

# ***Charter of Ethics for reference persons and persons seeking assistance***

***Within the framework of the informal procedure for a request for assistance in a case of psychological or sexual harassment at the OHIM***

## **1. GENERAL PRINCIPLES**

This charter of ethics is intended to serve as a guide for persons acting as reference persons<sup>1</sup> as well as for persons seeking assistance<sup>2</sup> within the context of the informal procedure for a request for assistance in the event of psychological or sexual harassment.

As regards reference persons, acceptance of their mandate implies a commitment to comply with the provisions of this charter.

Persons seeking assistance, in turn, must observe the principles establishing their rights and obligations under this procedure.

To enable the informal procedure to provide a solution to the problem, relations between reference persons and persons seeking assistance must be based on absolute trust and mutual respect. Honesty, loyalty, integrity, confidentiality and the good faith of the parties involved are essential.

The principles of professional ethics set out in this charter are applicable at all stages of the relationship between the reference person and the person seeking their assistance, even after conclusion of the case. The reference person will inform the person seeking assistance of the general terms of that relationship and provide him/her with a copy of this document in order to ensure that he/she is clearly informed of the moral contract established with the reference person.

## **2. PRINCIPLES OF PROFESSIONAL ETHICS FOR THE REFERENCE PERSON**

### **Respect for the rights and dignity of the person**

Reference persons have a duty to respect the person seeking assistance, avoiding discrimination of any kind.<sup>3</sup>

The reference person must respect the moral values of the person seeking assistance, which underlie the points referred to above, i.e. this person's freedom to live according to his/her own beliefs.

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<sup>1</sup> 'Reference person' means the institutional agent appointed by the Appointing Authority under the informal procedure. The role of the reference person is, above all, to listen to people who request assistance, to inform them of their rights and duties as well as those of other persons involved, to advise them of the options available and, at the request of a person who considers himself or herself to be a victim, to reconcile the parties in dispute.

<sup>2</sup> 'Person seeking assistance' means a person who requests the assistance of a reference person with a problem he/she faces directly and who is a member of staff of the Office in a broad sense covered by the Staff Regulations (officials, temporary members of staff, auxiliary staff, contract staff, local staff, special advisors) or, by analogy, a seconded national expert or a member of staff having a contractual relationship in the broad sense with the Office (temporary employment agency workers and trainees). Staff of the Office's contractors carrying out their work on the Office's premises, whilst not being considered as Office staff, are covered by and subject to these guidelines, provided that one of the persons directly involved in the dispute has a contractual link (in the broad sense) with the Office.

<sup>3</sup> such as discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation (Article 1d (77) of the Staff Regulations).

Respect for the person seeking assistance prohibits any use or manipulation of their suffering or difficulties or of the values or facts communicated, observed or interpreted, with a purpose to oppress that person or interfere unjustifiably in their private life, or to undermine their honour and reputation or, worse still, to further the personal interests of the reference person.

### **Professional secrecy and confidentiality**

Reference persons are appointed by the Appointing Authority from amongst the Office staff covered by the Staff Regulations. They are therefore necessarily bound by Article 17 of the Staff Regulations and consequently must ensure professional secrecy is maintained whenever their services are called upon. Reference persons may share information with third parties who are members of the Office staff covered by the Staff Regulations where this is necessary for the proper performance of their role. In such case, the reference person will inform the person who has sought his/her assistance. The duty of confidentiality extends to the persons involved in this way, unless the information concerned has already been made public.

Conclusion of a case does not remove the duty of secrecy, even after the departure of the person who sought assistance.

### **Duty of information**

Reference persons have an absolute duty to give the person seeking assistance all necessary information regarding his/her rights and the foreseeable advantages and disadvantages of the action to be taken, and to be clear about the objectives and content of the procedure. They have a duty to inform the person seeking assistance in a comprehensible and truthful manner of the outcome of the steps taken as it relates to him/her.

They must also answer questions concerning the use to be made of the data collected.

### **Informed consent and freedom to consent**

The reference person will not involve any person against their will, in an accompaniment measure or similar support of procedure, and acknowledges the right of the person seeking assistance to withdraw his/her participation at any time. Reference persons must make sure that the person seeking assistance has given her overall consent before taking any steps.

### **Competence and professional constraints**

Reference persons must carry out their role only, within the limitations of their mandate, of the skills they have acquired by training and experience. They must be aware of the limitations of the procedures, methods and forms of action used, as well as of the conclusions they may draw from them.

Reference persons agree to refer the person seeking assistance, where appropriate, to other service providers available at the Office, notably the Human Resources Department, the medical department or the welfare officer, to deal with those requirements of the person seeking assistance which fall outside their remit. In the event of doubt, reference persons must themselves consult a specialist or request professional advice and support.

In exercising their role, reference persons are responsible for maintaining and developing their own skills, *inter alia* by taking part in training provided by the Human Resources Department or by requesting specific training.

### **Responsibility and requirement for quality and speed**

Reference persons are responsible for their work and must carry it out diligently and aim to offer a high quality service. In their function, reference persons must demonstrate the utmost objectivity and be committed to responding as quickly as possible when a request is received.

### **Avoidance of damage**

Reference persons must avoid using methods which may cause damage to the persons concerned, or infringe their dignity or impinge upon their private life to a greater extent than necessary to achieve the required purpose.

