

**Report V (1); Ending violence and harassment in the world of work
International Labour Conference, 108th Session, 2019**

Replies of the Government of Finland

Finland considers the topic of ending violence and harassment in the world of work to be an important one and supports the drafting of the Convention and the supplementary Recommendation. The aim shall be to produce a Convention that is both effective and ratifiable. Excessively detailed provisions may constitute impediments to ratification.

Finland considers that the proposed texts in the Report of the ILO International Labour Office (“Office”) provide an excellent basis for further deliberations. However, the ambiguities arising from the broadness of the definitions and scope are yet to be resolved in all respects, which is why Finland considers that the texts would benefit from further clarification.

Finland submits the following comments and proposals for amendment to the individual Articles:

Convention

Preamble

The relevant Committee of the ILO International Labour Conference decided to amend the language of the Preamble to read:

“Recalling that violence and harassment in the world of work is a *form of* human rights violation...”

The Office believes that there may be room for further improving and clarifying the preambular text in this regard and, therefore, proposes that the reference to human rights violations could be moved from the sixth to the fourth preambular paragraph, drawing on the language in the Preamble of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111):

“Considering that violence and harassment in the world of work constitutes a violation of human rights enunciated in relevant international instruments such as the Universal Declaration of Human Rights...”

(Convention 111: “Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights”)

Finland considers it important that a reference to human rights violation appear in the Preamble of the Convention now being drafted. Finland proposes the following wording for the relevant passage of the Preamble: “*Recalling that violence and harassment in the world of work is a human rights violation, ...*” This formulation would be clear and simple, it would have sufficient coverage and it is also the formulation used in several United Nations (UN) Resolutions. The formulation furthermore gives Members discretion as to the national regulation of violence and harassment while simultaneously recognising both as human rights violations.

Article 1 (a)

In its report, the Office observes that the definition of “violence and harassment” is worded such that it may be understood to encompass different conducts, and that the term provides flexibility to accommodate national laws and regulations, enabling Members to implement a single definition of “violence and harassment” or to define each term separately at the national level.

Taking into account the Office’s commentary, Finland considers that the definition in Article 1(a) provides adequate flexibility and may serve as the basis for further deliberation on the Convention. However, Finland finds it problematic that although according to the Office, the concepts of violence and harassment may be implemented separately at the national level, the text of the Convention does not provide for this outcome, which is likely to give rise to uncertainty upon eventual implementation and subsequent interpretation of the Convention. Finland proposes clarification of the text by means of adding a reference to violence and harassment “as defined by national law”.

Finland does not consider it necessary for the Recommendation to include an indicative, non-exhaustive list of forms of violence and harassment. Deliberation on such a list might prove time-consuming and thus present challenges to the advancement of the process, taking into account the limited amount of time available for negotiations at the ILO Labour Conference.

Article 1 (b)

The Office’s Report does not expressly indicate whether the terms “violence and harassment” in this context may be addressed separately at the national level. Finland hopes that the Office will provide further clarification on this point at a subsequent stage of deliberations.

Article 1 (c)

In its commentary, the Office notes that the word “worker” was chosen to ensure broad protection “in all aspects of employment and occupation”. The Office also makes reference to its proposal for a new Article (after Article 4) to clarify that different actors in the world of work can have different and complementary responsibilities. (Please see below for comments on the new Article.)

While the idea of seeking to provide all persons in the world of work with broad protection from violence and harassment is laudable, the concept of “worker” as it currently appears in the draft Convention is not defined in Finland and it is not recognised ‘as such’ outright in legislation. Consequently, Article 1(c) poses a problem for Finland. A clearly better solution would be to abandon the concept of worker in Article 1(c) in favour of a different formulation that would allow the persons covered by Article 1(c) to be incorporated into the scope of the Convention (“this convention applies to OR this convention covers persons...), for example as follows: “This Convention covers/applies to persons in all sectors, both in the formal and the informal economy, and whether in urban or in rural areas, including workers and employees as defined by national law and practice, ...”.

