

**Autonomous Framework  
Agreement on**

# **Harassment and Violence at Work**

**An ETUC interpretation guide**



EUROPEAN TRADE UNION CONFEDERATION (ETUC)



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This guide was developed by ETUC and ETUI-REHS with the financial support of the European Commission

# CONTENTS

<b>Preface</b>	<b>6</b>
1. Introduction	8
2. Aim	10
3. Description	11
4. Preventing, identifying and managing problems of harassment and violence	13
5. Implementation and follow-up	16
<b>Annexes</b>	<b>19</b>
Annex 1: Relevant EU Directives	20
Annex 2: "Harassment and Violence at work and EU legislation/ case law: to be or not to be in?"	22
Annex 3: Proposal for taxonomy of violence and harassment at work	64
Annex 4: A selection of references about harassment and violence at work	67
Order form	69

# PREFACE

The negotiations on harassment and violence at work are part of the Work Programmes of the European Social Partners for 2003-2005 and 2006-2008. Building on the conclusions of a joint preparatory seminar (12 May 2005 – Brussels), the negotiations started on 7 February 2006 and finished on 15 December 2006.

ETUC, BUSINESSEUROPE<sup>1</sup>/UEAPME and CEEP then signed this framework agreement on 26 April 2007, after approval by the respective decision-making bodies of these organisations.

It must be implemented by all member organisations of ETUC, BUSINESSEUROPE/UEAPME and CEEP in accordance with the procedures and practices specific to management and labour as specified in Article 139 of the Treaty and this within 3 years after its signature (i.e. before 26 April 2010).

This interpretation guide provides an overview on the content of the agreement, chapter by chapter, focusing on the main issues at stake as discussed throughout the negotiations. Furthermore, this guide provides: 1) an overview of relevant EU Directives (Annex 1), 2) an analysis of some EU legislation and case law proving

that harassment and violence at work are covered by them (Annex 2), 3) a proposal for taxonomy of violence and harassment at work (Annex 3), and 4) a selection of references about harassment and violence at work (Annex 4).

It is intended to support the ETUC member organisations in the implementation of the content of this agreement and to allow better monitoring and evaluation of the results achieved <sup>2</sup>.

It is also hoped that this guide will help to enhance the dissemination and awareness of this agreement and its content among social partners, workers and the public at large.

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**1** - UNICE changed its name to BUSINESSEUROPE in 2007.

**2** - This ETUC interpretation guide was edited by Maria Helena André (ETUC Deputy General Secretary and ETUC Spokesperson during the negotiations) and Stefan Clauwaert (ETUI-REHS Researcher and member of the ETUC's "Harassment and Violence at work" negotiation delegation). Gauthy Roland and Schömann Isabelle (also ETUI-REHS Researchers and members of the ETUC's negotiation delegation) provided their expert commentaries on it. Special thanks go also to Margarida Arenga (ETUI-REHS trainee June-December 2007) for her very valuable assistance in the development of this guide.

# 1. INTRODUCTION

Text of agreement	Interpretation/Comment
<p><i>Mutual respect for the dignity of others at all levels within the workplace is one of the key characteristics of successful organisations. That is why harassment and violence are unacceptable. BUSINESSEUROPE, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) condemn them in all their forms. They consider it is a mutual concern of employers and workers to deal with this issue, which can have serious social and economic consequences.</i></p> <p><i>EU <sup>3</sup> and national law define the employers' duty to protect workers against harassment and violence in the workplace.</i></p>	<p>The agreement thus covers harassment and violence in all their forms, despite the fact that the initial position of the employers during the negotiations was that the agreement should deal exclusively with harassment and not at all with violence at work. It is also highlighted that harassment and violence can have serious social consequences (e.g. health-wise, working climate, work satisfaction, etc.) as well as economic repercussions. That is why the issue is of such great importance to them and must be tackled by the social partners together.</p> <p>The agreement recognises that existing legislation both at EU and national level is applicable and thus that the processes and procedures provided for by that legislation can also apply when dealing with harassment and violence: e.g. information and consultation procedures, risk assessment methods/processes, the use of internal and external expertise, training, responsibility of the employer to protect workers, etc. It is important to note that the references to EU legislation contained in the footnotes are a <u>non-exhaustive</u> list of relevant EU legislation on the matter.</p>

**3** - This includes amongst others the following Directives:

- Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
- 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
- Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work



Text of agreement	Interpretation/Comment
<p><i>Different forms of harassment and violence can affect workplaces. They can</i></p> <ul style="list-style-type: none"> <li>• <i>be physical, psychological and/or sexual</i></li> <li>• <i>be one off incidents or more systematic patterns of behaviour,</i></li> <li>• <i>be amongst colleagues, between superiors and subordinates or by third parties such as clients, customers, patients, pupils, etc.</i></li> <li>• <i>range from minor cases of disrespect to more serious acts, including criminal offences, which require the intervention of public authorities.</i></li> </ul> <p><i>The European social partners recognise that harassment and violence can potentially affect any workplace and any worker, irrespective of the size of the company, field of activity or form of the employment contract or relationship. However, certain groups and sectors can be more at risk. In practice not all workplaces and not all workers are affected.</i></p> <p><i>This agreement deals with those forms of harassment and violence which are within the competence of social partners and correspond to the description made in section 3 below.</i></p>	<p>This paragraph describes the different forms of harassment and violence and the possible perpetrators, including 3<sup>rd</sup> parties. ETUC's position on 3<sup>rd</sup> party violence was clear from the outset: the agreement does not deal specifically with any type of violence, but as soon as there is a link with the workplace, violence or harassment are within the remit of the social partners who have to deal with it, even when the perpetrator is from outside the company. There are measures that can be applied generally to the different types of violence; however more specific measures should be tackled at the sectoral level. Furthermore, the handling of some behaviour /acts is fully/partially the responsibility of public authorities as they constitute criminal offences and do not therefore fall within the remit of the social partners. Having said that, it is recognised that employers have a responsibility for action in the cases that fall under their specific responsibility and that they have to protect their workers.</p> <p>The broad coverage is further demonstrated by this paragraph which recognises that every worker and every workplace, <u>including SMEs</u>, can be affected by violence and harassment. Furthermore, this paragraph also entails the recognition that certain groups and sectors can be more at risk, including concerning 3<sup>rd</sup> party violence. The signatory parties to this agreement have a common understanding that employers cannot be held responsible for the growing violence and harassment that are present in our societies. However, this recognition should not prevent them from acting carefully and proactively in order to assess the working situation and to prevent incidents from arising.</p>

## 2. AIM

Text of agreement	Interpretation/Comment
<p><i>The aim of the present agreement is to:</i></p> <ul style="list-style-type: none"><li>• <i>increase the awareness and understanding of employers, workers and their representatives of workplace harassment and violence,</i></li><li>• <i>provide employers, workers and their representatives at all levels with an action-oriented framework to identify, prevent and manage problems of harassment and violence at work.</i></li></ul>	<p>The major aim is to have harassment and violence tackled at the workplace, whereby all signs that may indicate the presence of harassment and violence need to be taken into consideration. This means first of all that workers, employers and their representatives have to understand how to assess the situation, the subtle mechanisms of e.g. hidden violence and to know how to react, who to involve, etc. Labour and management must therefore cooperate in the identification, prevention and control/handling of harassment and violence.</p> <p>In essence, this agreement must be seen as an action-oriented reference document that can be used and adapted by social partners at other levels according to their speeds, needs and problems.</p> <p>Finally, this paragraph amongst others also indicates that harassment and violence at work must be seen as collective issues/problems and not as something that is solely individually based or between individuals.</p>

### 3. DESCRIPTION

Text of agreement	Interpretation/Comment
<p><i>Harassment and violence are due to unacceptable behaviour by one or more individuals and can take many different forms, some of which may be more easily identified than others. The work environment can influence people's exposure to harassment and violence.</i></p>	<p>In this paragraph, we again find the recognition that harassment and violence can take many different forms, some more hidden, others more open. Thus, as regards moral and social aspects, for instance, even insulting some one, preventing him/her from obtaining due information or enjoying normal social contacts with staff and superiors is an act of violence. There is also the recognition that the work environment – which is here to be understood in a broad sense including work organisation, working conditions and work content – may lead to harassment and violence.</p>
<p><i>Harassment occurs when one or more worker or manager are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work.</i></p>	<p>Due to the complexity of the issues under discussion, ETUC proposed to have two separate definitions in order to show the difference between repetitive and one-off events. Sometimes, in the case of sexual harassment of colleagues, for instance, what is usually termed 'harassment' actually constitutes a serious threat and in this case a 'one-off' is more than enough.</p>
<p><i>Violence occurs when one or more worker or manager is assaulted in circumstances relating to work.</i></p>	<p>The descriptions of both harassment and violence also include the recognition that these phenomena always fall within the scope of the agreement as soon as there is a link with work. They should thus not be read as merely being limited to the personal relations between individuals.</p>

Text of agreement	Interpretation/Comment
<p><i>Harassment and violence may be carried out by one or more managers or workers, with the purpose or effect of violating a manager's or worker's dignity, affecting his/her health and /or creating a hostile work environment.</i></p>	<p>As to the description of the possible perpetrators, ETUC - unlike the employer organisations - wished to have and succeeded in having a formulation that did not explicitly exclude 3<sup>rd</sup> party violence. Although, as previously noted, the descriptions in paragraphs 2 to 4 of this clause are mainly 'work-related', they need to be read in conjunction with all the other references in the text to 3<sup>rd</sup> party violence and in particular the last sentence in Clause 4 which states that external violence is covered by the measures indicated. In addition, it should be noted that the 1<sup>st</sup> opening paragraph of this clause does not make a distinction between possible perpetrators either, as it refers to "individuals" in general and thus not to workers or managers specifically.</p>

