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Consultation of the social partners concerning violence at the workplace and its effects on health and safety at work

1. INTRODUCTION

The aim of this document is to obtain the opinion of the social partners concerning the protection of the health and safety of workers at work against all forms of violence at the workplace, including bullying.

The Commission is fully aware that the social partners have already included the subject of harassment in their joint work programme 2003-2005, and have planned a seminar to study the possibility of negotiating a voluntary agreement in this area. The Commission congratulates the social partners on this initiative and would like to contribute to it by providing, through this document, some additional elements for discussion and for an exchange of views on such an important subject. These elements are taken in particular from data collected by the Commission and by certain Community organisations.

Questions of violence and harassment at the workplace are of growing interest in Europe, not only among workers' and employers' organisations and the authorities responsible for working conditions, but also in society as a whole.

It should be stressed that violence at the workplace can have devastating consequences for the wellbeing and physical and emotional health of workers. It also frequently results in a deterioration of working conditions, with resulting organisational and economic consequences such as decreased motivation, increased absenteeism and a fall in productivity. According to some studies, psychological violence alone can contribute to a 1-2% fall in productivity¹.

However, there remains a wide disparity in perception and recognition of the problem in the different countries of Europe. The real extent of the phenomenon remains unknown, but the data available indicate that the problem affects a large number of workers within the Member States.

The results of the third European survey of working conditions,² carried out in 2000 by the Dublin Foundation, indicate the extent of the problem in the 15 countries which were Member States at that time.

According to these results, nearly one worker in 10 (9%) said they had been a victim of intimidation at their workplace in 2000, a slight increase (+ 1%) since 1995. There are significant differences between countries, ranging from 15% in Finland to 4% in

¹ Hoel, H. et Cooper, C.L., *Destructive Conflict and Bullying at Work*, University of Manchester Institute of Science and technology (UMIST), November 2000

² <http://www.eurofound.ie/publications/files/EF0121EN.pdf>

Portugal. These differences are probably due more to a greater awareness of the problem in certain countries than to the actual situation. Women are more exposed (+2%) than men. Employees (9%) are more exposed than the self-employed (5%). There is no significant difference in terms of employment status. Among professional categories, service and sales personnel are the most exposed (13%), and professions with a high proportion of self-employed work (agriculture, craftsmen) are least exposed.

The Dublin Foundation also published a report in 2001 on working conditions in the acceding and candidate countries.³

This report highlights the similarity between the EU Member States and acceding countries for the proportions of different forms of violence and discrimination. These mainly concern women, young people and workers with insecure status.

EU workers thus appear to be increasingly exposed to violence at the workplace, and a Community initiative on this subject would strengthen prevention.

Violence at the workplace can take a wide variety of forms, ranging from simple verbal aggression, through various forms of harassment to physical aggression resulting in death or serious injury.

All forms of violence at the workplace involve an attack on a person's dignity, and are likely to constitute a risk to their health and safety. Psychological violence and harassment are specific forms of violence at work. The Commission has therefore decided that this consultation of the social partners should relate to all forms of violence at work, including bullying.

2. BACKGROUND

In its communication "Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006",⁴ the Commission adopts a global approach to wellbeing at work, taking account of changes in the world of work and the emergence of new risks, particularly psychosocial ones. It thus aims to improve the quality of work, one of the essential components of which is a healthy and safe working environment.

The Commission communication referred to mentions that "emerging" illnesses such as stress, depression, anxiety, violence at work, harassment and intimidation are responsible for 18% of all problems associated with health at work, with a quarter of them resulting in two weeks or more absence from work.⁵

In this communication on a new Community strategy on health and safety 2002-2006, the Commission announced that it would "examine the appropriateness and scope of a Community instrument on bullying and violence at the workplace".

³ <http://www.eurofound.eu.int/publications/files/EF0306EN.pdf>

⁴ COM(2002) 118 final.

⁵ Source : Labour Force Survey 1999.

