

From: [REDACTED]
To: European Data Protection Supervisor
<EDPS@edps.europa.eu>
CC: [REDACTED]
Sent at: 05/01/17 13:06:09
Subject: Attn: [REDACTED] - Subject: EDPS e-mail
dated 9 December 2016

Attn: [REDACTED]
Subject : your e-mail dated 9 December 2016

Dear [REDACTED],

Please find attached our reply to your email dated 9 December 2016 regarding the implementation of the EDPS' recommendations in relation to the EIB's Dignity at Work policy.

Should you need any further information, please do not hesitate to contact us.

Regards,

[REDACTED]

PS
Please note that a hard copy of the letter will follow by mail.

[REDACTED]
Coordination Officer
[REDACTED]
[REDACTED]
[REDACTED]



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European Data Protection Supervisor

Rue Wiertz, 60
1047, Brussels
Belgium

Attn: [REDACTED]
Legal Officer

Luxembourg, 28 December 2016

CS/PERS/ERA/DIR/2016-77/OR

Subject : your e- mail dated 9 December 2016

Dear [REDACTED],

We refer to your e-mail of 9 December 2016 regarding the implementation of the EDPS' recommendations in relation to the EIB's Dignity at Work policy.

We assure you that the EIB is aware of the importance to implement the recommendations related to a full compliance with Regulation 45/2001 and is considering aligning with the practice of the European Commission. Therefore, in preparing the deadlines on the plan for implementation, the Bank has adopted a prudent approach in order to ensure that the planning can be respected and fully adhered to.

Please note that the Bank considers that the deadlines submitted should be the latest possible date for implementation. It is however important to underline that the Bank's internal processes may delay the approval of policies. The updated Dignity at Work policy will firstly need to be approved internally within Personnel, secondly, discussed and formally submitted to the College of Staff Representatives for their comments and finally, submitted to the Management Committee for approval. This process involves a strict adherence to procedures and the submission of documents in accordance with a predefined calendar and can require several submissions if not approved in a first discussion.

We have taken note of your observations on the list of recommendations and have provided an update on progress as follows:

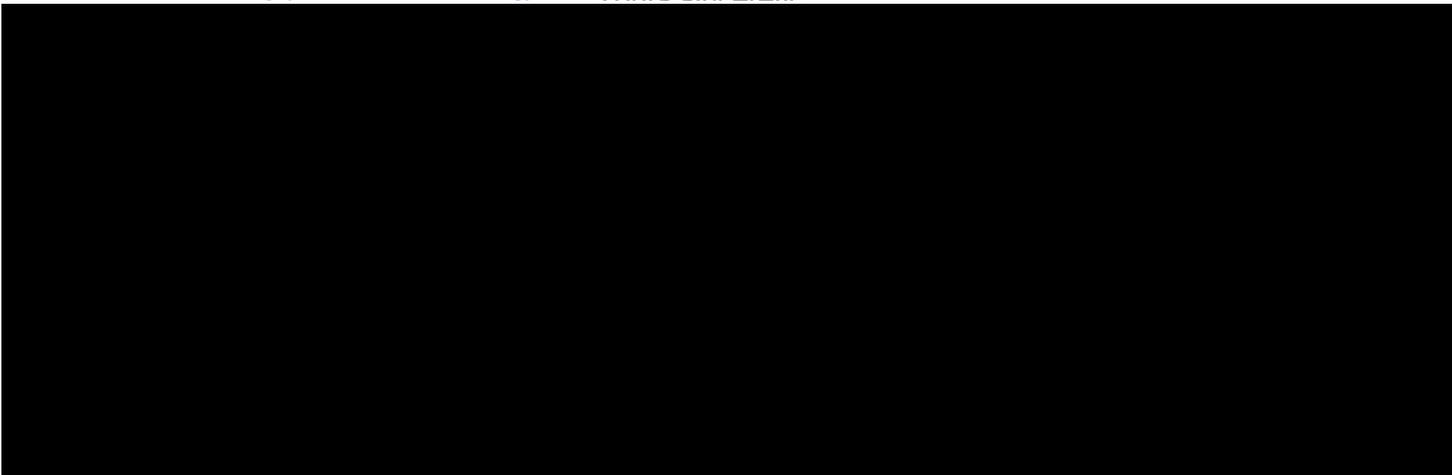
- **Recommendations 13 and 22:** a first draft of the updated Dignity at Work policy has already been prepared and will shortly be circulated internally for comments. The draft is attached for your reference and includes the mediation phase. However, as a draft document, please note that it is still subject to modification.



