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**CONSULTATION OF MANAGEMENT AND LABOUR ON THE PREVENTION OF
SEXUAL HARASSMENT AT WORK**

Sexual harassment

(presented by the Commission)

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I. INTRODUCTION

The aim of this paper is to seek the views of management and labour on the issue of the protection of the dignity of women and men at work (hereafter "sexual harassment").

The Commission's interest in this area derives from its policy of equal opportunities for women and men. Sexual harassment at work may be contrary to provisions contained in Council Directive¹ 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.

Subsequent to the adoption of this directive, the European Parliament, the Commission and the Council have adopted several measures in this field:-

- in 1986 the European Parliament adopted a resolution on violence against women². In the section on sexual harassment, it asked the Commission to conduct a series of surveys on the costs arising from sexual harassment and to propose a directive to supplement the existing legislation. Moreover, it called on trade union organisations to take a number of preventive measures in this field;
- in 1987 the Commission published a report on the development of the situation as regards sexual harassment in the various Member States: 'The dignity of women at work. A report on the problem of sexual harassment in the Member States of the European Communities'. This survey showed that the existing means of legal redress in the Member States were generally inappropriate in cases of sexual harassment³;

¹ OJ No L 39 of 14.2.1976

² OJ C 176 of 14.7.1986

³ Michael Rubenstein "The dignity of women at work. A report on the problem of sexual harassment in the Member States of the European Communities", Oct. 87., V/412/87

- on 29 May 1990 the Council adopted a resolution on the protection of the dignity of women and men at work which requested the Commission to draw up a code of practice and recognised the fact that under certain circumstances, sexual harassment could conflict with the directive on equal treatment⁴;
- on 27 November 1991, the Commission adopted a recommendation on protecting the dignity of women and men at work and a code of practice on measures to be taken to combat sexual harassment⁵. The recommendation called on the Member States to take measures to promote awareness of the fact that sexual harassment is unacceptable and may conflict with the principle of equal treatment. It also asked the Member States to encourage employees' and employers' representatives to formulate measures to implement the Commission's code of practice;
- the Council, in a declaration of 19 December 1991 on the implementation of the Commission's recommendation and code of practice, requested the Commission to encourage an adequate exchange of information with a view to improving existing knowledge and experience in the Member States in relation to preventing and combatting sexual harassment at work⁶;
- in September 1993 the Commission published a guide to implementing the Commission's code of practice⁷, a practical and pragmatic handbook containing examples taken from real life that reflect the current endeavours to resolve the problem of sexual harassment;
- In February 1994, the European Parliament adopted a resolution on a new post of confidential counsellor at the workplace⁸;
- Within the Commission itself, the commitment to implement the measures in the Council resolution of 29 May 1990 and the Commission recommendation and Code of Practice was confirmed in the Commission's internal Second Positive Action Programme and most recently on 29 February 1996, in a Communication addressed to all Commission staff outlining the policy and procedures relating to the protection of dignity of the person at the workplace.

⁴ OJ C 157 of 27.6.1990.

⁵ OJ No. L 49 of 24.2.1992.

⁶ OJ C 27 of 4.2.1992.

⁷ Michael Rubenstein, Ineke De Vries "How to combat sexual harassment at work. A guide to implementing the European Code of Practice." Commission of the European Communities, 1993 (ISBN 92-826-5225-4), 1- 4 pages

⁸ Resolution on a new post of 'confidential Counsellor' at the workplace A3-0043/94, 11 February 1994.

As requested under Article 4 of the 1991 Recommendation, Member States informed the Commission during 1994 and 1995 of the measures they had adopted to give effect to it. During that same period, research was also carried out to evaluate the progress achieved by the social partners on this issue. These elements, together with other sources of information, have been used to draw up the "Evaluation report on the Commission Recommendation on the protection of the dignity of men and women at work " (see III. and Annex).

II. THE GENERAL CONTEXT

The expert report published by the Commission in 1987 analyses the problem of sexual harassment in the workplace on the basis of an extensive survey carried out in the Member States. It found that sexual harassment is a serious problem for many working women in the European Community and that research in the Member States has proven beyond doubt that sexual harassment at work is a phenomenon that affects millions of women in their working lives. Men, too, may suffer sexual harassment and should, of course, have the same rights as women to protection of their dignity. These findings are reiterated and expanded on in the European Parliament publication "Measures to Combat Sexual Harassment at the Workplace - Action Taken in the Member States of the European Community" (1994)⁹.

Some specific groups are particularly vulnerable to sexual harassment. Research in several Member States, which documents the link between the risk of sexual harassment and the recipient's perceived vulnerability, suggests that divorced and separated women, young women and new entrants to the labour market and those with irregular or precarious employment contracts, women in non-traditional jobs, women with disabilities, lesbians and women from racial minorities, are disproportionately at risk. Gay men and young men are also vulnerable to harassment.

Moreover, given the growing trend towards men and women working together at similar levels, the profile of persons subjected to harassment at work is changing. Many cases of sexual harassment now take place between persons at the same level in the hierarchy, not always between employees and their superiors.

As shown in the Evaluation Report concerning the implementation of the Recommendation and the Code of Practice (see III. and Annex), in spite of the lack of the comprehensive approach needed to fulfil the aim of the Recommendation, the problem of sexual harassment has in recent years been acknowledged in a majority of the Member States and has resulted in the enactment or preparation of legislative acts in Belgium, France, Germany, Italy, Ireland, the Netherlands and Spain and in collective agreements in some sectors in Spain, the United Kingdom, the Netherlands and Denmark. It should also be noted that, in certain Member States, the pre-existing legislation has formed the basis for successful legal actions before the courts, e.g. U.K. and Ireland.

⁹ DOC EN\DV\245\245696

Sexual harassment pollutes the working environment and can have a devastating effect upon the health, confidence, morale and performance of those affected by it. The anxiety and stress produced by sexual harassment commonly leads to those subjected to it taking time off work due to sickness, being less efficient at work or leaving their job to seek work elsewhere. Employees suffer the adverse consequences of the harassment itself and short and long-term damage to their employment prospects if they are forced to change jobs. Sexual harassment may also have a damaging impact on employees not themselves the object of unwanted behaviour, but who are witness to it or have a knowledge of the unwanted behaviour.

It follows from the above that there are quite severe consequences arising from sexual harassment for employers. Considering the significant and rapid changes in the labour market in recent years, in terms of women's participation, the negative effect of sexual harassment is reinforced. It has a direct impact on the profitability of the enterprise where staff take sick leave or resign from their posts because of sexual harassment, and on the economic efficiency of the enterprise where employees' productivity is reduced by having to work in a climate in which individuals' integrity is not respected. Moreover, the negative publicity which is sometimes associated with sexual harassment, as well as possible legal implications, can be devastating for a business.

In general terms, sexual harassment is an obstacle to the proper integration of women into the labour market and the Commission is committed to encouraging the development of comprehensive measures at all relevant levels involving legislative acts, collective agreements as well as studies and information campaigns to improve such integration.

III THE EVALUATION REPORT

The "Evaluation report on the Commission Recommendation on the protection of dignity of men and women at work", annexed to this document, considers the legislative situation in the Member States and the action taken to give effect to the Recommendation and the Code of Practice and the extent of its use in collective bargaining between social partners in the Member States to which the Recommendation was originally addressed.

The report shows, as stated above, that some Member States have responded to the Commission Recommendation by legislative acts and that in others the social partners have concluded collective agreements in some sectors and/or initiated information campaigns.

Even if it is shown that in a majority of Member States progress has been made both in the legislative field and/or at the level of the social partners, the conclusion of the report is that the Recommendation and the Code have not led to sufficient measures being adopted in order to ensure a working environment where sexual harassment can be effectively prevented and combatted. Generally speaking, existing legislation is inadequate and there remains a lack of the comprehensive approach at all levels of decision-making needed to establish and maintain a workplace free of sexual harassment.

Even though the Commission Recommendation confronts the issue thoroughly and the Code of Practice deals with the subject in a clear and sensible way, coherent action is limited to the few Member States in which there already existed a high political and social awareness on this issue.

This result may be attributed to the inherent limitations of the Recommendation, its success depending too much on being widely known and followed on a voluntary basis.

IV. THE IMPORTANCE AND EXTENT OF COMMUNITY ACTION

As sexual harassment is an affront to the dignity of the individual and a hindrance to productivity within the European union, it constitutes an obstacle to an efficient labour market in which men and women work well together. Both in terms of developing a minimum level of common social rights in Europe and in terms of competitive conditions, the problem of sexual harassment requires attention at Community level.

In spite of the number and level of Community instruments stressing the importance of combatting sexual harassment at work and the recent actions by Member State governments and social partners, sexual harassment still constitutes a real problem in labour relations. In view of the continuing lack of effective measures to combat sexual harassment, most recently documented in the annexed Evaluation Report, and the emphasis put on further action on this issue in the Fourth Medium Term Action Programme on Equal Opportunities between women and men (1996-2000)¹⁰, it is submitted that the issue of sexual harassment at work is one which should continue to be actively considered at European level.