Not all ILO instruments provide a definition for the concept of “employee” or “worker”. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to which reference is made

in the Report, also does not provide a definition for “employee” and instead its fairly broad application arises from the formulation of its scope. Finland is of the opinion that similar wording could be used in the Convention now being drafted.

Article 2

Article 2 defines the situations covered by the “world of work”. The Office points out the aim of going beyond the physical workplace and taking into consideration the evolving nature of work. The Office observes that not all aspects of the provision are intended to be applied in every circumstance to every actor but rather that different actors have different responsibilities. The Office makes reference to its proposed new Article (after Article 4) to provide clarification as to the various actors in the world of work and their different and complementary responsibilities. (Please see below for comments on the new Article.) The responsibilities of these various actors shall be clearly delineated and take into account each actor’s opportunities to influence the prevention and elimination of harassment and violence.

A broad definition of the world of work presents a challenge vis-à-vis subsequent Articles in which the obligations and responsibilities of actors are defined. Some of the paragraphs in the Article are such that employers and Members can exert only little de facto influence. The obligations of employers in particular may be deemed to be somewhat unclear when Article 2 concerning scope is read in conjunction with Article 9 concerning employer obligations. The issue is duly recognised in the Office’s commentary concerning this and the proposed new Article (please see below for comments on the new Article.)

In seeking a compromise on defining employer responsibility, guidance could also be sought from wording equivalent to that in Article 3(c) of the Occupational Safety and Health Convention, 1981 (No. 155), which takes into account the employer’s opportunities to exert influence; therein, the term “workplace” means all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer (on this topic, please also see comments on Article 9.)

Possible new Article after Article 4

The Office notes that during Committee discussions, concerns were raised as to the broadness of the definitions and scope and the relationship of these to the rights and obligations of the various actors, in particular the obligations of employers. The Office recalls that the aim is to ensure the protection of all persons in the world of work and that different measures taken by different actors can address different situations with a view to ensuring the desired protection.

The Office proposes a possible new Article clarifying that responsibility may vary and that coordination and cooperation among the actors involved is important to maximise the impact of their respective actions. The new Article would read as follows:

In adopting and implementing an inclusive, integrated and gender-responsive approach for the elimination of violence and harassment in the world of work, Members shall:

- (a) recognise that governments, and employers and workers, and their respective representatives, have different and complementary roles and responsibilities in preventing and addressing violence and harassment in the world of work; and*
- (b) promote coordination and cooperation between them.*

Finland supports the aim of the Article proposed by the Office, to clarify the responsibilities of the various actors, which the Convention should reflect. However, the wording proposed by the Office could result in problems of interpretation. For example, it could be construed to expand the responsibility and obligation of individual workers to prevent and combat harassment and violence. Consequently, the wording of the provision requires further elaboration.

Article 6

The Office notes that it has replaced the term “for all workers” with “in employment and occupation” and justifies this change with i.a. consistency with the principles set out in Articles 1 and 5, and with the broad approach adopted in Article 7. The change would furthermore clarify that all persons are entitled to the right to equality and non-discrimination. According to the Office, the wording is moreover in conformity with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which the term is given a specific definition.

Finland does not consider the use of the term “in employment and occupation” in this context to be consistent, taking into account the current contents of Articles 1 and 2. The Convention under consideration lacks any definition for the term and this Article 6 is the only Article in which it appears. In this respect, Finland refers to the changes proposed by it regarding Article 1(c). If Article 1(c) was amended, the term “employment and occupation” could possibly be used in this Article. Consistency in the use of concepts in the various provisions is a paramount consideration.

The Office also invites comments on whether the words “vulnerable groups” should be deleted from the Article while maintaining the reference to “groups in situations of vulnerability”. In the opinion of the Office, the change would not restrict the scope of protection of this provision but would avoid any potential stigmatisation, as no group is inherently more vulnerable than others to violence or harassment.

