

Psychosocial risks in Europe

National examples as inspiration
for a future directive

Aude Cefaliello

Aude Cefaliello

is a researcher at
the European Trade
Union Institute (ETUI),
Brussels.

Key points

- Psychosocial risks (PSR) are increasingly impacting all industries in every Member States. The effects of psychosocial risks can be long-lasting and have both physical and psychological impacts on workers' lives (such as depression, musculoskeletal disorders or burnout).
- Employers are under an obligation to protect workers' safety and health in all aspects of work. Member States do not, however, share legally binding common standards and principles regarding psychosocial risks. This results in unequal legal protection for workers.
- National examples of regulation of psychosocial risks show that effective legislation is possible. These examples can be a source of inspiration to (re)start the discussion to adopt a specific directive on psychosocial risks, which would establish common rules aimed at improving workers' safety and health and encouraging organisational prevention of these growing risks.

Introduction

The European Occupational Safety and Health (OSH) legal framework revolves around the so-called *Framework Directive* (Directive 89/391/EEC). This directive has broad scope and covers workers' safety and health in all aspects of work. It should also cover its psychological dimension, and the general principles of prevention should apply to psychosocial risks (PSR). Unfortunately, reference to psychosocial risks is only implicit. There are only brief mentions of *mental strain* in the Working Time Directive (Article 8, Directive 2003/88/EC). The only explicit examples of psychosocial risks are in the two autonomous framework agreements on work-related stress (2004), and on workplace bullying and violence at work (2007). These autonomous framework agreements provide common descriptions of work-related stress, workplace bullying and violence, while explicitly drawing a link with the Framework Directive, and are aimed at raising awareness and understanding among employers, workers and their representatives. Unfortunately, even if these agreements prove that a common basis can be found at the EU level, they are not legally binding and their implementation across the Member States has been inconsistent.¹ The differences between the Member States might be explained by variations in the degree of awareness, prioritisation and acknowledgment, but also the resources allocated to managing psychosocial risks (Leka et al. 2011). Almost all Member States have some provisions on the mental aspect of occupational safety and health, but none of them cover everything comprehensively. The connection between the mental dimension of workers' health and psychosocial risks varies considerably. Some national legislation, such as that of Germany, refers to 'psychosocial strain at work', while others – such as Estonia – address workplace bullying and work-related stress without any description of the organisational and social environment factors related to psychosocial risks. This patchwork of legal approaches does not provide workers with equal protection.

To ensure a similar level of workers' protection, we need to fill the gap between theoretical principles of prevention at the EU level and practices at the national level. The lacuna of the framework agreements proves the need for legally binding requirements to address psychosocial risks effectively in the EU (Scandella 2017).

Given that occupational safety and health directives are better implemented at the domestic level if the directive is based on existing common practices (Cefaliello 2020), an examination of current domestic laws can provide good practices and examples on the basis of which a directive can be discussed in the future.

This policy brief explores ways of developing a specific legal framework to prevent psychosocial risks at work effectively. An overview of three national legal provisions will be presented: Sweden, Belgium and Denmark. These three national regulations all approach psychosocial risks in a way that echoes the general preventive principles of Directive 89/391/EEC. They adopted their legal

¹ European Commission (2011); Carta et al. (2016).

frameworks covering psychosocial risks at different times, however: Sweden in 1974, Belgium in 1997 (followed by legal revisions/reforms) and Denmark with a recent addition in 2020. They also provide examples of different legal approaches. The Swedish approach is more general and focuses on the impact of mental strain resulting from the work environment; the Belgian approach is more detailed and extensive, providing examples of three types of prevention of work-related stress and workplace bullying; while the Danish approach combines both, with the introduction of employers' obligations concerning the 'psychosocial work environment'.

Holistic organisational approach to psychosocial risks – Sweden

Sweden adopted legislation on psychosocial risks more than 30 years ago, based on a holistic approach. Over time it has evolved to cover specific risks such as stress and violence. The Swedish approach emphasises the organisational dimension of psychosocial risks by aiming at a good work environment. Therefore, managers and supervisors have to be trained to prevent and to take appropriate action against psychosocial risks. The involvement of management and collaboration with social partners are essential for effective prevention.

In 1977, Sweden adopted the Work Environment Act (Arbetmiljölagen, AML). This provides that 'technology, work organisation, and job content shall be designed in such a way that the employee is not subjected to physical or mental strains which can lead to ill-health or accidents'. Even if psychosocial risks are not expressly mentioned, the psychological aspect of workers' health is covered. In 1993, Sweden completed its legal framework with the Violence and Threats in the Work Environment Regulation (AFS 1993: 2). The focus is on procedures within the company to investigate risks or threats of violence and take appropriate measures. The same year, the Victimisation at Work Regulation (AFS 1993:17) was adopted, which applies to all activities in which employees can be subjected to victimisation. The employer must make it clear that victimisation is unacceptable.

