

Protocol for preventive action and care for victims of sexual harassment and gender-based harassment, based on sexual diversity or gender

Donostia International Physics Center (DIPC)

2020-2021



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*Donostia International Physics Center (DIPC)
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1. Declaration of principles

This protocol aims to encourage and maintain a dignified working environment for all workers that form part of the Donostia International Physics Center (DIPC), keeping it free from violence in general and violence against women and other non-regulatory collectives in particular.

Violence against women, wherever it happens, is the most devastating demonstration of gender discrimination while also a flagrant infringement of other fundamental rights such as dignity, physical and moral integrity, sexual freedom and the right to work.

In turn, this Protocol includes harassment based on sexual diversity and gender given that it constitutes a “prohibited cause for discrimination” (art. 21 of the European Union Charter of Fundamental Rights); a “suspicious cause for discrimination” (art. 14 CE); and a form of discrimination by the sex-gender system in as much as this system is built on the basis of mandatory heterosexuality.

The Donostia International Physics Center (DIPC) assumes that attitudes of sexual harassment, gender-based harassment and harassment based on sexual orientation and gender identity and expression are an attack on each person’s right to equality, health and dignity. It consequently makes all resources available so that this type of situation is not tolerated, and it commits to preventing and eradicating this behaviour.

Taking into consideration that the rights to equality, non-discrimination, moral integrity, intimacy and work, maintaining dignity, are guaranteed in the Spanish Constitution, in European Union regulations, in the Workers’ Statute, and in regional regulations, as signees representing the DIPC, we undertake to use this Protocol to regulate the procedure to be applied both to prevent, through training, responsibility and information, and to resolve claims and complaints presented by the affected parties, with the due guarantees and taking into consideration community, constitutional, regional, labour regulations and declarations relating to the right of all workers to workplaces that are free from sexual harassment, gender-based harassment and harassment due to sexual orientation and gender identity and expression.

It is the responsibility of all persons within the Donostia International Physics Center (DIPC) to make sure that this commitment is met; particularly anyone holding a senior or middle management position who must guarantee that harassment does not occur in any form. If this type of attitude or behaviour occurs, help and assistance will be provided to the persons who are experiencing sexual harassment, gender-based harassment and harassment due to sexual orientation and gender identity and expression, solutions will be sought for the problems caused by this

violence. Every attempt will be made to prevent the situation from occurring again and it will be sanctioned according to the circumstances and restrictions for this particular occurrence.

2. Aims

This Protocol has the general aim of preventing and resolving possible situations of sexual harassment, gender-based harassment and harassment due to sexual orientation and gender identity and expression, in any form, that might take place both inside and outside the physical space of the Donostia International Physics Center (DIPC) or over its virtual or symbolic media.

There are also several specific aims:

- Identify situations that amount to sexual harassment, gender-based harassment and harassment based on sexual orientation and gender identity and expression
- Inform and raise awareness among staff on the importance of stopping situations of sexual harassment, gender-based harassment and harassment based on sexual orientation and gender identity and expression
- Help to prevent sexual harassment, gender-based harassment and harassment based on sexual orientation and gender identity and expression by planning training and awareness-raising actions.
- Identify the persons responsible for processing the procedures and actions to follow.
- Facilitate notification in cases of sexual harassment, gender-based harassment and harassment based on sexual orientation and gender identity and expression, providing a complaint model template and identifying who should fill it in.
- Guarantee the security, integrity and dignity of the affected persons and application of measures that apply in each case to protect the persons filing the complaint.
- Guarantee reserved treatment and respect for intimacy and dignity for all parties involved.
- Resolve the conflicts and the situations of sexual harassment, gender-based harassment and harassment based on sexual orientation and gender identity and expression, setting a course to apply the relevant sanctioning measures.

For this purpose, this protocol determines the attitudes and behaviour that the Donostia International Physics Center (DIPC) considers to fall within the concepts of sexual harassment, gender-based harassment and harassment based on sexual orientation and gender identity and expression, what the persons experiencing them can do, what procedure should be followed in these cases and which measures should be adopted to help these persons and address the different situations generated by this violence.