- **Recommendation 15:** the centralisation of documents with reference to Dignity at Work procedures will be implemented for all new cases. However, for ease of reference, e-mails will be saved by the case manager during the course of the procedure and on finalisation and closure of the case, all e-mails will be archived in the GED database.
- **Recommendations 16-19:** information on data protection has been included in the draft of the updated policy but it should be noted that the EIB already informs staff on the processing of personal data in the Dignity at Work procedure.
- **Recommendation 21:** it should be noted that this is already applied with regard to new Dignity at Work procedures (we ensure that only relevant and necessary data are communicated to the alleged harasser and that the alleged victim is informed about the intended communication).
- **Recommendations 23-24:** a procedure already exists on the destruction and retention period for files relating to Dignity at Work. The procedure will be updated and modified in the new policy.

We trust that the above information provides the requested justification on deadlines and provides assurance that some measures are being or have already been implemented.

Yours sincerely



Encl.: Draft updated EIB Dignity at Work policy

EIB DIGNITY AT WORK POLICY

The European Investment Bank (hereinafter the “EIB” or the “Bank”),

having regard to the EIB Staff Regulations I and to the EIB Staff Regulations II, in particular their Article 1¹ and Chapter 6 (Articles 38-41)²;

having regard to the EIB Staff Code of Conduct, in particular its Chapter 3, point 3.6³;

having regard to the EIB Whistleblowing Policy, in particular its Chapter III.2(b)⁴ and V⁵;

whereas the Bank aims to ensure a working environment in which staff is treated with dignity and respect and therefore will not tolerate unwanted conducts in the workplace and will take all necessary measures to prevent and eradicate them;

whereas it is appropriate to review and replace the existing EIB Dignity at Work Policy adopted on 12 November 2003, to take into account the experience and best practices gained over the years in handling cases of alleged bullying and harassment;

has adopted the following Dignity at Work Policy (hereinafter the “Policy”).

Article 1

Purpose, scope and definitions

1.1 The purpose of the Policy is to establish the procedures for dealing with all forms of unwanted conduct in the workplace having the aim or the effect of violating the dignity of a person and/or of creating an intimidating, hostile, degrading, humiliating or offensive environment (hereinafter the “**Unwanted Conduct**”).

Unwanted Conduct is typically linked to the infringement of the rules set out in Chapter 3 “Internal relations” of the EIB Code of Conduct (hereinafter “**CC**”), namely concerning the behaviour towards subordinates (Article 3.3 CC), the behaviour towards superiors (Article 3.4 CC), the behaviour between colleagues (Article 3.5 CC), the psychological harassment (Article 3.6.1 CC), the sexual harassment (Article 3.6.2 CC) and the sexual blackmail (Article 3.6.3 CC).

Independently from possible infringements of the EIB Code of Conduct, any other conduct in the workplace which is unwanted by the recipient may be treated as Unwanted Conduct under the Policy.

The behaviour does not need to be driven by a malicious intent to be qualified as Unwanted Conduct under the Policy.

1.2 Everyone working at and for the EIB, regardless of status or employment contract, has the right to effective protection by application of the provisions of this Policy against Unwanted Conducts. The Policy applies thus to the following persons (hereinafter the “**Members of staff**”):

- persons whose relations with the Bank are governed by individual contracts under Article 13 of the Staff Regulations I or of the Staff Regulations II, regardless of their place of assignment;

¹ EIB Staff Regulations I and II, Article 1: “Members of staff shall conduct themselves in the discharge of their duties and outside working hours in a manner befitting the international character of the Bank and their duties”.

² EIB Staff Regulations I and II, Chapter 6 (Articles 38-41): “Disciplinary measures and disputes”.

³ EIB Staff Code of Conduct, Chapter 3, point 3.6: “Dignity at work”.

⁴ EIB Whistleblowing Policy, Chapter III.2 (b): “Cases of bullying, harassment and those concerning dignity at work are to be reported to the Director of Human Resources”.

⁵ EIB Whistleblowing Policy, Chapter V: “Protection for whistleblowers”.

- persons working at the Bank on secondment from their parent administration;
- persons working at the Bank under internship/traineeship programs;
- persons working at the Bank under the GRAD program of Annex III to the Staff Regulations I and of Annex II to the Staff Regulations II;
- interim staff (considering that these persons are not directly employed by the Bank they may only participate as alleged Victim);
- local staff;
- external consultants and other service providers (considering that these persons are not directly employed by the Bank they may only participate as alleged Victim).

Annex II to this Policy applies also to Members of staff who have already left the Bank.

1.3 In this Policy:

- (a) **Alleged Victim** means a Member of staff who considers having suffered an Unwanted Conduct perpetrated by another Member of staff;
- (b) **Alleged Wrongdoer** means a Member of staff who is accused of an Unwanted Conduct by an Alleged Victim;
- (c) **Whistle-blower** means a Member of staff who reports to have witnessed or become aware of acts which s/he considers an Unwanted Conduct against another Member of staff;
- (d) **Confidential Counsellor** means a Member of staff who has been selected and trained to provide assistance, support and advice to Alleged Victims and to Alleged Wrongdoers.
- (e) **Occupational Health Psychologist** means an external consultant providing to Members of staff counselling and advice on work-related psychological matters.