It takes particular account of the European Parliament resolution on harassment at the workplace, adopted in September 2001.⁶

Among other things, the resolution calls upon the Commission to take account in communications on a Community strategy on health and safety at work of the mental, psychological and social aspects of the work environment, with particular regard to combating bullying at work.

The Commission communication on a Community strategy on health and safety 2002-2006 also takes account of Article 31 of the Charter of Fundamental Rights, which states that "*every worker has the right to working conditions which respect his or her health, safety and dignity*".

The Council, in its resolution on the Commission communication,⁷ refers to the need to take account of the social risks such as harassment at work, and calls upon the Commission to propose all initiatives necessary to achieve the objectives defined in the new strategy.

For its part, the European Parliament, in its resolution on the Commission communication,⁸ supports the global approach to wellbeing at work, which takes into account all risks, including those such as violence and harassment at work, and calls upon the Commission to propose new Community legislation concerning harassment at the workplace.

3. WORK AT COMMUNITY LEVEL

The question of violence at the workplace and its impact on the health and safety of workers has long been of concern to the Commission.

For this reason, in 1996 the Commission asked the University of Nottingham and Work Research Centre Ltd. to prepare a document⁹ containing information and guidelines on violence at the workplace.

The document points out that violence at the workplace can take a wide variety of forms, ranging from simple verbal aggression, through various forms of harassment to physical aggression resulting in death or serious injury. It also notes that violence is a problem which concerns the field of health and safety at work, and which has been consistently underestimated, even in countries where practices in this field are relatively advanced.

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http://www2.europarl.eu.int/omk/sipade2?SAME_LEVEL=1&LEVEL=4&NAV=S&LSTDOC=Y&DE_TAIL=&PUBREF=-//EP//TEXT+TA+P5-TA-2001-0478+0+DOC+XML+V0//EN

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OJ C 161, 5.7.2002.

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http://www2.europarl.eu.int/omk/sipade2?SORT_ORDER=D&S_REF_P=%25&PROG=TA&L=FR&MI_TITLE=nouvelle+strat%C3%A9gie+communautaire&F_MI_TITLE=nouvelle+strat%C3%A9gie+c+ommunautaire&MI_TEXT=&F_MI_TEXT=&S_NATURE=TA&NAV=S&LEG_ID=5&I_TYPE_SEA_RCH=TITLE&I_WORDS=nouvelle+strat%C3%A9gie+communautaire&LEVEL=2

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"Guidance on the prevention of violence at the workplace" (x CE-V/4-97-014-EN-C, Richard Wynne, Nadia Clarkin, Tom Cox, Amanda Griffiths, March 1996).

In 1997, at the request of the Commission, the Advisory Committee on Safety, Hygiene and Health Protection at Work (Advisory Committee) established an ad hoc group with the mandate of preparing a draft opinion all measures that may be necessary at Community level concerning the prevention of violence at the workplace.

The Advisory Committee adopted its opinion on violence at the workplace in 2001 (Annex 1). This opinion proposes definitions of violence and bullying at the workplace, and stresses that violence at the workplace, in all its forms, constitutes a risk factor which employers must assess and prevent by taking specific measures, as with all other risk factors. Moreover, the opinion calls upon the Commission to propose a Council recommendation on the subject, and to draw up guidelines taking account of initiatives adopted in some Member States. The Advisory Committee also proposes awareness-raising and information campaigns on the problem of violence at the workplace.

Work by the Dublin Foundation and the Bilbao Agency in the field of violence at the workplace should also be pointed out.

In this regard, the European Foundation for the Improvement of Living and Working Conditions (Dublin Foundation) has developed a specific research project on violence and harassment at work. An initial report, "Preventing violence and harassment in the workplace",¹⁰ a summary of which is given in Annex II, was published in 2003. It contains information on the following aspects: concept, determining factors, gender and vulnerability, trends and patterns, regulatory instruments, costs and good practice. The report highlights the need for additional research into particular sectors and professions and specific types of violence as a prerequisite for launching legislative initiatives and drawing up strategies in this field at both European and national levels.