Reference persons must not use their knowledge of the person seeking assistance for purposes which may be detrimental to him/her.

### **Continuity of assistance**

Reference persons are responsible for ensuring continuity of the assistance provided to the person seeking assistance, collaborating with another reference person where appropriate.

They must take all necessary measures where they are obliged to suspend or terminate their involvement.

### **Resolution of ethical problems**

When an ethical problem arises, the reference person must take this into account and seek to find an appropriate solution. Where necessary, the reference person should not hesitate to consult colleagues who also act as reference persons or the Human Resources Department. These parties have a duty to assist.

### **Conflicts of interest**

Reference persons must refuse to deal with a case if they anticipate a conflict of interests arising and refer the person seeking assistance to other reference persons or to the Human Resources Department.

### **Honesty and thoroughness**

Reference persons must pay attention to detail and recognise the limitations of the conclusions and opinions expressed in their reports and declarations made when carrying out their mandate. At no time in the procedure must they pass judgement on the situation presented by the person seeking assistance, on the person seeking assistance himself/herself or on third parties mentioned by the person seeking assistance.

### **Relations with colleagues acting as reference persons**

Reference persons must support their colleagues in the application of this charter and the related guidelines.

Reference persons must respect the ideas and practices of their colleagues on condition that they are in compliance with this charter.

When a reference person believes that a colleague's conduct does not accord with the charter, he/she must draw this to the colleague's attention<sup>4</sup>.

When a request to a reference person acting within his/her mandate conflicts with this charter or the related guidelines, the reference person has a duty to act in accordance with the established principles and, where necessary, to refer the matter to colleagues also acting as reference persons and to the Human Resources Department.

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<sup>4</sup> In the event of non-compliance with the professional ethics charter or the related guidelines, the mandate of a reference person may be revoked by the Appointing Authority.

### **3. PRINCIPLES OF PROFESSIONAL ETHICS FOR THE PERSON SEEKING ASSISTANCE**

#### **Rights**

##### **Right to be informed:**

The person seeking assistance has the right to be informed of:

- the informal procedure and how it relates to any potential formal procedure;
- all steps concerning him/her for which his/her prior consent is required;
- the possibility of having recourse, where appropriate, to other services of the Office to obtain medical, psychological or welfare assistance which the reference person cannot provide.

##### **Freedom of choice**

The person seeking assistance is entitled to choose which reference person to approach.

##### **Right to confidentiality**

The person seeking assistance is entitled to confidentiality regarding the approach to the reference person, the information passed to the reference persons and any other information relating to him/her.

##### **Right to inspect the file**

As soon as a formal procedure has been set in motion, the persons seeking assistance have the right to access their data..

#### **Duties**

##### **Duty of information**

The person seeking assistance must inform the reference person of the decisions he/she takes concerning the steps proposed or scheduled.

The person seeking assistance must inform the reference person of the outcome of the steps he/she decides to take, on his/her own so that the reference person can judge whether the file may be considered closed or suggest appropriate follow-up action.

If the person seeking assistance believes that the reference person has failed to carry out his/her mandate, he/she may report this only to the Human Resources Department or to the Appointing Authority.

##### **Duty of courtesy and respect**

A lack of courtesy or respect vis-à-vis the reference person may constitute a valid reason for that reference person to refuse to continue to provide the assistance requested. The person seeking assistance shall abstain from making any derogatory oral or written comments concerning the reference person to third parties during or after the case.

The person seeking assistance must allow the reference person the time reasonably required to take the agreed action.

#### **4. PROTECTION OF PERSONAL DATA**

Persons involved in the anti-harassment procedure have a duty to process all information received in accordance with the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data.

Confidentiality and compliance with the legislation relating to protection of personal data is guaranteed during and after the informal procedure and during and after the formal procedure, to the alleged victim, to the alleged harasser and to any witnesses.

Any information communicated to the administration or to the reference person which relates to a situation of harassment is considered to be strictly confidential and shall not be used without the prior consent of the persons concerned. Only in exceptional circumstances where the alleged victim is in danger and must therefore be urgently protected, can this be overruled.

Each person involved will ensure the safeguarding of the information and files he/she deals with according to his/her mandate or role, in accordance with the rules relating to the protection of personal data and with Article 17 of the Staff Regulations. Any information published shall include only statistical data of an anonymous and non-identifiable nature.

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## **GUIDELINES ON PROTECTING THE DIGNITY OF THE PERSON AND PREVENTING PSYCHOLOGICAL HARASSMENT AND SEXUAL HARASSMENT AT THE OHIM**

### **INTRODUCTION**

As an employer and to protect its staff, the OHIM must guarantee respect for the dignity of women and men at the workplace. The Office has committed itself wholeheartedly to combating psychological harassment and sexual harassment and to condemning such behaviour, which falls within the broader issue of violence at work and is a serious problem in the working environment.

These guidelines apply to any persons working at the Office or for the Office, regardless of their status, contract of employment or place of work, provided that one of the persons directly involved in the conflict has a contractual link with the Office<sup>1</sup>. In the case of persons not covered by the Staff Regulations of Officials of the European Communities or the Conditions of employment of other servants of the European Communities<sup>2</sup>, the protective measures considered will apply by analogy. In other cases, penalty measures will however be the subject of a recommendation of the Office submitted for consideration to the contracting party.

