

## ANNEX I: 13 questions related to CSC plenaries and annual reports 2014-2020

### November plenary: [2020](#) *General Activity Report of the Mediation Service of the Commission*

1. For the first time, the *methodology of case handling* ('*methodology*') text is not present in the annual report.<sup>1</sup> The Mediation Service annual report is much less easily understood without this information.
  - a. Can you please explain the non-inclusion of this explanatory text in the 2020 report?
  - b. Have the information and/or definitions contained within the *methodology* changed since the publication of the 2019 report (07.09.2020)?
  - c. Can you please provide a location for equivalent information to be found?<sup>2</sup>
  - d. Are colleagues approaching the Mediation Service systematically informed in writing of the *methodology* (or equivalent) text?
  
2. We welcome the inclusion of the two real-life example cases in the 2020 report (2020, pp. 22-23). This is an excellent way of explaining the type of work you do in a user-friendly manner.
  - a. The first example: case relating to rights and obligations stemming from the Staff Regulations.
    - i. While we understand that mediation ends there and that this case is resolved, there is no mention of any type of lessons learned/feedback for all concerned. What happens afterwards to ensure that the issue stays fixed and that similar mistakes are avoided? E.g. might this lead to a corresponding recommendation?
    - ii. If the payments were to stop and Ms X recontact the Mediation Service would this be counted as a new request for intervention or a reopening of a closed case? How would this be reflected in the statistics? (Would this be the same as question 2.b.i?)
  - b. The second example: case relating to conflict at work.
    - i. If Mr W were to recontact the Mediation Service after the closure of the intervention how would this be reflected in the count of interventions, i.e. would this be treated as a new request? (Would this be the same as question 2.a.ii?)
    - ii. Is there a time limit on recontacting the Mediation Service about the same issue/reopening a case? (question relates to both 2.a.ii and 2.b.i)  
'The Mediation Service indicates their intervention to be closed, but that they remain available for Mr W should any issue arise.' (2020, p. 23)
    - iii. If Mr W's head of unit (HoU) had refused to participate in mediation, Point B of the *methodology* suggests that the option available would be a formal complaint. Is that correct?

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<sup>1</sup> This standard text is present in the annex of all other reports found: [2019](#) (p. 16), [2018](#), [2017](#), [2016](#), [2015](#) and [2014](#). It sets out the admissibility criteria (Point A), collection of information, analysis and assessment (Point B), and finally resolution, the proposing of a solution or compromise and the criteria for considering a case 'solved' (Point C) (see question 2b.iv on this point).

<sup>2</sup> The Mediation Service [frequently asked questions](#) page does not contain this information.

‘In a number of cases, in particular when there is no leeway to interpret texts or no negotiation, the Mediation Service confines itself to examining the options and guiding requesters.’

- iv. Would a case such as 2.b.iii above, be counted as resolved? (*Methodology*, Point C). Please explain.

‘A case is regarded as solved if the solution proposed has been accepted by the parties concerned or suggestions and advice have been given to the requester.’

- v. If, upon opening the request for intervention, Mr W were to be moved quickly (e.g. within days) (with or without his agreement) to another unit, would the request for intervention still be admissible? Please provide an explanation.
- vi. If Mr W had received a negative career development review (CDR) report from that same HoU related to this conflict and [appealed via Article 90\(2\)](#), would this appeal be the basis for stopping the mediation? Please explain.<sup>3</sup>
- vii. If a situation such as 2.b.vi above results in the stopping of mediation, at the end of the appeal process via Article 90(2), would mediation again be possible, i.e. would the case be admissible?

- 3. Unlike in previous reports, these resources/actions/explanations are not mentioned/present in the 2020 report: can you please explain their absence, where their current equivalents might be found and provide current status and forward planning?
  - a. ‘specialist coaches that the Service can suggest to staff members who consult it.’ (last mentioned 2019, p. 6)
  - b. ‘Steering Committee for Psychosocial Risks ... This group brings together the various parties involved in preventing these risks at the Commission, including: the Medical Service, OIB.SIPP, HR.D, HR.E3, the joint committee on prevention and protection at work (CPPT)’ (last mentioned 2018, p. 12)
  - c. ‘awareness-raising and information campaigns’ (last mentioned 2018, p. 12)
  - d. ‘The Board welcomed DG HR’s follow-up proposals, in particular as regards the professionalisation of management and measures to tackle harassment. A new Commission proposal for a decision on that subject is currently in the process of being

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<sup>3</sup> The *methodology* (Point C) is not explicit on this issue: ‘As a result of these two approaches, it is often possible to avoid formal proceedings under Articles 90(2) and 24 of the Staff Regulations (as a result of the withdrawal of the complaints or requests for assistance, as the case may be) because compromise solutions have been produced that are acceptable to the parties.’

