as harassment, to act by encouraging the alleged victim to seek support. If the behaviour witnessed or fact is deemed extremely serious, the witness may choose to inform a person of trust (line manager, confidential counsellor, mediator, occupational psychologist, medical officer, member of the Staff Committee, member of COPEC), who will then contact the alleged victim and offer support.

29 There are many actors at the ECA who can spot the early signs of disrespectful or potentially harassing behaviour, such as the line manager, medical officer, occupational psychologist, social assistant, HR staff, members of the Staff Committee, members of COPEC, members of the Legal Service, and confidential counsellors, but they may also be contacted by an alleged victim, or staff who witnessed questionable behaviour. Line managers also play a crucial role in detecting and tackling conflictual relationships, spotting early signs of distress, or tensions, and taking note of and addressing undesirable behaviour within their team.

30 These actors are regularly trained in how to address issues at the earliest possible stage and avoid aggravation of the situation.

31 When any of the above-mentioned actors are notified of disrespectful behaviour and/or presumed harassment, the person imparting the information must identify himself/herself, act in good faith, and provide accurate, valid and first-hand information.

32 A person who has provided information concerning disrespectful behaviour and/or presumed harassment is to be protected against retaliation. Any form of retaliation against such a person, whether or not a member of the ECA's staff, is prohibited and will result in disciplinary action.

5. Addressing potential harassment

33 The general rule is that harassment cases should be handled as quickly and efficiently as possible.

34 In many cases, the person accused of harassment is not aware that their behaviour is perceived as harassing. Therefore, any person who feels they are a victim of disrespectful behaviour and/or harassment are encouraged, first, to try to resolve their concerns with the person accused of harassment immediately. The alleged victim should

address their concerns in an open and honest manner, and make it clear insofar as possible that the conduct is unwanted.

35 If the alleged victim does not feel at ease addressing the issue with the person accused of harassment, or the situation does not improve after this preliminary step, the alleged victim may seek help, through either the **informal** (confidential counsellors, mediation) or **formal procedure**.

36 The informal and formal procedures are **open to all**, irrespective of the type of contract or working relationship the person has with the ECA: Members of the ECA, any member of the ECA's staff (including trainees and Seconded National Experts), and any staff employed by a service provider to the ECA (including those working on ECA premises, and interim staff) or an auditee.

37 All the support actors involved in the various procedures are bound by the rules of confidentiality, ethical behaviour, objectivity and impartiality throughout the proceedings and thereafter. They should also avoid any real or perceived situations of conflict of interest.

5.1. The informal procedure of support from confidential counsellors

38 Any person affected by disrespectful behaviour or potential harassment may contact the **confidential counsellor** of their choice, either internal or external, whose name and contact details may be found on the ECA's intranet.

39 The confidential counsellor should aim to react⁵ to any request for assistance in the shortest possible time, and no later than **two** working days from the time of submission of the request. Where the counsellor is unavailable or unable to help (e.g. due to absence, or a conflict of interest), the confidential counsellor should suggest that the alleged victim contact a different counsellor.

40 The role of the confidential counsellor is to give advice to those seeking assistance and inform them of the various support options. The confidential counsellor must try to fully understand the issue and help the alleged victim to find the most appropriate way to tackle it.

⁵ An out-of-office reply is also considered a reaction, following which the alleged victim can either wait until the confidential counsellor returns, or contact a different counsellor.

41 The ECA's confidential counsellors:

- are active or retired colleagues who, in addition to performing their standard duties, act as confidential counsellors on a part-time and **voluntary** basis. They receive their mandate from the Secretary-General, and are trained to take on this role;
- form a **network** of people of different categories, grades, nationalities, etc.;
- take action solely within the framework of the **informal procedure**, and only and always with the express consent of the person who contacted them;
- receive, listen to, help, support, inform and accompany persons seeking their assistance in a situation of perceived **psychological or sexual harassment**;
- explore the situation in **confidential interviews** with the people who consult them, and look into what action the perceived victims of harassment can take, as well as possible solutions to their problems;
- guarantee the **confidentiality** of any information they receive in order to protect the person who feels they are a victim of harassment;
- in cooperation with the Professional Training team, organise **awareness-raising activities and provide training** relating to the ECA's policy in this area, and their role, that are aimed at generic or targeted audiences.

