

Lisbon, 6 March 2024

AB 69 06e 03 Decision Implementing Rules to the Staff Regulations

DECISION OF THE ADMINISTRATIVE BOARD on the request for the Commission Agreement for derogation from implementing rules of the Staff Regulations

THE ADMINISTRATIVE BOARD OF THE EUROPEAN MARITIME SAFETY AGENCY,

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

Having regard to the Staff Regulations of Officials of the European Union (hereinafter 'Staff Regulations') and the Conditions of Employment of Other Servants of the European Union (hereinafter 'CEOS'), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68¹ as last amended, and in particular to Article 110(2), third subparagraph, of the Staff Regulations;

Having regard to Council Regulation (EC) N° 1406/2002 of 27 June 2002, as amended, establishing the European Maritime Safety Agency and in particular Article 6 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 3.3. B) thereof;

After consulting the Staff Committee,

Whereas:

- 1) Pursuant Article 110(2) of the Staff Regulations implementing rules adopted by the Commission to give effect to the Staff Regulations shall apply by analogy to the agencies to that end, the Commission informs the agencies of any such implementing rule without delay after adoption.
- 2) On 22 December 2023 the Commission informed the agencies on the adoption of Commission Decision C(2023)8630 of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3.
- 3) This communication triggered the nine-month deadline for agencies to decide if they will apply the rules by analogy or request a derogation;
- 4) The Agency considers that Commission's Decision C(2023)8630 is not suitable to apply by analogy to the Agency, mainly because of its different internal structure. Therefore, it is appropriate to request a derogation not to apply these rules by analogy and to adopt different rules;
- 5) The Agencies Standing Working Party (SWP) has informed the agencies that in coordination with the Commission, a specific model decision adapted to agencies will be developed and which will better suit the needs of the agencies;
- 6) Pursuant to Article 110(2) of the Staff Regulations and guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, the Management Board must empower the executive Director to request the Commission's agreement for derogation.

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

HAS DECIDED AS FOLLOWS:

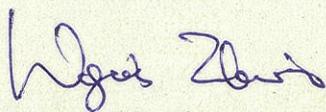
Article 1

With a view to adopting different rules, the Executive Director of the Agency is hereby empowered to request the Commission's agreement on the non-application by analogy of Commission's Decision C(2023)8860, pending the finalisation of a model decision on this matter for agencies.

Article 2

This decision shall take effect on the day following that of its adoption.

Done at Lisbon, on 6 March 2024



Wojciech Zdanowicz

Chairman of the Administrative Board

Annex: Commission Decision C(2023)8630 of 12.12.2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3



Brussels, 12.12.2023
C(2023) 8630 final

COMMISSION DECISION

of 12.12.2023

**on the prevention of and fight against psychological and sexual harassment, and
repealing Decision C(2006) 1624/3**

COMMISSION DECISION

of 12.12.2023

on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006) 1624/3

THE EUROPEAN COMMISSION,

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 ('CEOS') of the European Union, laid down by Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Articles 1d, 12, 12a, 24, and 110, paragraph 2, of the Staff Regulations, and Articles 11 and 81 of the CEOS,

After consulting the Central Staff Committee,

Whereas:

- (1) Every worker has the right to working conditions that respect their safety, integrity, and dignity.
- (2) The modern world of work can create psychosocial risks and therefore it is very important to ensure the best possible world of work in the Commission, which is focussed on the health and wellbeing of its staff in all aspects.
- (3) Psychological and sexual harassment fall within the broader spectrum of violence in the world of work, which, when they arise, represent a serious problem in the world of work and a violation of the right to dignity at work. As a responsible employer, the Commission should guarantee the dignity of all members of staff, independently of their position or function. It should not tolerate harassment or any conduct that runs counter to a respectful and inclusive world of work and should strive constantly to improve the means available to prevent and fight harassment of any kind.
- (4) The world of work should be understood in the context of the International Labour Organisation Convention, the Violence and Harassment Convention (No. 190)², which goes beyond the workplace and includes work-related facilities and communications, including telework, travel and social activities, as well as employer-provided accommodation and commuting to and from work.
- (5) The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) recognises violence against women as a violation of human rights and a form of discrimination against women. It covers various forms of gender-based violence against women, including sexual harassment, which refers to violence directed against women because they are women or violence affecting them disproportionately. The Union has acceded to the Istanbul Convention and it has exclusive competence to accept the obligations set out in the

¹ OJ L 56, 4.3.1968, p. 1.

² International Labour Organization, the Violence and Harassment Convention (No. 190).

Convention with respect to its own institutions and public administration, within the scope of Article 336 of the Treaty on the Functioning of the European Union³.

- (6) Psychological and sexual harassment in the world of work should be combatted regardless of the employment status of those concerned. As some categories of persons are not subject to the Staff Regulations and the CEOS, the provisions of this Decision should also apply to those categories, subject to the respect of the relevant legal provisions and conditions applicable to them. In particular, the decision on the follow-up of cases involving a Member of the Commission should take account of the Code of Conduct for the Members of the Commission and the relevant institutional provisions in Union law.
- (7) This Decision should apply to any form of psychological and sexual harassment defined in Article 12a, paragraphs 3 and 4, of the Staff Regulations, for which specific means of redress should be established.
- (8) In accordance with Article 12a, paragraph 3, of the Staff Regulations, psychological harassment is a conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person. Such conduct may, for instance, include, belittling, ridiculing someone or calling into question their professionalism, isolating someone, hostile or inappropriate comments or messages, stalking, threats, using vulgar or insulting language, undermining someone, as well as setting unrealistic working objectives, not giving to the person enough work or giving them work that does not meet their profile, if it takes place over time, is repetitive or systematic and fulfils also the other conditions of Article 12a of the Staff Regulations.
- (9) In accordance with Article 12a, paragraph 4, of the Staff Regulations, sexual harassment is a conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment is to be treated as discrimination based on gender. It may, for instance, include making promises of reward in return for sexual favours, or threats and/or reprisals if these demands are rejected, making sexual or offensive comments or gestures, showing sexually suggestive visuals, inappropriate physical contact, or sending or showing inappropriate obscene content or making inappropriate jokes.
- (10) In order to prevent and fight psychological and sexual harassment effectively within the Commission, it is necessary to set out the rights and obligations of persons who perceive themselves to be victims of harassment in the world of work as well as of those persons who are accused of harassment.
- (11) Whenever there are signs of harassment in the world of work, the Commission should comply with its duty of care. It should examine the matter impartially, fairly and diligently, while taking into account the need to address instances of alleged harassment as expeditiously as possible.
- (12) Any type of improper conduct should be condemned in the world of work, whether or not it can be qualified as discrimination or harassment. Commission staff should be

³ The EU signed the Istanbul Convention in June 2017, and the procedure was completed with the deposit of two instruments of approval on 28 June 2023, triggering the entry into force of the Convention for the EU on 1 October 2023.

encouraged to and assisted in addressing any type of improper conduct in the world of work that they are subject or witness to, by means of early intervention, formal and informal procedures, as well as by raising awareness of the standards of conduct that are expected of Commission staff.

- (13) Staff members should contribute by their behaviour to creating and maintaining the best possible world of work. Staff members who have witnessed directly a behaviour that could qualify as harassment should act in accordance with Article 22a of the Staff Regulations.
- (14) Discrimination may manifest itself through harassment. Sexual harassment may be a form of discrimination based on gender. The heightened public awareness of sexual harassment in the world of work has emphasised the importance of having strong, appropriate, and dissuasive tools to fight against such behaviour. In the implementation of this Decision, the Commission should consider the increased risk of harassment faced by persons exposed to discrimination based on one, or a combination of, different grounds, such as those listed in Article 1d of the Staff Regulations.
- (15) Commission Decision C(2006) 1624/3⁴ sets out the framework for protecting the dignity of the person and preventing psychological and sexual harassment at the Commission. Moreover, Commission Decision C(2002) 601⁵ offers the possibility to turn to the Mediation Service of the Commission ('Mediation Service') in disputes that can arise in the context of working relations.
- (16) While Decision C(2006) 1624/3 provides an overall framework for preventive measures and informal and formal redress mechanisms, experience in applying that framework gained over more than 15 years, has shown that further steps are needed to improve the options available to staff who feel they are victims of psychological or sexual harassment. The results of a staff survey on diversity, inclusion and respect at workplace carried out in 2021 showed that respondents did not always know where to find information on the support available. The majority of respondents who reported having experienced behaviour that can be qualified as psychological or sexual harassment did not seek assistance from the institution.
- (17) It is therefore appropriate to strengthen a victim-centred approach, reinforce the independence and effectiveness of the formal and informal procedure for providing assistance in situations perceived as psychological or sexual harassment, and offer comprehensive accompanying measures to victims of harassment, whether in the course of an informal, or a formal procedure.
- (18) The informal procedure should aim at offering appropriate assistance to the issues raised by the victim, without providing an assessment of the behaviour in legal terms.
- (19) The formal procedure should aim at assessing the allegations of harassment and establishing the facts, with a view to enabling the appointing authority to take appropriate measures concerning the alleged harassers. During the assessment phase, the competent services in charge of the formal procedure could liaise with the Chief Confidential Counsellor, in order to ensure a comprehensive approach regarding the *prima facie* evidence of a case of harassment.