The [online FAQs](#) (question 7) also suggest that the mediation and appeal can run concurrently: ‘However, please note that the intervention of the Mediation Service does not have any suspensive effect. In case you ask us to intervene in the context of a dispute on a decision about a statutory right and obligation, please keep in mind the 90-day deadline to challenge formally such a decision (Art 90.2 of the staff Regulation).’

In addition, the [Commission Decision on the Reinforced Mediation Service](#) linked from [the Mediation Service website](#) states in Article 3(3):

‘If the Mediation Service considers that a case may be solved by mutual agreement or by a compromise solution, it may submit either orally or in writing an appropriate recommendation to the person and service(s) concerned for consideration. In particular, oral or written recommendations for an amicable settlement of the dispute may be made with regard to complaints lodged in accordance with Article 90(2) of the Staff Regulations. Such recommendations may be made in particular in the context of the Interservice meeting on complaints as long as no reasoned decision is taken or the case is not brought before the Court of First Instance.’

drawn up. The proposal is designed to consolidate and modernise the remedies available to people who feel that they have been subjected to psychological or sexual harassment.’ (2019, p. 7)

- e. A [Corporate Management Board](#) follow-up discussion of Mediation Service report. ‘This initiative could be repeated in future.’ (mentioned 2018, p. 2)
  - f. Text explaining mediation, its methods and terms (including the terms direct/indirect) (2017, pp. 15-23)
  - g. ‘The benefits of mediation within the Commission explanatory text’<sup>4</sup> (2015, pp. 10-11).
4. These resources/actions are only in the 2020 report: are they one-off actions or are they to be continued (e.g. adopted as good practice)?
- a. HR follow-up of recommendations and discussion of same by Corporate Management Board. (mentioned 2020, p. 9)
  - b. DG HR director-general note providing status of 2019 recommendations (included in full, 2020, p. 15)

5. With regard to measuring the success of the Mediation Service, the 2020 report states the following:

‘By 2025, we envision to be recognised as a reference for mediation for our professionalism, authority and ability to resolve conflict and as a sponsor of a culture of mediation across the Commission. We want more people to come for our advice or mediation and to contribute to more workable and accepted settlement for both parties. Thirdly, we want systemic issues to be more effectively addressed by the Administration. We want to contribute to instil a culture where conflicts are swiftly and effectively addressed across our organisation.’ (2020, p. 2)

The stated mission appears to correspond to the following policy objectives/performance indicators.

- a. An increase in the number of intervention requests overall (‘more people to come for our advice’).

In contrast to that, later in that same introduction text to the 2020 report (p. 2: see question 6b, below) suggests that a decrease in that same metric is a success. Could you please explain the (apparent) contradiction?

- b. An increase in the number of accepted settlements (‘more workable and accepted settlement’).

There do not appear to be any statistics provided for the number and percentage of accepted settlements. How is this policy objective to be monitored and evaluated if

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<sup>4</sup> Particularly point 10: ‘Saving resources: The 2008 activity report of the Mediation Service pointed out the non-existence of figures and studies which would enable it to quantify the cost to the institution of conflicts in professional relationships and stated: ‘The Mediation Service is aware of this, but proposes that reference be made to the figures published by the Justice Ministry of one Member State. According to its figures, in any organisation between 2 % and 5 % of staff are involved in at least one dispute a year, with the cost of a dispute put at €50,000. Although we must be careful when making an extrapolation for an Institution with a staff of over 30,000, we can advance the estimate that the annual cost to the Commission as a direct consequence of staff disputes, based on a 2 % dispute rate, is at least €30 million’.

It is enough to multiply the estimated cost of a dispute (€50,000) by the number of cases resolved to see that the activities of the Mediation Service save the institution millions of euros annually. However, it is not the short-term savings that matter most but the recovery of human resources in the long term.’ (2015, p. 11)

there are no published statistics of those ‘accepted settlements’? (see questions 6a and 7)

- c. An increase in the number of accepted, implemented and followed-up general recommendations on a continuous basis.

Figures are largely provided per year/report only with no overall view. We count 56 general recommendations 2008-2020.<sup>5</sup> (see annex: can you please provide a status on each one?)

The 2017 report addressed this issue and recommended action<sup>6</sup>, can you please provide information on the outcome and follow-up? (see also question 3)

- d. A decrease in time to achieve accepted settlement.

There do not appear to be any corresponding figures in the report on the time to achieve an accepted settlement. How is this performance indicator to be monitored and evaluated? Also, as stated in the report often the outcome relies on the intervention of

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<sup>5</sup> Please see full list in Annex II. For 31 recommendations we have the title only (reports 2008-2013 are not available on MyIntracomm, the recommendation titles are from the 2014 report), for many there is no follow-up given in subsequent reports and there appears to be significant overlap/repetition e.g. those below, suggesting that the recommendation is/was still outstanding.