42 The ECA's network of confidential counsellors comprises four to six **internal**, and up to two **external**, counsellors.

43 The ECA's Secretary-General appoints confidential counsellors for a **six-year term**, following the selection procedure detailed in Annex 1. The ECA will replace half of the counsellors every three years to revitalise the network, while retaining its memory and experience. Confidential counsellors may **reapply for the role, but no less than a year after their mandate has expired**. Should a confidential counsellor wish to withdraw from the role prior to the end of their term for any reason, they are free to do so⁶.

44 The ECA network of confidential counsellors meets **twice a year** with the ECA's Director of Human Resources, Finance and General Services to provide **an entirely confidential and anonymous** update on the extent of the staff's use of the service.

⁶ A written notification to the Director of Human Resources, Finance and General Services will suffice.

45 One or more members of the network will attend the meetings of the **interinstitutional network of confidential counsellors**. The member(s) who attend(s) these interinstitutional meetings will relay the content of the discussions to the ECA network members who were not present.

5.2. The informal procedure of mediation

46 Mediation is a voluntary informal procedure whose purpose is to find an amicable solution to a strained situation between an alleged victim and the person accused of harassment as effectively and quickly as possible, so that normal working relations may be resumed.

47 Mediation can be initiated by either the alleged victim or the person accused of harassment.

48 A list of the names and contact details of the internal and external mediators available will be posted on the ECA's intranet.

49 The initiating party is free to choose any mediator from the list. However, any request for an external mediator should be addressed to the Director of Human Resources, Finance and General Services or, where this Director is the alleged perpetrator, to the Secretary-General, who will deal with the financial and contractual aspects.

50 Annex 2 details the procedure for selecting and training internal mediators. External mediators are preselected by the Human Resources Department from among recognised and qualified mediators operating in Luxembourg. The preselection will be limited to ensuring that the mediators are familiar with workplace conflict and harassment mediation.

51 The internal mediator should aim to react⁷ to any request for assistance in the shortest possible time, and no later than **five** working days from the time of submission of the request.

52 The mediator is to notify the request for mediation to the other party, who will have **five** working days to accept or refuse the mediation procedure. Failure to reply by this deadline, or refusal to follow the informal procedure, will not entail any negative consequences for the person concerned.

⁷ An out-of-office reply is also considered a reaction, following which the alleged victim can either wait until the mediator returns, or contact a different mediator.

53 The mediator operates in complete independence and confidentiality, acts solely within the framework of the informal procedure, and always with the express consent of the person by whom they were contacted. The mediator must undertake to abide by the European Code of Conduct for Mediators⁸.

54 The alleged victim, the person accused of harassment and the mediator may convene as many mediation sessions as necessary for as long as necessary. The parties may withdraw from the mediation at any time.

55 Where an agreement is reached, the parties are to conclude a mediation settlement agreement (the “Mediation Settlement”), which is binding on the parties concerned.

56 A Mediation Settlement may not include measures that go beyond the parties’ remit or provide for financial compensation or compensation in kind. Once concluded, the mediator is to communicate the Mediation Settlement to the Director of Human Resources, Finance and General Services.

57 Any party may bring to the attention of the Director of Human Resources, Finance and General Services any breach of the commitments entered into under the Mediation Settlement.

58 The mediation will be deemed to have failed in the event that the parties withdraw from the discussions before an agreement has been reached, the mediator reaches the conclusion that an amicable solution is not possible, or a formal procedure is initiated. The mediator is to confirm that the mediation procedure has failed by informing the parties involved and the Director of Human Resources, Finance and General Services accordingly, in writing.

59 The mediators meet **twice a year** with the ECA’s Director of Human Resources, Finance and General Services to provide a **completely confidential and anonymous** update on the staff’s general use of the service.

5.3. The formal procedure

60 The formal procedure may be initiated either when an informal procedure (bilateral approach, confidential counselling, mediation) has not resulted in an amicable solution to the problem, or immediately and directly. The alleged victim may withdraw from the formal procedure at any time.

⁸ <https://e-justice.europa.eu/fileDownload.do?id=c0ec51ee-bf0f-4b6b-8cc9-01b305b90d68>.