Article 2

Types of procedures

- 2.1 The Policy establishes the following procedures for dealing with cases of alleged Unwanted Conducts (hereinafter the "**Procedures**"):
 - I) an informal procedure which aims to resolve cases of alleged Unwanted Conduct informally, quickly, effectively and amicably, in accordance with the provisions of Annex I (hereinafter the "**Informal Procedure**");
 - II) a procedure of formal investigation about the alleged Unwanted Conduct, involving a comprehensive fact-finding exercise and possibly the adoption of appropriate measures, in accordance with the provisions of Annex II (hereinafter the "**Formal Procedure**").
- 2.2 The secretariat of the Informal Procedure and of the Formal Procedure shall be ensured by the Division of the Personnel Directorate entrusted with the management of the Dignity at Work policy (hereinafter the "**Dignity at Work Team**").

Article 3

Access to the Procedures

- 3.1 The Alleged Victim is strongly encouraged to go through the Informal Procedure before launching the Formal Procedure.
- 3.2 However, the Alleged Victim may decide not to go through the Informal Procedure and to launch directly the Formal Procedure, in particular where s/he feels that the alleged Unwanted Conduct is causing/has caused her/him serious harm and distress. The Alleged Victim shall then file with the Director General of Personnel a Complaint according to clause 2.1 of Annex II.

- 3.3 At any moment during the Formal Procedure, the Director General of Personnel is entitled to invite the parties to refer their case to the Mediation foreseen by clause 2 of Annex I.

Article 4

Special rules for members of the Personnel Directorate

- 4.1 In order to avoid situations of actual or potential conflict of interests, where the Alleged Victim and/or the Alleged Wrongdoer is a member of the Personnel Directorate or was a member of the Personnel Directorate when the alleged Unwanted Conduct took place, all the powers and responsibilities assigned under the Policy to the Director General of Personnel will be exercised by the Group Chief Compliance Officer (hereinafter the "GCCO"). The provisions of this Policy shall be applied by the GCCO by analogy.
- 4.2 The GCCO will carry out a preliminary assessment of whether the case submitted to her/him actually falls within her/his competence according to Article 4.1; should the GCCO conclude that the case does not fall within her/his competence, s/he shall transmit the GCCO's reasoned opinion to the Alleged Victim and will redirect the case to the Director General of Personnel.
- 4.3 If members (or former members as defined in Article 4.1) of the Office of the Chief Compliance Officer are also involved in the case submitted to the GCCO, or in any other situation where the GCCO is deemed to have an actual, potential or apparent conflict of interest, the GCCO and the Director General of Personnel will jointly assess their competence to handle the case. They may also decide to refer the matter to the President.
- 4.4 Without prejudice to Article 4.1, the Dignity at Work Team will ensure the secretariat of the Informal Procedures and of the Formal Procedures which fall under the competency of the GCCO, as well as any kind of support and assistance which the GCCO might need for the fulfilment of his/her tasks under the Policy. To safeguard the effectiveness of this provision, members of the Dignity at Work Team shall not share, discuss or exchange with their managers any information they obtained whilst acting for the GCCO on the matter.

Article 5

Whistle-blowers

- 5.1 Any Member of staff who reasonably suspects, witnesses or otherwise becomes aware of a presumed Unwanted Conduct under the Policy is strongly encouraged to report it to the Director General of Personnel.
- 5.2 The provisions under Chapter V "Protection for Whistle-blowers" of the EIB Whistleblowing Policy shall apply by analogy to the Whistle-blowers under the Dignity at Work Policy.

Article 6

Retaliation

- 6.1 The protection against any acts of retaliation provided for by Chapter V "Protection for Whistle-blowers" of the EIB Whistleblowing Policy shall be ensured also to the Alleged Victim, to the Alleged Wrongdoer and to any Member of staff who has given support to an Alleged Victim or to an Alleged Wrongdoer, or who has participated or cooperated in the Procedures under the Policy.

Article 7

Vexatious, false or malicious allegations

- 7.1 Vexatious, false or malicious allegations made under the Policy by the Alleged Victim, by the Alleged Wrongdoer, by a Whistle-blower or by any of the persons involved in the Formal or in the Informal Procedures may be sanctioned under the disciplinary procedure laid down in the Staff Regulations I and of the Staff Regulations II (hereinafter the "**Disciplinary Procedure**").
- 7.2 The same applies to the Alleged Victim who has filed a Complaint within the Formal Procedure which is declared inadmissible for abuse of procedure pursuant to clause 3.2, fourth indent, of Annex II.