In 2015, these legal provisions were completed by the Swedish Work Environment Authority's Regulations and General Guidelines on the Organisational and Social Work Environment. These Regulations emphasise occupational safety and health prevention and the impact on workers' health because of organisational and social conditions in the work environment. Even though psychosocial risks are not expressly mentioned,² there are similar definitions in this Regulation. For example, the definition of unhealthy workload echoes the commonly accepted definition of stress.³ The general recommendations for preventing unhealthy workloads are detailed and include adapting workloads, but also tasks and resources. In addition, it places a substantial emphasis on training managers and supervisors, not only workers. It also underlines the importance of

2 Except section 11: 'The employer shall take measures to counteract ill health among employees who encounter tasks and situations that entail severe mental stress.'

3 'When job requirements exceed resources on more than a temporary basis. This imbalance becomes unhealthy if it is prolonged and if opportunities for recovery are inadequate.'

support from supervisors and the possibility for workers to contact their managers or employers in case of problems, in particular in situations of victimisation. The important point is that intervention needs to be swift to prevent further deterioration.

Detailed and extensive legislative framework on psychosocial risks – Belgium

Belgium's legal provisions on psychosocial risks reflect the Framework Directive's principles of prevention. The articles of the Well-being code on psychosocial risks provide for an obligation of evaluation, prevention and adaptation of the workplace, with the involvement of workers and their trade union representatives in relation to psychosocial risks. There are also obligations of information, training and consultation, alongside all the other obligations and rights directly applicable to psychosocial risks. One interesting aspect of Belgian law is that it takes into consideration the specificities of psychosocial risks. Its prevention plan envisages three types of prevention: primary, practical and organisational measures aimed at permanently eliminating risks; secondary measures aimed at limiting and avoiding harm; and tertiary measures applicable when the employer has not been able to avoid risks or subsequent harm. The legal framework provides general principles and leaves a significant margin to enable adaptation to companies' needs. This flexibility and the link with the Framework Directive make it possible to transpose these principles in other Member States.

Interestingly, Belgium has a proactive, rather than reactive, system for preventing psychosocial risks. The law imposes on employers the obligation to identify and to adopt procedures to avoid a deterioration in interpersonal relations and situations that foster unacceptable behaviors, such as harassment or violence. The construction of the legal provisions on psychosocial risks in the Well-being Code underline the detailed, yet broad national approach that. Article I.3-1 condenses in a single article:

- the obligation of assessing and evaluating the psychosocial risks,
- definitions of specific psychosocial risks with the examples of stress, burn out, violence, psychological or sexual harassment,
- the importance for the employer to involve the workers.

Belgium law does not only have reference to the concept of psychosocial risks; it also provides a legal definition that is broader than harassment and bullying.⁴ Combined, all of these provisions give a real collective approach to address PSR.

It shows that PSR are extensive and can take multiple forms. The psychological tensions which can lead, later, to recognised situations of stress, burn out, harassment and violence, are covered as well. In addition to the various definitions, the Belgium Well-Being Code also provides specific

4 'The probability that one or more workers will suffer psychological harm due to exposure to elements of the content, organization, or conditions of work, which may also be accompanied by physical harm, as a result of aspects of work content or organization, working or living conditions, or interpersonal relationships at work, over which the employer has an influence, and which objectively constitute a risk' (art 32/1 Law on well-being, art 2, 3° royal decree of 10 April 2014 relating to prevention of psychosocial risks at work).

provisions to address the organisational aspect of the PSR. Therefore, the employer should arrange internal procedures, both formal and informal, and external procedures.

The internal procedures are centered around the early prevention of tensions with the intervention of the PSR advisor or the *trustworthy person*. A worker who suffers from PSR can contact this person at the workplace, during the working time to ask for an (informal) intervention. Once the formal procedure starts, the worker who complained is protected against victimisation. If all these proceedings fail or are unsatisfactory, the worker can ask for the intervention of the labour inspectorate or start an action before the employment tribunal. With this combination of informal and formal procedures within the company, situations that could have fallen without the scope of harassment can still be addressed by the measures to reduce psychosocial risks (van der Plancke 2014).

The modern concept of psychosocial work environment– the Danish example

In Denmark, the government has adopted in September 2020 an Ordinance/ Executive Order to prevent risks related to mental work environment. This ordinance completes the *Working Environment Act* (WEA), which was adopted in 1977 – It covers *the physical and psychological working environment*. The focus is, therefore, not on the workers' safety and health but on the working environment, which can lead to a deterioration of workers' safety and health. It shifts the attention on the organisational functioning and not the individual dimension of OSH. The WEA is extensive and integrated the implementation of various OSH directives, including the Working Time Directive, as part of the overall OSH prevention. In addition to proactive inspection, employees may submit complaints to the Working Environment Authority regarding mobbing or sexual harassment, which may be followed up by a specific inspection. If the Authority has suspicions about the psychosocial work environment – particularly regarding a breach of the OSH legislation – it can issue an order to investigate the psychosocial work environment with a mandatory investigation by authorised safety and health consultant.

