

Opinion on the draft Commission Recommendation on the protection of the dignity of women and men at work

(92/C 14/02)

On 4 October 1991 the Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned draft Commission Recommendation.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 October 1991. The Rapporteur was Miss Maddocks.

At its 290th plenary session (meeting of 30 October 1991) the Economic and Social Committee adopted the following Opinion by a majority with 1 vote against.

1. General comments

1.1. The Committee welcomes the Commission's draft and the accompanying Code of Practice, which is broadly in line with the mandate provided by the Council Resolution of 29 May 1990 on the 'protection of the dignity of women and men at work'⁽¹⁾. The proposal also rightly argues that unwanted conduct affecting the dignity of women and men at work is both 'unacceptable' and 'in certain circumstances' contrary to the principle of equal treatment within the meanings of Articles 3, 4 and 5 of Council Directive 76/207/EEC.

1.2. The Commission is to be complemented on having the courage publicly to assert that sexual harassment at work 'is not an isolated phenomenon' and that it can have 'devastating effects upon the health, confidence, morale and performance of those affected by it'. Indeed a first step in promoting awareness, and in turn prevention of the problem, is surely to demonstrate how it has been grossly underestimated both in terms of the extent of persons adversely affected and the actual type of behaviour in question.

1.3. This in turn is why the Committee is disappointed that the 'code of practice' proposed is only limited to a Commission Recommendation. Given the seriousness and widespread occurrence of sexual harassment or of unwanted behaviour demeaning the dignity of women and men at work, and considering that Ministers have already pronounced themselves on this problem, the Committee considers that at least a Council Recommendation is required, possibly leading at a future stage, after EC-wide monitoring, to a more binding EC instrument registering an appropriate degree of political commitment and scrutiny.

1.4. In the above context, the proposal and 'code of practice' should not only encourage measures to protect

the dignity of women and men at work, but should also call upon Member States seriously to quantify and monitor the estimated numbers of cases involved in order to carry out adequate counter measures, and to establish the effectiveness of policies being implemented over a three-year period.

1.5. The definition of sexual harassment or offensive conduct at work, presented in Article 1 of the Recommendation and in point 2 of the 'code of practice', corresponds to that already registered in the Council Resolution of 29 May 1990. It is wholeheartedly endorsed by the Committee, the emphasis clearly being on the 'unwanted' nature of the conduct, as distinct from 'friendly behaviour which is welcome and mutual'. The Committee would argue that, along with this definition, the Commission ought to reconsider at least appending to the code practical examples of behaviour which it considers are covered by the definition. This would be helpful both for interpreting the code and in making management and workers more aware of what actually constitutes offensive conduct or sexual harassment at the work place. The Committee would further argue that this more expansive, if not exhaustive, explanation would be helpful to prevention and basic training policy in this area, as well as for drawing appropriate clauses in collective agreements.

1.6. It is crucial to the whole exercise that a fair and even-handed approach be instituted when complaints procedures are opened, so that the onus of proof is not exclusively borne by either the complainant or by the alleged harasser. This is why the Committee would once again urge the Council to consider approving the long-standing Commission proposal on modifying the burden of proof in sexual discrimination cases.

1.7. Finally, the Committee is only too aware that the code and package of suggested responsibilities, training

⁽¹⁾ OJ No C 157, 27. 6. 1990, p. 3.

policies, informal measures, counselling, official complaints procedures, investigations and disciplinary measures, whilst all clearly necessary, appropriate to the size and structure of undertakings, will still only touch the tip of the iceberg. This is a general societal problem which cannot be solved by codes or legislation alone, but by basic education and sustained campaigns of public awareness. This is why it is vital for Member States to treat the initiative seriously both at its launch stage and in monitoring its results and findings. It is hoped that clear guidance be given to Member States as to how this should be done. It would be helpful to include good practice throughout the Community.

1.8. The Committee would also urge the Commission to consider the ways in which the code of practice can be included in its on-going work on health and safety at the work place.

2. Specific comments

2.1. The Committee would propose that the Commission delete the last sentence of the second paragraph in the Introduction to the proposed Code of Practice (taking account of 'national and local practices').

2.2. Under point 3 of the Code, third paragraph, the Committee would point out that 'gender' is not always the determining factor in who is harassed. Sexual orien-

tation can also be a factor, as argued in point 1 of the same Code. The Commission may wish to make separate provision for this in view of the fact that people harassed by persons of the same sex might not have redress under the equal treatment directive or Member States' sex discrimination legislation.

2.3. Under B 'Procedures', the last sentence of the first paragraph should be amended to read:

'Such guidance should, of course, draw attention to possible sanctions against employees behaving in a sexually discriminatory manner, as well as to an employee's legal rights and to any time limits within which they must be exercised, under existing legislation designed to combat sexual discrimination.'

2.4. Point B IV) of the Code, second paragraph should be slightly modified to allow for the complainant or alleged harasser to have the right to be 'accompanied and/or represented.'

2.5. Point 6 of the Code should clearly state that Trade Unions have a vital role to play in launching, applying and monitoring the Code of Practice at the work place, together with management.

2.6. The Committee would recommend that at the end of Article 4 of the Recommendation, should be added 'and to measure their effectiveness'.

Done at Brussels, 30 October 1991.

*The Chairman
of the Economic and Social Committee*

François STAEDLIN