Article 8

Confidentiality - Duty to Report

- 8.1 Any Member of staff who becomes aware of, or involved in a procedure under this Policy, in any manner whatsoever, is obliged to observe the strictest confidentiality regarding all aspects of the procedure, including the fact of its existence, the persons involved, the grounds on which the procedure was initiated and its outcome.
- 8.2 However, within the Informal Procedure the persons called upon by the Alleged Victim for assistance and advice and the Mediator, as this term is defined in article 2.2 of Annex I to these Procedures, have a special duty to report to the Director General of Personnel (hereinafter the "**Duty to Report**") cases in which they consider that the alleged Unwanted Conduct
- (a) is causing to the Alleged Victim serious harm and distress or
 - (b) is severely affecting the smooth running of the service or
 - (c) appears from the outset to be a serious breach of professional obligations or a criminal offence by the Alleged Wrongdoer.
- The Director General of Personnel will communicate to the reporting person which action, if any, is to be taken with regard to the reported case.
- 8.3 The confidentiality requirement does not apply to relations between the Alleged Victim and the Alleged Wrongdoer and their legal counsels, if any.

Article 9

Ex officio Formal Procedure

- 9.1 If the Director General of Personnel becomes aware - through one of the persons who have the Duty to Report under Article 8.2, through a Whistle-blower or otherwise - of an alleged Unwanted Conduct which has one of the effects described in Article 8.2 (a) and (b), then the Director General of Personnel may launch the Formal Procedure on his/her own initiative according to clause 4 of Annex II, if necessary adopting interim precautionary measures pursuant to Article 10 hereunder.
- 9.2 If the Director General of Personnel becomes aware in any manner whatsoever of an alleged Unwanted Conduct having the effect described in Article 8.2 (c), then the Director General of Personnel may decide to open directly against the Alleged Wrongdoer the Disciplinary Procedure, without going through the Procedures under the Policy.

Article 10

Interim precautionary measures

- 10.1 In the cases described in Articles 3.2 and 9.1, or following the indication of the Investigation Panel pursuant to clause 13 of Annex II, or whenever it is deemed appropriate in the course of the Procedures, the Director General of Personnel may adopt interim precautionary measures which are necessary to protect the Alleged Victim from the risk of serious harm and distress and/or to ensure the smooth running of the service.

The measures may include, without limitation, a period of exemption from duties or the reassignment to another service of the Alleged Victim and/or of the Alleged Wrongdoer. These measures must be suitable and strictly proportionate.

For the avoidance of doubt during the exemption from duties the staff member will receive full salary.

- 10.2 Unless the seriousness of the situation justifies otherwise, interim precautionary measures shall be adopted after hearing the Alleged Victim and/or the Alleged Wrongdoer.

Article 11

Cooperation

- 11.1 Any Member of staff who becomes involved in the Procedures under the Policy has the duty to cooperate fully and in good faith to ensure the smooth running of the procedure and to communicate to the competent persons, without concealment or alteration, all information available to them.
- 11.2 Deliberate acts of obstruction by Members of staff may be sanctioned under the Disciplinary Procedure. Equally, disciplinary proceedings may be initiated against a staff member who proffers threats or exercises hostile behaviour.

Article 12

Data protection

- 12.1 The Bank, and all persons involved in the Procedures, must comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data.
- 12.2 Within the scope of the Policy, the Director General of Personnel shall act as the 'controller' according to the definition given in Article 2(d) of Regulation 45/2001. Nonetheless, when a Formal Procedure is initiated and an Investigation Panel is established, the role of 'controller' shall be assumed by the Chairperson of the Investigation Panel.
- 12.3 All data collected and exchanged in the course of the Procedures shall be adequate, kept secure and confidential, processed only for the purposes related to the implementation of the Policy, not transferred to unauthorised third parties and not kept for longer than necessary.
- 12.4 An exception to the confidentiality of data shall apply when this is necessary to safeguard the prevention, investigation, detection and/or prosecution of criminal offences. In this case, the Director General of Personnel shall inform the Alleged Victim and/or the Alleged Wrongdoer of the possible transmission of data to the competent national authorities unless this may risk to undermine the investigation prevention, investigation, detection and/or prosecution of criminal offences. In this case the Alleged Victim and/or the Alleged Wrongdoer will be informed at a later stage.
- 12.5 The Alleged Wrongdoer's right to access data related to him/her may be temporarily restricted if this is necessary to protect the Alleged Victim or other persons involved in the Procedures or to safeguard the effectiveness of the Investigation.
- 12.6 The data transmitted during the Procedures to the Alleged Wrongdoer shall only be the data that is relevant and necessary for the investigation. The Alleged Victim may object to the transmission of data on compelling legitimate grounds except in those cases provided for in Article 5 (b), (c) and (d) of Regulation 45/2001.

- 12.7 Any unjustified breach of the provision about data protection shall be sanctioned under the Disciplinary Procedure.