The Office will adopt the measures necessary to prevent and penalise, in accordance with the Staff Regulations and Community legislation in force in this field, any non-compliance or conduct infringing the dignity of the person at work and the dignity of the function, irrespective of the status of the persons formally recognised as guilty of such conduct.

In this regard, management (at both middle and senior level) play a key role. As managers, it is their duty to ensure the creation and preservation of a working environment that sets limits to the risks of psychological and sexual harassment, and in which such situations can be remedied as swiftly as possible.

### **1.- THE LEGAL FRAMEWORK**

● **Directive 2006/54/EC of 5 July 2006** on the implementation of the principle of equal treatment of men and women in matters of employment and occupation defines at Article 2 the concepts of "harassment" and "sexual harassment" and formally prohibits these forms of discrimination in the workplace.

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<sup>1</sup> Office staff in the broad sense are defined as: staff covered by the Staff Regulations (officials, temporary staff, auxiliary staff, contract agents, local staff, special advisors) and, by analogy, seconded national experts and staff having a contractual relationship in the broad sense with the Office (temporary employment agency workers and trainees). Staff of the Office's contractors carrying out their work on the Office's premises, whilst not being considered as Office staff, are covered by and subject to these guidelines, provided that one of the persons directly involved in the dispute has a contractual link (in the broad sense) with the Office.

<sup>2</sup> Hereinafter referred to as the "Staff Regulations".

- **Council Directives 2000/43/EC<sup>3</sup> and 2000/78/EC<sup>4</sup>** protecting all persons within the European Union against discrimination on the basis of race or ethnic origin, and against discrimination on the basis of religion or belief, disability, age or sexual orientation. These two directives lay down a series of principles offering any person in the European Union a minimum level of legal protection against discrimination.
- **The Staff Regulations of Officials of the European Communities:** Article 12a states that *“All officials shall refrain from any form of psychological or sexual harassment”*.

## **2.- DEFINITIONS**

According to Article 12a of the Staff Regulations,

‘3. *“Psychological harassment” means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.*

4. *“Sexual harassment” means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. (...)*’.

Psychological harassment and sexual harassment often stem from abuse of power or maliciousness, and can be perpetrated by both individuals and groups. It may come from colleagues on an equal footing, as well as superiors and subordinates.

### **Psychological harassment**

Under the Staff Regulations psychological harassment means any improper conduct that takes place over a period, is repetitive or systematic and involves 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.<sup>5</sup>

Subject to the repetitive and systematic character mentioned in the previous paragraph, a range of different types of behaviour can be considered psychological harassment, such as:

- proffering offensive or degrading comments to or about someone, in particular in public, including insults, threats or humiliations;
- bullying, showing antagonism, exercising inappropriate pressure, refusing to communicate;
- belittling someone’s contributions and achievements;
- excluding, ignoring and/or rejecting someone;

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<sup>3</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>4</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>5</sup> See point 5.b for a definition of the concept of the alleged victim.

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- placing someone in a professionally unsustainable situation, e.g., by setting manifestly unattainable working objectives or systematically giving them work that does not match their competencies or their job profile.

Such behaviour, while unacceptable, may in isolation appear of little consequence. When occurring on a regular basis, however, such conduct can cause serious harm to the person at whom it is directed.

Some kinds of behaviour or management decisions may hurt certain people without constituting psychological harassment. A remark, a dispute, a clash of personalities at work, a change decision which is difficult to accept (e.g. allocation of new tasks or setting of new objectives), a duly substantiated negative assessment, even repeated, cannot therefore necessarily be considered psychological harassment.

### **Sexual harassment**

Under the Staff Regulations, sexual harassment means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile or disturbing environment.

Sexual harassment may take different forms (physical, verbal, written or other), and involve persons of the opposite sex and of the same sex. The essential characteristic of sexual harassment is that it is unwanted by the recipient; it is therefore for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although, unlike psychological harassment, a single incident may constitute sexual harassment if it is sufficiently serious. Anyone who is guilty of such behaviour knows or should know that it affects the dignity of women and men at the workplace. Sexual harassment is also treated as discrimination based on gender.<sup>6</sup>

A range of different types of behaviour can be considered sexual harassment, such as:

- promises of some kind of reward (favourable career moves, etc.) in return for sexual favours, or threats of reprisals if such requests are turned down;
- repetition of coarse or suggestive remarks, or sexual innuendo;
- use of crude and obscene language and gestures;
- repeated and exaggerated misplaced compliments on the appearance of a work colleague;
- physical contact, rubbing against someone, pinching, deliberate unwanted kisses;
- acts of voyeurism or exhibitionism;
- transmission of pornographic material.

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<sup>6</sup> See Article 12a(4) of the Staff Regulations.

### **3.- OHIM POLICY ON THE PREVENTION AND COMBATING OF HARASSMENT**

The policy of the Office in this area is as follows:

- To offer all persons working at the Office a safe and healthy working environment, in order to ensure that professional activities can be carried out smoothly;
- To promote a culture in which all forms of harassment are judged to be unacceptable and are neither tolerated nor ignored;
- To protect all persons working at the Office against all inappropriate or misplaced conduct in the workplace;
- To take the requisite preventive measures;
- To put in place informal and formal procedures with a view to safeguarding the dignity of all persons working at the Office;
- To ensure the protection of any person working at the Office who complains about being harassed, or who acts as a witness in a harassment enquiry;
- To take disciplinary measures against any person recognised as being guilty of psychological or sexual harassment or who hinders the smooth running of the procedure;
- To verify the truth of claims of harassment to avoid such claims themselves becoming instruments of harassment against the alleged harasser, and to provide for sanctions in the event of false accusations and testimony;
- To ensure that all persons working at the Office comply with this policy; and to take appropriate measures against any person contravening it;
- To provide support to any alleged victim at the Office and to provide the best possible defence of their interests against any harasser, whether or not a member of staff of the Office, in any professional situation whatsoever;
- To raise awareness among staff and provide information, training and counselling about the policy of preventing psychological harassment or sexual harassment.