⁴ Commission Decision C(2006) 1624/3 of 26 April 2006 on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment.

⁵ Commission Decision C(2002) 601 of 25 February 2002 on the reinforced Mediation Service.

- (20) Persons not covered by the Staff Regulations and the CEOS who consider themselves to have been or to be subject to harassment by a staff member, should be able to address the allegations directly to the Investigation and Disciplinary Office of the Commission ('IDOC') or to the European Anti-Fraud Office ('OLAF'), for assessment and appropriate follow-up in order to resolve the situation.
- (21) By reason of its specific characteristics, namely its multicultural environment, the diversity of its staff, and the fact that it operates in many different jurisdictions, the Commission, although inspired by the national systems of the Member States in which it has its seats according to Protocol No 6 on the Location of the Seats of the Institutions and of Certain Bodies, Offices, Agencies and Departments of the European Union, annexed to the Treaties, has established its own internal procedures to address harassment. Those procedures apply equally in all places of employment of persons working for the Commission, and wherever the alleged harassment occurs. Those procedures do not affect any judicial means available to victims under the national legal system.
- (22) Relevant Commission services should ensure that allegations of harassment are addressed in full respect of the rights of the persons involved.
- (23) All instances of alleged psychological or sexual harassment should be appropriately examined, the victims should be protected and, where it is confirmed that harassment took place, disciplinary penalties should be imposed on the perpetrator. At their request, the victims should be assisted in pursuing legal proceedings before the relevant national courts in line with Article 24 of the Staff Regulations. At the same time, it is necessary to uphold the presumption of innocence and the rights of defence of all those involved.
- (24) The Directorate-General for Human Resources and Security should establish a set of comprehensive and targeted measures, including medium- and long-term action plans for the prevention of harassment, including in the framework of psychosocial risk prevention measures. Those measures should include information on the rights of the victims of harassment, awareness-raising campaigns, training and learning activities, advice and support. Those measures should also reflect a systemic monitoring and assessment aimed at identifying and remedying what in the principles of work organisation and relations between staff members is likely to favour or allow the appearance of harassment.
- (25) Since psychological or sexual harassment may cover a wide range of situations, it is appropriate to provide both informal and formal means of redress. An informal procedure should not involve any legal assessment of the circumstances and should therefore not lead to a legal qualification of behaviour perceived as psychological or sexual harassment. As such, it should be available where it is desired by the victim and deemed by the victim or the relevant services to be faster, more efficient, and more effective than a formal procedure.
- (26) In order for the victims to have a better visibility in the informal procedure and to improve their access to it, the function of a Chief Confidential Counsellor should be established. The Chief Confidential Counsellor should be selected from among persons with an established and proven record of relevant knowledge and professional experience, for example in the field of anti-harassment, law, and ethics and whose integrity, independence, impartiality, and probity are beyond doubt. The Chief Confidential Counsellor should be the first contact point for persons who perceive themselves as victims of harassment and should be able to advise and support them by

various means during and after the situation perceived as harassment. For that purpose, the Chief Confidential Counsellor should have the possibility to establish temporary structures to listen to the staff members and contact, advise, and assist the staff members and services responsible for implementing interim protective and accompanying measures for example by providing information related to the assessment of staff members in different career-related exercises, advising on best practice, notifying staff or units of situations prone to result in harassment.

- (27) The Chief Confidential Counsellor should be entrusted with the daily management of the network of confidential counsellors, including their selection and mandate conferral, the allocation of cases of conduct perceived as psychological or sexual harassment, as well as the potential withdrawal of their mandate. It is necessary to clarify the role of the confidential counsellors, who should continue to operate on a voluntary basis. They should focus on listening and supporting staff who come to them, without engaging in mediation.
- (28) Without prejudice to other legal obligations such as Article 22a of the Staff Regulations, Regulation (EU, Euratom) No 883/2013⁶ and Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999, the Chief Confidential Counsellor and the confidential counsellors should act in full impartiality and in compliance with rules on confidentiality concerning the performance of their tasks.
- (29) Processing of personal data by the Commission is subject to Regulation (EU) 2018/1725 of the European Parliament and of the Council⁷. In that light, information containing personal data collected or transmitted in the course of proceedings taken pursuant to this Decision should enjoy the level of data protection guaranteed by Regulation (EU) 2018/1725.
- (30) The Commission may also process sensitive categories of personal data, voluntarily provided by the victim, within the meaning of Articles 10 and 11 of Regulation (EU) 2018/1725. The applicable ground for lawfulness in such cases are Articles 10(2) points (a) and (b) of Regulation (EU) 2018/1725.
- (31) Pursuant to Regulation (EU) 2018/1725, the Commission is required to provide information to data subjects on the processing of personal data concerning them and to respect their rights as data subjects. However, the Commission should balance those rights with the objectives of preventing and dealing effectively with actual or potential cases of psychological or sexual harassment in the workplace. Article 16(5) of Regulation (EU) 2018/1725 provides for exceptions to data subjects' right to information, where personal data have not been obtained from the data subjects. That data subjects' right should not apply in cases where the provision of information to alleged harassers, about the processing of their personal data for the purpose of conducting the informal procedure with the Chief Confidential Counsellor and their network of confidential counsellors, would seriously impair the achievement of the

⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, as amended ('OLAF Regulation').

⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 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 and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

objectives of that processing in accordance with Article 16(5)(b) of the Regulation. Such exception should be applied to the right of alleged harassers to information as regards personal data collected by the Chief Confidential Counsellor and the confidential counsellors, where it would seriously impair the Chief Confidential Counsellor's and the confidential counsellors' ability to conduct the informal procedure, which is based on confidentiality towards the victim seeking assistance. Provision of information to the alleged harasser without the victim's consent can have adverse consequences for the victim, notably potential retaliatory measures, and can disrupt the proper functioning of the informal procedure. At the same time the Commission should not keep any personal data beyond the information contained in the opening form. That is a necessary and proportionate measure to ensure a safe environment for the victims of harassment and unobstructed functioning of the informal procedure with the Chief Confidential Counsellor and their network of confidential counsellors.

- (32) As they are exceptions to the general rules, any limitations of data subject rights should be interpreted restrictively. Therefore, a balance should be struck between the rights of victims and alleged harassers in order to ensure that neither's rights are restricted more than necessary. The assessment of necessity and proportionality of such limitations of data subject rights should be carried out on a case-by-case basis, taking into account all relevant circumstances.
- (33) It might also be necessary to balance the alleged harasser's other data subject rights against the fundamental rights and freedoms of others. To that end, Article 25 of Regulation (EU) 2018/1725 gives the possibility to restrict data subjects' rights under certain conditions. Unless such restrictions are provided for in a legal act adopted on the basis of the Treaties, it is necessary to adopt internal rules for the Commission to be able to restrict those rights. In order to ensure the confidentiality and effectiveness of all proceedings referred to in this Decision, including administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings, Commission Decisions (EU) 2019/165⁸ and (EU) 2022/121⁹ which restrict the application of data subjects' rights pursuant to Article 25(1) points (b), (c), (g) and (h) of Regulation (EU) 2018/1725, should also apply.
- (34) Pursuant to Commission Decision C(2002) 601, the Mediation Service is a Commission service which acts as a facilitator in disputes that may arise in the context of working relations or concerning the rights and obligations. It provides impartial advice or mediation. Mediation Service is solely responsible for offering mediation in situations which are deemed suitable for an amicable resolution between the parties involved. In order to engage in mediation, persons should be able to contact the Mediation Service at any time for matters related to working relations or they may be advised to turn to the Mediation Service by the Chief Confidential Counsellor. The Mediation Service should also contribute to the prevention of harassment through

⁸ Commission Decision (EU) 2019/165 of 1 February 2019 laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their data protection rights by the Commission in the context of administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings (OJ L 32, 4.2.2019, p. 9).

⁹ Commission Decision (EU) 2022/121 of 27 January 2022 laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their rights in the context of processing of personal data for the purposes of handling requests and complaints under the Staff Regulations (OJ L 19, 28.1.2022, p. 77).

general recommendations on systemic issues about employment relationships it detects during its work.

