Atskiras pagrindų susitarimas dėl priekabiavimo ir smurto darbe

Europos profesinių sąjungų konfederacijos interpretavimo vadovas

Vadovą parengė Europos profesinių sąjungų konfederacija (ETUC) (logotipas) ir Europos profesinių sąjungų mokslinių tyrimų, švietimo, sveikatos ir saugos institutas (ETUI-REHS) (logotipas), naudodamiesi Europos Komisijos finansine parama

Turinys

Pratarmė

Derybos dėl priekabiavimo ir smurto darbo vietoje įeina į Europos socialinių partnerių 2003–2005 ir 2006–2008 metų darbo programas. 2006 m. vasario 7 d.–2006 m. gruodžio 15 d. vykusios derybos rėmėsi bendro parengiamojo seminaro (vykusio Briuselyje 2005 m. gegužės 12 d.) išvadomis.

Vėliau, patvirtinus atitinkamiems šių organizacijų sprendžiamiesiems organams, ETUC, Europos amatininkų, mažų ir vidutinių įmonių asociacija („Businesseurope“[1]/UEAPME) ir Europos įmonių, kuriose dalyvauja valstybė, centras (CEEP) 2007 m. balandžio 26 d. pasirašė šį pagrindų susitarimą.

Susitarimą turi įgyvendinti visos ETUC, Businesseurope/UEAPME ir CEEP organizacijos narės, remdamosi administravimui ir darbui taikomomis procedūromis ir praktika, numatytomis Sutarties 139 straipsnyje, per 3 metus nuo susitarimo pasirašymo (t. y. iki 2010 m. balandžio 26 d.).

Interpretavimo vadove pateikiama kiekvieno susitarimo skyriaus apžvalga, akcentuojant pagrindines spręstinas problemas, aptartas derybų metu. Be to, šiame vadove pateikiama: 1) susijusių ES direktyvų apžvalga (1 priedas); 2) kai kurių ES teisės aktų ir precedentinės teisės atvejų analizė, įrodant, kad jie taikytini priekabiavimui ir smurtui darbe (2 priedas); 3) siūlymas dėl priekabiavimo ir smurto darbe sisteminimo (3 priedas); 4) nuorodos priekabiavimo ir smurto darbe tema (4 priedas).

Vadovo tikslas – padėti ETUC organizacijoms narėms įgyvendinti šio susitarimo turinį ir sėkmingiau atlikti pasiektų rezultatų stebėseną ir vertinimą[2].

Mes taip pat viliamės, kad šis vadovas padės skleisti informaciją apie šį susitarimą ir jo turinį socialinių partnerių, darbuotojų ir plačiosios visuomenės tarpe.

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[1] 2007 m. Europos pramonės ir darbdavių konfederacijų sąjunga (UNICE) pakeitė organizacijos pavadinimą į „Businesseurope“.

[2] Šį ETUC interpretavimo vadovą parengė Maria Helena André (ETUC generalinio sekretoriaus pavaduotoja ir ETUC atstovė deryboms) ir Stefan Clauwaert (ETUI-REHS tyrėjas ir ETUC „Priekabiavimo ir smurto darbe“ derybų delegacijos narys). Gauthy Roland ir Schömann Isabelle (taip pat ETUI-REHS tyrėjai ir ETUC „Priekabiavimo ir smurto darbe“ derybų delegacijos nariai) šiam vadovui pateikė savo ekspertų pastabas. Ypatingai dėkojame ir Margarida Arenga (2007 m. birželio–gruodžio mėn. ETUI-REHS stažuotojai) už jos vertingą paramą rengiant šį vadovą.

1. Įvadas

Text of the agreement	Aiškinimas / komentaras
Mutual respect for the dignity of others at all levels within the workplace is one of the key characteristics of successful organisations. That is why harassment and violence are unacceptable. BUSINESSEUROPE,, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) condemn them in all their forms. They consider it is a mutual concern of employers and workers to deal with this issue, which can have serious social and economic consequences.	Tokiu būdu sutartis taikoma visoms priekabiavimo ir smurto darbo vietoje apraiškoms, nepaisant pradinio darbdavių nusistatymo taikyti susitarimą vien tik priekabiavimui, netaikant jo smurtui darbo vietoje. Pabrėžiama, kad priekabiavimas ir smurtas darbo vietoje gali lemti sunkias socialines pasekmes (pvz., sveikatai, darbo atmosferai, pasitenkinimui darbu ir pan.) bei ekonominius padarinius. Štai todėl ši problema yra jiems tokia svarbi ir socialiniai partneriai turėtų ją spręsti išvien.
EU[3] and national law define the employers' duty to protect workers against harassment and violence in the workplace.	Susitarimas pripažįsta, kad dabartiniai teisės aktai ES ir nacionaliniu lygiu yra galiojantys, todėl juose numatyti procesai ir procedūros gali būti taikomi ir kovai su priekabiavimu ir smurtu darbo vietoje: pvz., informavimo ir konsultavimo procedūros, rizikos įvertinimo metodai (procesai), vidaus ir nepriklausomos kompetencijos panaudojimas, mokymai, darbdavio atsakomybė apsaugoti darbuotojus ir t. t. Svarbu pabrėžti, kad išnašose pateikiamos nuorodos į ES teisės aktus neapima visų susijusių ES teisės aktų šiuo klausimu.

[3]This includes amongst others the following Directives:

- Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and
- Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
- Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work

Different forms of harassment and violence can affect workplaces. They can • *be physical, psychological and/or sexual* • *be one off incidents or more systematic patterns of behaviour,* • *be amongst colleagues, between superiors and subordinates or by third parties such as clients, customers, patients, pupils, etc.* • *range from minor cases of disrespect to more serious acts, including criminal offences, which require the intervention of public authorities.* *The European social partners recognise that harassment and violence can potentially affect any workplace and any worker, irrespective of the size of the company, field of activity or form of the employment contract or relationship. However, certain groups and sectors can be more at risk. In practice not all workplaces and not all workers are affected.* *This agreement deals with those forms of harassment and violence which are within the competence of social partners and correspond to the description made in section 3 below.*	Šiame paragrafe apibūdinamos įvairios priekabiavimo ir smurto apraiškos bei potencialūs pažeidėjai, taip pat ir trečiosios šalys. ETUC pozicija trečiųjų šalių vykdomo smurto atžvilgiu buvo aiški nuo pat pradžių: susitarimas konkrečiai netaikomas kuriai nors smurto rūšiai, tačiau esant ryšiui su darbo vieta, smurtas arba priekabiavimas atsiduria turinčių tai spręsti socialinių partnerių kompetencijos ribose, net jei pažeidėjas nedirba bendrovėje. Esama priemonių, kurias bendrai galima taikyti skirtingoms smurto rūšims, tačiau sektoriniame lygmenyje turėtų būti nustatytos labiau specializuotos priemonės. Be to, kai kurio elgesio / veiksmų visiškas ar dalinis reguliavimas yra valstybinių valdžios įstaigų atsakomybė, nes toks elgesys ar veiksmai traktuojami kaip kriminalinis nusižengimas ir dėl to patenka socialinių partnerių kompetencijon. Atsižvelgiant į tai, pripažįstama, kad darbdaviai yra atsakingi už veiksmus tokiais atvejais, kuriems taikoma jų konkreti atsakomybė, ir privalo apsaugoti savo darbuotojus. Šiame paragrafe taip pat nurodomas platus taikymas, pripažįstant, kad smurtas ir priekabiavimas gali grėsti visiems darbuotojams ir visoms darbovietėms, tarp jų ir MVĮ. Be to, šis paragrafas pripažįsta ir tai, kad tam tikroms grupėms ir sektoriams gresia didesnė rizika, tarp to ir dėl trečiųjų šalių smurto. Šį susitarimą pasirašiusios šalys vienodai supranta tai, kad darbdavys negali būti atsakingas už augantį smurtą ir priekabiavimą mūsų visuomenėse. Tačiau šis pripažinimas neturėtų trukdyti jiems atidžiai ir iniciatyviai veikti, vertinant situaciją darbe ir užkertant kelią incidentams.

2. Tikslas

Text of the agreement	Aiškinimas / komentaras
The aim of the present agreement is to: • *increase the awareness and understanding of employers, workers and their representatives of workplace harassment and violence,* • *provide employers, workers and their representatives at all levels with an action-oriented framework to identify, prevent and manage problems of harassment and violence at work.*	Pagrindinis siekis – išspręsti priekabiavimo ir smurto darbo vietoje problemą, todėl privaloma atsižvelgti į visus ženklus, galinčius rodyti priekabiavimo ir smurto buvimą. Vadinasi, visų pirma darbuotojai, darbdaviai ir jų atstovai turi suprasti, kaip vertinti padėtį, subtilius, pvz., užslėpto smurto, mechanizmus ir žinoti, kaip reaguoti, kokius asmenis į tai įtraukti ir pan. Todėl darbuotojai ir administracija turėtų bendradarbiauti, nustatant, užkertant kelią ir kontroliuojant (sprendžiant) priekabiavimą ir smurtą. Iš esmės šį susitarimą reikėtų vertinti kaip į veiksmus nukreiptą informacinį dokumentą, kurį galima naudoti ir pritaikyti socialiniams partneriams kituose lygiuose pagal jų spartumą, poreikius ir problemas. Galiausiai šis ir kiti paragrafai taip pat nurodo, kad priekabiavimas ir smurtas darbo vietoje gali būti vertinami kaip kolektyvinės problemos / sunkumai, o ne individualus asmenų reikalas.