3. Field of application

3.1. Material field of application. This protocol is applied to any of the behaviour defined in article 4 that takes place verbally, in person or electronically (emails, social media, WhatsApp, etc.).

3.2. Subjective field of application. This protocol is applied to:

a) All personnel who have a working or statutory connection, and also associates and visitors on research visits to the Donostia International Physics Center (DIPC).

b) Personnel from external companies contracted by the Donostia International Physics Center (DIPC) and that provide their services in the DIPC premises, whenever one of the persons implicated in the facts belongs to the collectives indicated in section a. By applying the obligations set for coordination of business activities compiled in Law 31/1995 and in Royal Decree 171/2004, of 30 January, for which article 24 of the aforementioned law is developed, external companies must be informed of the existence of this protocol. When there is a conflict between the personnel from the Donostia International Physics Center (DIPC) and the personnel from a contracted external company, there should be reciprocal communication of the case, so that each party can apply their respective action protocol and execute the corrective or disciplinary measures that it considers appropriate.

c) Anyone who is not part of any of the aforementioned collectives but that uses the services provided by the Donostia International Physics Center (DIPC) whenever the person accused in the complaint forms part of the DIPC.

3.3. Territorial field of application: the behaviour must have taken place within the Donostia International Physics Center (DIPC) organisational field or service provision.

4. Reference standard and definition of concepts

4.1. Regulatory framework

Strategic Line 3 of the Donostia International Physics Center's First Equality Plan, published in April 2020, features the need to address Sexual Harassment and gender-based harassment in the workplace.

It highlights six specific actions for this purpose that are listed below and that have been compiled in this Protocol: have a protocol for prevention and eradication of sexual and gender-based harassment; identify the person responsible for receiving complaints and claims who will also run the procedure in the protocol; offer training on the topic to this person who will become the Confidential Counsellor, the body responsible for activating the Protocol. Inform the DIPC about the protocol to prevent and address sexual and gender-based harassment which should be easily accessible for the entire

DIPC community in different ways (emailing, website, others) and different formats (digital and/or paper). Produce a biannual assessment report to be sent to Emakunde.

International Regulatory Framework

The Universal Declaration of Human Rights determines fundamental Human Rights which include equality and freedom of all human beings. It was proclaimed by the United Nations General Assembly on 10 December 1948, in resolution 217 A (III).

Covenant 111 of the International Labour Organisation of 15 June 1958 relating to discrimination in employment and occupation highlights sexual harassment at work as a form of discrimination for working women and Recommendation 19 on violence in the workplace in the service sector and measures to fight it.

The Declaration on Elimination of Discrimination against Women, declaration of human rights, was proclaimed by the United Nations General Assembly on 7 November 1967.

The Convention on Elimination of All Forms of Discrimination against Women was approved by the United Nations General Assembly on 18 December 1979.

The Declaration on Elimination of Violence against Women was approved by the United Nations General Assembly resolution 48/104 on 20 December 1993. This declaration defines “violence” against women” and spans acts that take place within the family, in the community in general, including rape, sexual abuse, harassment and sexual intimidation at work and in educational institutions.

The optional protocol from the convention on the Elimination of All Forms of Discrimination against Women was approved in 1999.

Resolution 17/19 from the Human Rights Council, in 2011, implies the right to equal treatment before the law and the right to be protected against discrimination for reasons that include sexual orientation and gender identity.

Community Regulatory Framework

The European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950, specifically article 14, prohibits any type of discrimination in the enjoyment of rights and freedoms recognised in the Convention.

Article 20 of the European Social Charter from 1961, determines that all workers have the right to equal opportunities and treatment in terms of employment and profession, without gender-based discrimination, and the additional Protocol to the European Social Charter of 1988.

Article 1 of the Protocol to protect Human Rights and Fundamental Freedoms of 2000 determines the general prohibition of discrimination.