The report also says that drawing up codes of conduct, training manuals and awareness-raising material at Community level would be of considerable benefit in facilitating understanding between the EU Member States and would set out guidelines in this new area of action.

In addition, the Foundation organised two events in 2003 concerning violence and harassment in the workplace which led to a very fruitful exchange of information and experience: a European conference (Brussels, 29 April 2003) and a seminar (Brussels, 12-13 December 2003).¹¹ The seminar was the first to be organised by the European Working Conditions Observatory (EWCO) established by the Foundation. At the seminar, it was announced that the Dublin Foundation and the EWCO would continue to develop research into the subject of violence and harassment at work, making particular use of the network of national correspondents.

A second report¹² on violence and harassment in the workplace was published by the Dublin Foundation and the EWCO in June 2004. Based on data from the European survey of working conditions in 2000 and on additional research, different aspects of

¹⁰ <http://www.eurofound.ie/publications/files/EF02109EN.pdf>

¹¹ <http://www.eurofound.eu.int/working/health/harassment/index.htm>

¹² <http://www.eurofound.ie/working/reports/FI0406TR01/FI0406TR01.htm>

the phenomenon of violence at the workplace in a number of Member States are analysed in greater detail.

For its part, the European Agency for Safety and Health at Work (Bilbao Agency) devotes particular attention to information concerning violence at the workplace on its website.

The Bilbao Agency also looked at the subject of violence at the workplace in the context of "Health and Safety at Work Week 2002", which was devoted to problems at work of a psychosocial nature. The Agency also drew up a number of publications on the subject of violence at the workplace, such as "Violence at work", "Bullying at work", "Preventing psychosocial risks at work" and "Good practice: Prevention of psychosocial risks and stress at work in practice".¹³

It should also be noted that the Agency has collected a large number of studies and publications concerning violence at the workplace in certain high-risk sectors such as health care.¹⁴

Finally, many examples of good practice in the prevention of violence and stress at work are also available on the Agency website.¹⁵

The Commission also monitors work on the prevention of violence at the workplace by other international organisations, particularly the International Labour Office, through the "Safework" programme.¹⁶

4. PROTECTING THE HEALTH AND SAFETY OF WORKERS AGAINST VIOLENCE AT THE WORKPLACE AT NATIONAL LEVEL

Regulations governing violence at the workplace in the Member States of the European Union vary widely and are constantly changing. Some countries have introduced specific legislation relating to all or to certain forms of violence at the workplace. This is the case with Sweden, with specific regulations governing violence and victimisation at work; Belgium, with a law on violence, bullying and sexual harassment; France, with specific provisions on bullying and sexual harassment; and Finland and the Netherlands, which have laws on working conditions containing specific provisions on physical and psychological violence.

Other Member States tackle situations of violence at the workplace using existing civil, penal, environmental and/or safety legislation. This is particularly the case in Germany, Greece, Portugal, Spain, Slovakia, Slovenia, the Czech Republic and Ireland, as well as the United Kingdom, although the latter has a legislative provision to protect against harassment at work (Protection from Harassment Act) and Poland, with a law on equal treatment in employment, harassment and mobbing which amended the labour code.

¹³ <http://osha.eu.int/ew2002/ew2002.php?lang=en&id=4&sub=1>

¹⁴ http://europe.osha.eu.int/good_practice/sector/healthcare/indexbytopic11.php?id=196

¹⁵ http://europe.osha.eu.int/good_practice/forums/list.php?f=19

¹⁶ <http://www.ilo.org/public/english/protection/safework/violence/index.htm>

There are other countries which deal with various situations of violence at the workplace using non-legislative measures such as codes of good practice and collective agreements. This is particularly the case with Luxembourg and Denmark.