61 The formal procedure is initiated by the alleged victim by means of a **written request for assistance**, submitted on the basis of Article 24 of the Staff Regulations or, in the case of alleged victims who are not covered by the provisions of the Staff Regulations or the Conditions of Employment of Other Servants, on the basis of ECA Decision No 50-2022.

62 The written request for assistance is addressed to the Secretary-General. If the person accused of harassment is the Secretary-General, the written request for assistance should be addressed to the Director of Human Resources, Finance and General Services, who will forward it to the Ethics Committee.

63 Once a request has been received by the Secretary-General or Director of Human Resources, Finance and General Services, it must immediately be classified as confidential.

64 If the person accused of harassment is a Member of the Court, including the President, the Secretary-General must forward the request to the Ethics Committee set up by virtue of Court Decision No 14-2015.

65 The request for assistance must indicate the person accused of harassment, and provide a description of the facts, as well as initial evidence of the alleged psychological or sexual harassment. Medical certificates or reports pointing to a situation of harassment delivered by the alleged victim's medical practitioner do not constitute sufficient evidence of harassment but may, nevertheless, be taken into account in conjunction with other evidence, particularly in order to evaluate the impact of the alleged harassment on the alleged victim.

66 A person who feels they are a victim of harassment is encouraged to keep a record of all incidents in as detailed a manner as possible.

67 Upon receipt of a request for assistance, and within **10** working days, the Secretary-General, or Director of Human Resources, Finance and General Services where appropriate, will **pre-assess** the request, seeking the Legal Service's opinion, and, where the person accused of harassment is the President, a Member of the Court or the Secretary-General, seek the opinion of the Ethics Committee.

68 Based on this pre-assessment, and after having heard the alleged harasser, a decision should be taken within a maximum of **twelve** working days from the time of submission of the request for assistance to either open an administrative investigation, or refuse assistance (where the behaviour described in the request does not, *prima*

*facie*⁹, constitute harassment, or the complaint is considered to have been made in bad faith).

69 This Decision is taken by:

- the Administrative Committee, if the person accused of harassment is a Member of the Court, the President or the Secretary-General. The Administrative Committee receives the pre-assessment from the Secretary-General or, when the person accused of harassment is the Secretary-General, from the Director of Human Resources, Finance and General Services;
- the Secretary-General for all other cases.

70 Where the decision taken is to refuse assistance, the alleged victim may contest it by submitting a complaint pursuant to Article 90(2) of the Staff Regulations, or, in the case of alleged victims who are not covered by the provisions of the Staff Regulations and the Conditions of Employment of Other Servants, pursuant to ECA Decision No 50-2022. Furthermore, where the alleged victim believes that the request for assistance has been maladministered by the ECA, they may lodge a complaint with the European Ombudsman.

71 Where it is decided to open an administrative investigation, the Secretary-General or Director of Human Resources, Finance and General Services will inform the person accused of harassment that an investigation has been launched, and explain the accused person's rights and obligations.

72 In all cases, pending the outcome of the investigation, the Secretary-General or Director of Human Resources, Finance and General Services may take interim measures aimed at maintaining a satisfactory working environment, while taking into consideration the interests of the persons concerned.

73 The administrative investigation is to be conducted in accordance with the rules on administrative investigations in force at the ECA, taking all necessary measures to protect the alleged victim and witnesses against revictimisation and retaliation, and the privacy of those involved, as well as guarantee confidentiality for the complainant and witnesses.

74 Both the alleged victim and the person accused of harassment are required to cooperate in good faith with the designated investigator(s).

⁹ Definition of prima facie: evidence that is sufficient to establish a fact or to raise a presumption of the truth of a fact unless controverted (Collins dictionary).

75 The alleged victim and the person accused of harassment may submit any document or material they wish to the investigator(s), and may also ask that one or more witnesses be heard.

76 The alleged victim, the person accused of harassment and the witnesses may be assisted throughout the formal procedure, and in particular during the hearings, by a person of their choice (including a lawyer, at their own expense).

77 The length of the administrative investigation should be as short as possible and last no longer than **four months** from the date of adoption of the decision to launch the administrative investigation.

78 Once the investigation has ended, the investigator will draw up a report and send it to the parties concerned, and the Appointing Authority. The report must not contain any confidential medical information without the express permission of the person to whom it relates.