3. Aprašymas

Text of the agreement	Aiškinimas / komentaras
Harassment and violence are due to unacceptable behaviour by one or more individuals and can take many different forms, some of which may be more easily identified than others. The work environment can influence people's exposure to harassment and violence. *Harassment occurs when one or more worker or manager are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work.* *Violence occurs when one or more worker or manager is assaulted in circumstances relating to work.* *Harassment and violence may be carried out by one or more managers or workers, with the purpose or effect of violating a manager's or worker's dignity, affecting his/her health and /or creating a hostile work environment.*	Šiame paragrafe mes vėl susiduriame su pripažinimu, kad esama daug įvairių priekabiavimo ir smurto darbo vietoje apraiškų, kurių kai kurios mažiau pastebimos nei kitos. Taigi, kalbant apie etinius ir socialinius aspektus, pavyzdžiui, net kieno nors įžeidimas, trukdymas gauti priklausančią informaciją arba palaikyti normalius socialinius ryšius su personalu ir viršininkais yra smurto veiksmai. Be to, pripažįstama, kad darbo aplinka, - kurią čia reikėtų suprasti plačiąją prasme, kuri apima darbo organizavimą, darbo sąlygas ir darbo turinį, - gali lemti priekabiavimą ir smurtą. Atsižvelgdama į aptariamų problemų sudėtingumą, ETUC pasiūlė taikyti du skirtingus apibrėžimus, kad būtų galima atspindėti skirtumą tarp pasikartojančių ir vieną sykį įvykusių atvejų. Kartais, pavyzdžiui, seksualinio kolegų priekabiavimo atveju, tai, kas vadinama „priekabiavimu“, iš tikro yra rimta grėsmė ir tokiu atveju „vienkartinis“ veiksmas yra daugiau nei gana. Tiek priekabiavimo, tiek smurto apibūdinimai apima pripažinimą, kad šiems reiškiniams visada taikytinas susitarimas, vos atsiradus ryšiui su darbu. Todėl nereikėtų manyti, kad jie apsiriboja vien asmeniniais individų santykiais. Kalbant apie potencialių pažeidėjų apibūdinimą, ETUC – priešingai nei darbdavių organizacijos – norėjo taikyti ir galiausiai nutarė taikyti formuluotę, kuri aiškiai neatmeta trečiųjų šalių vykdomo smurto. Nors, kaip jau minėta anksčiau, šio skirsnio 2–4 paragrafuose pateikti apibrėžimai yra daugiausiai „susiję su darbu“, juos reikėtų skaityti kartu su visomis kitomis teksto nuorodomis į trečiųjų šalių sukeliamą smurtą, o ypač paskutiniu 4 skirsnio sakiniu, nurodančiu, kad smurtui iš šalies taikytinos nurodytos priemonės. Be to, reikėtų pastebėti, kad šio skirsnio pirmasis įžanginis paragrafas taip pat nenurodo skirtumo taip potencialių pažeidėjų, nes kalba apie „individus“ bendrąja prasme, o ne konkrečiai darbuotojus arba vadovus.

4. Priekabiavimo ir smurto problemų prevencija, nustatymas ir valdymas

Text of the agreement	Aiškinimas / komentaras
Raising awareness and appropriate training of managers and workers can reduce the likelihood of harassment and violence at work.	Pirmojo šio skirsnio paragrafo dėmesio centre – bendro pobūdžio priemonės, kaip kad informuotumo kėlimas ir mokymas, kurių reikia imtis, siekiant galėti nustatyti priekabiavimo ir smurto požymius bei organizuoti prevencinę veiklą ir (arba) terapinę veiklą, apimančią pagalbą aukoms, jei prevencinės priemonės nepadeda. Reikėtų atkreipti dėmesį į tai, kad šios priemonės turėtų būti taikomos visiems, dirbantiems darbo vietoje (vadovams, darbuotojams ir kt.), nepaisant padėties, kurią asmuo užima įmonės hierarchijoje arba organizacijos struktūroje. Negana to, šios rūšies priemonės turėtų apimti ir būti taikomos ir trečiųjų šalių vykdomo smurto atžvilgiu.
Enterprises need to have a clear statement outlining that harassment and violence will not be tolerated. This statement will specify procedures to be followed where cases arise. Procedures can include an informal stage in which a person trusted by management and workers is available to give advice and assistance. Pre-existing procedures may be suitable for dealing with harassment and violence.	Šis paragrafas išreiškia įsipareigojimą visose įmonėse arba organizacijose palaikyti visiškos netolerancijos nusistatymą / politiką priekabiavimo ir smurto atžvilgiu. Todėl, siekiant spręsti atvejus, kai šios netolerancijos nepaisoma, šios įmonės arba organizacijos privalės nustatyti tam tikrą priekabiavimo ir smurto atvejų sprendimo procedūrą, kurios metu, be visų kitų priemonių, administracija, darbuotojai ir jų atstovai turės bendrai paskirti asmenį, kuriuo visos šalys pasitiki. Šiuo asmeniu gali būti bendras kolega, tačiau, atsižvelgiant į šių reikalų sudėtingumą ir opumą, juo galėtų būti ir nepriklausomas konsultantas, kaip kad profesinis psichologas.
A suitable procedure will be underpinned by but not confined to the following: • *It is in the interest of all parties to proceed with the necessary discretion to protect the dignity and privacy of all·* • *No information should be disclosed to parties not involved in the case* • *Complaints should be investigated and dealt with without undue delay*	Trečiame paragrafe aprašomas negalutinis veiksmų sąrašas, kuris turėtų būti įtrauktas į procedūrą, kurios laikomasi bendrovėje. Šis sąrašas gali būti vertinamas kaip proporcingas ir apimantis visus susijusius aspektus. Nešališkumas, konfidencialumas ir absoliuti pagarba orumui paprastai ypač apsunkina reikalų, susijusių su opiais priekabiavimo ir smurto klausimais, sprendimą. Net akivaizdžiais smurto ir priekabiavimo atvejais, kuriems galioja dabartiniai įstatymai, dažnai prireikia nepriklausomos konsultacijos, siekiant ilgai nevilkinti psichologinės sumaišties.

• *All parties involved should get an impartial hearing and fair treatment* • *Complaints should be backed up by detailed information* • *False accusations should not be tolerated and may result in disciplinary action* • *External assistance may help*	
If it is established that harassment and violence has occurred, appropriate measures will be taken in relation to the perpetrator(s). This may include disciplinary action up to and including dismissal. *The victim(s) will receive support and, if necessary, help with reintegration.* *Employers, in consultation with workers and/or their representatives, will establish, review and monitor these procedures to ensure that they are effective both in preventing problems and dealing with issues as they arise.*	Tekste taip pat nurodoma, jog derėtų imtis drausminių veiksmų, nukreiptų prieš pažeidėją, ir jog reikėtų užtikrinti visišką aukos reabilitaciją, galutinai reintegruojant ją į darbo vietą, taip pat ir imantis veiksmų, užkertančių kelią tolesniems netoleruotiniems aukos santykiams su pažeidėju. Be to, darbdavys reintegracijos proceso metu turėtų teikti aukai (aukoms) paramą ir pagalbą, prireikus perduodant bylą teismui ir prisiteisiant kompensaciją. Iš pradžių darbdaviai norėjo apriboti priemones vien patikimo asmens paskyrimu ir nesvarstyti papildomų procedūrų. Jie netgi nenorėjo leisti darbuotojams ir jų atstovams dalyvauti šio asmens skyrime. Galiausiai jie sutiko įtraukti darbuotojus ir jų atstovus ne tik į procedūrų peržiūrėjimą ir stebėseną, bet ir į jų kūrimą. Taigi procedūros turi būti rengiamos, peržiūrimos ir stebimos bendradarbiaujant. Kitas pažymėtinas dalykas – tai, kad šio susitarimo tekste nebeliko įprastinės ankstesniems pagrindų susitarimams sampratos, pagal kurią pasitarimas su darbuotojais ir (arba) jų atstovais yra siejamas su nurodymu atlikti tai „pagal nacionalinę praktiką ir procedūras“.
Where appropriate, the provisions of this chapter can be applied to deal with cases of external violence.	Dalykas, dėl kurio derybos keletą sykių pateko į aklavietę, yra susijęs su susitarimo taikymu trečiųjų šalių vykdomo priekabiavimo ir smurto problemų prevencijos, panaikinimo ir sprendimo procedūromis. Šio skirsnio paskutiniame paragrafe pateikiamas pripažinimas, kad procedūros gali būti taikomos ir sprendžiant smurtą iš šalies, iš dalies šią problemą išsprendė. Išsprendė iš dalies, nes tai priklausys nuo profesinių sąjungų organizacijų pajėgumo palaikyti šią galimybę, įgyvendinant susita-

	rimą. Tačiau derybose dalyvavę kolegos iš ETUC Europos pramonės federacijų buvo įsitikinę, kad dabartinis tekstas sudarys jiems sąlygas savo konkrečiuose sektoriuose naudotis dabartiniu susitarimu kaip atspirties tašku tolesnėse derybose.

