

Social partners pledge to prevent harassment and violence at work

Violence¹ at work – a hydra-headed moral, psychological, social, physical and sexual phenomenon – poses a big and concerning threat to workers' health. Its knock-on effects cause them and the firm or body they work for to underperform. Violence is a fact of society that concerns us all, increasingly intolerable but still all around: it is written into the biological competition between animal species and, within the same species, that struggle for power that lets a small elite dominate the group. As rational human beings, we try to hold these primitive instincts in check. The representatives of private business and public service body workers and employers in the Member States of the European Union have decreed that violence or the use of violence in any form, including by third parties, is unacceptable. As a practical step towards outlawing it, the social partners² have pledged no longer to tolerate, but to prevent and tackle violence at work by signing up to the European framework agreement on harassment and violence at work of 26 April 2007³.

An elusive issue

The European social partners originally included the negotiation of a framework agreement on harassment and violence in their work programme 2006-2008. The Trade Union Technical Bureau, the forerunner of the European Trade Union Institute's Health and Safety Department, took a lead on this by staging a discussion and awareness-building seminar for union health and safety officers in December 2004.

Before embarking on talks, the European social partners themselves took part in a joint seminar in May 2005 to map out the parties' broad options and a timetable for negotiations to agree on a framework agreement on the basis of article 139 of the Treaty on European Union⁴.

Talks stretched out from February to December 2006, overrunning the 9 months allowed by the Treaty for this kind of negotiation⁵, as it soon emerged that "violence" and "harassment" were used to signify a wide range of particularly complex things. The first big task for the negotiators was to define and agree on the scope of the agreement: was violence to be physical, moral or sexual? And would harassment be psychological, sexual or extend to physical harassment?

A first test for the negotiators was to pin down the concepts behind these terms and their physical expression in the workplace. A general agreement that they are highly disruptive of work meant puzzling carefully through their causes. The discussions hinged on such questions as, "Do they stem from

working conditions or the violent nature of society?", "Can they be prevented in workplaces?", "What risk factors and preventive measures need acting on?".

The negotiators first had to make their way through a maze of questions to get to a response that was coherent and acceptable to all across different cultures and sensibilities⁶, also taking into account a wide range of work situations and players like work specifiers and project managers, as well as those doing the work in prescribed working conditions like working alone, night work, work handling valuables, women in a male work environment, public-facing work, wielding or exposed to violence, etc.

Because "violence" is a word that covers all forms of inappropriate conduct, whether through speech, body language, behaviour (threats, exclusion and harassment), and even murderous physical brutality, the European Trade Union Confederation (ETUC) wanted to make sure that no forms of violence were ruled out from the start of negotiations. It thought that could only be ensured by creating a taxonomy (see diagram) of the different forms of violence and their impacts at work. The employers' negotiators took a different tack, arguing that business owners could not be called to account for the general rise in violence in society and so could not be held vicariously liable for the acts of third parties, including in the workplace.

The European framework agreement on harassment and violence commits its signatories and their members. That fact alone makes it a good agreement, and is something without which the ETUC in particular would never have signed let alone implemented it. But it is a curate's egg of good and bad aspects, briefly considered here.

Strengths

The first is the recognition that violence is a big problem, and a pressing concern for the European social partners, prompting them to implement an agreement that states in so many words that violence in any form is unacceptable, including that committed by third parties not on the payroll. The problem can no longer be brushed aside, and so comprehensive awareness-building and training campaigns will be run, because the agreement is an action-oriented framework.

The social partners pledge that no form of violence will be tolerated in their organisations any more, and they will positively promote mutual respect for the dignity of others. Such respect is essential if workers' health and the work environment are not to be undermined.

¹ Used as a catch-all term here for physical, moral (including psychological harassment going by the names of "bullying" or "mobbing") and sexual violence, and their particular manifestations (see diagram p. 4).

² The European Trade Union Confederation (ETUC) and the employers' organisations BUSINESSEUROPE, UEAPME and CEEP.

³ The full framework agreement can be downloaded from <http://www.etuc.org/a/3574>.

⁴ Article 139 reads, "should management and labour so desire, the dialogue between them at the Community level may lead to contractual relations, including agreements". Agreements concluded at Community level are implemented either in accordance with the procedures and practices specific to management and labour and the Member States, or, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. For more details, see box p. 5.

⁵ Article 138.4 of the Treaty reads, "the duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it".

⁶ Interestingly, the findings of the *Fourth European working conditions survey* suggest that Finland has the highest rate of complaints about violence at work. This, however, may be due to violence being less tolerated than elsewhere in Europe, with victims readier to report it (see article p. 32).