- (35) The Mediation Service of the European External Action Service ('EEAS Mediation Service') is an independent service that acts as an informal, confidential facilitator and conciliator within the European External Action Service ('EEAS') and the Union Delegations. In particular, the EEAS Mediation Service has knowledge and experience to address situations particular to the Union Delegations context. Staff serving in Union Delegations who wish to pursue an informal procedure can directly contact the EEAS Mediation Service or should be advised to turn to the EEAS Mediation Service by the Chief Confidential Counsellor in relation to individual situations or individual decisions pertaining to the day-to-day working relationships at their place of employment, or relating to their rights and obligations resulting from their posting in Union Delegations, where the Commission has delegated powers to the EEAS. When issues relate in part or in full to people occupying posts in the establishment plan of the EEAS, the EEAS Mediation Service can be best placed to facilitate the settling of those issues.
- (36) While harassment situations may originate from a conflict at work which is not addressed in a timely and constructive way, not all conflicts at work could be considered as harassment. To better guide staff members to the most appropriate assistance, the relevant Commission services should reinforce communication on their respective competences by defining clearly the various paths offered to staff who feel they are victims.
- (37) There should be a formal procedure in conformity with the Commission's obligations pursuant to Article 24 of the Staff Regulations to allow the administration to provide effective assistance. That procedure should include appropriate verifications of the alleged facts as expeditiously as possible, as well as procedural safeguards. The victims can also pursue legal proceedings before the relevant national courts. In such a case, staff members should comply with their obligations under the Staff Regulations, and in particular Article 19 thereof.
- (38) The relevant services should assess the accuracy of the information provided to them in relation to possible cases of harassment with a view to deciding on the appropriate follow-up. To that end, the administration should conduct a preliminary examination of the information.
- (39) Recourse to the formal procedure involving a request for assistance pursuant to Article 24 of the Staff Regulations should also bestow upon staff members the right to receive certain information concerning the follow-up of the case, and in particular concerning the final result of the investigations conducted by IDOC and possible disciplinary action. While that right to information should be balanced with the need to fully observe the rules on data protection, it constitutes an important right for the victims who, in the absence of a request for assistance, would have no right of information concerning pending investigations.
- (40) Any person who has communicated information on alleged harassment should be protected against any acts of retaliation. Staff members called as witnesses to testify under a formal procedure should be made aware at an early stage of such formal procedure of the possibility to ask for assistance pursuant to Article 24 of the Staff Regulations in case they are subject to retaliatory measures because of their testimony.

- (41) The results of the Commission's internal findings should be taken into account when deciding on requests by staff members for assistance pursuant to Article 24 of the Staff Regulations, requests of staff members for authorisation pursuant to Article 19 of the Staff Regulations when called to testify before a national court, and on requests by national judicial authorities to waive the immunity of staff members and grant them permission to appear before a national court, also as a matter of the Commission's duty of care for the persons concerned.
- (42) In cases where the Commission authorises staff members who are called as witnesses or as alleged harassers to appear before national authorities, it may pay the costs of legal representation in accordance with its duty of care. However, in the case of alleged harassers, those costs should not be paid where the Commission's internal investigation confirms the veracity of the accusations, and where the person is convicted of a criminal offence at the end of the judicial procedure.
- (43) In order to provide a comprehensive overview of the policy on the prevention of and fight against psychological and sexual harassment in the Commission, the guidelines should be established addressing persons working directly or indirectly for the Commission, which should include practical recommendations on the prevention of and fight against harassment. Such guidelines should also include examples addressing types of improper conduct which are unwelcomed in the world of work, whether or not such conduct can be classified as harassment or discrimination.
- (44) The implementation of this Decision should be closely linked to the implementation of all the other initiatives announced in the Communication to the Commission on a 'A new Human Resources Strategy for the Commission Resources' ('HR Strategy')¹⁰ and pursuing the objectives announced in that Communication, notably actions pertaining to management development, staff wellbeing, and the promotion of diversity, inclusion, and gender equality.
- (45) It should also be ensured that in carrying out the tasks entrusted to it by the Treaty, the Commission makes good use of the human and budgetary resources available to it.
- (46) The Joint Committee on Equal Opportunities, the Joint Committee on Prevention and Protection at Work in Brussels, and the security and hygiene committees in Luxembourg, Ispra-Sevilla, Geel, Karlsruhe and Petten were consulted.
- (47) The European Data Protection Supervisor has been informed and delivered his opinion on 13 October 2023.
- (48) Decision C(2006) 1624/3 should be repealed,

HAS DECIDED AS FOLLOWS:

¹⁰ Communication to the Commission C(2022) 2229 of 5 April 2022: A new Human Resources Strategy for the Commission.

Title 1

General provisions

Chapter I

Subject matter, scope and definitions

Article 1

Subject matter

This Decision lays down the framework for:

- (a) the prevention measures taken in the Commission as regards psychological or sexual harassment in the world of work at the Commission, occurring in the course of, linked with, or arising out of work;
- (b) the procedures for victims of harassment in the world of work at the Commission and in particular the procedure for applying Article 24 of the Staff Regulations in cases of alleged harassment.

Article 2

Scope

1. This Decision applies to all forms of harassment as defined in Article 12a of the Staff Regulations and to all persons directly or indirectly working for the Commission at the time the alleged harassment took place, including persons who are not subject to the Staff Regulations and the CEOs, without prejudice to the respect of the relevant legal provisions and conditions applicable to them.
2. Notwithstanding paragraph 1, this Decision shall not apply to local staff working in Union Delegations.
3. The standard of protection against harassment laid down in this Decision shall be without prejudice to the protection guaranteed by other EU legislation and national law, where applicable.

Article 3

Definitions

For the purposes of this Decision, the following definitions apply:

- (a) ‘psychological harassment’ means, in accordance with Article 12a, paragraph 3, of the Staff Regulations, 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;
- (b) ‘sexual harassment’ means, in accordance with Article 12a, paragraph 4, of the Staff Regulations, 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;

- (c) ‘harassment’ means psychological or sexual harassment;
- (d) ‘conflict at work’ means for the purpose of this Decision a situation of disagreement between persons resulting from opposing interests, job-related views and ideas, or personalities, which is, in principle, suitable for an amicable solution;
- (e) ‘person’ means anyone, whether or not subject to the Staff Regulations and the CEOS, directly or indirectly working for the Commission and regardless of their contract status, with the exception of local staff working in Union Delegations pursuant to Article 4 of the CEOS;
- (f) ‘staff member’ means an official, temporary agent, or contract agent employed by the Commission or local staff working in the Commission’s Representations;
- (g) ‘victim’ means a person who considers that they are, or have been, subject to harassment, without prejudice to whether or not such harassment is finally established;
- (h) ‘alleged harasser’ means a person who has allegedly harassed another person, without prejudice to whether or not such harassment is finally established;
- (i) ‘unit in charge of the formal procedure’ means the unit in the Directorate-General for Human Resources and Security preparing the decisions of the appointing authority pursuant to Article 24 of the Staff Regulations;
- (j) ‘administrative inquiry’ means an administrative inquiry as defined in Article 2(7) of Commission Decision C(2019) 4231¹¹;
- (k) ‘request for assistance’ means a request submitted by a staff member pursuant to Article 24 of the Staff Regulations;
- (l) ‘preliminary assessment’ means an evaluation by the Investigation and Disciplinary Office of the Commission (‘IDOC’) of the information received as defined in Article 2(6) of Commission Decision C(2019) 4231;
- (m) ‘preliminary examination’ means an assessment of the factual and legal elements by the unit in charge of the formal procedure to establish whether there is *prima facie* evidence of harassment, taking into account the results of the preliminary assessment with a view to deciding on the appropriate follow-up;
- (n) ‘*prima facie* evidence of harassment’ means the establishment of factual elements indicating the possible existence of a case of harassment.

Chapter II Principles

Article 4

Respect, dignity and courtesy

1. All staff members shall contribute by their conduct to creating and maintaining cooperative relations in the world of work, where everyone is treated with respect, dignity, and courtesy.
2. Staff members who have directly witnessed behaviour that may qualify as harassment, shall act in accordance with Article 22a of the Staff Regulations.

¹¹ Commission Decision C(2019) 4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings.

Article 5

Prohibition of harassment

All staff members shall refrain from any form of harassment. The Commission shall give appropriate follow-up to any instance of harassment and, where appropriate, implement immediate protective measures for the victims.

Article 6

Reporting and acting on instances of harassment

1. Victims and witnesses of situations that might involve harassment may contact the actors and services referred to in Article 15 to obtain guidance on the appropriate procedures to address and resolve situations of harassment in the best possible manner.
2. Where the unit in charge of medical absences or the Medical Service detect a pattern of long-term sick leaves in the same entity, and where there is a reported alleged link to harassment, they shall inform the Chief Confidential Counsellor, based on anonymised data. The Chief Confidential Counsellor shall seek information about the circumstances. For that purpose, they may contact the hierarchical superior of the manager in charge of the entity concerned or the overseeing instance, where applicable.
3. Managers and hierarchical superiors shall give swift and appropriate follow-up to instances of alleged harassment within their entities, including by contacting the relevant actors and services referred to in Article 15.
4. Any person who has communicated information on alleged harassment under one of the procedures listed in Article 7, shall be protected against any acts of retaliation, including by respecting the rules on strict confidentiality laid down in Article 8.