Finland is not in favour of deleting “vulnerable groups” at this time. The deliberations of the Committee on the Article and the list originally included therein were highly challenging. The Article and any provision in the Recommendation relating thereto should be examined as a whole.

Article 8

The Office has moved the subparagraph concerning privacy and confidentiality, added to the Convention by the Committee, to Article 10. Finland endorses the move.

Article 9

Article 9 concerns employer obligations. Finland considers that amendment of the chapeau (“so far as is reasonably practicable”) is essential, taking into account the broad definitions and scope of the proposed text. In addition, the wording used in Convention No. 155, “under the direct or indirect control of the employers”, should be incorporated into the chapeau to illustrate the limits of the employer’s responsibility.

In subparagraph (a), the term “a workplace policy” is an improvement on the previous wording.

Article 10

Article 10(b) and its subparagraphs (i) and (ii) mention “dispute resolution mechanisms”. At the following stage of the process, the Office is encouraged to clarify the meaning of the term “dispute resolution mechanism”. Does the term refer to a specific process, and how do the processes mentioned in subparagraph (i), for example, differ from each other?

According to the Office’s commentary, the word *victim* has been included in subparagraphs (iv) and (v) of subparagraph (b) to ensure that, in cases where victims are not the complainants, they have access to protection against victimisation or retaliation and to legal, social, medical and administrative support measures. The Office is encouraged to specify the nature of such support measures and the party responsible for them. For example, does protection refer to protection against secondary victimisation, arising from the process, and against eventual retaliation?

As stated above, Finland supports the Office’s proposal to move the privacy and confidentiality provision from Article 8 to Article 10(c).

As a rule, workers are protected at work against the adverse effects and risk factors arising from the work, working conditions or working environment. Actors, authorities, measures and processes relating to domestic violence usually differ from the equivalent factors where work is concerned. This is why Finland finds it challenging to incorporate domestic violence in an instrument that concerns occupational health and safety or work, in particular a legally binding Convention. Finland proposes that subparagraph (f) concerning domestic violence be incorporated not in the Convention but in the Recommendation. However, in this context Finland wishes to emphasise the supreme importance of addressing and preventing domestic violence. It is also obvious that the effects of domestic violence may extend into the world of work. The Council of Europe Convention on preventing and combating violence against women and domestic violence requires all ratifying States to prevent violence taking place in the home. The said Convention has been ratified by Finland.

Finland sees no need for further remedial action to be specified in the Article.

Recommendation

New paragraph

As stated above regarding Article 1(a), Finland does not consider it necessary for the Recommendation to include an indicative, non-exhaustive list of forms of violence and harassment.

Paragraph 5

The Office invites comments regarding the placement of the provision and proposes that with regard to its content, the provision would be more appropriate under “Protection and Prevention” after paragraph 10.

The paragraph concerning protection of migrant workers differs in terms of substance from the other paragraphs appearing under the heading “Core Principles” and moving it under the heading “Protection and Prevention” is justified.

Paragraph 8

Paragraph 8 of the Recommendation relates to Article 9(a) of the Convention. Further flexibility would be advisable in the paragraph. For example, the word “should” in the final sentence might be replaced with “could”.

Paragraph 10

Finland is under the impression that the paragraph refers to Article 8 of the Convention despite the lack of any direct reference thereto. Article 8 uses the term “appropriate measures”, whereas the paragraph has the term “specific measures”. For the sake of consistency, “appropriate measures” should appear in this paragraph as well.

Paragraph 12

The Office points out that the original intent of the paragraph was to avoid that measures aimed at preventing violence and harassment would result in the restriction or exclusion of women or groups disproportionately affected by violence and harassment from specific jobs, sectors or occupations. The Committee’s deliberations resulted in a list of vulnerable groups being moved to this paragraph. Listing the various groups had the original intent of ensuring that the said groups would not be excluded from the scope concerning equality and non-discrimination. The Committee was unable to discuss the provision due to lack of time. The Office invites comments as to whether the original contents of the provision should be retained and the list of vulnerable groups included in a specific new provision as necessary.

