



REPORT ON
**SEXUAL HARASSMENT IN THE WORKPLACE
IN EU MEMBER STATES**

JUNE 2004



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**The Irish Presidency of the European Union
in association with FGS Consulting and
Professor Aileen McGolgan**



June 2004

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Foreword



I am very pleased to be associated with this Report on Sexual Harassment in the Workplace in EU Member States — a project which was undertaken by my Department as part of an Irish EU Presidency initiative.

Since 1998, successive European Union Presidencies have undertaken research leading to the development of indicators to facilitate the effective evaluation of the advances made by the EU in implementing the Beijing Platform for Action on violence against women. In this period, EU Presidencies have worked in partnership so that research undertaken across the Member States and compiled by one Presidency, has then been analysed and translated

into indicators by the next Presidency. This approach has produced a range of research and indicators, providing effective tools to combat violence against women, both at Member State and at EU level.

During the Irish Presidency, from January to June 2004, the Department of Justice, Equality and Law Reform initiated a research programme on sexual harassment in the workplace across the enlarged European Union. Questionnaires were developed and circulated to 149 organisations in the 25 Member States. The organisations contacted comprised relevant Government Ministries, specialist bodies, including equality promotional/enforcement bodies and employment adjudication bodies, and trade union/employee and employer bodies.

The high response rate (64%) has enabled a comprehensive and reliable information resource to be created in terms of on the ground practice and levels of awareness and action in the Member States. This information is considered particularly timely as it reflects the position in the Member States shortly before the required date for implementation of 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 principles of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Directive 2002/73/EC will be applicable across the Member States from October 2005 and will provide a catalyst for new or amended legislation in this area and a new consistency and clarity which can be expected to impact positively on future progress.

The development of indicators which build on the findings of this Report will be the subject of future work for the Dutch Presidency in the latter half of 2004. I am certain that they will find this quality Report to be of great assistance to them in this regard and I wish them well with their work.

Willie O Dea, T.D.,
Minister for Equality

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Acknowledgements

This report and its findings arise as a result of a Questionnaire on Sexual Harassment in the Workplace which was circulated to a number of organisations within each Member State of the enlarged European Union.

The Department of Justice, Equality and Law Reform engaged FGS Consulting, in association with Professor Aileen McColgan, to carry out this research on its behalf and would therefore like to thank Professor McColgan and FGS Consulting, in particular Ms. Annmarie O Connor and Ms. Marie Power, for the production of an excellent report. We would also like to thank the Dutch Ministry of Social Affairs and Employment for their useful advice and assistance during the development of the Report. We are also very grateful to each of the members of the High Level Group on Gender Mainstreaming, who assisted in the dissemination and coordination of the Questionnaire within each Member State.

The invaluable information provided by each of the respondent organisations, without whom the present study could not have been completed, is also acknowledged. A special thanks also to the Irish organisations that not only participated in the completion of the Questionnaire itself but also assisted in its pilot.

Executive Summary

Background to the Research

In 1995 the European Council called on Member States to conduct an annual review of implementation of the Beijing Platform for Action. This follow up process revealed the need for a more consistent and systematic observation and evaluation of Platform implementation in the European Union. The European Council agreed in 1998 that the annual review of Platform for Action implementation should include a proposal for a comparative evaluation of the advances made in the European Union (EU). Since 1998, under successive European Presidencies, indicators have been prepared to facilitate more effective evaluation of the Platform for Action implementation across Europe.

During the Irish Presidency of the EU, January to June 2004, the Irish Department of Justice, Equality and Law Reform has undertaken to establish the current position in EU Member States, including the accession countries, in relation to the fight against Sexual Harassment/ Harassment based on Sex in the workplace. The research findings provide quantitative and qualitative information which will be used to draw up indicators in relation to this issue during the Dutch Presidency in the latter half of 2004.

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 seeks to harmonize the Member States laws regarding the equal treatment of men and women and must be transposed by Member States by October 2005. **Directive 2002/73/EC** adds to Article 2(2) of Council Directive 76/207/EEC by providing definitions of “harassment” and “sexual harassment”. It also makes provisions in relation to the prevention of sexual harassment (Article 2(5)), the establishment of procedures for enforcement purposes; the compensation for victims of discrimination and harassment, as well as providing for the putting in place of the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex (Article 8).

Methodology

Questionnaires were circulated to one hundred and forty nine organisations across the EU (including the accession countries). In order to develop a fully comprehensive understanding of the legislative and associated preventative systems and supports in existence throughout Europe, questionnaires were targeted at three different groups; (i) Ministerial / Governmental and specialist bodies (encompassing both equality promotional and enforcement bodies and employment adjudication bodies), (ii) trade unions, employee organisations and (iii) employer organisations.

In total, **ninety five** organisations (64% of those surveyed) responded. This represents **twenty eight out of thirty five** (80%) Ministries, **fifteen out of twenty five** (60%) specialist bodies, **twenty three out of thirty nine** (60%) trade unions, **nine out of sixteen** (56%) employee organisations and **twenty out of thirty four** (59%) employer organisations.

In total, respondent trade unions and employee organisations had close to 20 million members and accounted for approximately 29% of the total labour force throughout the surveyed countries.

Respondent employer organisations had a total of approximately 60,000 members and represented 60% of the total employers in the responding countries.

Legislative Provisions, Case Law and Working Definitions

Twenty three countries (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg Malta, the Netherlands, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden and the UK) stated that they had employment legislation that dealt with Sexual Harassment/Harassment based on Sex. Greece stated that they did not. In Latvia draft amendments are currently before parliament. **Eighteen** countries stated that their **employment legislation** dealt with the matter explicitly and a further **four** stated that their legislation dealt with it implicitly (Estonia, Italy, Spain and the UK).

The majority of the definitions covered same-sex sexual harassment (**twenty one countries**) and transsexualism / transgenderism (**nineteen** countries) with only **twelve** addressing sex based conduct. The majority indicated that the definition did not specify the number of incidents necessary for Sexual Harassment/Harassment based on Sex to be deemed to have occurred.

Respondents were also required to provide information on **other Legislation and statutory provisions** dealing with Sexual Harassment / Harassment based on Sex. **Fifteen** countries (Austria, Belgium Denmark, Germany, Hungary, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden, and the UK) indicated having other such legislation in place.

Responding organisations in **eleven** countries indicated that there was a body of Case Law relating to Sexual Harassment / Harassment based on Sex. Across the board it is apparent that Case Law as a whole sets high standards as regards the definitions of acts of sexual harassment and that the compensation awarded to the victims by the courts is thus determined by these acts.

Directive 2002/73/EC explicitly prohibiting Sexual Harassment / Harassment based on Sex is to be implemented across the EU Member States by October 2005 and in light of this a significant number of the responding states (eleven providing detail) have plans in place to amend or introduce legislation dealing with Sexual Harassment / Harassment based on Sex.

In relation to working definitions used by trade unions, employee organisations and employer organisations, **thirty** organisations in **seventeen** countries stated that the working definitions of Sexual Harassment / Harassment based on Sex were directly from legislation.

It is evident that there is a wide variety of legislation in place to deal with Sexual Harassment/Harassment based on Sex as well as a degree of commonality in relation to the definitions included in that legislation. Where Sexual Harassment / Harassment based on Sex is expressly defined by legislation the definitions appear consistent with that in **Directive 2002/73/EC** embracing the physical and verbal forms of behaviour. This research has however indicated that there is some variation in responding organisations' understanding as to the explicit prohibition of specified activities. The implementation of **Directive 2002/73/EC**, by providing clarity on definitional issues, appears set to improve this position.

Codes of Practice

Codes of Practice dealing with Sexual Harassment / Harassment based on Sex are in place in **eleven** countries (Austria, Finland, Ireland, Italy, Malta, Lithuania, Luxembourg, the Netherlands, Slovenia,

Spain and the UK). **Four** countries stated that their Codes of Practice were legally binding (Austria, Lithuania, Italy and the Netherlands). Codes of Practice in Ireland and the UK can be taken into account by tribunals. All of the respondents who provided details of the Codes of Practice, except Austria, stated that that their Code of Practice covered verbal, non verbal and physical activities.

Codes of Practice have been shown to be important when the legislation upon which they are based does not explicitly define sexual harassment or even provide explicitly that it is regulated by law. In such cases these Codes of Practice can help give meaning to often abstract legislative provisions particularly where they may be taken into account by courts or tribunals determining legal issues arising from sexual harassment.

Collective Agreements

Eight trade unions/ employee organisations and **three** employer organisations from eight countries (The Czech Republic, Denmark, Ireland, Italy, Luxembourg, the Netherlands, Poland and Spain) stated that they were party to Collective Agreements which dealt specifically with Sexual Harassment / Harassment based on Sex. The majority of trade unions and employer organisations that responded reported that Collective Agreements dealing specifically with sexual harassment were legally enforceable. Two countries (Cyprus and UK) stated that their Collective Agreements were not legally binding. In general, in-company procedures dealing specifically with sexual harassment appear to be in place for addressing the issue, with recourse to the courts or industrial action existing when an incident cannot be dealt with at the organisational level.

The most striking finding was the very low level of apparent coverage of the issue of Sexual Harassment / Harassment based on Sex in those Collective Agreements to which the responding trade unions, employee / employer organisations were party. This may be attributable to the fact that those surveyed were not party to Collective Agreements reached between their constituent trade unions or employee / employer organisations and their industrial partners. However, the lack of knowledge on the part of the national level bodies as to what their members are doing at the bargaining level indicates that the issue of sexual harassment has yet to achieve a very high priority at the collective bargaining table.

Employer Liability

Twenty of the countries surveyed (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the UK) stated that an employer could be liable for Sexual Harassment / Harassment based on Sex perpetrated by an employee. The organisations also provided details of the circumstances in which employers can be liable. In all countries where an employer is liable for sexual harassment by a worker's superiors, liability also applies to a worker's peers. The situation in relation to sexual harassment perpetrated by a worker's clients is more varied.

Employer liability for sexual harassment outside the normal working hours / outside the workplace was also addressed with **ten countries** indicating that an employer could be liable in such circumstances (Cyprus, Finland, France, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Slovenia and the UK). The responding countries stated that the time and place in which the activity occurred did not impinge on employer liability.

Sixteen countries also stated that the harasser could be individually liable for acts of Sexual Harassment / Harassment based on Sex.

In the main, employers can be liable for Sexual Harassment / Harassment based on Sex when it occurs unless they have taken steps to prevent it. Where obligations are imposed on employers in connection with Sexual Harassment / Harassment based on Sex they relate to preventative actions including awareness raising, establishing explicit rules about conduct, establishing training for employees, establishing complaint procedures and imposing sanctions.

Legal Complaints and Remedies

All **twenty five** of the countries stated that there was an organisation in their country to which complaints in connection with Sexual Harassment / Harassment based on Sex could be brought.

Twenty three countries also provided details on mechanisms that exist to support complainants in bringing complaints in connection with Sexual Harassment. Lithuania and Estonia do not have mechanisms in place. Such supports included the employment of preventative consultants (Belgium) and “trust persons” (the Netherlands) to provide support and advice. Trade unions and other specialist organisations were also described as providing legal advice and other supports to victims.

Respondents also provided details of the financial compensation regime, (although the data here is far from comprehensive). The lowest award was £100 sterling and the highest award reported was £1.37 million sterling (both UK).

Inevitably there is little consistency of practice across the EU Member States in relation to the bodies to which complaints of work-related sexual harassment can be brought and the associated support mechanisms and remedies. However, **Directive 2002/73/EC** provides that “Member States shall designate and make the necessary arrangements for a body for the promotion, analysis, monitoring and support of Equal Treatment of all persons without discrimination on the grounds of sex.” This will require the EU member states to regulate and monitor their legal complaints in a standardised manner which should lead to more consistency in the reporting and presentation of information in this area.

Grievance Procedures and Sanctions

In total **fifteen** organisations in **ten** countries (Austria, Belgium, Finland, France, Germany, Ireland, Malta, the Netherlands, Spain and Sweden) stated that there was specific grievance procedures in place for dealing with Sexual Harassment / Harassment based on Sex. Broadly, grievance procedures usually involve the victim informing his or her supervisor / manager / boss / “trust person” whose role it is to determine what the next appropriate steps should be.

Seven organisations in **five** countries, (Austria, Belgium, the Czech Republic, Spain and Sweden) also stated that there were specific sanctions in place for dealing with Sexual Harassment / Harassment based on Sex amongst member organisations. Written warnings, reprimands, suspensions and dismissals for gross misconduct are all stated as relevant sanctions although the type of sanction generally relates to the seriousness of the offence.

Overall, it was evident that there was a general absence of specific grievance procedures and sanctions for Sexual Harassment / Harassment based on Sex. This may be due to the fact that such complaints are made and dealt with under general grievance procedures and are subject to general sanctions. However, this lack of specific procedures can give rise to particular difficulties where, for example, a union member makes an allegation against another union member, problems can arise as to who ought to be represented by the union.

Quantitative and Qualitative Research

Six countries indicated that research is conducted on sexual harassment on a regular basis (Austria, Finland, Italy, Malta, the Netherlands and Sweden). There is significant variation between countries in terms of the frequency with which research is conducted and the focus of the research that is carried out. With few exceptions the nature of the research infrastructure in the area appears to be underdeveloped. None of the countries / organisations surveyed have dedicated research personnel examining or monitoring the issue on an ongoing basis.

While some research on the issue has been undertaken in most countries it is evident that a common approach to the establishment of incidence or the more qualitative appraisal of impacts and outcomes is not applied across countries. As such, and although the data would appear to indicate that significant numbers of women are affected by the issue at some point in their working lives, it is difficult to be definitive about the extent of the problem.

This lack of information is also highlighted by respondents. Respondents in most countries have highlighted gaps and deficiencies in existing information, relating, *inter alia*, to the incidence / prevalence and nature / type of Sexual Harassment / Harassment based on Sex, the profile of the victim, the profile of the harasser, the nature of the organisation in which the harassment occurs and the outcome of court proceedings.

Initiatives designed to reduce the incidence of Sexual Harassment / Harassment based on Sex.

Respondents from **nineteen** countries indicated that they had been involved in initiatives designed to reduce the incidence of Sexual Harassment / Harassment based on Sex (Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden and the UK).

In terms of employer responsibility for such initiatives the most frequently cited activities included creating an environment free of harassment, raising awareness and developing and implementing preventative measures. Trade union responsibilities, although similar in nature, tend to be more loosely defined because they are not generally prescribed by law. Trade unions are also reported to have an important supportive function in providing assistance to victims.

Employer organisations and trade unions were also required to provide details of the roles and responsibilities of managers and employees in respect of preventative initiatives. The roles of managers were described in much the same way as those of employers, with managers regarded as having a role in the creation and maintenance of a harassment free environment. The roles of employees in relation to sexual harassment were described in terms of avoidance and prevention.

Throughout the surveyed countries there is a range of organisations that the victim of sexual harassment can turn to for support and Non Governmental Organisations (NGO's) are very important in this respect. It is noteworthy however, that several of the organisations referenced in this regard are women's groups or organisations dealing with the issue of violence against women.

Recommendations in relation to the development of indicators

There are at least three different types of indicators which could be established to monitor the prevention of Sexual Harassment / Harassment based on Sex in the workplace, each of which fulfills slightly different functions and may rely on the interrogation of slightly different data sets.

- (1) **Benchmarking indicators** — these are indicators which would establish basic information relating to the incidence / prevalence of sexual harassment and which could be used as a benchmark for ongoing monitoring.
- (2) **Context indicators** — these indicators would be based on multivariate analysis and would enable a deeper understanding of the relationship between sexual harassment and a range of other variables e.g. age, sex, sector, occupational type, etc.
- (3) **Policy/practice indicators** — this type of indicator would prompt and support discussion in relation to Sexual Harassment / Harassment based on Sex at European level. These indicators might draw on research at the level of the enterprise on such issues as the percentage of enterprises that have preventative policies in place, or the percentage of Codes of Practice / Collective Agreements that make specific reference to **Directive 2002/73/EC**.

In developing indicators there will be a need to address issues relating to definitional clarity, population and the type of data that is used.

1

Background to the Research

1.1 Evaluating the Beijing Platform for Action

The Beijing Platform for Action (PfA), which was adopted at the United Nations Fourth World Conference on Women in Beijing in 1995, calls on Governments, the international community and civil society to take strategic action in twelve critical areas of concern which include the area of violence against women (including the prevention of sexual harassment in the workplace).

After the Beijing Conference, the European Council at its Madrid December 1995 meeting, called on Member States to conduct an annual review of the implementation of the Platform for Action. In 1996 and 1997, this follow up process revealed the need for a more consistent and systematic observation and evaluation of Platform implementation in the European Union. The European Council agreed, at its 2 December 1998 meeting, that the annual review of Platform for Action should include a proposal for a comparative evaluation of the advances made in the EU. To facilitate the evaluation process, indicators have since been developed in relation to the following areas: Women in Decision Making (Finnish Presidency, second half of 1999), Women and the Economy/Reconciliation of Work and Family Life (French Presidency, 2000), Equal Pay (Belgian Presidency, 2001), Violence against Women (Spanish and Danish Presidencies, 2002), and Women in Economic Decision Making (Greek and Italian Presidencies, 2003).

1.2 Purpose of the Research

During 2004, the Irish and Dutch Presidencies are examining the issue of Sexual Harassment in the Workplace (including Harassment based on Sex). The Irish Presidency¹ carried out research via a questionnaire to establish the current position in EU Member States (including the accession countries²), in relation to the fight against Sexual Harassment / Harassment based on Sex at work. The research findings contained in this report provide both qualitative and quantitative information to assist the Dutch Presidency in the latter half of 2004 to draw up indicators in relation to this issue.

The focus of the research is on the legislation, systems and structures that exist at a national level across the EU to prevent Sexual Harassment / Harassment based on Sex in the workplace. As a result, the questionnaire was targeted at national level governmental organisations and representative organisations for both employers and employees.

¹ The Irish Department of Justice, Equality and Law Reform engaged FGS Consulting and Professor Aileen McColgan of Kings College London to carry out the research on its behalf.

² EU enlargement on 1 May 2004 to include ten new Member States was an event of historic significance during the Irish Presidency. The countries in question were Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. All twenty five Member States participated in the Questionnaire and information in relation to each is therefore provided in the Report.

1.3 The Equal Treatment Directive 2002/73/EC

The timing of the research is opportune. **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, hereinafter referred to as **Directive 2002/73/EC**, seeks to harmonize the Member States' laws regarding the equal treatment of men and women. **Directive 2002/73/EC** must be implemented by the EU Member States by the **5th October 2005**. As Member States adopt laws implementing **Directive 2002/73/EC**, sexual harassment will become recognised as a form of gender-based discrimination throughout the European Union.

Directive 2002/73/EC contains a number of elements, several of which, are examined in detail in this research, they include:

- **Definitions of sexual harassment** in the Workplace — the new Directive adds to Article 2(2) of Directive 76/207/EEC by providing definitions of “harassment” and “sexual harassment.”

Harassment and sexual harassment are recognised as a form of discrimination on the grounds of sex and thus are contrary to the principle of equal treatment between men and women.

“Harassment” is defined as *“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” is defined as *“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.”*

- **With reference to the prevention of sexual harassment;** Article 2(5) of **Directive 2002/ 73/ EC** specifies: *“Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment at the workplace.”*
- **In relation to the establishment of procedures for enforcement purposes;** the Directive obliges Member States to ensure that judicial and/or administrative procedures (including, if appropriate, conciliation procedures) are available to all persons who consider themselves wronged or victimized by discrimination in the workplace, even after the employment relationship has ended.
- With respect to **the compensation for victims of discrimination and harassment;** when unlawful discrimination has been proven, **Directive 2002/73/EC** prohibits limits on the compensation payable to the victim. Article 6(2) now requires Member States to introduce measures *“to ensure real and effective compensation or reparation . . . for the loss and damage sustained by a person injured as a result of discrimination.”*

- Article 8 of **Directive 2002/73/EC** requires that “Member States shall designate and make the necessary arrangements for a body or bodies **for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex.**” These bodies will be required to be competent at (1) providing independent assistance to victims of discrimination in pursuing their discrimination complaints; (2) conducting independent surveys related to discrimination; and (3) publishing independent reports and making recommendations on discrimination issues.

2 Methodological Approach

2.1 Questionnaire Design and Piloting

2.1.1 Questionnaire Design

The research findings contained in this report are based on the results of a Questionnaire on Sexual Harassment / Harassment based on Sex in the Workplace.³ Taking into account the distinctive roles and responsibilities of the national level organisations with a remit in this area, and the nature of the information required, a number of separate questionnaires were designed which were tailored, in so far as possible, to suit the organisations in question. The organisations surveyed included:

- Ministries / Governmental Bodies,
- Specialist bodies (Equality promotional and enforcement bodies and employment adjudication bodies),
- Employer Organisations,
- Trade Unions / Employee Organisations.

2.1.2 Piloting

In December 2003 the Questionnaires were piloted in Ireland with a number of relevant organisations. An analysis of responses and reviewer's comments was then conducted based on which a revised version of the Questionnaire was produced.

2.2 Contribution of the High Level Group (HLG) on Gender Mainstreaming

Members of the High Level Group on Gender Mainstreaming (HLG)⁴ assisted in the dissemination and coordination of the Questionnaires within each Member State. Draft questionnaires were circulated to the Group in December 2003 and were subsequently discussed at their meeting in January 2004. The final version of the Questionnaires reflect, in so far as possible, this consultation stage with the HLG.

2.3 Questionnaire Administration

2.3.1 Questionnaire Circulation

A maximum of **seven** national level organisations from each Member State are included in the research. These organisations include the relevant Government Ministry in each Member State, the main trade union / employee representative organisation, the main employer organisation and any relevant specialist / employment equality body (e.g. national level employment equality bodies, labour or other employment rights courts).

³ An example of the questionnaire tailored to suit the Governmental/ Ministerial bodies is provided in Appendix 4.

⁴ The High Level Group on Gender Mainstreaming is a European Commission group which meets once during each EU Presidency. It consists of Senior Government representatives in the equality area of each Member State. Details of the Membership of the High Level Group on Gender Mainstreaming are provided in Appendix 3.

From late January onwards, the questionnaire was available for completion in English, French, German and Italian, both in an on-line electronic version and in hard copy formats. The deadline for return was initially 5th March 2004 but was extended to 16th March 2004. Throughout the survey period the consultants were available to provide assistance to any organisation in completing the questionnaire.

2.4 Data Analysis

Upon return of completed questionnaires, the data was checked and analysed using Microsoft Excel and the Statistics Package for the Social Sciences (SPSS). The database was formatted in such a way as to enable the Dutch Ministry to utilise it in the development of indicators and to provide a resource to other organisations with an interest in the issue.

2.5 Profile of Respondent organisations

The questionnaire was circulated to one hundred and forty nine organisations across the EU Member States and accession countries. In total **ninety five** organisations (64% of those surveyed) responded. That figure corresponds to; **twenty eight out of thirty five** (80%) Ministries, and **fifteen out of twenty five** (60%) specialist bodies, **twenty three out of thirty nine** (60%) trade unions, **nine out of sixteen (56%)** employee organisations and **twenty out of thirty four** (59%) employer organisations. Appendix 2 gives a breakdown of the respondent organisations by country.

In total, respondent trade unions / employee organisations had close to 20 million members and accounted for approximately 29% of the total labour force throughout the surveyed countries.⁵

Respondent employer organisations had a total of approximately 60,000 members and accounted for 60% of the total employers in the responding countries.

2.6 Structure of the Report

The remaining sections of this report are as follows:

- **Chapter 3. Legislative Provisions, Case Law and Working Definitions.** In this chapter, the findings relating to employment legislation, statutory provisions and other legislation relevant to sexual harassment are presented with a particular focus on the nature of the definitions of sexual harassment. This chapter also presents an overview of relevant Case Law and where relevant, identifies any problems with the legislation that has emerged through the Case Law.
- **Chapter 4. Codes of Practice** (Statutory and otherwise). This chapter documents the Codes of Practice in operation throughout the surveyed countries based on responses provided by Government/ Ministries and specialist bodies.

⁵ There are missing values for some countries so this is only an approximate figure.

- **Chapter 5: Collective Agreements:** This chapter illustrates the provisions to prevent Sexual Harassment/ Harassment based on Sex that exist in Collective Agreements amongst trade union / employee organisations and employer organisations.
- **Chapter 6: Employer Liability:** All organisations were required to provide information on Employer Liability. This section describes the circumstances under which an employer is liable for sexual harassment and provides a description of the preventative actions (if any) that employers are legally obligated to undertake. This chapter also examines whether harassers are individually liable for their actions.
- **Chapter 7: Legal Complaints and Remedies:** This chapter, which is based on information provided by all of the responding organisations, examines whether there are any organisations to which legal complaints can be brought. This chapter also examines mechanisms that are in place to support complainants and what remedies are available for Sexual Harassment / Harassment based on Sex.
- **Chapter 8: Grievance Procedures and Sanctions:** This chapter illustrates the nature of the specific grievance procedures and sanctions in place within trade unions / employee organisations and employer organisations.
- **Chapter 9: Quantitative and Qualitative Research:** All organisations were requested to provide details on Quantitative and Qualitative Research which they had conducted on Sexual Harassment / Harassment based on Sex. In addition to providing information in relation to quantitative data and findings and outcomes of research, responding organisations were required to describe whether there was a dedicated organisation or role charged with conducting research on the issue as well as providing information on the frequency of data collection.
- **Chapter 10: Initiatives Designed to Reduce the Incidence of Sexual Harassment / Harassment based on Sex:** All of the surveyed organisations were required to provide information on, and identify best practices in relation to, initiatives (awareness raising and education, prevention, monitoring and enforcement) that they had undertaken to prevent or reduce the incidence of Sexual Harassment / Harassment based on Sex.
- **Chapter 11: Conclusions and Recommendations:** This chapter draws together the analysis presented in previous chapters and makes practical recommendations and suggestions on the development of indicators relating to prevention of Sexual Harassment / Harassment based on Sex in the working environment.

3.1 Employment Legislation dealing with Sexual Harassment / Harassment based on Sex

Ministerial and specialist bodies were required to provide information on **employment legislation** dealing with Sexual Harassment / Harassment based on Sex. **Twenty three** of the twenty five countries surveyed stated that they had **employment legislation** dealing with Sexual Harassment / Harassment based on Sex. Greece and Latvia did not have existing employment legislation in place. However Latvia specified that a draft amendment of the Labour Law 2004 was currently before its Government and will deal explicitly with sexual harassment.

Of the twenty three countries that indicated that they had employment legislation that dealt with sexual harassment, **eighteen** stated that their **employment legislation** dealt with the matter **explicitly** and a further **four** countries stated that the **legislation dealt with it implicitly** (Italy, Estonia, Spain and the UK). Denmark did not specify. Finland specified that there was no explicit definition in the wording of the law, but the explanatory memorandum to its legislation includes an explanation of what is meant by sexual harassment.

Sixteen countries provided the definition of Sexual Harassment / Harassment based on Sex from their employment legislation. Denmark referenced its relevant legislation but provided no further information.

The responses by country are summarised in Table 3.1.

Table 3.1

Employment Legislation dealing with Sexual Harassment /Harassment based on Sex

Country	Employment Legislation Dealing with Sexual Harassment / Harassment based on Sex	Implicitly / explicitly deals with Sexual Harassment / Harassment based on Sex	Countries with legislation defining Sexual Harassment
Austria	Federal Equal Treatment Act	Explicit	✓
Belgium	Law relating to the Protection Against Violence and Moral and Sexual Harassment at Work of June 11 th 2002 which is included in the law relating to the well-being of workers when carrying out their work (August 4 th 1996)	Explicit	✓
Cyprus	The Equal Treatment for Men and Women in Employment and Vocational Training Law (No. 205) 2002	Explicit	✓
Czech Republic	Labour Code 2004	Explicit	✓

Table 3.1—continued

Country	Employment Legislation Dealing with Sexual Harassment / Harassment based on Sex	Implicitly / explicitly deals with Sexual Harassment / Harassment based on Sex	Countries with legislation defining Sexual Harassment
Denmark	Gender Equality Act (Consolidation Act No. 553 of July 2 2002)	Not specified	Not specified
Estonia	Gender Equality Act (came into force 1st May 2004)	Implicit	✗
Finland	Act on Equality between Women and Men (1986) Act on Equality between Women and Men as amended 1995	Implicit (1986) Explicit (1995)	*Memorandum to the 1995 Act explicitly defines sexual harassment
France	Law on the Reform of the General Provisions to the Penal code (1992) Law on Social Modernization (2002) Law on Sexually Oriented abuse of Power within Working relationships (1992)	Explicit	✓
Germany	Law to Protect employees from Sexual Harassment in the Workplace (1994)	Explicit	✓
Greece	No Relevant Employment Legislation		
Hungary	The Labour Code (No.22, 1992) and Act on Equal Treatment and the Promotion of Equal Opportunities	Explicit	✓
Ireland	Employment Equality Act 1998	Explicit	✓
Italy	Act No. 903912/77 also Act No. 125 and Legislative Decree 196 (2000)	Implicit	✗ ⁶
Latvia	No Relevant Employment Legislation Draft amendments to the Labour Code currently before Parliament (Explicitly in amendments/ Definition not provided)		
Lithuania	Article 2 p.5 of the Lithuanian Law on Equal Opportunities (1998) Statute of the Armed forces Discipline (1999)	Explicit	✓
Luxembourg	Law on Protection Against Sexual Harassment within the Relationships	Explicit	✓
Malta	Employment and Industrial relations Act (2002)	Explicit	✓
The Netherlands	Working Conditions Act (1998) Regulation on Sexual Harassment of Civil Servants (1994)	Explicit	✓
Poland	Article 183a of the Polish Labour Code	Explicit	✓
Portugal	Article 24 (Harassment) of Law No.88/2003 of the Portuguese Labour Code	Explicit	✓
The Slovak Republic	The Slovak Labor code (Article 13, sub paragraph 4)	Explicit	✗ ⁷

⁶ Discrimination is defined but not explicitly sexual harassment.

⁷ "Harassment", rather than "sexual harassment" is defined.

Table 3.1—continued

Country	Employment Legislation Dealing with Sexual Harassment / Harassment based on Sex	Implicitly / explicitly deals with Sexual Harassment / Harassment based on Sex	Countries with legislation defining Sexual Harassment
Spain	National Labour legislation does NOT define sexual harassment but refers to Working Standards Act, Act on Labour Infringements and Penalties	Implicit	✗
Slovenia	Slovenian Employment Legislation (2002)	Explicit	✓
Sweden	Act on Equality Between Men and Women (1980)	Explicit	✓
UK	Sex Discrimination Act (1975) and Employment Rights Act (1996)	Implicit	✗
	23 Countries with employment legislation that deal with sexual harassment.	18 explicit 4 implicit 1 not specified	16

All of the definitions that were provided refer to unwanted, inappropriate and offensive behaviour that affect the dignity of the person harassed (this being core to the definition of Sexual Harassment / Harassment based on Sex in the amended Equal Treatment Directive). At present six countries whose legislation expressly defined sexual harassment make specific reference to the creation of a “hostile or humiliating work environment”.

3.2 Definitions of Sexual Harassment / Harassment based on Sex incorporated in Employment Legislation

In the following paragraphs information is presented in relation to the definitions of Sexual Harassment / Harassment based on Sex contained either explicitly or implicitly in **employment legislation** in the various respondent states.

Austria:

The Federal Equal Treatment Act 1993, which is applicable to public service employees, **explicitly** deals with Sexual Harassment / Harassment based on Sex. It provides (section 7) that:

- (1) Discrimination based on sex occurs if, in the context of his or her public service employment or training relationship, the public service employee
 1. Is sexually harassed by the representative of the actual employer,
 2. Is sexually harassed by a third party,
 3. Is sexually harassed by a third party and the representative of the employer fails to take the appropriate remedial action.
- (2) Sexual harassment occurs if conduct of a sexual nature is perpetrated and this conduct
 1. Is an affront to a person’s dignity;
 2. Is unwanted by, inappropriate or offensive to the affected person and

3. (a) Creates an intimidating, hostile or humiliating working environment for the affected person or;
- (b) If the person affected refutes or tolerates conduct of a sexual nature on the part of a representative of the employer or a colleague, and this forms the basis, either overtly or tacitly, for the a decision that adversely affects this person's access to training and further training, employment, further employment, promotion or payment or forms the basis for another negative decision concerning the public sector employment or training relationship.

The Equal Treatment Act 1979 (section 2, Part 1 a and b), which applies to **private sector employment**, is materially identical.

The Articled Clerk Act 2000 (section 22) and the Student Teacher Act 2000 (section 22) each prohibit sexual harassment in materially identical terms to those in the legislation mentioned above, effectively extending the prohibition on such conduct outside the strict sphere of “employment”.