79 The Appointing Authority is:

- the Secretary-General, for all officials/other staff up to grade AD12 (included);
- the Administrative Committee, for all officials/other staff in grades AD13 – AD15. However, in order to preserve confidentiality for the parties involved, the Administrative Committee may decide to delegate this role to the Secretary-General;
- the Court, for Members of the Court and the Secretary-General.

80 The Appointing Authority's final decision on the request for assistance will be based on the investigation report.

81 Where the Appointing Authority accepts the request for assistance, they may, as appropriate:

- propose solutions to the parties to the conflict, in cooperation with the medical officer, line managers and/or the mediator, with a view to re-establishing and maintaining a satisfactory working environment, and/or
- take rehabilitation measures to protect and support all the parties involved in the harassment case, in cooperation with the medical officer, line managers and/or the mediator, and/or
- compensate the complainant, under Article 24(2) of the Staff Regulations, for the harm suffered as a result of behaviour deemed to constitute harassment, and
- initiate disciplinary proceedings against the person accused of harassment.

82 Where the perpetrator is a Member of the Court, the investigation report will be sent to the Administrative Committee, which will hear the Member about the report and the evidence it includes, then submit the report to the Court. Where appropriate, the Court will invoke Article 4 of its Rules of Procedure, hear the Member, and decide on the measures to be taken.

83 Where the Appointing Authority rejects the request (the complaint is unfounded or was made in bad faith), due justification should be given.

84 Where a complaint lodged by way of a request for assistance has been made in bad faith, the Appointing Authority may take disciplinary action against the complainant. Where a Member lodged the complaint, the Court may invoke Article 4 of its Rules of Procedure.

6. Accompanying measures

85 The ECA is to take all appropriate accompanying measures in respect of all the parties involved (alleged victim, person accused of harassment, witnesses and bystanders, and other people who might have been involved in the proceedings, such as confidential counsellors, mediators, and the Legal Service), in order to re-establish and maintain a healthy and respectful working environment.

86 These measures can take various forms, including:

- immediate separation of the alleged victim and the person accused of harassment by means of reassignment;
- offering the possibility of special leave or adaptation of working pattern to allow time to recover from harm suffered;
- sessions with an occupational psychologist;
- providing the opportunity for confidential counsellors and mediators to undergo an annual supervision session with the occupational psychologist;
- specific, targeted training for teams involved in harassment cases.

87 In cases of proven harassment, the above-mentioned measures are to complement the disciplinary measures and/or financial compensation decided under the formal procedure.

7. Monitoring and reporting

88 The success of the implementation of this policy will be monitored and evaluated by means of the following:

- an annual, anonymised, gender-disaggregated report from all the actors involved in implementing the policy (confidential counsellors, mediators, Legal Service, medical officer), which is to be sent to the Director of Human Resources, Finance and General Services (see also the paragraph on data protection);
- regular staff surveys launched to measure staff's perception of the effectiveness of the policy.

89 While strictly respecting the confidentiality and data protection rules, the consolidated, gender-disaggregated information obtained through the above is to be communicated to all ECA staff in the interests of transparency.

8. Review

90 The ECA's policy on ensuring a respectful and harassment-free workplace is to be evaluated every three years by the Secretary-General.

9. Data protection

91 All data gathered in the context of harassment proceedings is to be processed in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 (the "EUDPR") on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

92 Data gathered during an informal procedure is to be destroyed as soon as the informal procedure has ended. Data gathered in connection with a request for assistance under Article 24 and stored for historical, statistical or research purposes must be rendered anonymous five years after final settlement of the proceedings.

93 Confidential counsellors, line managers, the medical officer and mediators must destroy all personal data gathered in the course of counselling and conflict-resolution duties performed during harassment proceedings. However, for statistical purposes, and in order to report on their own activities, they may keep anonymised general information, including on the number of cases handled each year, dates of visits, and details of the function groups of the persons concerned.

94 Where the nature of a case of alleged harassment in or in connection with the workplace constitutes a criminal offence, the Appointing Authority must cooperate with the national judicial authorities to which the case is referred.

95 In its capacity as data controller, the ECA will duly draw up privacy statements detailing the manner in which personal data will be processed under both the formal and informal anti-harassment procedures, and post them on the DPO's intranet page ([link](#)).