## 4. PREVENTING, IDENTIFYING AND MANAGING PROBLEMS OF HARASSMENT AND VIOLENCE

Text of agreement	Interpretation/Comment
<p><i>Raising awareness and appropriate training of managers and workers can reduce the likelihood of harassment and violence at work.</i></p> <p><i>Enterprises need to have a clear statement outlining that harassment and violence will not be tolerated. This statement will specify procedures to be followed where cases arise. Procedures can include an informal stage in which a person trusted by management and workers is available to give advice and assistance. Pre-existing procedures may be suitable for dealing with harassment and violence.</i></p>	<p>The first paragraph of this clause focuses on measures of a general nature, such as raising awareness and training, which need to be taken in order to be able to identify the ins and outs of harassment and violence and to organise preventative actions and/or curative actions involving victim support in the event that prevention fails. It should be noted that these measures should apply to everybody in the workplace (managers, workers, etc.) and thus irrespective of the place a person has within the hierarchy of the enterprise or the structure of the organisation. Furthermore, these types of measures should also cover and be applicable in relation to 3<sup>rd</sup> party violence.</p> <p>This paragraph expresses the obligation to have a zero tolerance position/policy towards harassment and violence in each enterprise or organisation. As a consequence, in order to deal with cases when this zero tolerance is breached, they will have to define a specific procedure to handle cases of harassment and violence, including the joint nomination by management, workers and their representatives of a person that is trusted by all sides. This person may be an internal colleague; however, given the complexity and sensitivity of these matters, it could also be an external adviser such as an occupational psychologist.</p>

Text of agreement	Interpretation/Comment
<p><i>A suitable procedure will be underpinned by but not confined to the following:</i></p> <ul style="list-style-type: none"> <li>• <i>It is in the interest of all parties to proceed with the necessary discretion to protect the dignity and privacy of all</i></li> <li>• <i>No information should be disclosed to parties not involved in the case</i></li> <li>• <i>Complaints should be investigated and dealt with without undue delay</i></li> <li>• <i>All parties involved should get an impartial hearing and fair treatment</i></li> <li>• <i>Complaints should be backed up by detailed information</i></li> <li>• <i>False accusations should not be tolerated and may result in disciplinary action</i></li> <li>• <i>External assistance may help</i></li> </ul> <p><i>If it is established that harassment and violence has occurred, appropriate measures will be taken in relation to the perpetrator(s). This may include disciplinary action up to and including dismissal.</i></p> <p><i>The victim(s) will receive support and, if necessary, help with reintegration.</i></p>	<p>The third paragraph contains a description of a <u>non-exhaustive list of actions</u> that should be part of the procedure established at company level; this list can be considered as balanced and covering the most relevant aspects. Impartiality, confidentiality and full respect for dignity usually make it extremely difficult to deal with sensitive questions of harassment and violence. Even in obvious cases of violence and harassment covered by the existing legislation, external advice is often required to avoid protracted psychological disorders.</p> <p>The text also provides that disciplinary actions should be taken against the perpetrator and that full recovery of the victim should be guaranteed via a total reintegration at his/her workplace, including measures to prevent the victim from being subjected to further intolerable relations with the perpetrator. Moreover, the employer should, within the reintegration process, provide the victim(s) with help and support in order to bring the case to court when necessary and obtain reparation.</p>

Text of agreement	Interpretation/Comment
<p><i>Employers, in consultation with workers and/or their representatives, will establish, review and monitor these procedures to ensure that they are effective both in preventing problems and dealing with issues as they arise.</i></p> <p><i>Where appropriate, the provisions of this chapter can be applied to deal with cases of external violence.</i></p>	<p>Initially, the employers wanted to limit the measures to the nomination of a trusted individual and not to discuss any further procedures. They were even reluctant to give workers and their representatives a role in the nomination of that person. Finally, they agreed to include workers and their representatives not only in the revision and monitoring of the procedures, but also in the design of the procedures. The establishment, revision and monitoring of procedures must thus be done in partnership. Another thing to note is that the usual concept used in previous framework agreements, whereby consultation of workers and/or their representatives is linked to the notion 'according to national practices and procedures', has been abandoned in the text of the present agreement.</p> <p>The point most responsible for bringing negotiations to a standstill on several occasions relates to the coverage of procedures to prevent, eliminate and manage problems of harassment and violence by third parties. The recognition in the last paragraph of this clause that the procedures can also be used in dealing with external violence partially solves this problem. Partially because it will depend on the capacity of trade union organisations, when implementing the agreement, to keep open this possibility. However, colleagues from the ETUC European Industry Federations present at the negotiations felt confident that the text as it stands will suffice to enable them to use the current agreement in their specific sectors as a starting point for further negotiations.</p>

## 5. IMPLEMENTATION AND FOLLOW-UP

Text of agreement	Interpretation/Comment
<p><i>In the context of article 139 of the Treaty, this autonomous European framework agreement commits the members of BUSINESSEUROPE, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) to implement it in accordance with the procedures and practices specific to management and labour in the Member States and in the countries of the European Economic Area.</i></p> <p><i>The signatory parties also invite their member organisations in candidate countries to implement this agreement.</i></p> <p><i>The implementation of this agreement will be carried out within three years after the date of signature of this agreement.</i></p>	<p>ETUC's intention in this chapter was to take a few more steps forward in relation to the framework agreement on work-related stress. The negotiating team was aware of the difficulties in this respect, since the social partners work programme 2006-2008 provides for joint analysis of the implementation procedures of the social dialogue instruments. The employers' initial position was to keep the chapter on implementation and follow-up unchanged in relation to what had been agreed during the negotiations of the framework agreement on work-related stress. The main concern of the ETUC delegation was to delete the word 'voluntary' when referring to the nature of the agreement in order to avoid further confusions on the status of the agreements.</p>



Text of agreement	Interpretation/Comment
<p><i>Member organisations will report on the implementation of this agreement to the Social Dialogue Committee. During the first three years after the date of signature of this agreement, the Social Dialogue Committee will prepare and adopt a yearly table summarising the on-going implementation of the agreement. A full report on the implementation actions taken will be prepared by the Social Dialogue Committee and adopted by the European social partners during the fourth year.</i></p> <p><i>The signatory parties shall evaluate and review the agreement any time after the five years following the date of signature, if requested by one of them.</i></p> <p><i>In case of questions on the content of this agreement, member organisations involved can jointly or separately refer to the signatory parties, who will jointly or separately reply.</i></p> <p><i>When implementing this agreement, the members of the signatory parties avoid unnecessary burdens on SMEs.</i></p>	<p>A second concern of the ETUC delegation was to give a more relevant status to the role of the Social Dialogue Committee (SDC) in the implementation and follow-up procedures. This has been achieved in the text and the SDC has a clearer role than was the case under past agreements. This change also requires a yearly report to be drawn up and adopted at the SDC and thus offers a yearly opportunity to look at and where necessary discuss problems of implementation.</p>

Text of agreement	Interpretation/Comment
<p><i>Implementation of this agreement does not constitute valid grounds to reduce the general level of protection afforded to workers in the field of this agreement.</i></p> <p><i>This agreement does not prejudice the right of social partners to conclude, at the appropriate level, including European level, agreements adapting and/or complementing this agreement in a manner which will take note of the specific needs of the social partners concerned.</i></p>	<p>The agreement includes non-regression and a more favourable clause to prevent any reduction in the general level of protection already given to workers on the matters being considered.</p> <p>The negotiations did not allow further progress to be made on the question of disputes settlement or on deletion of the clause relating to “unnecessary burdens on SMEs”. However, the employers did take note of our concerns in this regard and both matters will definitely reappear on the table during the discussions scheduled under the social partners’ work programme 2006-2008, in which they will - based on the implementation of amongst others the framework agreements on telework and stress at work - “further develop their common understanding of these instruments (...)”.</p>

# ANNEXES

<b>Annexes</b>	<b>19</b>
Annex 1: Relevant EU Directives	20
Annex 2: "Harassment and Violence at work and EU legislation/ case law: to be or not to be in?"	22
Annex 3: Proposal for taxonomy of violence and harassment at work	64
Annex 4: A selection of references about harassment and violence at work	67

# ANNEX 1

Paragraph 2 of Clause 1 “Introduction” states that: “*EU and national law define the employers’ duty to protect workers against harassment and violence in the workplace*”. The reference to EU law is a non-exhaustive list and includes amongst others the following Directives:

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 work (OJ L 183, 29.06.1989, p. 1) (Consolidated version: <http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/consleg/1989/L/01989L0391-20031120-en.pdf>)

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22–26) (Consolidated version: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/L\\_180/L\\_18020000719en00220026.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/L_180/L_18020000719en00220026.pdf))

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16–22) (Consolidated version: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/L\\_303/L\\_30320001202en00160022.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/L_303/L_30320001202en00160022.pdf))

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 (Text with EEA relevance) (OJ L 269, 5.10.2002, p. 15–20) (Consolidated version: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l\\_269/l\\_26920021005en00150020.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_269/l_26920021005en00150020.pdf))

#### Other relevant Documents:

Council Declaration of 19 December 1991 on the implementation of the Commission Recommendation on the protection of the dignity of women and men at work, including the code of practice to combat sexual harassment (OJ C 27, 4.2.1992, p. 1–1) (Consolidated version: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992Y0204\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992Y0204(01):EN:HTML))

## ANNEX 2

### **“Harassment and Violence at Work and EU legislation/ case law: to be or not to be in?”**

In this annex, an overview is provided of the EU directives referred to in Annex 1 and in particular an analysis of the preparatory documents leading to them. This analysis shows clearly that although harassment and violence may not always be explicitly mentioned in the texts, it was certainly intended to be covered as they cover all health and safety risks! Furthermore, it is clear that all these texts place very heavy emphasis on the involvement of workers and their representatives throughout the whole process of combating these risks.