Article 7

Access to procedures

1. Depending on their employment status, victims shall have access to the following anti-harassment procedures:
 - (a) the informal procedure with the Chief Confidential Counsellor and the confidential counsellors, laid down in Title II;
 - (b) the formal procedure laid down in Title III;
 - (c) the procedures before the national authorities in accordance with the rules laid down in Title IV.
2. In case of conflict at work that may arise in the context of working relations, persons may turn to the Mediation Service in accordance with Commission Decision C(2002)601¹².

Article 8

Confidentiality

1. The actors and services referred to in Article 15 entrusted with the analysis or handling of requests concerning alleged harassment shall ensure at all times the strict confidentiality of the information they receive in the context of those requests.

¹² Commission Decision C(2002)601 of 25 February 2002 on the reinforced Mediation Service.

2. The confidentiality obligation may be waived in cases where urgent action is necessary for the protection of the physical and psychological integrity of the person concerned or of other persons, as well in case of legal obligations such as Article 22a of the Staff Regulations, Regulation (EU, Euratom) No 883/2013, and Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999.

Article 9
Fundamental rights

1. In the implementation of this Decision the fundamental rights and principles laid down in the Charter of Fundamental Rights of the European Union¹³, in particular Article 21 thereof on the right to non-discrimination, shall be observed.

2. In the implementation of this Decision consideration shall be given to the increased risk of harassment faced by victims experiencing discrimination based on a combination of sex and other grounds of discrimination, such as those listed in Article 1d of the Staff Regulations.

3. In the implementation of this Decision particular attention shall be given to the risk of intimidation, retaliation, secondary and repeat victimisation and to the need to protect the dignity and physical integrity of victims.

4. Without prejudice to any interim measures to protect the victim, the presumption of innocence of alleged harassers shall be guaranteed for the entire duration of all procedures.

Article 10
Information

1. The Directorate-General for Human Resources and Security shall maintain and, where necessary, regularly update a web portal containing all relevant information on the measures and procedures in place for the prevention of and fight against harassment, including links to all the information concerning the actors and services referred to in Article 15, the annual activity reports produced by IDOC, the Mediation Service, and the Chief Confidential Counsellor. Those actors and services shall, within the limits of their individual mandates, exchange information, excluding personal data, which facilitates the tasks of the other actors, and in particular the prevention of harassment.

2. The relevant actors and services referred to in Article 15 shall, in accordance with their respective mandates, collect and report aggregated statistical data at regular intervals on allegations of harassment registered under the informal and the formal procedures.

3. Where contacted by any person, the actors and services referred to in Article 15 shall provide that person with comprehensive information on the available procedures and services of the administration.

¹³ OJ C 326, 26.10.2012, p. 391.

Chapter III

Institutional framework

Article 11

Function of Chief Confidential Counsellor

1. The function of Chief Confidential Counsellor shall be established in the Directorate-General for Human Resources and Security.
2. The Chief Confidential Counsellor shall report directly to the Member of the Commission responsible for Administration with respect to the responsibilities set out in this Decision and shall report annually to that Member of the Commission on the fulfilment of their mandate.
3. The Chief Confidential Counsellor shall be selected from among persons with an established and proven record of relevant knowledge and professional experience and whose integrity, independence, impartiality, and probity are beyond doubt. They shall be appointed for a period of 5 years, renewable once, after the approval of the Member of the Commission responsible for Administration.
4. The Chief Confidential Counsellor shall be independent in their work and shall neither receive nor accept any instructions about their work. For the purposes of processing of personal data, the Chief Confidential Counsellor shall be considered as delegated controller pursuant to Commission Decision (EU) 2020/969¹⁴.
5. The Chief Confidential Counsellor shall, both during and after their term of appointment, be subject to rules on confidentiality with regard to any information which has come to their knowledge in the course of the performance of their mandate.
6. The Chief Confidential Counsellor shall be responsible for the development and coordination of the implementation of the policy on the prevention of and fight against harassment. The responsibilities of the Chief Confidential Counsellor shall not affect those of the Mediation Service pursuant to Decision C(2002) 601, the role of IDOC pursuant to Decision C(2019) 4231, or the role of OLAF pursuant to Commission Decision 1999/352/EC¹⁵.
7. The Chief Confidential Counsellor shall be provided with appropriate resources to carry out their tasks and shall be responsible for and assisted by the network of confidential counsellors.

Article 12

Confidential counsellors

1. Confidential counsellors shall be selected by the Chief Confidential Counsellor among staff members following an open call for expressions of interest. The Staff Committee shall be consulted before the publication of the call for expressions of interest and shall have a representative in the selection panel. The call shall indicate the selection criteria, including:
 - (a) the abilities necessary to perform the role of confidential counsellor;

¹⁴ Commission Decision (EU) 2020/969 of 3 July 2020 laying down implementing rules concerning the Data Protection Officer, restrictions of data subjects' rights and the application of Regulation (EU) 2018/1725 of the European Parliament and of the Council, and repealing Commission Decision 2008/597/EC (OJ L 213, 6.7.2020, p. 12).

¹⁵ Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC(1999) 802).

- (b) professional experience or training;
- (c) knowledge or experience in the area of human resources;
- (d) reasons for wanting to become a confidential counsellor;
- (e) availability.

2. Selected confidential counsellors shall receive a mandate from the Chief Confidential Counsellor for a term of two years, renewable twice. Before awarding a mandate to selected confidential counsellors, the Chief Confidential Counsellor shall inform the Directorates-General or Services where the selected confidential counsellors occupy a post of their selection. The confidential counsellors shall exercise their mandate in accordance with Article 28 under the responsibility of the Chief Confidential Counsellor, but shall remain assigned to their Directorate-General or Service of origin.

3. Before starting and during their mandate, confidential counsellors shall receive appropriate training, including on active listening, holding an impartial and objective stance, the impact of harassment on victims' health and capacity to work, equality, gender equality, diversity, inclusion, protection of personal data, and different dispute settlement mechanisms available in the Commission. They shall have access to external psychosocial services.

4. Without prejudice to other legal obligations such as Article 22a of the Staff Regulations, Regulation (EU, Euratom) No 883/2013, and Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999, confidential counsellors shall, both during and after the term of their mandate, be subject to rules on confidentiality with regard to any information which has come to their knowledge in the course of the performance of their mandate.

5. The mandate of a confidential counsellor may be withdrawn by a decision of the Chief Confidential Counsellor where they fail to comply with the rules laid down in this Decision or the rules of procedure of the confidential counsellor network.

Article 13

Incompatibilities concerning confidential counsellors

1. The role of confidential counsellor shall be incompatible with the following positions:
 - (a) Data Protection Officer;
 - (b) elected staff representative or member of a governing body of a representative trade union or professional organisation;
 - (c) member of any *de jure* or *de facto* staff association whose main aim is to intervene in matters within the scope of this Decision;
 - (d) staff member in one of the following services:
 - (a) the unit in charge of the formal procedure;
 - (b) the Security Directorate of the Directorate-General for Human Resources and Security;
 - (c) IDOC;
 - (d) the HR Correspondent's team in a Directorate-General or Service;
 - (e) career guidance services;
 - (f) the Medical Service of the Commission;
 - (g) the Mediation Service of the Commission;

- (h) OLAF;
- (i) the office of the Data Protection Officer.

2. Before a selected confidential counsellor receives a mandate, the Directorate-General for Human Resources and Security shall check whether the candidate is subject to either of the following:

- (a) an administrative inquiry, pre-disciplinary proceedings, or disciplinary proceedings;
- (b) a disciplinary penalty which still appears in their personal file.

3. Where a person having applied following a call for expressions of interest referred to Article 12(1) falls within one of the categories listed in paragraph 2, the Chief Confidential Counsellor may reject their application, taking into account the concrete circumstances of the case and subject to providing the necessary justification.

4. Where a confidential counsellor falls within one of the categories listed in paragraph 2, point (a) or (b), after their appointment, the Chief Confidential Counsellor may, taking into account the concrete circumstances of the case and subject to providing the necessary justification, suspend their mandate for the duration of the proceedings or until a disciplinary penalty no longer appears in their personal file. Depending on the circumstances of each case and subject to providing the necessary justification, the Chief Confidential Counsellor may at any time withdraw the mandate of such a confidential counsellor.

4. Where, after appointment, a confidential counsellor takes up any of the positions listed in paragraph 1, the Chief Confidential Counsellor shall withdraw their mandate at the latest from the day they take up any of such positions.

Article 14

Relations with the Directorate-General or service of origin

1. The Directorate-General or Service to which the confidential counsellor is assigned shall provide them with the appropriate resources in order to carry out their tasks. Those resources shall, in particular, include an appropriate place where victims may be received and appropriate office and IT equipment. Confidential counsellors shall not receive instructions in relation to their work as confidential counsellors from the Directorate-General or Service to which they are assigned.

2. Each confidential counsellor's travel costs for attending training and other activities of the network shall be disbursed from the budget of the Directorate-General or Service to which they are assigned.