A review of the results of the evaluation report, which show a clear lack of adequate progress at the relevant levels on this matter within the Community, suggests that there is a need for a new global approach.

Firstly, such an approach could include the comparing and contrasting of different national policies on sexual harassment, of their experiences, successes and failures, in order that a strategy could be outlined for improving the coherence of existing policies.

Secondly, the Commission recognises the important part the social partners have to play in elaborating any form of future action, taking into account their crucial role in implementing any effective method of combating sexual harassment in the workplace. The social partners also have the practical knowledge which allows them to take into account matters such as the special position of small and medium-sized enterprises, and which enables them to find solutions to specific questions such as how to develop a system of help and advice for victims.

¹⁰ Fourth Medium-Term Community Action Programme on Equal Opportunities for Women and Men (1996-2000), Objective 5 pp. 32-33, COM (381), 19.7.1995, confirmed by Council Decision 95/593/EC, of 22.12.95 article 3, subparagraph 2 (f), and Annex point II, 2 (OJ L 335 of 30.12.95, p.37)

Finally, considering the lack of adequate progress in spite of the number and extent of measures taken to date by the Community in this area, an effective new approach could involve a binding instrument setting out a common plan to be adapted to each country's achievements, needs and preferences which would ensure that, on this issue, the benefits of already existing good practice on sexual harassment could be extended to every worker in the European Union.

Taking into account earlier research, the Code of Practice and the results of the evaluation report, an effective instrument should first of all contain a definition of sexual harassment. It would also lay down a framework of minimum standards indicating the essential steps to be followed to prevent sexual harassment at work, containing a system of help and advice for victims, (for example by the introduction of a confidential counsellor as proposed by the European Parliament¹¹), imposing a legal duty upon employers to take reasonable practical steps to establish and maintain a workplace free of sexual harassment, and setting out the types of remedy against sexual harassment which should be available through disciplinary measures taken by the employer and/or actions before national courts or other competent authorities.

Such an instrument would, as an integral part of a global approach, give the added impetus needed to create a workplace free of sexual harassment.

The Commission believes that further effective initiatives in this area would result in greater efficiency and productivity for employers. They would complement existing legislation in the realisation of equal treatment for women and men and fully accord with another declared priority of the Community - the health and safety of workers.

The practical knowledge and experience of the social partners in implementing measures to combat sexual harassment is widely recognised, and their involvement would greatly enhance the prospect of making significant progress in this field. Action on the part of the social partners could take the form of a collective agreement at European level.

In the light of the reaction of the social partners to this communication, the Commission will consider what further action is required. It is clear that, the more the social partners assume the responsibility for taking effective measures, the less the Commission will feel obliged to envisage legislation, and vice versa. In any event, the Commission's future actions will reflect its concern that the most effective measures possible be adopted in this area.

¹¹ Resolution on a new post of "confidential counsellor" at the workplace A3-0043/94, 11 February 1994.

V. POINTS FOR DISCUSSION

In the light of the above, the social partners are asked for their views on the following questions.

- (i) Do you consider that further action in this area is appropriate?
- (ii) If so, should such action be taken at Community level?
- (iii) If so, what form should such action take? Should it be a collective agreement or legislation, and, if a collective agreement, should this be a self-standing instrument or subsequently implemented through Community legislation?
- (iv) What should be the main elements of such action?

**EVALUATION REPORT CONCERNING
THE COMMISSION
RECOMMENDATION ON THE
PROTECTION OF THE DIGNITY OF
MEN AND WOMEN AT WORK**

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INTRODUCTION

On 29 May 1990, the Council of Ministers adopted a resolution on the protection of the dignity of women and men at work. The resolution stated that sexual harassment at work could amount to a violation of Council Directive of 9 February 1976 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 (76/207/EEC)¹. Reference was made to the Council Recommendation of 13 December 1984 on the promotion of positive action for women² and the resolution of the European Parliament of 11 June 1986 on violence against women³. The Council resolution affirmed that conduct of a sexual nature which affects the dignity of workers is unacceptable. Member States were called upon to develop information and awareness campaigns for employers and employees on combating sexual harassment. In particular, Member States were urged to remind employers of their duty to provide a working environment free from sexual harassment for their employees. The development of suitable positive measures in the public sector was encouraged. The potential contribution of management and labour was also underlined. The European Commission was requested to draw up a code of conduct, in consultation with the social partners, Member States and national equal opportunity bodies.

The Commission duly responded to this request by adopting, on 27 November 1991, Recommendation 92/131/EEC on the protection of the dignity of women and men at work⁴. The Recommendation recalled the Commission's action programme for the Community Charter of Basic Social Rights for Workers⁵ and also the terms of the third medium-term Community action programme for equal opportunities for women and men 1991-1995⁶.

The Commission Recommendation reaffirmed the main points of the Council's 1990 resolution as described above. A Code of Practice was annexed to the Recommendation. It was recommended that Member States implement the Code of Practice in the public sector so as to give example to the private sector (Article 2). It was further recommended that Member States encourage social partners to develop measures to implement the Code of Practice (Article 3).

¹ OJ No L39/40 14.2.76

² OJ No L 331/34 19.12.1984

³ OJ No C 176/79 14.7.1986

⁴ OJ No L 49/1 24.2.1992

⁵ COM(589) 568 final

⁶ COM(90) 449 final of 6 November 1990.

In January 1994, the European Parliament adopted a resolution on the appointment of confidential counsellors in the workplace in order to promote effective company level policies against sexual harassment.⁷

Sources of information

Under Article 4 of the Commission Recommendation, Member States were requested to inform the Commission within a period of three years of the measures they had adopted to give effect to the Recommendation.

During this period, the European Commission undertook a variety of activities in order to draw public attention to the problem and to Community policy on this subject. The Code of Practice itself was widely disseminated. Moreover, in order to ensure maximum effectiveness and accessibility for the Code, a practical guide was written by two leading European experts on the issue of sexual harassment.⁸ The guide looks at each of the provisions of the Code and draws on a wide variety of examples of practices and policies implemented in different Member States by a variety of actors. The guide was published in the nine official languages over 1993/94. The Commission organised a number of launches and presentations of the guide in London, Dublin, Noordwijk (Netherlands), Athens, Paris and Rome. Other actions supported by the Commission included: information seminars in Brussels and in different regions of the Netherlands; research into the extent of sexual harassment in Luxembourg; the development of staff training modules on the prevention of sexual harassment by a British/French theatrical group; the running of an "SOS Helpline" in Athens.

In 1994, the Commission wrote to the twelve Member States to which the Recommendation was originally addressed requesting information on all national measures taken to give effect to the Recommendation, and in particular: - on any legislative amendments to the criminal or civil codes, especially the laws concerning working conditions, workers' safety, the duty of employers in these areas - and on the extent to which the matter had been addressed within the public sector and whether it had figured in any national negotiations with the social partners. Information was received during 1994 and 1995 from the twelve Member States to which the Recommendation was originally addressed. In addition, research into the legislative situation in Austria, Finland and Sweden has been made during 1996.

In order to obtain further knowledge on the influence and effectiveness of the Code (article 4 of the Recommendation), research was also carried out by the Commission during 1995 into the progress achieved by the social partners in the European Union on the issue of sexual harassment. The object of the research was to gain a general picture of progress made in certain employment sectors.

⁷ Resolution on a new part of "Confidential Counsellor" at the workplace A3 - 0043/94, 11 February 1994.

⁸ How to Combat Sexual Harassment at Work - A guide to implementing the European Commission Code of Practice CE-77-92-433-EN-C

The sectors considered were: Food (production and distribution); Clothing/textiles (production and distribution); Clerical; Public Sector; Hotel, Restaurant and Cafe (Horeca); Cleaning.

The progress made at European level by social partner organisations was also studied. The methodology used comprised separate questionnaires for management and labour, followed up with interviews and local visits in some Member States.

The additional sources of information used in the compilation of this report include:

- a study published in 1994 by the European Parliament looking at the legislative position in the twelve Member States on sexual harassment ('Measures to combat sexual harassment at the workplace', Women's Rights Series January 1994).
- a study carried out for the Commission in 1994 by L'Association européenne contre les violences faites aux femmes au travail ('Innovative European developments in sexual harassment policy - Belgium, France, Germany, Ireland, Netherlands, Spain' - September 1994);
- publications of and comments from the Commission's Network on the application of the equality directives.

The present report is divided into two chapters. The first chapter outlines the legislative situation in the Member States and especially its evolution since 1991. It also deals with the role and main achievements of social partners and other bodies on this issue. The second chapter considers the degree of awareness of the Code of Practice, its impact on legislation and collective agreements and its perceived effectiveness.

CHAPTER I

CHAPTER I

SEXUAL HARASSMENT IN THE EUROPEAN UNION: A MEMBER STATE SURVEY

This chapter compares the extent to which the Member States have progressed on this issue since the adoption of the Commission Recommendation in 1991. The following three areas are presented; legislation, action by social partners and information and awareness-raising campaigns.

For the three Member States that were not originally covered by the Recommendation, Austria, Finland and Sweden, a presentation of the legislative situation is given based upon the Commission's own knowledge.