The European Council Convention on preventing and combating violence against

women and domestic violence (Istanbul 11V.2001) aims to protect women against all forms of violence and drive out this violence.

The Recommendation from the committee of ministers, of 30 April 2002, on protecting women against violence, defines the term “violence against women” and regulates general relative measures.

The Recommendation from the Council of Ministers, of 12 March 2003, on balanced participation between women and men in politics and decision-making.

Resolution from the European Parliament of 12 September 1989 on discrimination of transsexual persons, which recognises that each person can determine their identity as a human being.

Recommendation from the Commission, of 27 November 1991, on protecting dignity of women and men in the workplace.

Recommendation from the Commission 92/131, of 27 November 1992, on protecting dignity of women and men in the workplace. This compiles a code of conduct on measures to combat sexual harassment.

The Charter of Fundamental Rights of the European Union of 2000, specifically article 20 that proclaims equality for all citizens before the law; article 21 prohibits discrimination; and article 23 regulates equality between women and men.

Decision by the European Parliament and Council, of 21 April 2004, which approves a community action programme to prevent and fight violence inflicted on children, young people and women and protect the victims and risk groups.

Directive 2006/54 from the European Parliament and Council, relating to applying the principle of equal opportunities and equal treatment between men and women on matters of employment and occupation, that repealed directives 75/117/CEE, 76/207/CEE, 86/378/CEE and 97/80/CE.

The European framework agreement on harassment and violence in the workplace, sent by the Commission to the European Council and Parliament, of 26 April 2007, 686 final, that includes sexual orientation among the reasons for non-discrimination.

Regulation (EU) 2016/679 from the European Parliament and Council of 27 April 2016 relating to protection of physical persons regarding processing personal data and free circulation of this data.

State Regulatory Framework

Articles 9, 10.1, 14, 15, 18.1 and 35.1 of the 1978 Spanish Constitution, that recognise fundamental rights as the dignity of the person, inviolable rights that are inherent to them, free development of personality, equality with no gender-based discrimination, the right to life and to physical and moral integrity, without being subject to any

inhuman or degrading treatment, the right to honour, personal and family intimacy, to one's own image and to work without being the object of gender-based discrimination.

Law 31/1995 of 8 November, on Occupational Risk Prevention, in which article 14 determines that measures should be adapted to protect health and safety in the workplace.

Organic Law 10/1995 of 23 November, of the Criminal Code, specifically article 184, that punishes anyone who creates a severely intimidating, hostile or humiliating situation for the victim in the labour, education or service provision environment, as the perpetrator of sexual harassment. The same applies to whoever makes the most of a work, education or hierarchic superiority situation to commit sexual harassment. And article 178 that punishes whoever violates the sexual freedom of another person.

Organic Law 3/2018 of 5 December, on Personal Data Protection and guarantee of digital rights.

Law 1/2000 of 7 January on civil procedure, specifically article 11 bis, which determines the legitimacy to defend the right to equal treatment between women and men.

Legislative Royal Decree 5/2000 of 4 August which approves the reworked text of the Law on social order infractions and sanctions, article 8 determines very severe infractions that include sexual harassment.

Organic Law 1/2004 of 28 December, on Comprehensive Protection Measures against Gender Violence, which proclaims the rights of women who are victims of gender violence, specifically the right to information (art. 18), to comprehensive social care (art. 19) and free legal aid (art. 20).

Organic Law 3/2007 of 22 March for effective equality of women and men, in which article 7 defines sexual and gender-based harassment and determines discriminatory acts; while article 48 regulates the specific measures to prevent sexual and gender-based harassment in the workplace.

Legislative Royal Decree 2/2015 of 23 October, which approves the reworked text of the Workers Statute Law, specifically article 4 that determines labour rights; article 17 that prohibits discrimination in labour relations; article 54.2 that regulates the reason for dismissal.

The State pact on Gender Violence of 3 August 2017, in which the definition of gender violence compiles all types of violence against women included in the Istanbul Convention.