5. Įgyvendinimas ir tolesnės priemonės

Text of the agreement	Aiškinimas / komentaras
In the context of article 139 of the Treaty, this autonomous European framework agreement commits the members of BUSINESSEUROPE, UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) to implement it in accordance with the procedures and practices specific to management and labour in the Member States and in the countries of the European Economic Area. *The signatory parties also invite their member organisations in candidate countries to implement this agreement.* *The implementation of this agreement will be carried out within three years after the date of signature of this agreement.*	Šiuo skyriumi ETUC siekė imtis tolesnių priemonių dėl pagrindų susitarimo dėl su darbu susijusio streso. Derybininkai buvo susipažinę su sunkumais šioje srityje, nes socialinių partnerių 2006–2008 m. darbo programa sudaro sąlygas socialinio dialogo priemonių įgyvendinimo procedūros bendrai analizei. Pradžioje darbdaviai laikėsi pozicijos nekeisti skyriaus dėl įgyvendinimo ir paskesnių veiksmų, kuris buvo suderintas per derybas dėl pagrindų susitarimo dėl su darbu susijusio streso. Pagrindinis ETUC delegacijos rūpestis buvo pašalinti žodį „savanoriškas“, vartojamą kalbant apie susitarimo pobūdį, siekiant išvengti tolesnių nesusipratimų dėl susitarimų statuso.
Member organisations will report on the implementation of this agreement to the Social Dialogue Committee. During the first three years after the date of signature of this agreement, the Social Dialogue Committee will prepare and adopt a yearly table summarising	Antras ETUC rūpestis buvo suteikti svaresnį statusą Socialinio dialogo komitetui (SDK), įgyvendinant susitarimą ir vykdant paskesnes procedūras. Tekste tai buvo pasiekta ir SDK dabar turi aiškesnį vaidmenį nei pagal ankstesnius susitarimus. Pagal šį pakeitimą taip pat privaloma parengti metinę ataskaitą, kurią tvirtina SDK, taip sudarant galimybę sykį per metus peržiūrėti ir prireikus aptarti įgyvendinimo problemas.

the on-going implementation of the agreement. A full report on the implementation actions taken will be prepared by the Social Dialogue Committee and adopted by the European social partners during the fourth year. *The signatory parties shall evaluate and review the agreement any time after the five years following the date of signature, if requested by one of them.* *In case of questions on the content of this agreement, member organisations involved can jointly or separately refer to the signatory parties, who will jointly or separately reply.* *When implementing this agreement, the members of the signatory parties avoid unnecessary burdens on SMEs.* *Implementation of this agreement does not constitute valid grounds to reduce the general level of protection afforded to workers in the field of this agreement.* *This agreement does not prejudice the right of social partners to conclude, at the appropriate level, including European level, agreements adapting and/or complementing this agreement in a manner which will take note of the specific needs of the social partners concerned.*	Į susitarimą yra įtraukta palankesnių sąlygų netaikymo nuostata ir dar palankesnė nuostata, neleidžianti mažinti bendro apsaugos lygio, kuris jau suteiktas darbuotojams svarstomų reikalų atžvilgiu. Derybose nebuvo pasiekta didesnės pažangos, kalbant apie ginčų sprendimą arba nuostatos, susijusios su „bereikalinga našta, užkraunama MVĮ“, pašalinimą. Tačiau darbdaviai atsižvelgė į mūsų rūpestį šiuo atžvilgiu ir abu reikalai neabejotinai bus pakartotinai svarstomi per aptarimus,

	numatytus socialinių partnerių 2006–2008 m. darbo programoje, kurių metu jie „toliau derins savo bendrą nuomonę dėl šių priemonių (...)“, be viso kito, remdamiesi ir pagrindų susitarimų dėl darbo namie ir streso darbe vykdymo patirtimi.

Priedai

1 priedas

1 skirsnio „Įžanga“ 2 paragrafe nurodoma, kad „*ES ir nacionaliniuose teisės aktuose yra nustatyta darbdavio pareiga ginti darbuotojus nuo priekabiavimo ir smurto darbo vietoje“*. Pateikiama nuoroda su neišsamiu sąrašu ES teisės aktų, tarp kurių yra tokios direktyvos:

1989 m. birželio 12 d. Tarybos direktyva 89/391/EEB dėl priemonių darbuotojų saugai ir sveikatos apsaugai darbe gerinti nustatymo (OL L 183, 1989 6 29, p. 1)
(Konsoliduota versija: http://europa.eu.int/eur-lex/lex/LexUriServ/site/lt/consleg/1989/L/01989L0391-20031120-lt.pdf)

2000 m. birželio 29 d. Tarybos direktyva 2000/43/EB, įgyvendinanti vienodo požiūrio principą asmenims nepriklausomai nuo jų rasės arba etninės priklausomybės (OL L 180, 2000 7 19, p. 22–26)
(Konsoliduota versija: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_180/l_18020000719en00220026.pdf)

2000 m. lapkričio 27 d. Tarybos direktyva 2000/78/EB, nustatanti vienodo požiūrio užimtumo ir profesinėje srityje bendruosius pagrindus (OL L 303, 2000 12 2, p. 16–22)
(Konsoliduota versija: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_303/l_30320001202en00160022.pdf)

2002 m. rugsėjo 23 d. Europos Parlamento ir Tarybos direktyva 2002/73/EB, iš dalies keičianti Tarybos direktyvą 76/207/EEB dėl vienodo požiūrio į vyrus ir moteris principo taikymo įsidarbinimo, profesinio mokymo, pareigų paaukštinimo ir darbo sąlygų atžvilgiu (Tekstas svarbus EEE) (OL L 269, 2002 10 5, p. 15–20)
(Konsoliduota versija: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_269/l_26920021005en00150020.pdf)

Kiti reikšmingi dokumentai:

1991 m. gruodžio 19 d. Tarybos deklaracija dėl Komisijos rekomendacijos dėl vyrų ir moterų orumo apsaugojimo darbe, įskaitant kovos su seksualiniu priekabiavimo praktikos kodeksą, įgyvendinimo *(OL C 27, 1992 2 4, p. 1–1)*
(Konsoliduota versija: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992Y0204(01):EN:HTML)

2 priedas

„Priekabiavimas ir smurtas darbe ir ES teisės aktai. Precedentinė teisė: įtraukti ar neįtraukti?“

Šiame priede pateikiama **1 priede nurodytų ES direktyvų** apžvalga bei atkreipiamas dėmesys į **parengiamųjų dokumentų,** susijusių su direktyvomis, **analizę**. Analizė akivaizdžiai rodo, kad, nors priekabiavimas ir smurtas darbo vietoje ne visada aiškiai nurodomi tekstuose, tai ištiesbuvo ketinta reguliuoti, nes jie susiję su visais sveikatos ir saugos pavojais! Be to, akivaizdu, kad šie tekstai ypatingai akcentuoja darbuotojų ir jų atstovų dalyvavimą visame kovos su šiais pavojais procese.

Europos Teisingumo Teismo precedentinės teisės (ETT) nagrinėjimas taip pat suteikia įdomios informacijos. ETT precedentinės teisės duomenų bazės paieškos sistemoje (esančioje adresu: http://curia.europa.eu/jurisp) suvedus raktažodžius „smurtas / priekabiavimas / harcèlement“, gaunamas didžiulis sąrašas bylų, kuriose vienokiu ar kitokiu aspektu buvo nagrinėjamas priekabiavimas ir smurtas darbo vietoje. Tačiau didžioji jų dauguma susijusi su bylomis dėl Europos institucijų personalo darbuotojų (taip vadinamos „T bylos“), kurie laikė save priekabiavimo ir (arba) smurto darbo vietoje aukomis. Todėl svarbu pabrėžti, jog tik keletoje bylų yra objektyviai interpretuojamos atitinkamos direktyvos bei „priekabiavimo“ ir „smurto“ sąvokos, kurių konkretus apibrėžimas taip ir nenustatomas. Taigi šios bylos tik duoda bendrą supratimą, kokios situacijos darbe (ES institucijose) yra laikomos priekabiavimo ir smurto darbo vietoje atvejais, o kokios – ne. Keletas kitų bylų yra susijusios su priekabiavimo ir smurto aspektais darbe arba su darbu susijusiose vietose, tačiau preliminariame nutarime minimi klausimai yra labiau susiję su kitomis (ES) teisės sritimis. Minėtina *Pupino* byla (C-105/03)[4], susijusi su smurtiniais vaikų lopšelio auklėtojos veiksmais, nukreiptais prieš mažus vaikus. Tačiau joje buvo spręstas klausimas, ar 2001 m. kovo 15 d. Tarybos Pamatinis sprendimas 2001/220/TVR dėl nukentėjusiųjų padėties baudžiamosiose bylose suteikia teisę nacionaliniam teismui įgalioti mažus vaikus, tapusius blogo elgesio aukomis, duoti parodymus specialiomis sąlygomis (pvz., ne teisme, prieš teismo posėdį, padedant specialistams ir t. t.).

Tačiau esama vienos įdomios bylos, kuri dar bus sprendžiama. Vadinamosios *Coleman* bylos (byla C-303/06)[5] dėmesio centre yra 2000 m. lapkričio 27 d. Tarybos direktyva 2000/78/EB, o ETT preliminariam nutarimui teikiami tokie klausimai:

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[4] Teisėjo padėjėjo išvados ir ETT sprendimas pateikiami adresu: http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&Submit=Submit&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&alldocrec=alldocrec&docj=docj&docor=docor&docop=docop&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoj=docnoj&docnoor=docnoor&typeord=ALLTYP&allcommjo=allcommjo&affint=affint&affclose=affclose&numaff=C-105%2F03&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=&domaine=&mots=&resmax=100

[5] Nuoroda į preliminarų nutarimą, priimtą 2006 m. liepos 10 (OL C 237, 2006 9 30, p. 6 – taip pat žr.: http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&Submit=Submit&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&alldocrec=alldocrec&docj=docj&docor=docor&docop=docop&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoj=docnoj&docnoor=docnoor&typeord=ALLTYP&allcommjo=allcommjo&affint=affint&affclose=affclose&numaff=C-303%2F06&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=&domaine=&mots=&resmax=100)

"1. Kalbant apie diskriminacijos negalios pagrindu draudimą, ar direktyva[6] gina nuo tiesioginės diskriminacijos ir priekabiavimo tik žmones, kurie yra patys neįgalūs?

2. Jei atsakymas į (1) klausimą yra neigiamas, ar direktyva gina darbuotojus, su kuriais, nors jie ir nėra neįgalūs, yra elgiamasi ne taip palankiai arba kurie patiria priekabiavimą dėl savo santykių su neįgaliu asmeniu?