Analysis of the case law of the European Court of Justice (ECJ) also yields some interesting information. Entering the keywords “violence/harassment/harcèlement” in the search engine of the database on ECJ case law (available at: <http://curia.europa.eu/jurisp>) produced a vast list of cases dealing in one way or other with aspects of violence and harassment at work. However, a very large majority of them concerned cases relating to staff members of the European Institutions (the so-called “T-cases”) who considered themselves victims of harassment and/or violence in the workplace. In this connection, it is important to emphasise that only a few of these cases objectively interpret the relevant directives as well as the concepts of ‘harassment’ and ‘violence’, and do not really agree on a concrete definition of it. Consequently, these cases merely provide an idea of which situations at work (inside the EU institutions) are considered to be cases of harassment and violence and which are not. A few other cases do deal with aspects of violence at work or work-related areas, but the questions referred for

preliminary ruling tend to be situated in other branches of (EU) law. An example is the Pupino case (C-105/03) <sup>4</sup> which concerns violent acts committed by a nursery school teacher against young children but where the question at stake is whether the Council Framework Decision 2001/220/JHA of 15 March 2001 on standing of victims in criminal proceedings should enable a national court to authorise young children who have been victims of maltreatment to give their testimony under special arrangements (e.g. outside the trial, before the trial is held, with the assistance of experts, etc.)

There is however one interesting upcoming case. The so-called Coleman case (case C-303/06) <sup>5</sup> deals particularly with Directive 2000/78/EC of 27 November, and refers the following questions for preliminary ruling to the ECJ:

*"1. In the context of the prohibition of discrimination on grounds of disability, does the Directive <sup>6</sup> only protect from direct discrimination and harassment persons who are themselves disabled?*

*2. If the answer to Question (1) above is in the negative, does the Directive protect employees who, though they are not themselves disabled, are treated less favourably or harassed on the ground of their association with a person who is disabled?*

*3. Where an employer treats an employee less favourably than he treats or would treat other employees, and it is established that the ground for the treatment of the employee is that the employee has a disabled son for whom*

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**4-** The opinion of the Advocate General and the ECJ judgment are available at: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&Submit=Submit&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurftp=jurftp&alldocrec=alldocrec&docj=docj&docor=docor&docop=docop&docav=docav&docsom=docsom&docinf=docinf&alldocnrec=alldocnrec&docnoj=docnoj&docnoor=docnoor&typeord=ALLTY P&allcommjo=allcommjo&affint=affint&affclose=affclose&numaff=C-105%2F03&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=&domaine=&mots=&resmax=100>

**5-** Reference of preliminary ruling made on 10 July 2006 (OJ C 237 of 30.09.2006, p. 6 – see also: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&Submit=Submit&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurftp=jurftp&alldocrec=alldocrec&docj=docj&docor=docor&docop=docop&docav=docav&docsom=docsom&docinf=docinf&alldocnrec=alldocnrec&docnoj=docnoj&docnoor=docnoor&typeord=ALLTY P&allcommjo=allcommjo&affint=affint&affclose=affclose&numaff=C-303%2F06&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=&domaine=&mots=&resmax=100>)

**6-** Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, p. 16.

*the employee cares, is that treatment direct discrimination in breach of the principle of equal treatment established by the Directive?"*

*4. Where an employer harasses an employee, and it is established that the ground for the treatment of the employee is that the employee has a disabled son for whom the employee cares, is that harassment a breach of the principle of equal treatment established by the Directive?"<sup>7</sup>.*

At the time of writing (December 2007), this case was still awaiting an opinion by the Advocate General's opinion and the ECJ's judgement.

The Coleman case thus relates to what is called 'discrimination by association'. The Commission's Anti Discrimination Law Review<sup>8</sup>, also reports on this case as a starting point for introducing at EU level the concept of 'discrimination by association', which it defines as the situation *where person A discriminates against person B because of person B's link to or association with person C*.

The Commission's review furthermore states that "*discrimination by association can arise with regard to all the grounds covered by the Anti-discrimination directives, as well as, potentially, with regard to gender and any further grounds covered by national non-discrimination law, such as nationality or trade union affiliation*", and also notes that "*an initial reading of the Directives<sup>9</sup> appears to suggest that they do not protect people who are associated with someone else from certain forms of discrimination*". However, as the definition



of harassment definition in these Directives includes the term 'on grounds of', this seems to extend the legal protection to these kinds of situations, according to the European Commission's position. Also, it is argued that "*equality is a fundamental principle of the European Community and the Directives should be interpreted broadly as a result*". Furthermore, as a result of the importance of respecting fundamental rights which is also stressed in the Preambles to the Directives, "*prohibiting discrimination by association is in line with the purpose of the directives*". Thus, the Commission seems to conclude that discrimination by association is covered and considered a prohibited form of behaviour under European law. Despite the legal opening to this interpretation, it is now to be awaited whether the ECJ will confirm this interpretation via its judgment on the *Coleman case*.

As for the national level, an analysis of the (implementation) legislation and case law of the Member States reveals that, in the majority of cases, discrimination by association is not (yet) expressly provided for. Many Member States have simply copied the wording of the Directives, and have prohibited (direct) discrimination 'on the grounds' of the covered grounds, but have not (yet) elaborated on the exact scope of this protection. However, in a few Member States the matter is expressly provided for in legislation or has been the subject of comments in preparatory documents or case law. This is most notably the case in Austria, France, Ireland, Slovakia, Sweden and the UK; for more information on the particular arrangements in these countries, see pages 17 to 21 of the "European Anti-Discrimination Law Review", Issue 5, July 2007.

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**7-** OJ C 237 of 30.09.2006, p.6.

**8-** "European Anti-Discrimination Law Review", Issue No. 5, July 2007. An initiative of the EU and "The European Network of Legal Experts in Non-Discriminated Field", available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/07lawrev5\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07lawrev5_en.pdf)

**9-** Council Directive 2000/78/EC of 27 November 2000 establishing a general framework agreement for equal treatment in employment and occupation, O.J.L.303/16, 2.12.2000 and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, O.J.L.180/22, 19.7.2000.

# DIRECTIVE 89/391/EEC

## "FRAMEWORK DIRECTIVE ON HEALTH AND SAFETY AT WORK"

Nature of text	Selection of interesting and relevant text proposals
<p>Initial Commission proposal for directive (COM(88) 73 final of 7 March 1988, OJ C 141/88, p. 1)</p>	<p><u>Article 2</u>: proposed definition of "occupational risk" stating "any work-related situation liable to damage the physical and psychological safety and/ or health of the worker, excluding accidents on the way to and from work."</p> <p><u>Article 4 (1)</u> on the "Responsibility of the employer" states that: "The employer shall be responsible for the safety and health of the workers in every aspect which is directly or indirectly related to the work in the undertaking and/or establishment."</p> <p><u>Article 5(2)</u> on "Obligations of the employer" states: "The employer shall put the following general preventive principles into practice, adapting them to match the specific conditions applying to his undertaking, including the size of the undertaking: (...) -developing a coherent overall prevention policy based on technology, organisation of work, working conditions and <u>human relationships</u>."</p> <p><u>Article 5(3) (b)</u> on specific obligations of the employer states: "The safety and health measures taken by the employer must be integrated into all the activities of the undertaking and/or establishment and at all hierarchical levels."</p>

## Nature of text

EESC Opinion (OJ C 175/88, p. 22, 28 April 1988)  
(amendments proposed in bold)

## Selection of interesting and relevant text proposals

And Article 5(3)(f) states: *"The planning and introduction of new technologies shall be undertaken in close cooperation with the workers and/or their representatives, particularly in respect of the choice of equipment and the working conditions, including those aspects connected with the working environment and the physical and psycho-social well-being of the individual. Workers shall receive appropriate training."*

The EESC's comment on the Directive's provisions concerning Article 1 (Object of the Directive) is:

*"The participation of workers should be included in the second sentence, which should thus read: The Directive contains general principles concerning in particular the prevention of occupational risks, the protection of safety and health and the informing, consultation, **participation** and training of workers and their representatives, as well as general principles concerning the implementation of such measures."*

The EESC proposes to define "workplace" in Article 2 as: *"All places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer."*

The EESC also proposes to insert a paragraph in Article 5 in relation to "evaluation of safety and health risks to workers": *" In so doing [i.e. the evaluation], the employer shall assess the following risks in particular:*

*(...)*

*- excessive physical, nervous and mental strain caused by heavy work, shift work, night work, fixed posture, monotonous and unvaried work processes, pressure of deadlines, high-speed work, working time and work organisation.*

## Nature of text

EP Amendments 1<sup>st</sup> reading (OJ C 326/88, p. 102, 16 November 1988)  
(amendments proposed in bold)

## Selection of interesting and relevant text proposals

Article 5(3)(f) should read: "When new technologies are planned and introduced, detailed consideration shall be given to aspects of workers' safety and health, particularly in respect of the choice of equipment and the working conditions, and the physical and psycho-social effects of the working environment on the individual."  
EESC proposes to entitle Article 10 "Worker consultation and participation" and to start with this principle: "1. Employers must cooperate closely with workers or workers' representatives with specific responsibility for safety and health."