BELGIUM

I) Legislation

Applicable Law

On 18 September 1992 a Royal Decree on the protection of workers from sexual harassment was signed. This Decree covers all companies in the private sector as well as certain public utilities.

The Decree gives a definition of sexual harassment very similar to the Community definition: sexual harassment means any form of verbal, non-verbal or bodily conduct of a sexual nature which the perpetrator knows or should know will offend the dignity of women and men at the workplace (article 1 (3)).

On 9 March 1995 a Royal Decree for the public service was signed. Having the form of a decree instead of a law it does not cover the authorities of the Regions and Communities or the local authorities.

Employers' Obligations

It is now a legal requirement for companies to have a sexual harassment policy in place which conforms to the terms of the 1992 and 1995 Decrees.

The 1992 Decree requires employers to set out protective measures against unwanted sexual conduct at work in their employment regulations. Failure to do so may expose the employer to penal sanctions under Article 25(1) of the Law of 8 April 1965 on Industrial Relations. The 1992 Decree is consistent with the Commission's Code of Practice in that it provides that employment regulations must include the following:

- a definition of unwanted sexual conduct at work
- a declaration that such conduct will not be tolerated in the company
- the designation of a confidential counsellor or service where victims may obtain help
- a complaints procedure
- the sanctions to be applied to those who perpetrate unwanted sexual conduct at the workplace.

The 1995 Decree refers to the Commission Recommendation and Code of Practice and goes further than the 1992 Decree in that it provides for the trade unions to be associated in the nomination of the confidential counsellor and that a victim of sexual harassment is given the right to complain to the alleged harasser's superior. The latter possibility is a novelty in Belgian administrative law.

Sexual harassment is not in itself regarded as a criminal offence in Belgium. However, the circumstances in which such conduct occurs may constitute a crime under the penal code.

Legal remedies

The victim of sexual harassment may resort to various means of action at three points in the working relationship: at the time of recruitment, during the performance of the employment contract and at the end of the working relationship. Here, two laws are crucial in relation to sexual harassment: Title V of the Economic Re-orientation Act of 4 August 1978 and the Employment Contracts Law of 3 July 1978. Two systems can be used in the framework of the law of 4 August 1978: one restricts the right of dismissal; the other prohibits the discriminatory behaviour.

For a victim to prove an act of sexual harassment under the Penal Code the humiliating or threatening nature of the conduct in question has to be shown under the procedural rules applying to the penal code.

II) Role of the Social Partners

The National Labour Council, an institution made up of members of the most representative employers' and workers' organisations, decided unanimously in favour of the Royal Decree of 1992. However, very few social partners decided to go further. The following actions may be cited:

The Christelijke Centrale Voeding en Diensten - ACV(CCVC) representing the food and clerical sector distributed information leaflets and brochures to its membership on the contents of the 1992 Decree.

The Fédération de l'Industrie Alimentaire - FIA, representing the food industry, produced a draft text on sexual harassment for the food joint commission (Commission paritaire pour l'alimentation), recommending that it be adopted by companies in that sector so as to conform to the requirements of the 1992 Decree. The draft text defines sexual harassment and lays down informal and formal procedures for responding to incidents of harassment at work.

Apart from these examples, it would seem that social partners do not take the initiative in dealing with sexual harassment, although the successful functioning of the procedures and awareness among staff of company policy will depend to a considerable degree on the diligence of management and employee representatives.

III) Awareness-raising campaigns and other measures

A national information campaign was carried out in 1986 involving the publication of brochures and information packs in considerable quantities. No information on any later awareness-raising campaigns is available.

Since the 1992 Decree was signed, telephone helplines have also been established for both the French-speaking and Dutch-speaking parts of the country, where individuals may receive advice and counselling from trained staff on an anonymous basis. The lines have been set up under a pilot project which began on 8 July 1993. This telephone service is also intended for those dealing with the problem within a business or institution.

The Belgian Labour Ministry has also provided training for labour inspectorates and confidential counsellors.

DENMARK

I) Legislation

Applicable law

No new legislation has been introduced in Denmark in response to the Commission Recommendation.

Although sexual harassment is not specifically mentioned in Danish law, the term has been defined in court cases as conduct of 'a sexual nature' or as conduct 'based on sex' which is offensive to the victims (e.g. *Ostre Landsret, K. v. Danish Skilled Workers Union*, Case No 4-262, Judgement of 8/9/89).

Court cases of sexual harassment at work have been based on the Equal Opportunities Act (Act No 244 - 19/4/a). The Act prohibits all forms of sex discrimination by a superior in working conditions and in a situation leading to dismissal (section 4). Sexual harassment at work could also potentially be covered by labour law (see II) and criminal law provisions.

According to Section 220 of the Penal Code, (Act No 607 6/9/86), it is a criminal offence to seriously abuse the subordinate position or financial dependence of another person in order to obtain sexual favours outside marriage. This has been considered in a court case to include sexual harassment.

Sections 217 (attainment of sexual relations by means of unlawful duress other than violence or threat of violence) and 232 (offence against decency) could also be applicable to sexual harassment.

Employers' Obligations

According to Section 4 of the Equal Opportunities Act, the employer can be held liable for sex discrimination in employment. Also, the employer could potentially be obliged to take the appropriate action if an employee complains about being sexually harassed by a supervisor or a colleague.

In addition to this provision, the Working Environment Act (No 681 - 23/12/75, as amended by Notification 139 - 23/3/87) affirms the duty of the employer to ensure a safe and healthy working environment (Section 15). Under this act, the employer could potentially be held liable for alleged sexual harassment at the workplace.

Legal remedies

Victims of sexual harassment who are successful in court may claim up to 39 weeks' salary as compensation under Sections 14 and 15 of the Equal Opportunities Act. A victim can also have recourse to the penal provisions mentioned above.

II) Role of the Social Partners

Two collective agreements have been made at the national level. Firstly, on 1 April 1991, a national Agreement on Equal Treatment - Supplementary Agreement to the Cooperation Agreement of 9 June 1986 - was concluded between the Danish Employers' Association and the Danish Trade Unions Confederation.

Section 4(a) of the Agreement provides that companies should seek to ensure a working environment free of:

- (a) unwanted actions of a sexual nature or any other action related to sex that would violate the dignity of women or men at the workplace.
- (b) discrimination against any person who makes a complaint, who wishes to do so or who has witnessed an act of that nature.

Secondly, a similar agreement exists for the public sector. It also relates to various equality issues and deals with sexual harassment in the same terms as the above mentioned agreement.

At company level these agreements remain in many cases to be implemented.

It appears that more progress has been made in certain sectors; Danish State Railways (DSB) includes sexual harassment in its equal opportunity policy and has produced a brochure for its staff summarising the main points of this policy as it appears in the collective agreement.

Handels og Kontorfunktionærernes Forbund i Danmark (HK Service), representing commercial and clerical employees, has published information leaflets for its members and a handbook on the issue. It also provides special training for its officials on the problem of harassment.

A number of other union organisations have produced model agreements on sexual harassment in individual workplaces but it is unclear if these model agreements have led to the **conclusion of actual local agreements.**

III) Awareness-raising campaigns and other measures

Over the past ten years, sexual harassment has become an issue for public discussion. However, the level of debate has been characterised by Danish experts as 'timid'. No information on any public awareness-raising campaigns is available.

GERMANY

I) Legislation

Applicable law

Until 1994, there was no definition of sexual harassment in the law. To fill this gap, a law was adopted in that year, dealing with sexual harassment (Article 10.2 of the Second Equal Opportunities Law). It provides a definition of sexual harassment at work and applies to all workers including public servants.

The Civil Code provisions concerning sex discrimination in the workplace (Article 611 a. BGB) and protection of life and health in the workplace (Article 618 BGB) are indirectly applicable to sexual harassment.

Even though sexual harassment as such is not criminalised, the Penal Code is applicable if the discriminating behaviour can be found to constitute a crime under the penal provisions.

Employers' Obligations

This 1994 law sets out the steps that an employer has to take when a case of sexual harassment can be identified in the workplace.

In the regulations for the public sector it is stated that the problem of sexual harassment should be taken up in vocational training programmes.

Legal remedies and other measures to help victims

Under the general provisions of the Civil Code it is possible for a victim of sexual harassment to obtain compensation for both material and immaterial damage. There also exist several procedures giving the employer the possibility to terminate the employment contract of the perpetrator of the harassment.

The new law stipulates that where sexual harassment occurs, the victim has the right to complain and the employer is then obliged to consider the complaint and, if a case of sexual harassment is established, to ensure that the victim is not exposed to any further harassment.

On the Länder level, Bremen is a good example as it has adopted a serious policy statement and taken several innovative initiatives including setting up an advisory bureau to help victims of sexual harassment and to provide them with legal advice.

II) Role of the Social Partners

The Deutscher Gewerkschaftsbund - DGB (German Trade Union Confederation) has run information campaigns on the issue, using a variety of publications. Other union organisations representing different sectors have also published leaflets for their members on the issue. No evidence of collective agreements within companies was forthcoming.