3. The time devoted by confidential counsellors to their tasks and training in relation to their work as confidential counsellors shall be taken into account by their Directorate-General or Service in the overall determination of their workload.

4. The activity carried out by a confidential counsellor in the framework of this Decision shall be considered as work in the interests of the institution.

5. The competent appointing authority for the authorisations provided for in Articles 17 and 17a of the Staff Regulations shall seek the prior approval of the Chief Confidential Counsellor in relation to the activities carried out as confidential counsellors.

Article 15
Relevant actors and services

1. Without prejudice to OLAF's prerogative foreseen by Article 5(3) of Regulation (EU, Euratom) No 883/2013 and its role in the prevention of and fight against harassment in accordance with Decision 1999/352/EC, the following actors and services shall be responsible for different steps in the course of informal or formal procedures pursuant to this Decision based on their respective mandates and in coordination between themselves and the actors and services listed in paragraph 6 of this Article:

- (a) the Chief Confidential Counsellor with the assistance of the network of confidential counsellors;
- (b) the Mediation Service of the European External Action Service ('EEAS Mediation Service') and the network of confidential counsellors of the EEAS for staff members serving in Union Delegations;
- (c) the unit in charge of the formal procedure;
- (d) IDOC.

2. The Chief Confidential Counsellor shall:

- (a) be the principal entry point for victims to provide prompt and confidential advice, information on available services, and support to the victims during the informal procedure and its aftermath;
- (b) at the request of the victim, provide their opinion on aspects of the preliminary examination in accordance with Article 39(2);
- (c) in accordance with Article 38(4) of this Decision, provide elements or documents relevant to the preliminary assessment, which they have been informed of during the informal procedure, or testify as witness on the facts relevant to the administrative inquiry conducted by IDOC or, upon its invitation, OLAF or the pre-disciplinary proceedings and/or disciplinary proceedings, in accordance with Commission Decision C(2019) 4231. The Chief Confidential Counsellor may ask to be called as witness;
- (d) establish, where appropriate, temporary structures to listen to staff members concerned and help to facilitate the implementation of interim protective measures and accompanying measures in accordance with Chapter VI;
- (e) advise and support managers on preventing harassment within their teams;
- (f) respond to situations indicating potential harassment brought to their attention pursuant to Articles 6 and 22;
- (g) manage the network of confidential counsellors in accordance with Articles 11, 12 and 13, Article 27(1), point (d), and Article 28(3);
- (h) provide support to victims on an individual basis.

3. The Chief Confidential Counsellor and the confidential counsellors shall fulfil their mandate in accordance with the rules on informal and formal procedures laid down in Title II and Title III. They shall not provide legal assessment of facts or conclude on the establishment of harassment.

4. The unit in charge of the formal procedure shall be responsible for dealing with requests for assistance in accordance with Title III.
5. IDOC shall address allegations of harassment brought to its attention in accordance with the rules on the formal procedure laid down in Title III.
6. Without prejudice to their other competences laid down in other legal acts, the following services and actors shall also be involved in the prevention of and the fight against harassment, as provided for in this Decision:
 - (a) managers;
 - (b) competent human resources services, notably human resource correspondents;
 - (c) the Medical Service of the Commission, with due respect for medical confidentiality;
 - (d) relevant psychosocial services in the Commission;
 - (e) the Mediation Service of the Commission.
7. Staff representatives may also be involved in the prevention of and the fight against harassment, notably pursuant to Article 23.

Article 16
Training and support

1. The Commission shall ensure appropriate training and support to the services and actors referred to in Article 15.
2. All managers shall complete mandatory training on anti-harassment policy and their role in the prevention of and fight against harassment as soon as possible after the adoption of this Decision. Newly appointed managers shall complete the training at the time of taking up duties.

Chapter IV **Prevention**

Article 17
Prevention principles

1. The Directorate-General for Human Resources and Security shall establish a set of comprehensive measures for the prevention of harassment as part of the general psychosocial risks prevention measures. Those measures shall include information and awareness-raising campaigns, training and learning activities, advice and support, where needed, and measures reflecting a systemic monitoring and assessment aimed at identifying and remedying what in the principles of work organisation and relations between staff members is likely to favour or allow the appearance of harassment. Those measures shall be easily accessible and available for all persons, in particular to those holding management responsibilities. The Chief Confidential Counsellor shall coordinate the implementation of such comprehensive measures.
2. The Directorate-General for Human Resources and Security shall regularly conduct a staff survey on harassment to assess the prevalence of and trends in sexual and psychological harassment. The prevention and response measures shall be revised accordingly, where appropriate, on the basis of the results of such survey.

3. Managers and services in charge of human resources in the Commission departments shall actively promote and apply the policy of preventing harassment. The Chief Confidential Counsellor shall provide advice and support in that respect.

4. The Mediation Service shall contribute to the prevention of harassment through general recommendations on systemic issues about employment relationships it detects during its work. Its contributions shall be detailed in the annual General Activity Report of the Mediation Service.

Chapter V

Early intervention within the workplace

Article 18

Personal action and involvement of managers

1. Persons who feel that they are the target of harassment may raise the matter directly with the alleged harasser, to explain what behaviour they find unwelcome and to make clear that they want it to stop.

2. Persons who feel that they are the target of harassment, or who have witnessed such behaviour, may inform their line manager, asking for the latter's advice or involvement in resolving the matter. If the alleged harasser is the direct manager, the persons who feel that they are the target of harassment or who have witnessed such behaviour, may raise the matter directly with the line manager's hierarchy. Line managers may contact the Chief Confidential Counsellor to seek advice and support on the prevention of harassment within their teams.

3. When acting in accordance with paragraphs 1 and 2, persons who feel that they are the target of harassment may be accompanied by a representative. The steps set out in paragraphs 1 and 2 shall not be a condition for initiating an informal or a formal procedure laid down in Titles II or III.

Chapter VI

Listening structures, interim protective measures, accompanying measures and contact with services and actors

Article 19

Temporary listening structures

The Chief Confidential Counsellor may, where appropriate, establish temporary structures to listen to staff and take any follow-up action that may be deemed appropriate.

Article 20

Interim protective measures

1. On the victim's request, appropriate and proportionate interim measures to protect the victim may be taken. Such measures may, in particular, involve a transfer of the alleged harasser or of the victim to another entity. The Directorate-General of Human Resources and Security shall further detail the implementation of interim protective measures.

2. Interim protective measures shall not affect any final decision about whether harassment did or did not take place. Unless prevented by overriding reasons linked to the urgency of the situation, the appointing authority shall hear the person subject to an interim measure pursuant to paragraph 1, before taking that measure.

3. The Chief Confidential Counsellor shall make recommendations to and assist the appointing authority in the assessment aiming to establish whether interim measures to protect the victim are needed. Where relevant, the Chief Confidential Counsellor may facilitate the implementation of interim protective measures, without prejudice to the competences of the respective actors and services involved.

Article 21
Accompanying measures

1. In cases where an instance of harassment is established at the end of a formal procedure, appropriate measures shall be taken in favour of the victims, in order to mitigate the effects of the harassment and, where appropriate, facilitate their reintegration into the world of work.

2. Upon request of the victim or the appointing authority the Chief Confidential Counsellor shall coordinate the implementation of the accompanying measures.

Article 22
Contact with services, actors, and alleged harasser

1. The Chief Confidential Counsellor may, where appropriate, contact the services and actors referred to in Article 15, paragraphs 1 and 6. The Chief Confidential Counsellor may provide those services and actors with the relevant information or advice on appropriate measures without prejudice to the competences of the respective services and actors and, where necessary for data protection purposes, with the explicit consent of the victim.

2. The Chief Confidential Counsellor may contact the services and actors referred to in Article 15 in particular in the following cases:

- (a) to inform, for general preventive measures, services and actors concerned of situations they have identified that are prone to result in harassment or which are unwelcomed by persons and to advise them on appropriate measures, for example by indicating best practice and available trainings, without providing any personal data;
- (b) to inform the appointing authority of the need to implement protective or accompanying measures, notably, when the Chief Confidential Counsellor identifies a situation that would require a transfer of the alleged harasser or the victim;
- (c) to inform, with the explicit consent of the victim, the relevant services about situations which may impact the assessment of staff members in different career-related procedures such as the annual appraisal exercise, the promotion exercise, and the certification procedure.

2. When they consider this appropriate means to mitigate a situation, the Chief Confidential Counsellor may, with the victim's explicit consent, contact the alleged harasser to inform them of the concerns raised and to advise them on the means to address the situation, without engaging in any kind of mediation between the victim and the alleged harasser or legally qualifying the conduct.