It can nevertheless be noted that, even in countries which have until now taken very little interest in provisions concerning violence at the workplace, there is increasing awareness of the problem in society and in the world of work.

Some studies point out that these different approaches to the subject of regulations in this area to some extent reflect differing interpretations and perceptions of the phenomenon of violence at the workplace in European countries, due in particular to cultural, sociological and historical influences.

In any event, there is a very dynamic situation in some Member States, where new regulatory instruments concerning violence at the workplace must coexist with existing provisions. This may sometimes involve conflicts of competence between different organs and authorities with jurisdiction in areas such as work organisation, relations between employers and workers, gender equality, discrimination and health.

The practical implementation of national provisions concerning violence at the workplace requires further in-depth analysis in order to assess the actual impact of introducing these measures.

5. PROTECTING THE HEALTH AND SAFETY OF WORKERS AGAINST VIOLENCE AT THE WORKPLACE AT COMMUNITY LEVEL

5.1. Framework Directive 89/391

At present, no specific European legislative provision in force refers explicitly to violence and bullying at work. Nevertheless, certain provisions can be considered to cover the problem.

The framework Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work¹⁷ has the merit of establishing for the first time at European level the general principles of prevention of occupational hazards and establishing as an objective the promotion of improved safety and health for workers at work. It is the result of a new legislative strategy consisting of the establishment of a framework text defining the main aspects of safety and health at work. Horizontal in scope and very wide-ranging, the text was to be supplemented by individual directives in order to cover certain high-risk activity sectors or certain aspects of the work environment and working conditions.

Article 5 of the framework Directive 89/391/EEC imposes on employers “a duty to ensure the safety and health of workers in every aspect related to the work”.

The objective of Directive 89/391 is therefore a dynamic one, adapting also to changing circumstances and risks. Various provisions of the Directive clearly show

¹⁷ OJ L 183, 29.6.1989, p.1.

that it is not set in stone, thus relating only to the risks existing when it was adopted, but rather is developing to meet new situations.

Article 6(2g) of Directive 89/391 states that "the employer shall implement the measures referred to ... on the basis of the following general principles of prevention: developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment".

In the case of harassment at work, awareness is needed of the fact that the very specific nature of such situations frequently makes it difficult for those who are not victims to detect them.

Nevertheless, it should be noted that the opinion of the Advisory Committee on Safety, Hygiene and Health Protection at Work (Advisory Committee) of 29 November 2001 (Annex I) on violence at the workplace makes the following reference to the framework Directive 89/391:

"Violence at the workplace, in all its forms and irrespective of whether it originates inside or outside the workplace itself, is a risk factor which the employer, whether public or private, has a duty to assess and prevent or reduce by means of specific measures in the same way as all other risk factors, pursuant to Article 6 of framework Directive 89/391/EEC. Indeed, under the terms of Article 6(1), the employer is obliged to assess all the risks, and the list of the risks related to chemical agents, work equipment, etc. is not exhaustive".

5.2. Other legal sources

It should also be noted that Article 13 of the EC Treaty enables the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Two Directives were adopted in 2000 on the basis of Article 13, relating to different types of harassment:

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;¹⁸

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;¹⁹

In addition, under Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions,²⁰ harassment and sexual harassment within the meaning of this directive are considered discrimination based on sex and are therefore banned.

¹⁸ OJ L 180, 19.7.2000.

¹⁹ OJ L 303, 2.12.2000.

²⁰ OJ L 269, 5.10.2002.

These three directives deal with a subject which may, in certain cases, amount to harassment at work (particularly discrimination against people on the grounds of their racial or ethnic origin, or discrimination against women in employment and at work). It must be stressed, however, that the aim of these directives is to ensure protection against treatment which is unequal because of a characteristic of the person concerned, which is not always the case in other situations of violence and harassment at work, where aggression towards one or more workers does not necessarily result from the differing characteristics of the persons in question.