Finland concurs with the view of the Office that the proposed text currently ‘mixes apples and oranges’ and supports the separation of the two into their individual provisions.

The list of vulnerable groups was originally included in the proposed text of the Convention and moved to the Recommendation during the Committee’s deliberations on the said Articles and the related list, which the Committee found to be highly challenging. The Article and any related paragraph in the Recommendation should be examined as a whole. Taking this into account, Finland finds that at this point in the proceedings, the list of vulnerable groups should remain incorporated into the Recommendation as a specific paragraph. Since a point on the list that posed a particular challenge to the Committee concerned the mention of LGBTI, one possible compromise might be to refer instead to persons and groups discriminated by sexual orientation or gender identity. An examination from the perspective of the basis for discrimination might prove fruitful, as ILO Discrimination (Employment and Occupation) Convention (No. 111) covers not only the bases for discrimination mentioned in Article 1(a) of the said Convention but also, as specified in Article 1(b), all other kinds of distinction, exclusion or preference. Reference to the said Convention is moreover made in the proposed text, in paragraph 6 of the Recommendation. ILO Recommendation no. 205 also mentions sexual orientation among the bases for discrimination (Article 7(f)).

Paragraph 13

The paragraph refers to Article 10(b) of the Convention concerning appropriate and effective remedies as well as safe, fair and effective reporting and dispute resolution mechanisms. Finland proposes that the flexibility of the provision be enhanced by replacing the words “should include” in the final sentence of the chapeau with the words “could include”, thus making the steps laid out in the subparagraphs a– to constitute more of an indicative list. For instance, taking back the employee

or restoring the employment – if that is what “reinstatement” refers to here – is not possible in all circumstances.

Paragraph 15

The wording of the paragraph is fairly rigid. Additional flexibility would be warranted, as the Members have different processes and procedures in place. For example, the phrases “according to national law and practice” or “as appropriate” might be incorporated into the chapeau, or the verb “should” in the chapeau might be replaced with the verb “could”. At the very least, the phrase “where appropriate” should be added to subparagraphs (a) and (b).

Finland also points out that the shifting of burden of proof, as provided in subparagraph (e), cannot apply in criminal cases, and the subparagraph therefore must be delimited in this respect.

Paragraph 16

Finland opines the wording of this paragraph as well to be quite rigid and finds that it would benefit from greater flexibility. For example, the establishment of the specialised police units mentioned in subparagraph (g) largely depends on the kind of system in place in each Member. In the interests of enhancing flexibility, it is proposed that the phrase “appropriate measures such as” be added to the end of the end of the chapeau, or alternatively that the wording “should include” be replaced with “could include”.

Paragraph 17

Finland refers to its comments on Article 10 of the Convention concerning the status of domestic violence in an instrument addressing occupational safety and health, or work. Finland holds that the wording of paragraph 17, too, is very rigid and would therefore benefit from greater flexibility. This paragraph as well should be more in the nature of an indicative list, necessitating the addition of e.g. “appropriate measures such as” to the chapeau, or replacement of “should include” with “could include”.

The following labour market organisations have been consulted before finalising this report:

1. The Confederation of Finnish Industries (EK)
2. The Central Organisation of Finnish Trade Unions (SAK)
3. The Finnish Confederation of Salaried Employees (STTK)
4. Akava - Confederation of Unions for Professional and Managerial Staff in Finland
5. KT Local Government Employers
6. The Office for the Government as Employer (VTML)
7. The Federation of Finnish Enterprises

A copy of the report has also been sent to the above mentioned labour market organisations.

Statements of the labour market organisations:

The Confederation of Finnish Industries (EK)

EK finds that harassment and violence in the workplace cannot be condoned under any circumstances. The inclusion of the topic on the agenda of the 2018 Conference demonstrates that in principle, ILO actors are aligned in regarding its importance and the fact that action to combat violence and harassment are needed. It is all the more unfortunate, then, that the parties could not be more in disagreement as to the kind of action required.