R7.2012	Improving tools to ensure zero tolerance of acts that undermine human dignity.
R4.2011	Need to improve tools to ensure zero tolerance of acts that undermine human dignity.

With regard to those 2 recommendations, the Annual Reports prior to 2014 are not available on the Mediation Service’s website. Would it be possible to make those available there and to provide those to us in the meantime?

R1.2018 (2018-R1)	Professionalise staff management
R1.2017 (2017-R1)	Professionalise staff management
R1.2016 (2.1)	Communication between management and staff
R2.2016 (2.2)	Middle management training for conflict management

With regard to those 4 recommendations, at the CSC plenary (November 2021) you mentioned that one of the main reasons for conflict is managers not fully exercising their role and that the responsibility of the line managers in the harassment situations must be enhanced. We welcome and agree with that statement. What is more, managers often see their role in conflict situations as just marking negatively in the CDR the lower ranking colleague as having deficiencies in cooperating with colleagues and/or hierarchy. Such managerial approach only puts fuel in the fire of conflict, thus breaking the cohesion of a team, which should not be the role of a manager of a team. We do not see any such statement reflected in the 2020 Recommendations

<sup>6</sup> ‘Since 2008, the Mediation Service has presented around forty general recommendations. Some have been followed up, while others have yet to be implemented. The Mediation Service had already proposed in 2014 that a Commission body be made responsible for following up their implementation by the relevant departments. This task could be entrusted to the Steering Committee for Psychosocial Risks with regard to the recommendations falling within its competence.’ (2017, p. 11)

‘In order to ensure a better follow-up to its recommendations, the Mediation Service reiterates the need to appoint a body tasked with ensuring their implementation by the relevant departments. This task could be entrusted to the Steering Committee for Psychosocial Risks with regard to the recommendations falling within its competence.’ (2017, p. 28)

‘The purpose of the general recommendations is mainly to prevent the recurrence of similar problems. The Mediation Service has presented 26 general recommendations since 2008 ... Some of the recommendations were followed up and the proposed improvements were put into practice. However, a number of them were never followed up. For this reason, the Mediation Service recommends that a Commission department should be tasked with coordinating follow-up of the implementation of the general recommendations presented by the Mediation Service to the Commission in its activity reports.’ (2014, p. 11)

other services <sup>7</sup>, therefore how can the Medical Service performance be reliably measured?

6. More detail and context would increase transparency in interpreting statistics and facilitate sound monitoring and evaluation.
  - a. When listing cases closed, would it be possible to also state, which stage in the *methodology* those cases reached (A, B, C) and what the outcome was. We would welcome a breakdown stating (1) number and percentage of cases where the 'resolution' was reached and 'accepted settlement' was reached; (2) number and percentage of cases where mediation was stopped due to refusal of the other party to participate; (3) number and percentage of cases closed due to the starting of a formal procedure; (4) number and percentage of cases closed due to the person being moved outside the unit/directorate etc.; (5) number and percentage of cases closed due to an unfavourable 'assessment of the leeway available for successful mediation' (*methodology*, Point B) (6) number and percentage of cases closed for any other reason. We refer to question 5 above: please explain which measures/statistics are related to the monitoring and evaluation of the achievement of your policy objectives.
  - b. Can you please provide some data to support the interpretation of the reduction in the number of requests suggested in the 2020 report :  
'You will read that there was a decreasing number of new requests submitted to us. We clearly saw COVID impact. We assume that as there were less physical interactions, there were less room for conflict. Maybe our line managers responded swiftly to such unprecedented situation, checking regularly with their team members how they were coping or what kind of support they needed, showing up another facet and nurturing a different working relationship with their team.' (2020, p. 2). E.g. is it not equally possible that people postponed requesting intervention, or were overwhelmed by the confinement situation and not finding enough energy to start mediation in addition to that, rather than that there was indeed 'less room for conflict'. It is also possible that requestors agreed to postpone online direct mediation while being advised to wait for reestablishment of in-person direct mediation. In that context, from which date was online direct mediation available?
  - c. Would it be possible in future reports to add context to the observation 'Women account for the majority of (new) requests' (2020, 2019, 2018) e.g. a footnote stating 'Women outnumber men at the Commission (see [DG HR statistical Bulletin](#)), but the figures are not directly comparable since non-Commission staff and pensioners can also request intervention from the Mediation Service (see figure X 'new cases by category of requester' group 'others')'.
  
