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workers in Europe

BUSINESSEUROPE



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Mr. Jackie Morin

European Commission
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Concerns: Commission Communication to the Council and the European Parliament transmitting the European framework agreement on harassment and violence at work (COM(2007) 686 final of 8 November 2007)

Dear Mr. Morin, Dear Jackie,

The European social partners noted with particular interest the abovementioned Communication which main aim is to inform the European Parliament and the Council of the European framework agreement on harassment and violence at work. Although we appreciate this initiative of the Commission, we would however like to draw your attention to the following:

Firstly, there are two different dates of signature of the agreement mentioned in the first paragraph of the document (i.e. 26/4) and the third paragraph (which mentions 27/4). In our view, this might lead to confusion on the exact official date of signature which is 26 April 2007.

Secondly, in the first line of the 4th paragraph, the Commission refers to different kinds of violence and harassment such as bullying; the latter is however a term which they (deliberately) did not use in the text of our agreement due to the fact that it is not everywhere known and/or accepted as term.

Thirdly, in the 5th paragraph, it is said that the autonomous agreement is to be implemented by the members of the signatory parties; *"i.e. the national social partner organisations"*. This particular part/addition does to our view not take fully into account the affiliation structure of at least ETUC which also has affiliated European Industry Federations which co-negotiated and co-adopted the agreement via the ETUC and have thus committed themselves also to implement the agreement together with their partners in the respective European sectoral social dialogue committees. In addition, by putting it in such a restricted sense, it indirectly does not

take into account the different industrial relation systems, where sometimes there are other levels (sectoral, etc.) which have to ensure the implementation in first instance. In fact, if this part is read in a narrow way, it might even be (wrongly) considered that if indeed the national social partners have ensured an implementation, that there is no more need to do something by the other partners on other levels. Finally, we consider that by putting it as such, this does not really enhance the creation of “synergies” with the EU sectoral social dialogue (committees) in particular regarding the implementation of EU interprofessional social dialogue agreements. We would like to recall that the creation of better synergies was also one of the main challenges identified by the Commissions’ Communication on “Partnership for change in an enlarged Europe: enhancing the contribution of European social dialogue (COM(2004) 557 final of 12.08.2004). Furthermore, it does also not really reflect the current initiatives of the Commission with different affected EU sectoral social partners regarding the implementation of the harassment and violence agreement, in particular on the aspect of 3rd party violence. We therefore consider that it would have been better to leave this particular part out of the sentence as then it would have been fully correct in both its wording and spirit!

Fourthly, the last sentence of the 5th paragraph refers to the preparation of the joint implementation report by the Social Dialogue Committee (SDC) in the fourth year after the signature of the framework agreement. However, the text only refers to the preparation and not the adoption of the report by the SDC. Furthermore, it does nowhere refer to the annual joint implementation tables which we committed ourselves to prepare and adopt in the course of the implementation period.

Fifthly, in the abovementioned Communication of 2004, the Commission did indeed foresee to inform the EP and Council on our agreements and do an ex-ante assessment. The Communication of 2004 did however not reflect explicitly that this would have been on both our representativity and on the content. As to the representativity assessment, this paragraph is to be welcomed as it stands. As to the content assessment, we welcome to learn that all our “individual clauses” are in conformity with Community law and the fact that our aims are in line with the objectives of European policy on health and safety at work. However as to the latter, we would like to highlight that we did not negotiate this agreement in and from a mere health and safety perspective, but also in a non-discrimination perspective (see the links to the EU directives where (sexual) harassment are deemed discriminations) and an even wider work environment/organisation perspective.

Also regrettable is the fact that the following line then mentions “*the agreement takes an action-oriented, rather than a legal approach*”. Putting this addition of “*rather than a legal approach*” can to our point of view only lead to confusion and even support arguments that our agreement does not provide for “rights and obligations” in relation to preventing and tackling harassment and violence at the work place.

We consider it however very positive that the Commission invites the other EU institutions to promote the agreement via adequate publicity and supporting implementation at national level. We also very much welcome the last paragraph of the text which foresees that not only the Commission commits itself to provide any necessary support to the social partners during the implementation process, but also that it intends to conduct –again- its own monitoring while giving of course precedence to the monitoring undertaken by the social partners themselves. As to the latter, we consider that a lot will of course depend on how the Commission intends to further handle its own implementation report (and in particular its conclusions) on the telework agreement (as currently conducted with the support of Professor Visser).

We also very much welcome the fact that this Communication is made available in 22 languages, including a non-official translation into 21 languages, whereby these non-official translations could indeed be used as a basis for concrete (discussions on) implementation actions within both the European but in particular national context.

The Europeans social partners would however like to receive some clarification from the Commission as to the exact status of this Communication. Its aim is indeed mainly -if not exclusively- to inform the other EU institutions of our framework agreement. Given that this Communication will be published in the Official Journal and in particular looking at where this Communication is posted on the Commission's Social Dialogue website, it is put on the same level and in the same category with all the former Communications on European social dialogue (1993, 1996, 1998 and 2004). However, we consider the latter Communications to have a more "institutional"/"interpretative" character as they try to set and/or clarify the "rules and procedures" governing the European social dialogue.

Finally, and taking into account all the above mentioned comments, we call on the Commission to be consulted at an early stage, namely during the drafting process, should the practice of publishing this type of Communication following the conclusion of an autonomous agreement be kept. Such an early consultation will prevent the kind of misunderstandings and or inaccuracies pointed out in the present letter.

Looking forward to your reply to our reactions.

Yours sincerely,






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