3. Kai darbdavys elgiasi su darbuotoju ne taip palankiai, kaip elgiasi ar elgtųsi su kitais darbuotojais, ir yra nustatoma, kad tokio elgesio su darbuotoju pagrindu yra tai, kad darbuotojas turi neįgalų sūnų, kuriuo darbuotojas rūpinasi, ar toks elgesys yra laikytinas tiesiogine diskriminacija, pažeidžiančia vienodų teisių principą, nustatytą direktyvoje?

4. Kai darbdavys priekabiauja prie darbuotojo ir yra nustatoma, kad tokio elgesio su darbuotoju priežastis yra ta, kad darbuotojas turi neįgalų sūnų, kuriuo darbuotojas rūpinasi, ar toks priekabiavimas pažeidžia vienodų teisių principą, nustatytą direktyvoje[7]?"

Šio dokumento rengimo metu (2007 m. gruodžio mėn.) ši byla dar vis laukė teisėjo padėjėjo išvadų ir ETT sprendimo.

Taigi *Coleman* byla yra susijusi su vadinamąja **„diskriminacija dėl ryšių"**. Komisijos *Europos antidiskriminacinės teisės apžvalga*[8] (Anti Discrimination Law Review) taip pat nurodo šią bylą kaip pradžios tašką, ES lygiu įvedant „diskriminacijos dėl ryšių" sąvoką, kurią šis leidinys apibrėžia kaip situaciją, „kurioje asmuo A diskriminuoja asmenį B dėl asmens B ryšių arba santykių su asmeniu C".

Komisijos apžvalgoje toliau teigiama, kad „diskriminacija dėl ryšių gal būti vykdoma bet kuriuo pagrindu, numatytu kovos su diskriminacija direktyvose, bei galimai lyties ir visais kitais pagrindais, kuriems taikomi nacionaliniai kovos su diskriminacija teisės aktai, kaip kad tautybė arba profesinės sąjungos narystė", bei pažymima, kad „pirminė direktyvų[9] formuluotė sudaro įspūdį, kad jos negina žmonių, kurie yra susiję su kuo nors kitu, nuo tam tikrų diskriminacijos formų". Tačiau, kadangi priekabiavimo apibrėžime šiose direktyvose esama žodžio „pagrindu", rodosi, kad, remiantis Europos Komisijos pozicija, teisinė apsauga taikoma ir tokio pobūdžio situacijoms. Be to, teigiama, kad „lygybė yra pagrindinis Europos Bendrijos principas, todėl direktyvos turėtų būti interpretuojamos plačiąja prasme". Negana to, dėl pagrindinių teisių gerbimo svarbos, kuri taip pat

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[6] 2000 m. lapkričio 27 d. Tarybos direktyva 2000/78/EB, nustatanti vienodo požiūrio užimtumo ir profesinėje srityje bendruosius pagrindus, OL L 303, p. 16.

[7] OL C 237, 2006 9 30, p.6.

[8] *Europos antidiskriminacinės teisės apžvalga* („European Anti-Discrimination Law Review"), Nr. 5, 2007 m. liepos mėn. ES iniciatyva ir Europos teisės ekspertų, kurių specializacija – kova su diskriminacija, tinklas („The European Network of Legal Experts in Non-Discriminated Field"), yra čia: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07lawrev5_en.pdf

[9] 2000 m. lapkričio 27 d. Tarybos direktyva 2000/78/EB, nustatanti vienodo požiūrio užimtumo ir profesinėje srityje bendruosius pagrindus, OL L 303, p. 16., 2000 12 2, ir 2000 m. birželio 29 d. Tarybos direktyva 2000/43/EB, įgyvendinanti vienodo požiūrio principo taikymą asmenims, nepaisant jų rasės arba etninės priklausomybės, OL L 180/22, 2000 7 19.

pabrėžiama direktyvų preambulėse, „diskriminacijos dėl ryšių uždraudimas atitinka direktyvų siekį“. Taigi Komisija daro išvadą, jog diskriminacija dėl ryšių yra numatyta direktyvose ir pagal Europos teisę vertinama kaip uždrausta elgesio forma. Nepaisant šios interpretacijos teisinio pagrindimo, dabar reikėtų sulaukti, ar ETT patvirtins šią interpretaciją savo sprendime *Coleman* byloje.

Kas dėl nacionalinio lygio, valstybių narių (įgyvendinamų) teisės aktų ir precedentų teisės analizė rodo, kad daugeliu atvejų į diskriminaciją dėl ryšių (dar vis) neatsižvelgiama. Daugelis valstybių narių paprasčiausiai nukopijavo direktyvų formuluotę ir uždraudė (tiesioginę) diskriminaciją numatytais „pagrindai“, tačiau (dar vis) nepatikslino šios apsaugos apimties. Vis dėlto keletoje valstybių narių šis reikalas aiškiai aptartas teisės aktuose arba buvo paaiškintas parengiamuosiuose dokumentuose arba precedentų teisėje. Tai labiausiai pasakytina apie Austriją, Prancūziją, Airiją, Slovakiją, Švediją ir Jungtinę Karalystę; daugiau informacijos apie konkrečias priemones šiose šalyse rasite *Europos antidiskriminacinės teisės apžvalgos* Nr. 5, 2007 m. liepos mėn., 17–21 psl.

Directive 89/391/EEC
"Framework Directive on Health and Safety at work"

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

	equipment and the working conditions, including those aspects connected with the working environment and the physical and psycho-social well-being of the individual. Workers shall receive appropriate training."
EESC Opinion (OJ C 175/88, p. 22, 28 April 1988) (amendments proposed in bold)	The EESC's comment on the Directive's provisions concerning Article 1 (Object of the Directive) is: "The participation of workers should be included in the second sentence, which should thus read: *The Directive contains general principles concerning in particular the prevention of occupational risks, the protection of safety and health and the informing, consultation,* ***participation*** *and training of workers and their representatives, as well as general principles concerning the implementation of such measures*." The EESC proposes to define "workplace" in Article 2 as: *"All places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer."* The EESC also proposes to insert a paragraph in Article 5 in relation to "evaluation of safety and health risks to workers": *" In so doing [i.e. the evaluation], the employer shall assess the following risks in particular:* *-(...)* *- excessive physical, nervous and mental strain caused by heavy work, shift work, night work, fixed posture, monotonous and unvaried work processes, pressure of deadlines, high-speed work, working time and work organisation".* Article 5(3) (f) should read: *"When new technologies are planned and introduced, detailed consideration shall be given to aspects of workers' safety and health, particularly in respect of the choice of equipment and the working*

	conditions, and the physical and psycho-social effects of the working environment on the individual." EESC proposes to entitle Article 10 "Worker consultation and participation" and to start with this principle: *"1. Employers must cooperate closely with workers or workers' representatives with specific responsibility for safety and health."* Article 11 (1) should read: *"The employer shall ensure that each worker receives adequate safety and health* ***instruction and necessary*** *training specific to his workstation or job."*
EP Amendments 1st reading (OJ C 326/88, p. 102, 16 November 1988) (amendments proposed in bold)	The EP proposes to amend the initial 1st recital to read: *"Whereas Article 118A of the Treaty provides that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements as regards the health and safety of workers, especially in the working environment;* ***whereas the health and safety of workers should be protected at the highest possible level****".* The EP proposes to amend the initial 9th recital to read: *"Whereas it is necessary to develop information, dialogue and negotiations on safety and health at work between employers and workers and their representatives by means of appropriate procedures and instruments".* The EP proposes to amend the initial 10th recital to read: *"Whereas safety and hygiene at the workplace and the physical and mental health of workers are rights which cannot be subordinated to economic considerations".* The EP proposes to add a definition of "work environment" in Article 2, as follows: *"the workplace, the design of the workplace, the furnishings, layout machines, equipment, materials, the organisation of*

	work, the working atmosphere, the working hours, the duration and quality of work, the facilities for relaxation, general living conditions, safety and hygiene, and all factors which have a bearing on the living conditions of the worker". The EP proposes to amend the definition of *"workplace"* in Article 2 to read*: "**all places in and/or outside the undertaking or establishment where workers must remain or which they must visit in connection with their work and for which the employer is directly or indirectly responsible, or** any place to which the worker has access in the undertaking and/or establishment".* The EP proposes to add a definition of health in Article 2, as follows: *"health in the context of work shall encompass not only the absence of sickness or disease but also all physical and mental factors affecting health and directly related to safety and health at work".* As for Article 5 (see above), the EP proposed the following amendments: *"Article 5 (1)* *Within the context of his responsibilities, the employer shall take the necessary measures for the protection of the safety and health of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organisation and resources. **The employer shall ensure that these measures are taken and, if they are not, shall take appropriate decisions concerning the organisation of work.*** *(...)* *- developing a coherent overall prevention policy based on technology, organisation of work, working conditions, human relationships **and environmental influences**."*

	"Article 5 (3) *(a)* ***In so doing [i.e. the evaluation], the employer shall identify and assess and draw up surveys of the following hazards:*** *• (…)* ***• physical, nervous and mental strain caused by heavy physical labour, shift work, night work, the requirement to work in a specific position, monotonous work, piece-work, individual work carried out in isolation and similar pressures."*** *"(d)* ***with a view to improving safety and health at the workplace****, the employer must take the necessary measures to permit workers* ***and their representatives to participate in the organisation of their work****."* "Article 6a new 2. ***Where the health of a worker is at particular risk, talks shall be held between the worker and the employer, with the participation of the worker's representatives, with a view to the worker's employment in another, non-hazardous job, whilst guaranteeing his position***." The EP suggests the following amendment: "*Article 10 (1)* *Employers must cooperate closely with workers and their representatives in all issues involving safety and health protection."*
Amended Commission proposal for Directive (COM(88) 802 final of 5 December 1988, OJ C 30/89, p. 19) (amendments proposed in bold)	*Whereas, in order to achieve the maximum degree of protection which is reasonably practicable, it is essential that workers and their representatives be informed of the risks to their safety and health of the measures required to reduce or eliminate these risks; whereas it is also essential that they be allowed to verify and ensure, by means of balanced participation in accordance with national practice and/or legislation, that the necessary protective measures have indeed been taken;*