In general terms, EK finds that the ILO should strive effectively to address the problem of violence and harassment. EK considers that the draft Convention and Recommendation included in the Report on which the statement is issued are problematic in this respect. If an effective international instrument is to be created, its form and content must be acceptable as widely as possible. Indeed, EK questions the wisdom of preparing inconsistent conventions which the Members are unwilling or unable to ratify and suggests that the path of recommendations might better serve the purpose. The ILO could accomplish more this way, since Members could more easily ratify recommendations, the implementation of which is nonetheless subject to ongoing monitoring and supervision by the ILO.

It is with amazement that EK has observed the Finnish government representatives' position in favour of the Convention and the Recommendation during the Committee's deliberations. Finland was in favour of the Convention although in the opinion of EK, such a position did not serve Finland's best interests. EK holds that the position of the Finnish government lacked justification due to the fact that legislation in Finland stands at an altogether different level than in most ILO Members, and existing legislation concerning the world of work already serves effectively to combat violence and harassment in the workplace.

EK finds that the Committee's deliberations did not live up to the aims of the ILO. The ILO is intended as a tripartite forum for cooperation whose activities rely above all on shared dialogue and the parties listening to, hearing and understanding the views of others. Such dialogue was absent from the Committee, where the workers' group together with the governmental group of African nations used their combined weight to steamroll over the employers' group and also many individual governments, occasionally even the EU governmental group. The deliberations of the Committee in the coming year should, in the view of EK, build upon a wholly different premise – dialogue between the various groups and views – in order for the Committee to arrive at any unanimous outcome.

In its detailed remarks, EK draws attention to the definition of “worker” in Article 1(c) of the draft Convention. Among others, the definition covers job applicants and workers whose employment has been terminated. In Finland, occupational health and safety obligations are construed to apply to persons who are working in the workplace. EK holds that it should be left up to Members to define the term “worker”. Likewise, the definition of “violence and harassment” is problematic. The definition included in Article 1(a) of the draft Convention covers both harassment and violence, even though these are two separate phenomena. In other words, violence and harassment should be given separate definitions, which is the case also in national legislation in Finland.

The concept of “world of work” in Article 2 of the draft Convention is excessively broad, in the view of EK, if the intent is to create an instrument to govern the obligations of employers. EK also notes that in many developing nations, the protection of women and the threat of sexual violence, for example when taking public transportation to work, is a serious problem. It is above all a problem for society and not one that can be addressed by action taken by any individual employer. It

would be unreasonable to make an employer legally liable for conditions which the employer lacks the means to oversee.

As regards the draft Recommendation, the summer conference was unable to decide whether it would include a list of vulnerable groups that are disproportionately affected by violence and harassment in the world of work. Some speakers demanded that any mention of sexual minorities be removed from the list. In the opinion of EK, such a list is necessary and it definitely must include sexual minorities. The efforts taken in certain quarters to remove the said group from the list of vulnerable groups is a cause of concern for EK.

In some instances, the draft Convention and Recommendation mention domestic violence as a factor that should be addressed in collective bargaining and the effects of which should be taken into account in the world of work. While EK considers domestic violence to be a highly regrettable phenomenon that should be combated by all appropriate means, violence in the home nonetheless falls outside the employer's sphere of influence. Moreover, as the topic is generally perceived to be a highly sensitive one, there are compelling reasons to question whether it should be addressed in the workplace at all. Workers who become a victim of violence in their free time are entitled to sick leave and other disability benefits regardless of whether such violence was inflicted on them at home or elsewhere.

