Decision on harassment: where do we stand and what do we propose?

A few weeks ago, we informed you about the ongoing social dialogue meetings with the administration on a new decision to prevent and combat moral and sexual harassment.

In this context, the representatives of U4U, together with the representatives of the other trade unions, are asked to make proposals to the administration in order to improve the proposed decision.

Here are some key points about the ongoing discussions:

1. What are we talking about?

The proposal under discussion concerns psychological and sexual harassment as defined in the Staff Regulations.

Mental harassment is defined as "any form of continuous, repeated or systematic improper behaviour, whether verbal, physical, gestural or written, which is intended to undermine the personality, dignity or physical or psychological integrity of a person".

As for sexual harassment, again according to the law, it consists of "conduct of a sexual nature which is unwanted by the person to whom it is directed and which has the purpose or effect of violating the dignity of that person or of creating an intimidating, hostile, offensive or embarrassing environment".

As can be seen, these definitions are rather restrictive and exclude a large proportion of situations of violence and intimidation at work. In particular, it should be noted that moral harassment must be proven to be **intentional**. This excludes, in particular, bad management practices, situations of systematic deterioration of the working climate in teams, etc.

Since the purpose of the decision under discussion is not only **to combat** harassment but also **to prevent** it, it is extremely important that these preventive measures take account of situations which, without necessarily constituting harassment, contribute to creating a breeding ground in which harassment can easily develop.

2. What is the basis of the proposal under discussion?

Inspired by the practices of other international organisations (the role of the "anti-harassment coordinator" created by the World Bank comes to mind), the new proposal for a decision focuses on the role of a new actor who should make the whole procedure more accessible and clearer: the "Chief Confidential Counsellor".

This senior official (at the level of a senior adviser - equivalent to a director-general or deputy director-general) will have several responsibilities. He or she will work independently under the direct authority of the Commissioner for Administration.

His responsibilities will include, but are not limited to, the following:

1. Selection and appointment of Confidential Counsellors (Art. 22.c and 25 of the draft decision)
2. Overall responsibility for initiating, developing and coordinating the implementation of the anti-harassment and prevention policy (Art. 10.6)
3. Multiple responsibilities within the framework of the informal procedure (art. 22), in particular to inform the victims of harassment (art. 22.a) and to appoint confidential counsellors responsible for following up the cases submitted to them (art. 22.b). In addition to these responsibilities, there are also various tasks to support victims or managers in charge of dealing with harassment situations (art. 22.d and 22.f), including the coordination of support measures for the victims' return to work (art. 22.e).
4. Responsibilities for identifying and reporting to the relevant Directors-General and Heads of Service on recurrent situations of harassment that may occur in their services (Article 22.g).

3. What are the issues that interest us?

3.1. Yes to centralisation... but with caution and a dose of decentralisation

As you can see from the above, the Administration's proposal for a decision relies on centralisation and independence as assets to improve the global, coherent and efficient management of situations of harassment or risk of harassment. This is a risk we are prepared to take, but not without precautions.

In particular, we consider it important that the work of the Chief Confidential Counsellor is regularly monitored by a joint committee such as the CPPT.

In order to ensure that the “Chief Confidential Counsellor”, but also our trade union organisation and the various committees concerned, benefit from a complete and relevant feedback, we as an organisation will also strengthen the role of proximity monitoring of our "contact persons", i.e. the members of our trade union who represent us in the various services and DGs.
In fact, it is not a distortion of the independence of the Chief Confidential Counsellor to give him the means to be questioned on issues that are part of his area of responsibility.
This local presence, which our organisation has put in place, could be institutionalised by electing staff representatives in the various DGs who could play an early warning role, including with human resources departments, staff committees and even the “Chief Confidential Counsellor”.

3.2. Insist on professionalisation and training of actors

Effective prevention of harassment and related risks cannot be envisaged without a sufficient level of professionalism and training.

For this reason, we will ask that the “Chief Confidential Counsellor” must be supported by a person with appropriate training, at Master's level, in the management and prevention of psychosocial risks.

We will also insist that the members of the network of persons of trust receive not only initial training when they take up their duties but also sufficient ongoing training and supervision, which is absolutely necessary for people dealing with difficult human situations.

IDOC and OLAF officers who follow up on harassment-related cases in the framework of the formal procedure or as a follow-up to complaints should also be able to benefit from adequate training on these matters by competent persons.

3.3. Introduction of a "duty to inform" for witnesses of harassment

The staff of the institutions are bound by a duty to inform in various matters (see, for example, Article 22a of the Staff Regulations, which obliges them to report any possible illegal activity of which they become aware).