### **4.- GENERAL PRINCIPLES FOR DEALING WITH REQUESTS**

#### **a) Principle of prevention**

The Office will take the measures necessary to inform and raise awareness amongst all staff with a view to avoiding situations of harassment.

#### **b) Principles of equal treatment**

The Office, as an employer and by virtue of the principle of the duty of care, is obliged to ensure that its staff are treated with respect and dignity in all circumstances.

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Any persons working at the Office<sup>7</sup>, regardless of their status, contract of employment or place of work, is entitled to report a harassment situation in which they consider themselves to be the victim or which they have witnessed, to a reference person or to the Human Resources Department<sup>8</sup>, provided that one of the persons directly involved in the conflict has a contractual link with the Office.**c) Principle of fair treatment**

Article 12a of the Staff Regulations states that: *'An official who has been the victim of psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution. An official who has given evidence on psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution, provided the official has acted honestly.'*

**d) Principle of confidentiality**

Confidentiality and compliance with legislation on the protection of personal data is guaranteed during and after the informal procedure as well as during and after the formal procedure vis-à-vis the alleged victim, the alleged harasser and potential witnesses.

All information communicated to the administration or to the reference person which relates to a harassment situation will be considered as confidential and may be used only with the consent of the persons concerned. All persons involved will be responsible for safeguarding the files they are dealing with under their mandate, in accordance with the rules relating to the protection of personal data and with Article 17 of the Staff Regulations. Any information published on harassment cases may only comprise anonymous statistics.

**e) Principle of the presumption of innocence**

The presumption of innocence is fully guaranteed to alleged harassers.

**f) Principle of protection of victims and eventual witnesses**

The anti-harassment policy is a new protection mechanism for persons employed at the Office. In this regard, alleged victims, persons against whom a complaint has been filed and potential witnesses will be guaranteed the Office's protection under Article 24 of the Staff Regulations.

**g) Principle of swiftness**

Whether under the formal or informal procedure, all requests for assistance by a person reporting a situation of psychological harassment or sexual harassment will be dealt with as swiftly as possible. Nevertheless, it should be noted that, if an administrative enquiry is opened under the formal procedure, the timesframe for dealing with matters will, however, be longer.

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<sup>7</sup> Office staff in the broad sense are defined as: staff covered by the Staff Regulations (officials, temporary staff, auxiliary staff, contract agents, local staff, special advisors) and, by analogy, seconded national experts and staff having a contractual relationship in the broad sense with the Office (temporary employment agency workers and trainees). Staff of the Office's contractors carrying out their work on the Office's premises, whilst not being considered as Office staff, are covered by and subject to these guidelines, provided that one of the persons directly involved in the dispute has a contractual link (in the broad sense) with the Office.

<sup>8</sup> See the procedure in section '5. Procedures for dealing with psychological harassment and sexual harassment' and in particular section 'd) Requests for assistance: what to do?'

**h) Precautionary principle**

When an indication of psychological or sexual harassment has been detected, the Office may apply, as a precaution, a measure separating the parties to the dispute, either automatically in the case of the formal procedure, or at the request of the reference person or the line manager.

**i) Principle of information and training**

Awareness campaigns will take place in order to explain to the staff the policy of combating psychological harassment and sexual harassment at the OHIM (understanding the different forms of violence at work, spotting problematic behaviour, etc.).

This information will also allow staff:

- to be able to recognize harassment in the workplace and to react to it adequately;
- to know how and where to find support, advice and guidance in order to be able to act.

The harassment issue will be included in management training when necessary. Special attention will be dedicated to reference persons' training.

**5.- PROCEDURES FOR DEALING WITH PSYCHOLOGICAL HARASSMENT AND SEXUAL HARASSMENT**

**a) General Considerations**

Some people are not always aware of the impact of their behaviour. If a certain type of conduct is felt to be inappropriate or embarrassing, it is advisable to make this clear. In the event of sexual harassment in particular, ambiguous behaviour should be set straight. It is important to react immediately, setting limits politely but firmly. In some cases, in order to put an end to the situation, it may be sufficient that the alleged victim of such conduct clearly explains to the alleged harasser that he/she finds the conduct unsuitable, offensive and liable to undermine his/her performance at work or even his/her health.

If unwanted behaviour continues, a written record should be kept of all incidents: dates, circumstances, description of events, potential witnesses, personal reactions at the time and afterwards, and any psychosomatic consequences.

**b) 'Alleged victim'**

As a measure of caution, it is important to use the expression 'alleged victim' in all cases of psychological or sexual harassment.

Any person who feels he or she is the victim of psychological or sexual harassment in the workplace should be aware both that there is no reason why he or she should tolerate such treatment and that he or she is entitled to protection against all conduct which is inappropriate, abusive or misplaced.