Title II

The informal procedure

Chapter I

General provisions

Article 23

First contact

1. The Chief Confidential Counsellor shall be the first contact point for victims wishing to initiate an informal procedure in case of harassment, in accordance with this Title .
2. The Mediation Service may be contacted to obtain advice or initiate mediation in case of conflict at work in accordance with Commission Decision C(2002) 601.
3. The EEAS Mediation Service may be contacted directly by Commission staff members serving in Union Delegations wishing to initiate an informal procedure in the EEAS. The EEAS Mediation Service shall be the preferred procedure for staff members serving in Union Delegations in relation to individual situations or individual decisions pertaining to the day-to-day working relationships at their place of employment, or relating to their rights and obligations resulting from their posting in Union Delegations, where the Commission has delegated powers to the EEAS.
4. Where issues relate in part or in full to staff members occupying posts in the establishment plan of the EEAS, the EEAS Mediation Service may be best placed to facilitate the settling of those issues.
5. Victims may also contact the staff representatives, who may inform the relevant actor pursuant to paragraphs 1, 2, and 3 with the person's explicit consent.
6. Where a person seeks contact with one of the actors referred to in paragraphs 1 to 4, that actor shall systematically check with the person concerned if they have contacted other actors, to ensure effective coordination of support.

Article 24

Parallel proceedings

1. Where a victim who engaged in an informal procedure with a confidential counsellor, assigned to them by the Chief Confidential Counsellor, subsequently initiates a procedure with the Mediation Service or the EEAS Mediation Service, the informal procedure with the confidential counsellor shall be terminated, after duly informing the victim.
2. The informal procedure with a confidential counsellor shall be reopened, upon request of the victim, where the Mediation Service or the EEAS Mediation Service decide not to take on the case, and in the event of a failed mediation attempt or abandonment of mediation by either of the parties.

Article 25

Right to terminate the procedure

The victim may terminate the informal procedure at any time.

Chapter II

The informal procedure with the Chief Confidential Counsellor

Article 26

Scope

The informal procedure with the Chief Confidential Counsellor shall be available to the following persons:

- (a) staff members;
- (b) national experts seconded to the Commission;
- (c) persons employed under contracts concluded under national law;
- (d) service providers and their staff;
- (e) trainees;
- (f) junior professionals in delegations;
- (g) special advisers.

Article 27

The role of the Chief Confidential Counsellor

1. In addition to the competencies set out in Article 15, the Chief Confidential Counsellor shall be responsible for:

- (a) informing victims of harassment of their rights and of available procedures;
- (b) providing information to witnesses seeking advice on combatting harassment and on available procedures;
- (c) depending on the victim's needs, either assigning the case to a confidential counsellor, or referring the victim to relevant services in order to help them find a satisfactory solution to an identified problem;
- (d) selecting and conferring mandate on the confidential counsellors, managing the network of the confidential counsellors, adopting its rules of procedure, ensuring appropriate training and support, including psychological supervision, to the members of the network, and potentially withdrawing the mandate of a confidential counsellor;
- (e) making recommendations and providing support to the respective service in assessing a need for interim protective measures and facilitate their implementation, coordinating accompanying measures in order to mitigate the effects of the harassment and, where appropriate, facilitating victims' reintegration into the world of work, and contacting the services or actors responsible for implementing different measures to provide them with the relevant information or advice in accordance with Chapter VI;
- (f) upon their request, listening to victims who engaged in the formal procedure, without, however, intervening at any stage of the formal procedure, notwithstanding their role pursuant to Articles 35(3), 37(3) and 38(2);

- (g) if appropriate, with the explicit consent of the victim, contacting the alleged harasser to inform them of the concerns raised and to advise them on the means to address the situation, without engaging in any type of mediation in accordance with Article 22(3);
- (h) informing the Director-General or the Head of Service concerned of recurrent allegations of harassment occurring in the same Directorate-General or Service and, with the agreement of the victim, informing IDOC.

2. In exceptional cases, the Chief Confidential Counsellor may decide to perform the tasks of a confidential counsellor, in which case they shall be subject to the rules applicable to confidential counsellors.

Article 28

The role of confidential counsellors

1. Confidential counsellors shall receive, listen to, support, inform, and guide victims, referred to them by the Chief Confidential Counsellor, in victims' efforts to find a satisfactory solution in a situation which victims perceive as involving harassment.
2. The confidential counsellors shall carry out their work in an independent manner. They shall be trustworthy, remain neutral and objective, and seek to clarify with the victims the circumstances of the situation.
3. The confidential counsellors shall be organised in a network organised and managed by the Chief Confidential Counsellor and shall work in a spirit of mutual cooperation.

Article 29

Initial interview with the confidential counsellor

1. Following the assignment of a case by the Chief Confidential Counsellor to a confidential counsellor, the confidential counsellor shall organise an initial interview with the victim, with the aim of determining their needs and explaining the procedure.
2. Following the initial interview, the victim shall decide whether they wish to pursue the informal procedure further.
3. Where the victim does not wish to pursue the informal procedure further with the confidential counsellor, the case shall be closed without further action, unless overriding reasons linked to the urgency of the situation require immediate intervention.

Article 30

Conflict of interest

1. The Chief Confidential Counsellor shall decide on the assignment of cases to the confidential counsellors. A confidential counsellor shall, in principle, not deal with a file if they are assigned in the same Directorate-General or Service as the victim or the alleged harasser, or if they have a personal interest such as to impair their independence.
2. A confidential counsellor who finds themselves in a situation of conflict of interest in a case for which their involvement is required shall immediately interrupt the procedure and inform the Chief Confidential Counsellor so that appropriate action can be taken.

Article 31
Principle of prior authorisation

1. Unless urgent action is needed to protect the physical or psychological integrity of the victim, the Chief Confidential Counsellor shall, in the context of the informal procedure, only contact other services, including IDOC or OLAF, or disclose to third parties the information provided by the victim with the prior authorisation of that person.
2. Where in exceptional cases of urgency it is necessary to protect the physical or psychological integrity of the victim, and where it is not possible to obtain the prior authorisation of the victim, the confidential counsellors may contact other services, including IDOC or OLAF, or disclose to third parties the information provided by the victim only with the prior authorisation of the Chief Confidential Counsellor. The victim should be consequently duly informed.

Article 32
Referral to the Mediation Service or the EEAS Mediation Service

1. The Chief Confidential Counsellor, following due consideration of the confidential counsellor's input when applicable, shall inform the person concerned about the option to seek assistance from the Mediation Service when the situation pertains to a conflict at work. Any referral to the Mediation Service shall occur only with the prior consent of the person concerned.
2. Persons may contact for matters related to conflict at work the Mediation Service at any time. Staff members shall inform the Chief Confidential Counsellor of their decision. The Chief Confidential Counsellor shall consequently close the case.
3. The Chief Confidential Counsellor and the Mediation Service shall establish a memorandum of understanding setting out the details of their cooperation pursuant to this Article.
4. Commission staff members serving in Union Delegations may directly contact the EEAS Mediation Service. Where they have previously contacted the Chief Confidential Counsellor, they shall inform the Chief Confidential Counsellor of their decision to initiate the procedure with the EEAS Mediation Service. The Chief Confidential Counsellor shall consequently close the procedure.
5. The Chief Confidential Counsellor and the EEAS Mediator shall establish a memorandum of understanding setting out the details of their cooperation regarding Commission staff members serving in Union Delegations to address allegations of harassment and conflict at work.

Article 33
Time limits

1. The informal procedure shall be terminated within two months from the initial interview referred to in Article 29. In exceptional cases, the Chief Confidential Counsellor may extend that deadline once by one month, unless a longer extension is duly justified.
2. Where the period laid down in paragraph 1 has expired, the confidential counsellor shall inform the victim that their assignment to the case has ended. Where the victim wishes to benefit from mediation, the confidential counsellor shall inform that person that they may turn to the Mediation Service or start the formal procedure, pursuant to Title III.

Article 34

Processing of personal data by the Chief Confidential Counsellor and the network of confidential counsellors

1. Personal data obtained by the Chief Confidential Counsellor and the network of confidential counsellors as part of the informal procedure shall be processed in accordance with Regulation (EU) 2018/1725 and with the respective record of processing operations maintained in accordance with Article 31(1) of Regulation (EU) 2018/1725. The personal data shall be stored in a secured physical or electronic environment to prevent unlawful access or transfer of data to persons who do not have a need to know.
2. The data kept as part of the informal procedure shall be limited to the information contained in the opening form. The opening form shall be established by the Chief Confidential Counsellor and shall contain the name of the person who engaged in the informal procedure, their Directorate-General or Service, and the name of the assigned confidential counsellor. The Chief Confidential Counsellor shall store the opening form in a secure manner for a maximum of 5 years starting from when the personal data was collected. The Chief Confidential Counsellor and the confidential counsellors shall not keep any personal data obtained during the informal procedure –contained in the opening form beyond the time necessary to fulfil their mandate.
3. The Chief Confidential Counsellor may, where necessary, exchange information with other services and actors in accordance with Article 22, including personal data, where such information is required for the legitimate performance of their tasks.
4. The Chief Confidential Counsellor shall inform the persons involved in the informal procedure about the processing of their personal data in accordance with Articles 15 and 16 of Regulation (EU) 2018/1725. This information shall be conveyed to the persons by means of privacy statements accessible by appropriate means.
5. The Commission may restrict the right of access, pursuant to Articles 14 to 17 and Articles 19, 20 and 35 of Regulation (EU) 2018/1725, by the alleged harasser to their personal data obtained by the Chief Confidential Counsellor and its network of confidential counsellors during the informal procedure.
6. The Chief Confidential Counsellor and their network of confidential counsellors shall receive training on protection of personal data and shall act in accordance with the Code of Conduct of confidential counsellors.