From the point of view of protecting the health and safety of workers, all situations of violence at the workplace constitute a risk factor likely to affect health and safety at work and should therefore be avoided or, if this is impossible, assessed by the employer, who should take it into account when drawing up the prevention plan for the undertaking.

This essentially preventive approach is not taken into account in the case of current directives on sexual and racial harassment, the aim of which is to ensure equal treatment and to combat all forms of discrimination.

6. THE IMPORTANCE OF COMMUNITY ACTION AND A POSSIBLE APPROACH AT COMMUNITY LEVEL

Although Community legislation on the protection of the health and safety of workers applies to situations of violence at the workplace, a high percentage of workers claim they have been subject to such situations.

The available data indicate that situations of violence at the workplace result in highly significant costs both for undertakings and for society. As the Dublin Foundation notes in its report,²¹ there are appreciable differences from one country to another, and between different activity sectors, with regard to violence at the workplace and the specific measures taken to combat it.

Given the wide variety of regulations in most Member States concerning protection against violence at the workplace and its consequences for the health and safety of workers, there is a significant disparity in levels of protection within the European Union.²²

In the light of the principle of subsidiarity, shortcomings in Community law and national legislation in this area show that action at Community level could help to strengthen prevention of different forms of violence at the workplace.

Some Member States have already adopted rules to protect workers against violence at the workplace. Those which have not yet taken measures could benefit from the results of the implementation of such measures in other countries. Some Member States also recently stated their intention to further develop their legislative

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<http://www.eurofound.ie/publications/files/EF02109EN.pdf>

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The departments of the European Commission are able to provide the social partners, if they so wish and in the context of their discussions in this field, with information on the subject of national regulations concerning violence at work which the Member States have forwarded to the Commission.

framework to encompass the psychosocial aspects of work. As a result, an initiative in this area would in principle be proportionate and in line with the principle of subsidiarity.

In the context of Article 138(2) of the Treaty, the Commission therefore proposes to consult the social partners on the subject of all forms of violence at the workplace, including bullying. In this regard, it notes with satisfaction and interest the intention expressed by the social partners in their work programme 2003-2005, adopted on 28 November 2002, to organise a seminar to study the possibility of negotiating a voluntary agreement on harassment at work. The Commission does not intend to take the place of the social partners, but to contribute to the discussion of the measures necessary with regard to violence at the workplace.

7. THEMES FOR CONSULTATION

In the light of the above, and in the context of the announced intention of the cross-industry social partners in their work programme to open discussions with a view to an autonomous agreement on harassment at work, the Commission would like to know the position of the social partners on the usefulness of an initiative in the field of violence at the workplace, including bullying. Should this initiative be taken at Community level if appropriate? The Commission also calls upon the social partners to analyse preventive measures and possible instruments for action with regard to the different forms of violence at the workplace, and the impact of measures in the field of work organisation on the phenomenon of violence at the workplace. Finally, the Commission would like to know the scope of any agreement between the cross-industry social partners in this field, and the procedures for implementing it.

ANNEX I

ADVISORY COMMITTEE ON SAFETY, HYGIENE AND HEALTH PROTECTION AT WORK

OPINION

VIOLENCE AT THE WORKPLACE

Adopted on 29 November 2001

Violence can be defined as a form of negative behaviour or action in the relations between two or more people, characterised by aggressiveness, sometimes repeated, sometimes unexpected, which has harmful effects on the safety, health and wellbeing of employees at their place of work.

Aggressiveness may take the form of body language indicating intimidation, contempt or disdain, or of actual physical or verbal violence.

Violence manifests itself in many ways, ranging from physical aggression to verbal insults, bullying, mobbing and sexual harassment, discrimination on grounds of religion, race, disability, sex or, in any event, difference, and may be inflicted by persons both outside and inside the working environment. It is important to bear in mind that physical violence can have consequences that are not only physical but also psychological, which can be immediate or delayed.