It is a matter for the alleged victim alone to decide how he or she wishes the problem to be dealt with.

All steps will be taken to ensure that confidentiality is observed and that the identity of the alleged victim is only disclosed when absolutely necessary.<sup>9</sup>

**c) 'Alleged harasser'**

Persons suspected of harassment must be assured that their case will be dealt with strictly. They are of course also entitled to discuss it with one of the intervening parties.

All steps will be taken to ensure that confidentiality is observed and that the identity of the alleged harasser is only disclosed when absolutely necessary.<sup>10</sup>

**d) Requests for assistance: what to do?**

Any persons working at the Office or for the Office<sup>11</sup> who feel they are a victim of psychological harassment or sexual harassment are entitled to submit a request for assistance to the Office, provided that one of the persons directly involved in the dispute has a contractual link with the Office (in the broad sense).

Members of staff may choose either the informal or the formal procedure.

As a first step, staff are strongly advised to seek resolution of the problem through conciliation, via the informal procedure with the assistance of a reference person<sup>12</sup>.

Any person who feels he or she is the victim of psychological or sexual harassment is, however, free from the outset to initiate a formal procedure. The informal procedure can also lead to the formal procedure if it proves impossible to find a solution. Passage to the formal procedure is understood to automatically involve closure of any informal procedure under way.

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<sup>9</sup> Notably when the procedure requires it.

<sup>10</sup> Notably when the procedure requires it.

<sup>11</sup> Office staff in the broad sense are defined as: staff covered by the Staff Regulations (officials, temporary staff, auxiliary staff, contract agents, local staff, special advisors) and, by analogy, seconded national experts and staff having a contractual relationship in the broad sense with the Office (temporary employment agency workers and trainees). Staff of the Office's contractors carrying out their work on the Office's premises, whilst not being considered as Office staff, are covered by and subject to these guidelines, provided that one of the persons directly involved in the dispute has a contractual link (in the broad sense) with the Office.

<sup>12</sup> The role of the reference person is primarily to listen to the person who has requested his/her assistance, to advise him/her of his/her rights and obligations as well as those of the other parties involved, to advise him/her as to the options available to him/her, and, where the alleged victim so requests, to seek to reconcile the parties in dispute (see 'The parties involved')

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In parallel with this, any person accused of psychological harassment or sexual harassment may also request information (e.g. on current policy or procedures or those to be followed) or advice from reference persons or from the Human Resources Department who may usefully guide the alleged harasser on the options for resolving the conflict.

### ● **Informal Procedure**

In the informal procedure, any person who considers he or she is a victim may ask for advice or assistance from a reference person.

#### ○ **Steps in the informal procedure**

**a) Choosing a reference person:** the alleged victim of psychological or sexual harassment chooses a reference person

- either by consulting the list posted on the Human Resources website
- or by approaching the Human Resources Department which will appoint a reference person<sup>13</sup>.

Except in the case of force majeure and in order to avoid any conflict of interest, the reference person is advised not to become involved in cases in his/her own service. Similarly, a person considering himself or herself to be a victim is advised not to contact a reference person from the same service or, where possible, the same department.

**b) Making contact:** the alleged victim can make contact by e-mail or by calling the telephone number indicated.

**c) First meeting:** at this meeting, the alleged victim puts forward his or her case. The first objective of the reference person is to recognise and alleviate the alleged victim's suffering by receiving them and listening without preconceptions and without passing judgement. Reference persons inform of the procedure in place and of the rights and obligations of each of the persons involved (alleged victim, alleged harasser, and reference person). They accompany and guide the alleged victim in his or her approach, examining with him or her, the various options that will help find a satisfactory solution to the problem<sup>14</sup>. They make a note of the meeting, recording the date, name of the person attending and the purpose of the meeting<sup>15</sup>. No action may be taken by reference persons in the context of the informal procedure without the prior consent of the alleged victim and any such action must remain within the framework of the mandate given them.

At the time of the initial contact, the reference persons should ensure that no other formal procedure is under way (Articles 24 and 90 of the Staff Regulations). If such a procedure is under way, they should indicate that they are unable to deal with any other type of claim if a formal procedure has already commenced and will limit their role to the provision of information.

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<sup>13</sup>In the event of conflict of interest with the persons officially nominated, the Appointing Authority (or the HRD mandated by the Appointing Authority) will appoint a reference person on an ad hoc basis.

<sup>14</sup> Possibly directing the victim towards and putting him/her in touch with the Medical Service, the welfare officer, and/or the Human Resources Department.

<sup>15</sup> This note will remain on file with the reference person. It will be passed to the Human Resources Department in the event that a formal procedure is initiated.

**d) Conciliation stage:** The reference person may, with the consent of the alleged victim, meet the other party, and play a conciliatory role in an attempt to reach an amicable solution. These are not automatic steps as they are taken at the request of the alleged victim. In all cases, reference persons will strive to listen carefully to the two parties, remain objective, clarify the facts and ensure good communication.

### **Duration and limitations of the informal procedure**

The reference person must listen to and advise the alleged victim as quickly as possible. If after a reasonable period of time (one month) reference persons are unable to contribute to finding a solution, or no result has been achieved following the conciliation stage, they may propose that the alleged victim contact the Career and Development Sector of the Human Resources Department or lodge a formal complaint (Article 24 or 90 of the Staff Regulations).