Belgium:

In Belgium, the law relating to the Protection Against Violence and Moral and Sexual Harassment at Work (11th June 2002, which is included in the law relating to the well-being of workers when carrying out their work August, 4th, 1996) which **explicitly** deals with Sexual Harassment / Harassment based on Sex defines sexual harassment at work as “all types of verbal, non verbal or physical behaviour of a sexual nature which the guilty party knows or should know will affect the dignity of men and women in the workplace”.

Royal decrees of 18 September 1992 and 9 March 1995 and a number of Government Decrees also provide protection against sexual harassment in the workplace. These decrees should be adapted to the law to the protection against violence and moral and sexual harassment at work, June 11th 2002.

The Law of 7 May 1999 on equal treatment of men and women relating to working conditions, access to employment and promotion possibilities, access to an independent profession and complementary social security systems is also referenced but there is no additional information given in relation to the definition contained in the legislation. Sexual harassment is categorised (Article 2, section 6 of the law of 25 February 2003) as a form of sex discrimination. It is defined as any form of verbal, non-verbal or physical behaviour of a sexual nature which the guilty party knows or should know affects the dignity of men and women in the workplace.

Cyprus:

The Equal Treatment for Men and Women in Employment and Vocational Training Law (No. 205) 2002 **explicitly** deals with sexual harassment as follows:

“Sexual harassment means any unwanted verbal or physical conduct of a sexual nature or any form of conduct based on sex, of a person, which violates the dignity of women and men in employment, vocational education or training during access to employment, vocational education or training. Sexual harassment is deemed to be discrimination on grounds of sex and therefore prohibited”.

Czech Republic:

The Labour Code 2004, which entered into force on 1st March 2004, **explicitly** defines sexual harassment as behaviour of a sexual nature in any form rightly perceived by the respective employee as unwelcome, inappropriate or insulting and the intention or impact of which leads to reducing the dignity of the physical person or to creation of hostile or disturbing environment at the workplace or may be rightly perceived as a condition for decision influencing performance of rights and duties following from employment relationship. Similar provision is made in relation to the Army and the Police.

Denmark:

The relevant legislation in Denmark is the Gender Equality Act (Consolidation Act No. 553 of 2 July 2002). It was not specified if there was a definition of sexual harassment.

Estonia:

The Gender Equality Act (2004) (section 3) **explicitly** defined sexual harassment as “any unwelcome verbal, non verbal or physical behaviour or action of a sexual nature directed at an individual who is a subordinate or a dependent, that has the aim or the effect of degrading a person’s dignity, that creates a disturbing, threatening, hostile, belittling, humiliating or offensive environment and that the victim rebuffs or tolerates because, explicitly or implicitly expressed, it is made a condition of recruitment to a job or a public service, continued employment, access to training, payment of remuneration or other advantages or benefits. There is the general prohibition of gender discrimination in the Gender Equality Act stating that there must be no gender-based discrimination in the private or public sector (section 1.2.1). More precisely section 6.2.5 specifies that “the actions of the employer are regarded to be discriminatory when s/he engages in sexual harassment or neglects his/her obligations under the Article 11.1.4. “An employer is obligated in terms of promoting gender equality to take care of the protection of the employee from sexual harassment”.

Finland:

In Finland the Act on Equality between Women and Men (1986) **implicitly** regulates sexual harassment. However the amended Act (1995) provides an **explicit** definition of sexual harassment. In addition, the Employment Contracts Act 2001 and the Occupational Safety and Health Act 2002 are both described as **explicitly** dealing with Sexual Harassment/ Harassment based on Sex but the definitions are not provided.

France:

The Law on the Reform of the general provisions of the Penal Code (1992) **explicitly** deals with sexual harassment, as acts instilling fear, conferring threats, imposing constraints or exercising undue pressure with the aim of asserting undue pressure.

The Law on Social Modernization (2002) and the Law on sexually-oriented abuse of power within working relationships (1992) are both described as **explicitly** dealing with Sexual Harassment / Harassment based on Sex, however the definitions contained in these laws are not provided.

Germany:

The Law to protect employees from sexual harassment in the workplace (Employee Protection Act) 1994: **explicitly** deals with sexual harassment in the workplace and defines it as consisting of “any intentional, sexually-oriented behaviour that violates the dignity of employees in the workplace”. This includes:

1. sexual acts and types of behaviour that are penalized under criminal codes, as well as
2. other sexual acts and demands for such acts, sexually-oriented touches, remarks of a sexual nature, as well as showing and visibly displaying pornographic images that are clearly rejected by the party concerned.

Hungary:

The Labour Code (No. 22, 1992) makes a reference to the “Act on Equal Treatment and the Promotion of Equal Opportunities” (No. 125, 2003), which includes the following definition:

“Harassment is a conduct violating human dignity related to the relevant person’s characteristic, defined in Article 8, with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around a particular person”.

Article 8 lays down the general prohibition of direct discrimination and refers to discrimination on sexual grounds.

Ireland:

Section 14A (7) of the Employment Equality Act 1998 (as amended) **explicitly** deals with sexual harassment defining it as follows:

- (a) (i) References to harassment are to any form of unwanted conduct related to any of the discriminatory grounds and
- (ii) references to sexual harassment are to any form of unwanted verbal, non verbal or physical conduct of a sexual nature,

being conduct which in either case has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

- (b) Without prejudice to the generality of paragraph (a), such unwanted conduct may consist of acts, requests, spoken words, gestures of the production, display or circulation of written words, pictures or other material.

Harassment / sexual harassment is prohibited in the workplace, by an employer, colleague, or a client, customer or other business contact of the employer “and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to prevent it”. The Act also prohibits the differential treatment of an employee in the workplace for reasons connected with his or her rejecting or accepting the harassment.

Italy:

Act no. 903 of 9/12/77 does **not explicitly** regulate Sexual Harassment / Harassment based on Sex. It does, however, provide that:

“Any deed, pact or behavior which gives rise to a prejudicial effect, including discriminating indirectly against female or male workers because of their gender constitutes discrimination. Any prejudicial treatment resulting from the adoption of criteria which disadvantage the workers in one or other sex in a proportionally greater manner and regard requirements which are not essential for carrying out the working activity constitute indirect discrimination”.

The Italian Presidency of Council of Ministers indicated that this provision has been interpreted to cover sexual harassment. Other relevant legislation includes Act No. 125 (1992) and Legislative Decree 196 2000 both of which implicitly regulate sexual harassment. The manner in which this occurs is not described.

Latvia:

In Latvia draft amendments to the Labour Law (2004) which are described as dealing **explicitly** with sexual harassment in keeping with **Directive 2002/73/EC** are currently before Parliament. However the definition of sexual harassment contained therein is not provided.

Lithuania:

Article 2, p. 5 of the Lithuanian Law on Equal Opportunities (1998) **explicitly** defines sexual harassment as offensive conduct of sexual nature, verbal or physical, towards a person with whom there are work, business or other relations of subordination.

In Lithuania, the Statute of the Armed Forces Discipline was prepared by the Ministry of National Defence in 1999. It prohibits sexual harassment of a verbal, written or physical nature on grounds of a person's sexual determination and inviolability and is legally binding on service personnel.

Luxembourg:

In Luxembourg, the Law on Protection against Sexual Harassment within the relationships (2000) **explicitly** defines sexual harassment under Article 2 as follows:

“For the purposes of the present law, harassment within industrial relations shall be any conduct of a sexual nature or any other conduct based on sex for which the perpetrator knows or ought to know that it would affect the dignity of a person at work, and where one of the following three conditions is met:

- (1) The conduct is improper, hurtful to and untimely for the person subjected to it.
- (2) The fact that a person refuses or accepts such conduct from an employer, an employee, a client or a supplier is expressly or implicitly used as the basis for a decision affecting the rights of this person as regards vocational training, employment, continuation of employment, promotion, salary or any other decision concerning that person's employment.

- (3) Such conduct creates an intimidating, hostile or humiliating environment for the person subjected to it. The conduct may be physical, verbal or non-verbal. The intentional element of the conduct is presumed.”

In addition, Article 10. 1 of the Law dated 16 April 1979, fixing the general status of government officials, as amended by the law of 26 May 2000 on protection against sexual harassment within industrial relations provides that the protection against sexual harassment is extended to civil servants.

Malta:

The Maltese Employment and Industrial Relations Act 29 (2002) **explicitly** deals with sexual harassment as follows:

“It shall not be lawful for an employer or an employee to harass another employee or harass the employer by subjecting such person to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material, which in respect of that person is based on sexual discrimination and which could reasonably be regarded as offensive, humiliating or intimidating to such person.”

With reference to Article 26 of the Employment and Industrial Relations Act (2002), that deals with discrimination and gender equality, the Act to Promote Equality for Men and Women (Article 4 (2) (c)) states that “Without prejudice to the provisions of Article 26 of the Employment and Industrial Relations Act, employers shall also be deemed to have discriminated against a person if such employers neglect their obligation to suppress sexual harassment as provided under subarticle (2) of Article 9 of this Act”. With reference to the National Commission for the Promotion of Equality for Men and Women, set up in January 2004 under the Act to Promote Equality for Men and Women (2003), Article 5 (1) further states: “It shall be the duty of employers upon the request of any person claiming to have been sexually harassed or discriminated against, or upon a request by the Commissioner acting upon a complaint or otherwise, to provide such person or the Commissioner, as the case may be, within ten working days of such a request with a report on the allegation made or the procedures used by the employers in the matter alleged to constitute such sexual harassment or discrimination”.

An **explicit** definition of what constitutes sexual harassment is provided in Article 9 (1) that states: “Without prejudice to the provisions of Article 29 of the Employment and Industrial Relations Act, it shall be unlawful for any person to sexually harass other persons, that is to say: (a) to subject other persons to an act of physical intimacy; or (b) to request sexual favours from other persons; or (c) to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcome to the persons to whom they are directed and could reasonably be regarded as offensive, humiliating or intimidating to the persons to whom they are directed; or (d) the persons so subjected or requested are treated less favourably by reason of such persons’ rejection of or submission to such subjection or request, it could reasonably be anticipated that such persons would be so treated”. Article 9 (2) goes on to say: “Persons responsible for any work place, educational establishment or entity providing vocational training or guidance or for any establishment at which goods, services or accommodation facilities are offered to the public,

shall not permit other persons who have a right to be present in, or to avail themselves of any facility, goods or services provided at that place, to suffer sexual harassment at that place. It shall be a defence for persons responsible as aforesaid to prove that they took such steps as are reasonably practicable to prevent such sexual harassment". Article 9 (3) states that: "Persons who sexually harass other persons shall be guilty of an offence against this article and shall, without prejudice to any greater liability under any other law, be liable on conviction to a fine (multa) of not more than one thousand liri or to imprisonment of not more than six months or to both such fine and imprisonment".

The Netherlands:

The Working Conditions Act 1998 Article 1.3.e.⁸ **explicitly** defines sexual harassment as undesired sexual approaches, requests for sexual favours or other verbal, non verbal or physical behaviour also in relation to the following issues:

- submission to this kind of behaviour is used either explicitly or implicitly as a precondition for the employment of a person;
- submission to or denial to such behaviour by a person is used as a basis for decisions in relation to the job of the person;
- such behaviour has the goal to damage the job performance of a person and/or to create an intimidating, hostile or disagreeable job environment, or has the outcome that the job performance of a person is damaged and/or an intimidating, hostile or disagreeable job environment is created.

The Regulation on Sexual Harassment of Civil Servants (1994) was also cited as **explicitly** addressing the issue of sexual harassment.

Poland:

Article 18 3a, section 6, of the Polish Labour Code 1974/ 2004 **explicitly** defines sexual harassment as follows:

"Sexual harassment shall be deemed to be also any form of discrimination when unwanted conduct relating to sexual context or with reference to the employee's sex takes place with the purpose or effect of violating the dignity of an employee, degrading humiliating an employee; such conduct may include physical, verbal or extra-verbal elements (sexual harassment)."

Article 94 of the Polish Labour Code then provides that:

"An employer shall in particular:

- (2b) prevent discrimination in employment, in particular based on sex, age, disability, race, religion, nationality, political orientation, trade union affiliation, ethnic origin, belief, sexual orientation, employment for a definite or indefinite term, or on a full-time or part-time basis.

⁸ In the Netherlands the **Working Conditions Act** 1998 is the official name for the Act. However for clarification in relation to the kind of Act this is, it is often referred to by using the international term Occupational Safety and Health (OSH).

Portugal:

Article 24 (Harassment) of Law No. 99/ 2003 of the Portuguese Labour Code explicitly prohibits, as discrimination, sexual harassment of job applicants or employees. Harassment is defined as:

“any unwanted conduct related to one of a number of factors including gender sexual orientation, marital status occurring during the recruitment process or the employment itself, at work or during vocational training, with the purpose or effect of violating the dignity of the individual or of creating an intimidating, hostile, degrading, humiliating or destabilizing environment”.

Sexual harassment is further defined to include “Any form of unwanted oral, non-oral or physical conduct of a sexual nature, with the purpose or effect mentioned in the previous point.”

Article 23 of the Labour Code further provides that:

“The employer may not take any direct or indirect discriminatory measure based, in particular, on origin, age, gender, sexual orientation, legal or marital status, genetics, reduced ability to work, disability or chronic illness, race, ethnic origin, religion, political or ideological beliefs or union affiliation.”

Slovak Republic:

The Labour Code (Article 13) defines harassment as a form of prohibited discrimination where it consists of:

“Undesired conduct with the intention or effect of contravening human dignity which causes for the employee hostile, threatening, embarrassing, degrading offensive environment”.

Slovenia:

Slovenian employment legislation (Zakon O Delovnih Razmerjih 2002) **explicitly** regulates sexual harassment in terms which refer to the protection of workers' personal dignity, and cover same-sex harassment and harassment connected with transsexualism. The legislation refers to a “workers right not to be exposed to any kind of unwanted physical, verbal or non-verbal or other act or activity based on sex, that makes the work environment hostile or humiliating, whether the harasser is employer, superior, peer or client”.

Types of unwelcome sexual behaviour are not specified but are to be defined by each organisation.

Spain:

The Spanish Ministry specifies that although the national (labour) legislation does not define sexual harassment per se, both legal provisions and case law afford workers ample protection against this manner of abuse.

The Working Standards Act: Article 4.2 states: “Workers are entitled to respect for their privacy and due consideration for their dignity including protection against verbal and physical abuse of a sexual nature and against harassment for reasons of racial or ethnic origin, religion or convictions, disability, age or sexual orientation”.

The Act on Labour Infringements and Penalties is also cited, under which the following are regarded to be very serious violations: Sexual harassment taking place in a domain within the reach of company management control regardless of identity of the perpetrator. (Article 8.13) and employer breach of regard for worker privacy and due respect (Article 8.11).

Employment legislation protects workers against sexual harassment and case law interprets the scope of such protections according hereto. Generally speaking verbal, physical and non verbal activities are covered by the notion of sexual harassment.

Sweden:

The Act on Equality between Women and Men (1980) explicitly defines sexual harassment (section 6) as “unwanted conduct based on sex or unwanted conduct of a sexual nature that violates the integrity of the employee at work”.

The UK:

Neither the Sex Discrimination Act (1975) nor the Employment Rights Act (1996) explicitly regulate sexual harassment, but many instances of sexual harassment will amount to sex discrimination for the purposes of the 1975 Act and the courts refer to the EC Code of Practice on the Dignity of Women and Men at Work (92/131/EC) for guidance on the definition of sexual harassment.

3.2.1 Types of Harassment covered by the Definitions

Respondents were required to indicate whether specified types of harassment were covered by the definitions. In Table 3.2 the types of harassment that are included in the definitions are detailed. **Twenty one** countries stated that their definition addressed same-sex sexual harassment, **nineteen** countries stated that their definition addressed harassment in connection with transsexualism / transgenderism. **Twelve** countries stated that their definition addressed sex-based conduct i.e. behaviour that denigrates, ridicules or abuses another person because of her or his sex.

The UK and Latvia, indicated that the definition incorporated under the relevant employment legislation did not include same-sex sexual harassment. Employment legislation in Malta and Ireland does not explicitly deal with harassment connected with transsexualism / gender reassignment in the definition. Neither does the UK, although most sexual harassment will amount to sex discrimination and the sex discrimination legislation does protect from discrimination connected with gender reassignment. Austria, Belgium, Finland, Hungary, Lithuania, Malta, Spain and the UK stated that the relevant employment legislation did not address sex based conduct as such, though some such conduct would fall within their definitions (explicit or implicit) of sexual harassment.

Table 3.2
Types of Harassment included in Definitions used in Employment Legislation

Country	Same-Sex Sexual Harassment	Transsexualism / Transgenderism	Sex-based Conduct
Austria	✓	✓	✗
Belgium	✓	✓	✗
Cyprus	✓	✓	✓
Czech Republic	✓	✓	✓
Denmark	No definition provided	No definition provided	No definition provided
Estonia	✗	✗	✗
Finland ⁹	✓	✓	✗
France	✓	✗	✗
Germany	✓	✓	✗
Hungary	✓	✓	✓
Ireland ¹⁰	✓	✗	✓
Italy ¹¹	✓	✓	✓
Lithuania	✓	✓	✗
Luxembourg	✓	✓	✓
Malta ¹²	✓	✓	✓
the Netherlands	✓	✓	✓
Poland	✓	✓	No response
Portugal	✓	✓	✓
The Slovak Republic	✓	✓	✓
Slovenia	✓	✓	✓
Spain ¹³	✓	✓	✗
Sweden	✓	✓	✓
UK	✓ ¹⁴	✓	✗
Total	21	19	12

⁹ Memorandum to the Amended 1995 Act on Equality between Women and Men.

¹⁰ Same sex sexual harassment is addressed in the Equality Bill 2004 in Ireland.

¹¹ In Italy employment legislation implicitly deals with sexual harassment.

¹² Protection against sexual discrimination based on sexual orientation is provided for under Legal Notice 297 of 2003, of the Employment and Industrial Relations Act (2002), entitled Employment and Industrial Relations Interpretation Order, 2003. This Legal Notice (2) states: "In determining whether any treatment is treatment that is justified in a democratic society, the Industrial Tribunal shall take into account the provisions of any directives and/ or regulations issued by the institutions of the European Union relating to discrimination and particularly Council Directive 2000/43/EC of 29th June 2000 and Council Directive 2000/78/EC of 27th November 2000 prohibiting discrimination on the basis of religion or belief, disability, age, sexual orientation, race or ethnic origin."

¹³ Spain implicitly deals with sexual harassment.

¹⁴ Though only where it is related to **sex**, rather than **sexual orientation**. UK deals implicitly with sexual harassment.

3.2.2 Number of Incidents

In relation to the number of incidents necessary for a finding that Sexual Harassment / Harassment based on Sex has occurred, **twenty** of the forty six organisations (**thirteen** of the countries) stated that a single incident was sufficient. **None** stated that repeated incidences were required, and **twenty** organisations (twelve countries) stated that no specific number of incidences was specified / required.

3.3 Other Legislation and Statutory Provisions

Countries were asked to state whether they had any other statutory provisions and other legislation which are relevant to Sexual Harassment / Harassment based on Sex. **Fifteen** countries reported having other such provisions in place. Respondents were requested to provide details of these provisions. The following sections provide information on other legislation / statutory provisions dealing with Sexual Harassment / Harassment based on Sex.

Austria:

In Austria the Criminal Law Amendment Act 2004, which is currently being drawn up, provides (section 218(1)) that:

“Anyone who perpetrates a sexual act, with the intention of harassing another person, is sentenced to a prison term of up to six months or is fined up to 360 per diem allowances if the act is not subject to a more severe punishment in accordance with another provision.¹⁵

(2) The perpetrator is only to be pursued on the application of the harassed person”.

Belgium:

Article 442b of the penal code states that: “Anyone who harasses a person when he knew or should have known that this would seriously affect the tranquillity of the person in question shall be sentenced with between fifteen days and two years imprisonment and a fine of between €50 and €300 (between €250 and €1,500 after the application of the additional tithes). The crime may only be pursued if the person who claims to have been harassed lodges a complaint.”

Harassment in this context is not defined but is understood to cover importuning a person in a manner which is irritating for the latter (Parl. Doc. Chamber, sess. 1996-1997, 1046/8-96/97, p. 8). and is not restricted to sexual harassment. Harassing behaviour does not have to be of a repetitive nature (Parl. Doc. Chamber, sess. 1996-1997, 1046/8-96/97, p. 8) but it must seriously affect the tranquillity of the person concerned and must be voluntary on the part of the harasser. It is not necessary that the harasser intended to infringe seriously upon the tranquillity of the victim although he or she must either have known or ought to have known that his behaviour would seriously affect the tranquillity of the victim.

¹⁵ A fine of up to 360 daily allowances ranging between €2 and €327 can be imposed instead of a prison sentence.

Denmark:

Article 102 of the Labour Code orders the employer to ensure proper conditions for a healthy and safe working environment; to organise work so as to allow the employees to exercise the rights and fulfil the obligations originating from their employment relationship; to provide the employees with the information and guidance necessary for the performance of work.

Article 103 of the Labour Code orders the employee to cooperate with his co-workers and to work and otherwise proceed without endangering the health and safety of others, without disturbing their work, causing financial detriment or causing damage to their reputation.

The Act on equal treatment of men and women, Consolidation Act No. 711 of 20 August 2002 is also referenced but is not elaborated on.

Germany:

Some forms of sexual harassment can be prosecuted under the Penal Code for example as (sexual) intimidation or insult, but there is no specific regulation.

Under certain conditions sexual harassment may be deemed as discrimination because of sex under section 611a Civil Law.

The Federal Civil Servant Act prohibits sexual harassment implicitly as disloyal conduct that can be prosecuted as infraction of discipline.

Hungary:

The Hungarian Criminal Code (Articles 174, 180, 197, 198 of the 4th Act of 1978) prohibits the “constraint” of a person “with violence or menace to do, not to do, or to endure something” where this “causes a considerable injury of interest”. It also prohibits the use of “an expression suitable for impairing honour or commits another act of such a type, a) in connection with the job, performance of public mandate or in connection with the activity of public concern of the injured party, b) before a great publicity”. Rape is criminalised as is indecent assault.

Ireland:

The Safety, Health and Welfare at Work Act 1989 imposes a duty on employers to ensure that employees are not harmed unreasonably, whether mentally or physically. This implicitly prohibits the subjection of employees to sexual harassment. The Unfair Dismissals Act 1977 and the Industrial Relations Act 1990 also implicitly deal with sexual harassment however how they regulate sexual harassment in practice is not elaborated on.

Lithuania:

Article 152 of the Lithuanian Criminal Code provides that:

“1. The one who has harassed the person with whom there are work or other relations of subordination, striving for sexual contact or satisfaction by taking vulgar or similar actions, making offers or hints has committed a criminal offence and shall be punished with a punitive fine, confinement or arrest.”

Luxembourg:

Luxembourg provided the following list of other legislation dealing with sexual harassment. Again the manner in which they regulate sexual harassment is not described.

- Article 4, paragraph. 3, point 5 of the law dated 12 June 1965 on collective agreements, as amended by the law dated 26 May 2000. As a result of the application of Article 4, paragraph 3, point 5, all collective agreements are obliged to provide for a declaration of principles concerning sexual harassment and the disciplinary sanctions which can be taken.
- The Law dated 17 June 1994 on Health and Safety of Employees at Work. This Law does not deal explicitly with sexual harassment.
- The Penal Code which without dealing specifically with sexual harassment represses certain types of behaviour which can be an instance of sexual harassment.
- Law dated 24 May 1989 on Employment contracts implicitly provides for tools to combat sexual harassment.

Malta:

The Gender Equality Act 2003 provides that it is an offence to subject another person to any act of physical intimacy; or to request sexual favours; or to do any act with sexual connotations (including spoken words, gestures or the production, display or circulation of any written words, pictures or other material) where the act, words or conduct is unwelcome to persons to whom they are directed and could reasonably be regarded as offensive or humiliating to the persons to whom they are directed.

The Netherlands:

The article on sexual harassment in the law on sexual harassment is part of the Working Conditions Act (1998). The implication of this is that, regarding all articles in this Working Conditions Act, employers are by definition liable for the wellbeing and care of their employees. The employer has an obligation to provide information about all the matters in relation to occupational safety and health (working conditions). One of these matters is the prevention of sexual harassment and (all forms of) aggression and violence. In doing this, both employer and employees become responsible for good working conditions. The employer also has the obligation to undertake a risk assessment. One of the topics in this assessment is 'sexual harassment'. On the basis of this assessment an evaluation and plans to tackle the issue have to be made. These plans must be approved by OSH services (Health and Safety Executive).

Portugal:

The Penal Code (Article 163 — Sexual Coercion) provides that:

Whosoever, using violence, or serious threat or after having rendered a person, for this purpose, unconscious or unable to resist, forces that person to endure or carry out, together or with a third party, indecent assault, shall be punished with a prison sentence of 1 to 8 years.

Whosoever, by abusing the power vested in him under a relationship of hierarchical, economic or employment dependency, forces another person, by means of an order or

threat not mentioned in the previous point, to endure or have sexual intercourse, anal sex or oral sex, with him or with a third party, shall be punished with a prison sentence of up to 3 years.

Article 177 — Aggravation further provides that:

“The sentences provided for in Articles 163 to 165 and 167 to 176 shall be aggravated by a third party, within their minimum and maximum limits, where the victim:

- (b) is in a relationship of hierarchical, economic or employment dependency with the agent and if the crime is perpetrated by taking advantage of this relationship.”

Slovenia:

Slovenia references the Constitution of the Republic of Slovenia (1991), the Act on Equal Opportunities for Women and Men (2002), the Act on the Implementation of the Principles of Equal Treatment (2004) and the Penal Code of the Republic of Slovenia (1994) which are all described as implicitly regulating Sexual Harassment / Harassment based on Sex.

Spain:

The Constitutional Act 10/1995 of 23 November on the Penal Code provides that:

“Whoever seeks favours of a sexual nature for him/herself or for a third party in the context of an ongoing or steady occupational or educational relationship or one involving the provision of services and with such behaviour objectively and seriously intimidates or places the victim in a hostile or humiliating situation shall be punished as a perpetrator of sexual harassment and punished with three to five months imprisonment or six to ten months fine. The penalty is harsher if the perpetrator in committing sexual harassment avails him/herself of a higher occupational educational or hierarchical rank or expressly or tacitly avows to jeopardise the victims legitimate expectations within the scope of such relationship in this case the penalty is 5 to 7 months imprisonment or 10 to 14 months fine or when the victim is particularly vulnerable for reasons of age, illness or personal situation in which case the penalty is up to 7 months imprisonment or 10 to 14 months fine or up to 6 months to 1 year imprisonment when in such cases the perpetrator commits the illicit act from a position of superiority as described above.

Sweden:

Sweden stated that The Work Environment Act (1978) is described as dealing with Sexual Harassment / Harassment based on Sex, however it is not elaborated on.

The UK:

The Protection from Harassment Act 1997 and, in Northern Ireland, the Protection from Harassment Order (1997) provide that:

“A person must not pursue a course of conduct — (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.

- (2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.”

Furthermore, the Health and Safety at Work Act 1974, and the Management of Health and Safety at Work Regulations 1999, impose obligations upon the employer to safeguard the health and safety of workers. Materially similar provisions apply in Northern Ireland. Subjection to sexual harassment would not be consistent with these obligations.

3.3.1 Number of Incidents

Five countries stated that a single incident was sufficient to constitute Sexual Harassment / Harassment based on Sex. **One** country stated that a repeated incident was required (the UK) while **five** countries stated that the number was not specified.

3.4 Case Law

Eleven countries specified that they had Case Law in their country dealing with sexual harassment. The evolution of Case Law relating to Sexual Harassment / Harassment based on Sex in the relevant countries is described in the following paragraphs. Finland and Slovenia stated that there have been individual cases but there is no established practice. Any issues or problems with the legislation emerging from Case Law are also indicated.

Belgium:

There is no jurisprudence as yet relating to sexual harassment under the law of 4th August 1996. Nevertheless the Ministry provided an extensive listing of Case Law relating to sexual harassment which has developed under other legislation. Some of the more important issues which have arisen in this connection are highlighted below.

It has been accepted (**Labour Tribunal Dinant: 1.6.1998 (Chr. D.S. 1990, 138 obs, J. Jacqmain)**) that injuries resulting from a physical attack on a worker by her superior in the course of sexual harassment were caused by an “industrial accident” as was (decree of 19.1.1914 (Pas., 19 II, 36), Court of Appeal) the pregnancy of a worker “seduced” by her foreman by moral constraint... In **Chr. DS 2001, 479 (obs. J. Jacqmain)**, the Labour Tribunal at Charleroi (24.1.2000) accepted that sexual harassment amounted to a form of sex discrimination while in (**Chr D.S. 1989, No laughing Matter**), the Labour Court at Gand (1.7.1998) ruled that sexual harassment which took the form of the display of pornography by a male worker to a subordinate young female worker constituted serious grounds for the former’s dismissal.

France:

Information provided in relation to French Case Law indicates that very high standards are set as regards the definition of acts of sexual harassment and that the compensation awarded to the victim by the courts is regarded by the respondents as insufficient.

Germany:

The German respondents indicate that problems associated with the Case Law include the relative rarity of proceedings and problems of proof. In addition, the courts have had problems with the application of the legal definition of harassment. Case Law mostly refers to actions of the harasser for protection against unwanted dismissal or other sanctions taken by the employer.

Ireland:

The Irish Equality Authority provided an extensive listing of relevant cases. Some of the key points arising from the Case Law are mentioned here.

In **A Garage Proprietor v A Worker [EEO 2/1985]** the Labour Court declared that, although Sexual Harassment was not expressly dealt with in the Employment Equality Act 1977 (which prohibited discrimination on the grounds of sex and marital status): “freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect. The Court will, accordingly, treat any denial of that freedom as discrimination within the terms of the Employment Equality Act 1977.” In **A Worker v a Company [EEO 3/91]** the Labour Court indicated that it would recognise a claim of same-sex sexual harassment, although “[w]here two persons of the same sex are involved, it is the Court’s view that particular circumstances must be established to justify the claim that the conduct of one constitutes sexual harassment of the other.” In the same case, the Labour Court ruled that an employer could be liable for sexual harassment by a non-employee: “It is irrelevant that the perpetrator of the harassment was not an employee of the Company. He was on the Company premises with the agreement of the employer and the employer was in a position to protect the worker.” And in **A Company v A Worker [EEO 9/92]** the Labour Court ruled that, where an employer had no procedures, or inadequate procedures, it would be liable for failure to protect employees from sexual harassment. This approach was changed in **BC v A Health Board ([1994] ELR 27)** in which the High Court ruled that employers would be liable only for sexual harassment committed “within the scope of” the harasser’s employment (there holding the employer not liable for sexual assaults perpetrated by employees on another employee). The narrower approach has been applied in a number of subsequent decisions, although the employer remained liable where the sexual harassment constitutes an abuse of power given to the perpetrator by the employer (**A Company v A Worker [1996] ELR 85**).

Italy:

In general the employer is under an obligation to protect the moral sphere of the worker in the company and to ensure that the exercise of hierarchical power is informed by principles of correctness. The Italian respondents highlight the absence of specific regulations as being problematic but report judicial decisions to the effect that **(Civil Court Of Cassation, Labour Section, 19/12/1998 n. 12717) on-the-spot dismissal is legitimate for Sexual Harassers; as well as a number of cases on remedies for Sexual Harassment (Court of Pisa, labour section, 10 April 2002. 80,000.00 euro); (Court of Forlì, labour section, 15 March 2001) 33,053.24 euro; (Court of Pinerolo, labour section, 6 February 2003, n. 30), 30,340.00 euro; (Court of Pisa, 3 October 2001) 15,493.71 euro.**

Latvia:

A few cases (oral) have been reviewed by the Latvian National human rights office on this topic, resulting in legal consultations and recommendations. Until now there have been no

explicit provisions in force in this field so it is impossible for victims to submit applications to the court and gain compensation in such cases.

The Netherlands:

Case Law relating to sexual harassment was documented in recent years in a study by Mr. R. Holtmaat. An important starting point in this study was the issue of 'good employership' as stated in Article. 6.11 of the Civil Law. The study gives a description of the verdicts in about 100 cases. The Civil Service Law forces Civil authorities to arrange these Codes.

Portugal:

The existing case law on sexual harassment in the workplace relates primarily to situations of harassment by colleagues although there are some cases in which the perpetrator is the employee's hierarchical superior. The case law was established under the legislation in place **before** the current Labour Code and so is of limited relevance to this research. Prior to Law no 99/2003, Sexual Harassment / Harassment based on Sex was not legally defined and there was little legal regulation of it as a result.

Spain:

The most significant Spanish case on sexual harassment was the decision of the **Constitutional Court 13-12-1999** in which that Court defined sexual harassment and recognised its implications for **fundamental rights** such as the right to respect for personal dignity (Article 10.1 of the Spanish Constitution), the right to personal privacy (Article 18.1), the right to physical and moral integrity (Article 15), the right to non discrimination (Article 14).