III) Awareness-raising campaigns and other measures

Copies of the 1991 Commission Recommendation were supplied to the umbrella organisations representing employers and trade unions.

GREECE

I) Legislation

Applicable law

There is no specific statutory provision on sexual harassment in Greece. No legislative steps have been taken after the adoption of the Commission Recommendation.

National legislation which could be applicable includes:

- Act "on the application of the sex equality principle in employment relationships" (Law No 1414 30 January 1984). To date, no cases of sexual harassment have been brought under it (W.R.S. p. 49).
- Penal Code Chapter 19 on sex-related offences and Chapter 21 on crimes against honour (articles 337, 343a, 361.1). The Penal Code contains no specific provision on sexual harassment and it would therefore have to be proven under the Criminal Procedural rules that the victim of sexual harassment had been exposed to behaviour constituting a criminal act for the Code to apply.
- Civil Code (Law No 2250, 15 March 1940). Articles 662 and 228 emphasise the duties of the employer to guarantee working conditions which protect the employee's morals and personal integrity. Article 281 which concerns the abuse of authority has been successfully applied in two court cases dealing with sexual harassment (Cass. Plen Ass. 17/1987 RDT).
- Law No 2112 on termination of employment, dated 11 March 1920 as amended on 17 October 1953. Article 7 of this law has been successfully applied in a case in which the court found that an employee was entitled to resign or to claim compensation in the event of dismissal on the grounds of an unfavourable change to the contract of employment after having been harassed by the employer (Cass. Plen Ass. 13/87 Jur. Trib 36, 78)

Employers' obligations

As stated above, the Civil Code puts some obligations on the employer relating to sexual harassment.

Legal remedies

Law No 2112 on termination of employment has in one case, as stated above, provided a legal remedy for a victim of sexual harassment.

II) The role of Social Partners

Article 11 of the 1993 National Collective Agreement relates to the principle of equality between the sexes at work. Under this article, the contracting parties agree to take measures to ensure dignified treatment of men and women at work.

In the clerical sector, the Greek Federation of Insurance Employees' Unions received information on the Commission Recommendation through Euro-FIET. It transmitted this information to its various branches.

In general, there is no evidence of any implementation of any collective agreements on this subject at company level.

III) Awareness-raising campaigns and other measures

No evidence of any awareness-raising campaigns other than the above mentioned, was forthcoming

SPAIN

I) Legislation

Applicable law

The Penal Code, as amended in November 1995, explicitly forbids sexual harassment (Article 154).

The following provisions in national law could also apply to sexual harassment:

- The Spanish Constitution prohibits discrimination on the grounds of sex (Article 35.1)
- Law 3/1989 of 3 March 1989 has amended both the Workers' Charter of 1980 and the Civil Servants' Regulations of 1964 so as to specifically provide for the protection of the dignity of workers against physical or verbal affronts of a sexual nature.

Employers' obligations

Under the Workers' Charter (Article 4.2. e, 19.1, 50.a, 54) and the Civil Servants' Regulations (Article 63), the employer can be held liable for sexual harassment. According to Articles 45.1.h and 54.2.c of the Charter, the employer may suspend a worker's wages or dismiss a worker as a disciplinary measure.

Legal remedies

Apart from the possibility of claiming compensation from the employer (see above) Article 50.1 of the Workers' Charter states that the worker can request termination of his/her contract for valid reasons such as 'substantial alterations to his/her working conditions which adversely affect his/her (...) personal dignity'. This provision could be applied to cases of sexual harassment.

Moreover, the worker may request a cessation of the harassment as well as demanding compensation.

The possibility to take the harasser to court under the Penal Code also exists, subject to the procedural requirements that have to be fulfilled for the success of such a claim.

II) Role of Social Partners

The collective agreement at the Ministry of Industry, Commerce and Tourism of 25 October 1991 provides for informal and formal procedures for those who consider they have been subjected to sexual harassment.

At the Ministry of Social Affairs, the collective agreement of 8 November 1991 also sets out the procedures to follow as well as the sanctions which may be applied where it is found that an employee has sexually harassed a colleague.

In the textile sector, the collective agreement for 1994-1995 contains an article prohibiting sexual harassment at work. It also states that incidents of harassment shall be dealt with confidentially by management and employee representatives.

The matter is equally addressed in the national agreement for travel agencies, which states that verbal or physical offenses of a sexual nature are serious infringements of the disciplinary regulations.

In 1994 the General Workers' Union adopted a special equality plan for its own internal use which included a specific policy on sexual harassment. It urged the inclusion of provisions concerning sexual harassment in collective agreements. Training and publications have also been provided for union officials. However, there is little evidence to indicate that the subject is appearing in collective agreements or being systematically addressed at company level.

Finally, in the trade unions' 1996 guidelines for collective bargaining, the fight against sexual harassment is mentioned as an objective.

III) Awareness-raising campaigns and other measures

The 'Instituto de la Mujer', which is an autonomous body in charge of women's issues in Spain, has arranged working meetings and exchanges of experience with the Director-General of Work Inspection and Social Security to consider the question of sexual harassment at work. It has also published and distributed the Commission's code of conduct.

FRANCE

D) Legislation

Applicable law

Two laws adopted in 1992 deal with the issue of sexual harassment. Law 92-684 of 22 July 1992 amended the Penal Code so as to create the new offence of sexual harassment. An act where by a person abuses the authority conferred on him/her by virtue of his/her duties by harassing another person by means of orders, threats or constraints with the purpose of obtaining sexual favours is punishable by one year in prison and a fine of FF 100,000 (Article 222-33 of the Penal Code). Law 92-1179 of 2 November 1992 introduced a prohibition of the same behaviour into the Labour Code. These provisions apply only to employment situations, in both the private and public sectors.

Under both laws, the perpetrator must be in a position of authority over the victim and must have abused that authority in order to obtain sexual favours. Otherwise the behaviour does not, in itself, constitute an offence.

Several other additions have been made to the Labour Code. Firstly, Article L-122-47 has been added, under which any employee who has committed acts of a sexual nature is liable to disciplinary measures. Secondly, a new paragraph has been added to Article L-236-2 to the effect that the Committee on Health, Safety and Working Conditions may propose measures to prevent sexual harassment.

Thirdly, a new Article L 123-1 of the Labour Code provides that no person may take into consideration the fact that an individual submitted or refused to submit to acts of a sexual nature, or witnessed them or reported them, in decisions on recruitment, pay, career prospects, disciplinary measures or dismissal.

Article L-122-46 of the Labour Code states that no employee may be penalised or dismissed for refusing to submit to acts of harassment by an employer, his representative or any person abusing the authority conferred on him/her by his/her duties.

This provision also applies to any employee who has been penalised or dismissed for witnessing such acts or having reported them. The protection extends to an individual in whom a victim of harassment has confided, who has reported it and who has been penalised or dismissed for doing so. The article also covers harassment which takes the form of a client of the firm exerting pressure on an employee.

Furthermore, the general civil servants' regulations (Law 83-634 of 13 July 1983) were supplemented in a similar way through Article 122-47 of the Labour Code concerning disciplinary measures.

Employers' Obligations

The new Article L 122-48 in the Labour Code requires the head of an undertaking to take all the necessary steps to prevent acts constituting an abuse of authority of a sexual nature, in the context of working relations. Employees of a company have to be informed of the legal measures applicable. The labour inspectorates are responsible for ensuring that these measures are applied but there is no sanction against the head of the business who does not fulfil the obligation.

Legal remedies

The new laws of 1992 (Law 92-684 and Law 92-1179) have introduced a system of penal and civil provisions punishing the perpetrator of sexual harassment and making any penalisation of the victim, because of a refusal to submit to or the protesting against acts of sexual harassment, null and void.

The new Article L-122-46 of the Labour Code entitles an employee who has suffered harassment to be reinstated or to be awarded compensation

II) Role of the social partners

Article L-123-6 of the Labour Code allows the representative trade unions in the company to take legal action on behalf of the employee suffering sexual harassment.

After obtaining the victim's written agreement, the trade union can, as a first step, bring a case before the Conciliation Board and, if conciliation is not successful, subsequently bring a private action before a criminal court.

Similarly, the law amends Articles 2-2 and 2-6 of the Criminal Procedure Code so that associations which want to combat discrimination on the grounds of sex through their statutes, have the right to act as plaintiffs and bring a private action before a criminal court, provided they obtain the written agreement of the person concerned.

There is no information on any collective agreements providing for special clauses on sexual harassment.

A number of French union organisations have informed their members about the contents of Law 92-1179.

III) Awareness-raising campaigns and other measures

In order to raise awareness about the legal provisions introduced by the new laws of 1992, various actions have been undertaken by the French authorities including an administrative circular explaining the effect of the law, brochures, information days and training.

IRELAND

I) Legislation

Applicable law

There is no explicit prohibition of sexual harassment in Irish law but the Labour Court stated in a ruling⁹ in 1985 that "freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect" and that denial of such freedom contravenes the 1977 Equality Act.