***It should be noted that the informal procedure allows the parties to be heard and to receive information and may enable the dispute to be settled amicably but does not involve formal recording of the facts, or the applying of penalties, both of which can be done through the formal procedure only.***

***No step in the informal procedure may prejudice what might be established under the formal procedure.***

#### **● From informal to formal procedure**

If the alleged victim decides to initiate a formal procedure, the reference person will be informed and from that time onwards will take no initiatives other than providing moral support to the alleged victim. Under this procedure, and depending on the requirements of the enquiry, reference persons may be called as witnesses to testify to facts relevant to the enquiry of which they have been informed during the informal procedure<sup>16</sup>.

#### **● Formal procedure**

Any person<sup>17</sup> in the OHIM who feels that he or she is the victim of psychological harassment or sexual harassment is entitled under the Staff Regulations to initiate a formal procedure, either immediately, without first going through the informal procedure, or in the course of or at the end of the informal procedure. The transition to the formal procedure automatically triggers the end of any informal procedure under way. It is not, however, a requirement that the informal procedure must be undertaken before the formal procedure is initiated.

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<sup>16</sup> The reference person may accompany the alleged victim, at his/her request, to a hearing by the Human Resources Department, provided that he/she does not act as a witness in the same case. So far as possible, the reference person must retain the utmost neutrality thus avoiding excessive involvement.

<sup>17</sup> Office staff in the broad sense are defined as: staff covered by the Staff Regulations (officials, temporary staff, auxiliary staff, contract staff, local staff, special advisors) and, by analogy, seconded national experts and staff having a contractual relationship in the broad sense with the Office (temporary agency workers and trainees). Staff of the Office's contractors carrying out their work on the Office's premises, whilst not being considered as Office staff, are covered by and subject to these guidelines, provided that one of the persons directly involved in the dispute has a contractual link (in the broad sense) with the Office.

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The formal procedure is triggered by a request for assistance in accordance with Article 24 of the Staff Regulations, making reference to the Office's duty to assist its staff. Requests for assistance must be made to the Appointing Authority, which is responsible for conducting these procedures.

The Appointing Authority may, in these cases, mandate the Career and Development Sector of the Human Resources Department with a view, where appropriate, to carrying out an administrative enquiry, to determine the facts of the case and apportion any responsibility. In the event of a conflict of interest between the alleged victim or harasser and the Career and Development Sector of the Human Resources Department, the Appointing Authority will mandate one or more persons not working in that sector to carry out the administrative enquiry.

In the event that a formal procedure is initiated and depending on the interests of the service, the Appointing Authority<sup>18</sup> will inform the line manager<sup>19</sup> of the alleged victim, provided that he/she is not involved in the dispute<sup>20</sup>. In the event that the Appointing Authority or the Human Resources Department intend to take measures affecting the staff of the line manager with whom they have made contact, they will advise him/her of this as swiftly as possible.

When the administration has taken the appropriate steps, notably by opening an administrative enquiry<sup>21</sup>, to establish the facts underlying the request, this indicates that the request has been followed up and has not been implicitly rejected (absence of reply after 4 months). In the event of explicit or implicit rejection of the request, the party involved may, where appropriate, lodge a complaint in accordance with Article 90(2) of the Staff Regulations.

Any person who feels he or she is the victim of sexual harassment must provide all details which might support his or her allegations and, in the case of psychological harassment, a degree of evidence is required at this stage, notably by way of a list of facts which demonstrate the improper, persistent, intentional, repetitive and systematic<sup>22</sup> nature of the conduct being criticised. Additionally, the person requesting assistance in a case of psychological or sexual harassment may be accompanied at hearings by a person of his or her choice, provided that that person cannot be called as a witness in the course of the enquiry.

At the end of the administrative enquiry, the Human Resources Department will present its report to the Appointing Authority which may decide, after having heard the person(s) concerned, whether or not to commence disciplinary proceedings and to apply the appropriate penalties.

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<sup>18</sup> Or, where appropriate, the Career and Development Sector of the Human Resources Department.

<sup>19</sup> The line manager is defined as being the reporting officer of the alleged victim or, in the case of staff for whom an appraisal report does not need to be drawn up under the Staff Regulations and the Office's ad hoc implementing regulations, the person who approves leave or acts as coordinator of the services provided by the alleged victim.

<sup>20</sup> In the event that the line manager is involved in the dispute, the Human Resources Department will contact the most appropriate superior of that superior.

<sup>21</sup> Cf. the administrative decision of the OHIM relating to administrative enquiries and disciplinary procedures for approval in the framework of article 110 of the Staff Regulations..

<sup>22</sup> Cf. Article 12a of the Staff Regulations.

## Guidelines on protecting the dignity of the person and preventing psychological harassment and sexual harassment at the OHIM

If the procedure results in recognition of psychological harassment or sexual harassment, victims will receive compensation for the damage suffered, under the terms set out in the Staff Regulations (second paragraph of Article 24), where appropriate.

If the procedure is closed with no further action taken, all those who have been heard will be informed. If the complaint proves to have been formulated in an abusive manner or in bad faith or with the manifest intention of causing harm, disciplinary measures may be taken by the Appointing Authority, either on its own initiative or at the request of the wrongfully accused person.