Unlike sexual harassment, which is defined in Directive 2000/78/EC, psychological violence, and mobbing in particular, is more difficult to describe. Let us just say that mobbing is a negative form of behaviour, between colleagues or between hierarchical superiors and subordinates, whereby the person concerned is repeatedly humiliated and attacked directly or indirectly by one or more persons for the purpose and with the effect of alienating him or her. This behaviour may take the form of sarcasm, criticism and gossip or lead to limitation of freedom of opinion or reduction of social prestige. The final outcome, which is not necessarily intended, is isolation from the working environment or alienation from the workplace or even the employment relationship.

While physical violence is fairly easy to identify on account of the obvious external signs, the same cannot be said of mental violence, the effects of which may often be denied or distorted.

Violence at the workplace, in all its forms and irrespective of whether it originates inside or outside the workplace itself, is a risk factor which the employer, whether public or private, has a duty to assess and prevent or reduce by means of specific measures in the same way as all other risk factors, pursuant

to Article 6 of framework Directive 89/391/EEC. Indeed, under the terms of Article 6(1), the employer is obliged to assess all the risks, and the list of the risks related to chemical agents, work equipment, etc. is not exhaustive.

The study conducted at the request of the European Commission and the Eurogip survey completed in June 2000 both show that the perception of this specific problem differs considerably from one Member State to another. There are countries which have enacted a law on the subject, others which have tackled the problem of violence with non-legislative measures, yet others which consider only internal violence as a workplace risk, whereas external violence is regarded as a general risk to the population and hence a problem of public order, and, lastly, others which have yet to develop an awareness of the problem.

The same survey shows that there is considerable reluctance to report cases of violence and that, although there are few comparable national statistics on the subject, the phenomenon seems to be on the increase in all sectors.

Bearing in mind that this risk factor has already been referred to by the provisions of framework Directive 89/391/EEC, and in view of the situation illustrated by the abovementioned studies, we endorse the Commission's proposal for a recommendation on this subject.

Such an initiative could provide effective encouragement to undertake a sound assessment of the nature and scale of the problem, and to counter the lack of information on effective preventive measures.

The Commission should therefore draft guidelines based on the definition of the phenomenon in all its various forms and on its inclusion among the risk factors that employers are obliged to assess under the terms of the framework Directive. A model for the assessment of the specific risk as part of the overall assessment would therefore be useful.

The guideline should be based on an essentially preventive approach and therefore set out measures designed to head off the problem. The focus should therefore be on working conditions, work organisation, promoting a good working climate, and good cooperation between management and labour.

Training programmes for managers and workers would be particularly useful in order to draw attention to the problem and identify the appropriate conduct to be maintained in relations with the victims of violence.

While preventive measures should be the priority, they need to be accompanied by psychological and other support for the victims.

The study conducted for the European Commission, the Swedish legislation and the draft legislation on the matter that is currently in the process of being

adopted in Belgium, France and Ireland provide a good working basis for drafting these guidelines.

This initiative should also be accompanied by an awareness raising and information campaign to draw more attention to the problem and to the need to head off violence at the workplace. The campaign should be focused on large, small and medium-sized enterprises and the public sector and be backed up by information material that is practical and easy to understand on good practice with regard to preventive and remedial approaches, as well as sanctions, which are needed whenever the other measures prove to be insufficient.

It would be preferable for the definition of the indicators of the quality of work to take account of the mental and psychosocial factors related to the working environment.

Given the seriousness and extent of the phenomenon of violence at the workplace, it would be useful for the recommendation to be adopted by the Council so that it carries greater political weight with the Member States.

COMMON DECLARATION

Because of the cultural and legal complexity of this subject, the three interest groups consider that the scope of any future recommendation and guidelines should be discussed and defined by the Planning group of the Advisory Committee.

ANNEX II

Summary of the report "Preventing violence and harassment in the workplace", published by the European Foundation for the Improvement of Living and Working Conditions. Available at the following Internet address:

<http://www.eurofound.ie/publications/files/EF02112EN.pdf>