Sweden:

The problem of proof was highlighted as a difficulty by the Swedish respondents.

The UK:

The **sex discrimination provisions** of domestic law do not expressly render sexual harassment unlawful. This gap has been partially filled by expansive interpretation of the concept of direct discrimination in the UK and, in EU law terms, by a European Commission Recommendation (EEC/92/131) and associated **Code of Practice (92/131/EEC) on the Dignity of Women and Men at Work**.

The EC Recommendation adopts the following definition of sexual harassment:

Conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work [which] is unacceptable if:

- (a) such conduct is unwanted, unreasonable and offensive to the recipient;
- (b) is used as a basis for an employment decision; and/or
- (c) such conduct creates an intimidating hostile or humiliating working environment for the recipient.

The **EC Code of Practice further** defines sexual harassment as unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work;. This can include unwelcome physical, verbal or non-verbal conduct. The EAT endorsed this definition in **Wadman v Carpenter Farrer Partnership ([1993] IRLR 374) and. British Telecommunications plc v Williams ([1997] IRLR 668, EAT).**

The UK courts have accepted that sexual harassment can amount to unlawful direct sex discrimination if the harasser treats a woman less favourably than he would have treated a man and does so on grounds of her sex (**Porcelli v Strathclyde Regional Council [1986] ICR 564, [1986] IRLR 134, Ct of Sess**). They have accepted that a single act, if sufficiently serious, may amount to sexual harassment (**Bracebridge Engineering Ltd v Darby [1990] IRLR 3, EAT**) and that coarse remarks of a sexual nature may amount to sexual harassment (**Chief Constable of the Lincolnshire Police v Stubbs [1999] IRLR 81, EAT; Reed and Bull Information Systems Ltd v Stedman [1999] IRLR 299, EAT**). In **MacDonald v Min of Defence (2003)** the House of Lords ruled that employers may be liable for acts of harassment committed by an employee on a colleague, but will not ordinarily be liable to acts of harassment committed against their 3rd parties.

3.5 Planned Legislation

As mentioned **Directive 2002/73/EC** explicitly prohibits Sexual Harassment / Harassment based on Sex. It has to be implemented across Member States by October 2005, in view of this, and given the relatively patchy framework of legislation currently in place, it is not surprising that a significant number of responding states have plans in place to amend existing legislation or to introduce new legislation dealing with Sexual Harassment/ Harassment based on Sex. Many of the legislative changes planned and outlined below are intended to bring the law in the relevant state into line with **Directive 2002/73/EC**. Others such as that planned in Austria and Northern Ireland are the result of domestic agendas.

Austria:

Austria indicated that there was federal legislation, which can be used to change the Criminal Code, the 1975 Code of Criminal Procedure, the Courts Act, the Extradition and Judicial Assistance Law and the Law on the Treatment of Offenders (Criminal Law Amendment Act 2004) which establishes the facts of a case of sexual harassment. According to Section 218 of the 1975 Code of Criminal Procedure:

- (1) Anyone harassing a person as a result of a sexual act
 - (i) Against this person, or
 - (ii) In front of this person, in circumstances in which this causes justifiable offence, is sentenced to a prison term of up to six months or fined up to 360 per diem allowances, if the act is not punished more harshly under the terms of another legal provision.
- (2) Anyone committing a sexual act publicly and in circumstances in which this behaviour, through direct detection, causes justifiable offence must also be punished.
- (3) In the case of Par. 1, the perpetrator is only to be pursued on the application of the harassed person.

In addition, Austria is planning federal legislation to implement Directive 2002/73/EC. The legislation (Equal Treatment Act — GIBG) Part 1 Equal treatment in the working environment section 1 Equal treatment of men and women provides (section 6, section 7, section 41 & section 42) that:

- (1) Discrimination based on sex also occurs if a person:
 - (i) Is sexually harassed by his/her actual employer.
 - (ii) Is discriminated against by his/her employer in such a way that the employer fails to take the appropriate remedial action, based on legislation, the standards of collective labour law or the employment contract in the event of harassment by a third party.
 - (iii) Is harassed by a third party in the context of his/her employment relationship.
 - (iv) Is harassed by a third party outside of the employment relationship.
- (2) Sexual harassment occurs if conduct of a sexual nature [or sex-based conduct] is perpetrated and this conduct is an affront to a person's dignity and is unwanted by, inappropriate or offensive to the affected person and
 - (i) Creates an intimidating, hostile or humiliating working environment, or
 - (ii) If the affected person refuses or tolerates sex-based conduct on the part of the employer or superiors or colleagues, and this forms the basis, either overtly or tacitly, for a decision that affects this person's access to vocational training, employment, further employment, promotion or payment or forms the basis for another decision made in the working environment.
- (3) Discrimination also occurs in the instructing of the sexual harassment of a person.

Harassment

Section 15 covers sexual-orientation harassment in materially identical terms (also discrimination based on race, ethnic origin, religion, belief or age) while Section 8 of the Federal law concerning equal treatment within the context of the Federal Government (Federal Equal Treatment Act — B-GIBG) provides similar prohibitions on sexual harassment in the case of public service employees.

The Czech Republic:

The Czech Republic has in the pipeline a single anti-discrimination act based on the Irish model. In addition, plans are well under way to implement the **Directive 2002/73/EC**.

Estonia:

The Estonian respondents indicate that their Gender Equality Draft Act provides a definition of sexual harassment but do not indicate what that definition is.

Finland:

The amended Act on equality between women and men (1995) is currently being updated in accordance with the **Directive 2002/73/EC**.

Germany:

The Federal Government is at present preparing a bill for the common conversion of **Directive 2002/73/EC**, Directive 2000/78/EC¹⁶ and Directive 2000/43/EC¹⁷.

Ireland:

The Equality Bill 2004 amends the provision for harassment / sexual harassment in line with requirements under **Directive 2002/73/EC**. This legislation will amend the Employment Equality Act 1998 and the Equal Status Act 2000 and will bring into effect new provisions in line with requirements under EU Directives on equality.

Italy:

The Italian respondents provided a list of new legislation, however the relationship or otherwise of this legislation to the implementation of Council **Directive 2002/73/EC** is not specified.

The Netherlands:

When **Directive 2002/73/EC** is implemented sexual harassment will be a form of direct (gender) discrimination and therefore forbidden.

Portugal:

Equality and non discrimination issues are currently under review.

Slovak Republic:

The draft bill of the Act on Anti-discrimination has already been approved by Cabinet (Government) and will be submitted for consideration in Parliament in March 2004. It is described by the Slovak Ministry as fully transposing both anti-discrimination Directives (2000/43/EC and 2000/78/EC) and also therefore recognises the definition of harassment. There are also plans that the new Antidiscrimination Act will be amended in accordance with the **Directive 2002/73/EC**.

Spain:

There are plans to transpose **Directive 2002/73/EC** before 5 Oct 2005.

Sweden:

When **Directive 2002/73/EC** is implemented sexual harassment will be a form of direct (gender) discrimination and therefore forbidden.

The UK:

Regulations will be prepared in order to implement **Directive 2002/73/EC** before 5 October 2005. In Northern Ireland a Single Equality Act is planned.

¹⁶ Directive 2000/78/EC Establishing a general framework for Equal Treatment in Employment and Occupation.

¹⁷ Directive 2000/43/EC Implementing the Principle of Equal Treatment between persons irrespective of Racial or Ethnic Origin. Information relating to the definition of sexual harassment that will result from this is not provided.

3.6 Working Definitions

This section of the questionnaire was designed to establish the extent to which working definitions used by trade unions, employee organisations and employer organisations accorded with those incorporated in the relevant legislation of the surveyed countries. **Eleven** organisations (one employee organisation, five trade unions and five employer organisations) in six countries (Estonia, Greece, Latvia, the Slovak Republic, Slovenia and the UK) stated that they had no working definition of Sexual Harassment / Harassment based on sex. In the UK, the Citizens Advice Bureaux note that it would consider individual circumstances of cases against section 1 (1) (a) of Sex Discrimination Act 1975.

Of the countries that had working definitions dealing with Sexual Harassment/ Harassment based on Sex, **thirty** organisations in **seventeen** countries stated that those definitions had their sources in legislation (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Spain and Sweden).

Comparative analysis indicated that the legislation referenced coincided with the legislation reported by the Ministerial bodies in most cases. However in a number of countries additional information on relevant legislation was provided as follows.

Denmark:

Denmark's employee organisation, HK, alluded to Section 2B of the Danish Salaried Employees Act on irrelevant termination and Section 3 on compensation owing to a breach of employment. They also cite the Equal Treatment Act: Section 4 on the employer's obligation to give equal treatment to women and men and sections 14 and 15 on notification of remuneration. Sections 1,15,16, 26, 28,38 and 40 of the Working Environment Act, Council Resolution of 29 May 1990 on the Protection of the dignity of women and men at work and the Commissions recommendation of 27 November 1991 on the Protection of the dignity of women and men at work are also cited. Under the Danish Salaried Employees Act, sexual harassment comprises many sexual advances, such as unwanted physical contact, a touch or a pat, unwelcome insinuations, jokes, comments on one's appearance or rude verbal assaults, obscene or compromising invitations, pornographic pictures at the workplace, demands for sexual services and physical assault.

Finland:

Finland's two employee organisations (AKAVA and SAK) reference the Guidelines made in cooperation with social partners. Sexual Harassment is defined as "unwanted and one sided." Sexual harassment becomes harassment especially after the subject has stated that he or she finds it offending or distasteful. The basis is the persons own experience. Similarly the Finnish Confederation of Salaried Employees (STTK) and the Employers Confederation of Service Industries reference the central labour market organisation's guide to preventing harassment. They define sexual harassment as "unwanted one sided basis based on a person own experience". It depends on the person, situation, how harassment is experienced, the offender and whether he/she is a colleague, supervisor, or customer. Harassment in its most extreme forms (rape or attempted rape) is seen as a crime.

France:

In France the trade union Force Ouvrière cites Article L.122-46 of the Labour Code. It defines sexual harassment as “Acts of harassment by anyone, the aim of which is to obtain favours of a sexual nature for his own benefit or for the benefit of a third party.”

Italy:

In Italy the General Italian Confederation for Trade refers to the definition in Community legislation (EU Commission recommendation of 27/11/1991, resolution of the EU Parliament of 11/2/1994, **Directive 2002/73/EC**).

3.7 Summary: Legislative Provisions, Case Law and Working Definitions

It is evident from the foregoing that there is, across the states surveyed, a wide variety of legislation in place to deal with Sexual Harassment / Harassment based on Sex. The legal tools by which such behaviour can be controlled or penalised are not limited to provisions which expressly regulate harassment in the employment context. While most of the respondent states now have such legislation in place, others regulate sexual harassment implicitly as a form of sex discrimination (Estonia, Italy, Spain, and the UK). Where Sexual Harassment / Harassment based on Sex is expressly defined by legislation the definitions (where provided) appear consistent with that in **Directive 2002/73/EC** embracing verbal as well as physical forms of behaviour and are not restricted to quid pro quo harassment but also embrace “hostile environment” harassment.

Differences that do appear between the respondent states relate to the regulation of sex-based conduct as a form of sexual harassment and, to a lesser extent, the coverage of harassment connected with transsexualism / gender reassignment.

There was a wide variety of responses across the respondent states as to the regulation of Sexual Harassment / Harassment based on Sex by legislation other than that in the employment field specifically directed towards it (or, more generally, at sex discrimination). Such tangential coverage is of most importance where the “first line” of legislative provisions is either absent or for some reason is less than comprehensive (as, for example, in the UK where sexual harassment is only regulated under the Sex Discrimination Act 1975 where it amounts to less favourable treatment on grounds of the victim’s sex).

Where member states indicated that it did exist, it consisted either of criminal prohibitions (Austria, Finland, Hungary, Lithuania, Portugal, Spain and the UK); gender equality legislation (Belgium, Denmark, Ireland and Malta) or health and safety provisions (Ireland, Luxembourg, the Netherlands and the UK).

Questions as to what exactly sexual harassment meant in this context tended to be less illuminating than in relation to legislation whose primary or significant purpose was connected with sexual harassment. Where, for example, the legislation at issue is concerned with health and safety, the question posed under it will be “is this conduct damaging” rather than “does it amount to sexual harassment (much less, does it cover same-sex harassment or harassment connected with gender reassignment). As far as penal provisions are concerned, they can be of value in addressing the most serious episodes of sexual harassment but are likely to place

the threshold of behaviour required too high to be of much use in dealing with low level, even if persistent, harassment which takes the form of the display of inappropriate material or the making of sexualised, though unthreatening remarks, as distinct from gross physical touchings.

The overall impression conveyed by the survey of existing legislation and Case Law on Sexual Harassment / Harassment based on Sex is that most respondent states have legal tools by which such conduct can be controlled and/ or penalised, but that there is a lack of simplicity and clarity about the relevant law. The implementation of Council **Directive 2002/73/EC** appears set to improve this position. The Czech Republic, Estonia, Finland, Germany, Italy, Latvia, the Netherlands, the Slovak Republic, Spain, Sweden and the UK all have plans to amend domestic legislation to transpose the Directive while Austria, Belgium, Cyprus, Hungary, Ireland, Lithuania, Luxembourg, Malta, Poland, Portugal and Slovenia already have legislation in place which appears to deal with sexual harassment broadly in line with the **Directive 2002/73/EC**. The position in Denmark and France is unclear, those states not having provided any definition of sexual harassment as it is currently regulated, nor details of any proposed reforms.

4.1 Introduction

Ministries / Government Bodies and specialist bodies were required to provide information on Codes of Practice dealing either implicitly or explicitly with Sexual Harassment / Harassment based on Sex. For the purposes of this research a Code of Practice is¹⁸ *“a guide to provide practical guidance to employers, employers’ organisations, trade unions and/or employees on a specific issue. A Code of Practice does not necessarily impose any legal obligation in itself nor is it necessarily an authoritative statement of the law. However, it does seek to promote the development of and implementation of policies and procedures”*.

Eleven countries stated that such Codes were in place (Austria, Finland, Ireland, Italy, Malta, Lithuania, Luxembourg, the Netherlands, Slovenia, Spain and the UK). However, only **eight** (Austria, Finland, Ireland, Italy, Malta, the Netherlands, Slovenia and the UK) provided specific details of the Codes of Practice that are in place. The German Ministry (Bundesministerium für Familie) provided a general remark on Codes of Practice stating that: *companies, especially larger ones, and officials have some plant agreements, service agreements and similar instruments that deal with and are intended to prevent sexual harassment. These, to an extent, regulate the handling of cases of sexual harassment by making the complaint procedure concrete or by appointing contact persons. Overall this happens only in a small share of workplaces.*

Eleven countries stated that they did not have Codes of Practice in place. Two countries did not respond to this question (Belgium and Portugal).

Of the eleven countries that stated they had Codes of Practice in place, **four** countries stated that their Codes of Practice were legally binding (Austria, Italy, Lithuania and the Netherlands). Codes in Ireland and the UK can be taken into account by tribunals. **Three** countries stated their Codes were not legally binding (Finland, Luxembourg and Malta). Slovenia and Spain did not specify whether the Codes were binding or not.

4.2 Codes of Practice dealing with Sexual Harassment / Harassment Based on Sex

The following section highlights the eight countries that provided details on their Codes of Practice.

Austria:

The Austrian Ministry, (Bundesministerium für soziale Sicherheit und Generationen), stated that there are both voluntary company-internal agreements and voluntary company guidelines. These Codes of Practice are prepared by and agreed between company and Works Council. They are both legally binding. Generally, the legal definition of harassment is used in these Codes.

¹⁸ Guidance Notes Questionnaire on Sexual Harassment in the Workplace, January 2004 p2

Finland:

The Office of the Ombudsman for Equality stated that there is a Code of Practice “Good behaviour allowed — Harassment Forbidden” (2000), which was prepared by the Finnish trade unions and employer organisations. This code is not legally binding. Details of the definition of Sexual Harassment / Harassment based on Sex included in the Code were not provided.

Ireland:

There are a number of Codes of Practice in Ireland.

- The Code of Practice on Sexual Harassment and Harassment at Work 2002, which was prepared by the Irish Equality Authority, requires employers to have in place accessible and effective policies and procedures to deal with sexual harassment.
- The Code of Practice on the Prevention of Workplace Bullying 2002 prepared by the Health and Safety Authority/ Department of Enterprise, Trade and Employment requires organisations to have effective procedures for addressing allegations of workplace bullying.

While neither of the Codes of Practice above are legally binding, they may be admitted as evidence in any proceedings.

- A Policy on Harassment, Sexual Harassment and Bullying, was prepared by the Irish Defence Forces in 1996. It addresses complaints and redress procedures but is not legally binding.

The definitions used in the Codes of Practice are broadly in line with the definition in the Employment Equality Act 1998.

Italy:

A Code of Conduct in the Fight against Sexual Harassment for Employees of the Ministry of Labour was prepared by the Italian Ministry of Labour in 1999. Its objective is to prevent sex-based harassment and, where it occurs, to guarantee immediate and simple recourse to adequate procedures to tackle the problem and prevent its repetition. It provides for a “personal counsellor”, a competent person outside the work structure who can intervene informally to help eliminate workplace unease and restore a peaceful working environment and, when the situation is not resolved through conciliation, to assist the person who wishes to make a formal complaint to management and initiate legal proceedings. This Code is legally binding.

A Code of Conduct for the Personnel of the Civil Administration of the Ministry of the Interior with regard to the measures to take in the Fight against Sexual Harassment in order to guarantee the Protection of the Dignity of Men and Women in the Working Environment was prepared by the Ministry of the Interior in 2003. The Code is legally binding and aims to prevent all undesired action or conduct with a sexual connotation which causes offence to the dignity of the persons who suffer it and furthermore to guarantee the conditions required for safeguarding women and men in the working environment.

In Italy the definitions of sexual harassment applying in the Codes of Practice encompass the following:

1. Every unwanted action or behaviour, non-verbal or verbal, which has a sexual connotation or is based on sex and which, in itself or because of the perpetrator's persistence, causes offence to the dignity and liberty of the person who suffers it, or is liable to create an intimidating, hostile or humiliating working environment for them.
2. In particular, conduct such as the following amounts to sexual harassment:
 - (a) explicit or implicit requests for sexual services or attention of a sexual nature which are unwelcome and offensive for those who are subject to it;
 - (b) threats, discrimination and intimidation suffered as a result of repelling sexually-based conduct which directly affect the establishment, fulfilment or conclusion of the employment relationship;
 - (c) annoying or undesired physical contact;
 - (d) offensive verbal remarks about the body or sexuality;
 - (e) improper and provocative sexually-based gestures or winking;
 - (f) display in the workplace of pornographic material;
 - (g) writing and verbal expressions on the presumed inferiority of persons because they belong to a given sex or which are disparaging because of differences in the expression of sexuality.

Malta:

It is planned that the National Commission for the Promotion of Equality, in consultation with the relative stakeholders including the unions, will establish a standardised Code of Practice to provide against sexual harassment at the workplace at a national level.

A Policy on Sexual Harassment has been developed by the University of Malta which establishes a complaints procedure but is not legally binding. Policies on sexual harassment have also been developed by the Sedqa Agency¹⁹ and Maltacom²⁰ both of which are also described as establishing a complaints procedure.

Although the definition varies slightly from one Code of Practice to the other, they provide that: Sexual harassment is unwanted behaviour of a sexual nature affecting the dignity of women and men at the place of work. Sexual harassment may take various forms — including verbal, non-verbal, and physical and *quid pro quo* types.

The Netherlands:

Employers have an obligation to have a policy to prevent sexual harassment and at the same time to prevent all kinds of aggression and violence. A policy for after care in case of incidents has also to be developed. This has led to the fact that most of the bigger organisations in the Netherlands have policies on these topics. In the Explanatory Statement (in relation to the articles on sexual harassment) a model for the institution of a 'trust person or confidential person' is given.

¹⁹ The Maltese Sedqa Agency was mandated by Cabinet to provide prevention and care services in to increase awareness of and treat, drug and alcohol abuse.

²⁰ Maltacom Group is a provider of telecommunications and related services on the Maltese Islands

In practice, this has led to quite a lot of sectors and (groups of) organisations developing tailor-made 'codes of practice'.

For example, the Netherlands Interior Ministry has produced an "Integrity Code" whose definition of sexual harassment stems from the Working Conditions Law regarding Sexual Harassment, Aggression and Violence and Bullying at work, 2000.

Slovenia:

In 2003, the Office of the Republic of Slovenia for Equal Opportunities prepared an example of a company's employer policy against sexual harassment in the workplace. This policy was sent to large and medium size companies.

The UK:

In the UK the Code of Practice on Sex Discrimination in Employment 1985, has been produced by the Equal Opportunities Commission (EOC) and a Code of Practice on Sexual Harassment at Work by the Equality Commission for Northern Ireland in 1976.

- The EOC's Code of Practice recommends that employers take particular care to deal effectively with all complaints of discrimination, victimisation or harassment. It further recommends that all reasonable practical steps be taken to ensure a standard of conduct or behaviour is maintained which prevents members of either sex from being intimidated harassed or otherwise subjected to unfavourable treatment on the grounds of their sex, and that particular care is taken to ensure that an employee who has in good faith taken action under the Sex Discrimination Act does not receive less favourable treatment than other employees, for example, by being disciplined or dismissed. The Code, which is not legally binding but which can be introduced as evidence in all sex discrimination cases, provides that employees should be advised to use the internal procedures where appropriate, but that this is without prejudice to the individual's rights to apply to an industrial tribunal.
- The EOC also provides guidance for employers dealing with sexual harassment in the workplace which defines sexual harassment at work as unwelcome physical, verbal or non-verbal conduct of a sexual nature. It further provides that sexual harassment includes demeaning comments about a person's appearance; indecent remarks; questions about a person's sex life; sexual demands by a member of the same sex or opposite sex; name-calling with demeaning terminology which is gender specific; and unwelcome physical contact and other conduct of a sexual nature that creates an intimidating, hostile, or humiliating working environment. The Code is not legally binding.
- Northern Ireland's Code of Practice on Sexual Harassment at Work sets out measures to prevent sexual harassment and procedures for addressing it. Like the UK Code, it is not legally binding but may be taken into account by any tribunal or court in determining a complaint of sexual harassment. A Model Harassment Policy and Procedure 2003, was prepared by the Equality Commission for Northern Ireland which describes employers' responsibilities. Again, this is not legally binding. The Northern Ireland Code specifies that sexual harassment is unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work, and that this can include unwelcome physical, verbal or non-verbal conduct.

4.3 Activities implicitly / explicitly included in definitions used in Codes of Practice

Respondent organisations were required to specify whether the definitions applying in the Codes of Practice either implicitly or explicitly included specified activities, and whether the definitions extended to same-sex sexual harassment, harassment connected with transsexualism / transgenderism and sex-based conduct. The responses were difficult to tabulate because some have formal legal effect and are readily available, for example the UK's Codes of Practice dealing with sexual harassment issued by the specialist bodies, while others cover a multitude of policies determined and applicable at workplace level, for example in Austria and Germany. What can be said from the responses detailed in this section of the report is that all of the respondent bodies except those from Austria stated that their Codes of Practice covered verbal, non verbal and physical activities. Austria and the UK did not respond to the question whether the definitions of sexual harassment in their Codes of Practice included same-sex sexual harassment, harassment connected with transsexualism or transgenderism, or sex-based conduct. The responses from the other states are set out in the table 4.1.

Table 4.1
Types of Harassment in Codes of Practice

Country	Same-Sex Sexual Harassment	Transsexualism / Transgenderism	Sex-based Conduct
Finland	✓	✓	✗
Ireland	✓	✗	✓
Italy	✓	✓	✓
Malta	✓	✓	✗
The Netherlands	✓	✓	✓
UK (Northern Ireland) ²¹	No response	✗	✓
TOTAL	5	4	4

Ireland and the Netherlands stated that a single incident was sufficient under their Codes of Practice to amount to Sexual Harassment / Harassment based on Sex. Finland, Italy and Malta stated that no particular number of incidents was required to amount to sexual harassment. No organisation stated that repeated incidents were necessary, while neither the UK nor Austria provided a response to this question.

4.4 Summary: Codes of Practice

Codes of Practice can be of particular importance where the legislation upon which they are based does not explicitly define sexual harassment or (as in the UK), even provide explicitly that it is regulated by law. In such cases Codes of Practice, particularly in cases in which they can be taken into account by courts and tribunals, can help to give meaning in the real world

²¹ Note: The UK Organisations did not reply however the Equality Commission for Northern Ireland specified that the definition as per their Code of Practice took sex based conduct into consideration.

to abstract legislative provisions. Where, on the other hand, the legislation dealing with sexual harassment provides detailed definitions and explanations of sexual harassment, Codes of Practice are less necessary in definitional terms. They may still, however, be of real significance in providing guidance as to how sexual harassment can be prevented and how it ought to be dealt with when it occurs. Again, such Codes may be particularly helpful where they may be taken into account by courts or tribunals determining legal issues arising from sexual harassment.

5 Collective Agreements

5.1 Membership of Collective Agreements

Trade unions, employee organisations and employer organisations were required to indicate whether they were party to any Collective Agreements which deal specifically with Sexual Harassment / Harassment based on Sex. **Eleven organisations** from **eight countries** stated that they were party to such agreements. These organisations comprised **eight** trade unions / employee organisations (two from Denmark and one each from the Czech Republic, Italy, Luxembourg, Poland, Spain and the Netherlands) and **three** employer organisations (Ireland, Denmark and the Netherlands).

Thirty four responding organisations (fifteen employer organisations, twelve trade unions and seven employee organisations) **in fifteen countries** (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Latvia, Lithuania, Poland, Malta, Slovak Republic, Sweden and the UK) stated that they were not party to Collective Agreements which dealt specifically with Sexual Harassment / Harassment based on Sex. The Polish trade union (the Polish Alliance of Trade Unions) stated that such Collective Agreements are in place, but that they do not have any further information or data concerning this issue. This seemed to be the case for several of the responding organisations. No employer organisations or trade unions replied to this section in Hungary, Portugal and Slovenia.

Table 5.1

Respondent organisations membership of Collective Agreements

Country	Organisation	Organisation type	Is the organisation party to a Collective Agreement?
Austria	AK	Employee Org	No response
	OGB	Trade Union	✗
	WKO	Employer Org	✗
Belgium	ACLVB	Trade Union	✗
	ACV/CSC	Trade Union	✗
Cyprus	DEOK	Trade Union	✗
	PASYDY	Employee Org	✗
	Employers and Industrialists Federation	Employer Org	✗
Czech Republic	CMKOS	Trade Union	✓
Denmark	LO	Trade Union	✓
	HK	Employee Org	✓
	LDA	Employer Org	✓

Table 5.1—continued

Country	Organisation	Organisation type	Is the organisation party to a Collective Agreement?
Estonia	Confederation of Estonian Trade unions	Trade Union	✗
	Estonian Employees Union Confederation	Employee Org	✗
Finland	AKAVA	Employee Org	✗
	SAK	Employee Org	✗
	STTK	Employee Org	✗
	Employers Confederation of Service Industries	Employer Org	✗
	Confederation of Finnish Industries and Employers	Employer Org	✗
France	Confederation General du Travail	Trade Union	✗
	force-ouvriere	Trade Union	No response
Germany	Veriente Dienstleistungsgewerkschaft e. V Bundesverwaltung	Trade Union	✗
	BDA	Employer Org	✗
Greece	GESEEBEE	Employer Org	✗
Ireland	IBEC	Employer Org	✓
Italy	General Italian Confederation for Trade	Trade Union	✓
	Confindustria	Employer Org	No response
Latvia	Latvian free Trade Union	Trade Union	✗
	Latvian Employers Confederation	Employer Org	✗
Lithuania	Lithuanian Confederation of Trade Union's/ Women's Centre	Trade Union	No response
	Lithuanian Confederation of Industrialists	Employer Org	✗
Luxembourg ²²	CEPL	Employee Org	✗
	LCGB	Trade Union	✓
Malta	UHM	Trade Union	✗
	Malta Employer Association	Employer Org	✗
The Netherlands	CNV	Trade Union	✓
	FNV	Trade Union	No response
	VNO-NCW	Employer Org	✓
	MKB NL	Employer Org	✗
	ROP Council for Governmental Staff Policy, Min of Internal Affairs and Kingdom Relations-VSO Association of Public Sector Employers	Employer Org	No response

²² In Luxembourg, the LCGB mentioned two Collective Agreements which deal specifically with sexual harassment and one of these Agreements has a general obligation.

Table 5.1—continued

Country	Organisation	Organisation type	Is the organisation party to a Collective Agreement?
Poland	All Poland Alliance of Trade unions	Trade Union	No response
	Polish Confederation of Private Employers	Employer Org	✘
Slovak Republic	Confederation of Slovak Trade Union	Trade Union	✘
	Federation of Employer's Associations of the Slovak Republic	Employer Org	✘
Spain	Unión General de Trabajadores (UGT)	Trade Union	✓
Sweden	LO	Trade Union	✘
	SACO	Trade Union	✘
	TCO	Trade Union	No response
	Arbetsgivarverket	Employer Org	✘
	Svens ktnaringsliv.	Employer Org	✘
The UK	National Association of Citizen's Advice Bureaux	Employee Org	✘
	CBI	Employer Org	✘

Respondent organisations were also asked to state if these Collective Agreements defined Sexual Harassment / Harassment based on Sex. Responding organisations from **six countries** provided definitions of sexual harassment from their Collective Agreements (the Czech Republic, Denmark, Ireland, Luxembourg, the Netherlands and Spain. In Ireland, where the respondent states that there are “numerous” relevant Collective Agreements the definition is described as being the same as that contained in the legislation (Employment Equality Act 1998).²³

5.2 Details of Collective Agreements

The Czech Republic:

One of the responding trade unions from the Czech Republic (CMKOS) states that its definition is that which is contained in the amendment to the Labour Code which entered into force on 1st March 2004 viz., Sexual harassment means behaviour of a sexual nature in any form rightly perceived by the respective employee as unwelcome, inappropriate or insulting and the intention or impact of which leads to reducing the dignity of the physical person or to creation of hostile or disturbing environment at the workplace or may be rightly perceived as a condition for decision influencing performance of rights and duties following from employment relationship.

²³ As the definitions contained in Collective Agreements come directly from legislation in the majority of cases the types of harassment and number of incidents of sexual harassment are the same as described in section 3 on Employment Legislation.

Denmark:

Both the Danish trade union (LO) and the employer organisation (DA) cited the Cooperation Agreement, May, 1999 which recommended that organisations address sexual harassment within their personnel policies viz. “the parties hereto moreover recommend that the individual enterprise, through its personnel policies, seeks to ensure that the environment is free from unwanted conduct of a sexual nature or other”. The Cooperation Agreement defines sexual harassment as “undesired conduct of a sexual or otherwise gender-specific nature which is likely to be offensive to the dignity of men or women at the workplace”.

The employee organisation, HK, referenced the Agreement on Job Satisfaction and a Healthy Psychological Working Environment which was entered into by the Central Organisation of Industrial Employees in Denmark and the Confederation of Danish Industries in 2001. This psychological working environment agreement (which includes sexual harassment) sheds light on the fact that several tools are available for resolving problems arising at the company. They include:

- If a general problem occurs, the obvious approach would be to submit the issues for discussion by the liaison committee in order to define the existing inappropriate behaviour for the purpose of determining the measures that need to be initiated for eliminating this undesirable behaviour.
- If the occasion should arise, the Central Organization of Industrial Employees in Denmark and the Confederation of Danish Industries have a joint corps of consultants who can be summoned to help set the process in motion.
- If a tangible, general disagreement arises, the consultants should be summoned for the purpose of settling the disagreement. If they are unable to do so, the parties are under an obligation to settle the matter through industrial arbitration.
- If one party does not wish to participate in this process, this constitutes a breach of the agreement, which can be brought before the Labour Court.

On the other hand, cases involving injury / harassment suffered by an individual should be brought before the civil courts.

None of the above-mentioned cases — i.e., a bad psychological working environment or sexual harassment — justify the implementation of a labour conflict.

The Agreement specified that, in the event of a “general disagreement” complaints of sexual harassment should be settled at the enterprise in question by the liaison committee or the occupational safety organisation. If the problem is not solved at workplace level, the Agreement sets out a procedure which includes the possibility of industrial arbitration. If one of the parties does not participate in this regard, this will be viewed as a breach of the agreement and may be brought before the industrial relations court. There was no specific definition of Sexual Harassment in this Collective Agreement.

Another Collective Agreement referred to by the Danish HK was on the hearing of cases involving harassment, including sexual harassment, which provides for the involvement of outside bodies which attempt to facilitate agreement at the workplace level. If the efforts to reach an agreement do not succeed, either of the affected parties may choose to pursue the

disagreements via the industrial dispute system pursuant to the rules of collective agreements on the settling of disputes. There was no specific definition of sexual harassment.