Article 13

Conflict of interest

- 13.1 Any Member of staff who becomes involved in the Procedures under the Policy and who finds him/herself in a situation of conflict of interest because of a close link with the Alleged Victim and/or with the Alleged Wrongdoer or because of other reasons, shall immediately declare it to the Director General of Personnel.
- 13.2 Without prejudice to Article 4, if the situation of conflict of interest concerns the Director General of Personnel, all powers conferred to the Director General of Personnel under the Policy shall be exercised by a person specifically appointed by the President of the Bank.

Article 14

Final provisions

- 14.1 Any breach of the provisions of this Policy or of its Annexes may be sanctioned under the Disciplinary Procedure.
- 14.2 The EIB Dignity at Work policy adopted on 12 November 2003 is hereby repealed and replaced in full, as are any other documents which have been issued to implement, clarify or promote it.
- 14.3 The present Dignity at Work policy shall apply as of _____, with the exception of clauses 2 and 3.2 of Annex I which shall apply as of _____.

INFORMAL PROCEDURE

1) *First phase*

- 1.1 An Alleged Victim who considers having suffered an Unwanted Conduct as a result of another Member of staff's behaviour may request assistance and advice from an Occupational Psychologist, or from a Confidential Counsellor, or from a member of the Dignity at Work Team.
- 1.2 All discussions will be confidential and no further action shall be taken without the Alleged Victim's express permission.
However, in situations described in Article 8.2 of the Policy, the persons addressed by the Alleged Victim must comply with the special Duty to Report to the Director General of Personnel.
- 1.3 The Alleged Victim is encouraged to try to solve his/her concerns with the Alleged Wrongdoer informally and bilaterally.

2) *Second phase*

- 2.1 If the Alleged Victim considers that the alleged Unwanted Conduct persists after the first phase of the Informal Procedure, s/he may initiate a mediation procedure ("**Mediation**").
- 2.2 Mediation is a voluntary and confidential process in which a neutral third person, hereinafter the "**Mediator**", actively assists the parties in working towards a mutually acceptable agreement of a difference, disagreement or dispute, with the parties in ultimate control of the decision to settle.
- 2.3 The Alleged Victim shall submit to the Dignity at Work Team a request for Mediation within a reasonable period after the first phase of the Informal Procedure.
- 2.4 The request for Mediation may also be submitted to the Dignity at Work Team by the Alleged Wrongdoer within a reasonable period after the first phase of the Informal Procedure.
- 2.5 The Dignity at Work Team will manage the request for Mediation according to the relevant Guidelines on EIB mediation services.
- 2.6 Starting point and prerequisite for the Mediation is the mutual agreement of the parties to engage in a mediation procedure, formalised in a "**Mediation agreement**".
- 2.7 The Mediator is bound by confidentiality, but in the situations described in Article 8.2 of the Policy, s/he must comply with the special Duty to Report to the Director General of Personnel.
- 2.8 The Mediation is considered to have ended when:
 - (a) the parties reach an agreement on a solution to amicably settle the incident or to improve the situation between them and, with the help of the Mediator, they formalize it in a binding "**Memorandum of Understanding**".
, the breaching party may be liable to the Disciplinary Procedure;
 - (b) the Mediator comes to the conclusion that it is not possible that the parties agree on a solution and informs the Dignity at Work Team thereof;
 - (c) one of the parties withdraws its consent to the Mediation Agreement;
 - (d) the Mediator refers the case to the Director General of Personnel in compliance with the special Duty to Report provided for by clause 8.2 of the Policy.

3) *Records*

- 3.1 Copy (paper and/or electronic) of the Mediation Agreement and the Memorandum of Understanding and the documents in view of which a decision is taken not to launch an investigation, shall be kept in the personal file of the Staff Member concerned and for a period of 2 years.

FORMAL PROCEDURE

1) *Scope of the procedure*

- 1.1 The Formal Procedure may be launched:
- (a) by the Alleged Victim, either directly or after the exhaustion of the Informal Procedure, i.e. in case of unsuccessful end of the Mediation;
 - (b) *ex officio* by the Director General of Personnel in the situations described in Article 8.2 of the Policy.