Article 11(1) should read: "The employer shall ensure that each worker receives adequate safety and health **instruction and necessary** training specific to his workstation or job."

The EP proposes to amend the initial 1<sup>st</sup> recital to read: "Whereas Article 118A of the Treaty provides that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements as regards the health and safety of workers, especially in the working environment; **whereas the health and safety of workers should be protected at the highest possible level**".

The EP proposes to amend the initial 9<sup>th</sup> recital to read: "Whereas it is necessary to develop information, dialogue and negotiations on safety and health at work between employers and workers and their representatives by means of appropriate procedures and instruments".

The EP proposes to amend the initial 10<sup>th</sup> recital to read: "Whereas safety and hygiene at the workplace and the physical and mental health of workers are rights which cannot be subordinated to economic considerations".

## Nature of text

## Selection of interesting and relevant text proposals

The EP proposes to add a definition of “work environment” in Article 2, as follows: *“the workplace, the design of the workplace, the furnishings, layout machines, equipment, materials, the organisation of work, the working atmosphere, the working hours, the duration and quality of work, the facilities for relaxation, general living conditions, safety and hygiene, and all factors which have a bearing on the living conditions of the worker”*.

The EP proposes to amend the definition of “workplace” in Article 2 to read: ***“all places in and/or outside the undertaking or establishment where workers must remain or which they must visit in connection with their work and for which the employer is directly or indirectly responsible, or any place to which the worker has access in the undertaking and/or establishment”***.

The EP proposes to add a definition of health in Article 2, as follows: *“health in the context of work shall encompass not only the absence of sickness or disease but also all physical and mental factors affecting health and directly related to safety and health at work”*.

As for Article 5 (see above), the EP proposed the following amendments:

***“Article 5 (1) Within the context of his responsibilities, the employer shall take the necessary measures for the protection of the safety and health of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organisation and resources. The employer shall ensure that these measures are taken and, if they are not, shall take appropriate decisions concerning the organisation of work.***  
(...)

## Nature of text

## Selection of interesting and relevant text proposals

*- developing a coherent overall prevention policy based on technology, organisation of work, working conditions, human relationships and environmental influences."*

### "Article 5 (3)

*(a) In so doing [i.e. the evaluation], the employer shall identify and assess and draw up surveys of the following hazards:*

- (...)
- *physical, nervous and mental strain caused by heavy physical labour, shift work, night work, the requirement to work in a specific position, monotonous work, piece-work, individual work carried out in isolation and similar pressures"*

*"(d) with a view to improving safety and health at the workplace, the employer must take the necessary measures to permit workers and their representatives to participate in the organisation of their work."*

### "Article 6a new

*2. Where the health of a worker is at particular risk, talks shall be held between the worker and the employer, with the participation of the worker's representatives, with a view to the worker's employment in another, non-hazardous job, whilst guaranteeing his position."*

The EP suggests the following amendment:

### "Article 10 (1)

*Employers must cooperate closely with workers and their representatives in all issues involving safety and health protection."*

## Nature of text

Amended Commission proposal for Directive (COM(88) 802 final of 5 December 1988, OJ C 30/89, p. 19)  
(amendments proposed in bold)

## Selection of interesting and relevant text proposals

*Whereas, in order to achieve the maximum degree of protection which is reasonably practicable, it is essential that workers and their representatives be informed of the risks to their safety and health of the measures required to reduce or eliminate these risks; whereas it is also essential that they be allowed to verify and ensure, by means of balanced participation in accordance with national practice and/or legislation, that the necessary protective measures have indeed been taken;*

*Whereas information, dialogue and negotiations on safety and health at work must be developed between employers and workers and their representatives by means of appropriate procedures and instruments, in accordance with national practice and/or legislation;*

*Whereas the improvement of safety and health at work and of the physical and mental health of workers are objectives which should not be subordinated to purely economic considerations;*

The Commission amends article 4(1), concerning the "Responsibility of the employer" as follows: "The employer shall be responsible for the safety and health of the workers in every aspect which is directly or indirectly related to the work **or to presence** in the undertaking and/or establishment."

The Commission suggests the following amendments to Article 5 concerning the "Obligations of the employer":  
"2. (...) - developing a coherent overall prevention policy based on technology, organisation of work, working conditions, human relationships **and the influence of environmental factors**."

Nature of text	Selection of interesting and relevant text proposals
<p>EP Amendments 2<sup>nd</sup> reading (OJ C 158/89, p. 131, 24 May 1989) whereby, amongst others, the EP reiterates its proposal to add a definition of "health" (see above).</p>	<p>4. (...)  e) (...) <i>All aspects of the safety and health protection of workers should be taken into account, particularly those in respect of the choice of equipment, working conditions and the impact of environmental factors on the physical and psycho-social well-being of the individual.</i></p> <p><u>Article 10</u> should be entitled "Consultation and participation of workers" and start with this principle:  <i>"1. Employers must work closely with workers and their representatives on <u>all</u> questions involving safety and health protection at work."</i></p> <p>The EP suggests the following amendments:  <u>Article 3</u> (new)  (ca) <i>health: in the context of work shall encompass not only the absence of sickness or disease but also all physical and mental factors affecting health and directly related to safety and health at work;</i>  (cb) <i>prevention: all the provisions or measures taken or provided for at each stage of the activities performed within the undertaking with a view to avoiding or reducing the occupational risks, including, where appropriate, banning the use of certain processes or substances and the laying down of specific conditions for the undertaking of certain tasks;</i>  (cc) <i>occupational risk: any work-related situation liable to damage the physical or psychological safety and/or health of the worker, excluding accidents on the way to and from work.</i></p>



## Nature of text

Seconded amended proposal of Commission (COM(89) 281 final of 12 June 1989, OJ C 172/89, p. 3)

ECJ Case law:  
Commission vs. Italy (Case C-49/00;  
available at <http://curia.eu.int/>)

## Selection of interesting and relevant text proposals

### Article 11

2. *Consultation of workers. The employer shall be obliged to consult the workers with specific responsibility for the protection of the safety and health of workers and workers' representatives in good time before any measure or programme is introduced which might have a substantial impact on safety and health protection."*

### "Article 3

d) *prevention: all the provisions or measures taken or provided for at each stage of the activities performed within the undertaking with a view to avoiding or reducing the occupational risks;*

e) *occupational risk: any work-related situation liable to damage the physical or psychological safety and/or health of the worker, excluding accidents on the way to and from work*

In line with the argumentation of the Advocate General, the ECJ states the following in its judgment of 15/11/2001: "*According to the Commission, Article 6(3) (a) of the directive requires employers to evaluate all the risks to the safety and health of workers at work. The three types of risk mentioned in that provision are only examples of particular risks which must be evaluated. (...) It must be noted, at the outset, that it follows both from the purpose of the directive, which, according to the 15th recital, applies to all risks, and from the wording of Article 6(3)(a) thereof, that employers are obliged to evaluate all risks to the safety and health of workers. It should also be noted that the occupational risks which are to be evaluated by employers are not fixed once and for all, but are continually changing in relation, particularly, to the progressive development of working conditions and scientific research concerning such risks."* (§§ 10-13)

# DIRECTIVE 2000/43/EC “NON-DISCRIMINATION BASED ON RACIAL AND ETHNIC GROUNDS”

Nature of text	Selection of interesting and relevant text proposals
<p><u>Explanatory Memorandum Commission proposal for a Council Directive</u> (COM (1999) 566 final of 25 November 1999, p.4, 5 and 7) (OJ C 116, p.56, 26 April 2000)</p>	<p>In proposing a Directive to combat discrimination on grounds of racial and ethnic origin, the Commission has taken account of experience at national and international levels and the views expressed in the various consultations which it has carried out. The European Parliament in its resolution of 29 January 1998<sup>10</sup> argued that the Directive should cover “the fields of employment, education, health care, social security, housing and public and private services”.</p> <p><b><u>Article 2: Concept of discrimination</u></b></p> <p>Paragraph 3 deals with the notion of harassment. Such conduct can take different forms, ranging from spoken words and gestures to the production, display or circulation of written words, pictures or other material and, to be caught by the Directive, must be of a serious nature, creating a generally disturbing or hostile working environment. Harassment on grounds of racial or ethnic origin seriously undermines people’s rights in professional, economic and social spheres and should be deemed to constitute discrimination.</p>

<sup>10</sup> - Resolution of 29 January 1998 (OJ C 56, 23.2.1998).

## Nature of text

Commission proposal for a Council Directive (COM (1999) 566 final of 25 November 1999) (OJ C 116, p.56, 26 April 2000)

## Selection of interesting and relevant text proposals

### Recital (11):

Harassment on grounds of racial or ethnic origin of a person or group of persons which produces an intimidating, hostile, offensive or disturbing environment should be deemed to be discrimination.

### Article 2: Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is liable to affect adversely a person or a group of persons of a particular racial or ethnic origin, unless that provision, criterion or practice is objectively justified by a legitimate aim which is unrelated to the racial or ethnic origin of a person or group of persons and the means of achieving that aim are appropriate and necessary.

3. Harassment of a person or group of persons related to racial or ethnic origin, which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment in any of the areas covered in Article 3, shall be deemed to be discrimination within the meaning of paragraph 1.