Italy:

In Italy, at present, all the national collective agreements for the various sectors are described as referring to the EU Commission recommendation of 27/11/1991 which safeguards the dignity of women and men at work, as well as to **Directive 2002/73/EC**. Codes of conduct to adopt in the fight against sexual harassment have been incorporated into many of these national Collective Agreements, the definitions of sexual harassment being drawn directly from **Directive 2002/73/EC**.

Italy's employer organisation, Confindustria, drew specific reference to the "Chatico-Farra Ceutico e afeini" 2002 which was a study of the aspects of sexual harassment in order to draw up guidelines on sexual harassment. They also made reference to other studies such as Engineering (2003), Textiles (2000), Telecommunications (2000) Electricity (2001). These are collective agreements that also incorporated some initiatives on sexual harassment.

The Netherlands:

In general, in the Netherlands, Collective Agreements set out procedures for complaints which include the appointment of a trusted representative. The respondents indicate that the definitions are mostly the same as in the legislation or they are part of the health and safety policy or anti-discrimination part of the agreement. All kinds of 'not-wanted' behaviour are covered.

Spain:

The Spanish trade union Union General de Trabajadores (UGT) provided a list of relevant collective bargaining Agreements as follows:

- Chemical Industry 2001, which is described as "considering" the seriousness of Sexual Harassment if it occurred in the Industry.
- Steel making industry in the province of Barcelona 2003, which is described as "examining the inclusion of the concept of quid pro quo sexual harassment and environmental sexual harassment and instituted an information dossier.
- Office and commercial building cleaning in Seville 2003: This is described as highlighting definition, procedures and penalisation.
- Hostelry in Almeria: This is described as "highlighting" the definition, procedures and penalisation.
- Health care centres 2002: This is described as making reference to existing legislation definition and penalisation.
- AUCAT (Autopistas de Catalaunya S.A.): is described as having "looked at the principles and concepts of sexual harassment".

In relation to each of these agreements there is no uniform definition of sexual harassment. UGT state that the collective bargaining agreements mentioned contain the following definitions:

- Sexual harassment: verbal or physical conduct of a sexual nature directed towards an employee, for whom such behaviour is offensive.
- Sexual harassment: any conduct, proposition or requirement of a sexual nature taking place in the scope of company organisation or management, which the actor knows — or is in a position to know — is unwelcome, unreasonable and offensive for the intended target, whose response to such conduct is tied to a decision that affects their employment or working conditions. Mere sexual attention may become harassment if it continues after the person targeted shows clear signs of rejection, in whatever manner. This distinguishes sexual harassment from freely accepted personal approaches based, therefore, on mutual consent.
- Sexual harassment is understood to mean verbal or physical aggression on the part of employees, regardless of their position or responsibility in the company, at the workplace or in the exercise of duties, with a clearly sexual intention, compromising the dignity and privacy of co-workers. By way of example only, the following behaviour is regarded to constitute sexual harassment:
 - (a) Suggestive comments, jokes or remarks about the appearance or sexual condition of a woman or man worker.
 - (b) Requests for sexual favours, including any insinuation or attitude that ties consent to improvements in the employee's working conditions or extension of their employment contract.
 - (c) Exhibition or use of pornography at the workplace.
 - (d) Any other behaviour whose cause or aim is worker discrimination, abuse, ill-treatment or humiliation on the grounds of sex.
 - (e) Any sexual aggression.
- Sexual harassment is any behaviour or conduct at the workplace that denotes lack of respect for the privacy and dignity of women or men in the form of physical or verbal offence of a sexual nature. Engaging in such conduct or behaviour from a position of hierarchical advantage will be regarded to be an aggravating circumstance.

5.3 Enforcement of Collective Agreements

Most trade unions and employer organisations that responded reported that Collective Agreements dealing specifically with sexual harassment were legally enforceable. In general in-company procedures appear to be in place for addressing the issue with recourse to the courts/industrial action existing when an incident cannot be dealt with at the organisational level. In Cyprus and the UK, collective agreements are not legally binding (though in the former such agreements are of very wide application, regulate terms and conditions of employment for many workers and are enforced in cases of flagrant violation by industrial action). Collective agreements bind all companies affiliated to the Danish Employers Confederation and violation of them can result in a fine.

5.4 Summary: Collective Agreements

The most striking aspect of the information discussed in this section is the very low level of apparent coverage of Sexual Harassment / Harassment based on Sex in those Collective Agreements to which our respondents — the leading trade union / employee and employer organisations in their various states — were party. Some of this apparent lack of coverage may be the result of the fact that the bodies surveyed were not themselves party to collective agreements reached between their constituent trade unions or employers organisations (for example) and their industrial partners. But even if this is the case, the apparent lack of coverage by such Collective Agreements of sexual harassment — or the lack of knowledge on the part of the national level bodies as to what their constituent elements are doing at the bargaining level — indicates that the issue of sexual harassment has yet to achieve a very high priority at the collective bargaining table.

6 Employer Liability

All organisations were required to provide information on employer liability. **Twenty of the** countries surveyed stated that an employer could be liable for Sexual Harassment / Harassment based on Sex perpetrated by an employee. Estonia, Latvia, Lithuania, the Slovak Republic and Greece²⁴ were the only countries that indicated that an employer **can not** be held liable for Sexual Harassment / Harassment based on Sex perpetrated by an employee. On further analysis it was found that the nature of the liability explicitly derived from the employment legislation in the majority of the cases. As with Chapter 3 — Legislative Provisions — there was some variation in the responses recorded by different organisations to the questions asked. Where conflicting information was provided the response of the relevant member of the HLG is reported.

6.1 Nature of employer liability and defences to liability

The organisations were required to describe the circumstances in which the employer can be liable. This information, together with information relating to defences to liability, is documented in the following paragraphs. Table 6.1 highlights the circumstances in which employers can be liable for sexual harassment by a worker's "superiors", "peers" and "clients". In all countries where an employer is liable for sexual harassment by a worker's superiors, liability also applies in relation to sexual harassment by a worker's peers. The situation in relation to sexual harassment perpetrated by a worker's clients is more varied. Cyprus, Denmark, Portugal, Poland and the UK specifically indicated that there was no such liability (with regard to the UK there is an exception where the employer himself or herself discriminates against the harassed employee by treating him or her less favourably than s/he would a worker of the opposite sex).

Austria:

Under the Austrian Federal Equal Treatment Act the employer is liable for harassment s/he actually perpetrates. Employers are also liable for harassment by third parties where they fail to take the appropriate remedial action based on legislation, the standards of collective labour law or the employment contract. Discrimination based on sex also occurs if the actual employer is the harasser or if the employer fails to take the appropriate remedial action, based on legislation, the standards of collective labour law or the employment contract if the employee is sexually harassed by a third party. The employer has a defence to liability when steps are taken that are designed to protect the harassed person from further harassment, and by so doing fulfils his or her duty of care as an employer. The same also applies to the Equal Treatment Act concerning the private sector.

²⁴ Greece did not respond to the questions on employment legislation. Latvia does not currently have relevant legislation and the Slovak Republic's employment legislation deals with the matter implicitly.

Belgium:

In Belgium, in the absence of preventative measures or measures aimed at putting an end to the harassment, an employer is liable for harassment by employees and third parties.

Cyprus:

In Cyprus an employer is liable for sexual harassment where:

- S/he or any other employee sexually harasses a worker.
- An employee suffers unfavourable treatment because s/he has repelled or reported sexual harassment or because s/he has supported a person who repelled or reported sexual harassment.
- S/he fails to protect employees or trainees or candidates for employment or training, conduct that constitutes sexual harassment.
- S/he fails to take appropriate and timely measures with a view to averting sexual harassment in general.
- S/he fails to take action where sexual harassment has occurred with a view to making sure that it has ceased, it will not be repeated and that its repercussions are lifted.

The Czech Republic:

According to the Czech Labour Law, the employer is liable for violations of the principle of equality and non-discrimination. This is due to the fact that the employer is obliged to create working conditions for successful performance of work tasks by employees and enabling safe work. The employer who organises, manages and controls the performance of work has thus all the competence to assure the observance of the principle of equal treatment of all employees and non-discrimination including sexual harassment. It is not specifically stated that the employer is held liable for harassment by other employees or third parties.

Denmark:

In Denmark, an employer is liable if the employer is aware of the harassment and does not take action to deal with it. According to Section 1 of the Working Environment Act, it is the duty of the employer to ensure that working environment is free of harassment. The assessment of the workplace must include the issue of sexual harassment. If an employee feels that s/he is the object of harassment, the employer is obliged to discuss the problem in the occupational safety organisation or the liaison committee. The employer is not liable for the sexual harassment if s/he is not aware of it.

Finland:

In Finland, according to the Equality Act, an employer can be liable for sexual harassment in the workplace if the alleged harassment has been reported to the employer and the employer does not act. The employer's duty to act begins when the matter has been reported, either by the victim or through another person. If, after being informed of the sexual harassment, the employer takes necessary measures to solve the harassment case and, if necessary, applies sanctions, s/he cannot be held liable for it.

France:

The employer may be held liable for third party actions where s/he has failed to take all necessary measures to prevent harassment, and may be liable if s/he failed to take action especially when s/he was informed.

Where sexual harassment is perpetrated by a hierarchical superior or a colleague, the private or state employer may inflict a disciplinary measure on the perpetrator. Failing this, s/he may be held liable for the harassment.

Germany:

In principle, it is possible for the employer to be held liable for sexual harassment if the perpetrator's behaviour can be attributed to the employer; *i.e.*, because the harassment occurred while fulfilling the employer's instructions.

If the legal requirements are fulfilled in the individual case, liability pursuant to Section 611a, Paragraph 2, Bürgerliches Gesetzbuch legislation, comes into consideration.

Furthermore, the employer will be liable if it violates its duties of protection under the Employee Protection Act by failing to take appropriate, reasonable measures to protect the employee and stop sexual harassment. This includes, in addition to preventive measures (informative events on sexual harassment and the establishment of suitable offices for complaints), the introduction of individual legal sanctions against the assailant.

The employer is not liable if it has taken appropriate and reasonable measures to protect the employee and to stop sexual harassment.

Hungary:

The Hungarian Specialist Body (HU) indicates that according to the Labour Code, the employer shall be subject to full liability for damages caused to employees in connection with their employment. The employer can be liable in circumstances where s/he gave the order to the employee as a consequence of which Sexual Harassment / Harassment Based on Sex was perpetrated. According to Article 102 of the Labour Code the employer has to ensure proper conditions for a healthy and safe working environment. A working environment where sexual harassment may occur is not safe and healthy. S/he shall be relieved of liability if s/he is able to prove that s/he has acted in a manner that can generally be expected in the given situation or that the damage was due to an impediment outside of his / her sphere of activity and beyond his / her control or was exclusively due to the employee's behaviour.

Ireland:

According to section 15 of the Employment Equality Act 1998, an employer is vicariously liable for any act done by an employee in the course of his employment. Section 14 A of the Act as amended provides that harassment / sexual harassment constitutes discrimination by the victim's employer where the employee is harassed or sexually harassed in the workplace. It is a defence for the employer to prove that s/he took such steps as were reasonably practical to prevent the person from doing the act complained of.

Italy:

Article 2087 of the Civil Code plays a central role in the action taken against the employer. This recalls the employer's obligation to do whatever is necessary to "... safeguard the physical integrity and mental personality of the providers of labour..." It is characterised by the fact that, not only does it punish the violation of the rules safeguarding the physical integrity and mental personality of the worker, but it lays down duties for the employer and allows for the possibility of updating in the event of new risk factors and new forms of prevention. Violations by the employer of specific prevention obligations or failure to adopt specific measures laid down by the law are not required in order to establish liability. It is sufficient for the employer's deeds and omissions to be considered to be culpably harmful to the qualities referred to (health and mental personality). In addition, extra-contractual responsibility deriving from the applicability of Articles 2043 and 2049 of the Civil Code arises where the employer's contractual responsibility deriving from failure to fulfil the obligations laid down in Article 2087 causes damage to the rights of a worker independently from the working relationship e.g. damage to health, damage to personality, damage to professionalism.

Luxembourg:

The employer and the employee must refrain from any act of sexual harassment within working relationships, as must any client or supplier of the company. Furthermore, under Article 4 of the law of 26 May 2000, the employer is obliged to ensure that any sexual harassment of which he is aware ceases immediately. Under no circumstances may measures intended to bring an end to the sexual harassment be taken to the detriment of the victim of the harassment. The employer is also required to take all necessary preventative measures to ensure protection of the dignity of any person within the working relationships. These measures must include information-providing measures.

Malta:

In Malta, under the Maltese Employment and Industrial Relations Act 29 (2002) persons responsible for any work place, educational establishment or entity providing vocational training or guidance or for any establishment at which goods, services or accommodation facilities are offered to the public may not permit other persons who have a right to be present in, or to avail themselves of any facilities, goods or service provided at the place of work, to suffer sexual harassment at the place of work.

It is considered a defence for persons responsible for any institution where sexual harassment is alleged to have taken place to prove that they took such steps as are reasonably practicable to prevent such harassment.

The Netherlands:

The relevant article is part of the Netherlands Working Conditions Act (OSH Act). The implication is that, with regard to all articles in the Working Conditions Act, employers are, by definition, liable for the well-being and care of their employees. Employers are obliged to give information about all matters in relation to occupational safety and health (working conditions). One of these matters is the prevention of sexual harassment and (all forms of) aggression and violence. As a result, both employer and employees become responsible for good working conditions.

There is a defence to liability when an employer can prove that all the preventative measures were taken by him/her and that s/he can prove that the employee behaved in an irresponsible way or not according to specified rules or procedures.

Poland:

In Poland, the employer will be liable if s/he induces or encourages employees to violate the principle of equal treatment in employment.

Portugal:

In Portugal, CITE, indicate that the employer is liable for sexual harassment where:

- s/he personally fails to “a) Respect and treat the employee with civility and integrity; or b) Provide good working conditions, both from a physical and a moral point of view” (Article 120 Labour Code). Employers are also prohibited from (Article 122): a) Opposing, in any way whatsoever, the fact of the employee exercising his/her rights, or dismissing, sanctioning or otherwise treating him/her unfavourably as a result of exercising these rights; c) Exerting pressure on the employee to act with the aim of unfavourably influencing his/her working conditions or those of his/her colleagues. Article 363 provides that: “Where one of the parties deliberately or negligently fails to fulfil its obligations, it shall be liable for any damage caused to the other party.”

Article 26 of the Code, under the obligation to indemnify, stipulates: “Without prejudice to the provisions of Book II, the practicing of any discriminatory act affecting an employee or a job applicant entitles the latter to compensation for pecuniary loss and moral prejudice within the general terms.” Article 642 of the code classifies a breach of Article 24 (harassment and sexual harassment) as a very serious offence. Although the Code does not expressly oblige the employer to take disciplinary measures against an employee who perpetrates acts of sexual harassment, such conduct can constitute fair grounds for dismissal (Article 396, no. 3, paragraph. i) . Further (Article 441) “Certain conduct on the part of the employer constitutes gross misconduct resulting in termination of the contract by the employee, namely: f) Offences against the employee’s physical or moral integrity, liberty, honour or dignity that are punishable by law and are perpetrated by the employer or his/her legitimate representative.” Under the terms of Article 443, the employee is entitled, in the situations mentioned above, to compensation for any pecuniary loss or moral prejudice suffered, to be fixed at between 15 and 45 days’ basic pay plus seniority increase for each year of service.

The Civil Code provides for the possibility of extra-contractual civil liability within the general terms of the law in the event of conduct attributable to the employer (Article 483) or conduct attributable to the subordinates of the latter (Article 500). Where action on the part of subordinates is concerned, the employer may escape liability by proving that s/he took the necessary measures to avoid or put an end to the illegal conduct of his subordinates (Article 799).

Slovak Republic:

According to the Slovak Labour Code, the employer is obliged to create working conditions for successful performance of the work tasks by employee enabling safe work. As a result of the Slovak Labour Code the employer is responsible for taking appropriate and reasonable measures to protect employees.

Slovenia:

In Slovenia, an employer is liable when it does not provide an appropriate work environment, in compliance with the 45. ZDR Article.

Spain:

In Spain, an employer is liable when the employer is aware of the events and does nothing to prevent them. When abuse of power is involved, they are liable for the authority delegated.

Under the Act on Labour Infringements and Penalties, Article 8.13 :Sexual harassment is legally classified as a very serious infringement on the part of an employer when it takes place in a domain that falls within the reach of company management control, regardless of the identity of the perpetrator.

Article 13.10 of the same Act provides that employers commit a very serious infringement when they fail to adopt any other preventive measures at the workplace required to enforce legislation on prevention of occupational hazards entailing a serious and imminent risk to employee health and safety.

There is a defence to liability when the employer proves that management, in the fulfilment of its obligation to monitor due operation of the company, could not have been aware of the events or that, once aware that sexual harassment was taking place, it employed all due diligence and did everything in its power to ascertain the existence of sexual harassment and prevent it.

Sweden:

Under section 22a of the Equal Opportunities Act, an employer who becomes aware that an employee considers her or himself to have been exposed to sexual harassment by another employee is required to investigate the circumstances surrounding the said harassment and, if it has occurred, to implement measures to prevent its continuation. If this is not done the employee may claim for damages. In a case of sexual harassment it is also possible for the employer to take disciplinary actions against the perpetrator.

The employer has a defence to liability if s/he has carefully investigated the circumstances and taken adequate measures to prevent continuance of the sexual harassment. Similarly under section 22 of the Act, it is stated that an employer may not subject an employee to harassment on the grounds that the employee has rejected the employer's sexual advances or has reported the employer for sex discrimination. A person who is entitled to determine an employee's condition of work in lieu of the employer shall, in the application of the provisions of the first paragraph be equated with the employer. Employers have no direct liability, however, they do have obligations towards the employee.

The UK:

The Sex Discrimination Act and the Sex Discrimination (Northern Ireland) Order treat employers as having done any unlawful acts of discrimination of their employees which are carried out in the course of their employment. This is the case even where those acts are done without either the knowledge or approval of the employer. It is a defence for the employer to

prove that s/he took such steps as were reasonably practicable to prevent the employee from doing the act (or acts of that sort) in the course of his/her employment.

6.2 Employer Liability for Sexual Harassment perpetrated by a worker's superiors, peers and clients

Table 6.1 provides details of those countries that indicated that an employer could be held liable for sexual harassment perpetrated by a worker's "superiors", "peers" and "clients". In all countries where an employer is liable for sexual harassment by a worker's superiors, liability also applies in relation to sexual harassment by a worker's peers. The situation in relation to sexual harassment perpetrated by a worker's clients is more varied. Denmark, Hungary, Portugal, Poland and the UK specifically indicated that there was no such liability (with regard to the UK there is an exception where the employer himself or herself discriminates against the harassed employee by treating him/her less favourably than s/he would a worker of the opposite sex). The majority of respondents indicated that employer liability derived from employer obligations to prevent sexual harassment during work, including work outside the workplace and outside the normal working hours.

Table 6.1: Employer Liability for Sexual Harassment by a worker's superiors, peers and clients

Country	Circumstances under which an employer is liable:		
	Sexual Harassment by a Worker's Superiors	Sexual Harassment by a Worker's Peers	Sexual Harassment by a Worker's Clients
Austria	✓	✓	✓
Belgium	✓	✓	✓
Cyprus	✓	✓	✗
Czech Republic	✓	✓	✓
Denmark	✓	✓	✗
Estonia	✓	✓	✓
Finland	✓	✓	✓
France	✓	✓	No response
Germany	No response	No response	No response
Greece	No response	No response	No response
Hungary ²⁵	✗	✗	✗

²⁵ The prohibition of sexual harassment at the workplace and the regulation of the responsibility on the employer's side are not present in the Hungarian law. The Labour Code regulates the employer's responsibilities (healthy and safe place of work, securing the employees' ability to practice their rights etc.). It declares that the employer is fully liable for all the damage relating to employment regardless of guiltiness, but it doesn't explicitly comprise any prescription concerning sexual harassment. By lack of concrete regulations in most of the cases the interpretation of the judge plays a crucial role.

The Act on equal treatment and equal opportunities (CXXV/2003 (dec. 22.)) includes the notion of harassment and that it violates the requirement of equal treatment. However, the regulation of the procedure in case of violation of the act has not yet entered into force. The Act also declares that the claims caused by the violation of the requirement of equal treatment can be enforced in procedures laid down in separate Acts of law (e.g. personal, labour, consumer protection cases).

Table 6.1—continued

Country	Circumstances under which an employer is liable:		
	Sexual Harassment by a Worker's Superiors	Sexual Harassment by a Worker's Peers	Sexual Harassment by a Worker's Clients
Ireland	✓	✓	✓
Italy	✓	✓	✓
Latvia	✓	✓	✓
Lithuania	No response	No response	No response
Luxembourg	✓	✓	✓
Malta	✓	✓	✓
The Netherlands	✓	✓	✓
Poland	✗	✗	✗
Portugal	✗	✗	✗
Slovak Republic	No response	No response	No response
Slovenia	✓	✓	✓
Spain	✓	✓	✓
Sweden ²⁶	✗	✗	✗
UK	✓	✓	✗
TOTAL	17	17	13

6.3 Employer liability for Sexual Harassment / Harassment outside the workplace/ outside working hours

There was significant variation in the responses provided to the question relating to employer liability outside the workplace / working hours and in such cases the response of the relevant representative of the HLG has been relied upon. **Fourteen** countries (Austria, Belgium, the Czech Republic, Denmark, Estonia, Germany, Hungary, Italy, Latvia, Malta, Portugal, the Slovak Republic, Spain and Sweden) indicated that employers **could not** be held liable for Sexual Harassment / Harassment based on Sex that took place outside of the workplace or outside normal working hours. The remainder of the responding countries / organisations indicated that the place and time in which the activity occurred did not impinge on employer liability.

The responses of the countries / organisations that stated an employer could be liable for harassment outside the workplace / normal working hours are synthesised below.

²⁶ An employee has no direct protection from victimisation, however employers have obligations towards the employee under section 22a of the Equal Opportunities Act. These obligations pertain when the employee is sexually harassed by a superior or by a peer. However this is described as indirect law. Employers thus do not have direct liability although they have obligations which gives them an indirect liability.

In Slovenia, the employer is obligated under the 45. ZDR Article to provide a good and healthy work environment with equal rights for everyone no matter what place or time.

In Finland and Ireland, similar conditions apply to employer liability if the harassment takes place for example at a work related social event, at a party, during a journey or a course, which is connected with work. However, the Confederation of Finnish Industry and employers highlight the fact that, in the case of events such as company-organised Christmas parties, liability is somewhat limited due to the circumstances e.g. alcohol and dancing etc.

Similarly in Cyprus, Luxembourg and Poland, sexual harassment may occur during access to employment or vocational training. Since the relevant activities may take place outside the workplace or outside normal working hours, it necessarily follows that the employer may be liable in such a case.

The Portuguese Ministry of the Presidency stated that the law does not deal specifically with this issue but it is possible to conceive that the employer's liability also extends to these situations where these are connected with work. However Portugal has ratified Article 26 of the revised European Social Charter in which this situation is provided for.

The French trade union Force Ouvrière, note a current general trend in the corporate case law which tends to increasingly recognise a connection between the private life of employees and the contractual employment relationships, which it states "looks likely to be detrimental to employees".

In the UK if the employee carries out the act of Sexual Harassment / Harassment based on Sex outside the workplace or outside normal working hours, but it is in the course of employment, the employer would be liable. The Equal Opportunities Commission (EOC) notes that acts committed by colleagues away from the workplace are less likely to fall within the scope of the Sex Discrimination Act.

The Netherlands also states that an employer could be liable for harassment outside the workplace / normal working hours and that there is some jurisprudence on this subject. In some cases the employer is liable, in other cases they are not. It depends on the circumstances of the case.

6.4 Harasser liability

As indicated in Table 6.2 in **sixteen countries** the harasser can be individually liable for acts of Sexual Harassment / Harassment based on Sex. In Denmark, Ireland, Latvia, Poland, Spain and Sweden the harasser is not individually liable for workplace Sexual Harassment / Harassment based on Sex.

Table 6.2
Harasser Liability

Country	Circumstances under which Harasser is liable	
	Harasser is individually liable	Harasser's liability is contingent on employers liability
Austria	✓	✗
Belgium	✓	✗
Cyprus	✓	✗
Czech Republic	✓	✗
Denmark	✗	✗
Estonia	No response	No response
Finland	✓	✗
France	✓	No response
Germany	✓	✗
Greece	No response	No response
Hungary	✓	✗
Ireland	✗	✓
Italy	✓	✗
Latvia	✗	No response
Lithuania	No response	No response
Luxembourg	✓	✗
Malta	✓	✗
The Netherlands ²⁷	✓	✓
Poland	✗	No response
Portugal	✓	✗
Slovak Republic	✓	✗
Slovenia	✓	✓
Spain	✗	✗
Sweden	✗	No response
UK	✓	✓
TOTAL	16	4

²⁷ In the Netherlands there is some jurisprudence on this subject.

6.5 Employer obligations to prevent / address Sexual Harassment / Harassment based on Sex

There was again significant variation in the responses provided by different organisations to this section of the questionnaire and in the context of such conflicting information the findings reported here are based on the responses reported by the relevant representatives of the HLG.

In **eight** countries (Austria, Denmark, Italy, Latvia, Slovenia, the Slovak Republic, Spain and the UK) employers are not under any legal obligation as such to prevent Sexual Harassment/ Harassment based on Sex from occurring. Employers are, as we saw in the preceding sections, generally liable for Sexual Harassment / Harassment based on Sex when it does occur unless they have taken steps to prevent it. Where obligations are imposed (either directly or indirectly) on employers in connection with Sexual Harassment / Harassment based on Sex they generally relate to the full spectrum of preventative actions i.e. awareness raising, establishing explicit rules about conduct, establishing training for employees, establishing complaints procedures, imposing sanctions on others.

In most cases the specific activities that an employer must conduct or the systems that must be put in place are not specified by the relevant legislation. There are some exceptions. In Belgium, for example, the employer must, after an act of sexual harassment has been reported, carry out a risk analysis for all acts of harassment for which a complaint has been lodged or which have been entered in a register of acts of violence (which only concerns acts originating outside the firm). S/he must subsequently evaluate the prevention measures which s/he had already established and, if necessary, adapt them or create new ones. The Belgian decrees of 9 March 1995, 25 Feb 1999 and 26 July 2000, provide for the appointment of a “confidential person” or service whose aim is to offer advice, assist members of staff who are victims of sexual harassment in the workplace and help to solve the problem in a formal or informal manner. In the public sector when the facts relating to sexual harassment provided to the confidential service call for an inquiry the latter is carried out by the “confidential person”. Also in the Netherlands, the “Trust person” or “confidential person” has become a well known functionary in the case of sexual harassment.

6.6 Summary: Employer Liability

The responses detailed in this section indicate that — as might have been expected — employers will generally be legally liable for Sexual Harassment / Harassment based on Sex which takes place at work. Broadly speaking, employers may be liable for sexual harassment carried out by third parties, as well as by peers or workplace superiors of the person harassed (though in some cases, as in Finland, only after they have been made aware of the problem). There are some apparent exceptions. The approach to employer liability in Poland, for example, appears narrow and there is some uncertainty as to the position in Sweden. There are also difficulties as to when employers will be liable for sexual harassment occurring outside the workplace. There appears, however, to be a significant degree of similarity across the various legal systems which, for the most part, appear to adopt a fairly broad approach to

employer liability while in many cases allowing a defence to an employer who has taken all reasonably necessary steps to prevent harassment from occurring. In most legal systems surveyed, individual harassers, as well as employers, may be held liable for sexual harassment.

7 Legal Complaints and Remedies

7.1 Introduction

All of the surveyed organisations were required to provide information on Legal Complaints and Remedies in connection with Sexual Harassment / Harassment based on Sex.

7.2 Organisations to which complaints can be brought

All of the **twenty five** countries surveyed stated that there was an organisation in their country to which complaints in connection with Sexual Harassment / Harassment based on Sex could be brought. The details of the relevant organisations in the surveyed countries are provided below.

Austria:

In Austria, the Attorneys for Equal Treatment provide advice and support for people who have been discriminated against and are also responsible for the initiation of proceedings before the Equal Treatment Commission. The Equal Treatment Commission at the Federation for Health and Women is a Federal department which deals with all issues relating to discrimination and the relevant guidelines vis-à-vis violations of the obligation to apply the principle of equal treatment. Labour Courts, which provide civil jurisdiction, are also highlighted.

Belgium:

The Belgian respondents report the presence of a specialist “prevention advisor” in the workplace, appointed for the employer with the agreement of all employee representatives sitting on the committee for prevention and protection at work. The prevention advisor tries to conciliate the victim and the perpetrator. If this does not work the victim can bring a complaint. The complaint is given to the employer company with the advice of the prevention advisor. The employer has to take measures to stop the harassment.

Where the harassment continues *i.e.* after it has been reported to the employer and the employer fails to take appropriate measures, the prevention advisor refers the matter to the labour inspectorate from the Federal Public Department of Employment and Work which has responsibility for monitoring of legislation.

Employment tribunals were also mentioned as a means of monitoring legislation. They also suggest measures to the employer with a view to stopping harassment. This is the last option that the victim can choose, but the Belgian legislation encourages the use of the internal procedure with the prevention advisor rather than the procedure in front of a tribunal.

Cyprus:

In Cyprus, the Committee for Gender Equality in Employment and Occupational Training is an advisory committee that receives complaints and refers them to the Labour Inspectorate for investigation. The Labour Inspectorate is responsible for conducting inspections on equality matters in the workplace and for the practical implementation of the law. The Industrial Disputes Tribunal and Supreme Court are also described as organisations to which a complaint in connection with Sexual Harassment / Harassment based on Sex can be brought.

The Czech Republic:

The Czech Republic lists the courts, the labour offices and trade unions as organisations to which complaints in connection with Sexual Harassment / Harassment based on Sex can be made. However, the role of these organisations in the complaints procedure is not described.

Denmark:

In Denmark, the Gender Equality Board is a body which deals with complaints about gender discrimination. The Board's decisions are final within the administrative system. Trade unions, Courts of Law and Civil Courts are also stated as organisations to which complaints can be brought however their specific role is not illustrated.

Estonia:

An independent institution of the Gender Equality Commissioner has been established whose responsibility is to process complaints of discrimination on the basis of gender.

Finland:

The Office of the Ombudsman for Equality and the Health and Safety Authorities provide advice and counselling on sexual harassment. The courts in turn determine the financial compensation according to on the seriousness of the complaint.

France:

In France, complaints of Sexual Harassment / Harassment based on Sex are made to the police who in turn submit them to the Procureur de la République who may order an investigation and either pursue proceedings or take no further action on the matter. The senior examining magistrate at the High Court may conduct an investigation into a complaint and submit it to the Procureur de la République. The Procureur de la République represents the Public Prosecutor's Office and can decide to order an investigation into the facts of which he is aware and pursue proceedings or take no further action on a case. Complaints can also be brought to Criminal Court for ruling on the offences. The Industrial disputes body assesses deficiencies in the social / employment legislation standards.

Germany:

In Germany, complaints can be dealt with at the operational level. The parties concerned can obtain support from the Works Committee and/or the Personnel Committee and in the area of public service, from the relevant representatives.

Greece:

The Greek employer organisation mentions the Research Centre for Gender Equality (KETHI) which conducts social research on gender equality issues to improve women's status and enable their advancement in all areas of political, economic and social life, within the framework of the policies defined by the General Secretariat for Equality. The respondents do not describe what role this organisation plays in the complaints procedure.

Hungary:

Complaints can be brought to the Civil Court for investigation and to determine compensation.

Ireland:

- The Equality Tribunal — a quasi-judicial body — operates along the lines of a court. It investigates and mediates complaints of discriminatory treatment in employment on nine grounds under the Employment Equality Act 1998.
- Decisions of the Equality Tribunal may be appealed to the Labour Court.
- In the case of claims of discriminatory treatment on the grounds of sex, redress may instead be sought from the Circuit Court.

Italy:

The Magistrate at all court levels examines complaints including those of Sexual Harassment/Harassment based on Sex. Trade unions generate awareness of the legislation and can intervene at local level or in the workplace, both in accordance with the collective national contract for the sector and by providing the victims with legal support with lawyers through their own women's offices throughout Italy. However it is mostly to the Equality Counsellor that complaints are brought. The territorially competent provincial and regional male and female equality counsellors have the power to apply to the courts as labour judges or, in the case of relationships subject to their jurisdiction, to the territorially competent regional administrative court, instructed by the interested person, or to intervene in actions taken by the same. Equality counsellors can also take any initiative of use for the purpose of respecting the principle of non-discrimination and promotion of equal opportunities for male and female workers, and carry out the following tasks in particular:

- (a) detecting situations of imbalance in general, for the purpose of carrying out the promotional and guarantee functions against discrimination envisaged by Act n. 125 of 10 April 1991;
- (b) promotion of affirmative actions, also through the identification of Community, national and local resources earmarked for the purpose;
- (c) promotion of the coherence of territorial development policy programming with respect to Community, national and territorial guidelines regarding equal opportunities;
- (d) supporting the active labour policies, including those regarding training, from the point of view of promoting and realising equal opportunities;
- (e) promotion of the implementation of equal opportunities policies by public and private entities operating in the labour market;

- (f) collaboration with the provincial and regional labour offices for the purpose of identifying effective procedures for detecting infringements of the rules governing equality, equal opportunities and guarantees against discrimination, also through the formulation of special training packages;
- (g) diffusion of the knowledge and exchange of good practices, information activities and cultural training on equal opportunities problems and on the various forms of discrimination;
- (h) assessment of the results of the realisation of the affirmative action projects envisaged by Act n. 125 of 10 April 1991;
- (i) liaison and collaboration with the labour departments of the local authorities and of the equal opportunities bodies of local bodies.