Regulatory Framework for the Euskadi Autonomous Community

Article 9 of Organic Law 3/1979 of the Basque Country Autonomy Statute determines the fundamental rights of citizens.

Law 4/2005, of 18 February, for equality between women and men.

Agreement from the Governing Council of 29 June 2010 that approves the 5th Plan for equality between women and men.

Decree 29/2011, of 1 March, on the coordination mechanisms to assist victims of gender violence in the general administration of the Euskadi Autonomous Community.

Order of 20 June 2011, from the Ministry of Education, Universities and Research, that regulates prevention measures and the procedure to follow for cases of moral and/or gender-based harassment in the workplace, in the field of the Department of Education, Universities and Research.

Law 3/2012, of 16 February, which modifies the law for equality between women and men.

Law 14/2012, of 28 June, on non-discrimination for reasons of gender identity and recognition of the rights of transsexual persons.

Decree 234/2015 of 22 December, on the administrative documentation of transsexual persons. Foral and local plans for equality between women and men.

4.2. Definition of concepts

Sexual harassment

According to Art 7.1 of Organic Law 3/2007, of 22 March, for effective Equality of women and men "sexual harassment is any behaviour, verbal or physical, of a sexual nature that aims to or produces the effect of threatening the dignity of a person, particularly when an intimidating, degrading or offensive environment is created."

As an example, the following behaviours can constitute sexual harassment:

- a) Offensive sexual jokes and comments on the physical appearance or sexual condition of the female or male worker.
- b) Obscene sexual comments.
- c) Questions, descriptions or comments on fantasies, preferences and sexual skills/prowess.
- d) Insulting or obscene ways of addressing persons.
- e) Spreading rumours on the sex life of persons.
- f) Communications (phone calls, emails, etc.) with sexual content and an offensive nature.
- g) Behaviour that seeks ill-treatment or humiliation of the worker due to their sexual condition.
- h) Invitations or pressure to go on dates or have sexual encounters.

- i) Invitations, requests or demands for sexual favours when they are directly or indirectly related to their career, improving their working conditions or keeping their job.
- j) Persistent invitations to take part in social or recreational activities even though the person receiving them has made it clear that they are unsolicited and inappropriate.
- k) Use of images, graphics, cartoons, photos or drawings with sexually explicit or suggestive content.
- l) Obscene gestures, whistling, immodest gestures or looks.
- m) Offensive letters, notes or email messages with sexual content.
- n) Behaviour that seeks ill-treatment or humiliation of the worker due to their sexual condition.
- o) Deliberate and unsolicited physical contact (pinching, touching, unsolicited massages, etc.) or excessive and unnecessary physical proximity.
- p) Cornering or deliberating seeking to be alone with the person unnecessarily.
- q) Intentionally or “accidentally” touching sexual organs.

Gender-based harassment or gender-based harassment

According to Art 7 of Organic Law 3/2007, of 22 March, for effective Equality of women and men “Gender-based harassment is any behaviour performed due to a person’s gender that aims to or produces the effect of threatening their dignity and creating an intimidating, degrading or offensive environment.”

Among other behaviour, harassing behaviour can constitute:

- a) Use of discriminatory behaviour due to being a woman.
- b) Jokes and comments about persons that take on tasks that have been traditionally performed by persons of the other sex.
- c) Use of insulting or offensive forms to refer to persons of a determined gender.
- d) Use of gender-based humour.
- e) Ridiculing or putting down the capability, skills and intellectual potential of women.
- f) Evaluating the work of persons with disdain, unfairly or with bias depending on their gender.
- g) Assigning tasks or jobs below the professional capability or skills of the person.
- h) Unfavourable treatment due to pregnancy or motherhood.
- i) Explicit or implicit behaviour aimed at making restrictive or limiting decisions on the person’s access to employment or to their continuity in it, to vocational training, salary or any other matter related to working conditions.