96 Lastly, in accordance with [Decision No 42-2021](#) of the Court of Auditors of 20 May 2021 adopting internal rules concerning restrictions of certain rights of data subjects in relation to the processing of personal data in the framework of activities carried out by the European Court of Auditors, certain restrictions may apply to data subjects' rights in the course of anti-harassment proceedings at the ECA.

Annex 1: selection and training of confidential counsellors

01 To fill a vacant confidential counsellor position, the ECA's Director of Human Resources, Finance and General Services launches a **call for expression of interest**. In the case of internal counsellors, the call is open to all ECA staff, and in that of external counsellors, it is addressed to the International Association of Former Officials of the European Union (AIACE), and the ECA's Active Seniors.

02 The ECA's Director of Human Resources, Finance and General Services screens the applications, consults the members of the confidential counsellors' network to obtain their opinion¹⁰, and submits a proposal for appointment to the Secretary-General. The Secretary-General draws up the definitive list of confidential counsellors. The ECA's Human Resources Department communicates the list to the ECA's staff using all appropriate means, including the intranet.

03 The criteria for the selection of confidential counsellors are as follows:

- **abilities related to the role**, namely to listen, empathise and communicate, exercise discretion, maintain confidentiality, remain impartial and objective, and act autonomously;
- **understanding** of the issue of harassment and the ECA's related policy and procedures, particularly in light of the confidential counsellor's role of explaining to the person seeking assistance the options available and the procedures that exist;
- capacity and commitment to **assist** in exploring possibilities for an amicable resolution of problems that arise;
- **motivation** for taking up the role of confidential counsellor;
- **availability** (both to alleged victims of harassment and for coordination meetings / further training relating to the issue of harassment);
- insofar as possible, **gender equality**, and **adequate coverage** of the various parts of the ECA's organisational structure.

04 Successful candidates are required to follow specific training courses comprising approximately five training days organised by the ECA's Professional Training team.

05 In the subsequent years of their term, confidential counsellors are required to dedicate **one to two working days** each year to training courses relating to their role. This/these training course(s) is/are chosen by the network in cooperation with the ECA's

¹⁰ The network's opinion is non-binding.

Professional Training team. The counsellors may also attend external training courses to develop their skills further.

06 By reason of the ECA's duty of care to its staff, confidential counsellors are strongly encouraged to attend a **supervision** session with a psychologist every year, the purpose of which is to help them maintain the objectivity and distance required for their role, learn from their experience, and develop their expertise, to ensure that a good service is provided to all ECA staff.

Annex 2: selection and training of internal mediators

01 To fill a vacant internal mediator position, the ECA's Director of Human Resources, Finance and General Services launches a call for expression of interest, which is open to all ECA staff.

02 The ECA's Director of Human Resources, Finance and General Services screens the applications and submits a proposal for the appointment of an internal mediator to the Secretary-General.

03 The ECA's Human Resources Department communicates the name(s) of the person(s) selected as mediator(s) to the ECA's staff using all appropriate means, including the intranet.

04 The criteria for the selection of mediators are as follows:

- **motivation** for taking up the role of mediator;
- **abilities related to the role**, namely to listen, empathise and communicate, exercise discretion, maintain confidentiality, remain impartial and objective, and act autonomously;
- **understanding** of the issue of harassment and the ECA's related policy and procedures, including explaining to the person seeking assistance the options available and the procedures that exist;
- **availability** (both to alleged victims of harassment and for coordination meetings / further training relating to the issue of harassment);
- insofar as possible, **gender equality**.

05 The successful candidate(s) is/are required to follow a specific training course, leading to professional certification as a mediator, that is reimbursed by the ECA.

06 Internal mediators are required to dedicate **one to two working days** each year to training courses relating to their role. This/these training course(s) is/are chosen by the mediators in cooperation with the ECA's Professional Training team. The mediators may also attend external training courses to develop their skills further.

07 By reason of the ECA's duty of care to its staff, internal mediators are strongly encouraged to attend a **supervision** session with a psychologist every year, the purpose of which is to help them maintain the objectivity and distance required for their role, learn from their experience, and develop their expertise, to ensure that a good service is provided to all ECA staff.