

Draft rules of procedure for the institutions of the European Civil Service in terms of harassment

*(Draft document submitted by the Harassment Working Group to the Federal
Committee in view of the Bratislava Congress)*

The Dubrovnik Congress instructed the USF Federal Committee to *"draft a set of rules, inspired by the most progressive legislation on the subject, on how to deal with complaints of intimidation and harassment"*. To this end, the CF/USF has created a Harassment/Psychosocial Risks Working Group to respond to this mandate and address any issues related to this subject that may arise at the CF/USF.

Please find below: 1. Rules: basics (p.1) 2. Details of the Rules (pp 2-6) 3. How to address psycho-social risks in the Rules (Appendix)

1. Draft Rules

Principles

- . Non-impunity - zero tolerance
- . Presumption of innocence
- . Prevention: mandatory nature
- . Independence of the actors
- . More transparency without compromising confidentiality

Implementation

- . Awareness-raising at all levels
- . Improving on how the complaint is handled and how the complainant is taken care of
- . Strengthening the role of actors
- . Strengthening coordination between the different actors
- . Inter-institutional coordination
- . Strengthening the role of the Prevention and Protection at Work Committees (or equivalent)
- . Examination of the relevance of mediation or conciliation
- . Protection against reprisals
- . Naming and Shaming
- . Special case of decentralized agencies and offices
- . Special attention paid to the most vulnerable agents
- . The European Ombudsman

2. Details of the rules

Non-impunity - zero tolerance: the institution's senior managers will have to convey the message of zero tolerance and non-impunity through their harassment declarations/acts, even if it means removing some information from confidentiality. If harassment is recognized, sanctions will be necessary[MJ1].

Respect for the presumption of innocence |

[MJ2]

Prevention: mandatory nature

Prevention must be mandatory in all institutions.

Provision should be made for an independent monitoring mechanism with a dedicated and independent service and staff: e. g. creation of an Internal Service for Prevention and Protection at Work as provided for by Belgian law, which will have the mandates, resources and staff (including occupational psychologist) to coordinate the fight against these risks. It must be absolutely independent of the DGs and have the power to recommend all collective or individual measures to be implemented. Among its functions, with the frank support of the Organization's senior management, the launch of a prevention plan based on a risk analysis.

A Prevention Plan with an interim and regular evaluation system should be also provided for.

Independence of the actors

The various actors involved in harassment cases must be able to carry out their mission in complete freedom and independence.

More transparency without compromising confidentiality

Institutional health protection actors and parties involved in the procedure would have access, even if it meant anonymising them, to certain statements in the procedure.

Awareness-raising at all levels

- ✓ All interlocutors, from top management to the average agent, should be made aware of the problem and invited to observe a respectful attitude towards everyone and to alert whoever is entitled in the event of harassment observed;
- ✓ Training at an early stage of recruitment, in particular for managers and all staff with an HR role (socio-medical team, HR staff, staff representatives, etc.);
- ✓ Clear (e.g. clear and documented brochure including: what is and what is not harassment and exhaustive information on the structure put in place should be available;
- ✓ Possibly, create a publication line on the subject;
- ✓ Have studies produced by recognised and neutral bodies on psycho-social risks, produce figures so that the respective public institutions cannot contest and take the problem seriously;
Launching media events, e. g. film screening and debate during a dedicated day;
- ✓ Launch of a major initiative, based on the 2004 European Framework Agreement on work-related stress, which had led to various initiatives;
- ✓ Push for a ministerial conference or "Etats généraux";

- ✓ Use the opportunity of an international day (e.g. Kindness Day/Dignity Day) to undertake targeted anti-harassment actions.