According to this Act which applies to employees of both the private and the public sector, the employer may not discriminate on the basis of sex in any of the terms and conditions of employment. Furthermore, several provisions of the Unfair Dismissals Act 1977 could potentially be applied to both the victim of sexual harassment and the harasser in particular, Articles 2(c), 4(b) and 6.

In 1994 a National Code of Practice on sexual harassment: "Measures to Protect the Dignity of Women and Men at Work", was drawn up and published by the Employment Equality Agency (EEA).

This document is modelled on the Commission's Code of Practice. It is intended that the code will receive statutory recognition in the new equality legislation which is currently under consideration. This would involve facilitating reference to the code in proceedings under existing equality legislation before an Equality Officer or the Labour Court.

Employers' obligations

The employer has a responsibility under the 1977 Employment Equality Act and subsequent case law, for ensuring that employees enjoy freedom from sexual harassment. The responsibility of the employer has been extended in case law¹⁰ to acts of sexual harassment perpetrated by persons other than employees who are regularly on the premises of the workplace.

Legal remedies

As a consequence of the employer's responsibility under the 1977 Employment Equality Act, an employee can obtain damages from the employer for sexual harassment, in the context of a complaint about terms and conditions of employment. For the employer to be liable, the employee will have to show¹¹ that the employer was aware of the sexual harassment perpetrated by another employee.

⁹ A Garage Proprietor v. A Worker EE 2/1985

¹⁰ A Company v. A Female Worker EEO 3/1991

¹¹ A Company v. A Worker DEE 2/1988

Most court cases in which employees have obtained damages have involved unfair dismissal or constructive dismissal because of sexual harassment. In order to establish constructive dismissal the worker must show that the only reasonable course open to her/him was to resign.

Victims can rely on the support of the Employment Equality Agency who usually assist and make submissions on behalf of complainants alleging sexual harassment before the Labour Court or an Equality Officer.

II) Role of the social partners

The social partners have co-operated in the drafting of the aforementioned National Code of Practice. The Code gives guidelines to employers on the subject, defining inappropriate conduct, stating the disciplinary consequences and explaining the procedure to be followed in making a complaint of harassment. These guidelines should be circulated to all staff and other actors whose actions have an impact on the working environment. The Code recommends that trade unions have clear policies on sexual harassment and include it in their collective bargaining agendas. It can be expected that when the national Code of Practice is given statutory recognition, the guidelines will be adopted by most companies.

The Irish Business and Employers' Confederation have produced guidelines on industrial relations which include information on how to deal with sexual harassment at the workplace. IBEC also encourages additional training for managers and supervisors on the subject.

A number of trade unions have informed their members about the Commission Recommendation in leaflets on sexual harassment. Model agreements have been drawn up (e.g. by the Services Industrial Professional Technical Union) and many of these agreements have been included in collective agreements at branch level.

In the services sector, some of the bigger banks have adopted sexual harassment policies. In the food production and distribution sector, sexual harassment has been addressed in policy statements.

In the public sector, the Electricity Supply Board, An Post, Telecom Eireann, RTE (television and radio broadcasting) and Aer Lingus have all adopted policies on sexual harassment.

III) Awareness-raising campaigns and other measures

Apart from the publication of the Code of Practice mentioned above, there is no information on any other public awareness-raising campaigns.

ITALY

I) Legislation

Applicable law

The Equal Opportunities Act, the Civil Code and the Penal Code (Articles 520, 612, 660) and Act No 66 of 15 February 1996 on rape contain provisions which could be used in situations of sexual harassment. Furthermore, Law No 125 of 1991 on Positive Action to Promote Equal Treatment for Men and Women at Work, strengthens the existing provisions.

Italian Law has no explicit prohibition of sexual harassment but the matter could fall under provisions in the Equal Opportunities Act, the Civil Code, the Penal Code and Law No 125 of 1991 on Positive Action to Promote Equal Treatment for Men and Women at Work

The Equal Opportunities Act (Law No 903 of 9/12/77) prohibits any form of discrimination based on sex in questions of employment (Art. 1). Law No. 125 reinforces this prohibition by specifying that sex discrimination includes any act or behaviour that adversely affects workers by discriminating against them, even indirectly, on the grounds of their sex (Art. 4).

These definitions could be interpreted to include sexual harassment. This would mean a prohibition of sexual harassment and that sexual harassment would have to be combatted by positive action in the workplace.

Several provisions in the Civil Code have been interpreted in case law as being applicable to cases of sexual harassment. See below under (II) and (III).

A draft law on sexual harassment is currently under consideration in the Senate and it will also be considered by the Chamber of Deputies. The draft law exclusively concerns the problem of sexual harassment at work. It provides that employees have the right to a working environment which is safe, peaceful and favourable to inter-personal relationships on a basis of equality and mutual respect. Sexual harassment would be specifically deemed to be discriminatory behaviour for the purpose of Article 4 of Law 125/1991.

The draft proposes *inter alia* that it should be obligatory for employers to adopt the measures necessary to ensure the physical and moral integrity of their employees and to agree with trade unions on the necessary training and preventive action. It also makes provision for annual information campaigns.

Employers' Obligations

Law No. 903 provides that liability falls on any person who commits an act of discrimination (Art. 16). This could potentially be applied to the employer in respect of sexual harassment by supervisors or colleagues.

Article 2087 of the Civil Code renders the employer responsible for the employee's moral and physical integrity. Several judges, namely: the Pretore of Trento, decision of 22 February 1993; the Pretore of Milano, decision of 14 August 1991; the Pretore of Torino, decision of 26 January 1991; the Pretore of Frosinone, decision of 11 August 1989 have ruled, on the basis of this article, that sexual harassment is a moral or physical injury for which the employer can be held liable.

Legal remedies

The Equal Opportunities Act states that acts which are detrimental to women because of their sex are legally null and void (Art. 15 of Act No 300 of 20 May 1970, "Workers' Statute"). The same act also includes a series of penalties and remedies against sexual discrimination at the workplace (Arts 15 and 16).

Under Article 2087 of the Civil Code, the employer is liable in contract. However, Italian judges (see decisions quoted above) have also relied upon Article 2043 of the Civil Code (liability in tort), which establishes the general principle that any person who as a consequence of tort or negligence causes an injury, has a duty to pay compensation. The judges have invoked this article in conjunction with Article 32 of the Italian Constitution, which guarantees every citizen the fundamental right to health, in order to enable a woman to recover damages for sexual harassment at work.

The lack of "Just cause of dismissal" (Article 2119 of the Civil Code) can also be relied upon by the victim of sexual harassment who refuses to submit to the harasser and therefore is dismissed (see decisions quoted above).

II) Role of the social partners

Many collective agreements contain provisions on sexual harassment and the Community instruments on sexual harassment are often cited in the preamble to the agreements.

In the food distribution sector, a 1991 agreement between management and labour in the Caron SPA supermarket chain seeks to ensure a working environment free of conduct which is offensive to the dignity of women or men. The agreement takes note of the Commission Recommendation and Code of Practice.

The national collective agreement for the textile sector contains provisions on sexual harassment at work. Under this agreement, management and labour will examine incidences of sexual harassment with a view to resolving the problem on a confidential basis.

The national collective agreement of 16 November 1994 for the banking and insurance sectors provides for the protection of the dignity of women and men at work. This agreement takes explicit account of the Commission Recommendation and the Code of Practice.

A number of agreements have been signed in the public sector covering certain ministries, essential public services, regional and local bodies and non-economic public bodies. A common clause is included in all of these agreements which protects the dignity of the person and provides for sanctions against those who perpetrate acts of sexual harassment. In the case of acts amounting to sexual harassment or offending the dignity of persons, the harasser may be laid off for days without pay. Similarly, Alitalia has agreed a policy for the prevention of sexual harassment of staff.

The public sector agreements state that Equal Opportunities Commissions (EOCs), consisting of persons nominated in equal measure by employers and trade unions, must be set up in the workplace to, *inter alia* deal with complaints of sexual harassment. In the private sector, clauses providing for the setting up of EOCs have also been included in some agreements.

There are several examples of good practice at regional and local level, *inter alia* in the case of the administrations of Toscana, Pisa, Torino, Genova and Catania, involving the adoption of codes of practice and, in the case of Toscana, also dissemination of information and training courses on how to combat sexual harassment.

III) Awareness-raising campaigns and other measures

There is no information on any public awareness-raising campaigns.

LUXEMBOURG

I) Legislation

Applicable law

There is no specific statutory provision on sexual harassment in Luxembourg. No legislative steps have been taken in this matter after the adoption of the Commission Recommendation.

The following provisions of criminal and civil legislation could be applied in cases of sexual harassment at the workplace:

-Under criminal law, sexual harassment could be termed an offence against decency (Art. 378), a public offence against morality (Arts 383-386) or as deliberate assault and battery (Art. 392).

-As regards legislation on working relations, the law of 8 December 1981 on equal treatment of men and women as regards access to employment, vocational training and promotion and working conditions could potentially be applied to cases of sexual harassment regarded as specific forms of sexual discrimination.

-More generally, the articles of the Civil Code on the fulfilment of contractual obligations could in theory, apply to sexual harassment (in particular Article 1134 which states that agreements must be enforced in good faith).