Nature of text	Selection of interesting and relevant text proposals
	<p>Article 11: <u>Social dialogue</u></p> <p>1. Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.</p> <p>2. Member States shall encourage the two sides of the industry to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.</p> <p>Article 13: <u>Compliance</u></p> <p>Member States shall take the necessary measures to ensure that:</p> <p>(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.</p> <p>(b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing lucrative or non-lucrative associations, and rules governing the independent professions and workers' and employers' organisations, are declared null and void or are amended.</p>

## Nature of text

EP Report on the proposal for a council directive on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (COM(1999) 566 – C5 0067/2000 -1999/0253(CNS)) (OJ C 59, p. 263-276, 23 February 2001)  
(proposed amendments in bold)

## Selection of interesting and relevant text proposals

### EP Amendments

(Amendment 50) Article 11(1) Consultation in the social sphere

1. Member States shall take adequate measures to promote the *consultation between organisations in the social sphere and government establishments* with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices *and training of their members in all areas to which this directive applies. The social dialogue between the two sides of industry is an important component of such consultation.*

*Justification: The exclusive mention of the two sides of industry gives the impression that consultation is needed only in the field of employment. However, the scope of this directive is wider and makes it desirable that other organisations representing the interests of consumers, sectors of industry or migrants, etc. should be able to participate in the dialogue.*

The Explanatory statement to the report states the following on Harassment:  
*Subjective factors, however, are not entirely disregarded. The Commission has not confined itself to equality in the formal sense. One can only fully benefit from equal treatment in surroundings which make this possible. A hostile, intimidating, insulting or disturbing environment prevents rights in law from leading to equal treatment in practice, and is therefore prohibited. Harassment is also covered by this directive.*

Nature of text	Selection of interesting and relevant text proposals
<p>Opinion of the EP Committee on Employment and Social Affairs (COM(1999) 566 - C5 0067/2000 - 1999/0253(CNS)) (OJ C 59, p. 263-276, 23 February 2001) (proposed amendments in bold)</p> <p>EESC Opinion (OJ C 204/82, p. 4 and 5, 18 July 2000)</p>	<p>(Amendment 45) <u>Article 11.1: Social dialogue</u> Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences, good practices <b>and training of their members in the provisions of the Directive.</b></p> <p>Justification: The workplace is where many of the problems of discrimination take place in practice. It is important, therefore, that in addition to promoting the monitoring of workplace practices and codes of conduct, as already appear in the Commission text, the focus should also be on training for representatives of the social partners, as has been suggested for public bodies, given that the social partners will in principle be setting the standards to be followed in the workplace.</p> <p>The Committee welcomes the introduction of the definition of harassment in the text of the Directive. The Committee, however, is concerned to ensure that the liability of employers for harassment is limited to situations clearly under the employer's control and to situations where the employer has knowledge of the harassment and has tolerated its continuance.</p> <p><u>Article 11 - Social Dialogue.</u> The Committee welcomes the fact that the social partners, whose independence and autonomy is respected, are going to be involved in fostering the principle of equal treatment through monitoring of workplace practices, collective agreements, Codes of Practice, research, exchange of experience and good practice. The social partners should be required to provide training for their representatives on the provisions of the Directive.</p>

## Nature of text

Amended Commission proposal for Directive  
(COM(2000) 328 final of 31.05.2000) (OJ C  
311, p. 169, 31 October 2000)  
(proposed amendments in bold)

## Selection of interesting and relevant text proposals

### Article 13 - Compliance with the Directive

The Committee fully supports the compliance measures set out in the Directive.

### Article 2: Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is **intrinsically** liable to affect adversely a person or a group of persons of a particular racial or ethnic origin **and if there is a consequent risk that it will place those persons at a particular disadvantage**, unless that provision, criterion or practice is objectively justified by a legitimate aim which is unrelated to the racial or ethnic origin of a person or group of persons and the means of achieving that aim are appropriate and necessary.

3. Harassment of a person or group of persons related to racial or ethnic origin, which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment in any of the areas covered in Article 3, shall be deemed to be discrimination within the meaning of paragraph 1.

4. An instruction or incitement to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

Nature of text	Selection of interesting and relevant text proposals
<p>Final text of Directive (OJ L 180, p. 22, 19 July 2000 )</p>	<p><u>Article 16: Report</u> Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, <b>and every five years thereafter</b>, all the information necessary, <b>including indications of the viewpoints of the social partners and relevant non-governmental</b> organisations, for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.</p> <p>Formally adopted by the Council on 29 June. This directive, forming part of the 'anti-discrimination package', gives meaningful effect to the new powers conferred on the Community by the Treaty of Amsterdam under Article 13 of the EC Treaty. It seeks to prohibit discrimination throughout the Community in different areas such as employment, education, social security, health care and access to goods and services. It defines the concepts of direct and indirect discrimination, gives right of redress to victims of discrimination, imposes an obligation on the respondent to prove that the principle of equal treatment has not been breached, and offers protection against harassment and victimisation in all the Member States.</p> <p><u>Article 2 - Concept of discrimination</u> 1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin. 2. For the purposes of paragraph 1: (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;</p>



## Nature of text

## Selection of interesting and relevant text proposals

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

### Article 11 - Social dialogue

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

2. Where consistent with national traditions and practice, Member States shall encourage the two sides of the industry without prejudice to their autonomy to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.

Nature of text	Selection of interesting and relevant text proposals
	<p><u>Article 17 - Report</u></p> <p>1. Member States shall communicate to the Commission by 19 July 2005, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.</p> <p>2. The Commission's report shall take into account, as appropriate, the views of the European Monitoring Centre on Racism and Xenophobia, as well as the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, <i>inter alia</i>, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.</p>

# DIRECTIVE 2000/78/EC

## “NON-DISCRIMINATION IN EMPLOYMENT AND OCCUPATION”

Nature of text	Selection of interesting and relevant text proposals
<p><u>Explanatory Memorandum Commission proposal for a Council Directive</u> (COM (1999) 565 final of 25 November 1999, p.4, 8, 9 and 14) (OJ C 177, p. 42, 27 June 2000)</p>	<p><u>On point 2 “The Community Scope of Anti-Discrimination Issues”</u>  <i>Discrimination on the basis of sexual orientation also occurs in various forms in the workplace. The problems of workplace discrimination arising from sexual orientation and the lack of legal protection at EU level were highlighted in a recent decision of the European Court of Justice<sup>11</sup>.</i>  <i>Furthermore, two September 1999 judgements of the European Court of Human Rights outlawing the dismissals of members of the armed forces on grounds of their sexual orientation constitute clear evidence that discrimination on this ground exists. Two national surveys undertaken in the UK (1993) and Sweden (1997) show that 27% and 48% of respondents respectively had experienced harassment in the workplace on grounds of their sexual orientation. However, such cases are hard to prove and examples of discriminatory practices do not always come to the fore. This seems to be because employment is an area in which people may hide their sexual orientation for fear of discrimination and harassment.</i></p>

<sup>11</sup> - Case C 249/96, Grant v Southwest Trains [1998] ECR I-0621 [available at: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&Submit=Submit&lljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurfp=jurfp&alldocrec=alldocrec&docj=docj&docor=docor&docop=docop&docav=docav&docsom=docsom&docinf=docinf&alldocnor=ec=alldocnorec&docnoj=docnoj&docnoor=docnoor&typeord=ALLTYP&allcommjo=allcommjo&alfint=alfint&affclose=affclose&numaff=C:249%2F96&ddatefs=&mdatefs=&ydatefs=&nomusuel=&domaine=&mots=&resmax=100>]

Nature of text	Selection of interesting and relevant text proposals
	<p><u>On point 5 “Explanation of Individual Articles of the Proposed Council Directive”, concerning Article 2 – Concept of discrimination:</u></p> <p><i>Paragraph 3 deals with harassment. Such conduct can take different forms, ranging from spoken words and gestures to the production, display or circulation of written words, pictures or other material. This behaviour must be of a serious nature and create an overall disturbing or hostile working environment.</i></p> <p><i>The most recent national legislation prohibiting discrimination at work - the Irish Employment Equality Act (1998) and the new Swedish anti-discrimination Acts (1999)<sup>12</sup> - consider that harassment in the workplace violates the employee’s integrity and constitutes discrimination.</i></p> <p><i>The Directive states very clearly that such conduct should be deemed to be discrimination.</i></p> <p><u>Article 12 - Social Dialogue</u></p> <p><i>The Commission remains very committed to strengthening the role of the social partners in the fight against discrimination. This is why the proposed Directive requires Member States to encourage social partners to contribute to the implementation of the principle of equality of treatment by adopting collective agreements laying down anti-discrimination provisions, which should, however, respect the minimum requirements laid down by the Directive.</i></p> <p><i>Social partners can also have an important role to play in monitoring workplace practices. Possible measures could include the conclusion of agreements between social partners and the adoption of codes of conduct aimed at preventing discrimination.</i></p>

**12** - Ethnic Discrimination Act which replaces the Ethnic Discrimination Act of 1994; Act on discrimination of people with disabilities; Act on discrimination on grounds of sexual orientation.