	Whereas information, dialogue and negotiations on safety and health at work must be developed between employers and workers and their representatives by means of appropriate procedures and instruments, in accordance with national practice and/or legislation; *Whereas the improvement of safety and health at work and of the physical and mental health of workers are objectives which should not be subordinated to purely economic considerations;* The Commission amends Article 4(1) concerning the "Responsibility of the employer" as follows: *"The employer shall be responsible for the safety and health of the workers in every aspect which is directly or indirectly related to the work* ***or to presence*** *in the undertaking and/or establishment."* The Commission suggests the following amendments to *Article 5* concerning the "Obligations of the employer": *"2. (...)- developing a coherent overall prevention policy based on technology, organisation of work, working conditions, human relationships* ***and the influence of environmental factors.*** *4. (...)* *e) (...) All aspects of the safety and health protection of workers should be taken into account, particularly those in respect of the choice of equipment, working conditions and the impact of environmental factors on the physical and psycho-social well-being of the individual."* Article 10 should be entitled "Consultation and participation of workers" and start with this principle: *"1. Employers must work closely with workers and their representatives on all questions involving safety and health protection at work."*
EP Amendments 2nd reading (OJ C 158/89, p. 131, 24 May 1989) whereby, amongst others, the EP reiterates its proposal to add a	The EP suggests the following amendments:

definition of "health" (see above).	Article 3 (new) (ca) *health: in the context of work shall encompass not only the absence of sickness or disease but also all physical and mental factors affecting health and directly related to safety and health at work;* (cb) *prevention: all the provisions or measures taken or provided for at each stage of the activities performed within the undertaking with a view to avoiding or reducing the occupational risks, including, where appropriate, banning the use of certain processes or substances and the laying down of specific conditions for the undertaking of certain tasks;* (cc) *occupational risk: any work-related situation liable to damage the physical or psychological safety and/or health of the worker, excluding accidents on the way to and from work.* Article 11 2. *Consultation of workers. The employer shall be obliged to consult the workers with specific responsibility for the protection of the safety and health of workers and workers' representatives in good time before any measure or programme is introduced which might have a substantial impact on safety and health protection.*"
Seconded amended proposal of Commission (COM(89) 281 final of 12 June 1989, OJ C 172/89, p. 3)	"Article 3 d) *prevention: all the provisions or measures taken or provided for at each stage of the activities performed within the undertaking with a view to avoiding or reducing the occupational risks;* e) *occupational risk: any work-related situation liable to damage the physical or psychological safety and/or health of the worker, excluding accidents on the way to and from work*

ECJ Case law: **Commission vs. Italy** ***(Case C-49/00; available at*** http://curia.eu.int/**)**	In line with the argumentation of the Advocate General, the ECJ states the following in its judgment of 15/11/2001: *"According to the Commission, Article 6(3) (a) of the directive requires employers to evaluate all the risks to the safety and health of workers at work.* *The three types of risk mentioned in that provision are only examples of particular risks which must be evaluated. (...) It must be noted, at the outset, that it follows both from the purpose of the directive, which, according to the 15th recital, applies to all risks, and from the wording of Article 6(3)(a) thereof, that employers are obliged to evaluate all risks to the safety and health of workers. It should also be noted that the occupational risks which are to be evaluated by employers are not fixed once and for all, but are continually changing in relation, particularly, to the progressive development of working conditions and scientific research concerning such risks."* (§§ 10-13)

Directive 2000/43/EC
"Non-discrimination based on racial and ethnic grounds"

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

[10] *Resolution of 29 January 1998 (OJ C 56, 23.2.1998).*

Commission proposal for a Council Directive (COM (1999) 566 final of 25 November 1999) (OJ C 116, p.56, 26 April 2000)	Recital (11): Harassment on grounds of racial or ethnic origin of a person or group of persons which produces an intimidating, hostile, offensive or disturbing environment should be deemed to be discrimination. Article 2: Concept of discrimination 1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin. 2. For the purposes of paragraph 1: (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated on grounds of racial or ethnic origin; (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is liable to affect adversely a person or a group of persons of a particular racial or ethnic origin, unless that provision, criterion or practice is objectively justified by a legitimate aim which is unrelated to the racial or ethnic origin of a person or group of persons and the means of achieving that aim are appropriate and necessary. 3. Harassment of a person or group of persons related to racial or ethnic origin, which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment in any of the areas covered in Article 3, shall be deemed to be discrimination within the meaning of paragraph 1. Article 11: Social dialogue 1. Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices. 2. Member States shall encourage the two sides of the industry to conclude, at the appropriate level, including at undertaking level,

	agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures. Article 13: Compliance Member States shall take the necessary measures to ensure that: (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. (b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing lucrative or non-lucrative associations, and rules governing the independent professions and workers' and employers' organisations, are declared null and void or are amended.

EP Report on the proposal for a council directive on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (COM(1999) 566 – C5 0067/2000 -1999/0253(CNS)) (OJ C 59, p. 263-276, 23 February 2001) (proposed amendments in bold)	**EP Amendments** (Amendment 50) Article 11(1) ***Consultation in the social sphere*** 1. Member States shall take adequate measures to promote the ***consultation between organisations in the social sphere and government establishments*** with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices ***and training of their members in all areas to which this directive applies. The social dialogue between the two sides of industry is an important component of such consultation.*** *Justification: The exclusive mention of the two sides of industry gives the impression that consultation is needed only in the field of employment. However, the scope of this directive is wider and makes it desirable that other organisations representing the interests of consumers, sectors of industry or migrants, etc. should be able to participate in the dialogue.* The Explanatory statement to the report states the following on Harassment: *Subjective factors, however, are not entirely disregarded. The Commission has not confined itself to equality in the formal sense. One can only fully benefit from equal treatment in surroundings which make this possible. A hostile, intimidating, insulting or disturbing environment prevents rights in law from leading to equal treatment in practice, and is therefore prohibited. Harassment is also covered by this directive.*
Opinion of the EP Committee on Employment and Social Affairs (COM(1999) 566 – C5 0067/2000 – 1999/0253(CNS)) (OJ C 59, p. 263-276, 23 February 2001) (proposed amendments in bold)	(Amendment 45) Article 11.1: Social dialogue Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace

	practices, collective agreements, codes of conduct, research or exchange of experiences, good practices ***and training of their members in the provisions of the Directive.*** Justification: The workplace is where many of the problems of discrimination take place in practice. It is important, therefore, that in addition to promoting the monitoring of workplace practices and codes of conduct, as already appear in the Commission text, the focus should also be on training for representatives of the social partners, as has been suggested for public bodies, given that the social partners will in principle be setting the standards to be followed in the workplace.
EESC Opinion (OJ C 204/82, p. 4 and 5, 18 July 2000)	The Committee welcomes the introduction of the definition of harassment in the text of the Directive. The Committee, however, is concerned to ensure that the liability of employers for harassment is limited to situations clearly under the employer's control and to situations where the employer has knowledge of the harassment and has tolerated its continuance. Article 11 – Social Dialogue The Committee welcomes the fact that the social partners, whose independence and autonomy is respected, are going to be involved in fostering the principle of equal treatment through monitoring of workplace practices, collective agreements, Codes of Practice, research, exchange of experience and good practice. The social partners should be required to provide training for their representatives on the provisions of the Directive. Article 13 – Compliance with the Directive The Committee fully supports the compliance measures set out in the Directive.
Amended Commission proposal for Directive (COM(2000) 328	Article 2: Concept of discrimination

final of 31.05.2000) (OJ C 311, p. 169, 31 October 2000) (proposed amendments in bold)	1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin. 2. For the purposes of paragraph 1: (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated on grounds of racial or ethnic origin; (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is **intrinsically** liable to affect adversely a person or a group of persons of a particular racial or ethnic origin **and if there is a consequent risk that it will place those persons at a particular disadvantage,** unless that provision, criterion or practice is objectively justified by a legitimate aim which is unrelated to the racial or ethnic origin of a person or group of persons and the means of achieving that aim are appropriate and necessary. 3. Harassment of a person or group of persons related to racial or ethnic origin, which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment in any of the areas covered in Article 3, shall be deemed to be discrimination within the meaning of paragraph 1. **4. An instruction or incitement to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.** <u>Article 16: Report</u> Member States shall communicate to the Commission, within two years of the date mentioned in Article 15, **and every five years thereafter,** all the information necessary**, including indications of the viewpoints of the social partners and relevant non-governmental organisations,** for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.
Final text of the Directive (OJ L 180, p. 22, 19 July 2000)	Formally adopted by the Council on 29 June. This directive, forming part of the 'anti-discrimination package', gives meaningful effect to the

	new powers conferred on the Community by the Treaty of Amsterdam under Article 13 of the EC Treaty. It seeks to prohibit discrimination throughout the Community in different areas such as employment, education, social security, health care and access to goods and services. It defines the concepts of direct and indirect discrimination, gives right of redress to victims of discrimination, imposes an obligation on the respondent to prove that the principle of equal treatment has not been breached, and offers protection against harassment and victimisation in all the Member States. Article 2 - Concept of discrimination 1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin. 2. For the purposes of paragraph 1: (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin; (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. 3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States. 4. An instruction to discriminate against persons on grounds of racial or

	ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1. Article 11 - Social dialogue 1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices. 2. Where consistent with national traditions and practice, Member States shall encourage the two sides of the industry without prejudice to their autonomy to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures. Article 17 - Report 1. Member States shall communicate to the Commission by 19 July 2005, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive. 2. The Commission's report shall take into account, as appropriate, the views of the European Monitoring Centre on Racism and Xenophobia, as well as the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender

	mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Directive 2000/78/EC "Non-discrimination in employment and occupation"	
Nature of text	**Selection of interesting and relevant text proposals**

Explanatory Memorandum **Commission proposal for a Council Directive** (COM (1999) 565 final of 25 November 1999, p.4, 8, 9 and 14) (OJ C 177, p. 42, 27 June 2000)	On point 2 "The Community Scope of Anti-Discrimination Issues" *Discrimination on the basis of sexual orientation also occurs in various forms in the workplace. The problems of workplace discrimination arising from sexual orientation and the lack of legal protection at EU level were highlighted in a recent decision of the European Court of Justice*[11]. *Furthermore, two September 1999 judgements of the European Court of Human Rights outlawing the dismissals of members of the armed forces on grounds of their sexual orientation constitute clear evidence that discrimination on this ground exists. Two national surveys undertaken in the UK (1993) and Sweden (1997) show that 27% and 48% of respondents respectively had experienced harassment in the workplace on grounds of their sexual orientation. However, such cases are hard to prove and examples of discriminatory practices do not always come to the fore. This seems to be because employment is an area in which people may hide their sexual orientation for fear of discrimination and harassment.* On point 5 "Explanation of Individual Articles of the Proposed Council Directive", concerning Article 2 – Concept of discrimination: *Paragraph 3 deals with harassment. Such conduct can take different forms, ranging from spoken words and gestures to the production, display or circulation of written words, pictures or other material. This behaviour must be of a serious nature and create an overall disturbing or hostile working environment.*
	The most recent national legislation prohibiting discrimination at work - the Irish Employment Equality Act (1998) and the new Swedish anti-discrimination Acts (1999)[12] *- consider that harassment in the workplace violates the employee's integrity and constitutes*

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

Commission proposal for a Council Directive (COM (1999) 565 final of 25 November 199, p. 18-23) (OJ C 177, p. 42, 27 June 2000)	Recital (19) *Member States should promote social dialogue between the social partners to address different forms of discrimination in the workplace and to combat them.* Article 2 – Concept of Discrimination *1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination whatsoever between persons on any of the grounds referred to in Article 1.* *2. For the purposes of paragraph 1:* *(a) direct discrimination shall be taken to occur where, on any of the grounds referred to in Article 1, one person is treated less favourably than another is, has been or would be treated.* *(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is liable to affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.* *3. Harassment of a person related to any of the discriminatory grounds and areas referred to in Article 1 which has the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment, shall be deemed to be discrimination within the meaning of paragraph 1.* *4. In order to guarantee compliance with the principle of equal treatment for persons with disabilities, reasonable accommodation shall be provided, where needed, to enable such persons to have access to, participate in, or advance in employment, unless this requirement creates an undue hardship.* Article 12 – Social Dialogue

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

	1. Member States shall take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices. *2. Member States shall encourage the two sides of the industry to conclude, at the appropriate level, including at undertaking level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect this Directive and the relevant national implementing measures.*
EESC Opinion (OJ C 204/82, 18 July 2000)	*The Committee believes that an increased dialogue between business, trade unions and other social and economic actors, based on good practice, could show that equal treatment in employment and occupation can improve both economic performance and social inclusion. The Committee is well placed to help promote such a dialogue and intends to organise a hearing on the subject.* <u>Article 2 – Concept of Discrimination</u> *The Committee welcomes the introduction of the definition of harassment in the text of the Directive. The Committee, however, is concerned to ensure that the liability of employers for harassment is limited to situations clearly under the employer's control and to situations where the employer has knowledge of the harassment and has tolerated its continuance.* <u>Article 12 – Social Dialogue</u> *The Committee welcomes the fact that social dialogue will be reinforced. Social partners must play a fundamental role and can make a valuable contribution via the monitoring of procedures and practices. This power is not about 'control' but about monitoring the difference between these concepts should be underlined. (In some of the translations the word "control" has been used.) The Committee also*

	welcomes the recommendation that social partners implement the directive into collective agreements thus demonstrating the compatibility between collective and individual rights.
EP Report on the proposal for a Council directive establishing a general framework for equal treatment in employment and occupation (COM(1999) 565 – C5-0068/2000 -1999/0225(CNS)) (OJ C 178, p. 270, 22 June 2001) (proposed amendments in bold)	**EP Amendments** Amendment 23 - Article 2 (3) Harassment ***shall be deemed to be discrimination within the meaning of paragraph 1 when an unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance***

with the national laws and practices of the Member States.

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

Amendment 48 – Article 12(1)

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

Large and medium-sized undertakings shall appoint someone in whom employees can confide if they feel they are being discriminated against.

The social dialogue between employers and employees is an important component of these consultations. It shall be ensured that the right to free collective bargaining is upheld. Organisations that support the protection of social groups against discrimination may participate in negotiations between the two sides of industry only if explicitly invited to do so by the latter.

Justification: This amendment is based on the European Parliament's position on the proposal for an anti-racism directive (Amendment 50). It endorses the concept of the social dialogue provided that it accords with national traditions. There is otherwise a danger that groups which support minorities will always want to participate in negotiations between the two sides of industry.
In firms of an appropriate size an employee who feels discriminated against must have somewhere he can go in an effort to solve the problem internally. This is meant to prevent measures that might have serious consequences for those concerned.

Opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (COM (1999) 565 – C5-0068/2000 – 1999/0225(CNS)) (OJ C 178, p. 259, 22 June 2001) (proposed amendments in bold)	**Harassment** Consideration should again be given to whether the definition of harassment ought not to be supplemented so as to include detrimental influence on terms of employment. The concept should also extend to harassment by parties other than an employer or colleagues (e.g. patients or customers). Article 2(3) 3. Harassment ***shall be deemed to be discrimination within the meaning of paragraph 1 when an unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.*** *Justification:* *This is a broader definition of harassment in accordance with Directive 2000/43/EEC of 29 June 2000.*
Final text of Directive (OJ L 303, 2 December 2000, p. 16)	This proposal aims to establish a number of general principles at Community level for combating discrimination in employment and occupation. It tackles indirect as well as direct discrimination and includes a range of mechanisms to ensure effective remedies in the event of discrimination (improvement of legal protection, adjustment of the burden of proof, protection against harassment and reprisals, dissemination of adequate information on the directive's provisions, etc.). It also gives Member States the option of maintaining or adopting positive action measures. Recital 33 *Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental*

	organisations to address different forms of discrimination at the workplace and to combat them. Recital 36 *Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as regards the provisions concerning collective agreements, provided they take any necessary steps to ensure that they are at all times able to guarantee the results required by this Directive.* Article 2 – Concept of Discrimination *3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.* Article 13 – Social Dialogue *1. Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.* *2. Where consistent with their national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to conclude at the appropriate level agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and by the relevant national implementing measures.*

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

Nature of text	Selection of interesting and relevant text proposals
Commission Proposal for a **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Explanatory Memorandum) (OJ C 337, p. 204, 28 November 2000)	I. Introduction *4. The proposed Directive:* *– for the first time, clearly defines sexual harassment as discrimination based on sex, at the work place;* II. Content *10. Secondly, a very important and sensitive issue like sexual harassment cannot be ignored any more and must be addressed at Community level.* *14. Sexual harassment at the workplace is not a new phenomenon. However, it has so far been largely ignored by legislators, at both national and Community level. In the eighties, a first study on this serious problem was commissioned by the Commission. Ten years later, the Commission asked for a new study to be conducted in order to evaluate the eventual changes which have occurred in the Member States during that period.* *17. The Commission drafted an "Evaluation report on the Commission Recommendation concerning the protection of dignity of men and women at work". That report showed that there is a need to go further on this matter. That is why on 24 July 1996 the Commission decided to consult the social partners on a text outlining the Community institutions' past initiatives and proposals on the prevention of sexual harassment at work. The social partners all confirmed the importance of protecting the dignity of the individual worker. A majority agreed that sexual harassment was a widespread problem that had to be prevented in the workplace both for the sake of the individual and of the company. Opinions differed however on the best way to achieve this objective. On 19 March 1997, the Commission launched the second stage consultation with the social partners on the possibility of drawing up a comprehensive policy at EU level to fight against sexual harassment in the workplace, but the social partners did not*

	agree on the need to negotiate a collective agreement on this issue. IV. Commentary on the articles *Article 1* *39. The second amendment, which concerns the insertion of a new Article 1a making explicit that sexual harassment constitutes discrimination on grounds of sex and defining what would constitute sexual harassment, is inspired by the Code of Good Practice[13] and the Directive based on Article 13.* The text of the Commission's press release stated: "**IP/00/588** Brussels, June 7, 2000 **Commission bids to outlaw sexual harassment at the workplace** ***The Commission today adopted a proposal to ban sexual harassment at work. The draft directive, which also brings the longstanding equal opportunities directive of 1976 into line with European court judgements and new Commission antidiscrimination proposals under the Amsterdam Treaty, is a first attempt to tackle sexual harassment in Community law. The directive considers that sexual harassment is a form of sexual discrimination and thus entails a risk of liability for employers who fail to provide a workplace free of harassment.*** Anna Diamantopoulou EU Employment and Social Policy Commissioner said: *"No one contests that sexual harassment takes place and that it is an unacceptable affront to the individual concerned, normally - but not always - a woman. Very few legal systems have yet got to grips with the notion of sexual harassment and this is in part attributable to the inherent difficulty in defining it. But this should not deter us from our duty to send the strongest possible signal that sexual harassment must be outlawed from the workplace. In my mind, the chief purpose of this directive is preventive. By establishing a Community framework for sexual harassment, we draw attention to the problem throughout Europe and create momentum among employers to take their own steps to stamp it out. At the end of the day, a*