### **Precautionary Measures**

Where there are signs of psychological or sexual harassment, measures to move one of the parties (either within the department/service or to another one) may be considered. This measure may take the form of a reassignment in the interests of the service and may involve either the alleged victim (preferably with his/her agreement), or the alleged harasser, or both.

These measures may be taken as part of the informal or formal procedure, at the request of the alleged victim, of the reference person (representing the alleged victim) or on the initiative of the Appointing Authority or the Human Resources Department. Reassignment requests should be addressed to the Career and Development Sector of the Human Resources Department which is responsible for any reassignments. In order to proceed with the reassignment, the parties involved<sup>23</sup> will be met with separately.

These precautionary measures, which must take account of the needs of each particular situation, can be taken immediately. They are designed to put an end to a problematic situation. Their purpose is also to offer protection to the alleged victim and to send a message of deterrence to the alleged harasser.

### **Recurrent cases**

Requests for assistance from different people involving the same individual or from the same individual involving different people in different circumstances and moments are to be considered worrying. Such requests must therefore be brought to the attention of the Human Resources Department by the reference person(s), by the line manager of the person accused or of the person accusing, or by any other person who may have witnessed the events. The Human Resources Department, having consulted the line manager of the person accused or of the person accusing, will inform the Appointing Authority and suggest the most appropriate action to be taken in recurrent cases, in order to allow the Appointing Authority to commence, where appropriate, the procedures laid down in Annex IX to the Staff Regulations.

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<sup>23</sup> The alleged victim of psychological or sexual harassment, the alleged harasser, the respective line managers.

## **6.- THE INTERVENING PARTIES**

### **The Career and Development Sector of the Human Resources Department**

The various aspects of the role of the Career and Development Sector of the Human Resources Department in the context of procedures referring to preventing harassment are as follows:

- **Drawing up, monitoring and evaluating implementation of the policy** on the prevention and combating of psychological and sexual harassment, which will include the strategy of information, training and prevention, at an individual and collective level, to avoid and reduce the risk of psychological and sexual harassment. Every five years, an activity report including anonymous statistics relating to situations dealt with by reference persons will be published, following consultation with reference persons. Five years after implementation of these guidelines, an ex-post evaluation and such other activities as are considered necessary<sup>24</sup> will be undertaken.
- **Preparation and updating of documentation** referring to the policy for the prevention of psychological harassment and sexual harassment.
- **Management of the formal procedure**
- **Leading the network of reference persons** and managing the various matters relating to the functioning of this group. It will organise regular meetings and provide an overview of cases submitted to reference persons with a view to consistently improving and harmonising their working methods and skills<sup>25</sup>.

It will coordinate the procedure for appointment of reference persons and will allocate the reference person who best meets the profile required by the interested parties (criteria of language, gender, function group, etc.) in the individual cases referred to it. It will manage the informal procedure in close collaboration with the reference persons. At the same time, it will manage the development, application and consolidation of good practice amongst the network of reference persons.

**Support<sup>26</sup> and training of the network of reference persons**, the objectives of which which are:

- to improve professional independence through having a sense of perspective, the ability to clarify situations, and the capacity to analyse situations methodically.
- to encourage reference persons to build on experience of good practice and lead them to question their own attitudes, feelings and actions and draw the relevant conclusions.

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<sup>24</sup> For example, a staff survey or a procedural audit.

<sup>25</sup> The Career and Development Sector of the Human Resources Department is responsible for providing reference persons and their management with the necessary training enabling them to acquire and develop their skills and to incorporate developments in expert research into the field of violence at work. The training offered may include basic topics such as, for example, active listening, the issue of confidentiality, communication techniques, conflict management and conciliation.

<sup>26</sup> Pedagogical monitoring on a collective and/or individual basis which may be undertaken by an external consultant.

### **Reference persons**

The implementation of the policy on the prevention of psychological or sexual harassment foresees the appointment of reference persons. Reference persons have a fundamental role to play in view of the essentially preventive nature of the policy. They work in close collaboration with the Human Resources Department and are the institutional participants appointed by the Appointing Authority within the framework of the anti-harassment policy.

### **Appointment, mandate and removal**

Reference persons are appointed by the Appointing Authority on a voluntary basis, for a period of two years.<sup>27</sup> The Human Resources Department will ensure, as far as possible, during the selection procedure, that the different function groups of the Office's staff are represented in a balanced way, and will also ensure a gender balance. The list of these persons will be submitted to the Staff Committee for its opinion.

Appointment of the candidates selected will be officially communicated to the interested parties by the Human Resources Department and communicated to all staff via the Office's Intranet.

The appointment of reference persons implies their commitment to adhere to the Charter of ethics for reference persons and users ([Annex 2](#)).

The mandate of reference persons may be withdrawn from them individually by the Appointing Authority, for example in the event of failure to comply with the Charter of ethics. A reference person implicated (in the formal or informal procedure) in a harassment situation will automatically be removed from this function and replaced.

A reference person may ask the Human Resources Department to remove<sup>28</sup> him or her from the list of reference persons. He/she will take it upon themselves to transmit the ongoing cases to Human Resources Department for reattribution to another reference person.

### **The role**

Reference persons play their role within the framework of the informal procedure. Their line managers are recommended to take account of their tasks and facilitate the execution of their duties as far as possible. Within the scope of their function and the mandate given to them, reference persons may not suffer any prejudice from the Office, provided that they have acted in good faith and in accordance with these guidelines and with the Charter of ethics. Reference persons play an important role in informing and raising awareness amongst staff regarding harassment and all other forms of violence at work or in relation to work.