Joint statement of SAK, STTK and Akava:

In their joint statement, the employees' confederations make note of the vital importance of the standard topic of the ILO's 2019 International Labour Conference to stop violence and harassment in the world of work. The employees' confederations consider that the international Convention concerning harassment and violence along with the supplementary Recommendation are extremely important in order to combat the phenomena in both Finland and elsewhere. The protection offered against violence and harassment in the world of work is far from adequate at present. The topic is also strongly connected to the achievement of equality and non-discrimination among all workers in the world of work.

The employees' confederations find the proposals made by the Office in part to provide clarification and specification, and consider these acceptable as they are, while some of the proposals are unacceptable to the employees' confederations either in part or in full.

In their detailed remarks, the employees' confederations draw attention to i.a. the concept of "harassment and violence" and the concept of "worker". The employees' confederations attach importance to the inclusion of the concept of "harassment and violence" in the Convention in the formulation proposed by the Committee in its resolution. However, the Office's proposals for a more specific definition of "harassment and violence" may be endorsed but such that the definition may not be allowed to become exhaustive, but would rather provide an illustrative list of situations and conduct that constitutes harassment and violence. The Recommendation would likely be an apposite instrument for providing such greater specificity in regulation.

The employees' confederations are also aligned in favour of the amendments to the concept of "worker" proposed by the ILO Office. A broad definition of "worker" is necessary in order to ensure that no one in the world of work is excluded from protection. However, the employees' confederations do not believe that the proposed concept of "worker" would have a beneficial link to the

proposed new Article after Article 4. In addition, the employees' confederations consider the proposed new Article problematic, as it could be interpreted as expanding the obligation of individual employees to prevent and combat violence and harassment. If the new Article is deemed necessary, the obligations of employers and workers could be clarified, for example by including provisions on the cooperation of employers, workers and their representatives to prevent harassment and violence and their contribution to such action. Primary responsibility nonetheless rests with the employers.

The employees' confederations consider it important that the Convention and the Recommendation take domestic violence into account. Domestic violence or the threat thereof are a major impediment, on a global scale, to women taking part in the world of work. Domestic violence or the threat thereof also have an impact on the victims' coping in the workplace, susceptibility to accidents, and absenteeism. The effects moreover spread throughout the workplace community. Even taking into account that violence taking place in the workers' homes is usually outside the employer's sphere of influence, employers nonetheless have access to numerous tools to mitigate the effects of domestic violence and in some cases even to prevent it. Such tools include work arrangements and working time arrangements. Consequently, recognition of domestic violence and regard to it in an international Convention on the world of work is of vital importance.

Considering the difficult deliberations in the 2018 International Labour Conference Committee, the employees' confederations appreciate the Office's proposed formulation of Article 6 and consider that the proposal covers all persons without any separate definition of groups.

Violence in the workplace is directed at women in particular but other groups, such as young and older persons, persons with disabilities, pregnant women, immigrants and sexual and gender minorities are also at risk, both in the formal and especially in the informal economy. The ILO Report proposes that such groups of persons be referred to as "groups in situations of vulnerability" instead of "vulnerable groups".

The employees' confederations consider it important for the Convention to cover all workers without distinction or discrimination, and also for the Convention to recognise persons in situations of vulnerability such that the formulation promotes the adoption and ratification of the Convention and the supplementary Recommendation.

KT Local Government Employers

In its statement, KT recognises the importance of the aim of globally preventing violence and harassment at work. The scope of the proposed Convention and Recommendation as well as the definitions therein, such as the concept of "worker", for example, are nonetheless broad and open to interpretation when compared to national legislation. Moreover, some (protective) measures for which employers are responsible would, for all intents and purposes, appear to fall beyond the actual sphere of influence of employers. In order for the aforementioned factors not to constitute possible impediments to ratification, the wording of the proposed Convention and Recommendation texts needs to be reconsidered and reworked.

Office for the Government as Employer (VTML)

In its statement, VTML finds that the Convention and the Recommendation include elements that are outside the employer's sphere of influence and scope of action, and are also difficult to regulate through legislation. This should be taken into account at a later stage when addressing the possible

ratification and national implementation of the Convention and Recommendation. Ending violence and harassment in the world of work is an important topic. Cooperation between the authorities and the social partners must in particular focus on preventing any violence and harassment related to work.