Until recently, as many other European Countries, Denmark did not have explicit legal provisions to cover PSR. In that respect, the Executive order on psychosocial working environment adopted the 26th September 2020 is an essential step forward. The ordinance applies to the *mental work environment*, which is comparable to what has been described as PSR and is defined in the order as: *psychosocial effects of the work that takes place* in relation with: how the work is planned and organised, the work requirement, the way work is performed, and the social relations at work. As a general principle, the employer should take measures for planification of the mental work environment taking into consideration the individual and collective dimension, but also the short- and long-term impacts of the measures/plans.

The first part of the ordinance restates the general principle of prevention of the Directive 89/391/EEC and applies them to the mental work environment. The second part of the ordinance provides *special provisions concerning individual*

effects on the psychosocial working environment. For each of individual aspects, the employer should take into consideration the extent and the nature of the exposure. To assess the mental work environment, the employer should evaluate and take appropriate actions regarding the prevention of *large workload and time pressure, unclear or conflicting requirements at work, high emotional demands in working with people, and offensive acts.* These *offensive acts* include bullying and sexual harassment. This last point is fundamental considering that before that ordinance, there were no legislative provisions against bullying in Denmark, and only discriminatory sexual harassments were covered.

Conclusion: the opportunity to adopt a Directive on Psychosocial Risks

The previous national examples of legislation on PSR show that it is possible to give a legal definition of PSR as specific risks. It also proves the existence and the efficiency of general principles of prevention that take into consideration the particularities of these risks while giving some freedom at the company level. The Swedish has been amongst the first one in Europe to address mental dimension of OSH. It highlights the need to involve not only the employee and the employer but also managers as active stakeholders in the prevention of PSR both at the individual and collective levels. The Belgian example goes into the same direction and emphasis on primary prevention at the organisational level with the involvement of a mediator as an effective way to appease an escalating tension at the workplace. It also provides an interesting example of legal framework combining primary, secondary and tertiary mechanisms of prevention. Finally, the most recent example in Denmark illustrates that the structure and the general principles of prevention of the Directive 89/391/EEC are suitable for preventing PSR, but also that additional details should be provided on these risks.

At the European level, all the Member States have implemented the principles of the framework directive, the directive on equal treatment covering sexual harassment, and should have implemented the framework agreements on stress, violence and workplace bullying. Therefore, the common legal basis and awareness should already exist. Still, the latest survey conducted by EU-OSHA, Esner3, shows that workers are not equally protected against psychosocial risks at work in the EU.⁵ There is a need to go a step further and to adopt a directive on PSR that will take the specificities of the PSR into consideration while providing common definitions and practices in all the Member States. One way might be to apply and provide specific principles of prevention to the concept of psychosocial work environment. Focusing on the psychosocial work environment might be a way to address both the collective and individual dimension of psychosocial risks factors (e.g., excessive workload, tensions amongst colleagues), and their consequences (e.g., work related stress or

⁵ Data accessible at: https://visualisation.osha.europa.eu/esener/en/survey/detailpage-european-map/2019/emerging-risks-and-their-management/en_1/E3Q300/activity-sector/14/11/1

workplace bullying). Future research should investigate even further national good practices and assess their effectiveness in order to elaborate what could constitute an acceptable common base for a PSR directive inspired by Directive 89/391/EEC.

References

- Carta E. et al. (2016) Study on the implementation of the autonomous framework agreement on harassment and violence at work, Luxembourg, Publications Office of the European Union.
- Cefaliello A. (2020) Towards an improvement of the legal framework governing Occupational Health and Safety in the European Union, Doctoral dissertation, University of Glasgow.
- EU-OSHA (2019) The third European Survey of Enterprises on New and Emerging Risks (ESENER 3), Bilbao, European Agency for Safety and Health at Work.
- European Commission (2011) Commission staff working paper - Report on the implementation of the European social partners' Framework Agreement on Work-Related Stress, SEC(2011) 241 final, 24 February 2011.
- Leka S., Jain A., Iavicoli S., Vartia M. and Ertel M. (2011) The role of policy for the management of psychosocial risks at the workplace in the European Union, *Safety Science*, 49 (4), 558-564.
- Scandella F. (2017) Europe: vers une éclipse des risques psychosociaux au travail, *HesaMag* n°16, 6-9.
- van der Plancke V. (2014) Les risques psychosociaux saisis par le droit social belge : accents sur le harcèlement, in Lerouge L. (ed.) *Risques psychosociaux en droit social : approche juridique comparée France, Europe, Canada, Japon*, Paris, Dalloz, 91-107.

ETUI publications are published to elicit comment and to encourage debate. The views expressed are those of the author(s) alone and do not necessarily represent the views of the ETUI nor those of the members of its general assembly.

The ETUI Policy Brief series is edited jointly by Nicola Countouris, Jan Drahoukoupil, Philippe Pochet, Aída Ponce Del Castillo, Kurt Vandaele and Sigurt Vitols.
The editor responsible for this issue is Philippe Pochet, ppochet@etui.org

This electronic publication, as well as previous issues of the *ETUI Policy Briefs*, is available at www.etui.org/publications. You may find further information on the ETUI at www.etui.org.

© ETUI aisbl, Brussels, December 2021
All rights reserved. ISSN 2031-8782



The ETUI is financially supported by the European Union. The European Union is not responsible for any use made of the information contained in this publication.