Gender-based harassment due to pregnancy or motherhood

According to Art. 8 of Organic Law 3/2007 of 22 March for the effective equality of women and men, this type of harassment can be expressed as follows:

- a) Assigning a job with less responsibility than their capability or professional category.
- b) Attributing tasks that might be senseless, impossible to achieve or with irrational

- deadlines.
- c) Deliberately blocking their access to the appropriate means to do their job (information, documents, equipment, etc.).
- d) Arbitrarily denying them their rightful permits or licences.

Harassment due to sexual orientation, gender identity and expression

Directive 2006/54 of the European Parliament and Council, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation and the Framework Directive for equal treatment in employment (2007/78/CE), that includes sexual orientation among the reasons for non-discrimination, call harassment due to sexual orientation, gender identity and expression “any behaviour based on gender, sexual orientation, gender identity and/or expression of gender of a person, that has the purpose or causes the effect of threatening their dignity or physical or mental integrity or creating an intimidating, hostile, degrading, humiliating, offensive or unpleasant environment.”

- a) Public and/or private and reiterated depreciation regarding persons and their work, their capabilities, their technical competence, their skills, etc. due to gender diversity or sexual orientation.
- b) The use of insulting LGTB+phobic expressions that imply undervaluing these capabilities, competences and skills.
- c) Ridiculing persons who perform tasks that have been traditionally taken on by the other gender.
- d) Using LGTB+phobic humour.
- e) Treating persons as if they were minors, as if they were dependent persons, as if they were intellectually inferior... (how they speak to them or treat them, etc.), due to gender diversity or sexual orientation.
- f) Assigning a job or responsibility functions to a person that are below their capability, due to their gender. Or depreciating or undervaluing their capabilities or motivation due to their diversity.

5. Prevention measures

The following actions will be taken on preventing sexual harassment, gender-based harassment and harassment due to sexual orientation and gender identity and expression:

Information, awareness-raising and training:

- a) Guarantee that all persons in the Donostia International Physics Center (DIPC) are aware of this protocol. The outreach instruments will involve sending an email to all workers and publishing it on the intranet. Furthermore, the Protocol will be included on the DIPC website. The name and contact details of the Confidential Counsellor will appear on the entity’s organisation charts.
- b) In the case of collaborating entities or institutions, and supplier companies, they will be sent an email when the Protocol is approved and each time a new relationship is determined for the first time.

- c) It will be included in all Human Resources policies: reception, selection, collective negotiation, workplace conditions, training and internal communication.
- d) Training will be given to all persons within the DIPC, training on sexual harassment, gender-based harassment and harassment due to sexual orientation and gender identity and expression, and its effects on the health of the affected persons.
- e) One or two training sessions when this protocol comes into force. Furthermore, the training of persons from the DIPC on this matter will be updated when these persons require it.
- f) Finally, each time a new person joins the DIPC, they will be given a copy or a way of accessing the protocol at their induction.

6. Action procedure

6.1. Procedure guarantees

The procedure set here is voluntary. To apply this protocol, it will not be necessary for persons experiencing sexual harassment, gender-based harassment or harassment due to gender identity and expression to make a complaint on police or judicial premises.

Furthermore, processing the procedure envisaged in this protocol does not in any case prevent the initiation, simultaneously or subsequently, of potentially pertinent administrative or legal cases by the people involved.

- **Respect and protection:** Discretion should be used to protect the intimacy and dignity of the affected persons. The actions and diligence should take place with maximum respect for them.

All persons taking part in this procedure should be informed of the content of this protocol and consent to its application.

- **Confidentiality:** The persons involved in the procedure must maintain strict confidentiality and reserve regarding the information and data being processed and must not send it out or disseminate it.

All enquiries or complaints that are processed concerning possible psychological harassment, sexual harassment, gender-based harassment or harassment due to gender identity and expression are protected by the confidentiality principle both for the persons involved and all personnel that take part in any way in applying this protocol.