The necessity of adopting measures to deal with sexual harassment, has been stressed in the Government's declaration of 22 July 1994 before Parliament.

Employers' Obligations

The employer's obligations are to be determined by the tribunals according to the law found applicable to cases of sexual harassment.

Legal remedies and other measures to help victims

Victims of sexual harassment may make a claim under the Equal Treatment legislation, the Penal Code and more abstract, Civil Code legal concepts. It is up to the tribunals to decide whether these laws apply to cases of sexual harassment.

II) Role of the social partners

Many collective agreements enable the employer to suspend the employment contract on the grounds that an employee has committed a serious offence or is guilty of dishonest or criminal acts. Such a provision can theoretically be used by an employer to take disciplinary measures against a perpetrator of sexual harassment.

III) Awareness-raising campaigns and other measures

There is no evidence of any information or awareness-raising campaigns in Luxembourg on this matter.

NETHERLANDS

I) Legislation

Applicable law

New legislation on sexual harassment has come into force through an amendment to the Working Conditions Act (Act of 29 June 1994).

The amended Working Conditions Act now contains a definition of sexual harassment. It provides for the protection of employees from sexual harassment by colleagues and third parties such as suppliers, customers and patients. It also applies to work which is performed off the premises. The Act leaves some latitude to employers and employee representatives to agree on the precise modalities for dealing with sexual harassment at work.

Apart from the Working Conditions Act, provisions in the Penal Code on rape and indecent assault and provisions in the Civil Code which lay down the duty of "good employer" and "good employee" can, under some circumstances, be applicable in cases of sexual harassment.

Employers' Obligations

The amended Act provides for a duty of care on the part of an employer to protect, as far as is possible, male and female employees from sexual harassment. The employer must make it clear to all staff that sexual harassment is prohibited.

The employer's duty of care extends to all employees, apprentices and trainees in the company.

Employers are now required by law to draw up and implement a general policy on protection of workers. Sexual harassment is not explicitly mentioned in the requirements for the plans but should principally be included because of the employer's general obligation to protect the workers against sexual harassment. Sexual harassment should therefore be included when employers list and evaluate risks and it should figure in the annual work plan and report. Employees and Works' Councils shall be informed of the steps undertaken by the employer to combat sexual harassment.

The Inspection and Information Service of the Ministry for Social Affairs and Employment (I-SZW) follows up on the fulfilment of these duties by the employer.

Legal remedies

Under the Working Conditions Act, employees have to be informed how victims can seek assistance and they may cite sexual harassment as a reason for interrupting their work.

A regulation concerning complaints of sexual harassment in the civil service was adopted in 1994. It provides for confidential counselling, an independent complaints committee and a complaints procedure for civil servants in the central government. Regulations to the same effect covering other public employees such as the police and state-education employees have also been introduced.

II) Role of social partners

The FNV Industriebond, representing industrial workers, has adopted a code of behaviour on sexual harassment and provides special training on the issue to some union officers. The same organisation has produced a model agreement on sexual harassment for collective negotiation which provides, *inter alia*, for a confidential counsellor to be appointed at company level to advise and assist victims.

Similarly, the FNV Dienstenbond, representing clerical workers, has adopted a policy of preventing sexual harassment in the union itself and in the workplace. Information and training are provided for union representatives. Lists of qualified union officers are then circulated to members. A guide on how to implement a sexual harassment policy has been drawn up, as well as a model agreement for collective bargaining. It is reported that more than 20 sectoral agreements deal with sexual harassment, covering retail and wholesale, banking and insurance.

The Women's Secretariat of FNV disseminated an information leaflet on sexual harassment in 1992.

In 1990, the Labour Foundation (Stichting van de Arbeid), a consultative body comprising management and labour, published a recommendation on the prevention of sexual harassment at work.

III) Awareness-raising campaigns and other measures

Television advertisements were broadcast in early 1995, to raise awareness of sexual harassment and the introduction of the new law.

PORTUGAL

I) Legislation

Applicable law

Portugal has no national legislation which specifically addresses sexual harassment in the workplace. However, provisions of the Labour Contract Law, the Civil Code and the Penal Code can be applicable to sexual harassment.

The Labour Contract Law (Decree Law of 24 November 1969) lays down duties of mutual respect for employers and employees, Arts 20, 27 and 40, see below under (II) and (III).

Under Decree Law 64-A/89 of 27 February 1989 (Art. 9-2), the employer has the right to dismiss an employee who:

- violates the rights of workers in the workplace,
- is responsible, within an undertaking, for physical violence, insults or other offenses punishable by law, vis a vis the workers of that undertaking.

Article 70 of the Portuguese Civil Code protects individuals against any 'illegal offence or threat of illegal offence against their physical or moral person'.

Even if sexual harassment is not a crime itself in Portuguese law, a more severe act of sexual harassment may fall under the category of crime against the liberty of the individual in the Penal Code.

Employers' Obligations

The Labour Contract Law requires the employer to respect employees as colleagues and provide employees with good physical and moral working conditions (Article 19).

Article 40 of the same law puts an obligation on the employer to impose disciplinary measures on an employee who by his/her conduct breaches the obligation of mutual respect towards another employee laid down in articles 20 and 27.

Legal remedies

Under the 1989 Decree Law, workers are authorised to terminate their employment contracts without notice if they are victims of offences punishable by law relating to their physical integrity, freedom, honour or dignity. These offences have to be committed by the employer or his legal representative for the termination to be authorised (Art. 35-1 (b) and (f)).

In that case, the workers are entitled to compensation estimated at one months' salary for every year they have worked for the undertaking (Art. 36).

Furthermore, through an amendment, (Law 48/95), Article 130 of the Penal Code gives the victims of sexual harassment, when this amounts to a violent crime under the Penal Code, (see (I) above), the possibility of receiving compensation from the state.

Compensation for a violation of the obligation of Article 70 in the Civil Code, (see (I) above), is possible through Article 483 of the same code.

II) Role of social partners

In Portugal, the Women's Committee of the General Workers' Union (UGT) has been active on the issue of sexual harassment, informing branch organisations of the contents of the Commission Recommendation. The UGT included the prevention of sexual harassment amongst its working objectives in 1992. Sectoral unions, for example in the banking, tourist and food sectors, have also run seminars on the subject.

In the textile sector, the employer organisation Associação Portuguesa dos Industriais de Vestuário expressed interest in the guidelines contained in the Commission Code of Practice and is including the issue in its next round of collective bargaining.

However, it would generally appear that the issue of sexual harassment is not a priority for social partners in the context of collective bargaining.

III) Awareness-raising campaigns and other measures

In 1989, the Commission for Equality and Women's Rights issued a definition of sexual harassment which is comparable with the definition given in the Code of Practice accompanying the Commission Recommendation. This was followed by the publication of a brochure entitled 'Sexual harassment at the workplace'.

In 1992, the same Commission published research into sexual harassment at the workplace.

UNITED KINGDOM

I) Legislation

Applicable law

A case of sexual harassment may be taken under the Sex Discrimination Act 1975. More than 260 cases have been heard by Industrial Tribunals since this principle was established in the 1986 *Porcelli* case¹².

Under section 71 of the Sex Discrimination Act, the Equal Opportunities Commission (or Northern Ireland Equal Opportunities Commission) may, on request, conduct an enquiry or initiate legal proceedings in cases of sexual harassment at the workplace. To date, no case has been brought.

The Trade Union Reform and Employment Rights Act 1993 permits tribunals to make a restricted reporting order on cases of sexual harassment, so that potential plaintiffs are not deterred by the prospect of publicity.

A criminal offence of 'intentional harassment' has been created under the Criminal Justice and Public Order Act 1994. Although mainly aimed at addressing racial harassment, it also applies to other forms of harassment, including sexual harassment.

Employers' obligations

Under the 1975 Act, employers are liable for any discriminatory acts on the part of their employees carried out in the course of their employment unless an employer can show that it took reasonable steps to avert such acts.

Legal remedies

There is no specific provision which provides that a victim of sexual harassment may resign but in Common law, an employee is entitled to terminate his/her employment contract and at the same time bring a claim for unfair dismissal because the employer has committed a repudiatory breach of the contract. It will therefore be for the tribunal to ascertain whether the act of sexual harassment constitutes repudiatory conduct on the part of the employer. If a repudiatory breach of contract by the employer is established, the employee can also be awarded damages.

¹² *Porcelli v. Strathclyde Regional Council* [1986]ICR 564, IRLR 134 (Ct of Sess.)

If an act of discrimination, including sexual harassment, is carried out in the course of employment, the employer is liable under the Sex Discrimination Act 1975. In two recent cases¹³, the tribunals did not find acts of sexual harassment to be "an improper mode of performing authorised tasks" by the employee and the complainant was left without a remedy. Thus, there is a risk that some cases of sexual harassment will not be covered by the Sex Discrimination Act.

Industrial Tribunals have full discretion as to the level of compensation to be awarded to a successful complainant.