[13] Commission of the European Communities 1993, "How to Combat Sexual Harassment at Work, a guide to the European Commission Code of Practice".

	clear and predictable working environment free of sexual harassment is also in the interest of business itself". (underlining added) (Available at: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/00/588&format=HTML&aged=0&language=EN&guiLanguage=en)
Commission Proposal for a **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ C 337, p. 204, 28 November 2000)	Recital (3) *In its Resolution of 29 May 1990 on the protection of the dignity of women and men at work, the Council affirmed that sexual harassment in the workplace may, in certain circumstances, be contrary to the principle of equal treatment within the meaning of Council Directive 76/207/EEC. A statement to that effect should be included in the Directive itself, sexual harassment usually affects the individual's work performance and/or creates an intimidating, hostile or offensive environment.* Article 1 *2. The following Article 1a is inserted* *"Article 1a* *Sexual harassment shall be deemed to be discrimination on the grounds of sex at the workplace when an unwanted conduct related to sex takes place with the purposes or effect of affecting the dignity of a person and/or creating an intimidating, hostile, offensive or disturbing environment, in particular if a person's rejection of, or submission to, such conduct is used as a basis for a decision which affects that person."*
Amended proposal for a **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (COM(2001) 321 final) (OJ C 270, p. 9, 25 September 2001)	II. Commentary on the amendments *9. The fifth amendment modifies previous Recital 3, making it Recital 4. This modification specifies that sexual harassment may occur in all areas covered by the scope of the present proposal for a Directive.* *10. The sixth amendment inserts a new Recital 4a which alludes to the need for those responsible to take measures necessary to prevent sexual harassment.*

	25. The twenty-first amendment inserts, in the first paragraph a new Article 1a which incorporates definitions on direct and indirect discrimination, harassment on the basis of sex, and sexual harassment. This is done in order to achieve coherence with Directives based on Article 13 which contain a similar listing of definitions. *26. The twenty-second amendment inserts a new Article 1b which defines "harassment" and "sexual harassment" as discrimination on the grounds of sex, and specifies that Member States should take measures to prevent harassment, including a system of counsellors at the workplace.* *4. The following Article 1a is inserted:* *"Article 1a Definitions* *1. For the purposes of this Directive, the following definitions shall apply:* *(...)* *- harassment: the situation where an unwanted conduct related to sex occurs on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment;* *- sexual harassment: the situation where any form of verbal, non-verbal or physical conduct of a sexual nature occurs, on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment."*

EESC Opinion (OJ C 123/2001, p. 81, 25 April 2001)	*1.4. For the first time, clear-cut definitions are provided in this proposal of sexual harassment and discrimination based on sex in the workplace; these definitions are based on, and consistent with, the definitions to be found in the proposed directives based on Article 13, dealing with harassment as discrimination based on other grounds as well as sex. In addition, the proposal introduces protection for employees lodging complaints of discrimination, even when the employment relationship has ended, and lays down guidelines for the independent national bodies to promote the principle of equal treatment. It clarifies the Member States' powers to provide for exemptions from the principle of equal access to employment, while requiring Member States to substantiate bans on employing one or other sex in special forms of work. The proposal specifies and guarantees special protection for women on grounds of pregnancy and maternity, including their right to return to the same workplace after maternity leave. Lastly, Treaty Article 141(4) is incorporated, whereby Member States are entitled to adopt positive action measures to promote full equality for women and men at work.* *2.1. The Economic and Social Committee broadly welcomes the changes proposed by the Commission and would particularly stress how important it is that, for the first time, the definition of sexual harassment is now being given directive form and that the definition per se clearly states that discrimination based on sex at the work place is the issue. This makes it clear that it is always the employer's responsibility to prevent and deter sexual harassment in the workplace. At the same time, it is important - from a legal certainty perspective - to stress that an employer can only act on a specific case when it comes to his notice. The sexual harassment problem is a major, sensitive issue which can no longer be ignored and needs to be tackled at EU level. In addition, the Committee applauds the greater legal certainty resulting from the Directive's reference to Court of Justice case-law.* *The Committee welcomes the Commission's proposal and highlights the role played by the social partners in implementing equal treatment.*

EP amendment 1st reading (OJ C 47/2002, 16 May 2001, p. 19)	Amendment 21 *"Article 1a" Definitions* – *harassment: the situation where an unwanted conduct related to sex occurs on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.* – *sexual harassment: the situation where any form of verbal, non-verbal or physical conduct of a sexual nature occurs, which the perpetrator knows, or should know, on the occasion of access to or at the place of employment, occupation or training with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.* Justification: *There is a need to clarify the definitions.*
Common position Council (OJ C307, 31 October 2001, p. 5)	Recital (20) *Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination based on sex in the workplace and to combat them.* *2. Article 2 is amended as follows:* *Harassment shall be deemed to be discrimination within the meaning of the first subparagraph when unwanted conduct related to the sex of a person takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Sexual harassment, which manifests itself as unwanted conduct of a sexual nature expressed physically, verbally or non-verbally, constitutes a specific form of harassment.*

EP Amendments 2nd reading (OJ C 112/2002, 17 October 2001, p. 14) (proposed amendments in bold)	Amendment1 *Member States should under national law introduce measures obliging those responsible for access to training, employment or occupation, to take preventive measures against harassment and sexual harassment in the workplace, which may include a system of confidential counsellors.* Justification: *Preventive measures are essential to ensure a workplace free of harassment and sexual harassment*. Amendment 4 – harassment***: the situation where an unwanted*** conduct related to the sex of a person ***occurs on the occasion of access to or at the place of employment, occupation or training*** with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive ***environment.*** ***- sexual harassment: the situation where any form of verbal, non-verbal or physical*** conduct of a sexual nature ***occurs, which the perpetrator knows, or is under legal obligation to know, to have the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment.*** Amendment 5 *2b. The following Article 1b shall be inserted in Directive 76/207/ECC:* *"Article 1b:* *Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited.* *A person's rejection of, or submission to, such conduct shall not be used as a basis for a decision affecting that person.* *An instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination within the meaning of this Directive.* *Member States shall under national law ensure that those responsible for access to training, employment or occupation, or the conditions relating*

	thereto, introduce measures to prevent harassment and sexual harassment in the workplace. Justification*: Preventive measures are essential to ensure a working place free of harassment. The notion of national law comprises collective agreements and practice.*
Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (OJ L 269, 5 October 2002, p. 15-20)	Recital (6) *Council Directive 76/207/EEC(4) does not define the concepts of direct or indirect discrimination. On the basis of Article 13 of the Treaty, the Council has adopted Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin(5) and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation(6) which define direct and indirect discrimination. Thus it is appropriate to insert definitions consistent with these Directives in respect of sex.* Recital (8) *Harassment related to the sex of a person and sexual harassment are contrary to the principle of equal treatment between women and men; it is therefore appropriate to define such concepts and to prohibit such forms of discrimination. To this end it must be emphasised that these forms of discrimination occur not only in the workplace, but also in the context of access to employment and vocational training, during employment and occupation.* Recital (9) *In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of sexual discrimination and, in particular, to take preventive measures against harassment and sexual harassment in the workplace, in accordance with national legislation and practice.*

	Recital (21) *Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination based on sex in the workplace and to combat them.* Article 1 *2. Article 2 shall be replaced by the following:* *"Article 2* *2. For the purposes of this Directive, the following definitions shall apply:* *- direct discrimination: where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation,* *- indirect discrimination: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary,* *- harassment: where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment,* *- sexual harassment: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.* *3. Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited.* *5. Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for ac-*