The Italian trade union state that they can intervene at local level or in the workplace in accordance with the contents in the collective national contract for the sector and can also provide the victims with legal support.

Latvia:

The State Labour Inspectorate controls the fulfillment of obligations of employers and employees, determined by the employment agreements; it promotes cooperation between employers and employees, as well as carrying out activities in order to avoid misunderstanding between the employers and employees. Its role in relation to complaints is not specified.

Lithuania:

The Lithuanian Equal Opportunities Ombudsman investigates complaints in relation to discrimination and sexual harassment. Investigation of complaints on sexual harassment and gender discrimination in employment, education and science, goods production and service provision, legal acts of state and administrative institutions are the core functions of the Ombudsman. Trade unions, Public Prosecutors Office and the Employment Tribunal are also mentioned as being involved in the investigation of complaints.

Luxembourg:

The Public Prosecution office is stated as a prosecution body for investigating complaints in relation to sexual harassment. The Labour and Mines Inspectorate are also mentioned. Their function is to ensure that legal provisions and conventions are applied. The Labour Court is competent to deal with 1) nullity actions against retaliatory measures taken in relation to a victim of sexual harassment or witnesses to this, as well as 2) compensation actions available to a harassed worker in relation to his employer who harassed him/her or who omitted to cause the immediate stop of sexual harassment of which he was aware of, or who also omitted to take the necessary preventative measures (cf. Article 7 of Law of 26 May 2000 concerning protection against sexual harassment arising from work relations). The Civil Court is competent to deal with compensation actions taken by a harassed worker against a work colleague who was harassing him/her.

Malta:

The National Commission for the Promotion of Equality for Men and Women has various functions, among them the identification of the needs of persons who are disadvantaged by reasons of their sex, and the proposal of remedial steps. Industrial Tribunals have exclusive jurisdiction to consider and decide, *inter alia*, all cases of harassment.

The Netherlands:

The Labour Inspection/Inspectorate deals with complaints of sexual harassment. In every region two "Confidential inspectors" are appointed. Employees with problems at work regarding sexual harassment or bullying can ask for help at these Inspectorates. The inspectors have, as their main task, the responsibility of pointing out to the employer his or her primary responsibility to prevent harassment and to solve these kinds of problems and of monitoring the employer until the problems are settled. There is also an Equal Treatment Commission (ECT) which will be able to give opinions on complaints on sexual harassment under the incoming legislation. The ECT already deals with sexual intimidation, by bringing this subject under conditions of employment. After implementation of **Directive 2002/73/EC**, employees who feel sexually intimidated can also go directly to a judge.

Poland:

Poland mentions both the Labour Court and Labour Inspectorate which investigate complaints of Sexual Harassment / Harassment based on Sex.

Portugal:

Portugal mentions numerous organisations to which complaints based on Sexual Harassment/Harassment based on Sex may be brought. The main function of the Commission pour l'Égalité au Travail et à l'emploi (CITE) (Commission for Equality at Work), for example, is to eliminate discrimination and promote equality at work. The organization hears complaints, provides information and initiates proceedings. The Commission for Equality and Women's Rights (CIDM) is also mentioned. Its main functions are the elimination of discrimination and the promotion of gender equality in all areas. It provides information and support. The General Labour Inspectorate prevents, monitors and punishes discriminatory practices in the workplace. It also enforces counter-rulings. Trade unions provide information and defend workers before the Court having jurisdiction to initiate legal proceedings as a result of discriminatory practices.

The Slovak Republic:

The Slovak Republic mentions the Courts in determining compensation and investigating complaints.

Slovenia:

In Slovenia, the Advocate for Equal Opportunities for Women and Men is employed by the Office of the Government of the Republic of Slovenia for Equal Opportunities in order to hear cases of alleged unequal treatment of women and men, to issue opinions with regard to provisions of the Act on Equal Opportunities for Women and Men. Legal complaints on sexual harassment in the workplace are made to the misdemeanours judge.

Spain:

Courts of Justice for Labour Affairs and penal process determine whether Sexual Harassment/ Harassment based on Sex has occurred, and what penalty will apply. Labour and social security inspectorates investigate complaints lodged by workers, determine whether they constitute a legal infringement, and formulate an accusation including a proposal for the respective penalty. Equal opportunity bodies and the Women's Institute in autonomous communities also exist to promote and defend women's rights.

Sweden:

The Equal Opportunities Ombudsman is charged with the duty of ensuring compliance with the provisions of the Equal Opportunities Act and with parts of the Act concerning the Equal Treatment of Students in Higher Education (2001:1286). The Equal Opportunities Ombudsman is appointed by the Government and is head of the government authority bearing the same name. As with other government authorities, the Ombudsman has an independent status, which means that the office reaches its own decisions in all individual matters. In addition, the Jämställdhetsombudsmannen (Jämo) is a state body whose task is to inform about and to enforce the law. Labour organisations and trade unions exist whose function is to protect their members' rights.

The UK:

The Equal Opportunities Commission (EOC) is an independent statutory body which has the power to support individuals in taking sex discrimination cases to employment tribunals. This organisation can also undertake formal investigations against a company if it receives a number of complaints relating to harassment in that company. Employment tribunals are the courts which hear most legal complaints against an employer in the employment field. If the charge of harassment is found to be valid, the tribunal can both award compensation to the individual complainant and make recommendations of how the company's procedures should be improved to prevent such a problem in the future. Northern Ireland has the Equality Commission for Northern Ireland which assists complainants by providing advice and drawing up Codes of Practice.

7.3 Mechanisms to support complainants

Respondents were asked to comment on whether any mechanisms exist to support complainants in bringing complaints in connection with Sexual Harassment / Harassment based on Sex. **Twenty three countries stated that these mechanisms existed.** Only Lithuania and Estonia stated that they did not have such mechanisms in place. These mechanisms are highlighted by country below.

Austria:

Austria has the Attorneys for Equal Treatment who offer advice and support to complainants and initiate proceedings before the Commission. Similarly the Austrian Federal Economic Chamber, the Federal Chamber of Labour and trade unions provide advice and legal representation in court proceedings. Works Councils and the Equal Treatment Representative for Federal Government employees also offer advice and support.

Belgium:

Belgium states that each firm has a “prevention consultant” who offers support to victims of harassment and informs workers of the consequences of issuing a complaint within the firm. Legal authorities also help all people requesting a consultation on their rights and obligations within the area of their expertise. The Institute for the Equality for Men and Women is tasked with organising support for associations working in the field of equality between men and women or projects whose aim is to achieve equality between men and women; helping all people requesting a consultation on the extent of their rights and obligations within the limits of its aim; and acting on a legal basis in disputes which could arise from the application of criminal laws and other laws whose specific aim is to guarantee the equality of men and women.

Representative trade union organisations defend victims of Sexual Harassment / Harassment based on Sex before the courts and may themselves go to court in all disputes concerning sexual harassment at work.

SPF (which controls well-being at work) may file a complaint with the labour inspectorate²⁸ which carries out an investigation and may refer the complaint to the prosecutor.

Cyprus:

Women’s NGO’s and the trade unions may initiate complaints procedures and offer support and advice to victims of Sexual Harassment / Harassment based on Sex.

Czech Republic:

The Courts, Labour Offices, trade unions, NGOs and litigators assist in the documentation of complaints and can also act on behalf of the victim with his / her approval.

Denmark:

The Danish respondents refer to the trade unions and the support they offer in bringing cases to the courts.

Finland:

The Ombudsman for Equality, trade unions and the Health and Safety Authority all provide advice and counselling. The Ombudsman and trade unions can also provide legal aid, although the Ombudsman has yet to do so.

France:

Associations such as the “Association Européenne de Lutte Contre les Violences Faites aux Femmes au Travail” (European association to fight violence against women at work) provide victim support, assistance in bringing compensation claims, and financial aid to victims of sexual harassment, trade unions similarly provide victim support and assistance in bringing compensation claims.

²⁸ The labour inspectorate services apply to all public establishments and associations which have possessed a legal status for at least 5 years on the date of the event and offer in their articles of association to defend human rights and combat discrimination

Greece:

In Greece, the Women's Information and Counselling Centre provides counselling for women who have fallen victim to sexual harassment.

Germany:

The German respondents indicated that support was available; the details of the nature of such support are not clear from the response provided.

Hungary:

Legal aid offices and specialised NGO's provide legal assistance and funding and the courts also provide legal aid.

Ireland:

In Ireland, the Equality Authority provides information and advice and has discretion to provide assistance to claimants in strategic cases. Trade unions, professional associations and legal practitioners may also provide support to complainants.

Italy:

The Italian respondents state that if the regional female or male equality counsellors and, in cases of national importance, the national female or male counsellor, note the existence of direct or indirect discriminatory deeds or pacts or conduct of a collective nature (even if the female or male workers harmed by the discrimination are not immediately and directly identifiable) they can ask that a plan be put in place to remove the discrimination within no more than 120 days. Such action may be taken after the counsellor has heard — in relation to a complaint of discrimination on the part of an employer — the trade union representatives or (should there be none) the local association belonging to the most representative trade union organisations on a national level. If the plan is deemed appropriate for removing the discrimination, the female or male equality counsellor promotes an attempt at reconciliation, and a copy of the associated report acquires the force of an executive deed with court decree of a labour court judge.

Latvia:

The Latvian National Human Rights Office provides legal advice, opinions and recommendations on the solution of cases.

Luxembourg:

The Association pour la Santé au Travail du Secteur Financier (ASTF) (Association for Health at Work in the Financial Sector) provides support in the form of counselling to alleged victims of Sexual Harassment / Harassment based on Sex. The trade unions offer advice and assistance to the victims of sexual harassment. The law of 26 May 2000 concerning the protection against sexual harassment arising from work relations attributes, in particular, a particular role to equality representatives and representatives from personnel (who are workers elected within companies with at least 15 workers); these workers by virtue of the Law of 26 May 2000 are to assist and advise the worker who has been subjected to sexual harassment. The workers who have been a victim of this have the right to be assisted and accompanied by the equality representative or a representative from personnel in the meetings with the

employer, which take place in the framework of an enquiry into the sexual harassment (cf. Article 6(2) of the Law of 26 May 2000).

Malta:

The National Commission for the Promotion of Equality between Men and Women investigates individual complaints and provides assistance as appropriate to persons suffering from discrimination in enforcing their rights.

The Netherlands:

Trade unions may in some cases help people to bring their case to the equal treatment body. The OSH services have an important function in the prevention of sexual harassment. In this structure, SME's can make use of these OSH services.

Poland:

Trade unions, Civil and Penal Codes provide mechanisms to support complainants.

Portugal:

The Commission pour L'Égalité au Travail et à l'Emploi (CITE, the Commission for Equality at Work) hears complaints and provides information and support.

Slovak Republic:

Labour Inspectorate services, Offices of Labour, Social Affairs and Family and trade unions as well as NGO's can provide legal assistance and support to complainants. Trade unions and NGO's can also act on behalf of victims with their approval.

Slovenia:

In Slovenia, the Advocate for Equal Opportunities for Women and Men is employed by the Office of the Government of the Republic of Slovenia for Equal Opportunities in order to hear cases of alleged unequal treatment of women and men, to issue opinions with regard to provisions of the Act on Equal Opportunities for Women and Men.

Spain:

Trade unions in Spain provide such support mechanisms as counselling and representation of workers in collective bargaining. They are legally competent to institute individual proceedings in cases involving defence of the rights to equality and non-discrimination.

Sweden:

Trade unions in Sweden also provide counselling services to complainants.

The UK:

The Equal Opportunities Commission (EOC) provides advice and / or legal assistance. The Advisory Conciliation and Arbitration Service (ACAS) provides conciliation. In Northern Ireland the Equality Commission also provides legal support and advice to complainants.

7.4 Measures to protect complainants from victimisation by Employers

Respondents provided information on measures that exist to protect complainants of Sexual Harassment / Harassment based on Sex from victimisation by employers. **Twenty** countries stated that these measures exist. Greece and Estonia stated that they did not. The Spanish Trade Union (UGT) states that action can be taken with the company in support of the worker affected by possible reprisals. In Sweden, the Ministry of Industry, Employment and Communications states that there are no direct protections from victimization. However the employer has obligations towards the employee under The Equal Opportunities Act, section 22a. These obligations pertain when the employee is sexually harassed by a superior or peer. However this is an indirect law and not directly expressed by the legal text. Thus employer's have no direct liability although they have obligations which gives them an indirect liability. Greece and Estonia stated that they did not. The measures that exist in respondent countries are described in the following paragraphs.

Austria:

In accordance with the Labour Relations Act (section 105 paragraph 3 Z 3 lit), a dismissed employee can appeal if the reason for the dismissal was that the employee sought to enforce his or her employment rights. An explicit prohibition of discrimination is planned for inclusion in equal treatment legislation.

Belgium:

In Belgium, an employer whose worker has filed a valid complaint may not terminate the employment or unilaterally alter the working conditions of the worker other than for reasons unrelated to this complaint. This protection also applies to other workers, such as witnesses, involved in a dispute.

Cyprus:

In Cyprus, victimisation by employers or anyone else is specifically prohibited and the dismissal of an employee who repelled or reported sexual harassment is null and void. Furthermore, employers are prohibited from dismissing a complainant's colleagues because they support the victim.

The Czech Republic:

The Czech respondents indicate that victimization is prohibited as a general principle in labour law and practice.

Denmark:

According to the Danish Working Environment Act, it is the duty of the employer to ensure that the working environment is free of harassment. This means that it is also the duty of the employer to ensure that it is possible for an employee to lodge a complaint of sexual harassment without being victimised.

Finland:

The Finnish Equality Act prohibits the employer from worsening the working conditions or the terms of employment of an employee after the employee has attempted to enforce his or her rights under the Act.

France:

Article L.122-46 of the Labour Code states that no employee may be sanctioned, dismissed or subjected to a discriminatory measure for having endured or refusing to endure, witnessed or reported the acts of harassment. Any action to the contrary is automatically null and void.

Germany:

The Employee Protection Act (section 4, paragraph 3) provides that no employer or superior may put a harassed employee at a disadvantage because s/he has objected to sexual harassment and has exercised his/her rights in a permissible manner.

Hungary:

The Hungarian Ministry states that the “court engages the employer to cease the wrong attitude”.

Ireland:

Victimisation is prohibited by the Employment Equality Act 1998 (section 74 (2)) and is described as dismissal or other adverse treatment of an employee by his or her employer in reaction to a range of specified actions taken by an employee in accordance with the Act.

Italy:

Article 4 of Legislative Decree 216/2003 (which enacts Directive 78/2000) — for the purpose of awarding the damages the judge will take account of the fact that the discriminatory action or behaviour constituted retaliation for previous legal action or an unjust reaction to a previous action taken by the injured party to obtain compliance with the principle of equality of treatment.

Latvia:

The Law of Latvian National Human Rights prohibits victimisation.

Lithuania:

Article 5 of the Law on Equal Opportunities obliges an employer to take appropriate means to prevent sexual harassment of the employees and to take appropriate means to prevent the persecution of an employee who has lodged a complaint to the Ombudsman.

Luxembourg:

Article 5. of the law of 26 May 2000 provides that:

- (1) An employee may not be subjected to retaliation as a result of his protests or refusal raised against an act of sexual harassment or sexually harassing conduct by his

employer or any other hierarchical superior, work colleagues or external persons connected with the employer;

- (2) no worker may be subjected to retaliation for having witnessed the occurrences defined in article 1 or having reported them;
- (3) any provision or act contrary to the two preceding paragraphs, and in particular, any dismissal in breach of these provisions, shall automatically be null and void.

Malta:

Article 9(1) (d) of the Act to Promote Equality for Men and Women (2003) provides against victimisation by establishing that it shall be unlawful if persons subjected to sexual harassment or from whom sexual favours are requested “are treated less favourably by reason of such persons’ rejection of or submission to such subjection or request”.

The Netherlands:

The Working Conditions Act requires that employers implement an effective preventive policy on sexual harassment and an effective policy for “aftercare”. When the revised Directive is implemented in the Equal Treatment Act there will be a specific measure to protect complainants from victimization. The law governing dismissal also protects generally against unfair treatment. Victims can also start a juristic / civil procedure. If they win the harasser gets a punishment which could possibly take the form of a fine.

Poland:

Under Article 18 3e. of the Polish Labour Code, the fact that an employee relied upon rights against discrimination in employment cannot constitute a reason for his subsequent dismissal or termination of his employment contract.

Portugal:

Employers are prohibited from penalizing employees for having exercised their rights by dismissing, sanctioning or otherwise treating them unfavourably as a result of exercising these rights (Article 122, paragraph. a) of Law No. 99/2003, of 27 August).

The Slovak Republic:

Under the Labour Code of the Slovak Republic, an employer may not discipline or disadvantage an employee for having attempted to enforce his or her employment rights.

Slovenia:

In accordance to the Slovenian Act on the Implementation of the Principles of Equal Treatment (2004), the person discriminated against must not subject themselves to harmful consequences due to his/her actions (ban on victimization).

The UK:

In the UK, an employee can claim unfair dismissal if they are dismissed for taking a sexual harassment claim against their employer. If they can prove that further action was taken against them as a result of the claim they also have a legal claim against their employer under

the Sex Discrimination Act 1975 and the equivalent Northern Irish provisions (as long as the sexual harassment complained of amounted to actionable sex discrimination).

7.5 Legal remedies

Respondent organisations were requested to provide information on legal remedies available in their country in relation to Sexual Harassment / Harassment based on Sex. **Twenty one** countries stated that they had legal remedies in place. Estonia, Greece and Latvia stated that legal remedies did not exist and Slovenia did not provide a response. The legal remedies that are available are described in the following paragraphs.

Austria:

The Equal Treatment Act (which applies to employment relationships in the private sector) and the Equal Treatment Act for Men and Women in the Public Service (which applies to public sector workers) provide that an employee who suffers sexual harassment is entitled to claim for damages against the harasser, and also against the employer.

Belgium:

An injunction to prevent further harassment may be sought under emergency proceedings before the President of the First Instance, the Labour Tribunal or the Labour Court. At the request of the victim the judge may sentence the perpetrator of the discrimination to pay a penalty if the discrimination has not ceased.

Cyprus:

In Cyprus there are penal sanctions as well as financial compensation for the victim. The person who is guilty of committing sexual harassment is punishable by a fine or imprisonment or both.

The Czech Republic:

No specific remedies are described by the Czech respondents who state that everyone has the right to go to court to get a hearing and that the remedy will be decided by the court.

Denmark:

The Danish respondents refer to Section 4 in the Consolidation Act on Equal Treatment of men and women as regards employment and maternity leave but do not specify the remedies contained therein. The industrial dispute system and the judicial system hear cases on sexual harassment and HK supports any member that wishes to file a complaint of sexual harassment and take legal action, if necessary.

Finland:

Under the Finnish Equality Act, an employer who has violated the prohibition on discrimination shall be liable to pay compensation to the affected person.

France:

In France, the victim can summons the perpetrator of the sexual harassment directly to appear before the Tribunal Correctionnel. S/he may bring the case before the industrial tribunal to obtain reinstatement or nullity of the measure taken following a refusal of sexual harassment.

The French trade union, Force-Ouvriere, indicate that under the Labour Code the harasser may face one year's imprisonment and a fine of 3,750 Euros (article L.152-1-1) and under the Criminal Code one year's imprisonment and a fine of 15,000 Euros (article 222-33).

Germany:

In the first instance, the Labour Courts may be called upon to implement claims in connection with the employment relationship between the employer / employee(s). This is also true for claims for determination, restraint and damages in connection with sexual harassment in the workplace. With civil servants this task is handled by the administrative and/or disciplinary jurisdiction. Depending on the individual case, a criminal prosecution may also be considered.

Hungary:

Employers must make amends for the violation of personality rights and pay compensation for the damages.

Ireland:

The Equality Tribunal may, if it upholds a claim of sexual harassment, order a maximum of 104 weeks remuneration and require that a person or persons specified in the order take a specified course of action. The Labour Court can, in addition, order that a victim of Sexual Harassment be reinstated or re-engaged if s/he has been dismissed and the Circuit Court can award unlimited compensation and or reinstatement or re-engagement, together with an order that a person or persons specified take a specified course of action.

Italy:

Although neither the Penal Code nor the Civil Code explicitly mention sexual harassment, anyone who suffers harassment may complain to the competent judicial authority,(including through the competent equality counsellor) of a breach of the Penal Code regarding violent indecent behaviour, obscenity, offences against public decency or coercion.

Lithuania:

A person who has been sexually harassed has a right to lodge a complaint to the Lithuanian Ombudsman of Equal Opportunities or bring a complaint to the court. No information was provided as to possible remedies.

Luxembourg:

In Luxembourg an action can be taken in the Labour Court for nullity of the retaliatory measures or for nullity of unfair dismissal, as well as for a compensation action taken against the employer. The Civil Court is competent to deal with the compensation actions taken by the harassed worker in relation to a work colleague responsible for the harassment.

Malta:

Offenders are liable to a fine not exceeding Lm1000 (circa. 2,500 Euros) or imprisonment for not more than 6 months, or to both a fine and imprisonment as per the Act to Promote Equality for Men and Women (2003). Furthermore, the Malta Employer's Association, states that a complainant may lodge a complaint to the Industrial Tribunal and that it is the duty of the employer, at the request of any person claiming to have been sexually harassed or discriminated against, or upon a request made by the commissioner acting upon a complaint or otherwise, to provide such person or the commissioner as the case may be within 10 working days of such a request with a report on the allegation made or the procedures used by the employers in the matter alleged to constitute such sexual harassment or discrimination.

The Netherlands:

An implication of the Working Conditions Act is that fines can be awarded by the Labour Inspectorate against employers who have not performed a risk assessment of their organisation. Victims can also start a juristic/civil procedure. If they win the harasser gets a punishment which might be a fine.

Poland:

Under Article 18 3d of the Polish Labour Code, persons who have been subject to discrimination based on unequal treatment in employment are entitled to compensation equal to at least their minimum pay, determined under separate provisions.

Portugal:

In Portugal, the victim of the Sexual Harassment/Harassment based on Sex can file a complaint with the court having jurisdiction to rule on discriminatory practices.

The Slovak Republic:

Under the Labour Code (13 odr 7-paragraph 13 sub paragraph 7), employees who feel aggrieved by the failure of a complaint may claim their rights before the court and may be awarded compensation including compensation for non-pecuniary damages. In addition, Article 184 of the Penal Code defines and penalises bullying and sexual blackmail and provides for harsher penalties in the foregoing when the victim is particularly vulnerable for reasons of age, illness or personal situation.

Slovenia:

In accordance to the Slovenian Act on the Implementation of the Principles of Equal Treatment (2004), in cases of violation of the ban on discrimination, persons discriminated against shall have the right to request assistance in dealing with a case of violation in judicial and administrative proceedings as well as in other competent bodies under the conditions and in a manner determined by the law. They may also be entitled to compensation according to general regulations of civil law.

Sweden:

The Swedish respondents indicate that there are criminal regulations about sexual harassment in the Criminal Code. No information as to the remedies available in cases of Sexual Harassment / Harassment based on Sex was provided.

The UK:

Where an employment tribunal finds that a complaint presented to it under the Sex Discrimination Act is well-founded, it may make such provision of the following as it considers just and equitable:

- A Declaratory Order (an order declaring the rights of the parties in relation to the act(s) complained of).
- Compensation (an order requiring the respondent to pay compensation to the complainant).
- A Recommendation (A recommendation that the respondent take action for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination complained of).

7.6 Financial Compensation

Surveyed organisations were requested to provide information on financial compensation that may be awarded to the victim. The data provided by responding organisations is presented in Table 7.1.

Table 7.1

Financial Compensation awarded by Courts in respect of Sexual Harassment / Harassment based on Sex

Country	Legal remedies include financial compensation of the victim of SH	Lowest Award Payable €	Highest Award Payable €	Average Award €
Austria ²⁹	✓	363.4	3,634 +	Indeterminable
Belgium	✓	No response	No response	Determined by the court
Cyprus	✓	No response	No response	No response
Czech Republic	✓	No response	No response	No response
Denmark	✓	No response	No response	No response
Estonia	✗			
Finland	✓	2,820	9,380	6,000
France	✓	No response	No response	No response
Germany	✓	No response	No response	No response
Greece	✗			
Hungary	✓	210	3,760	

²⁹ In Austria the lowest award payable is legally binding so it may not be lowered whereas the court may go beyond the €3,634.

Table 7.1—continued

Country	Legal remedies include financial compensation of the victim of SH	Lowest Award Payable €	Highest Award Payable €	Average Award €
Ireland ³⁰	✓	13,000	30,000	19,333
Italy	✓	No response	No response	No response
Latvia	✗			
Lithuania	✗			
Luxembourg	✓	No response	No response	No response
Malta	✓	No response	No response	No response
The Netherlands ³¹	✓	—	65,798	No response
Poland	✓	165	No response	No response
Portugal	✓	No response	No response	No response
Slovak Republic	✗			
Slovenia	No response	No response	No response	No response
Spain	✓	No response	No response	No response
Sweden	✓	No response	No response	8,000
UK ³²	✓	100	1.37 million	13,982

Nineteen countries reported having financial compensation regimes in place. Estonia, Greece, Latvia, Lithuania and the Slovak Republic stated that no such compensation was in place. Slovenia did not provide a response. The lowest award described was £100 sterling in the UK. They also reported the highest award paid (£1.37 million).

7.7 Court Recommendations

Organisations were also requested to provide information on when a complaint is upheld by the court, could recommendations binding on the employer be made. Details are provided below.

Belgium:

The civil and criminal liability of the employer as the person responsible for the prevention policy may be invoked even if he is not the perpetrator. Within the framework of the prohibitory injunction the employer may be requested by the judge to take appropriate steps to ensure

³⁰ These figures were provided by the Equality Tribunal in Ireland.

³¹ An immaterial compensation of €13,613 is the highest ever to have been awarded to a victim of sexual harassment at work. Amounts of €11,344, €9,075 and €6,806 have also been granted. There is, however, a 1997 ruling in which a compensation of €65,798 was granted, even though the charged sexual harassment had not been proved. Such a high compensation was, among others, based on the fact that the requestor had given sufficient indications to her employer, who did not react properly.

In this decision, however, the privacy of the employee had been violated as well; therefore this was to be compensated too. The high sum of €65,798 encompasses not only the violation of privacy but also the inadequate response to the signs of sexual harassment.

³² These figures were provided by the Equal Opportunities Commission in the UK.

that the acts cease and can be subjected to the imposition of criminal sanctions if he fails to comply.

Denmark:

In Denmark, an employer is obliged to obey a ruling and pay the indemnity laid down in the ruling. If the employer does not pay, the person who is the object of the sexual harassment may take further legal action to receive this indemnity.

Hungary:

The Hungarian respondents indicate that the Court may “engage the employer to cease the wrong attitude” but does not elaborate on the response.

Ireland:

The decisions of the Equality Tribunal and Labour Court are binding and if they are not complied with, may be converted into a full judicial order which can be enforced. The Employment Equality Act 1998 also allows for the enforcement of a final determination of the Labour Court or the Director.

Italy:

Under Article 4 of Legislative Decree 215/2003 a judge may order that discriminatory behaviour ceases and may also order the employer to draw up a plan for eliminating the discrimination.

Luxembourg:

Article II of the Law of 26 May 2000 allows the chairman of the labour court, within the framework of emergency interim proceedings, to appeal to the employer to terminate all acts which he recognises as sexual harassment in the context of working relations within a fixed deadline. It is not a matter of proceedings in which the judge is required to decide whether or not sexual harassment has occurred, but of urgent proceedings whose aim is to prevent the worst. Furthermore, the chairman of the Labour Court cannot appeal to the employer to implement any specific measures (e.g. transferring the harasser) in order to terminate the harassment.

The Netherlands:

In the Netherlands, such recommendations are described as depending on the seriousness of the case. There is no general recommendation or approach.

Spain:

In Spain, the employer is obliged to comply with the court mandate contained in the sentence or in the terms thereof.

The UK:

The Sex Discrimination Act, 1975, provides that a Tribunal may make a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of

discrimination to which the complaint relates. These recommendations can include for example, a recommendation that the applicant should never have to come in contact with the harasser again; that the harasser be suspended until transferred to another site and never be in contact with the applicant again; that the employer adopt a sexual harassment or equal opportunities policy, or contact Advisory, Conciliation and Arbitration Service (ACAS) and/or the Equal Opportunity Commission (EOC) for advice on sex discrimination appropriately, or publicise the finding of the tribunal against it.

7.8 Summary: Legal Complaints and Remedies

It is difficult to draw any conclusions from the array of responses to the various questions considered in this section. It is inevitable that there will be little consistency of practice across the responding states in relation to — for example — the bodies to which complaints of work-related sexual harassment may be brought, the support mechanisms available to complainants, or the remedies for sexual harassment. Systems for the enforcement of employment rights generally vary widely across the Member States of the EU and the Accession States, and this variety of approach will inevitably continue. It is noteworthy that **Directive 2002/73/EC** provides (recital 20) that:

“Persons who have been subject to discrimination based on sex should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts”.

Article 8A of the Directive further provides that:

- (1) Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
- (2) Member States shall ensure that the competences of these bodies include:
 - (b) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 6(3), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination.

Most of the respondent states report measures in place to protect sexual harassment complainants from victimisation but gave little information in response to questions about financial compensation available to victims of sexual harassment.

8.1 Introduction

Trade unions / employee organisations and employer organisations surveyed were required to provide details of Grievance Procedures and Sanctions applying to members/member organisations for dealing with Sexual Harassment / Harassment based on Sex.

In total, **fifteen organisations in ten countries** (Austria, Belgium, Finland, France, Germany, Ireland, Malta, the Netherlands, Spain and Sweden) stated that there was specific **Grievance Procedures** in place for dealing with Sexual Harassment / Harassment based on Sex (**eleven** of the relevant trade unions / employee body and **four** employer organisations). None of the relevant organisations from Hungary and Slovenia provided responses to this section.

In total, **seven organisations (six** trade unions and **one** employer organisation) in five countries (Austria, Belgium, the Czech Republic, Spain and Sweden) stated that there were specific sanctions in place for dealing with Sexual Harassment / Harassment based on Sex amongst members/member organisations. The responses are detailed in Table 8.1.