2) *Launching of the procedure by the Alleged Victim or by the Alleged Wrongdoer*⁶

- 2.1 The Alleged Victim wishing to launch the Formal Procedure shall lodge with the Director General of Personnel via the Dignity at Work Team a complaint (hereinafter the "**Complaint**"), which specifies:
- i) the name, position and unit of the Alleged Victim and of the Alleged Wrongdoer;
 - ii) the factual background of the alleged Unwanted Conduct, namely the relevant events, situations and/or incidents, including their dates, places, reactions and effects;
 - iii) the steps already taken within the Informal Procedure, if there was one;
 - iv) any relevant supporting document or evidence, in compliance with clause 10 hereunder.
The Alleged Victim may submit a reasoned request that one or more specific documents are not transmitted to the Alleged Wrongdoer: the Dignity at Work Team will either accept the request and mark the document as "confidential", or reject the request if it considers that keeping the document confidential would unduly limit the Alleged Wrongdoer's rights of defence. In case of rejection of the request for confidentiality, the Alleged Victim shall clarify whether s/he allows the transmission of the document or withdraws it from the Complaint;
 - v) if applicable, the proposal to hear witnesses in support of the Complaint, indicating in a separate document their names and a brief explanation on why those persons could help establishing the facts.
- 2.2 The Complaint shall be lodged within 3 months running either from the last instance of the alleged Unwanted Conduct or, if there was an Informal Procedure, from the unsuccessful end of the Mediation.
- 2.3 The Dignity at Work Team will acknowledge to the Alleged Victim the receipt of the Complaint.

3) *Pre-assessment of the Complaint*

- 3.1 Within 2 weeks from the lodging of the Complaint in accordance with Article 2 of this Annex II, the Director General of Personnel shall decide whether the Complaint should be declared admissible, or whether it should be dismissed as inadmissible or as manifestly unfounded.
- 3.2 The Complaint shall be dismissed as inadmissible if:

⁶ See footnote No 11.

- it has been filed beyond the established deadline;
- it refers to persons who are not Members of staff as defined in Article 1.2 of the Policy;
- it infringes the principle of *ne bis in idem*⁷;
- it constitutes a manifest abuse of procedure;
- another procedure is considered more appropriate to solve the subject matter of the Complaint.

3.3 The Director General of Personnel's decision to dismiss the Complaint as inadmissible or as manifestly unfounded shall state the grounds on which it is based.

4) Launching of the procedure by the Director General of Personnel

4.1 If the Director General of Personnel decides to launch *ex officio* the Formal Procedure in the situations described in Article 8.2 of the Policy, the Dignity at Work Team shall prepare a note (hereinafter the "**Note**") which specifies:

- i) the name, position and unit of the Alleged Victim and of the Alleged Wrongdoer;
- ii) the factual background of the alleged Unwanted Conduct, namely the relevant events, situations and/or incidents, including their dates, places, reactions and effects;
- iii) the steps already taken within the Informal Procedure, if there was one;
- iv) any relevant supporting document or evidence.
The Dignity at Work Team may decide, for objectively justified reasons, to not transmit to the Alleged Wrongdoer one or more specific documents and to mark them as "confidential", provided that this does not limit the Alleged Wrongdoer's rights of defence;
- v) if applicable, the proposal to hear one or more persons who could know about the alleged Unwanted Conduct, indicating their names in a separate document;
- vi) the reasons which have determined the Director General of Personnel to launch the procedure.

5) The Investigation Panel

5.1 Within 1 month from declaring a Complaint admissible or from the preparation of the Note by the Dignity at Work Team, the Director General of Personnel shall establish the Investigation Panel who will deal with the case (hereinafter the "**Investigation Panel**").

5.2 The mandate of the Investigation Panel is

- to conduct a thorough investigation (hereinafter the "**Investigation**") for establishing the facts about the alleged Unwanted Conduct as described in the Complaint or in the Note;
- to issue a final report (hereinafter the "**Final Report**") describing the findings of the Investigation and concluding whether the alleged Unwanted Conduct has taken place.

5.3 The three members of the Investigation Panel shall be chosen from a list composed of up to 10 internal members, meaning active or retired Members of staff who ensure high standards of integrity and independence and a good knowledge of the Bank's environment, and of up to 20 external members, meaning external persons with professional experience as Dignity at Work experts, or employment, harassment and discrimination lawyers, or occupational psychologists and psycho-social counsellors.

5.4 Taking into account the specific circumstances underlying the Complaint or the Note, the Director General of Personnel shall choose from the list one internal member and two external members who will compose the Investigation Panel, as well as an equal number of alternate members.

⁷ *Ne bis in idem* means that a person can not be tried more than once for the same offence, act or fact.

The Director General of Personnel shall determine the member who shall act as Chairperson of the Investigation Panel.

- 5.5 The Investigation Panel shall be assisted by a secretariat from the Dignity at Work Team including at least one person with legal training. The secretariat will send to the Investigation Panel copy of the Complaint or of the Note.
- 5.6 If a member of the Investigation Panel considers to be in a position of conflict of interests with respect to the Complaint, s/he shall immediately declare it. If the Director General of Personnel deems that a conflict of interests exists, s/he shall replace the member without delay.