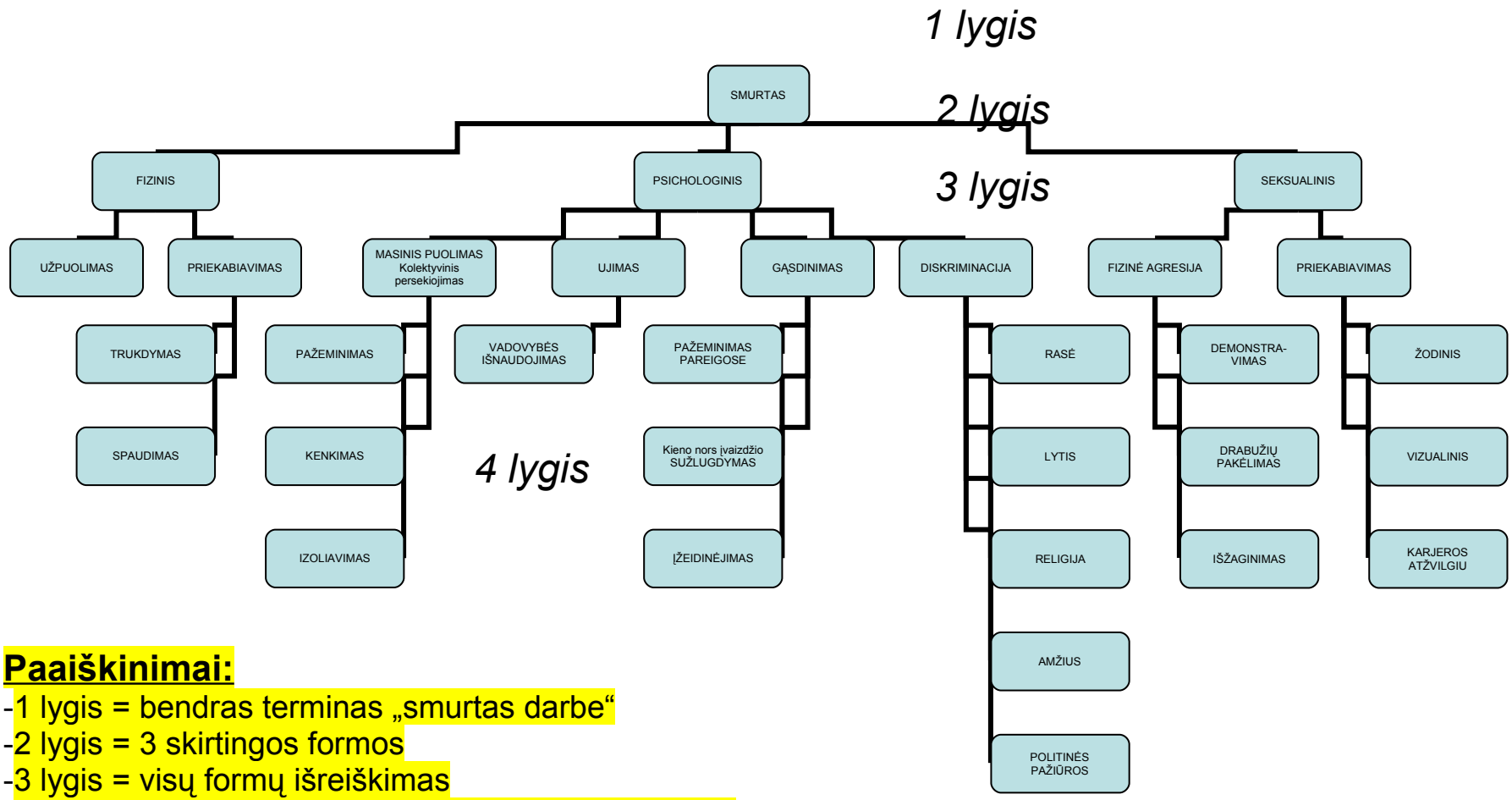
	cess to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment at the workplace. *2. To that end, Member States shall take the necessary measures to ensure that:* *(b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations shall be, or may be declared, null and void or are amended.";* *7. the following Articles shall be inserted:* *Article 8b* *1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.*

Council Declaration of 19 December 1991
"Implementation of the Commission Recommendation
on the protection of the dignity of women and men at work, including the code of practice to combat sexual harassment"

Nature of text	Selection of interesting and relevant text proposals
COUNCIL DECLARATION of 19 December 1991 on the implementation of the Commission recommendation on the protection of the dignity of women and men at work, including the code of practice to combat sexual harassment (OJ C 027/92, 4 February 1992, p. 1)	*THE COUNCIL OF THE EUROPEAN COMMUNITIES,* *Considering that on 29 May 1990 the Council adopted a resolution on the protection of the dignity of women and men at work (1);* *Considering that on 27 November 1991 the Commission made a recommendation on the protection of the dignity of women and men at work (2), to which is annexed a code of practice to combat sexual harassment;* *Considering that on 21 May 1991 the Council adopted a resolution on the third medium-term Community action programme on equal opportunities for women and men (1991 to 1995) (3);* *Considering that the European Parliament and the Economic and Social Committee have adopted respectively on 22 October 1991 a resolution (4) and on 30 October 1991 an opinion (5) on the protection of the dignity of women and men at work;* *Considering that the efforts already made to promote the integration of women on the labour market should be intensified and developed;* *considering that sexual harassment is a serious problem for many women working in the Community and an obstacle to their full integration into active life,* *1. ENDORSES the general objective of the Commission recommendation;* *2. INVITES THE MEMBER STATES to develop and implement coherent, integrated policies to prevent and combat sexual harassment at work, taking account of the Commission recommendation;* *3. INVITES THE COMMISSION:* *(a) to promote an adequate exchange of information with a view to*

	developing existing knowledge and experience in the Member States as regards the prevention and combating of sexual harassment at work; *(b) to examine the assessment criteria for the evaluation of the effectiveness of the measures taken in the Member States, taking account of the criteria already in use there;* *(c) to endeavour to implement the criteria referred to in (b) when drawing up the report referred to in Article 4 of the Commission recommendation;* *(d) to submit the report referred to in Article 4 of the Commission recommendation to the European Parliament, the Council and the Economic and Social Committee not more than three years after the adoption of this declaration.* *(1) OJ No C 157, 27. 6. 1990, p. 3.* *(2) See page 4 of this Official Journal.* *(3) OJ No C 142, 31. 5. 1991, p. 1.* *(4) OJ No C 305, 25. 11. 1991.* *(5) OJ No C 14, 20. 1. 1992.*

3 priedas: Siūlymas dėl priekabiavimo ir smurto darbe sistematikos (*)



Paaiškinimai:

-1 lygis = bendras terminas „smurtas darbe“
-2 lygis = 3 skirtingos formos
-3 lygis = visų formų išreiškimas
-4 lygis = skirtingų smurto apraiškų darbe pavyzdžiai

(*) Ši diagrama, kuria rėmėsi ETUC delegacija derybų dėl ES pagrindų susitarimo metu, vaizduoja šių reiškinių sudėtingumą. Tačiau nereikėtų jos vertinti kaip vienintelės rekomenduojamos smurto ir priekabiavimo darbe sistematikos.

Keletas kitų svarstytinų aspektų, susijusių su priekabiavimo ir smurto darbo vietoje sąvokomis

Dėl „smurto darbe“ apibrėžimo

Nors egzistuoja daugybė apibrėžimų, ETUC derybininkai, dirbdami savo darbą, rėmėsi šiuo apibrėžimu:

„Smurtas darbe – tai bendras terminas, apimantis visus incidentus, kurių metu asmuo yra išnaudojamas, jam grasinama arba jis užpuolamas su darbu susijusiomis aplinkybėmis“ (Jungtinės Karalystės Sveikatos ir saugos tarnyba ir Europos Komisija)

Be to,

skirtingos smurto apraiškos ir formos gali būti tarpusavyje susijusios:

* Vadovybės vykdomas išnaudojimas gali inicijuoti seksualinį priekabiavimą.
* Gąsdinimu gali būti siekiama įgyti pranašumą prieš savo kolegą tuo metu, kai pastarasis yra prastesnėje padėtyje.
* Fizinis kieno nors sulaikymas patalpoje arba lifte gali inicijuoti vadovybės vykdomą išnaudojimą arba ujimą.
* Kai kuriomis aplinkybėmis vien žodinę kieno nors reakciją adresatas gali suvokti kaip fizinį smurtą (pvz., autobuso kontrolierius gali baimintis fizinio smurto, kurio gali imtis keleivis, kuris žodžiu, tačiau tuo pačiu metu gestikuliuodamas arba būdamas atitinkamos laikysenos, atsisako parodyti savo bilietą).

4 priedas: **Nuorodos priekabiavimo ir smurto darbe tema**

1. Europos Komisija „Vyrų ir moterų orumo apsaugojimas darbe – Kovos su seksualiniu priekabiavimu priemonių praktikos kodeksas“: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992H0131:EN:HTML

2. Dublino fondas: žodžių „priekabiavimas“ ir „smurtas“ paieška adresu http://www.eurofound.europa.eu/ duoda tokius rezultatus:

   Priekabiavimas ir smurtas darbe (2 ataskaitos, kurias galima atsisiųsti):
   http://www.eurofound.europa.eu/pubdocs/2002/109/en/1/ef02109en.pdf
   http://www.eurofound.europa.eu/ewco/reports/TN0406TR01/TN0406TR01.pdf

3. Bilbao agentūra: žodžių „priekabiavimas“ ir „smurtas“ paieška adresu http://osha.europa.eu/info pateikia daugybę įdomių dokumentų.

4. ETUI-REHS – Sveikatos ir saugos skyrius:
   a. Sveikatos ir saugos skyriaus naujienlaiškis Nr. 33, spalis 2007-07-31
   b. Sveikatos ir saugos skyriaus tinklalapis (skirsnyje „Specialios temos“): http://hesa.etui-rehs.org/uk/default.asp

5. Įrankiai (vertinimo įrankiai):

   a. Leymanno psichologinio teroro inventorius – LIPT (Švedija): http://www.leymann.se
   b. Neigiamų veiksmų klausimynas – NAQ (Einarsenas ir kt., Norvegija) : http://univisjon.no/work/4339/content/naq/naq01_about.htm
   c. Organizacinio bauginimo klausimynas (Elaine Douglas, JK): http://www.gowerpub.com/pdf/bullysamp.pdf arba http://www.gowerpub.com/TitleDetails.asp?sQueryISBN=0566084082&sPassString=Y&sKeyword1=elaine&sKeyword2=&sBooleanSearch=AND&sSearchFrom=Author&sSubjectCode=5&sNewTitle=999&lStartPos=1
   d. Pagarba darbe, priemonių rinkinys: http://www.respectautravail.be/toolkit_homepage.php

6. Kiti straipsniai ir nuorodos:

   a. Tarptautinė darbo organizacija, Smurtas darbe, jo sąnaudos ir t. t. http://www.ilo.org/public/english/protection/safework/violence/
   b. Sveikatos ir saugos tarnyba: http://www.hse.gov.uk/violence/index.htm
   c. Pasaulinė sveikatos organizacija: http://www.euro.who.int/violenceinjury/violence/20050208_1

d. Tyrimų ir saugos institutas, Prancūzija (Smurtas Europoje): http://www.inrs.fr/htm/la_violence_travail_en_europe_la_realite_probleme.html
e. SPF Emploi, Pagarba darbe, http://www.emploi.belgique.be/WorkArea/showcontent.aspx?id=5948