The persons who are affected will remain anonymous. The persons that take part in the procedure envisaged in this protocol, be it as instructors, advisers, or as a witness, should remain silent on the case in order to respect the privacy of the persons involved.

It is prohibited to disseminate the documents related to the complaint or to the investigation, unless it is necessary to start a judicial or administrative procedure.

- **Diligence and speed:** The investigation and resolution on the behaviour in question should be performed without delay, so that the procedure can be completed in the shortest possible time keeping to the due guarantees.
- **Contradiction:** The procedure must guarantee an impartial audience and fair treatment for all affected persons. All persons that are involved should faithfully seek the truth and clarification of the facts that led to this request for their involvement.
- **Non re-victimisation:** Unnecessary repeating of the facts and public exposure of the person making the claim will be avoided and any data that might identify them will be kept secret.
- **Restitution of the victimised persons:** The necessary restitution measures will be taken to re-establish the situation of the person making the claim before the harassment, guaranteeing that they can go back to work in a role as similar as possible to their original situation and ensuring that they will have no contact with their assailant.
- **Prohibition of retaliation:** Retaliation must be explicitly forbidden against persons who put in a request for intervention, appear as witnesses or take part in the investigation of the possible case of sexual harassment, gender-based harassment or harassment due to gender identity and expression.

6.2. Persons who can communicate a situation of sexual harassment, gender-based harassment and harassment due to sexual orientation and gender identity and expression.

Any workers included in the field of application of this protocol, who consider that they are affected by sexual harassment, gender-based harassment or harassment due to gender identity and expression, or any other person who is aware of harassment situations can present a verbal or written claim or complaint to the competent body or persons.

If it is not the affected person who reports the harassment situation, explicit consent from this person should be included to begin actions in this protocol. Only in particularly severe cases or when there is more than one person affected will it not be necessary to get their consent.

In no case can the complaint or claim be processed anonymously.

6.3. Body in charge of applying the Protocol

The body in charge of applying this protocol will be the Confidential Counsellor, in charge of receiving complaints or claims and processing them.

They will be the persons authorised to receive the claims. They will be given this authority in the Equality Commission, ratified by the Centre Management.

Once the persons receiving the claims have been determined, as suggested by the Community Code of Conduct to fight sexual harassment of 27 November 1991, Confidential Counsellors will be named (henceforth Confidential Counsellor). Their identity and contact information will be sent out to all personnel in the entity.

As far as possible, these counsellors will be stable female personnel and will have received prior training on gender issues and/or gender violence. If they do not have this appropriate training, they will be provided with the means to be trained during working hours.

The Confidential Counsellor might be supported and advised by the Equality Commission and external personnel who are specialised in the types of violence compiled in the protocol, and in application of the current procedure.

The functions to be developed will be:

- a) Receive the complaints or claims due to sexual harassment, gender-based harassment and harassment due to sexual orientation and gender identity and expression.
- b) Support and advise anyone who has suffered harassment.
- c) Inform on the rights of persons who provide services in the field of the legislation on harassment.
- d) Compile all the information required to carry out the protocol by meeting the procedure guarantees described.
- e) Provide information on the resources and external services that might support persons who have suffered harassment, and other bodies that they might turn to such as the Ombudsman, Work and Social Security Inspection, Courts of Justice.
- f) Process the procedure according to this protocol.
- g) Monitor and evaluate this protocol.

6.4. Start of the procedure

The procedure begins when a verbal or written complaint or claim is presented by the person or persons affected by the harassment situation to the Confidential Counsellor. The person or persons who put in the complaint or claim have to make an explicit request in writing for this protocol to be applied.

In the event that another authority, professional or person in the DIPC is notified of the harassment situation, with prior consent from the affected person or persons, the complaint should be diverted to the Confidential Counsellor. Only this body can, in any

case, activate this protocol, always with consent from the person who is victim to the harassment situation. Consent is not required from the affected person in the cases listed in point 6.2 of this protocol.