6) Principles of the Investigation

- 6.1 The Investigation Panel shall
- conduct the Investigation in an exemplary manner, abiding by the rules of this Policy and respecting the principles of impartiality, independency and integrity;
 - adopt a balanced and objective approach;
 - respect at all stages the rights of defence and the right to be heard, examining both inculpatory and exculpatory evidence and taking into account both aggravating and attenuating circumstances;
 - observe the strictest confidentiality on all the elements of the Investigation, both during the Formal Procedure and after its conclusion.
- 6.2 The Investigation Panel shall act independently of the Bank and of third parties in the performance of its tasks and shall only be bound by the rules of this Policy. It shall be free to choose the methods of investigation it considers appropriate, within the limits of the principle of proportionality and of the provisions under clause 12 hereunder.
- 6.3 The Investigation Panel shall take its decision by simple majority and the members are not allowed to abstain from voting.

7) Notification to the parties

- 7.1 After the establishment of the Investigation Panel, the Director General of Personnel via the Dignity at Work Team shall:
- notify the Alleged Victim of the composition of the Investigation Panel;
 - provide the Alleged Wrongdoer with a copy of the Complaint or of the Note (without the documents which the Dignity at Work Team has marked as "confidential" in application of clauses 2.1.iv) and 4.1.iv), if any, and without the document containing the names of the persons proposed as witnesses or as persons informed of the alleged Unwanted Conduct, if any, and the composition of the Investigation Panel.
- 7.2 Each party may raise a reasoned objection in written against the appointment of one or more members of the Investigation Panel within 1 week from the notification of its composition.

Within 2 weeks from the receipt of the objection, the Director General of Personnel may:

- a) accept the objection and replace the refused member/s;
- b) reject the objection by a reasoned decision.

8) Submissions of the Alleged Wrongdoer

- 8.1 Within 1 month of the receipt of the Complaint or of the Note, the Alleged Wrongdoer may lodge his submissions on the Complaint or on the Note, by filing with the Dignity at Work Team an envelope marked "confidential" addressed to the Investigation Panel.
- 8.2 The Alleged Wrongdoer may add to his/her submissions any relevant supporting document or evidence, in compliance with clause 10 hereunder.
The Alleged Wrongdoer may submit a reasoned request that one or more specific documents are not transmitted to the Alleged Victim: the Dignity at Work Team will either accept the request and mark the document as "confidential", or reject the request if it considers that keeping the document confidential would unduly affect the principle of equality of arms and the transparency of the procedure. In case of rejection of the request for confidentiality, the Alleged Wrongdoer shall clarify whether s/he allows the transmission of the document or withdraws it from the submissions.
S/he may propose to hear witnesses in support of her/his submissions, indicating in a separate document their names and a brief explanation on why those persons could help to establish the facts.
- 8.3 The Dignity at Work Team shall send a copy of the Alleged Wrongdoer's submissions to the Alleged Victim, without the documents which the Dignity at Work Team has marked as "confidential" if any, and without the names of the persons proposed as witnesses, if any.

9) Burden of proof

- 9.1 The Alleged Victim must establish sufficient facts from which it may be presumed that the alleged Unwanted Conduct took place. The Alleged Wrongdoer may prove the contrary.
- 9.2 In case of a Formal Procedure launched *ex officio* by the Director General of Personnel, the Note issued by the Dignity at Work Team shall present the facts that could possibly presume that the alleged Unwanted Conduct took place. The Alleged Wrongdoer may prove the contrary.

10) Evidence and Witnesses

- 10.1 The Alleged Victim and the Alleged Wrongdoer may submit any reasonable means of evidence in support of their allegations, such as official and unofficial written documents (letters, faxes, e-mails, etc.), expert reports, medical certificates, witness statements.

The submission of additional evidence by the Alleged Victim and/or the Alleged Wrongdoer at their own request during the process is subject to the agreement of the Investigation Panel.
- 10.2 Any person can act as witness before the Investigation Panel, with the exception of the Alleged Victim's and of the Alleged Wrongdoer's family members.
- 10.3 The Investigation Panel shall decide whether the proposed persons should be heard as witnesses (hereinafter the "**Witnesses**").
The Investigation Panel could request that the proposed Witnesses submit written declarations instead of being heard.
- 10.4 If the Investigation Panel considers that the Witnesses to be heard could be at risk of retaliation, it shall point this out to the Director General of Personnel, who shall adopt adequate protective measures.