Improving the care of the complainant

The complainant [MJ3] must be put at the center of the procedure. It will be necessary:

- . Review existing formal and informal procedures to shorten the time required to implement them [MJ4];
- . it will be a matter of seeking more systematically alternative means of settlement to changing the complainant's service or taking sick leave; the possibility of quickly extracting the alleged harasser [MJ5] from a service where he is experiencing a situation that puts his health at risk should, however, be maintained - taking into account that for some "harassed" people, such a measure may be considered as a "double penalty".
- . Improve the medical examination process, with the possibility of seeking an opinion [MJ6] from an external doctor if necessary and a third medical opinion in the event of disagreement between the occupational doctor and the consulting doctor
- . Provide paper/online documentation to clearly inform the complainant of the tools and procedures available to him/her
- . Provide for the possibility for the plaintiff to seek compensation from the court
- . Create confidential contact points, in particular for first listening and orientation (e.g. Hotline run by people, including lawyers with extensive experience in harassment)
- . Accompany the complainant during interviews, hearings - possibly by a lawyer [MJ7]
- . Provide for the possibility of discussion groups
- . Provide for the destruction of the medical file at the end of the procedure [MJ8]
- . and finally, very importantly, to do everything possible to give the complainant every opportunity for a successful reintegration into the workplace at the end of the procedure.

Strengthening the role of actors

Creation (or strengthening) of the role of Harassment Counselors [MJ9]

Advisors should be experienced in this area. Independence in the performance of their duties is essential. Their role must be strengthened, as they must have the power to take appropriate action if the head of the institution concerned fails. They would lighten the complaint procedure for the complainant, as they would be responsible for this formality. They would have a proactive role in verifying whether an isolated complaint does not conceal a collective problem.

More restrictive selection of trusted persons, whose activities as trusted persons will have to be monitored by professionals (psychologist, other) - grant them time on their working time for this function, offer them training, provide them with more discreet places

Strengthening coordination between the different actors

- . Harassment Prevention Advisors;
- . Occupational physicians;

- . Trusted persons;
- . Control doctors;
- . Representatives of the protection/hygiene & safety committees;
- . Mediators_[MJ10] and/or mediation services;

Mediators_[MJ11] should be able to coordinate in total freedom and independence, to do so they should have meeting places where they can express their opinions. Information should be able to flow between them, in complete confidentiality

Inter-institutional coordination

It should be promoted and encouraged, in particular through occasional meetings between the actors of the various institutions (e. g. ETUC, EPSU), in order to assess the impact of the measures put in place and exchange on best practices.

Strengthening the role of the Prevention and Protection at Work Committees (or equivalent)

The CPPT_[MJ12] or equivalent:

- . should be able to receive the results of the RPS_[MJ13] analysis
- . should be able to be represented within the Coordination of RPS on the collective or individual preventive measures resulting from it.
- . should be able to have anonymized information related to all forms of RPS,
- . its members should be trained and consulted in advance on any measures taken to manage psycho-social risks (including personal choice of trust)
- . should be able to be overseen by a neutral body in order to guarantee its independence (eg. CES)

Examination of the relevance of mediation or conciliation

If appropriate, every effort should be made to promote fair mediation or conciliation between the parties to avoid aggravation of the conflict (taking into account the possible power imbalance between an alleged harasser determined in the face of a weakened harasser_[MJ14]).

It should be possible for staff to be kept more informed of closed and ongoing cases, even if this means anonymising certain elements. This would give them greater confidence in existing arrangements.

Protection against reprisals

It is certainly important to empower witnesses (colleagues, hierarchy) - to encourage them not to remain passive, because that is consent, but it is essential for that purpose that both the complainant and the witnesses or persons involved in the proceedings, at whatever level, obtain guarantees against any reprisals_[MJ15].

Naming and Shaming

- ✓ Launching actions to make situations in the institutions public could be undertaken, for example without the framework of a "European Harassment Observatory";
- ✓ Create a complaints register: Complaints should be recorded, anonymized, in a register, maintained by SIPP^[MJ16];
- ✓ make public the costs of harassment through specific examples;
- ✓ make public the figures of malaise (absenteeism, long illnesses, turnover, suicide, etc.);

E.g.: online platform where the figures would be made public by institution - either the organisations concerned are highlighted if the figures are "good", or it will make them "bad publicity".^[MJ17]

- ✓ .consider, unlike shaming, "praising", by highlighting managers (the "manager of the month") who have managed their team effectively in a climate of well-being.