The agreement relies on existing legislative instruments, referring particularly to Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. The very fact of including that reference gives the strategy to use in tackling violence – it must be based on a rigorously preventive approach which in each case attempts to identify and eliminate the risk factors. It also spells out the stages of a strategy now recognised as effective, based on identification, prevention and management (see chapter 4 of the agreement). In terms of proactive prevention of risks, “management” has to be understood as an ongoing, participatory process whose first aim is to eliminate the causal factors of the effects being tackled. Where violence at work is concerned, management must be about more than administering or managing risks; it must actively protect workers against the appearance of violence through evaluations, information and striving to actively eliminate all its causal factors.

Lastly, the agreement says that more attention must be paid to the victims of violence through measures of support and reintegration that the enterprise or organization must put in place. These measures must respect the confidentiality and dignity of the persons involved, and so intervention by a trusted person is suggested.

Weaknesses

⁷ The diagram that accompanies this article is an attempt to break this complexity down into logical elements.

Like its forerunner, the autonomous framework agreement on work-related stress, the Violence Agreement has failings that are directly related to

the essential nature of the instrument as provided for in the European treaty, and to the kind of problems it sets out to tackle. As a result, the agreement describes, but does not define, the problems.

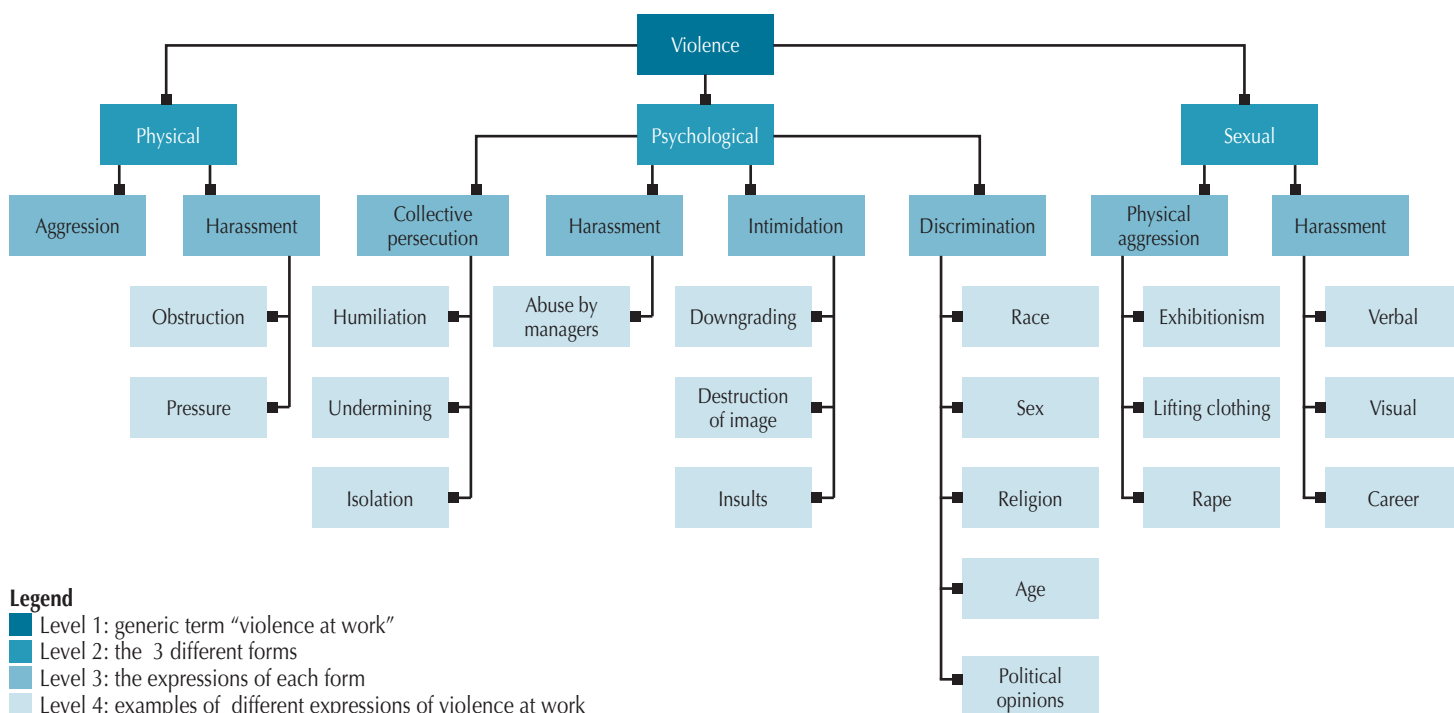
This is not because the agreement’s negotiators or draftsmen were unable to agree on a definition, however; rather it reflects the complexity and diversity of what, being primarily psychosocial problems, are difficult either to bundle together under a clear-cut blanket term that would encompass them all, or to quantify in terms of physical scale⁷. So, the negotiators settled on taking a practical approach of describing specific situations rather than going for wordy and convoluted definitions.