The Confidential Counsellor will receive and listen to the affected person or persons. The information should be received, listened to and compiled with sensitivity and respect. Safeguarding the dignity and integrity of the person or persons who make the complaint and avoiding them having to repeat the facts in the claim, except in cases where it is absolutely necessary to process the complaint in judicial and police premises.

The information will be compiled in writing, descriptively, non-judgementally, and checked with the affected person or persons, for the purpose of caring for the grievants' needs and proper development of the support process and, when appropriate, complaint process.

The affected person or persons will be informed and advised on their rights and their options and the actions that they can undertake depending on the needs and the specific claim.

Once the complaint has been received, the Confidential Counsellor will confidentially inform Management of the situation so that it can, when appropriate, after initial evaluation, take precautionary measures. Precautionary measures might include, whenever possible, distancing the person who has made the complaint from the person who is harassing them in order to prevent a situation from continuing which might be harmful to the victim's health and integrity. In no case should these measures negatively affect or diminish the victim's working conditions, or substantially modify them.

From the time when the complaint or claim is received and for the purposes of protecting privacy and confidentiality in the process, the Confidential Counsellor will assign a numerical ID code to the complaint or claim. The complaint or claim, and all documentation that is generated during the procedure, will be sent, kept safe and archived by the Confidential Counsellor.

6.5. Initial assessment of the claim or complaint

After an initial evaluation of the facts known about the harassment situations, the Confidential Counsellor could:

- a) Not admit this complaint for processing when what has been suggested clearly does not belong within the field of this protocol. The reasons that are given for not admitting the complaint must be explained in person and in writing to the affected person or persons.
- b) Admit the complaint or claim for processing as envisaged in this protocol.

This admission for processing phase must take place within 7 working days of the

presentation of the complaint or claim.

The person who is the subject of the complaint must be notified as quickly as possible and a meeting held with them.

If necessary, complementary information will be collected, as quickly as possible and confidentially, and participation will be requested from all witnesses or other personnel of interest, if they exist. The precautionary measures compiled in point 6.4 above can also be adopted by the Management, when circumstances require this.

6.6. Final Report with recommendations

The Confidential Counsellor, after compiling the information and prior to meeting the affected persons, after making the decision to admit the complaint or claim, will draft a report to which all the information on the actions practised should be attached, with recommendations on the actions to take, that will be sent to the DIPC Management,

The recommended actions will include the following fields of action, agreed with the affected person or persons in all cases:

- A focus on the safety needs of the person or persons affected by the violence.
- Derivation to the pertinent external services to care for the affected person or persons above all concerning the possibility that they decide to make a complaint, in the work inspection, on police or judicial premises.
- Corrective and remedial measures, considering the circumstances in the event that it does not consider the possibility of initiating a disciplinary action by the grievant/s.
- Request to initiate disciplinary action and/or adopt specific measures to correct the situation. Filing any kind of case with the judicial, labour or other authorities will mean suspending these disciplinary measures. Although not the precautionary measures adopted.

6.7. Conclusion of the process

After receiving the report drawn up by the Confidential Counsellor, the DIPC Management will resolve the complaint by the affected person or persons, stating in this resolution the corrective and remedial measures contained in the previous article, that it believes to be appropriate and proportional to the circumstances of the case. The persons involved will be notified of this ruling.

If necessary, a request will be sent to the DIPC Management to take disciplinary action against the person against whom the complaint or claim was made. This action will follow the applicable legislation in force. Once the action has been taken, the DIPC Management will sanction, when appropriate, the person responsible for the harassment, with the measures proposed by the person instructing the action.

The corresponding sanctions depending on the principle of proportionality will be as proposed in the reference agreement in force in Gipuzkoa or, failing that, what appears in the Workers Statute.

6.8. Duration of the procedure

The protocol has a maximum duration of two months from presentation of the complaint or claim to the Confidential Counsellor. This deadline can only be extended if required by the complexity of the situation.