Under the Criminal Justice and Public Order Act 1994 the criminal offence of 'intentional harassment', defined as the use of abusive or insulting words or behaviour with intent to cause a person distress or harassment, is punishable by six months imprisonment and a fine of £5000.

II) Role of social partners

The Confederation of British Industry and the Trades Union Congress were consulted on the drafting of government booklets on sexual harassment.

The issue of sexual harassment has a high profile in the United Kingdom and comprehensive policies to deal with sexual harassment at work have been adopted in large sectors of industry.

In the clerical sector, many of the major British banks have adopted sexual harassment policies. Typically, these policies state that sexual harassment is intolerable and make it the duty of staff to ensure that it does not arise. Informal and formal complaints procedures are set in place, involving staff representatives and management.

Sexual harassment policies have also been undertaken by some large supermarket chains, food companies and local authority employers.

As regards the public service, a questionnaire has been sent out to all government departments and other public institutions in order to gauge awareness of the Commission Recommendation and Code of Practice and to see whether sexual harassment policies were being put in place.

All government departments have taken steps to inform staff that sexual harassment is intolerable behaviour and a serious disciplinary offence. Most departments have a network of trained counsellors to deal with sexual harassment by providing confidential advice and support. Sexual harassment is discussed in many of the training programmes provided for staff.

Sexual harassment policies have also been adopted for the police, the fire service and British Rail.

¹³ Tower Boot Limited v. Jones 1995 IRLR 513, 529 and Waters v. Commissioner of Police of the Metropolis 1995 IRLR 531

III) Awareness-raising campaigns and other measures

In order to raise awareness about the Commission Recommendation, the Employment Department published a brochure for employers and a factsheet for employees. These publications were drawn up following consultation with the Equal Opportunities Commission (EOC) and social partners. They were distributed free of charge to all companies with more than 10 employees - approximately 100,000 companies.

In 1993, the EOC for Northern Ireland published and disseminated two brochures on sexual harassment. It also reproduced the text of the Commission Recommendation and Code of Practice, drawing employers' attention to the guidelines contained in the code. Similarly, in 1994 the EOC for Great Britain published and distributed two publications on sexual harassment., one for employers, the other for employees.

Survey of the legislative situation in the new Member States - Austria, Finland and Sweden

AUSTRIA

Legislation

Applicable law

In December 1992, new legislation was passed, amending the Equal Treatment Act of 1979, introducing special provisions on sexual harassment.

The amended Equal Treatment Act states that discrimination on grounds of sex arises when, in connection with an employment relationship, an employee is subject to sexual harassment by the employer himself (Article 2.1a.1) and when the employer is guilty of not providing an adequate remedy against sexual harassment by third parties (Article 2.1a.2).

The Act gives a definition of sexual harassment stating three different kinds of conduct that constitute sexual harassment. Firstly, when there is conduct of a sexual or sex-based nature in the workplace, either affecting another person's dignity, being undesired by her/him, or being inappropriate or offensive to her/him. Secondly, when there is conduct of a sexual or sexed-based nature leading to an intimidating, hostile or humiliating work environment. Finally in cases of sexual blackmail in the workplace.

Employers' obligations

The remedies to be introduced by the employer in cases of sexual harassment by third parties, see above, may be founded on legal norms, norms of collective agreements, or norms of the employment contract.

The employer's duty to provide adequate remedies clearly includes taking the appropriate action to end an act of sexual harassment that comes to his or her knowledge. It is somewhat unclear if this duty also includes the creation of conditions for the prevention of sexual harassment.

Legal remedies

Action by a victim of sexual harassment can be taken at the labour court up to six months after the harassment has occurred.

There is also a possibility for the victim of sexual harassment to complain to the Equal Treatment Commission (ETC) instead of, or as well as, taking legal action. The ETC is an administrative body consisting of three government, four employer and four employee representatives. The ETC proceedings are not public.

FINLAND

Legislation

Applicable law

A new Act on Equality Between Women and Men came into force in 1995. The Act prohibits direct or indirect discrimination on the basis of sex (Article 7). The actions of an employer shall be deemed to constitute discrimination if the employer neglects to ensure that an employee is not subjected to sexual harassment (Article 8.2.4), see below.

The Penal Code does not contain prohibition on sexual harassment as such but the crimes against dignity and sexual abuse can be applicable in some cases.

The Act leaves it to the courts to define sexual harassment.

Employers' obligations

Under the 1995 Act, the employer has an obligation to promote equality in working life (Article 6), which includes ensuring, as far as possible, that an employee is not subjected to sexual harassment (Article 6.2.4).

An employer with at least 30 staff shall include measures to further equality between women and men in the annual personnel or working plan, or the action programme for labour protection (Article 6 a). Even if the specific measures to be included in such a plan are not mentioned, they should certainly include measures to combat sexual harassment, considering the positive obligation the employer has to ensure a working environment free of sexual harassment.

Legal remedies

An employer who has violated the prohibition on discrimination, including not fulfilling the obligation as far as possible to ensure that an employee is not subject to sexual harassment, shall be liable to pay compensation to the affected person (Article 11).

A claim for compensation against the employer shall be pursued within one year from the date when the act of sexual harassment took place.

SWEDEN

Legislation

Applicable law

The Act Concerning Equality Between Men and Women (SFS 1991:433), hereafter "the Equality Act", states that an employer may not subject an employee to harassment because the latter has rejected the employer's sexual advances or lodged a complaint about the employer for sex discrimination (Article 22). This is also applicable to persons other than the employer who have the right to make decisions concerning an employee's working conditions.

The Equality Act does not prohibit sexual harassment itself in the workplace and does not provide a definition of sexual harassment.

The Law on Protection of Employment is applicable when an employee resigns because of sexual harassment (see below).

Employers' obligations

According to the Equality Act, an employer shall take, with regard to her or his resources, such measures as may be required to ensure that working conditions shall be appropriate for both men and women (Article 4). Furthermore, the employer shall strive to ensure that no employee is subjected to sexual harassment (Article 6). A general obligation for the employer to ensure a working environment free of discrimination, is repeated in the Working Environment Act. This has, in explanatory directions (AFS 1993:17), been qualified to include sexual harassment.

The measures taken to ensure equality in working conditions shall be included in a yearly equality plan to be drawn up by businesses with 10 or more employees. An account of how the planned measures have been implemented shall be included in the plan for the following year (Article 10 of the Equality Act).

The Equality Ombudsman has an obligation to control that these plans actually are drawn up in accordance with the provisions of the Equality Act.

Legal remedies

An employee who has been subjected to harassment because he or she has rejected the employer's sexual advances or lodged a complaint about the employer for sex discrimination (Article 22), is entitled to compensation from the employer for the moral injury caused by the harassment.

If the requirements in Article 22 of the Equality Law are not applicable, as sexual harassment is not prohibited as such in Swedish law, a victim of sexual harassment will have to prove under the penal procedural rules that the discriminatory behaviour constitutes a crime under the Penal Code, to obtain compensation.

An employer who does not strive to ensure that employees are not subjected to sexual harassment and/or does not draw up an equality plan, including *inter alia* measures to combat sexual harassment, may be ordered under penalty of a fine, to fulfil her or his obligation. Such an order may be made by the Equal Opportunities Commission at the request of the Equality Ombudsman.

The Equality Ombudsman may also present a case of harassment under Article 22 of the Equality Act for an individual employee or job applicant before the Labour Tribunal, if the person so permits and the case can be of importance as a precedent.

CHAPTER II

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THE PRACTICAL IMPLICATIONS OF THE CODE OF PRACTICE

Article 4 of the 1991 Commission Recommendation on the protection of the dignity of women and men at work, states that this report should examine the degree of awareness of the Code, its degree of application, the extent of its use in collective bargaining and its perceived effectiveness.

The previous chapter has already dealt with some of these issues and the present chapter will build on the results of that presentation. Firstly, the degree of awareness by certain actors and the measures taken by them to disseminate information will be considered. Secondly, the use of the Code in legislation and collective bargaining will be assessed, and finally an evaluation will be made on the effectiveness of the Code in these respects.

Degree of awareness of the Code

It is difficult to gauge precisely the degree of awareness amongst workers and employers across the European Union of the Commission Recommendation and Code of Practice, or of the problem of sexual harassment itself. However, an examination of the awareness of National Authorities, Social Partners and other Actors and the measures taken by them to raise awareness can give some indication of the situation.

Measures taken by National Authorities

According to the Recommendation, Member States are recommended to take action to promote awareness that sexual harassment is unacceptable (Art 1) and to encourage employers and employee representatives to implement the Code (Art 3).

It is clear from the previous chapter that national authorities differ considerably from one another in the approach taken to raise awareness about the problem of sexual harassment as addressed in the Commission Recommendation. In general, very little has been done to raise awareness of the problem at workplace level.

Where the subject has been raised, it has been either by government, by national equality agencies or by government in co-operation with independent organisations. The methods used include research reports, surveys, brochures, leaflets and television advertising. Clearly, there are limitations as to the impact of such campaigns on the population as a whole, especially if they are isolated initiatives, not accompanied by collective agreements or legislation.