The Federation of Finnish Enterprises

The Federation of Finnish Enterprises considers the elimination of violence and harassment in the world of work to be an important and laudable objective. Current Finnish legislation is already fairly comprehensive in this respect. The Convention is thus not essential when examined purely from a Finnish perspective. If Finland were to ratify the Convention in its proposed form, some degree of adaptation to national legislation would likely become necessary in any case. Although the Federation of Finnish Enterprises considers that the current Finnish system already largely meets the requirements of the proposed Convention, attention must be paid to the Convention leaving sufficient leeway for national applications. Achievement of the aims of the Convention should be prioritised over the means employed towards this end. Consequently, the Federation finds it positive that the Convention does not define the means in all respects and that the Convention is to be supplemented by a Recommendation listing possible forms of implementation.

The Federation of Finnish Enterprises points out that the text of the Recommendation was not adopted in its entirety by the International Labour Conference and in places, the text goes into highly specific detail on means, all of which cannot be considered to serve the purpose, considering that “violence and harassment” is given a very broad definition in the Convention. While the holistic approach to preventing violence and harassment adopted in the Recommendation makes sense, the means enumerated therein may not all be without problem.

In its detailed remarks, the Federation of Finnish Enterprises notes that the proposed amendments by the Office in many instances provide additional clarification and are warranted. The aim of a broad and holistic approach for the Convention is laudable. As concerns the definition of “worker” (Article 1(c) of the Convention), the Federation of Finnish Enterprises finds that the broad definition serves a worthy purpose *per se*. However, there is some lack of clarity as to how the definition would cover independent contractors, who in Finland are generally considered to be self-employed. While the Federation of Finnish Enterprises considers it necessary for the scope of protection from harassment and violence to extend to cover all persons who perform work, and thus also self-employed persons working as e.g. subcontractors, problems in practical application could arise from the fact that no “employer” can be determined for self-employed persons. Likewise, the fact that a self-employed person is at the same time an employer as well as a worker within the scope of the definition may give rise to problems. However, such problems are mitigated by the fact that in many instances, the text of the Convention does not refer expressly to “workers” and the obligations to eliminate and prevent violence and harassment instead apply more broadly “in the world of work”.

Under Article 2, the Convention would apply to violence and harassment also in situations where the worker is outside the workplace and in which situations the employer cannot and may not exert any influence. With regard to employer responsibility, particular problems arise from commuting to and from work (Article 2(c)), work-related trips or training (Article 2(d)), work-related communications (Article 2(e)) and employer-provided accommodation (Article 2(f)). It should be noted that these often involve the right to privacy, the protection of communications confidentiality, or the inviolability of the home, all of which are wholly outside the employer’s sphere of influence. It would

therefore be important to clarify that the prevention of violence and harassment in such situations does not depend on any act or omission on the part of the employer.

In the Office's commentary, this problem is acknowledged and the addition of a new Article may be supported. However, the proposed new Article fails to provide sufficient clarity to the situation. It should be more clearly limit the employer's responsibility in cases involving situations outside the employer's sphere of influence.

Article 9 of the Convention lists steps that employers would be required to take to prevent violence and harassment. The Federation of Finnish Enterprises finds it important for sufficient flexibility to be retained in the Article ("so far as is reasonably practicable") in order for the practical implementation of the steps mentioned in the Article to proceed smoothly and in a manner that best takes into account the size and particular characteristics of each workplace.

The Federation of Finnish Enterprises also draws attention to Article 10 of the Convention listing remedies and laying down provisions on competent authorities. Article 10(h) involves authorities that would have broad powers to deal with cases of violence and harassment. The Federation of Finnish Enterprises considers that the Article in this respect could be formulated for greater flexibility so as to allow the appropriate determination of the powers of national authorities and the adaptation of such powers to existing systems.