7. Could you please provide, at your earliest convenience, figures on:
  - a. The breakdown (6 headings) listed in question 6a above, we also refer to question 5 above that links those statistics to the monitoring and evaluation of the achievement of the Mediation Service policy objectives. We note that an overall success figure is

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<sup>7</sup> 'While some cases could be closed rather quickly, others remain open for a longer period for several reasons, for instance, pending additional information from the requester or an administrative decision.' (2020, p. 4)

occasionally provided in the reports, but with little further detail: 'In 2016, the Mediation Service was able to provide a solution in 95 % of admissible cases. In the other cases, the parties did not manage to agree on the proposed solution.' (2016, p. 9) (Also, could that remaining 5% be considered 'solved' if the parties were given suggestions and advice? (see question 2b.iv)

- b. The longest, shortest and average times for a case to be closed.
  - c. The breakdown between cases involving direct mediation and cases involving indirect mediation; these were mentioned at the plenary but no distinction, or even a description, is made for those two types of mediation in the 2020 report. (The explanatory text from the 2017 report (pp. 15-23) provides detailed information on these and many other types of mediation and would be a useful inclusion in future reports.)
8. The *methodology* text (Point A) states that the Mediation Service might redirect cases to staff representatives where they are 'better placed to deal with the problem'. Can you please give some general examples where someone approaching the Mediation Service ([certified in mediation in the workplace](#)) might be better served by staff representatives?
9. In the 2020 report you include the following recommendation:  
'2020 - R.3 Rights and assistance for the persons called as witnesses in the formal procedure- Review of the Decision on harassment - Request for assistance (Article 24 of the Staff Regulations)'  
We welcome that recommendation.
- a. However, we would like to remind you that the current institutional setup and the body of case-law underline the 'large margin of discretion/appreciation' of the hierarchy in both the annual appraisal exercise<sup>8</sup> and in the annual promotion exercise<sup>9</sup>. Those can and are used to intimidate and retaliate to both alleged harassment victims and potential witnesses in formal investigations. A bare statement in that respect, while welcome, is entirely inadequate, when the institutional setup does not provide real protection and safeguards against retaliation. That 'large margin of discretion/appreciation' is very ripe ground for instigating a culture of fear. Would you be able to look further into that; make specific, concrete suggestions for action in order to address potential intimidation and fear of retaliation for requestors and witnesses; and follow up on those recommendations?
  - b. This recommendation appears to repeat/overlap with several others (e.g. footnote 5 here and annex) and to highlight that the benefits of mediation (particularly those relating to the financial costs of harassment, see footnote 4) are currently being overlooked. Can you please detail the input and influence the Mediation Service has had on the new Commission proposal for a decision on this subject? (action listed in 2019 report and mentioned here in question 3d).
  - c. Would the same arguments used for better protection of witnesses in the formal procedure not apply to alleged harassment targets/victims too?

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<sup>8</sup> E.g. [Case F-24/14](#), paragraph 41 and case law mentioned in that paragraph.

<sup>9</sup> E.g. [Case F-83/14](#), paragraph 67 and case law mentioned in that paragraph.

- d. Has the Mediation Service received any indication of staff being intimidated or attempts at intimidation, particularly by hierarchy, to not start a formal procedure? For example, 'advice' that starting a formal procedure would create tension with the higher management or within the team?
10. The number of individual recommendations appears to be decreasing dramatically in recent years. In the 2015 report there are 6 individual recommendations and in the 2016 report there are 7 individual recommendations. That contrasts with only one individual recommendation in the 2019 report and 2 individual recommendations in the 2020 report. Could you please comment on the reasons for this clear and sharp downward trend?
11. The 2017 report (pp. 14-23) presents a very useful explanation of what mediation is in general how it is applied in practice outside the EU institutions and even refers to the legal framework under [Directive 2008/52/EC](#). From the description included therein, it appears to us that:
- a. The Commission's Mediation Service plays a rather active role in the process (also under Directive 2008/52/EC), by proposing solutions, requesting documentation, etc.
  - b. On the contrary, while the directive makes reference to incentives for participating in mediation<sup>10</sup>, the current institutional setup does not appear to contain such incentives. Could you please comment on this apparent discrepancy?
12. **November plenary:** (minutes not yet available) It was asked there whether mediation satellites e.g. on each site might make the Mediation Service more accessible, is this something you might consider? Similarly, is it intended that the online option for mediation be continued beyond the return to the office post pandemic?
13. **June plenary** ([536 minutes](#), Point 6) Can you please provide an update on the status of the revision of the *Commission Decision on psychological harassment and sexual harassment C(2006) 1624/3 and a provisional timeline?*

We thank you again for your input and willingness to engage with us. We appreciate the work you do in assisting colleagues who encounter difficulties.

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<sup>10</sup> Article 2 'Cross-border disputes: 1. For the purposes of this Directive a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which: [...]

(b) mediation is ordered by a court;

(c) an obligation to use mediation arises under national law; or [...]

Article 5: Recourse to mediation [...]

2. This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.'