## Nature of text

Commission proposal for a Council Directive (COM (1999) 565 final of 25 November 1999, p. 18-23) (OJ C 177, p. 42, 27 June 2000)

## Selection of interesting and relevant text proposals

### Recital (19)

*Member States should promote social dialogue between the social partners to address different forms of discrimination in the workplace and to combat them.*

### Article 2 - Concept of Discrimination

*1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination whatsoever between persons on any of the grounds referred to in Article 1.*

*2. For the purposes of paragraph 1:*

*(a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one person is treated less favourably than another is, has been or would be treated.*

*(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is liable to affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.*

*3. Harassment of a person related to any of the discriminatory grounds and areas referred to in Article 1 which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment, shall be deemed to be discrimination within the meaning of paragraph 1.*

*4. In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable accommodation shall be provided, where needed, to enable such persons to have access to, participate in, or advance in employment, unless this requirement creates an undue hardship.*

Nature of text	Selection of interesting and relevant text proposals
<p>EESC Opinion (OJ C 204/82, 18 July 2000)</p>	<p><u>Article 12 - Social Dialogue</u>  <i>1. Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.</i>  <i>2. Member States shall encourage the two sides of the industry to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect this Directive and the relevant national implementing measures.</i></p> <p><i>The Committee believes that an increased dialogue between business, trade unions and other social and economic actors, based on good practice, could show that equal treatment in employment and occupation can improve both economic performance and social inclusion. The Committee is well placed to help promote such a dialogue and intends to organise a hearing on the subject.</i></p> <p><u>Article 2 - Concept of Discrimination</u>  <i>The Committee welcomes the introduction of the definition of harassment in the text of the Directive. The Committee, however, is concerned to ensure that the liability of employers for harassment is limited to situations clearly under the employer's control and to situations where the employer has knowledge of the harassment and has tolerated its continuance.</i></p>

## Nature of text

EP Report on the proposal for a Council directive establishing a general framework for equal treatment in employment and occupation (COM(1999) 565 – C5-0068/2000 -1999/0225(CNS)) (OJ C 178, p. 270, 22 June 2001) (proposed amendments in bold)

## Selection of interesting and relevant text proposals

### Article 12 - Social Dialogue

*The Committee welcomes the fact that social dialogue will be reinforced. Social partners must play a fundamental role and can make a valuable contribution via the monitoring of procedures and practices. This power is not about 'control' but about monitoring the difference between these concepts should be underlined. (In some of the translations the word "control" has been used.) The Committee also welcomes the recommendation that social partners implement the directive into collective agreements thus demonstrating the compatibility between collective and individual rights.*

### EP Amendments

#### Amendment 23 - Article 2 (3)

Harassment **shall be deemed to be discrimination within the meaning of paragraph 1 when an unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practices of the Member States.**

Justification: This is a broader definition of harassment in accordance with Directive 2000/43/EEC of 29 June 2000

#### Amendment 48 - Article 12(1)

**In accordance with national traditions and practices**, Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment **in all areas to which this Directive applies**, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices **and the training of their members.**

Nature of text	Selection of interesting and relevant text proposals
<p>Opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (COM (1999) 565 - C5-0068/2000 - 1999/0225(CNS)) (OJ C 178, p. 259, 22 June 2001) (proposed amendments in bold)</p>	<p><i>Large and medium-sized undertakings shall appoint someone in whom employees can confide if they feel they are being discriminated against. The social dialogue between employers and employees is an important component of these consultations. It shall be ensured that the right to free collective bargaining is upheld. Organisations that support the protection of social groups against discrimination may participate in negotiations between the two sides of industry only if explicitly invited to do so by the latter.</i></p> <p>Justification: This amendment is based on the European Parliament's position on the proposal for an anti-racism directive (Amendment 50). It endorses the concept of the social dialogue provided that it accords with national traditions. There is otherwise a danger that groups which support minorities will always want to participate in negotiations between the two sides of industry. In firms of an appropriate size an employee who feels discriminated against must have somewhere he can go in an effort to solve the problem internally. This is meant to prevent measures that might have serious consequences for those concerned.</p> <p><b>Harassment.</b> Consideration should again be given to whether the definition of harassment ought not to be supplemented so as to include detrimental influence on terms of employment. The concept should also extend to harassment by parties other than an employer or colleagues (e.g. patients or customers).</p> <p><u>Article 2(3).</u> 3. Harassment <i>shall be deemed to be discrimination within the meaning of paragraph 1 when an unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.</i></p>



Nature of text	Selection of interesting and relevant text proposals
<p>Final text of Directive (O) L 303, 2 December 2000, p. 16)</p>	<p><i>In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.</i></p> <p><u>Justification:</u> <i>This is a broader definition of harassment in accordance with Directive 2000/43/EEC of 29 June 2000.</i></p> <p>This proposal aims to establish a number of general principles at Community level for combating discrimination in employment and occupation. It tackles indirect as well as direct discrimination and includes a range of mechanisms to ensure effective remedies in the event of discrimination (improvement of legal protection, adjustment of the burden of proof, protection against harassment and reprisals, dissemination of adequate information on the directive's provisions, etc.). It also gives Member States the option of maintaining or adopting positive action measures.</p> <p><u>Recital 33</u> <i>Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination at the workplace and to combat them.</i></p> <p><u>Recital 36</u> <i>Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as regards the provisions concerning collective agreements, provided they take any necessary steps to ensure that they are at all times able to guarantee the results required by this Directive.</i></p>

**Nature of text****Selection of interesting and relevant text proposals**

Article 2 - Concept of Discrimination. 3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

Article 13 - Social Dialogue. 1. Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.  
2. Where consistent with their national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to conclude at the appropriate level agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and by the relevant national implementing measures.

Article 19 - Report. 2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

# DIRECTIVE 2002/73/EC

## “PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN AS REGARDS ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND PROMOTION, AND WORKING CONDITIONS”

Nature of text	Selection of interesting and relevant text proposals
<p>Commission Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 (Explanatory Memorandum) (OJ C 337, p. 204, 28 November 2000)</p>	<p><u>I. Introduction</u> <i>4. The proposed Directive:</i> <i>- for the first time, clearly defines sexual harassment as discrimination based on sex, at the work place;</i></p> <p><u>II. Content</u> <i>10. Secondly, a very important and sensitive issue like sexual harassment cannot be ignored any more and must be addressed at Community level.</i></p> <p><i>14. Sexual harassment at the workplace is not a new phenomenon. However, it has so far been largely ignored by legislators, at both national and Community level. In the eighties, a first study on this serious problem was commissioned by the Commission. Ten years later, the Commission asked for a new study to be conducted in order to evaluate the eventual changes which have occurred in the Member States during that period.</i></p>

Nature of text	Selection of interesting and relevant text proposals
	<p>17. The Commission drafted an "Evaluation report on the Commission Recommendation concerning the protection of dignity of men and women at work". That report showed that there is a need to go further on this matter. That is why on 24 July 1996 the Commission decided to consult the social partners on a text outlining the Community institutions' past initiatives and proposals on the prevention of sexual harassment at work. The social partners all confirmed the importance of protecting the dignity of the individual worker. A majority agreed that sexual harassment was a widespread problem that had to be prevented in the workplace both for the sake of the individual and of the company. Opinions differed however on the best way to achieve this objective. On 19 March 1997, the Commission launched the second stage consultation with the social partners on the possibility of drawing up a comprehensive policy at EU level to fight against sexual harassment in the workplace, but the social partners did not agree on the need to negotiate a collective agreement on this issue.</p> <p><u>IV. Commentary on the articles</u></p> <p><u>Article 1</u></p> <p>39. The second amendment, which concerns the insertion of a new Article 1a making explicit that sexual harassment constitutes discrimination on grounds of sex and defining what would constitute sexual harassment, is inspired by the Code of Good Practice<sup>13</sup> and the Directive based on Article 13.</p>

<sup>13</sup> - Commission of the European Communities 1993, "How to Combat Sexual Harassment at Work, a guide to the European Commission Code of Practice".

## Nature of text

## Selection of interesting and relevant text proposals

The text of the Commission's press release stated:

"IP/00/588

Brussels, June 7, 2000

Commission bids to outlaw sexual harassment at the workplace

*The Commission today adopted a proposal to ban sexual harassment at work. The draft directive, which also brings the longstanding equal opportunities directive of 1976 into line with European court judgements and new Commission antidiscrimination proposals under the Amsterdam Treaty, is a first attempt to tackle sexual harassment in Community law. The directive considers that sexual harassment is a form of sexual discrimination and thus entails a risk of liability for employers who fail to provide a workplace free of harassment.*

Anna Diamantopoulou EU Employment and Social Policy Commissioner said: "No one contests that sexual harassment takes place and that it is an unacceptable affront to the individual concerned, normally - but not always - a woman. Very few legal systems have yet got to grips with the notion of sexual harassment and this is in part attributable to the inherent difficulty in defining it. But this should not deter us from our duty to send the strongest possible signal that sexual harassment must be outlawed from the workplace. In my mind, the chief purpose of this directive is preventive. By establishing a Community framework for sexual harassment, we draw attention to the problem throughout Europe and create momentum among employers to take their own steps to stamp it out. At the end of the day, a clear and predictable working environment free of sexual harassment is also in the interest of business itself". (underlining added)

(Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/00/588&format=HTML&aged=0&language=EN&guiLanguage=en>)

## Nature of text

Commission Proposal for a **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** 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 (OJ C 337, p. 204, 28 November 2000)

Amended proposal for a **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** 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 (COM(2001) 321 final) (OJ C 270, p. 9, 25 September 2001)

## Selection of interesting and relevant text proposals

### Recital (3)

*In its Resolution of 29 May 1990 on the protection of the dignity of women and men at work, the Council affirmed that sexual harassment in the workplace may, in certain circumstances, be contrary to the principle of equal treatment within the meaning of Council Directive 76/207/EEC. A statement to that effect should be included in the Directive itself, sexual harassment usually affects the individual's work performance and/or creates an intimidating, hostile or offensive environment.*

### Article 1

*2. The following Article 1a is inserted*

#### "Article 1a

*Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to sex takes place with the purposes or effect of affecting the dignity of a person and/or creating an intimidating, hostile, offensive or disturbing environment, in particular if a person's rejection of, or submission to, such conduct is used as a basis for a decision which affects that person."*

### II. Commentary on the amendments

*9. The fifth amendment modifies previous Recital 3, making it Recital 4. This modification specifies that sexual harassment may occur in all areas covered by the scope of the present proposal for a Directive.*

*10. The sixth amendment inserts a new Recital 4a which alludes to the need for those responsible to take measures necessary to prevent sexual harassment.*

## Nature of text

## Selection of interesting and relevant text proposals

25. The twenty-first amendment inserts, in the first paragraph a new Article 1a which incorporates definitions on direct and indirect discrimination, harassment on the basis of sex, and sexual harassment. This is done in order to achieve coherence with Directives based on Article 13 which contain a similar listing of definitions.