Special case of decentralized agencies and offices

Special attention should be paid to agencies which, because of their small structure or distance from headquarters, are sometimes more vulnerable and have fewer resources to implement the policies decided by the parent organization^[MJ18].

Additionally, in case of small agencies the impartiality and objectivity of the investigators could be questioned whenever the inquiries are carried out by internal investigators. Such impartiality could further be disputed because of the employment subordination relationship existing between an internal investigator and the Appointing Authority who has to take the final decision on the existence of harassment, or not.

The matter has been addressed also by the European Ombudsman, who in her report on dignity at work (reference: SI/2/2018/AMF), reminds the EU institutions that investigations carried out in the context of harassment needs not only to be conducted impartially but also to be perceived as impartial by all parties concerned. She, therefore, recommends using external investigators, especially in relatively small agencies "where most staff members know each other" (§32 of her recommendation). To this end USF would like to suggest the creation of a pool of staff members from the Agencies to be used especially for the purposes of investigation of alleged harassment. The individuals included in the pool must receive the appropriate training. It is highly recommended that the Agency investigating alleged harassment makes use of the pool as this would allow the use of external investigators and will ensure a higher degree of impartiality. ^[MJ19].

Special attention paid to more vulnerable agents

(e.g. contractual status, disability, illness, difficult personal situation, etc.) or potential targets of harassment (employee representatives)

The European Ombudsman

The European Ombudsman ^[MJ20] recently published a [report on dignity at work in the EU institutions and agencies: SI/2/2018/AMF](#) wherein she suggests a series of best practices identified and she strongly encourages all EU institutions, agencies and bodies to adopt them. These practices can be divided into two categories: i) what to do to avoid harassment taking place, ii) what to do when things go wrong.

The adoption of the suggested measures should be supported by USF. ~~In view of his mission, it would be appropriate to include the action of the European Ombudsman in any~~

~~mechanism: "The European Ombudsman is an independent and impartial body which can hold the institutions and agencies of the European Union to account and which promotes good administration. The European Ombudsman assists individuals, companies and organisations experiencing problems with the European Union administration by investigating complaints about maladministration by the European Union institutions and bodies, as well as by examining, on his own initiative, broader systemic issues." It should be noted, however, that it apparently only intervenes at the level of the EU institutions, and therefore not for our non-Community organisations (?)~~

References used:

Devices/proposals referenced

- . Belgian law of September 2014
- . existing arrangements at the Commission
- . existing mechanism at the Council of the EU
- . existing mechanism in Parliament
- . existing system at EEAS
- . existing arrangements at the Council of Europe
- . Proposals of the Commission's CPPT
- . existing mechanism at the European University Institute
- . Working documents studied within the Federal Committee (JP Escanilla, S. Saint-Marc)
- . French law
- . Existing PCA device - pending

APPENDIX
RISQUES PSYSHOSOCIAUX
COMMENT LES INCLURE DANS LES REGLES PROPOSEES ?

En se basant sur la liste de recommandations ci-dessus pour le harcèlement, on pourrait globalement retenir la même liste de règles pour la question des risques psychosociaux (RPS). Au niveau de l'application des procédures, 4 éléments semblent ressortir :

- . Les RPS sont **plus liés à la structure et à l'organisation** du travail qu'à un comportement individuel
- . L'approche devrait se fonder essentiellement sur la **prévention**
- . la **partie informelle** des différentes procédures étudiées pour le harcèlement semble plus pertinente pour la question des RPS.
- . A cette approche informelle, devrait se greffer un **dispositif plus contraignant de contrôle et de suivi** et la possibilité pour la victime d'obtenir compensation de l'Organisme qui l'emploie.

A part la question de non-impunité et de présomption d'innocence, toutes les règles proposées en matière de harcèlement seraient applicables pour les RPS.

On pourrait donc proposer que les autres règles soient appliquées pour le traitement des RPS, avec un intitulé plus inclusif :

**REGLES SUR LA FACON DE TRAITER LES PLAINTES POUR INTIMIDATION
ET HARCELEMENT**
&
**POUR LA PREVENTION ET LA PROTECTION DES TRAVAILLEURS CONTRE
LES AUTRES RISQUES PSYCHOSOCIAUX**