11) Hearings

- 11.1 In order to establish the facts underlying the Complaint, the Investigation Panel shall hold separate hearings with the persons involved, preferably respecting the following order:
- i) the Alleged Victim;
 - ii) the Witness/es summoned by the Alleged Victim, if any;

- iii) the Alleged Wrongdoer;
 - iv) the Witness/es summoned by the Alleged Wrongdoer, if any;
 - v) any other person that the Investigation Panel deems appropriate to hear.
- 11.2 If it deems it necessary, the Investigation Panel may re-summon one or more of the persons involved for additional hearings.
- 11.3 After the hearings according to paragraph 1 above, the Investigation Panel shall re-hear separately the Alleged Victim and the Alleged Wrongdoer, informing them about key statements made by the other persons heard and giving them the opportunity to submit their comments thereon.
- 11.4 The Alleged Victim, the Alleged Wrongdoer and the Witnesses may be assisted by a person of their choice during the hearings preferably not a family member.
- 11.5 If, for duly justified objective reasons, the Alleged Victim or the Alleged Wrongdoer can not be personally heard, the Investigation Panel may ask them to reply in writing to a list of questions and/or to appoint a person who will represent them at the hearings who cannot be a family member.
- 11.6 The Investigation Panel is required to keep minutes of the hearings.

12) Additional investigation methods

- 12.1 The Investigation Panel, acting within the limits of reasonableness and proportionality, may deem necessary to use additional investigation methods for establishing the facts underlying the Complaint.
- 12.2 For that purpose, the Investigation Panel may submit a reasoned request to the Director General of Personnel to:
- obtain an independent expertise on specific issues of the Investigation, including medical examinations following the procedure under Article 27, last paragraph, of the Staff Regulations I and of the Staff Regulations II;
 - conduct an investigation in the office-space of the Alleged Victim and/or of the Alleged Wrongdoer, including the inspection of their computer files and e-mails;
 - inspect the telephone records of the Alleged Victim, of the Alleged Wrongdoer and/or of other Members of staff involved.
- 12.3 The Director General of Personnel may authorize the requested additional investigation methods only after obtaining the consent of the Bank's Data Protection Officer, when needed, who may impose conditions and restrictions to the Investigation Panel in the use of the methods.

13) Adoption of interim precautionary measures

- 13.1 If, at any moment during the Investigation, the Investigation Panel becomes aware on its own motion, or upon indication of the Alleged Victim or otherwise that the case is causing to the Alleged Victim serious harm and distress or is severely affecting the smooth running of the service, it shall report this to the Director General of Personnel, who may decide to adopt interim precautionary measures in accordance with Article 10 of the Dignity at Work Policy.

14) End of the Investigation

- 14.1 The Investigation Panel shall endeavour to conclude the Investigation within 3 months from the date of its establishment. If not possible, the Investigation Panel shall declare it to the Director General of Personnel, who may extend the duration of the Investigation by a reasonable period depending on the circumstances of the case and trying to balance the interests of the parties involved.

- 14.2 At the end of the Investigation, the Investigation Panel shall submit to the Director General of Personnel the Final Report of the Investigation, in which it describes the outcome of its facts-finding exercise and its conclusion about the alleged Unwanted Conduct.
- 14.3 In the Final Report the Investigation Panel may conclude:
- a) that the established facts constitute an Unwanted Conduct under this Policy;
 - b) that the established facts do not constitute an Unwanted Conduct under this Policy;
 - c) that it can not be established with sufficient certainty whether the investigated facts constitute or not an Unwanted Conduct under this Policy;
 - d) that the established facts do not constitute an Unwanted Conduct under this Policy and that the Complaint was based on vexatious, false or malicious allegations;
 - e) that it is not necessary to establish whether the investigated facts constitute an Unwanted Conduct under this Policy because during the Investigation the Alleged Victim and the Alleged Wrongdoer have clarified the situation between them and have found a solution which is acceptable to both of them.
- 14.4 The Final Report may also include a recommendation on the possible implementation measures. However the decision on the implementing measures will be taken by the President at his/her sole discretion in accordance with Article 15.
- 14.5 Upon the conclusion of the Investigation, the Director General of Personnel may contact the Investigation Panel to receive comments or suggestions of a general nature about the Bank's working environment which the Panel might have drawn from the Investigation and which might be helpful to prevent and eradicate unwanted conducts at the Bank.

15) Decision on the Formal Procedure

- 15.1 The Director General of Personnel shall forward to the President of the Bank the Final Report together with his/her recommendations.
- 15.2 The President of the Bank will adopt the final decision on the case, indicating the necessary implementation measures.
- 15.3 The President's decision shall be notified to the parties without delay.
- 15.4 If the President's decision closes the case because no Unwanted Conduct has taken place or an Unwanted Conduct has taken place but there are not disciplinary consequences, a copy (paper and/or electronic) of the President's decision, the Final Report and any document in view of which the decision was taken not to open a disciplinary procedure shall be put in the Staff Member concerned personal file for a period of 5 years.
- 15.5 If the final decision of the President is that an Unwanted Conduct has taken place and there are disciplinary consequences, copy of the President's decision, the Final Report, instruments of the disciplinary procedure, correspondence with the Staff Member concerned, the decision imposing disciplinary measures and follow-up shall be put in the Staff Member concerned personal file for a period of 20 years. If the staff member submits an appeal to the Court of Justice the documents will be kept until the Bank has complied with the Court's judgment.