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<sup>27</sup> The term of office of reference persons may be reviewed in view of the need to ensure continuity of the work undertaken and to make optimum use of the skills acquired through significant investment in training and through their experience.

<sup>28</sup> This removal can be temporary.

## Guidelines on protecting the dignity of the person and preventing psychological harassment and sexual harassment at the OHIM

- **Listening and providing information:** reference persons ensure that persons in a harassment situation or suffering any other form of violence at work are well received, are listened to without preconceptions and on a non-judgmental basis and are supplied with information.
- **Advice:** the reference person advises alleged victims and examines with them all the available options.
- **Assistance and support:** the reference person should remain available to the alleged victim whichever procedure is being followed. In the formal procedure, they may be called upon to provide moral support if the alleged victim so wishes. The reference person may also accompany the alleged victim in the official steps they take.
- **Amicable settlement and conciliation:** the reference person acts as an intermediary between the two parties at the request of the person who called upon him/her. The reference person commits to listening carefully to the parties, remaining objective, clarifying the facts and ensuring there is a good level of communication.
- **Witness in the formal procedure:** the reference person may act as a witness during the formal procedure.

Reference persons will draw up, for the attention of the Human Resources Department, an anonymous case sheet for each situation dealt with.

### **Line Managers**

Line managers are, in principle, the first point of contact for any person who encounters a problem of psychological or sexual harassment. With their operational responsibility for staff management, they are required to take steps to cultivate a working environment that sets limits to the risks of psychological and sexual harassment, and in which such situations can be remedied as swiftly as possible. They must also prevent psychological and sexual harassment and alert their staff to and inform them about the existing procedures. They must also ensure, in close collaboration with the various intervening parties, the rapid and fair handling of any incident or complaint on this issue. Line managers must assist in seeking the necessary and most appropriate measures of reassignment of staff, and are required to accept the precautionary measures proposed by the Appointing Authority or the Career and Development Sector of the Human Resources Department.

### **The Staff Committee**

The Staff Committee is a natural point of contact for listening and providing information and guidance.

### **The Welfare Officer**

The welfare officers provide a listening, advisory and support function, and guarantees confidentiality. They are responsible for informing the person who contacts them of the available options with a view to finding a solution, assessing the possibility of filing a complaint and offering support in the steps taken.

## Guidelines on protecting the dignity of the person and preventing psychological harassment and sexual harassment at the OHIM

### **Staff in general**

Any person who is made aware of, or is a witness to, conduct which appears to be improper according to the descriptions given in this document, its annexes and the documents referred to, has both the right and the duty to inform a reference person, the Human Resources Department, the Appointing Authority, or their line manager, as they prefer. They are also obliged to cooperate in the smooth running of all enquiries carried out within the context of the formal procedure.

### **7.- PROTECTION OF PERSONAL DATA**

Persons involved in the anti-harassment procedure have a duty to process all information received in accordance with the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and to the notification of the same that is made to the European Data Protection Supervisor (EDPS) who is the supervisory and complaints body.

Confidentiality and compliance with the legislation relating to protection of personal data is guaranteed during and after the informal procedure and during and after the formal procedure, to the alleged victim, to the alleged harasser and to any witnesses.

Any information communicated to the administration or to the reference person which relates to a situation of harassment is considered to be strictly confidential and shall not be used without the prior consent of the persons concerned.

Each person involved will ensure the safeguarding of the information and files he/she deals with according to his/her mandate or role, in accordance with the rules relating to the protection of personal data and with Article 17 of the Staff Regulations.

Any information published will include only statistical data of an anonymous and non-identifiable nature.

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## **ANNEX I**

### **Your rights and responsibilities**

#### **Do you feel you are a victim of psychological harassment or sexual harassment?**

##### **YOU ARE ENTITLED**

- to be heard under the informal procedure, by contacting the Human Resources Department, a reference person of your choice or the Appointing Authority, uncritically and under the strictest confidentiality;
- to be assured that the reference person will not take any steps without your agreement;
- within the context of the formal procedure, to submit a request for assistance to the Appointing Authority without discomfort or fear of reprisals or indiscretions from this end;
- to be accompanied by a person of your choice during meetings with investigating officials;
- to be assured of a fair and impartial enquiry;
- to be informed of the result of the enquiry and, where applicable, of the measures that will be taken.

##### **YOU MUST**

- within a reasonable period of time, make the person you are accusing aware of your disapproval or unease, where necessary accompanied by a reference person;
- keep a written record of incidents;
- co-operate with those in charge of the enquiry into your complaint.

#### **Have you been accused of psychological harassment or sexual harassment?**

##### **YOU ARE ENTITLED**

- to contact, if necessary at the informal procedure stage, the Human Resources Department or the Appointing Authority to advise you and help you uncritically and under the strictest confidentiality;
- to be informed that an official complaint has been lodged against you, receive a copy of that complaint and have the opportunity to react to it;
- to be accompanied by a person of your choice during meetings with investigating officials;
- to be assured of a fair and impartial investigation;
- to be informed of the result of the investigation and, where applicable, of the measures taken.

##### **YOU MUST**

- keep a written record of incidents;
- co-operate with those in charge of the investigation into the complaint against you.

**HARASSMENT – OUTLINE OF PROCEDURES**