Table 8.1

Respondent Organisations with Specific Grievance Procedures and Sanctions

Country	Organisation	Organisation Type	Grievance Procedure	Sanction
Austria	AK (Chamber of Labour)	Employee Org	✓	✗
	OEGB (Austrian Trade Union)	Trade Union	✓	✓
	WKO (Austrian Economic Chamber)	Employer Org	✓	✓
Belgium	CGSLB/ACLVB	Trade Union	✓	✓
	CSC/ACV	Trade Union	✓	✗
Cyprus	Pancyprian Federation of Labour (PEO)	Trade Union	✗	✗
	Pancyprian Trade Union of Civil Servants (PASYDY)	Employee Org	✗	✗
	Employers and Industrialists Federation	Employer Org	✗	✗
Czech Republic	Ceskomoravska konfederace odborovych svazu	Trade Union	✗	✓
Denmark	LO	Trade Union	✗	✗
	HK	Employee Org	✗	✗
	DA	Employer Org	✗	✗

Table 8.1—continued

Country	Organisation	Organisation Type	Grievance Procedure	Sanction
Estonia	Eesti Ametuhingute Keskkliit (Confederation of Estonian trade unions)	Trade Union	✗	✗
	Teenistujate Ametiliitude Keskorganisatsioon (Estonian Employees Union Confederation)	Employee Org	✗	No response
Finland	The Confederation of Unions for Academic Professionals in Finland (AKAVA)	Employee Org	✓	✓
	Central Organization of Finnish trade unions (SAK)	Employee Org	✗	✗
	The Finnish Confederation of Salaried Employees STTK	Employee Org	No response	✗
	The Confederation of Finnish Industry and Employers	Employer Org	✗	✗
	Employers Confederation of Service Industries	Employer Org	✗	✗
France	Force-Ouvriere	Trade Union	✗	✗
	Confédération Générale du Travail (CGT)	Trade Union	✓	
Germany	Vereinte Dienstleistungsgewerkschaft e. V. Bundesverwaltung	Trade Union	✓	✗
	Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA)	Employer Org	✗	✗
Greece	General Confederation of Professional Artisans and Merchants of Greece (GE.S.E.B.E.E.)	Employer Org	✗	✗
Ireland	IBEC	Employer Org	✓	✗
Italy	General Italian Confederation for Trade	Trade Union	✗	✗
	Confindustria	Employer Org	✗	✗
Latvia	Latvian Free Trade Union	Trade Union	✗	✗
	Latvian Employers Confederation	Employer Org	✗	✗
Lithuania	Lithuanian Confederation of Industrialists	Employer Org	✗	No response
Luxembourg	LCGB	Trade Union	No response	✗
	Chambre des Employes Privés	Employee Org	✗	
Malta	Unjoni Haddiema Magħqudin (UHM)	Trade Union	✗	No response
	Malta Employers' Association (MEA)	Employer Org	✓	✗

Table 8.1—continued

Country	Organisation	Organisation Type	Grievance Procedure	Sanction
The Netherlands	CNV (National Federation of Christian trade unions)	Trade Union	✓	✗
	FNV (Federation Dutch trade unions) Women's Secretariat	Trade Union	No response	No response
	Confederation of Netherlands Employers and Industry VNO-NCW	Employer Org	✓	✗
	ROP Council for Government Staff policy, Min of Internal Affairs and Kingdom Relations-VSO Association of Public Sector Employers.	Employer Org	No response	No response
	MKB NL (organisation of small and medium sized enterprises)	Employer Org	No response	✗
Poland	All Poland Alliance of trade unions	Trade Union	✗	✓
	Polish Confederation of Private Employers	Employer Org	✗	
Slovak Republic	Confederation of Slovak Trade Union	Trade Union	✗	✗
	Federation of Employer's Associations of the Slovak Republic	Employer Org	✗	
Spain	Unión General de Trabajadores (UGT)	Trade Union	✓	✓
Sweden	Landsorganisationen — LO	Trade Union	✓	✓
	Sveriges Akademikers Centralorganisation — SACO	Trade Union	✗	No response
	Tjänstemannens Centralorganisation — TCO	Trade Union	✓	✗
	Arbetsgivarverket	Employer Org	✗	✗
	Confederation of Swedish Enterprise (Svenskt Näringsliv)	Employer Org	✗	✗
The UK	National Association of Citizens Advice Bureaux	Employee Org	✗	No response
	Confederation of British Industries (CBI)	Employer Org	✗	✗

8.2 Nature of Grievance Procedures

In the following section, details of the nature of grievance procedures that are present in the respondent countries are provided. Where grievance procedures / sanctions exist, they generally relate to all types of sexual harassment as defined by the relevant legislation.

Austria:

Both the Austrian employer organisation (WKO) and the employee organisation (AKWIEN) stated that individual cases were examined before the Equal Treatment Commission, in accordance with Sections 4 to 6 of the Equal Treatment Act.

With regard to sanctions Austria's trade union, ACLVB, stated that the sanction for sexual harassment very much depended on the seriousness of the incident. Written warnings, reprimands, suspension and dismissal for gross misconduct are listed as sanctions. The employer organisation (WKO) describes similar sanctions.

Belgium:

The Belgian trade union ACV-CSC stated that requests are made for arbitration to the appointed trustee within the company or to the prevention advisor specialising in the psychosocial aspects of work and of moral or sexual violence and harassment at work. The complaint is then dealt with by the specialist prevention advisor who provides the employer with suggestions to put an end to the harassment. Finally the complaint is lodged with the labour inspectorate and the action filed with the appropriate jurisdiction (procedure preferred by the aforementioned law of 11 June 2002).

The Belgian trade union, ACLVB, responded that its sanctions depend on the seriousness of the offence. Written warnings or reprimands, suspensions, dismissal for gross misconduct are all stated as relevant sanctions.

The Czech Republic:

With regard to sanctions, the Czech Republic's trade union (CMKOS) specified that, since 1st March 2004, any violation of rights and duties in relation to equal treatment or discrimination gives the employee the right to demand the end of these violations, the removal of their consequences and an adequate apology. If the employee's dignity or reputation in the workplace is diminished to a large extent, and the foregoing remedies are not sufficient, the employee is entitled to financial compensation.

Finland:

The Finnish employee organisation for academics (AKAVA) and employee organisation (STTK) both specify that the grievance procedure takes the format established in guidelines that give advice to a person subjected to harassment. The guidelines recommend that the victim should inform his/ her nearest supervisor or the offender's supervisor or an industrial safety officer / delegate or occupational health care personnel.

AKAVA also notes that a violation of rights entitles the employee to financial compensation. Sanctions depend on the severity of the offence, varying from a warning or file note, to

changes necessary in the harasser's job content to end the harassment and ultimately to the offender's dismissal.

France:

The French trade union CGT stated that the nature of the grievance procedure involved interventions by trade union representatives or staff representatives, however the detail of what is involved in practice was not described.

Germany:

The German trade union Vereinte Dienstleistungsgewerkschaft e. V. Bundesverwaltung specified that the steps involved in the grievance procedure include notifying the Operating / Human Resources Board and notifying those in charge of human resources. An arbitration committee should also be set up.

Ireland:

The Irish employers' organisation (IBEC) indicates that it has both informal and formal complaint procedures, formal procedures being reserved for more serious grievances. The steps involved are not described. IBEC states that these grievance procedures apply to all types of sexual harassment.

The Netherlands:

Both of the Dutch employer organisations (the VNO-NCW, and the MKB) specify "a special individual" (trust person) that a victim can talk confidentially to about a complaint. In severe cases the involvement of the judicial authority is sometimes called for. The trade union (CNV) refers to grievance procedures based on Collective Agreements and regulations made by companies in accordance with the opinions of Work Councils.

Slovenia:

In Slovenia there are both informal and formal procedures. The informal procedure is led by the Advocate for Equal Opportunities for Women and Men, who is employed by the Office of the Government of the Republic of Slovenia for Equal Opportunities. Legal procedure on sexual harassment in the workplace is led by the misdemeanours judge.

Spain:

The Spanish trade union (UGT) states that, although there is no specific complaint procedure or standardised sanction in place for sexual harassment, the procedure established by the UGT Committee on Guarantees is applied to ensure the protection of and respect for the rights of their members. The process involved in so doing is not described.

Sweden:

The Swedish trade union (LO) reports that there are grievance procedures in place to address unwanted conduct based on sex or unwanted conduct of a sexual nature. The trade union recommends addressing the Action Plan for harassment in the Workplace.

8.3 Summary: Grievance Procedures and Sanctions

The general absence of specific grievance procedures and sanctions for Sexual Harassment/ Harassment based on Sex may not necessarily indicate any lack of concern for the problem of harassment. It may be the case, for example, that such complaints are made and dealt with under general grievance procedures, and are subject to general sanctions. But harassment does give rise to particular difficulties — where, for example, a union member makes an allegation against another union member, or against a union official — problems can arise as to who ought to be represented by the union. Many unions would generally have policies of representing accused employees, rather than accusers, in disciplinary procedures (this because only the former is likely to be at risk of sanction from the employer). But any such policy applied in the context of sexual harassment will be tantamount to siding with alleged harassers over victims of harassment (frequently, in addition, to favouring male over female interests). Thus a number of unions have concluded that particular procedures have to be in place in order to respond effectively to the problem of sexual harassment.

9.1 Collection of Quantitative and Qualitative Research

In Austria, Finland, Italy, Malta, the Netherlands and Sweden, quantitative/qualitative research on sexual harassment is conducted on a “regular” basis by Ministries/specialist bodies. There is, as outlined below, significant variation between countries in terms of the frequency with which research is conducted and the focus of the research that is carried out. Trade unions in Denmark, Italy, the Netherlands, Spain and Sweden also reported conducting quantitative research on the subject. None of the responding employer organisations indicate that they conduct research on workplace sexual harassment.

Only three organisations stated that there was a specific individual in their organisation responsible for the collation and analysis of the data. In Ireland, the Equality Authority has since 1990 conducted its own analysis of case file data. The Italian Ministry cited the Head of Investigations into Safety and Violence which began collating data on the subject in 1996 and also mentions the Director of Investigations into Living Conditions. The Netherlands mention two agencies, both of which are agencies responsible for the collection of statistics and data.

9.2 Nature of Research

With few exceptions, the infrastructure for the collection of data on sexual harassment across the surveyed organisations is relatively underdeveloped. Data is not collected frequently at national or organisational level and specific functional responsibility for the conduct of research and the collection/collation of data at the institutional and organisational level is lacking. Nevertheless, a significant amount of information was provided by respondents which assists in establishing the nature of the research on sexual harassment that has/is being conducted across Europe.

Austria:

The Attorneys for Equal Treatment and the Equal Treatment Commission present a report each year to the Austrian Parliament on the enforcement of the Equal Treatment Act. The issue of sexual harassment is dealt with in this report, however, the Austrian respondents do not provide an indication of the kind of data that is collated or reported on in this report.

Other research on the subject highlighted by the Austrian respondents includes a “Report on Sexual Harassment in the Workplace”, (1988) which found that 81% of the 1,411 women surveyed indicated that they had experienced sexual harassment once or more in their working lives. (The percentage varied with the severity of the incidents). In another Austrian report on the “Satisfaction of women in the workplace” (1994), 73% of the women surveyed reported that they had experienced sexual harassment at least once.

Belgium:

There is no single institution that is charged with the collection of such data in Belgium and the approach is described as being “more voluntaristic”. There are no frequent studies that focus solely on the subject but there are frequently studies that address the topic as a dimension of other behaviour. There is for example, an organisation (DIOVA-DIRACT) in Belgium that collects data by means of a questionnaire on “well-being and stress at work”. The questionnaire has two questions dealing with sexual harassment. The questions are as follows:

- Are you confronted with jokes or remarks of a sexual nature during your work which you consider to be inappropriate?
- Does anyone brush against you or touch you during your work in a manner which you consider to be inappropriate?

The people questioned may respond with ‘always’, ‘often’, ‘sometimes’ or ‘never’.

DIOVA-DIRACT started collecting data in companies in 1999. It now has a database that is expanding on a monthly basis.

Other research on the issue conducted in Belgium includes, Report No. 35 and Communication No. 4 by the National Labour Council dated 18.12.1990. Opinion No. 1012 of the National Labour Council dated 29.10.1991 on the Draft Royal Decree implementing protection against sexual harassment in workplaces. The information contained in these reports and the findings in relation to sexual harassment is not expanded on.

Denmark:

The Danish Trade Union, HK, states that it conducts relevant research approximately once a year. However, it also points out that this does not involve a systematic or qualitative analysis but consists of a telephone survey of HK’s local branches.

Estonia:

Some research has been undertaken as an aspect of the *Working Life Barometer in the Baltic Countries* (2002).

France:

Regular research on the issue is not conducted in France, nevertheless there has been some recent relevant research. In 2002, a study based on the assessment of the law dated 02/11/1992 was carried out under the auspices of the French Department of Women’s Rights and Equality, Assessment of Law No. 92-1179 of 02/11/1992 on the abuse of power of a sexual nature within working relationships. The study found that there was little specific criminal or civil case law in the area and that there were often minor financial penalties associated with infringements. The study recommended greater penalties and more clearly established employer liability.

Germany:

Several “once-off” investigations have been conducted; however, there are no regular investigations. Relevant German research includes:

- “Sexual harassment in the Workplace“ a study commissioned by the Federal Ministry for the Family, the Elderly, Women and Youth in 1992 and 1997. The study provides basic, representative (quantitative) and qualitative research into the term, “sexual harassment”, its characteristics, extent and consequences. It found that in all, 72% of women surveyed indicated that they had experienced sexual harassment in the workplace at some point during their working lives. Differentiation according to socio-demographic features, victims / perpetrators, sector, hierarchical position, duration of employment, etc. was also apparent.
- “Self-aware women — self-possessed men” is a 2002 study commissioned by the Federal Ministry for the Family, the Elderly, Women and Youth. It is an assessment of various approaches to prevention, dialogue between the sexes and mediation in conjunction with sexual harassment in plants and companies.
- “The Employee Protection Act in Practice” as yet unpublished,³³ was commissioned by the Federal Ministry for the Family, the Elderly, Women and Youth. The study provides both quantitative, representative and qualitative research on 2 focal points: a) Implementation of the Employee Protection Act in operational practice and b) Implementation of Labour and Disciplinary Courts in jurisprudence. In relation to a) it has been found that:
 - Relatively few cases of sexual harassment in the workplace are known among those in charge of Human Resources and Works Committees.
 - The Employee Protection Act is not well-known enough. Special measures to implement the Employee Protection Act at the operational level and/or to prevent sexual harassment, such as setting up walk-up locations or complaint procedures, plant agreements, continuing education, etc. are the ones most often found in big operations; overall they tend to be rare.
 - The presence of preventive measures is accompanied by the disclosure of a significantly higher number of cases; apparently this emboldens those affected to resist harassment.

In relation to b) the findings suggest that:

- Of around 400 court cases on sexual harassment, 188 were analyzed in detail. The typical problems and weaknesses of these cases were worked out.

In terms of the influence of research on policy the report on “Sexual harassment in the Workplace” which was conducted before the Employee Protection Act was enacted as the first, representative, empirical study, is described by the German Ministry as having indelibly influenced the legislative proceedings on the Employee Protection Act. The results of the study on the Employee Protection Act in practice are being considered in the planned review of the Employee Protection Act, in conjunction with the implementation of the EU anti-discrimination guidelines.

Hungary:

The Hungarian respondents reference the “Equal Opportunities Programme” which is designed to prevent negative discrimination and to promote the equal opportunities of certain specific social groups in all aspects of life. The Hungarian Government has also carried out

³³ April 2004

some research and test surveys on “Psycho-terror in the Workplace“ as methodological preparations of the broad research that has been conducted in Hungary since the 1990s. From the forty-six different types of harassments researched, two involve sexual insults, namely sexual offers and sexual assault.

Finland:

The Council for Europe and Statistics Finland have been collecting data for four years. Research which has influenced policy in this area is also referenced by the Finnish Ministry; Varsa conducted research in 1993 which was used when the Finnish act on equality was renewed in 1995. The University of Helsinki used the results of Mankinens research (1995) when making guidelines on how to combat sexual harassment in the University of Helsinki.

A study entitled “Equality among police officers” conducted in 1999 by the Institute for Occupational Health found that sexist language (remarks about physical appearance, sexual behaviour and sex jokes from clients) cause exhaustion for both men and women police officers. The same applies to unwelcome physical contact especially for women.

Ireland:

In Ireland, there is no one central body responsible for coordinating matters in relation to the issue of sexual harassment, either in relation to data collection or research. The Irish Ministry notes that it is therefore difficult to summarise all research carried out to date as trade unions, universities etc. may have carried out such work. Relevant research on the issue that has been conducted in Ireland includes:

- “Sexual Harassment in the Workplace: a practical guide for Employers and Employees in Ireland, 1995, Noel Harvey and Aidan Twomey.
- Report on the Prevention of Workplace Bullying by the Irish Task Force on Dignity at Work — the Challenge of Workplace Bullying. The Report revealed that from a random survey representing 1.6m employees, 7% report having experienced bullying at work. The report draws attention to the financial losses incurred by employers as a result of permitting bullying in the workplace to occur and comments on purely financial terms that it makes common sense to eliminate the phenomenon of bullying.
- The SAVI Report (Sexual Abuse and Violence in Ireland) conducted in 2002 by the Health Services Research Centre at the Royal College of Surgeons in Ireland/Dublin Rape Crisis Centre is a national study of Irish experiences, beliefs and attitudes concerning sexual violence. The main aim of the SAVI study was to estimate the prevalence of various forms of sexual violence among Irish women and men across the lifespan from childhood through adulthood. Additional aims of the study were to describe who had been abused, the perpetrators of abuse, the context in which abuse occurred, and some psychological consequences of abuse; to assess public willingness to disclose abuse to others in the event of a future experience; to document particular challenges experienced in addressing sexual violence by marginalised groups; and to make recommendations for future developments in the areas of public awareness, prevention, service delivery and policy development. The issue of sexual harassment is also referred to.

- “Gender Injustice: feminizing the legal professions”, Ivana Bacik, Catherine Costello and Eileen Drew, 2003, TCD / NDP / British Council. This is concerned with discrimination against women solicitors and barristers, and includes some evidence of sexual harassment inter alia.
- Sexual Harassment at College, Ed O’Egan (Higher Education Equality Unit), c/o UCC, 1994.
- Bullying and Harassment in the Workplace, Lucy Costigan, Columba Press, 1998.

In addition, a number of the universities in Ireland have carried out some research on the issue, for example, University College Cork’s Committee on Equality of Opportunity produced a booklet entitled “Help Prevent Harassment” and includes reference to sexual harassment.

Italy:

The relevant organisation in Italy is ISTAT, the National Statistics Institute. It began to collect data in 1997/1998. Every five years, ISTAT carries out a survey on victimization (quantitative) which includes a section on sexual harassment and violence. The figures for harassment in the workplace were useful for drawing up the bill of law on harassment at work. Furthermore, ISTAT and the Equal Opportunities Department are planning a survey into violence against women and maltreatment. ISTAT also draws up the data on the criminality statistics received from the police, Carabinieri and forces of law and order and the procedures initiated on these topics. Other surveys of victims of violence have been carried out on an annual basis by the antiviolence centres.

In addition a report entitled “Women’s work between legislative protection and contractual provisions” 2002, was conducted by CNEL, the National Council for the Economy and Labour. The report examines the most interesting and significant provisions on the subject, such as: the definition of the cases in question and provisions for actions aimed at stopping harassment; protection duties attributed to employers and / or companies.

Lithuania:

No research is conducted on the causes, range or types of sexual harassment in Lithuania. There is no data available relating to sexual harassment apart from the information gathered by the Office of the Equal Opportunities Ombudsman, relating to the persons who filed a complaint on sexual harassment to the Ombudsman.

Luxembourg:

In Luxembourg a study entitled “Sexual Harassment-The daily reality in the working world of Luxembourg” was carried out in 1993 by ILRES S.A. on the request of non governmental organisations. Even though this study has the disadvantage that the collected data only pertains to women, it has the merit of drawing the attention of public opinion on the reality of sexual harassment. In effect, the study concludes that 78% of women in work have been victims of sexual harassment at least once.

Malta:

A national quantitative research survey was carried out in 2001; however, to date this has not been replicated. The findings informed an educational campaign carried out among government entities.

The Netherlands:

In the Netherlands, the organisation responsible for collecting data on sexual harassment is TNO Arbeid which started to collect data in 2000 and collects such data at least twice a year. SKB started to collect data in 2003 and has been collecting data periodically since.

In 1995, an evaluation of the specific articles from the Working Conditions Act on sexual harassment and aggression and violence was conducted, this involved interviewing of employers. In 2000, a similar evaluation was carried out and also examined the issue of 'bullying at the workplace'; both employers and employees were interviewed. In 2004, a new evaluation is planned on these issues as well as on the issues of 'conflicts and discrimination at work'; this study will involve interviewing employees.

Since 2000, a survey of about 4,000 employees has been conducted annually which provides an insight into trends in working conditions, and since 2003 the Ministry of Social Affairs and Employment also conducts a National Survey on Occupational Safety and Health (OSH) (about 10,000 employees). In these surveys employees are also being questioned about undesired sexual attention, intimidation and violence, and the need to take preventive measures.

Quantitative data is also collected as an aspect of monitoring of OSH covenants. Aggression and violence are issues in a number of OSH covenants. The intention of these covenants is to tackle all kinds of aggression. So implicitly sexual harassment is dealt with too. The covenants are in the following sectors: (academic) hospitals, mental health care, home care, care for the handicapped and the municipalities. Targets are set to reduce aggression and violence in these sectors.

The results of the covenants are monitored periodically by interviewing employees about exposure to aggression and violence, sexual harassment and bullying. Questions are also asked about complaints and the duration of sick leave as a consequence of the issues of aggression, violence, sexual harassment and workplace bullying.

Other research highlighted by the Dutch Ministry includes:

- The evaluation conducted by Regioplan in 2000 of the Working Conditions Act which examined sexual harassment, aggression and violence and bullying at work. The evaluation found, *inter alia*, that:
 - 36% of the employees are being confronted with aggression and violence,
 - 10% of employees with sexual harassment,
 - 16% with bullying,
 - In 56% of cases a colleague is the perpetrator.
- "Intimidation and aggression in the workplace", was a study conducted in 2000 and again in 2003 by TNO Arbeid. It involved a representative survey of 10,000 employees. The study found that in 2000, 21% of the respondents reported problems with intimidation by clients and customers; in 2003 this had risen to 27%. In 2000, 7% reported being confronted with physical violence; in 2003 the figure was 9%. More women suffer from physical violence (11%) than men (7%). The important factor here is that very often women work in close contact with clients and customers (care, services, etc).

- “Desired policy against undesired behaviour in the organisation,” is a study which identifies 16 good practices on policy to prevent bad and undesired behaviour in the organisation. The good practices were found in all kinds of organisations and sectors.
- Sexual harassment was also a feature of a report on the diversity audit of the police conducted in 2004.

Portugal:

In Portugal, the “National survey on Sexual Harassment / Harassment based on Sex within the employment market” conducted in 1989 on behalf of the Commission for Equality at Work found that 34.2% of the women surveyed had, at some time, been victim to sexual harassment.

A further Portuguese study “Violence against women“ conducted in 1997 by the Commission for Equality and Women’s Rights found that within employment and at the workplace, socio-cultural discrimination was the type of violence most commonly cited (54%), this was followed by psychological violence (31.7%) and sexual violence (13.7%). In public places, the most common type of violence was sexual (50.9%), primarily harassment.

“Sexual Harassment, a reality in need of typification or suitable protection under Portuguese criminal law” was a study conducted in 1998, within the scope of the first masters in legal and criminal science from the Université Catolique. It found that there needs to be a separate/specific Act defining sexual harassment as a crime in the strict sense.

“Sexual assault in the Workplace” conducted in 1994 found that:

- Harassment is an issue which affects women as a result of their professional status at work.
- Most harassment is perpetrated by peers.
- Women believe that harassment by their hierarchical superiors is more serious.
- Harassment is one more factor to add to many other discriminatory factors.

“A summary study on the sexual assault in the workplace” in 1999 found

- Sexual harassment mainly affects working women.
- There is a lack of awareness and general visibility as regards this issue.
- The two sides of industry have not introduced standards into the collective labour agreements which prevent, dissuade and provide against the perpetration of this conduct in the workplace.
- Employers need to be shown that a working atmosphere disturbed by this problem has repercussions on the company’s productivity and on the economy in general.

Slovenia:

The first data on sexual harassment in the workplace in Slovenia was collected by the International Research about Environment and Family in October and November 1993, 1,032 adults from Slovenia participated in the research. In 1997, there were two smaller research assignments. Suzana Bec conducted pilot research on 200 people (100 men and 100 women). Mojca Dobnikar conducted telephone research on 439 women. In 1998 a smaller postal

research was carried out. The questionnaire was sent to 1,050 adults of the Republic of Slovenia, but only 57.4% of them responded. More exact and reliable data was collected with postal research in June 1999. This research was conducted on a sample of 408 people (39.2% men and 60.8% women).

Spain:

In Spain a 2001 publication “Physical and Psychosocial consequences of psychological abuse at work (mobbing)” involved a study of working women in university and health care organisations. It found that, in recent years, a workplace related psycho-social problem has been described that had previously gone undetected. This phenomenon has been referred to as “mobbing” or psychological terror and is described as “the unethical communication of hostility by one or several people primarily to a single individual.” In this type of conflict the victim is subjected to systematic belittling and infringement of his/her civil rights. If it lasts for a number of years it may ultimately lead to exclusion from the labour market if the individual in question is subsequently unable to find employment due to the psychological injury sustained at his/her former place of work.

The Spanish Ministry states that to date no scientific confirmation has been forthcoming in Spain on the prevalence or consequences of mobbing. It is felt that there is a need to evaluate these factors and to establish adequate diagnostic and preventative measures. To date research has not revealed the existence of gender differences although the incidence of mobbing has been found to be higher in social service organisations (schools, hospitals etc) where a majority of employees are women.

Another Spanish study “Factors protecting adolescent and young women against sexual coercion and aggression in peer relationships”, found that awareness of the magnitude and importance of coercive and aggressive behaviour in the sexual relations of adolescents and young adults has grown in the last few decades. As a result of this research the Spanish Ministry propose to carry out a study on this problem within its own socio-cultural context, in order to ascertain the factors that enable adolescents and young adults to seek positive protection from or learn to cope with risk situations in this regard. Based on the survey results, the Spanish Ministry will attempt to offer guidelines that may be of interest in developing programmes aimed at preventing sexual aggression. In addition to working with potential perpetrators the Spanish Ministry plans to provide adolescents and young people with effective resources to prevent aggression.

“Sexual harassment in secondary schools — invisible violence”, was a 2001 study conducted by the University of Seville. Studies conducted on this subject in Spain have shown that sexual harassment is another form of violence that affects many working women at their workplace. However these situations are seldom reported. The study aimed to ascertain the cause of the problem, the forms it takes and the consequences for teenage relationships.

“Discrimination and sexual harassment against women in the labour market” was conducted in 1988 by the Women’s Department of the Union General de Trabajadores (UGT). It involved exploratory research on sexual harassment directed against women at the workplace. The survey was conducted in the city of Madrid and geared to working women in the following industries; transport ticket office attendants, clerical workers, hostelry, journalists, metal and chemical workers and health care. The variables considered were working activity, seniority in the company, age, marital status, educational background, religious affiliation, co-workers,

bosses, subordinates, physical appearance and modernity. The findings of the research are not provided.

Sweden:

In 1993, Sweden started to collect data relating to Sexual Harassment/Harassment based on Sex and since then it has been collecting data.

The UK:

A survey was conducted in 2002 by the IRS Lexis Nexis (leading publisher on Human Resource issues in the UK). The survey of 112 organisations found that 111 out of 112 have policies for dealing with sexual harassment and the one remaining is looking at implementing it. Six out of ten respondents to the survey have introduced the policy over the past 10 years. The most common reason for implementation was in order to support equal opportunities. Ninety five percent of the surveyed organisations resolve complaints informally.

In 1999, the Equal Opportunity Commission (EOC) conducted a sexual harassment survey. Respondents were from varying occupations and aged between 25 and 34; 60% were employed in workplaces of less than 100. Three out of four respondents had been harassed by managers/directors and 95% of those harassed had been harassed by men.

Other UK research on this issue includes "Sexual Harassment at the workplace in the EU", "The Employment Trend Survey" (1999) and "The Equal Opportunities Review survey" (1999).

In terms of the relationship between research and policy the EOC highlight the Leeds City Council Initiatives on sexual harassment through which a survey of staff attitudes towards sexual harassment and levels of reporting and non reporting was conducted. The results were fed back to staff and departmental procedures for dealing with sexual harassment were given to staff. All new staff now receive training and information on procedures and booklets and manuals have been drafted. The EOC's formal investigation into the Royal Mail has resulted in an agreement whereby the Royal Mail undertakes to research the incidents of sexual harassment in its workforce.

Sexual harassment at Work in Northern Ireland (1990) was a study commissioned by the Equal Opportunities Commission (NI) now the Equality Commission. It found low levels of awareness among organisations and trade unions about the problem of sexual harassment; inadequate support and counselling for complainants; lack of trained personnel to deal with complaints and a failure to use formal disciplinary procedures against harassers.

9.3 Statistical Data on Sexual Harassment/ Harassment based on Sex

In the following paragraphs the quantitative information on the incidence and nature of sexual harassment provided by respondents is described.

9.3.1 Incidence of Sexual Harassment /Harassment based on Sex by type

Relatively few organisations provided statistical data on the incidence or nature of sexual harassment in their country. It is therefore not possible to identify any common themes in the data. The data that was provided is detailed below:

- Belgium — data is available for the years 1999-2003 and indicates that 1.3% of the population are victims of verbal sexual harassment, 2% are victims of non verbal sexual harassment and 0.6% are victims of physical types of sexual harassment.
- Italy — the data which is available for 1997/1998 indicates that 56.3% of the female population have been victims of verbal sexual harassment, 22.6% of women have been victims of exhibitionism in their lifetime of which 4.2% has occurred in the last 3 years. 24% of women have been victims of physical harassment in their lifetimes (5.7% in the last 3 years).
- Malta — in the “Sexual Harassment at the Workplace in Malta Report” (2002) by the Ministry of Social Policy, the researchers had divided the behaviour itself from the perception of the receiver. The research also analysed whether the harassment was perpetrated by harasser into superior, a workmate and a client. Sexual harassment incidences committed by a superior were found to be 30.1%. Malta stated that prevalence of verbal sexual harassment by a superior was 7.5%. Prevalence of non verbal sexual behaviour by a superior was found to be 3.2% and the prevalence of quid pro quo behaviour by a superior was reported at 1.0%. This represented 4.2% of males versus 7.5% of women.
- Netherlands — in a 2000 evaluation, 78% of women reported verbal incidences, 14% reported pornographic posters, 54% reported minor physical contacts and 5% reported attempts to assault.
- Spain — the incidence ranges from 1-18% depending on level of severity.

9.3.2 Incidence of Sexual Harassment by Gender

Denmark (the employee organisation HK) is the only country to provide information on the incidence of male/female and female/male sexual harassment. Data is available for the previous 12 months and it indicates that 95% of the incidents of sexual harassment involve male harassment of females, 5% of incidents involve female harassment of males. No data was provided by any organisation in relation to same- sex sexual harassment.

9.3.2 Profile of the Victim

Surveyed organisations were asked to provide details relating to the age, gender and occupation of the victim. It is evident that very little data on these variables is available. In the following sections the information that has been provided is presented. Belgium, Denmark, Italy, Malta, Spain and Sweden all provided information on the profile of the victim.

- Belgium 1999-2003 — Average age of the victim was 37 and 6.5% are apprentices.
- Denmark — data in relation to the profile of the victim is collected every year, the age of the victim ranges from 17-55, 5% of victims are male, 95% are female. The groups most frequently exposed to harassment are clerks and shop assistants.
- Italy — data is available for the years 1997/1998, 2002. The most frequent occupational categories of the victim are 1.) executives, women entrepreneurs, professionals, 2.) those seeking a new job, 3.) clerical workers, 4.) self-employed women, 5.) retired. Of female victims of sexual harassment that have suffered at least one type of sexual harassment in the last three years the most frequent occupational categories were 1.) Those seeking a first job, 2.) executives, women entrepreneurs, professionals, 3.) clerical workers, 4.) self-employed women.

- Malta — data is available for 2001, the victim is primarily in the 16-25 year age bracket.
- Spain — most of the victims in Spain are younger than 35 years old.
- Sweden — 3.9 % of males have experienced harassment, 15.1% of females have experienced harassment.

9.3.4 Profile of the Harasser

All organisations were requested to provide information on the profile of the harasser. Again only Denmark provided information on the profile of the harasser. This data is collated every year. The age of the harasser is described as between 40 and 50 with a Male: Female ratio of 95:5. Most of the harassers are in leadership positions or are alternatively a colleague of the victim.

9.3.5 Profile of the Organisation

In relation to the profile of the organisation in which Sexual Harassment/ Harassment based on Sex occurred, only Belgium, Italy and Spain indicated that such data is available. Only Belgium provided the data in the format requested. In Belgium, 1999-2003 data indicate that of a total of 4% of all companies in which incidents of sexual harassment had occurred, 1.5% of incidents took place in the small category (0-50 employees), 1.1% in the medium category (50 -200 employees) and 1.4% in the large category (200+ employees). The average length of establishment of the firms in which harassment had occurred was 10.5 years. The five most frequent sectors were 1.) Food and Textile, 2.) Government, 3.) Health Care, 4.) Industry, 5.) Services.

9.4 Gaps and Deficiencies in Quantitative Data relating to Sexual Harassment/ Harassment based on Sex

Of the representatives of governmental organisations that responded to the questionnaire only the respondents from Cyprus, Estonia, Italy and Latvia indicated that there were no gaps or deficiencies in the data relating to Sexual Harassment / Harassment based on Sex in their countries.

Respondents from Austria, Spain, Slovenia, Portugal, the UK and the Equality Commission in Northern Ireland made broadly the same comments in relation to research gaps. Both the Austrian and Slovenian respondents stated that all of the data required by this study need to be gathered. The Swedish Ministry highlighted the need for more qualitative research. Other comments in relation to research gaps and data requirements in the surveyed states are detailed in the following paragraphs.

Belgium:

With respect to existing data collection in Belgium, the Belgian Ministry indicates that the figures collected describe only a few forms of this undesired behaviour and states that the research framework used was not particularly designed to address the matter in a profound way. For this, continuous data collection is needed. Although relevant legislation is in place and there are measures taken to counteract the matter, a framework to evaluate these tools is absent. Thus a risk analysis approach is still lacking.