Title III

The formal procedure

Article 35

Scope

1. The formal procedure shall be available to:
 - (a) staff members who consider themselves to be victims of harassment;
 - (b) former staff members who consider themselves to have been victims of harassment, where the alleged facts occurred while they were in active service at the Commission.
2. Staff members and former staff members who do not wish to lodge a request for assistance and all other categories of persons who are not covered by the Staff Regulations or the CEOS

may address the allegations of harassment directly to IDOC or to OLAF, without limiting the protection afforded by national law, where available.

3. IDOC shall address allegations of harassment brought to its attention in accordance with Decision C(2019) 4231. OLAF shall address allegations of harassment brought to its attention in accordance with Regulation (EU, Euratom) No 883/2013. IDOC and OLAF shall cooperate, and exchange information based on the administrative arrangements agreed between the Commission and OLAF.

4. The formal procedure shall be guided by the principles of fairness, diligence, and impartiality towards the victim and the alleged harasser and shall comply with Article 24 of the Staff Regulations.

Article 36

Opening of the formal procedure

1. The victim shall submit a request for assistance to the unit in charge of the formal procedure.

2. In support of their request, the victim shall provide all the elements of proof at their disposal which they deem necessary for an analysis of the case.

3. During the formal procedure, the victim may ask the Chief Confidential Counsellor to listen to them or seek advice on the course of the formal procedure and the approach to it.

4. Notwithstanding their role pursuant to paragraph 3 of this Article and Articles 38(3) and 39(2), the Chief Confidential Counsellor shall not intervene in any stage of the formal procedure.

Article 37

Interim protective measures and information exchange

1. The unit in charge of the formal procedure or IDOC may recommend to the appointing authority, at any time during the formal procedure, to take interim protective measures pursuant to Article 20.

2. OLAF may recommend to the appointing authority, in the context of its investigation, to take precautionary measures pursuant to Article 7(6) of Regulation (EU, Euratom) No 883/2013.

3. The unit in charge of the formal procedure shall, where necessary, exchange information, including personal data, with relevant services involved in the implementation of the interim protective measures, where such information is required for the legitimate performance of tasks.

Article 38

Preliminary examination of the elements put forward by the victim

1. The unit in charge of the formal procedure shall transmit the request for assistance to IDOC, which shall conduct a preliminary assessment to determine whether those elements constitute prima facie evidence of harassment or any other inappropriate behaviour. The preliminary assessment and examination shall not be limited to analysing individual acts of the alleged harasser in separation, but shall consider whether the acts constitute a pattern over a period of time.

2. When the allegations of harassment are put forward alongside allegations of fraud, corruption and any other illegal activity affecting the financial interests of the Union or when they constitute serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations, IDOC shall transmit the relevant information to OLAF without delay, in accordance with the Administrative Arrangements on cooperation and a timely exchange of information between the Commission and OLAF. IDOC shall also inform the unit in charge of the formal procedure thereof.

3. Within three months following the registration of the request for assistance, the unit in charge of the formal procedure shall perform a preliminary examination. That unit may extend the deadline to perform the preliminary examination by one month where necessary to take account of the opinion of the Chief Confidential Counsellor requested by the victim pursuant to Article 39(2).

4. As part of the preliminary assessment and examination referred to in paragraphs 1 and 2, fact finding activities may be carried out including, where necessary, by meeting the victim and other persons proposed by the victim. With the victim's explicit consent, the Chief Confidential Counsellor and confidential counsellors may be called, including upon the initiative of the Chief Confidential Counsellor, to provide elements or documents relevant to the preliminary assessment, which came to their knowledge during the informal procedure.

5. The unit in charge of the formal procedure may also contact staff members or the services responsible for human resources of the Directorate-General or Service of the victim and of the alleged harasser in order to obtain their assessment of the situation and all elements relevant to the case.

Article 39
Right to be heard

1. Where the unit in charge of the formal procedure considers that the elements put forward by the victim in the context of the request for assistance do not constitute prima facie evidence of harassment, it shall provide a summary of its considerations to the victim, who may submit their comments to that unit within 10 working days of receipt of the summary.

2. The victim may ask the Chief Confidential Counsellor to provide their non-binding opinion on aspects of the preliminary examination, based on the summary of the considerations. The opinion of the Chief Confidential Counsellor shall specify whether and for what reasons certain elements of the preliminary examination might require further attention. The Chief Confidential Counsellor shall provide their opinion to the victim and to the unit in charge of the formal procedure within the time limit referred to in paragraph 1, extended by 5 working days. The opinion of the Chief Confidential Counsellor shall be independent of any comments provided by the victim pursuant to paragraph 1.

3. Taking into account the comments submitted by the victim pursuant to paragraph 1 and, where applicable, the opinion of the Chief Confidential Counsellor delivered in accordance with paragraph 2, within the time limits referred to in paragraph 1 or 2, the unit in charge of the formal procedure shall finalise the preliminary examination, in consultation with IDOC, duly motivating any departure from the opinion of the Chief Confidential Counsellor, where applicable.

Article 40

Follow-up of the preliminary examination where there is no prima facie evidence of harassment

1. Where the unit in charge of the formal procedure in consultation with IDOC or OLAF, concludes that there is no prima facie evidence of harassment, the appointing authority shall reject the request for assistance and shall inform the victim of the reasons thereof.
2. The appointing authority shall provide the victim with information concerning remaining measures to address their situation. This may include the possibility to turn to the Chief Confidential Counsellor who may provide additional support and advice to the victim on avenues available outside the formal procedure, and the possibility to turn to the Mediation Service who may provide assistance on matters related to conflict at work.

Article 41

Follow-up of the preliminary examination where there is prima facie evidence of harassment

1. Where the unit in charge of the formal procedure in consultation with IDOC concludes that the elements put forward by the victim constitute *prima facie* evidence of harassment, the appointing authority competent for the opening of administrative inquiries shall instruct IDOC to open the administrative inquiry in accordance with Decision C(2019) 4231. Where the allegations were addressed to OLAF and the latter considers there is *prima facie* evidence to open an investigation, OLAF shall proceed in accordance with Regulation (EU, Euratom) No 833/2013 of the European Parliament and of the Council¹⁶.
2. The appointing authority competent to decide on the request for assistance shall inform the victim of the opening of an administrative inquiry. The unit in charge of the formal procedure shall forward to IDOC any information it receives that is relevant for the administrative inquiry.

Article 42

Information from IDOC

1. IDOC shall inform the unit in charge of the formal procedure in the following cases:
 - (a) it has finalised the administrative inquiry, and the appointing authority decided to close the case without further action because the inquiry established that there was no evidence of harassment;
 - (b) it has finalised the administrative inquiry, which corroborated the allegations and the appointing authority took the appropriate measures;
 - (c) it has finalised the administrative inquiry and, based on the established facts, the appointing authority decided to open a pre-disciplinary proceeding;
 - (d) the pre-disciplinary proceeding referred to in point (c) have ended and the appointing authority decided that no case can be made against the person concerned;

¹⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

- (e) the pre-disciplinary proceeding referred to in point (c) have ended and the appointing authority decided to address a warning to the person concerned;
- (f) the pre-disciplinary proceeding referred to in point (c) resulted in the appointing authority deciding to initiate disciplinary proceedings;
- (g) disciplinary proceedings ended with a penalty imposed by the appointing authority;
- (h) no penalty was imposed on the person concerned as a result of the disciplinary proceedings.

2. In reply to their request, victims of harassment who introduced a request for assistance shall receive a reasoned decision containing the information on the outcome of the procedure pursuant to paragraph 1, including on the type of penalty imposed in cases where harassment was established, from the unit in charge of the formal procedure. Victims who did not lodge a request for assistance shall receive the information about the outcome of the procedure from IDOC.

3. The requestor shall be heard before any decision to reject their request for assistance is adopted.

Article 43

Follow-up to the IDOC inquiry

1. The appointing authority shall take a reasoned decision in reply to a request for assistance in the cases referred to in Article 42, points (a), (b), (d), (e), (g) and (h).

2. In accordance with Article 11(4) of Regulation (EU, Euratom) No 883/2013, the Secretariat-General shall report to OLAF on the action, in particular of a disciplinary or legal nature, taken to follow-up on the recommendations addressed to the Commission by the Director-General of OLAF upon completion of internal investigations.