The introduction of a similar principle involving an obligation to inform the Chief Confidential Counsellor (i.e. an authority responsible for prevention rather than for disciplinary matters) of any situation which may constitute harassment seems desirable in order to enable him to act in the most effective way (including by exercising his

responsibility to inform the Directors-General or Heads of Service himself in the event of repeated situations of harassment).

3.4. Establishing a 'duty to protect' for line management

Similarly, the introduction of a specific and formally stated duty to protect victims of harassment, in addition to the general duty to protect employees incumbent on members of the hierarchy, could help to make our managers more aware of their responsibilities in these matters.

3.5. Strengthening the systemic and organisational dimension of prevention

Article 22(g) of the draft decision, which requires the Chief Confidential Counsellor to inform the Directors-General and Heads of Service of repeated situations of harassment in the entities for which they are responsible, should be expanded. The organisational and systemic dimension of harassment and its links with the prevention of psychosocial risks in general should be taken more into account in the decision.

3.6. Questioning the role of the mediation service in the procedure

The special position of the conciliation service in the harassment procedure raises a number of problems and causes much dissatisfaction among the staff who use its services.

The quality of the mediation service's work does not seem to us to be in question, and the reason for this dissatisfaction is undoubtedly to be found in the specificity of the service's methods of intervention.

As the person in charge of the service herself explained to us during the interview, the role of a mediation service is not to support a victim against a perpetrator, but rather to work on restoring a relationship and a possibility of communication between two people who are considered to be "equal" and in a neutral way.

This is often not the approach that victims of harassment need. Instead, they are looking for the support and empathetic listening that people they trust can provide. The tragedy of harassment is that once a colleague has gone through the mediation service, it is impossible for him or her to go back to the support person.

We therefore suggest that the logic of the proposed decision be taken to its logical conclusion and that the Chief Confidential Counsellor be the sole point of contact for

harassment situations. The latter could, if necessary, refer victims who explicitly request it to the mediation service.

In such a configuration, when the mediation service receives a request that it considers to be a harassment situation, it would refer this request to the Chief Confidential Counsellor in order to enable the applicant to receive all the necessary information on the various steps available to him/her. The mediator would then only intervene in the second line and after the Chief Confidential Counsellor has been able to fully inform the victim of all the possibilities of intervention available to him/her.

3.7. Explicit treatment of situations of "risk of harassment

In order to intervene in situations of proven or suspected harassment, we consider it essential to formalise in the Decision the monitoring of situations of "risk of harassment". We therefore propose that a specific article or title be added to the decision to deal with this type of situation, in which the risk of harassment is increased due to a deterioration in the relationship or disruption in the organisation of work.

3.8. Responding with assistance to "requests for assistance" from colleagues

The term "request for assistance" is used instead of "complaint" when a victim asks the administration to deal with a situation of harassment. This refers to Article 24 of the Staff Regulations, which states that "the Union shall assist an official" who has been the victim of threats, contempt or insults.

It therefore seems to us that this reference to "assistance", both in the Statute and in the proposed decision, should be interpreted as strictly as possible. To assist is not simply to register a complaint, but to help, support and assist the person who requests it.

While the services responsible for the follow-up of disciplinary complaints (IDOC and possibly OLAF) must of course act within a framework of neutrality and respect for the rights of the defence, the same is not necessarily true of the unit in DG HR responsible for managing requests for assistance in harassment cases.

We argue that it should play an active role in supporting, advising and guiding victims and not be reduced to a mere registration chamber for requests.

3.9. Management of a possible "conflict of interest" of the Chief Confidential Counsellor

One of the strengths of the proposed Decision is the centralised and independent role of the Chief Confidential Counsellor.

A problematic aspect of this exceptional position is that it involves situations in which the person is personally involved or even the subject of a harassment complaint.

This would, at the very least, create a conflict of interest situation and possibly a more general problem of the credibility of the office.

This situation should therefore be taken into account in the draft decision and solutions should be found.
One possibility would be to allow the Network of Trusted Persons to elect from among its members one or two deputies to the Chief Confidential Counsellor, who could replace him in the event of a conflict of interest.

3.10. Establishment of a principle of prior authorisation for complaints or testimony concerning harassment

Finally, Articles 48 and 50 of the draft decision provide for a prior authorisation requirement for victims wishing to lodge a complaint with a national court or for witnesses invited to give evidence.

This provision, derived from Article 19 of the Staff Regulations, will also allow the administration to be systematically informed of all the situations concerned.

Given the importance of facilitating access to proceedings before national courts, we recommend that these authorisations should be granted by default and that they should automatically lapse if there is no reply within one month (with the possibility of a one-off extension for the same period). Refusal decisions should be explicit and precisely reasoned.

Do you have any comments or suggestions? Do not hesitate to send us your comments via our functional box REP-PERS-OSP-U4U and send a copy to Yves Caelen, who is coordinating the follow-up of this file for our organization.