26. The twenty-second amendment inserts a new Article 1b which defines "harassment" and "sexual harassment" as discrimination on the grounds of sex, and specifies that Member States should take measures to prevent harassment, including a system of counsellors at the workplace.

4. The following Article 1a is inserted:

"Article 1a Definitions

1. For the purposes of this Directive, the following definitions shall apply:

(...)

- harassment: the situation where an unwanted conduct related to sex occurs on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment;

- sexual harassment: the situation where any form of verbal, non-verbal or physical conduct of a sexual nature occurs, on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment."

## Nature of text

EESC Opinion  
(OJ C 123/2001, p. 81, 25 April 2001)

## Selection of interesting and relevant text proposals

*1.4. For the first time, clear-cut definitions are provided in this proposal of sexual harassment and discrimination based on sex in the workplace; these definitions are based on, and consistent with, the definitions to be found in the proposed directives based on Article 13, dealing with harassment as discrimination based on other grounds as well as sex. In addition, the proposal introduces protection for employees lodging complaints of discrimination, even when the employment relationship has ended, and lays down guidelines for the independent national bodies to promote the principle of equal treatment. It clarifies the Member States' powers to provide for exemptions from the principle of equal access to employment, while requiring Member States to substantiate bans on employing one or other sex in special forms of work. The proposal specifies and guarantees special protection for women on grounds of pregnancy and maternity, including their right to return to the same workplace after maternity leave. Lastly, Treaty Article 141(4) is incorporated, whereby Member States are entitled to adopt positive action measures to promote full equality for women and men at work.*

*2.1. The Economic and Social Committee broadly welcomes the changes proposed by the Commission and would particularly stress how important it is that, for the first time, the definition of sexual harassment is now being given directive form and that the definition per se clearly states that discrimination based on sex at the work place is the issue. This makes it clear that it is always the employer's responsibility to prevent and deter sexual harassment in the workplace. At the same time, it is important - from a legal certainty perspective - to stress that an employer can only act on a specific case when it comes to his notice. The sexual harassment problem is a major, sensitive issue which can no longer be ignored and needs to be tackled at EU level. In addition, the Committee applauds the greater legal certainty resulting from the Directive's reference to Court of Justice case-law. The Committee welcomes the Commission's proposal and highlights the role played by the social partners in implementing equal treatment.*



## Nature of text

### EP amendment 1<sup>st</sup> reading

(OJ C 47/2002, 16 May 2001, p. 19)

### Common position Council

(OJ C307, 31 October 2001, p. 5)

## Selection of interesting and relevant text proposals

### Amendment 21

#### *"Article 1a" Definitions*

- *harassment: the situation where an unwanted conduct related to sex occurs on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.*

- *sexual harassment: the situation where any form of verbal, non-verbal or physical conduct of a sexual nature occurs, which the perpetrator knows, or should know, on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.*

Justification: *There is a need to clarify the definitions.*

### Recital (20)

*Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination based on sex in the workplace and to combat them.*

### 2. Article 2 is amended as follows:

*Harassment shall be deemed to be discrimination within the meaning of the first subparagraph when unwanted conduct related to the sex of a person takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Sexual harassment, which manifests itself as unwanted conduct of a sexual nature expressed physically, verbally or non-verbally, constitutes a specific form of harassment.*

Nature of text	Selection of interesting and relevant text proposals
<p>EP Amendments 2<sup>nd</sup> reading  (OJ C 112/2002, 17 October 2001, p. 14)  (proposed amendments in bold)</p>	<p><u>Amendment 1</u>  <i>Member States should under national law introduce measures obliging those responsible for access to training, employment or occupation, to take preventive measures against harassment and sexual harassment in the workplace, which may include a system of confidential counsellors.</i>  Justification: <i>Preventive measures are essential to ensure a workplace free of harassment and sexual harassment.</i></p> <p><u>Amendment 4</u>  - harassment: <b>the situation where an unwanted</b> conduct related to the sex of a person <b>occurs on the occasion of access to or at the place of employment, occupation or training</b> with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive <b>environment</b>.  - <i>sexual harassment: the situation where any form of verbal, non-verbal or physical conduct of a sexual nature occurs, which the perpetrator knows, or is under legal obligation to know, to have the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment</i></p> <p><u>Amendment 5</u>  2b. <i>The following Article 1b shall be inserted in Directive 76/207/ECC:</i>  "Article 1b: <i>Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited. A person's rejection of, or submission to, such conduct shall not be used as a basis for a decision affecting that person.</i></p>

## Nature of text

Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (OJ L 269, 5 October 2002, p. 15-20)

## Selection of interesting and relevant text proposals

*An instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination within the meaning of this Directive.  
Member States shall under national law ensure that those responsible for access to training, employment or occupation, or the conditions relating thereto, introduce measures to prevent harassment and sexual harassment in the workplace.*

*Justification: Preventive measures are essential to ensure a working place free of harassment. The notion of national law comprises collective agreements and practice.*

*Recital (6). Council Directive 76/207/EEC(4) does not define the concepts of direct or indirect discrimination. On the basis of Article 13 of the Treaty, the Council has adopted Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin(5) and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation(6) which define direct and indirect discrimination. Thus it is appropriate to insert definitions consistent with these Directives in respect of sex.*

*Recital (8). Harassment related to the sex of a person and sexual harassment are contrary to the principle of equal treatment between women and men; it is therefore appropriate to define such concepts and to prohibit such forms of discrimination. To this end it must be emphasised that these forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training, during employment and occupation.*

## Nature of text

## Selection of interesting and relevant text proposals

Recital (9). *In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of sexual discrimination and, in particular, to take preventive measures against harassment and sexual harassment in the workplace, in accordance with national legislation and practice.*

Recital (21). *Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination based on sex in the workplace and to combat them.*

Article 1. 2. *Article 2 shall be replaced by the following:*

*"Article 2*

*2. For the purposes of this Directive, the following definitions shall apply:*

- direct discrimination: where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation,*
- indirect discrimination: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary,*
- harassment: where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment,*
- sexual harassment: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.*

Nature of text	Selection of interesting and relevant text proposals
	<p>3. Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited.</p> <p>5. Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment at the workplace.</p> <p>2. To that end, Member States shall take the necessary measures to ensure that: (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations shall be, or may be declared, null and void or are amended.";</p> <p>7. the following Articles shall be inserted: Article 8b</p> <p>1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.</p>

# COUNCIL DECLARATION OF 19 DECEMBER 1991 "IMPLEMENTATION OF THE COMMISSION RECOMMENDATION ON THE PROTECTION OF THE DIGNITY OF WOMEN AND MEN AT WORK, INCLUDING THE CODE OF PRACTICE TO COMBAT SEXUAL HARASSMENT"

Nature of text	Selection of interesting and relevant text proposals
<p>COUNCIL DECLARATION of 19 December 1991 on the implementation of the Commission recommendation on the protection of the dignity of women and men at work, including the code of practice to combat sexual harassment (OJ C 027/92, 4 February 1992, p. 1)</p>	<p><i>THE COUNCIL OF THE EUROPEAN COMMUNITIES,</i> <i>Considering that on 29 May 1990 the Council adopted a resolution on the protection of the dignity of women and men at work (1);</i> <i>Considering that on 27 November 1991 the Commission made a recommendation on the protection of the dignity of women and men at work (2), to which is annexed a code of practice to combat sexual harassment;</i> <i>Considering that on 21 May 1991 the Council adopted a resolution on the third medium-term Community action programme on equal opportunities for women and men (1991 to 1995) (3);</i> <i>Considering that the European Parliament and the Economic and Social Committee have adopted respectively on 22 October 1991 a resolution (4) and on 30 October 1991 an opinion (5) on the protection of the dignity of women and men at work;</i></p>

## Nature of text

## Selection of interesting and relevant text proposals

*Considering that the efforts already made to promote the integration of women on the labour market should be intensified and developed; considering that sexual harassment is a serious problem for many women working in the Community and an obstacle to their full integration into active life,*

1. *ENDORSES the general objective of the Commission recommendation;*
2. *INVITES THE MEMBER STATES to develop and implement coherent, integrated policies to prevent and combat sexual harassment at work, taking account of the Commission recommendation;*
3. *INVITES THE COMMISSION:*

*(a) to promote an adequate exchange of information with a view to developing existing knowledge and experience in the Member States as regards the prevention and combating of sexual harassment at work;*

*(b) to examine the assessment criteria for the evaluation of the effectiveness of the measures taken in the Member States, taking account of the criteria already in use there;*

*(c) to endeavour to implement the criteria referred to in (b) when drawing up the report referred to in Article 4 of the Commission recommendation;*

*(d) to submit the report referred to in Article 4 of the Commission recommendation to the European Parliament, the Council and the Economic and Social Committee not more than three years after the adoption of this declaration.*