It is a “framework” agreement, which means that it cannot encompass the sometimes extremely serious specific situations that affect particular sectors, regions or activities. The ETUC negotiators are hoping that in negotiations for the implementation of the agreement, the social partners will be able to display the realism and vision needed to turn a framework agreement into a specifically workable and effective instrument in the particular situations concerned.

Conclusion

The preventive process described in Framework Directive 89/391/EEC applies to preventing the risk of violence at work. While the principle is referred to, its implementation is not described in the agreement which, technically, could not include such a complex aspect. The social partners will need

Tentative taxonomy of violence at work



to display proactivity and vision in implementing appropriate means for tackling violence by identifying the risk factors specific to the jobs in each type of undertaking or organisation in Europe. This analytical approach will be a first step preparatory to eliminating or taking practical measures to control the risk factors. These criteria will be the litmus of the signatory organisations' good intentions, involvement and ability to implement the agreement.

In practise, that means that if a lone worker has to shut up the shop or a filling station at night in a remote workplace, the employer must assess the risks run and take every possible measure required: this might mean fitting a video monitoring system or rostering an extra person at closing time. Similarly, the organizers of hospital or clinic out-of-hours services providing intake for violent, drunk, drug-taking

or plain psychologically-disturbed patients will have to assess the situation and take appropriate measures for the staff. Whenever a worker faces the risk of violence because of the nature of the activities or the circumstances, even exceptional, measures will have to be taken after a participatory risk assessment. If there is a problem, i.e., a failure of prevention, the victim will have to be reintegrated into the organisation and be given support. In less clear-cut cases of bullying or sexual harassment between workmates in the same workplace, respect for confidentiality, internal "sub judice", and the dignity of those who are often destabilised by repeated incidents will often make it essential to draft in expertise from outside. ■

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Autonomous framework agreement: what legal scope?

Stefan Clauwaert, a legal expert with ETUI-REHS, was closely involved, as an adviser, with the work of the ETUC delegation that negotiated the European autonomous framework agreement on harassment and violence at work. We asked him about the foundations and legal implications of this text.

The framework agreement on harassment and violence at work is referred to as "autonomous". Can you tell us what that means?

The legal basis of the framework agreement is Article 139 of the European treaty. Paragraph 2 of that article creates two possibilities for transposing a European framework agreement. At the request of the European social partners, the framework agreement can be incorporated into a Commission proposal for a directive that will then be submitted to the Council for adoption. In that case, the Member States are legally obliged to transpose the directive.

A second option is possible under Article 139: the European social partners can negotiate an agreement on an autonomous basis. In that case, transposition in the Member States is the responsibility of the national social partners, who will use the specific instruments and procedures of the national industrial relations system.

An agreement that is built into a directive is legally binding. It has the same legal value as a classic directive. On the other hand, autonomous framework agreements are not legally binding. They are, however, "contractually" binding. That means that it is the member organisations of the European social partners, with support from the latter if they desire, that will have to guarantee transposition of the agreement in their national context.

One question remains, however: Do autonomous agreements form part of the *Community acquis*? For the ETUC, the answer is yes, because the legal basis of this type of agreement is a European treaty article, a primary source of European legislation. Some do not share that opinion. The only way to settle this difference of views would be to test a case falling within one of the three European autonomous framework agreements (Ed.: teleworking, stress and harassment-violence) before the European Court of Justice. The Court would then establish the legal nature of this type of agreement.

Some states already have legislation against harassment or violence at work. How can the co-existence of national legislation and the text adopted by the European social partners be assured?

European autonomous framework agreements should be seen as complementary to legally binding texts existing at European and national level. Our colleagues from the countries having a binding legal framework in this area can, for example, use European autonomous framework agreements to settle certain details not covered by legislation or even to request the revision of laws. I can give the example of transposition of the autonomous framework agreement on stress at work in Belgium. That country already had legislation on stress at work, but it applied only to the private sector. The adoption of a framework agreement between the European social partners, among other factors, prompted the government to extend the scope of the law to the public sector.

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