Czech Republic:

The respondents from the Czech Republic have no available data relating to sexual harassment and stated that desirable information would include: Sector of the organisation in which the incident occurred and information relating to non-verbal harassment as well as statistics on the nature of the convictions, the types of harassment or the number of victims.

Ireland:

The Irish Equality Authority stated that data should be collected on the profile of the victim, the profile of the harasser and the profile of the organisation in which it occurs. The Irish Ministry stated that data should be collected on a wide number of issues, including matters relating to the incidence of sexual harassment (e.g. by type of harassment involved and by the gender of the harassed / harasser), also the profile of the harasser and the profile of the victim, profile of the organisation where it occurred etc.

Malta:

The Maltese respondents stated that data should be collected on a regular basis on as wide a range of variables relating to sexual harassment as possible, including profile of victim (age, gender, occupational status etc), profile of harassers, redress sought and satisfaction with redress.

The Netherlands:

The Dutch Ministry notes that although there are still gaps in the data it is trying to address these by doing surveys on a yearly basis. One of these studies is called the National Enquete on Working Conditions (the so-called NEA study). In this study, which examines working conditions in general, some specific questions are about sexual harassment, aggression, violence and intimidation. These issues can then be examined with respect to other questions regarding the type of organisation, culture etc. About 10,000 employees participate in this study.

Another survey regarding working conditions is done every two years (the so called TAS study). About 4,000 employees participate in it. Another study is planned to cover the covenants on working conditions, (in some covenants aggression and violence (implicitly sexual harassment) is an issue). In 2004, an evaluation of the Working Conditions Act about sexual harassment, aggression and violence, bullying, discrimination and conflicts at work (i.e. inappropriate behaviour) will be performed.

As stated, the Netherlands do already have quantitative and qualitative research. These findings are used and translated in the covenants on aggression (also stated in the Netherlands report). This is an important means of translating and implementing complicated 'law' issues in every day working life. In almost all of these covenants the attention and definition of aggression is very wide. So in practice this is a way to cover other harassment issues (including sexual harassment).

Portugal:

The Portuguese Ministry indicated that there was a requirement for any data capable of enabling a true assessment of the problems and in particular data on the results of legal proceedings and the sentences.

Spain:

The Spanish Ministry suggested that data should be gathered from two chief sources: 1.) Routine surveys and 2.) Judicial system statistics.

The UK:

The Equality Commission in Northern Ireland stated that data needs to be collected centrally on both the complainant and harasser and also on areas such as: gender; sexual orientation; disability; race; age; transgenderism; size and sector of employment; standard occupational classification; union status. The EOC in the UK highlighted the need for research to establish how frequently sexual harassment leads to the termination of the employment relationship.

9.5 Summary: Qualitative and Quantitative Research

As mentioned at the outset of this chapter the infrastructure for the collection of data in relation to Sexual Harassment/Harassment based on Sex is underdeveloped. None of the countries/organisations have dedicated research personnel examining or monitoring the issue on an ongoing basis. The fact that none of the employer organisations that responded to this question reported undertaking research on the issue might be slightly misleading as many of the preventative initiatives which are reported on in Chapter 10 are described as being undertaken by the “social partners”. Notwithstanding this, and given the role of employers in establishing and ensuring the implementation of preventative policies as a defence to liability, it might have been anticipated that such policies would be grounded in research on the subject.

This relates to another feature of the findings presented in this section, which is the limited evidence of the relationship between research findings and policy generally, although there are some notable exceptions to this (Germany, the UK and Finland).

The purpose of requesting quantitative information on the prevalence / incidence and nature of sexual harassment in the context of this research was to try to establish a benchmark, aspects of which could perhaps be monitored over time. However, it is clear from the synthesis of the data provided by respondent organisations that the existing data is far too fragmented to provide such a benchmark. From the studies that have been conducted it would appear that the level of sexual harassment is substantial and the absolute number of women, in particular, affected over the course of their working lives would appear to be very significant.

Notwithstanding this, quantitative studies are being conducted periodically in some of the countries surveyed. Where such research is being undertaken it is usually as a component of wider research into working conditions generally or the wider issue of violence against women. The former would appear to be an effective approach enabling cross referencing with other variables such as occupational type, sector etc. However, such an approach would not necessarily be capable of filling some of the research gaps highlighted above i.e. results of legal proceedings and psycho-social effects of sexual harassment.

Another feature of the research is that a number of the dedicated research studies that have been undertaken have focused on the working conditions of women or, as aforementioned,

on the issue of violence against women and there may therefore, be an under-representation in the research literature on the level and nature of male sexual harassment.

The majority of the respondents have indicated that there is a need to collect data on all of the variables identified in this research, *viz.* incidence and nature of harassment, profile of the harasser, and the victim, profile of the organisation etc. In light of the role assigned under Article 8 of **Directive 2002/73/EC** to “a body or bodies responsible for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex,” it may be worthwhile adopting a common approach to the monitoring of sexual harassment involving surveys incorporating these and other categories of data, across the EU Member States. This would not only facilitate effective monitoring of the indicators that are to be developed in conjunction with this study but would also facilitate the transfer of the various “best practice” initiatives for the prevention of sexual harassment that are being developed within individual member states.

Other research which has been conducted by individual Member States and which has a wider applicability to a range of equal opportunities issues is that which examines the link between sexual harassment and sick leave/absenteeism and ultimately to the victim’s alienation from the labour market.

10 Initiatives Designed to Reduce the Incidence of Sexual Harassment / Harassment Based on Sex

10.1 Introduction

All of the organisations surveyed were required to provide information on initiatives designed to reduce the incidence of Sexual Harassment / Harassment based on Sex.

In total, organisations in **nineteen** out of the twenty five countries indicated that they had been involved in initiatives designed to reduce the incidence of Sexual Harassment / Harassment based on Sex (**thirteen** of the relevant Ministries, **eight** specialist bodies, **nineteen** trade unions/employee organisations and **ten** employer organisations). The countries in which no responding organisation stated that they had engaged in these types of initiatives included Greece, Latvia, the Slovak Republic, and the Czech Republic. France and Poland did not specify.

10.2 Range of Initiatives and Best Practices

In the following section, details of the initiatives that have been implemented in the respondent countries are provided. Where best practices have been highlighted these are also identified.

Austria:

In Austria, in order to raise awareness, a folder for Attorneys for Equal Treatment has been developed. In addition, in order to illustrate how to go about establishing complaint procedures a sample company agreement has been developed. The Chamber of Labour, public service trade unions, solicitor's chambers, and the University of Vienna have established an advice centre for university staff and students and provide various emergency numbers and helplines.

Belgium:

In order to raise awareness trade union brochures have been published on violence and harassment at work and on legislation. There have also been articles in the CSC trade union periodicals, as well as trade union training courses for representatives and employees on this issue. The Belgian trade union also indicated that within companies, the employee representatives are, in principle, involved in the definition and implementation of such measures and obligations under the legislation.

In terms of best practice, the Belgian respondents highlighted the importance of a consistent educational approach based on mutual respect. They also highlighted the need to avoid indirectly blaming the victims by sanctioning the perpetrators and not those enduring their offences.

Cyprus:

In Cyprus, awareness courses for employers and managerial staff have been delivered. In relation to the establishment of complaint procedures, the Gender Equality Committee will be responsible for considering matters falling within the scope of the Equal Treatment legislation and submits and accepts complaints which by its own initiative, it will forward to the Chief Inspector for proper handling.

Denmark:

The employee organisation HK reported that in Denmark two brochures were published in 1999, a website www.sex-chikane.dk was established and various presentations have been made. The subject of sexual harassment is included in HK's courses for stewards and employees. Guidelines issued by the Danish Working Environment Service (March 2002) deal with harassment and sexual harassment: the nature of sexual harassment, how to prevent it, how to deal with actual cases, complaints procedures. If the parties of a collective agreement agree to comply with the guidelines, the obligation to follow the guidelines is unequivocally the responsibility of the parties and the obligation does not involve supervision of the enterprises by the Danish Working Environment Service. The issuing of these guidelines has been highlighted as a best practice in relation to the issue of sexual harassment.

Estonia:

Training and awareness raising has also been undertaken by the Ministry of Social Affairs in cooperation with the International Labour Organisation (ILO) in the frame of the project "*More and better jobs for women*". Rules about conduct, complaint procedures and the imposition of sanctions will be addressed when the draft Gender Equality Act is adopted by Parliament.

Finland:

The Social Partners in Finland negotiated and agreed in 2001-2002 on practical guidelines on preventing sexual harassment in the working places. Almost 100,000 copies of the leaflets were printed. It was sent to all employers' confederations member companies, state agencies and municipal employers, as well as to shop stewards around the country. This has been identified as a best practice initiative in relation to the issue.

Germany:

In order to raise awareness in Germany, public relations work has been conducted and brochures have been developed e.g. "Not with me" (especially for facilities for the disabled). Training materials have also been developed, such as the basic manual, "*Acting in Partnership*", for trainers from the Federal Office for Health Information.

Hungary:

In Hungary, employers in public organisations that employ more than fifty employees must determine a Plan of Equal Opportunities. It contains special rules in relation to the employment of women.

In relation to scientific research, the dissemination of the relevant information also falls within the framework of psycho-terror in the workplace. A number of publications and newsletters

exist to deal with the issue of sexual harassment and its resolution. The topic is included in the curriculum and there are also training offers in the domestic market.

In the areas of labour safety and health, the Decision No 20/2001 (III.30.) OGY of the National Assembly serve as the background for the regulations on harassments in the workplace (acts, decrees, collective agreements), in which a five-year National Labour Safety Programme was accepted, aiming at creating a working environment and securing good feelings in both physical and psycho-social sense.

Ireland:

The Equality Authority, which is funded by the Irish Ministry, is involved in initiatives to prevent or reduce the incidence of Sexual Harassment / Harassment based on Sex. In addition a Violence against Women Section in the Ministry provides funding for awareness raising and prevention measures around the issue of violence against women, although not specifically addressing sexual harassment.

Awareness Raising:

A National Steering Committee on Violence Against Women was established by the Irish Government in December 1997. A number of awareness raising initiatives have been undertaken by the Committee in recent years. While many of these have focused on specific aspects of violence against women, e.g. domestic violence and rape, a number have addressed the issue in a broader context.

Training for Employers/Employees:

The Dublin Rape Crisis Centre offers a training programme for the prevention of sexual harassment, harassment and bullying in the workplace. The programme is designed for use by management, human resources professionals and employees. It addresses the needs of each particular group and workplace and includes:

- Defining bullying, harassment and sexual harassment
- The effects of harassment on the individual and on the company
- The legal issues
- Drawing up a policy and procedures
- Implementing a policy and procedures
- Guidelines for managers in dealing with harassment
- Introducing the policy to the employees
- Skills for those investigating an allegation of harassment

Code of Practice:

The development of a number of Codes of Practice in Ireland as well as the Dignity in the Workplace Charter, which arose directly out of the recommendations of the Irish Task Force on the Prevention of Workplace Bullying, have also been highlighted as best practice initiatives.

Italy:

In Italy, a number of initiatives have been developed. The Legislative Decree 196/2000 which introduced the inversion of the onus of proof in cases of discrimination based on sex has been described as a best practice initiative.

Lithuania:

The Human Rights Action Plan which was signed by the Government of the Republic of Lithuania is described by the Lithuanian Ministry as a best practice. One of the components of the Action Plan was to conduct research on sexual harassment, provide proposals and develop an awareness raising campaign for the officers and NGOs in Lithuanian districts.

Luxembourg:

In 1999, the Ministry of Feminine Promotion organised a European conference on sexual harassment and dignity at work. Its objectives were to raise the awareness of the legal professions to the problem of sexual harassment, reopen the official debate and promote communication both nationally and on a European level.

Malta:

An information sheet on what the law says has been developed in Malta together with guidelines on how to draw up a sexual harassment policy. Presentations on the topic are also made by the Malta's Employer Association (MEA) when requested. Although the Malta Employment Association (MEA) does play an active part in promoting the prevention of sexual harassment in the workplace, this role is performed at a wider, national level by the National Commission for the Promotion of Equality for Men and Women since it is within the responsibilities of the Commission to generate awareness of the provisions of the Act to Promote Equality for Men and Women (2003) including provisions against sexual harassment at the workplace, and ensure their implementation.

The Netherlands:

In October 1994, a campaign regarding sexual harassment was launched with flyers, posters and a TV trailer. The TV trailer showed a man at the photocopying machine who is harassed at his leg by a dog. The voice asks "*What would you do in a case like this?*"

There are also a number of websites concerning organisations who provide information about (the prevention of) sexual harassment. A very important source of information is the website of the "Women Secretariat" of the socialist labour union FNV. This website is connected to other important and well known websites of organisations who are tackling sexual harassment.

Portugal:

The Portuguese Ministry referred to the European Commission recommendation of 27 November 1991 (91/131/EEC) on the protection of the dignity of men and women at work, containing the Code of Conduct as part of the battle against sexual harassment as a best practice.

Under the Delfin project, CITE was the promoter, in 1999/2000, of the “Equal opportunities for men and women” sub-project, as part of which a training manual was drafted for equality trainers and various videos created tackling the issue of sexual harassment in the workplace. Matters connected with sexual harassment in the workplace form part of the information and awareness raising campaigns that the CITE organises on a regular basis. These also include dissemination of the legislation and participation in seminars, conferences and radio and television programs.

In 2003, the CITE took part in 2 programmes dealing with sexual harassment shown on the SIC television channel.

Slovenia:

Initiatives that have been recently undertaken by the Slovenian Ministry include measures to provide equal opportunities for women and men and to eliminate discrimination against women. The purpose is to eliminate inequalities, to promote equality between women and men and to implement the rules of Slovenian legislation in every day working life. Parts of the measures address establishing the general framework for sexual harassment policy, systems of explicit rules about conduct, complaint procedures and how to include the topic of sexual harassment in educational training for employers and employees. Research on this matter will also be performed by the Ministry this year.

Spain:

In Spain seminars are provided for judicial agents on the issue of equal occupational opportunities for women and men and offences against equality. Seminars are provided for collective bargaining negotiators.

The Fourth Plan for Equal Opportunities for Women and Men (2003-2006) approved by the Council of Ministers on 7 March 2003, covers the following:

- Include the definition of sexual harassment and its classification as a specific occupational hazard in employment legislation.
- Conduct a national survey to ascertain the incidence of sexual harassment. Propose harsher penalties for sexual harassment committed at the workplace.
- Encourage the inclusion of special mechanisms to prevent sexual harassment at the workplace in collective bargaining.
- Implement programmes to enhance awareness on the prevention of sexual harassment along with measures to provide support for women suffering such harassment.

The Spanish trade unions also refer to the publication of sensitisation materials and guides on harassment and action to be taken. They also play a role in the dissemination of press releases on amendments to legislation as well as on the denunciation of cases of harassment. The delivery of courses on the subject geared to delegates who counsel the working population was also highlighted by the Spanish trade unions.

Sweden:

The Swedish Ombudsman educates employers and the labour organisations about the regulations in the act concerning sexual harassment. The Ombudsman's office has produced handbooks about how to deal with sexual harassment in the workplace.

The social partners in the Government sector have jointly taken action on the issue of sexual harassment and have produced a handbook containing advice from experts. They have also held a two-day conference for the social partners at local level.

The UK:

The EOC conducted an awareness raising campaign which incorporated a helpline over a period of 3 weeks. The campaign aimed to raise workers awareness of their rights. It also involved the targeting of employers and their representatives — accountants, solicitors etc. Previous campaigns on the issue have been conducted by the EOC such as *“What would you do if your boss asked you for a blow job?”*

Leaflets have also been developed explaining that sexual harassment at work is against the law.

Arising out of a EOC formal investigation, an agreement has been implemented in the Royal Mail which includes an undertaking by Royal Mail staff to raise awareness amongst management and employees. The EOC formal investigation agreement with the Royal Mail also included a provision for training and the establishment of a complaint procedure following the EOC's Formal Investigation. The EOC also highlight a process developed by London Underground Ltd. for dealing with complaints of harassment as a best practice initiative.

The DfEE (Department for Education and Skills) also produces booklets on the issue.

In Northern Ireland, the Equality Commission as part of its work to raise employer awareness about their duties in relation to unlawful discrimination carries out training in the area of sexual harassment.

10.3 Roles and Responsibilities of Employers and Trade Unions in relation to preventative initiatives

Both trade union and employer organisations were required to provide details of their roles in relation to initiatives designed to reduce the incidence of Sexual Harassment/Harassment based on Sex.

As previously highlighted, legislation in relation to employer liability requires employers in several of the countries surveyed to undertake preventative measures as a defence to liability. It is therefore noteworthy that few of the responding employer organisations specified the responsibilities of employers under legislation in answering this question. Similarly, few respondents referenced specific responsibilities under the relevant collective agreements.

In terms of employer responsibilities the most frequently cited activities include:

- Creating an environment that is free of any kind of harassment.

- Raising awareness by providing information on the relevant legislation.
- Preventative measures such as the establishment of rules of conduct.

Employers in some countries are also described as having responsibilities in relation to the “creation of tools to solve problems at the workplace” (Finland) and “monitoring the application of codes of conduct” (Italy).

Trade union responsibilities are similar in nature but because these are not generally prescribed by law appear to be more loosely defined. In common with employers, trade unions in most countries have a responsibility for awareness raising and training, including the dissemination of materials. Trade unions also have an important supportive function and in a number of countries were described as having a responsibility for providing assistance to victims with regard to the legislative process (Finland, Denmark, Italy and Malta). The role of trade unions in initiating and conducting research on the subject was also highlighted.

10.4 Roles and Responsibilities of Managers and Employees in relation to preventative initiatives

Employer organisations and trade unions were also required to provide details of the roles and responsibilities of managers and employees in respect of preventative initiatives. The roles of managers were described in much the same way as those of employers, with managers regarded as having a role in the creation of an environment that is free of any kind of harassment, raising awareness and implementing preventative measures. Managers were also perceived as having a role in ensuring that they themselves were trained to deal with the issue (Ireland) and in defending workers rights (Poland). The roles of employees in relation to sexual harassment were described in terms of avoidance/abstention, prevention, reporting it when it occurs and providing support and encouragement to victims.

10.5 Support Services for Victims of Sexual Harassment / Harassment based on Sex

Ministerial and specialist bodies were required to provide details of any organisations in their countries that provide a support service for individuals who fall victim to Sexual Harassment / Harassment based on Sex. There was significant variation between countries in terms of the level and nature of support that is provided. In most cases it is a combination of statutory organisations and NGO's working in the areas of victim support and violence against women e.g. Slovenia and Spain. The trade unions and labour organisations also have an important role in the provision of support and advice e.g. Sweden, Czech Republic. The universities also have a role in the provision of support, in Malta the University of Malta fulfils this role and in Austria support services are provided by the University of Vienna.

More details on the range of organisations that provide support to victims of sexual harassment are provided in the following paragraphs.

Austria:

In Austria, support is provided by the Chamber of Labour, the public service trade union and the solicitors' chambers. The University of Vienna has an advice centre for university staff and students and there are also various emergency numbers and helplines.

Cyprus:

In Cyprus, there is the Association for the Prevention and Handling of Violence in the Family. There is a direct phone-line through which persons who fall victim to sexual harassment and violence in general can get psychological support and any other kind of support by on-call officials, if needed. In addition, under the authority of this association there is a "Shelter" particularly for women and children who fall victim to harassment. Persons can be accepted there after a certain procedure and evaluation of the situation experienced. The "Shelter" provides security, secrecy/privacy, as well as physical and psychological support to the victims.

Estonia:

The Criminal Work Centre and the Crime Victim Support Association provide support for victims of sexual harassment. By the end of 2003, victim support services had been established in Tallinn, Harju county, Ida-Viru county, Rapla county and Tartu.

Ireland:

In Ireland, the Equality Authority provides support and advice in relation to breaches of the equality legislation. The Rape Crisis Centres nationwide offer confidential listening, support and information for women and men affected by all forms of sexual violence, including sexual harassment and offers counselling services nationwide. There is also an Anti-Bullying Centre in Trinity College Dublin. There are voluntary organisations such as Women's Aid Ireland which provide support and advice. Support is also available from legal support organisations, advice services and trade unions.

Italy:

In Italy, trade unions, Equal Opportunities Committees, Equal Opportunities Commissions, Anti-violence Centres and Citizen's Advice bureaus provide advice to victims of sexual harassment.

Luxembourg:

The relevant organisations in Luxembourg are the association for the health to the workers of the financial sector (ASTF), Mobbing ASBL, and OGBL. Mobbing ASBL works mainly in the field of moral harassment and in this context the association offers individual consultations to the people concerned by mobbing and a personal follow-up of different cases. In addition Mobbing ASBL is involved in a great deal of lobbying in this field and conducts information campaigns on the subject. The ASTF (Association for Health at Work in the Financial sector) offers assistance within the framework of mobbing. The structure created by OGBL offers consultations and assistance to victims of moral harassment.

Netherlands:

There are many organisations in the Netherlands that are active in providing support and service.

As a consequence of the Working Conditions Act, the Netherlands has a structure of occupational safety and health services. These services are tasked with providing advice, assistance and help on all issues of OSH / Working conditions (including all forms of inappropriate behaviour at work). All organisations in the Netherlands have an obligation to buy the service of these specialised OSH offices.

There are many private organisations with a good reputation in the field of tackling inappropriate behaviour at work. They include the Bezemer and Kuyper Advice Centre, Funding Stop Mobbing and Anti Mobbing.

The 'Clara Wichmann Institute' is a nationwide centre of expertise for women and the law. All activities are targeted at improvement of the legal position of women and include initiatives in the area of sexual harassment support.

TransAct, is an organisation providing expertise for women in the field of:

- Aggression and violence at home and sexual violence and harassment.
- Care and aftercare.
- Advice and training to social workers, organizations for care and wellbeing, police and justice.
- Information for the public, municipalities and government.

Slovenia:

In Slovenia, support is provided by the NGO's and advocates for equal opportunities for women and men employed by the Office of the Government of Representatives of Slovenia for Equal Opportunities.

The UK:

The EOC provide advice and representation in legal proceedings. Citizens Advice also provides advice for citizens on their rights at work (among other issues).

10.6 Investment in Prevention Initiatives and the Cost of Sexual Harassment to Employer Organisations

Employer organisations were required to provide details on the annual investment by members on initiatives designed to prevent sexual harassment and the cost of Sexual Harassment / Harassment based on Sex to the members of employer organisations.

No data in relation to either of these questions was provided by any of the respondent organisations and it must therefore be assumed that this information is not available.

10.7 Summary: Initiatives Designed to Reduce the Incidence of Sexual Harassment/ Harassment Based on Sex

A variety of preventative initiatives are being undertaken throughout the surveyed countries by both governmental organisations and the social partners. The findings from the previous chapter on research are relevant here. The general lack of research on sexual harassment, its prevalence and causes, may imply that such preventative measures are not always grounded in research.

In the main, preventative initiatives are related to awareness raising and training, with several references being made to, brochures, guidelines, articles, etc. In only three countries were initiatives targeted at the public generally; Ireland, the Netherlands and Portugal. In the Netherlands and Portugal reference is made to televised awareness raising campaigns. In the main awareness raising and training initiatives are focused on employers, managers and trade union officials. Specific initiatives that also target employees are only referenced in Austria, Belgium, Denmark, Ireland and Estonia. The only other grouping that are targeted in terms of specific initiatives are members of the judicial system (Spain and Austria). While the social partners are described as having been involved in a number of the initiatives, only Spain indicates that training has specifically been provided for those involved in collective bargaining.

While employers are seen to have a role in awareness raising and prevention and ensuring that the working environment is free of harassment, their role in developing policy statements and ensuring that these are implemented at every level is less evident.

Trade unions appear to have a more wide ranging role both with regard to awareness raising and training and in the provision of support and guidance and also, in some cases, in representing the victim in legal proceedings.

It is notable that none of the respondents indicated that there was a requirement for employees to know and understand the relevant legislation, or even the working definitions adopted by their organisations.

Throughout the surveyed countries there is a range of organisations that the victim of sexual harassment can turn to for support and NGOs are particularly important in this regard, the only notable feature is that several of the organisations mentioned are women's groups or organisations dealing with the issue of violence against women and, as such, it is not apparent, in all cases, that such support would be available to male victims of sexual harassment.

11 Conclusions and Recommendations in relation to the Development of Indicators

11.1 Introduction

The purpose of this report is to establish the current position in EU Member States in relation to the fight against Sexual Harassment / Harassment based on Sex in the workplace. It is also intended that it will provide information to assist the Dutch Presidency in the development of indicators to facilitate the monitoring of Sexual Harassment / Harassment based on Sex in the workplace.

This concluding section provides summaries of the key conclusions that have arisen throughout the body of the report. The commentary in relation to indicators set out below relates mainly to the second phase of the project.

11.2 Summary of key conclusions

11.2.1 Legislative Provisions

Across the states surveyed, a wide variety of legislation is in place to deal with Sexual Harassment / Harassment based on Sex. However this legislation is not limited to provisions which expressly regulate harassment in the employment context. While the majority of the respondent states now have legislation which explicitly prohibits sexual harassment, others regulate sexual harassment implicitly as a form of sex discrimination (Estonia, Italy, Spain, and the UK). The definitions in the legislation which explicitly deals with the issue appear consistent with that in the Council Directive on Equal Treatment, **Directive 2002/73/EC** and encompass verbal and physical forms of behaviour, are not restricted to *quid pro quo* harassment and also embrace “hostile environment” harassment. Notwithstanding this, there are differences between the respondent states in relation to the regulation of sex-based conduct as a form of sexual harassment and, to a lesser extent, the coverage of harassment connected with transsexualism / gender reassignment. After October 2005 appropriate legislation should be in place as a result of the transposition of the **Directive 2002/73/EC**.

Other relevant statutory provisions and legislation where they exist includes criminal prohibitions (Austria, Finland, Hungary, Lithuania, Portugal, Spain and the UK); gender equality legislation (Belgium, Denmark, Ireland and Malta) or health and safety provisions (Ireland, Luxembourg, the Netherlands and the UK). A notable feature of the responses relating to such other legislation and statutory provisions is the lack of clarity on what exactly sexual harassment meant in these contexts. In many cases definitions were not provided, or references were made to harassment or acts of sexual violence. In addition, there were a number of apparent inconsistencies in the data relating to specific acts that were prohibited by the legislation. Despite the existence of Case Law in several of the respondent countries there still appears to be a lack of simplicity and clarity about the relevant law. This situation should improve with the implementation of **Directive 2002/73/EC** which will provide greater definitional clarity.

11.2.2 Codes of Practice and Collective Agreements

There is only limited evidence of the existence of Codes of Practice dealing with the issue of sexual harassment across the surveyed countries and in only four of those countries are such codes legally binding. Where the legislation upon which they are based does not explicitly define sexual harassment, Codes of Practice, particularly in cases in which they can be taken into account by courts and tribunals, can help to give meaning in the real world to abstract legislative provisions.

There is also a very low level of apparent coverage of the issue of Sexual Harassment / Harassment based on Sex in those Collective Agreements to which the responding trade unions, employee / employer organisations were party, indicating perhaps, that the specific issue of sexual harassment has not yet achieved a high level of priority within the context of collective bargaining.

11.2.3 Employer liability

There appears to be a significant degree of similarity across the various legal systems which, for the most part, appear to adopt a fairly broad approach to employer liability, while in many cases, allowing a defence to an employer who has taken all reasonable necessary steps to prevent sexual harassment from occurring. Generally where employers are legally liable for Sexual Harassment/ Harassment based on Sex which takes place at work they are also liable for sexual harassment carried out by third parties, as well as by peers or workplace superiors of the person harassed (though in some cases, as in Finland, only after they have been made aware of the problem). In most legal systems surveyed, individual harassers, as well as employers, may be held liable for sexual harassment. There is significant variation across countries with regard to employer liability for sexual harassment occurring outside the workplace/normal working hours.

11.2.4 Legal Complaints and Remedies

There is little consistency of practice across the responding states in relation to — for example — the bodies to which complaints of work-related sexual harassment may be brought, the support mechanisms available to complainants, or the remedies for sexual harassment. Most of the respondent states did have measures in place to protect sexual harassment complainants from victimisation and also provide for the compensation of the victim.

The diversity of responses to questions in relation to the issue of legal complaints and remedies is unsurprising as the systems governing the enforcement of employment rights generally vary widely across the Member States of the EU and this variety of approach will inevitably continue despite the express provisions in **Directive 2002/73/EC**.

11.2.5 Grievance Procedures and Sanctions

There is a general absence of specific grievance procedures and sanctions for Sexual Harassment / Harassment based on Sex. Where such procedures do exist they appear to depend on the nature of the harassment.

11.2.6 Qualitative and Quantitative Research

Of all of the areas examined in conducting this research this section of the report is possibly the most useful in the context of developing indicators under the Dutch Presidency.

In all of the countries surveyed the infrastructure, in terms of tools and resources, for the collection of data in relation to Sexual Harassment / Harassment based on Sex is lacking. None of the countries/organisations have dedicated research personnel examining or monitoring the issue on an ongoing basis.

Although research is being conducted in most of the respondent countries (primarily by Governmental organisations, trade unions and NGO's) there is no overarching framework or approach to the conduct of quantitative research. As such it is not possible to develop a comprehensive overview of incidence / prevalence / nature. Notwithstanding this, it seems that the level of sexual harassment is substantial and the absolute number of women, in particular, affected over the course of their working lives would appear to be very significant.

Where research is being undertaken it is usually as a component of wider research into working conditions generally or the wider issue of violence against women. The former would appear to be an effective approach enabling cross referencing with other variables such as occupational type and sector. However, such an approach would not necessarily be capable of filling some of the research gaps highlighted by respondents *i.e.* results of legal proceedings, psycho-social effects of sexual harassment. Another feature of the research is that a number of the dedicated research studies that have been undertaken have focused on the working conditions of women or, as aforementioned, on the issue of violence against women and there may therefore be, an under-representation in the research literature on the level and nature of male sexual harassment.

There is only limited evidence that the research that is being conducted is being used to influence policy / practice on the issue.

It is clear that significant research gaps remain across the surveyed countries in relation to the incidence and nature of harassment, the profile of the harasser, and the victim, profile of the organisation, judicial outcomes etc. This is the basic data requirement necessary to describe the issue and facilitate cross country-comparisons. However, there is also a requirement for research in other areas which would address such issues as the impact of sexual harassment, the link between sexual harassment and sick leave / absenteeism and the victim's alienation from the labour market.

11.2.7 Initiatives designed to reduce the incidence of Sexual Harassment / Harassment based on Sex.

A variety of preventative initiatives are being undertaken throughout the surveyed countries by both Governmental organisations and the social partners. However the general lack of research on sexual harassment may imply that such preventative measures are not always grounded in research.

In the main, preventative initiatives are related to awareness raising and training, with several references being made to, brochures, guidelines, articles, etc. Awareness raising and training initiatives are primarily focused on employers, managers and trade union officials. Specific initiatives that also target employees are only referenced in a limited number of responses. The only other grouping that are targeted in terms of specific initiatives are members of the judicial system. While the social partners are described as having been involved in a number of the initiatives, only Spain indicates that training has specifically been provided for those involved in collective bargaining.

The roles and responsibilities of employers, trade unions, managers and employees in respect of preventative initiatives are described in broad terms. Employers are seen to have a role in awareness raising and prevention and ensuring that the working environment is free of harassment, their role in developing policy statements and ensuring that these are implemented at every level is less evident. Trade unions appear to have a more wide-ranging role both with regard to awareness raising and training and also in the provision of support and guidance and also in some cases in representing the victim in legal proceedings.

Non-governmental organisations are particularly important in providing support to the victims of harassment but, in most countries, there is a wide range of organisations that the victim of sexual harassment can turn to for support.

11.3 Relevance for the development of indicators

There are at least three different types of indicators which could be established to monitor the prevention of Sexual Harassment / Harassment based on Sex in the workplace, each of which fulfills slightly different functions and may rely on the interrogation of slightly different data sets.

- (1) Benchmarking indicators — these are indicators which would establish basic information relating to the incidence/prevalence of sexual harassment and which could be used as a benchmark for ongoing monitoring.
- (2) Context indicators — these indicators would be based on multivariate analysis and would enable a deeper understanding of the relationship between sexual harassment and a range of other variables, age, sex, sector and occupational type.
- (3) Policy/practice indicators — this type of indicator would prompt and support discussion in relation to Sexual Harassment / Harassment based on Sex at a European level. These indicators might draw on research at the level of the enterprise on such issues as the percentage of enterprises that have preventative policies in place, or the percentage of Codes of Practice / Collective Agreements that make specific reference to **Directive 2002/73/EC**.

11.4 Basic benchmarking indicators

It is clear that in order to ensure effective monitoring of Sexual Harassment / Harassment based on Sex there is a need to develop an effective shared approach to the collection and collation of statistics on incidence / prevalence across the EU. (Incidence refers to the number of new cases annually and prevalence to the percentage of people in some population that have had such experiences).