Measures taken by Social Partners and other actors

Regarding trade unions, there are some excellent examples of follow-up, but these tend to be the exception rather than the rule. Some of the organisations which have achieved notable results on this issue are those with a very active women's department that have elaborated a comprehensive strategy to eliminate sexual harassment in the workplace.

In general, the trade unions of the different countries have developed information leaflets and training material on sexual harassment and contributed to raising the issue of sexual harassment as a social problem. Again, such isolated measures are not a very effective means of dealing with the problem.

Some organisations did go further and elaborated a model agreement on sexual harassment roughly corresponding with the Code of Practice.

Employers' organisations appear, in general, to be less aware of the contents of the Commission's Code of Practice and seem rather reluctant to adopt measures to prevent sexual harassment in the workplace. In some countries, (e.g. the United Kingdom and Ireland) individual employers and their organisations have been more active, issuing policy statements or guidelines to prevent and combat sexual harassment at work.

It is also important to underline the vital role played by women's associations in allowing the victims to be heard and in bringing the problem of sexual harassment into the political and social debate. They also assist social partners in the development of procedures on how to deal with sexual harassment at work. These women's associations often carry out research on the extent and the financial and personal implications of the problem of sexual harassment. In several countries, these associations, often together with social partners, take part in the direct preparation of legislation on sexual harassment.

Measures taken at European level

As previously mentioned in the introduction, the Commission has for its part undertaken a variety of measures in order to draw public attention to the problem of sexual harassment and Community policy on this subject. It has published a guide to implementing the Commission Code of Practice and has supported information seminars, research pilot projects and other actions.

As part of the research into social partner initiatives on sexual harassment, questionnaires were sent to European organisations representing management and labour in the sectors under review, regrettably with little response. However, from those replies received the following information was obtained:

In the food, Horeca and service sectors, the European Industry Committee of the Food, Catering and Allied Workers' Union within the IUF transmitted information on the Commission Recommendation to national affiliates and also distributed copies of the Commission's guide.

In the clerical sector, Euro-FIET has informed its member organisations about the EC policy on sexual harassment and adopted a motion on the issue at its most recent congress. It intends to draw up provisions which should be included in collective agreements on the issue.

In the public sector, the European Public Service Committee informed its member organisations about the Commission Recommendation. It has presented a special paper on the subject, outlining the effects of sexual harassment, the legal framework and procedures for dealing with it.

Degree of application of the Code at legislative level and in collective bargaining

Legislation

Since the Commission Recommendation was adopted in 1991, three Member States (Belgium, France, and the Netherlands) have enacted specific legislation on sexual harassment requiring that companies have pro-active policies to prevent and to combat sexual harassment, and ensuring easier access for victims to counselling and advice services as well as to legal remedies. Spain has introduced a prohibition of sexual harassment in its Penal Code and Germany has defined sexual harassment in its Equality legislation. Two countries, Italy and Ireland, are in the process of enacting specific legislation.

Regarding the new Member States, Austria and Finland have recently introduced comprehensive legislative measures to combat sexual harassment. The Swedish law takes up sexual harassment indirectly but does not prohibit it in the workplace other than under specific circumstances.

The remaining countries have general anti-discrimination legislation that is applicable to sexual harassment in varying degrees. With the exception of the United Kingdom, where extensive case-law have been developed, the existing legislation in these countries gives no more than a theoretical possibility of dealing effectively with sexual harassment. One has to bear in mind the very strict procedural requirements applying to criminal law and the difficulties of construing abstract Civil Code principles to apply to cases of sexual harassment. The sparse or non-existent case law on the matter in some countries is a clear indication of these difficulties.

Collective Bargaining

The social partners in Denmark, Italy, Ireland, the United Kingdom and the Netherlands have been fairly active. Within some sectors they have negotiated collective agreements with explicit provisions on how to combat sexual harassment at work. Many organisations at national level have developed model agreements. However, there does appear to be a lack of information within the social partner organisations on the practical implementation of such agreements at company level. It is clear from the very nature of the subject that active involvement of management and labour at company level is essential in putting into place adequate procedures to deal with sexual harassment at work.

Some development at social partner level can be seen in Spain, Belgium, France and Germany while in Greece, Portugal and Luxembourg sexual harassment does not seem to be considered as a priority for the social partners. Even though the Greek reply referred to a National Collective Agreement, there was no evidence of implementation of this agreement in the workplace.

Until recently, the Social Partners in Germany have been passive, but in view of the adoption of the new law, it can be expected that they will start to negotiate on the issue.

Other Actors

Elsewhere, the Commission Recommendation and Code have produced some rather indirect effects, by instigating discussion on the topic, influencing official bodies to commission research or to develop new sexual harassment initiatives, or encouraging and legitimising certain measures and even perhaps a number of court decisions taken.

In Ireland, the Employment Equality Agency, in cooperation with the social partners, has drafted a National Code of Practice very much in accordance with the Commission Recommendation and Code. It is expected that when this National Code receives statutory recognition, most companies will adopt its guidelines.

Effectiveness of the Code

To consider the effectiveness of the Code of Practice, one first has to turn to the Recommendation and the Code of Practice itself. The message that emerges from these documents is that it is not enough to simply provide a legal basis for victims of sexual harassment to sue their employers before a court. Rather, the approach must be preventive and pro-active, in that a clear policy is put in place and then carried out diligently at all levels of decision-making.

In practical terms, legislation and/or model agreements without proper implementation at company level will not be effective. Legislation and comprehensive collective agreements will not be effective without information and vice versa.

Legislation which defines sexual harassment and which is aimed specifically at combatting it through practical measures, can of course also have a great importance for raising awareness of the problem.

Looking at the three countries that have enacted comprehensive legislation specifically aimed at actively combatting sexual harassment, the following observations can be made. Firstly, it appears that government recognition and support for the initiatives against sexual harassment were crucial to the advancement of the issue.

In these three countries, three general groups of actors were instrumental in developing and maintaining sexual harassment policy: governments, the unions and employers' organisations and women's groups. These groups had various degrees of implication in the major steps of the process: raising the issue of sexual harassment as a social problem; developing a policy to prevent and to combat the problem; and translating that policy into legislation and other action. None of these countries involved all the actors in all stages and in only one of the countries was work done to build on the legislative stage through action by the Social Partners in the collective bargaining process (at least for the sectors covered in the Commission's research carried out during 1995).

In the Netherlands, the union organisations elaborated a model agreement on sexual harassment. They negotiated its adoption at company level with the employers. Many companies now possess collective agreements which contain this model agreement.

Regarding the other countries, there will be considerable improvement if the planned legislation in Italy and Ireland is enacted. The Code has also proved quite useful in so far as it has sometimes been used by the social partners, mostly trade unions, at the national level in the drawing up of model agreements. The problem remains to implement these model agreements at company level.

What is striking is the fact that, even where it can be clearly indicated that the Commission Recommendation and Code have had some influence, neither the national authorities nor the social partners have been able to provide substantial information presenting an evaluation of the progress made and which could have shown the extent of implementation and the real effectiveness of the Code at least within those countries or work sectors where there has been a relative success in this regard.

CONCLUSION

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Reviewing the results of the present report the following observations can be made.

The report shows that the Recommendation and the Code of Practice have had at least some impact in most Member States. A variety of approaches have been adopted in those countries which have introduced specific legislation or important amendments to their civil and penal codes in order to tackle the problem of sexual harassment in a more coherent and efficient way as recommended in the 1991 Code of Practice.

Firstly, provisions were frequently introduced in legislation or in national collective agreements explicitly defining and prohibiting sexual harassment. These measures have several advantages: they give the victim of harassment an identifiable remedy; they make it clear to the perpetrator that their behaviour is unacceptable and they have a general awareness-raising effect.

Secondly, provisions have sometimes been enacted in legislation and/or in collective agreements putting a responsibility on the employer to ensure that the working environment is free of sexual harassment together with the possibility for the employer to take disciplinary measures against the perpetrator. This has a crucial preventive effect and thus avoids the development of potential problems.

Thirdly, agreements and/or legislation have occasionally provided for the introduction of a confidential counsellor giving crucial assistance to the victim of harassment.

These measures have been partially taken up by a number of Member States. In those Member States where these types of provision have been implemented through national collective agreements, it is doubtful whether they have been implemented at the workplace level. As to awareness-raising of the problem of sexual harassment, modest results have been achieved.

The Code of Practice was drawn up with the intention of actually improving the situation for employers and employees in the Community, in respect of the problem of sexual harassment. To reach this goal, a comprehensive approach must be taken, involving actors at all levels and having a practical impact in the individual workplace. Such an approach must define and prohibit sexual harassment, provide for effective remedies and counselling and create a real awareness of the problem.

It is clear that even if considerable progress has been made in certain countries, the comprehensive approach needed to ensure a working environment where sexual harassment can be effectively prevented and combatted has generally not been adopted. This can be explained at least in part by the inherent limitations of the Commission Recommendation, its success depending too much on it being widely known and followed on a voluntary basis.

Thus, even if the 1991 Recommendation and the Code of Practice certainly do constitute a major step forward, it is clear that further progress needs to be made.

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