Article 44

Cases where the alleged harasser is a Member of the College

Where the claim of alleged harassment is directed towards a Member of the College, and information constituting *prima facie* evidence has been provided, the Director-General for Human Resources and Security shall inform the President, the Member of the Commission in charge of Administration, or only one of them if the claim concerns the other, and, if the criteria set out in Article 22a(1), subparagraph 3, of the Staff Regulations are fulfilled, OLAF without delay. The principles set out in Articles 4 to 9 shall apply to those claims.

Article 45

Complaints

Victims who have submitted a request for assistance may lodge a complaint to the appointing authority against the final decisions referred to in Article 40 and Article 43 on the request for assistance taken in accordance with Title III of this Decision, in accordance with Article 90(2) of the Staff Regulations.

Article 46

Protection of victims of harassment and of witnesses called to testify

1. Without affecting the rules on the maximum duration of contracts and the rules governing the extension of contracts of temporary and contract agents, the victim shall not suffer any prejudicial effects on the part of the Commission, where, at the end of formal procedure:

- (a) it is established that harassment took place; or
- (b) there is no proof that the allegations were made in bad faith.

2. Without affecting the rules on the maximum duration of contracts and the rules governing the extension of contracts of temporary and contract agents, witnesses called upon to testify during the formal procedure shall not be subject to any retaliatory measures. They may lodge a request for assistance in accordance with Article 24 of the Staff Regulations to seek the Commission's assistance against possible retaliatory measures.

Title IV

Procedure before national authorities

Article 47

Remedies before national authorities

1. In accordance with Article 47 of the Charter of Fundamental Rights of the European Union, victims have the right of access to remedies before the national authorities. They shall seek permission from the appointing authority in accordance with Article 19 of the Staff Regulations before bringing their allegations before a national authority, when they intend to disclose information of which they have knowledge by reason of their duties. Permission shall only be refused by the appointing authority where the interests of the Union so require and when such refusal would not entail criminal consequences as far as the victim is concerned. In situations of imminent or immediate danger or in situations which are related to allegations of sexual harassment or other acts of physical violence that harm the integrity of the victim, the victim shall not be required to seek permission from the appointing authority.

2. Where no formal procedure has been previously initiated, the appointing authority shall transmit the information to IDOC or OLAF with a view to performing a preliminary assessment and, where appropriate, conducting an administrative inquiry into the facts.

3. Insofar as it is not prohibited by the rules governing the procedure launched before the national authorities, the victim shall keep the appointing authority informed of the progress of the file.

Article 48

Assistance to the victim in national procedures

1. Upon request from a victim who wishes to take further legal steps against the harasser before a national authority, the appointing authority may decide to provide support to that victim.

2. Assistance to staff members may include, where appropriate, the payment of reasonable legal fees. The assistance may be provided in the following situations:

- (a) where, at the end of the disciplinary proceedings concerning a case of harassment, it is established that harassment took place;

- (b) where, at the end of an administrative procedure, the appointing authority decides to initiate disciplinary proceedings;
- (c) in exceptional cases not covered by points (a) and (b).

Article 49

Cooperation with national authorities

Where a national authority requests the assistance of the Commission in the context of legal proceedings linked to allegations of harassment, the Commission shall cooperate with that authority, in accordance with the principle of sincere cooperation.

Article 50

Decisions pursuant to Article 19 of the Staff Regulations

1. Without prejudice to victims seeking remedies before national authorities in accordance with Article 47, where a staff member is requested by a national authority to appear before it to testify in legal proceedings concerning alleged harassment, the staff member concerned shall request an authorisation to do so from the appointing authority, in accordance with Article 19 of the Staff Regulations.
2. Before taking a decision on the request for authorisation referred to in paragraph 1, the appointing authority shall verify whether IDOC or OLAF have conducted an administrative inquiry into the case or whether such an inquiry is ongoing.
3. Where no administrative inquiry has been conducted or is pending, IDOC shall conduct a preliminary assessment without delay and, where necessary, an inquiry into the matter, except for cases involving a Member of the Commission, to which Article 44 shall apply.
4. The decision on the request referred to in paragraph 1 of this Article shall be a decision within the meaning of Article 90(1) of the Staff Regulations. In taking such a decision, the appointing authority shall take into account all available information, including the findings made during any formal procedure or administrative inquiry already concluded. Should an administrative inquiry still be pending, the appointing authority shall also take IDOC's preliminary assessment into account.
5. The appointing authority shall refuse to grant the authorisation requested pursuant to paragraph 1 only where the interests of the institution so require and such refusal would not entail criminal consequences for the staff member concerned. The decision to grant or refuse authorisation shall take account of whether the staff member concerned is to benefit from immunity from legal proceedings pursuant to Article 11, point (a), and Article 17 of the Protocol No 7 on Privileges and Immunities. Where the appointing authority refuses to grant such an authorisation, it shall communicate to the national authority its findings and the reasons for the refusal.
6. The appointing authority may decide to inform the national authorities of the existence of any formal procedure or administrative inquiry on the matter and may, upon request of the national authorities, provide all relevant documents pertaining to such procedures once they are finalised.

Article 51

Decisions under Article 17 of the Protocol No 7 on Privileges and Immunities for cases of alleged harassment

1. Where the Commission receives a request from a Member State authority to waive the immunity of a staff member for a case of harassment, the Commission shall verify whether an administrative inquiry has been conducted by IDOC or whether such an inquiry is ongoing. Where no inquiry has been conducted, and there is no ongoing inquiry, IDOC or OLAF shall conduct a preliminary assessment as soon as possible and, where necessary, an administrative inquiry into the matter, except for cases involving a Member of the Commission, to which Article 44 shall apply.
2. Where the Commission decides to apply Article 17 of the Protocol No 7 on Privileges and Immunities in the context of a case of harassment brought before a Member State authority, all available information shall be taken into account, including the findings made during any formal procedure or administrative inquiry already concluded. Where an administrative inquiry is pending, the Commission shall also take IDOC's preliminary assessment into account.
3. The Commission may decide not to waive the immunity of a staff member where it would be contrary to the interests of the institution pursuant to Article 17 of the Protocol No 7 on Privileges and Immunities. In that case, the findings of the Commission and the reasons for the refusal to waive the immunity shall be communicated to the Member State authority.
4. The Commission may decide to inform the Member State authorities of the existence and outcome of any formal procedure or administrative inquiry on the matter and shall, upon request of the national authorities, provide all relevant documents pertaining to such procedures once they are finalised.
5. OLAF shall be consulted in accordance with Article 6 of Decision 1999/396/EC, ECSC, Euratom on any request from a Member State authority, pursuant to this Article, to waive the immunity of a staff member¹⁷.

Article 52

Assistance to staff members called before a national authority

1. Where the appointing authority takes a decision to waive the immunity of a staff member or to authorise a staff member to disclose, during legal proceedings, information they have knowledge of by reason of their duties, the staff member concerned may request the appointing authority to provide them with appropriate means of assistance pursuant to Article 24 of the Staff Regulations.
2. In deciding upon the request referred to in paragraph 1, the appointing authority shall take into consideration all available information, including the findings made during a formal procedure or an administrative inquiry already concluded, as well as, where an administrative inquiry is still pending, IDOC's preliminary assessment.
3. Assistance shall cover at least the reasonable legal fees incurred by the staff member, in cases where the conditions pursuant to Article 24 of the Staff Regulations are met. Where at

¹⁷ Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests (OJ L 149, 16.6.1999, p. 57).

the end of a judicial procedure, the staff member is convicted of a criminal offence, the legal fees paid to them in the form of assistance shall be recovered.

Title V

Final provisions

Article 53 *Practical guide*

The Directorate-General for Human Resources and Security shall establish a guide providing practical information regarding the principles covered by this Decision and shall update it as necessary.

Article 54 *Reporting*

1. The Chief Confidential Counsellor shall report to Member of the Commission responsible for Administration on an annual basis on their activities. Their report shall, notably, include relevant aggregated data on reports of harassment referred to in Article 10(2), as well as data on the prevention activities, including systemic prevention, taken in accordance with Article 17.

2. The Chief Confidential Counsellor shall also regularly inform the Joint Committee on Equal Opportunities, the Joint Committee on Prevention and Protection at Work in Brussels, and the security and hygiene committees on the implementation of this Decision. These joint committees should also be consulted on the implementation of the survey conducted by the Directorate General for Human Resources and Security pursuant to Article 17(2).

Article 55 *Review*

The Commission shall assess the implementation of this Decision three years after its entry into force.

Article 56 *Transitional provisions*

1. Articles 33 and 38 shall not apply to cases registered before the entry into force of this Decision.

2. Confidential counsellors appointed before the entry into force of this Decision shall continue to exercise their functions until the end of their mandate.

Article 57 *Repeal*

Decision C(2006) 1624/3 is repealed.

Article 58
Taking effect

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

Done at Brussels, 12.12.2023

For the Commission
Johannes HAHN
Member of the Commission