11.4.1 Definitional consistency

As this research has indicated, there is a degree of commonality in the definitions of sexual harassment encompassed by the legislation in the surveyed countries. The implementation of **Directive 2002/73/EC** goes a long way towards solving one of the most difficult methodological issues involved in conducting research on prevalence/incidence which is defining the central concept viz. Sexual Harassment / Harassment based on Sex.

Notwithstanding this, and bearing in mind the fact that the survey was targeted at those organisations / governmental bodies with a specific remit in the area of employment equality, the variation evident in the responses to the question on whether or not the legal definitions of individual countries implicitly or explicitly incorporated / prohibited specified acts should sound a cautionary note. If organisations / agencies with a remit in relation to legislation and/or its enforcement are not currently clear on the activities that are either implicitly or explicitly prohibited by the relevant legislation, it may prove difficult to frame questions addressed to the wider population which fully convey the intent of the legislation.

A further complicating factor is that even though such behaviour may be defined objectively it is important to recognise that it is experienced subjectively, thus the personal and psychological impact of the same behaviour may be vastly different depending on the victim's perception.

One way of overcoming this difficulty would be to rely, in the developing and monitoring of indicators, on existing administrative sources i.e. criminal and judicial records. However, most research on the issue shows that there are significant differences between the incidence of sexual harassment evidenced in self-reported data and that reflected in judicial records³⁴. The reason is that there is still significant under-reporting of sexual harassment and even when incidents are reported at the company level recourse is not always taken to the courts.

The literature reviews on research on the issue of Sexual Harassment / Harassment based on Sex³⁵ and on experiences of victimisation in other contexts (e.g. sexual abuse) suggests that if new and dedicated research is to be carried out to establish prevalence/incidence then it will be necessary to be mindful of the wording and sequencing of questions. The point here is that good prevalence research must use behavioural descriptions to which definitions of sexual harassment may be applied. Researchers / survey instruments should not rely on people defining themselves as victims of sexual harassment or describing the offending behaviour in the terms set out by the legislation.

11.4.2 Defining what is meant by work

The findings from Chapter 6 on Employer Liability indicate that there will be a need, in developing indicators, for conceptual clarity in relation to the definition of "work". The research findings suggest that at present in the majority of countries an employer cannot be liable for Sexual Harassment / Harassment based on Sex that takes place outside the workplace / outside normal working hours. In a number of countries an employer can be liable for such harassment and within those countries there is some ambiguity about the extent to which employer liability applies in the context of Sexual Harassment / Harassment based on Sex occurring at work-related social events.

11.4.3 Defining the population

By sampling trade unions and employer organisations, the emphasis in this study has been on those currently in employment. However, given that the establishment of prevalence

³⁴ There are several factors which contribute to the low incidence of reporting sexual harassment. The US National Council for Research on Women reported in 1991 that over 50% of female victims surveyed in the United States reported that they did not believe anything would come of making a complaint and 50% were afraid they would be blamed for the sexual harassment. Other reasons cited by women for not reporting an incident of sexual harassment was concern for the harasser, fear of losing one's job and fear of being ostracised by co-workers. These concerns and shameful feelings about the harassment were also cited in Poland as factors contributing to the underreporting of sexual harassment in a 2002 survey.

³⁵ For a detailed description of the approaches that have been adopted in various studies see the *Dutch Study on Sexual Harassment in European Workplaces, A review of research in 11 Member States (1987-1997)*. (p12).

requires the examination of the percentage of the population that has experienced Sexual Harassment / Harassment based on Sex, the relevant population needs to be defined.

Directive 2002/73/EC extends not just to the workplace but also applies “in the context of access to employment and vocational training“. This may imply that the establishment of indicators should concern the whole labour force (thus including the unemployed).

11.5 Context Indicators

The findings of research conducted amongst different groups presented in Chapter 9 indicate that different prevalence rates emerge when different populations are surveyed. On this basis it would appear that broad community samples will yield lower prevalence rates and provide more accurate data about the rate of sexual harassment in organisations / countries. There are a number of pan-European survey instruments that could incorporate questions that would assist in the establishment of incidence and the detailed examination of correlations with a range of other variables. For example, the Survey on Income and Living Conditions (SILC) is a new annual survey conducted as part of an EU-wide programme to obtain information on the income and living conditions of different types of households. The information collected will be used to inform national and EU policy making on social inclusion, health, employment. Other relevant research instruments at EU level include: the Labour Force Survey, the Community Household Panel and the European Survey on Working Conditions.

Multivariate analysis of the kind described above would be particularly useful in informing the development of preventative initiatives targeted at those groups, or sectors most at risk.

11.6 Policy / Practice Indicators

If the purpose of establishing and monitoring indicators under the review of the implementation of the Beijing Platform for Action is not merely to describe, but also to prompt action on the issues concerned, then there may be a need to consider the third category of indicators. Policy indicators are those designed to assist and engage stakeholders at the national level in debating the extent to which the intent of the amending legislation has been followed through in terms of concrete policies and changed practices.

Such indicators would reflect national level commitment in relation to the prevention of Sexual Harassment / Harassment based on Sex, and might cover such issues as partnership arrangements in relation to enforcement, the development of good education and training systems and research and development projects.

Associated outcome indicators could also be developed in relation to these variables, for example a reduction in the costs associated with absenteeism resulting from Sexual Harassment / Harassment based on Sex and litigation costs.

APPENDICES

1

Abbreviations

List of Abbreviations

ACAS	Advisory Conciliation and Arbitration Service (UK)
CIDM	Commission for Equality and Women's Rights (Portugal)
CITE	Commission Pour L'Égalité au travail á l'emploi (Commission for Equality and Work Portugal)
CNEL	National Council for Economy and Labour (Italy)
DfEE	Department for Education and Skills (UK)
Directive 2002/73/EC	Directive 2002/73/EC of the European Parliament and 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
ECT	Equal Treatment Commission (The Netherlands)
EOC	Equal Opportunities Commission (UK Specialist Body)
EU	European Union
HLG	High Level Group on Gender Mainstreaming
ILO	International Labour Organisation (Estonia)
ISTAT	Italian National Statistic Institute
KETHI	Research Centre for Gender Equality (Greece)
NGO	Non Governmental Organisation
OSH Act	In the Netherlands the Working Conditions Act 1998 is the official name for the Act. However for clarification in relation to the kind of Act this is, it is often referred to by using the international term Occupational Safety and Health (OSH)
OSH Services	Occupational Safety and Health Services (Netherlands)
PfA	Beijing Platform for Action
SPF	Federal Public Service Belgium

2

List of Respondent Organisations

Country	Ministry/Specialist Body	Employee Org/Trade Union	Employer Org
Austria	BMGF Ministry for Health and Women's Affairs	AKWIEN	WKO — Austrian Economic Chamber
	BMWA — Ministry for Economy and Labour	OGB Austrian Trade Union	
Belgium	Service public fédéral emploi, travail et concertation sociale	ACV-CSC.	
		ACLVB	
Cyprus	Ministry of Labour and Social Insurance	Pancyprian Federation of Labour (PEO)	Employers and Industrialists Federation
		Pancyprian Trade Union of Civil Servants (PASDYD)	
Czech Republic	Ministerstvo prace a socialnich veci	Ceskomoravska konfederace odborovych svazu	
	Ministerstvo spravlnosti		
Denmark	Minister for Gender Equality	LO	DA
		HK	
Estonia	Sotsiaalministeerium (Ministry of Social Affairs)	Eesti Ametuhingute Keskliit (Confederation of Estonian trade unions)	
	Tooinspektsioon (Labour Inspectorate)	Teenistujate Ametiliitude Keskorganisatsioon (Estonian Employees Union Confederation)	
Finland	Office of the Ombudsman for Equality	Central Organization of Finnish trade unions (SAK)	Employers Confederation of Service Industries
		The Confederation of Unions for Academic Professionals in Finland (AKAVA)	The Confederation of Finnish Industry and Employers
		The Finnish Confederation of Salaried Employees STTK	
France	Ministère des affaires sociales, du travail et de la solidarité; Services des droits des femmes et de l'égalité	Confédération Générale du Travail (CGT)	
		Force ouvrière	

Country	Ministry/Specialist Body	Employee Org/Trade Union	Employer Org
Germany	Federal Ministry for Family Affairs, Senior Citizens, Women and Youth	Vereinte Dienstleistungsgewerkschaft e. V. Bundesverwaltung	Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA)
Greece	Ministry of Justice		General Confederation of Professional Artisans and Merchants of Greece (GE.S.E.B.E.E.)
Hungary	Ministry of Justice Fovárosi Munkaugyi Bíróság Labour Court of the Capital City		
Ireland	Department of Justice, Equality and Law Reform Office of the Director of Equality Investigations (ODEI) Equality Authority Labour Court	Irish Congress of Trade Unions (ICTU)	Irish Business Employers Confederation (IBEC)
Italy	Presidency of Council of Ministers	General Italian Confederation for Trade	Confindustria
Latvia	Ministry of Welfare Ministry of Economy State Human Rights Bureau State Labour Inspectorate	Latvian Free Trade Union	Latvian Employers Confederation
Lithuania	Ministry of Social Security and Labour		Lithuanian Confederation of Industrialists
Luxembourg	Ministere de la Promotion Feminine	LCGB Chambre des Employes Prives	
Malta	Ministry for Social Policy (MSP) Employment and Training Corporation (ETC)	Unjoni Haddiema Maghqudin (UHM)	Malta Employers' Association (MEA)

Country	Ministry/Specialist Body	Employee Org/Trade Union	Employer Org
The Netherlands	Ministry of Social Affairs and Employment	CNV (National Federation of Christian Trade unions) FNV (Federation Dutch trade unions) Women's Secretariat	Confederation of Netherlands Employers and Industry VNO-NCW MKB NL (organisation of small and medium sized enterprises) ROP, Council for Governmental Staff Policy, Min. of Internal Affairs and Kingdom Relations-VSO Association of Public Sector Employers.
Poland	Ministry of the Economy, Labour and Social Policy Chief Labour Inspectorate	All Poland Alliance of trade unions	Polish Confederation of Private Employers
Portugal	Commission for Equality and Women's Rights Minister of the Presidency		
Slovak Republic	Ministry of Labour, Social Affairs and Family of the Slovak Republic Ministry of Justice of the Slovak Republic Commission on Equal Opportunities for men and women by Slovak Trade Union	Confederation of Slovak Trade Union	
Slovenia	Ministry of Defence		Chamber of Commerce and Industry of Slovenia
Spain	Instituto de la Mujer Ministerio de Trabajo y Asuntos Sociales	Unión General de Trabajadores (UGT)	
Sweden	Equal Opportunities Ombudsman — JamO Ministry of Industry, Employment & Communications	Landsorganisationen — LO Tjänstemannens Centralorganisation — TCO Sveriges Akademikers Centralorganisation — SACO	Arbetsgivarverket Confederation of Swedish Enterprise (Svenskt Näringsliv)
UK	Department of Trade and Industry Equal Opportunities Commission (EOC) Equality Commission for Northern Ireland	National Association of Citizens Advice Bureaux	Confederation of British Industries (CBI)

3

Membership of the High Level Group (HLG) on Gender Mainstreaming

Members of High Level Group on Gender Mainstreaming*		
Country	Contact Name	Organisation
Austria	Bernadette Gisinger-Schindler	Federal Ministry for Labour
Belgium	Marie Paule Paternotte	Institut pour l'égalité des femmes et des hommes
Cyprus	Maro Varnavidou	Ministry of Justice and Public Order
The Czech Republic	Dagmar Zelenkova	Ministry of Labour and Social Affairs
Denmark	Vibeke Abel	Ministry for Gender Equality
Estonia	Ulle-Marike Papp	Ministry of Social Affairs of Estonia
Finland	Tarja Heinila-Hannikainen	Ministry of Social Affairs & Health
France	Brigitte Gresy	Ministère de l'Emploi et de la Solidarité
Germany	Marion Thielenhaus	Bundesministerium für Familie
Greece	Efthia Bekou-Balta	Ministry of Interior Public Administration & Decentralisation
Hungary	Borbala Juhasz	Government Office for Equal Opportunities
Ireland	John O'Callaghan	Ministry of Justice, Equality and Law Reform
Italy	Clara Collarile	Presidency of Council of Ministers
Latvia	Gaile Agnese	Ministry of Welfare
Lithuania	Rimantas Kairelis	Ministry of Social Security and Labour
Luxembourg	Maddy Mulheims	Ministère de la Promotion Féminine
Malta	Sina Bugeja	National Commission for the Promotion of Equality for Men and Women
The Netherlands	Flora Van Houwelingen	Ministry for Social Affairs and Employment

Members of High Level Group on Gender Mainstreaming*		
Country	Contact Name	Organisation
Poland	Lidia Goldberg	Kancelaria Prezesa Rady Ministrow
Portugal	Maria Amelia Paiva	Commission for Equality and Womens Rights
The Slovak Republic	Zuzana Vranova	Ministry of Labour, Social Affairs and Family of the Slovak Republic
Slovenia	Tanja Salecl M. Sc.	Office of the Government of the Republic of Slovenia for Equal Opportunities
Spain	Miriam Tey De Salvador	Directora General del Instituto de la Mujer Ministerio de Trabajo y Asuntos Sociales
Sweden	Marianne Laxen	Ministry of Industry, Employment and Communications
UK	Angela Mason	Women and Equality Unit Department of Trade and Industry

*Note: As the High Level Group on Gender Mainstreaming met in January 2004 (i.e. pre EU enlargement on 1 May 2004), the accession countries were represented by Observers and were not formal members of the Group at this stage.

4

Ministerial Questionnaire

QUESTIONNAIRE

ON

SEXUAL HARASSMENT IN THE WORKPLACE

Ministries/ Specialist Bodies/ Adjudicator Bodies

**The Irish Department of Justice, Equality and Law Reform and FGS Consulting
in association with
Professor Aileen McColgan, Kings College London**

January 2004

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INSTRUCTIONS FOR RESPONDENTS

In 2004, the Irish and Dutch Presidencies of the EU have agreed to examine the issue of Sexual Harassment in the Workplace (including Harassment related to Sex). The Irish Presidency is carrying out research via a questionnaire to establish the current position in EU Member States (including new Member States), in relation to the fight against Sexual Harassment / Harassment based on Sex at work. The aim of the research is to provide both qualitative and quantitative information which will be used by the Dutch Presidency to draw up indicators in relation to this issue. The questionnaire on Sexual Harassment in the Workplace is to be circulated to Government Ministries, Specialised Bodies, Employer Organisations and Trade Unions / Employee Organisations to determine the current position **at national level** in EU Member States, in relation to the prevention of Sexual Harassment at work.

1. We ask all respondents to:

- Read the Questionnaire and Guidance Notes in full before responding to individual questions.
- Answer all questions to the best of their ability and knowledge.
- Provide supporting or additional documentation as necessary by attaching electronic files or sending hard copy to the address provided below.
- **Please state if a particular question or section does not apply to their organisation.**
- Direct any query in relation to the background to the study, particular questions or the guidance notes to:
Ms. Marie Power
FGS Consulting
Tel: +353-1-4182037.
- Forward written queries by email to WorkplaceSexualHarassment@fgs.ie (written queries will be responded to within 24 hours).
- If returning the questionnaire in hard copy format, please return to:
FGS Consulting
Workplace Sexual Harassment
Molyneux House
Bride Street
Dublin 8
Ireland

2. To facilitate our analysis it is essential that all Questionnaires are returned by Friday 5th March 2004.

This is an important study. The questionnaire is lengthy and the questions in some cases require the provision of detailed information. This however is unavoidable given the nature of the topic and the requirement for comprehensive information.

The Irish Department of Justice, Equality and Law Reform would like to thank all respondents in advance for assisting in the research process through the provision of information. The contribution of all surveyed organisations will be acknowledged in the final report and all organisations that return a completed questionnaire will receive a copy of the final report.

SECTION 1: RESPONDENT DETAILS

1.1 Details of person in organisation responsible for completing the questionnaire:

Name:	
Title:	
Contact E-mail Address:	
Telephone No:	

(v) Does the definition include the following? **Please tick ✓**

a. Verbal

Type	Please tick ✓ Explicit		Please tick ✓ Implicit	
	Yes	No	Yes	No
Sex Jokes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Remarks about physical appearance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Remarks about sexual behaviour	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Intrusive personal questioning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unwelcome requests of a sexual nature	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

b. Non Verbal

Type	Please tick ✓ Explicit		Please tick ✓ Implicit	
	Yes	No	Yes	No
Whistling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pin-ups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Suggestive gestures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Written materials (e-mails, texts, faxes, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

c. Physical

Type	Please tick ✓ Explicit		Please tick ✓ Implicit	
	Yes	No	Yes	No
Unwelcome physical contact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Touching intimate body parts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Forced kisses/hugs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sexual assault	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rape	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(vi) Does the definition cover same-sex **Sexual Harassment? Please tick ✓**

Yes No

(vii) Does the definition cover Sexual Harassment in connection with transsexualism / transgenderism?³⁶ **Please tick ✓**

Yes No

(viii) Does the definition cover sex-based conduct, i.e. denigration or insults which are gender related but not of a sexual nature? **Please tick ✓**

Yes No

(ix) As per the definition, how many incidents are necessary to deem Sexual Harassment / Harassment Based on Sex to have occurred? Please tick

Single Incident

Repeated Incident

None specified

Please specify number of incidents:

2.2 (i) Are there any other statutory provisions which are relevant to **Sexual Harassment / Harassment Based on Sex** in the workplace? **Please tick ✓**

Yes No

³⁶ See Guidance Notes for a definition of transsexualism / transgenderism.

2.2 (ii) If **Yes**, please list these statutory provisions:

2.3 (i) Is there any **other** legislation which deals explicitly / implicitly with **Sexual Harassment / Harassment Based on Sex? e.g. Health and Safety Legislation, Provisions dealing with Unfair Dismissal, etc. Please tick ✓**

Yes

No

(ii) If **Yes**, please state the title and date of the legislation and highlight if it deals explicitly / implicitly with **Sexual Harassment / Harassment based on Sex**:

Title	Date	Explicit	Implicit
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

(iii) Does this legislation define **Sexual Harassment / Harassment Based on Sex? Please tick ✓**

Yes

No

(iv) If **Yes**, how is it defined?

(v) Does the definition include the following? **Please tick ✓**

a. Verbal

Type	Please tick ✓ Explicit		Please tick ✓ Implicit	
	Yes	No	Yes	No
Sex Jokes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Remarks about physical appearance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Remarks about sexual behaviour	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Intrusive personal questioning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unwelcome requests of a sexual nature	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

b. Non Verbal

Type	Please tick ✓ Explicit		Please tick ✓ Implicit	
	Yes	No	Yes	No
Whistling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pin-ups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Suggestive gestures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Written materials (e-mails, texts, faxes, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

c. Physical

Type	Please tick ✓ Explicit		Please tick ✓ Implicit	
	Yes	No	Yes	No
Unwelcome physical contact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Touching intimate body parts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Forced kisses/hugs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sexual assault	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rape	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(vi) Does the definition cover same-sex **Sexual Harassment**? Please tick ✓

Yes No

(vii) Does the definition cover **Sexual Harassment** in connection with transsexualism / transgenderism?³⁷ Please tick ✓

Yes No

(viii) Does the definition cover sex-based conduct, i.e. denigration or insults which are gender related but not of a sexual nature? Please tick ✓

Yes No

(ix) As per the definition, how many incidents are necessary to deem **Sexual Harassment/ Harassment Based on Sex** to have occurred? Please tick ✓

Single Incident

Repeated Incident

None specified

Please specify number of incidents:

2.4 (i) In addition to legislation, is there any Case Law in your country dealing with **Sexual Harassment / Harassment Based on Sex**? Please tick ✓

Yes No

³⁷ See Guidance Notes for a definition of transsexualism / transgenderism.

- 2.4 (ii) If **Yes**, please provide a brief summary of the evolution of **Case Law** in your country relating to **Sexual Harassment / Harassment based on Sex**. Please include reference to key cases, and the implications for practice in relation to **Sexual Harassment / Harassment based on Sex**. (Supplementary material may be attached).

- 2.5 (i) Have any problems been identified from **Case Law** in your country in relation to legislation governing **Sexual Harassment / Harassment Based on Sex? Please tick ✓**
(Supplementary material may be attached)

Yes

No

- (ii) If **Yes**, please describe:

- 2.6 (i) Is there any planned legislation in the future, in your country in relation to **Sexual Harassment / Harassment based on Sex? Please tick ✓**
(Supplementary material may be attached)

Yes

No

SECTION 3: CODES OF PRACTICE:

3.1 (i) Are there **Codes of Practice** in your country dealing either implicitly or explicitly with **Sexual Harassment / Harassment Based on Sex**? Please tick ✓

Yes

No

(ii) If **Yes**, please provide the following information:

Name of Code of Practice	Date it came into effect	What organisation was it prepared by?	Is it legally binding? Please tick		What type of practices does it require?
			Yes	No	
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	

3.2 (i) Do these **Codes of Practice** define **Sexual Harassment / Harassment Based on Sex**? Please tick ✓

Yes

No

(ii) If **Yes**, how is it defined?

(iii) Does the definition either implicitly or explicitly include the following? **Please tick ✓**

a. Verbal

Type	Please tick ✓	
	Yes	No
Sex Jokes	<input type="checkbox"/>	<input type="checkbox"/>
Remarks about physical appearance	<input type="checkbox"/>	<input type="checkbox"/>
Remarks about sexual behaviour	<input type="checkbox"/>	<input type="checkbox"/>
Intrusive personal questioning	<input type="checkbox"/>	<input type="checkbox"/>
Unwelcome requests of a sexual nature	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>

b. Non Verbal

Type	Please tick ✓	
	Yes	No
Whistling	<input type="checkbox"/>	<input type="checkbox"/>
Pin-ups	<input type="checkbox"/>	<input type="checkbox"/>
Suggestive gestures	<input type="checkbox"/>	<input type="checkbox"/>
Written materials (e-mails, texts, faxes, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>

c. Physical

Type	Please tick ✓	
	Yes	No
Unwelcome physical contact	<input type="checkbox"/>	<input type="checkbox"/>
Touching intimate body parts	<input type="checkbox"/>	<input type="checkbox"/>
Forced kisses/hugs	<input type="checkbox"/>	<input type="checkbox"/>
Sexual assault	<input type="checkbox"/>	<input type="checkbox"/>
Rape	<input type="checkbox"/>	<input type="checkbox"/>
Other: If Yes , please specify here:	<input type="checkbox"/>	<input type="checkbox"/>

(iv) Does the definition cover same-sex **Sexual Harassment**? Please tick ✓

Yes No

(v) Does the definition cover **Sexual Harassment** in connection with transsexualism / transgenderism³⁸? Please tick ✓

Yes No

(vi) Does the definition cover sex-based conduct, i.e. denigration or insults which are gender related but not of a sexual nature? Please tick ✓

Yes No

(vii) As per the definition, how many incidents are necessary to deem **Sexual Harassment** to have occurred? Please tick ✓

Single Incident

Repeated Incident

None specified

Please indicate number of incidents:

³⁸ See Guidance Note for a definition of transsexualism / transgenderism.

SECTION 4: EMPLOYER LIABILITY

4.1 (i) Can an **Employer** be liable for **Sexual Harassment / Harassment Based on Sex** perpetrated by an employee? **Please tick ✓**

Yes

No

(ii) If **Yes**, please describe the circumstances in which the **Employer** can be liable:

(iii) In particular, can an **Employer** be liable for the following:

Sexual Harassment by a worker's Superior(s)

Yes

No

Sexual Harassment by a worker's Peer(s)

Yes

No

Sexual Harassment by Client(s)

Yes

No

Description of circumstance in which **Employer is liable for Sexual Harassment by Client:**

4.2 (i) Does the **Employer** have any defence to liability? **Please tick ✓**

Yes

No

(ii) If **Yes**, please explain:

4.3 (i) Can an **Employer** be liable for **Sexual Harassment / Harassment based on Sex** that takes place outside the workplace or outside normal working hours? **Please tick ✓**

Yes

No

(ii) If **Yes**, please describe:

4.4 (i) Is the **harasser** individually liable? **Please tick ✓**

Yes

No

(ii) If **Yes**, is such a liability contingent on employer's liability? **Please tick ✓**

Yes

No

4.5 (i) Are **Employers** under any legal obligation to prevent **Sexual Harassment / Harassment Based on Sex** in the workplace? **Please tick ✓**

Yes

No

(ii) If **Yes**, please indicate what types of **preventative action** employers are obligated to undertake:

Type of Preventative Action	Please tick ✓		If Yes, please elaborate here
	Yes	No	
Awareness Raising	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing explicit rules about conduct	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing Training for Employees	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing Complaint procedures	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing Anti-Sexual Harassment and Harassment Policies	<input type="checkbox"/>	<input type="checkbox"/>	
Imposing sanctions for Sexual Harassment	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	

4.6 (i) Are **Employers** under any legal obligation to address the issue of **Sexual Harassment / Harassment Based on Sex** when it occurs? **Please tick ✓**

Yes

No

(ii) If **Yes**, please indicate what actions employers are obligated to undertake when an incident of **Sexual Harassment / Harassment Based on Sex** occurs? **Please tick ✓**

Types of Action	Please tick ✓		If Yes, please elaborate here
	Yes	No	
Awareness Raising			
Establishing explicit rules about conduct	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing Training for employees	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing Complaint procedures	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing Anti-Sexual Harassment and Harassment Policies	<input type="checkbox"/>	<input type="checkbox"/>	
Imposing sanctions for Sexual Harassment	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	

5.3 (i) Do measures exist to protect complainants of **Sexual Harassment/ Harassment based on Sex from victimisation by Employers? Please tick ✓**

Yes

No

(ii) If **Yes**, please describe:

5.4 (i) Are legal remedies available in your country in connection with **Sexual Harassment / Harassment Based on Sex? Please tick ✓**

Yes

No

(ii) If **Yes**, please describe:

(iii) Do these legal remedies include financial compensation of the victim of **Sexual Harassment / Harassment Based on Sex? Please tick ✓**

Yes

No

(iv) If **Yes**, what was the value of financial compensation in your country, paid to individual victims of **Sexual Harassment / Harassment Based on Sex in 2003?**³⁹

Lowest Award:

€

Highest Award:

€

Average Award:

€

5.5 (i) When a complaint is upheld by the courts can recommendations binding on the employer be made? **Please tick ✓**

Yes

No

³⁹ Or the latest year for which information is available

(ii) If **Yes**, please describe

SECTION 6: QUANTITATIVE AND QUALITATIVE RESEARCH

- 6.1 (i) Is quantitative / qualitative research on **Sexual Harassment / Harassment based on Sex** conducted on a regular basis in your country? **Please tick ✓**

Yes

No

- (ii) If **Yes**, please specify how frequently this research is undertaken.

- 6.2 (i) Is there a designated organisation in your country responsible for collecting data on **Sexual Harassment/ Harassment Based on Sex? Please tick ✓**

Yes

No

- (ii) If **Yes**, please state the name of the organisation and the year it started to collect such data:

Name of Organisation	Year it started to collect data	Regularity of Data Collection

- 6.3 (i) Is there a specific individual in your organisation responsible for collecting and analysing data on **Sexual Harassment /Harassment Based on Sex? Please tick ✓**

Yes

No

- (ii) If **Yes**, please give their title and the year that data collection and analysis began:

Title	Year started to collect/analyse data

- 6.4 (i) Is national level data collected on the following? **Please tick ✓ If yes**, please provide the requested information in the following tables.

a. Incidence of Sexual Harassment by Type

Variable	Please tick ✓		Years for which data is available	If yes what is the annual average incidence of Sexual Harassment by type
	Yes	No		
Incidence of Sexual Harassment by type	<input type="checkbox"/>	<input type="checkbox"/>		
Verbal	<input type="checkbox"/>	<input type="checkbox"/>		
Non- verbal	<input type="checkbox"/>	<input type="checkbox"/>		
Physical	<input type="checkbox"/>	<input type="checkbox"/>		

b. Incidence of Sexual Harassment by Gender

Variable	Please tick ✓		Years for which data is available	If yes what is the annual average incidence of Sexual Harassment by harasser's gender
	Yes	No		
Incidence of male /female Sexual Harassment ⁴⁰	<input type="checkbox"/>	<input type="checkbox"/>		
Incidence of female /male Sexual Harassment ⁴¹	<input type="checkbox"/>	<input type="checkbox"/>		
Incidence of male /male Sexual Harassment ⁴²	<input type="checkbox"/>	<input type="checkbox"/>		
Incidence of female /female Sexual Harassment ⁴³	<input type="checkbox"/>	<input type="checkbox"/>		

⁴⁰ Male Sexual Harassment of Females

⁴¹ Female Sexual Harassment of Males

⁴² Male Sexual Harassment of Males

⁴³ Female Sexual Harassment of Females

c. Profile of the Victim

Variable	Please tick ✓		Years for which data is available	If yes please provide the relevant information
	Yes	No		
Profile of the Victim	<input type="checkbox"/>	<input type="checkbox"/>		
Age	<input type="checkbox"/>	<input type="checkbox"/>		Average age of Victim <input type="text"/>
Gender of the Victim	<input type="checkbox"/>	<input type="checkbox"/>		% Male <input type="text"/> % Female <input type="text"/>
Occupation of the Victim	<input type="checkbox"/>	<input type="checkbox"/>		List 5 most frequent occupational categories: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

d. Profile of the Harasser

Variable	Please tick ✓		Years for which data is available	If yes please provide the relevant information
	Yes	No		
Profile of the Harasser	<input type="checkbox"/>	<input type="checkbox"/>		
Age	<input type="checkbox"/>	<input type="checkbox"/>		Average age of Harasser <input type="text"/>
Gender of the Harasser	<input type="checkbox"/>	<input type="checkbox"/>		% Male <input type="text"/> % Female <input type="text"/>
Occupation of the Harasser	<input type="checkbox"/>	<input type="checkbox"/>		List 5 most frequent occupational categories: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

e. Profile of the Organisation

Variable	Please tick ✓		Years for which data is available	If yes please provide the relevant information
	Yes	No		
Profile of the organisation in which the incident occurred	<input type="checkbox"/>	<input type="checkbox"/>		
Size (No. of people employed)	<input type="checkbox"/>	<input type="checkbox"/>		Small 0-50 <input type="text"/> % Medium 50-200 <input type="text"/> % Large +200 <input type="text"/> %
Length of establishment	<input type="checkbox"/>	<input type="checkbox"/>		Average length of establishment (yrs)
Sector	<input type="checkbox"/>	<input type="checkbox"/>		List 5 most frequent sectors : 1. _____ 2. _____ 3. _____ 4. _____ 5. _____
Union status	<input type="checkbox"/>	<input type="checkbox"/>		% Unionised <input type="text"/> % Non-Unionised <input type="text"/>

6.5 (i) In your view, are there any gaps or deficiencies in the data relating to **Sexual Harassment / Harassment Based on Sex in your country? Please tick ✓**

Yes No

(ii) If **Yes**, please describe the nature of the data relating to **Sexual Harassment / Harassment Based on Sex that should be collected?**

6.6 (i) Has any national-level **qualitative** research been conducted in your country on **Sexual Harassment / Harassment Based on Sex? Please tick ✓**

Yes No

Study 3

Title of the Study:	
Year of publication:	
Authors of the Study:	
Commissioning Body:	
Summary of Main Findings:	

6.7 (i) Have research findings in your country been used to inform policy or practice relating to **Sexual Harassment / Harassment Based on Sex? Please tick ✓**

Yes

No

(ii) If **Yes**, please describe:

6.8 What is the main source of funding for research in your country into **Sexual Harassment / Harassment Based on Sex?**

SECTION 7: INITIATIVES DESIGNED TO REDUCE THE INCIDENCE OF SEXUAL HARASSMENT/ HARASSMENT BASED ON SEX

7.1 (i) Has your organisation or any other governmental organisation in your country funded any initiatives designed to prevent, or reduce the incidence of, **Sexual Harassment / Harassment based on Sex**? Please tick ✓

Yes

No

(ii) If **Yes**, please describe the nature of the initiative and the reason it was undertaken

Type of initiative	Please tick ✓		Please describe
	Yes	No	
Research	<input type="checkbox"/>	<input type="checkbox"/>	
Awareness Raising for Employers/Employees	<input type="checkbox"/>	<input type="checkbox"/>	
Training for Employers /Employees	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing explicit rules about conduct	<input type="checkbox"/>	<input type="checkbox"/>	
Establishing complaint procedures	<input type="checkbox"/>	<input type="checkbox"/>	
Imposing sanctions for Sexual Harassment	<input type="checkbox"/>	<input type="checkbox"/>	

7.2 Give examples of recent initiatives, which are believed to indicate best practice in relation to prevention/ dealing with **Sexual Harassment / Harassment Based on Sex** in the workplace:

Thank you for taking the time to complete this Questionnaire