6.9. Monitoring

The Confidential Counsellor will monitor the claims presented and resolution of the cases in order to write a follow-up report every two years on application of this protocol. This report will be presented to the management team, and also to Emakunde so that this organisation can write a general report on the application of procedures to prevent violence in the workplace in Euskadi.

In turn, Emakunde¹ will inform the Department of the Interior Gender Violence Victims Care Board about its content.

7. Categorisation of faults and sanctions

Acts and behaviour that constitutes sexual and gender-based harassment are serious and very serious offences. In any case, qualification of the offences and impose sanctions will be envisaged in the applicable collective labour agreement or in the equivalent bargaining instrument. If there is no applicable collective labour agreement or equivalent bargaining instrument, this Protocol classifies the actions or behaviour and the severity of each one, although always within the consideration that these are serious or very serious offences.

AGGRAVATING circumstances are:

- a) Abuse of hierarchical superiority or that the person committing the harassment has decision-making powers over the victim's working conditions or the action working relationship.
- b) Repeat of the offensive behaviour after the victim has used solution procedures.
- c) Malice in the use of means, methods or forms to directly ensure the indemnity of the subject of the claim
- d) The person who commits the harassment is a repeat offender in sexual and or gender-based harassment.
- e) There are two or more victims.

¹ EMAKUNDE is an autonomous body of the Basque Government that designs, boosts, assesses, coordinates and evaluates equality policies and raises awareness in society to achieve real and effective gender equality in the Basque Country.

- f) The victim has some type of physical, mental or sensory disability.
- g) When the victim has some previous type of medically certified health problem.
- h) When the assailant has demonstrated intimidation or retaliation towards the victim, witnesses or Confidential Counsellor.
- i) When it takes place during a personnel selection or promotion process.
- j) When pressure or coercion is applied to the victim, witnesses or persons in their working or family environment in order to prevent or hinder the investigation.
- k) The situation of temporary contract, a temporary work period, trial period, internship and/or work placement.

The corresponding SANCTIONS depending on the principle of proportionality will be as follows:

- Temporary or definitive forced transfer.
- Suspension of employment and salary.
- Temporary or definitive loss of work professional level.
- Disciplinary dismissal.

All sanctions that do not imply disciplinary dismissal will be complemented by the obligation to attend a training course on the content specified in the Awareness-raising, Information and Training section of this Protocol.

Additional arrangements

The protocol will be reviewed biannually. However, it should be modified, without expecting this biannual review whenever it is necessary to adapt the text to legal modifications brought in that affect it.

NOTIFICATION AND INFORMED CONSENT

Date:	
Requested by:	

Type of harassment:

Information on the affected person:

Name and surname:	DNI/NIE (ID document):
Position in the company:	Work relationship/Type of contract:
Phone:	Email:

Summary

<p>I, with ID number..... Request the application of the Protocol for prevention and attention to sexual harassment and gender-based harassment, due to sexual diversity or gender. To do this, I CONSENT to the use of my personal data by the Confidential Counsellor, in accordance with the legislation in force:²</p> <p>Date:</p> <p>Signed:</p>

Code	
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Code	
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EVALUATION REPORT

²Organic Law 3/2018 of 5 December, on Personal Data Protection and guarantee of digital rights.

Information on the affected person:

Name and surname:	Date
DNI/NIE (ID document):	Position in the company:
Phone:	Email:

Description of the facts (compiles what has happened, the affected persons and possible witnesses and documentary proof if it exists).

Relevant data (persons who have witnessed the facts, actions that have been performed by the notifying persons, data related to the consequences of the harassment on the woman and her work performance, others):

Actions carried out by the Confidential Counsellor (notification to management or department managers, enquiries among other professionals or organisations that oversee these issues, others):

Recommendations to resolve the situation:

MONITORING REPORT

Code	
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Follow-up 1

Date:	Type of follow-up (phone, in person, email, etc.)

Follow-up 2

Date:	Type of follow-up (phone, in person, email, etc.)

Follow-up 3

Date:	Type of follow-up (phone, in person, email, etc.)