*(1) OJ No C 157, 27. 6. 1990, p. 3.*

*(2) See page 4 of this Official Journal.*

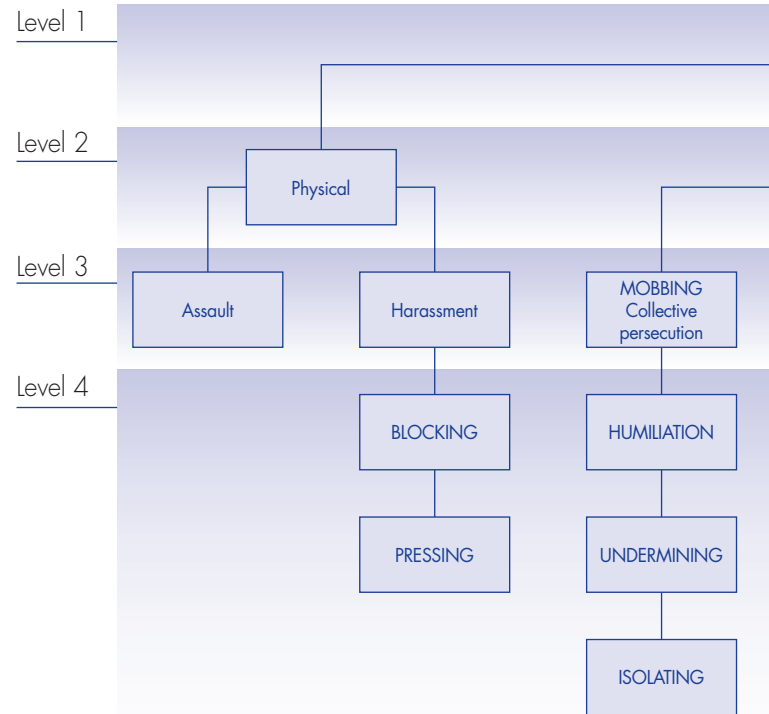
*(3) OJ No C 142, 31. 5. 1991, p. 1.*

*(4) OJ No C 305, 25. 11. 1991.*

*(5) OJ No C 14, 20. 1. 1992.*

## ANNEX 3:

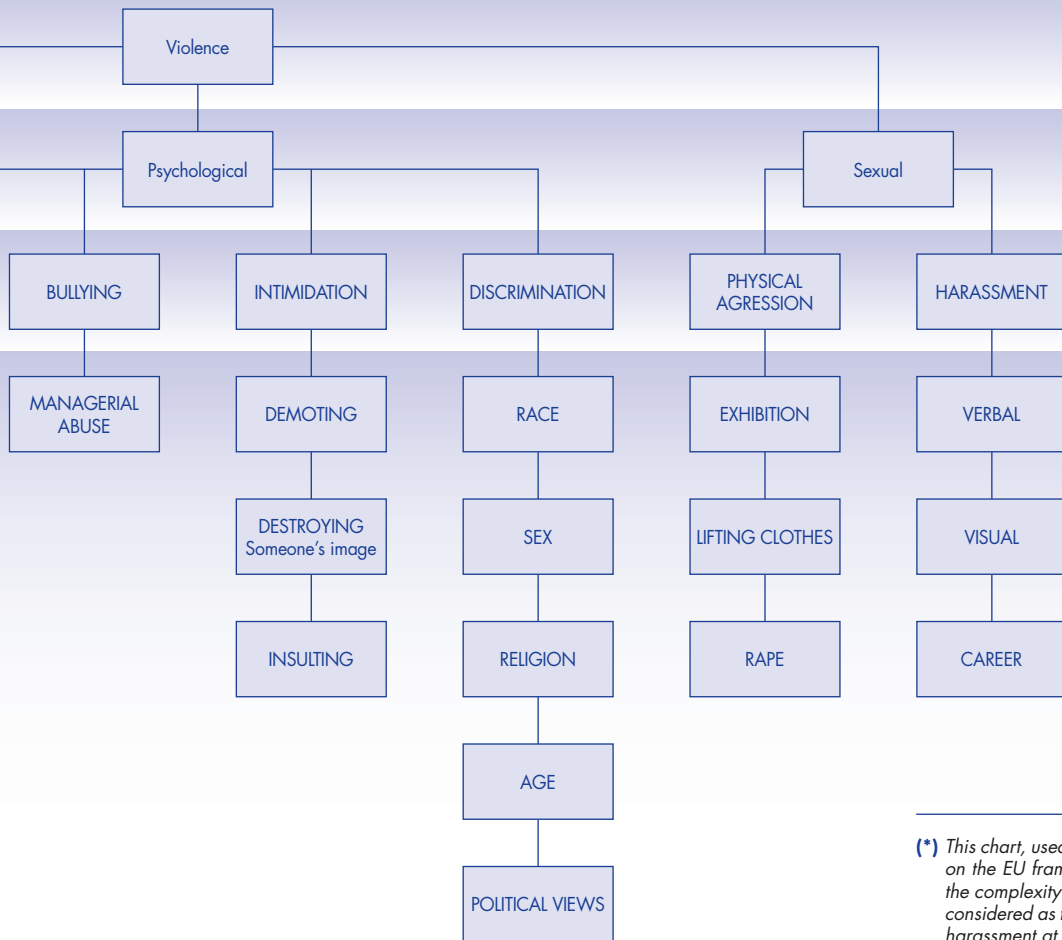
# PROPOSAL FOR TAXONOMY OF VIOLENCE AND HARASSMENT AT WORK (\*)



### Legend:

- Level 1 = generic term "Violence at work"
- Level 2 = the 3 different forms
- Level 3 = the expressions of each form
- Level 4 = examples for the different expressions of violence at work





(\*) This chart, used by the ETUC delegation during the negotiations on the EU framework agreement, is given as an illustration of the complexity of these phenomena. However, it should not be considered as the sole recommended taxonomy of violence and harassment at work.

## Some other points to keep in mind concerning the concepts of harassment and violence at work

### Regarding the definition of “violence at work”

Although numerous definitions exist, the ETUC negotiators took the following as the main basis for their work:

*“Violence at work is a generic term that applies to: any incident in which a person is abused, threatened or assaulted in circumstances relating to his/her work” (HSE UK and European Commission)*

### Furthermore:

The different expressions and forms of violence interact:

- Managerial abuse could be the starting point for sexual harassment.
- Intimidation could be a strategy to obtain advantages from a colleague at a time when the latter is in a weaker position.
- Physically detaining somebody in a room or in a lift could be the starting point for managerial abuse or bullying.
- In some circumstances, purely oral reactions can be perceived by the recipient as physical violence also (e.g. a bus ticket inspector may fear physical violence from a passenger who orally - but with an accompanying body gesture/posture - refuses to show his/her ticket).

## ANNEX 4:

# A SELECTION OF REFERENCES ABOUT HARASSMENT AND VIOLENCE AT WORK

1. European Commission, "Protecting the dignity of women and men at work – A code of practice on measures to combat sexual harassment": <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992H0131:EN:HTML>
2. Dublin Foundation: a search for "harassment" or "violence" at <http://www.eurofound.europa.eu/> gives the following:

Violence and harassment in the workplace (2 downloadable reports):  
<http://www.eurofound.europa.eu/pubdocs/2002/109/en/1/ef02109en.pdf>  
<http://www.eurofound.europa.eu/ewco/reports/TN0406TR01/TN0406TR01.pdf>

3. Billbao agency: a search for "harassment" or "violence" at <http://osha.europa.eu/info> turns up numerous interesting documents
4. ETUI-REHS - Health & Safety Department:
  - a. HESA Newsletter No. 33, October 2007-07-31
  - b. HESA website (under 'special topics'): <http://hesa.etui-rehs.org/uk/default.asp>
5. Tools (assessment tools):
  - a. Leymann Inventory of Psychological terror – LIPT (Sweden): <http://www.leymann.se>
  - b. Negative Acts Questionnaire – NAQ (Einarsen et.al., Norway) :

- [http://univisjon.no/work/4339/content/naq/naq01\\_about.htm](http://univisjon.no/work/4339/content/naq/naq01_about.htm)
- c. Organisational Bullying Questionnaire (Elaine Douglas, UK) : <http://www.gowerpub.com/pdf/bullysamp.pdf> or <http://www.gowerpub.com/TitleDetails.asp?sQueryISBN=0566084082&sPassString=Y&sKeyword1=elaine&sKeyword2=&sBooleanSearch=AND&sSearchFrom=Author&sSubjectCode=5&sNewTitle=999&lStartPos=1>
  - d. Respect au travail, toolkit : [http://www.respectautravail.be/toolkit\\_homepage.php](http://www.respectautravail.be/toolkit_homepage.php)

6. Other articles & links :

- a. ILO, Violence at Work, its cost, etc. <http://www.ilo.org/public/english/protection/safework/violence/>
- b. HSE: <http://www.hse.gov.uk/violence/index.htm>
- c. WHO: [http://www.euro.who.int/violenceinjury/violence/20050208\\_1](http://www.euro.who.int/violenceinjury/violence/20050208_1)
- d. INRS, France (La violence en Europe): [http://www.inrs.fr/htm/la\\_violence\\_travail\\_en\\_europe\\_la\\_realite\\_probleme.html](http://www.inrs.fr/htm/la_violence_travail_en_europe_la_realite_probleme.html)
- e. SPF Emploi, Respect au travail, <http://www.emploi.belgique.be/WorkArea/showcontent.aspx?id=5948>

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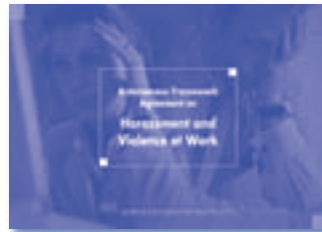
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