



empower

The European platform to Promote Wellbeing
and hEalth in the woRkplace

Report on the scope of EU level and national (Finland, Poland and Spain) health and safety legislation with regard to mental health issues

Security, legal and ethical aspects
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ACRONYMS, ABBREVIATIONS AND CLARIFICATIONS

EMPOWER	European platform to Promote Wellbeing and Health in the workplace
ESENER	European Survey of Enterprises on New and Emerging Risks
EU	European Union
EU-OSHA	European Agency for Safety and Health at Work
ILO	International Labour Office
INSST	National Institute for Safety and Health at Work (Spain)
OSH	Occupational Health and Safety
SMEs	Small and Medium Enterprises
WHO	World Health Organization
WP	Work package

Partner	Project Partner Institution also referred to as Beneficiary and Party of the Consortium Agreement
DoA / GrA Annex I	The Description of the Action (DoA) is explained in Annex I of the Grant Agreement, both terms refer to the legally binding Project activities and Deliverables agreed upon with the EC

EXECUTIVE SUMMARY

This report reviews the EU level legislation and the legal frameworks of Finland, Poland and Spain with the aim to point out any pieces of legislation in those countries providing binding requirements in preventing risks to workers' mental health in addition to the obligations laid down in the EU Directives.

The cornerstone of the EU legislation in this matter is certainly the Framework Directive 89/391/EEC on safety and health at the workplace. It guarantees minimum OSH requirements throughout Europe, while Member States are allowed to maintain or establish stricter measures for the protection of workers, provided that they ensure full compliance with those minimum standards.

By reviewing the legal frameworks of Finland, Poland and Spain, the analysis focused on detecting any pieces of legislation in those countries providing for binding requirements for the protection of workers' mental health, in addition to the obligations laid down in the EU Directives, which are duly transposed in each of these Member States.

The Finnish legislation on occupational health and safety explicitly covers the matter, as it includes mental risk factors, together with physical ones, in pointing out the hazards to be prevented at the workplace. Although not explicitly, mental health is covered by the OSH legislation of Poland and Spain as well. Indeed, even though those two frameworks do not make any reference to mental health, psychosocial risks are implicitly addressed with the general obligations imposed on employers.

All three legal frameworks of Finland, Poland and Spain were found not to place on employers any additional obligations aimed at achieving higher standards in the field of prevention of risks to workers' mental health.

1 INTRODUCTION

The EMPOWER (European platform to Promote Wellbeing and Health in the workplace) Project has received funding from the European Union's Horizon 2020 Programme under grant agreement № 848180. It consists of a multidisciplinary research and innovation effort aiming to developing, implementing, evaluating and disseminating the effectiveness and cost-effectiveness of a modular eHealth intervention platform to promote health and well-being, reduce psychological distress, prevent common mental health problems and reduce their impact in the workplace.

The aim of the project is to adapt, in collaboration with stakeholders, existing effective interventions focused on different components (awareness and stigma, workplace conditions and psychosocial factors, stress, common mental health symptoms, early detection, comorbidity, lifestyle, and return to work) to create a combined online modular platform feasible in various workplace settings.

The intervention will be implemented through a randomized controlled trial directed to employees and employers of SMEs and public agencies from three European countries (Spain, Finland and Poland). Both qualitative and quantitative methods will be used in the evaluation of the individual health outcomes, cost-effectiveness (from a social, economic, employers' and employees' perspective), and implementation facilitators and barriers. The outcomes will help employees, employers and policymakers in decision-making processes of new legal and contractual framework at EU and national level covering the new economy landscape.

This report is one of the deliverables due under WP7 "Security, legal and ethical aspects". Two objectives of the WP7 are dedicated to assessing the scope of EU health and safety legislation with regard to mental health issues and investigating the employers' duties on occupational risks prevention in Finland, Spain and Poland. This report presents an overview of the legislation on mental health and wellbeing in the workplace at a European level and in these three countries.

The specific aim of this report is to identify the employers' obligations with regard to mental health set out both at the EU level and in the national regulations, in order to compare them. The result sought is assessing whether the employers' duty to take preventative actions addressing risks to workers' mental health is regulated through stricter protection obligations at the national level, setting higher standards for the mental health in the workplace in the three Member States involved in the field trial.

The methodology adopted is the desk research, through the analysis of EU Directives and the national legislation in Finland, Spain and Poland on OSH, together with reports, guidance, surveys and working paper on this matter. In gathering the relevant national regulations, the contribution of partners from Finland, Spain and Poland played a key role.



2 MENTAL HEALTH AT WORK IN THE EU-LEVEL REGULATION

2.1 Recognising the issue

Psychosocial risk factors include any work-related psychological and social influences on health such as time pressure, monotonous work, social reciprocity, job control and autonomy, fairness, work demands and job security, as well as social contact with co-workers and supervisors¹.

In the Framework Agreement on work-related stress (European Social Partners, 2004), stress is defined as a state, which is accompanied by physical, psychological or social complaints or dysfunctions and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them.

Since 1981, with the ILO Convention No. 155 on OSH, it has been specified that «the term health, in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work»².

Furthermore, the ILO has acknowledged that psychosocial hazards can cause an occupational disease, i.e. mental and behavioural disorders³. Indeed, the ILO has included mental and behavioural disorders in the list of occupational diseases, last revised in 2010⁴. Nevertheless, the current EU inventory of occupational diseases, under Commission Recommendation 2003/670/EC⁵, still does not include any reference to mental health diseases⁵.

In several countries a number of stakeholders – mainly trade unions – want "new" diseases to be registered, including mental illnesses⁶. However, mental ill health is

¹ Cox, T. and Griffiths, A., Monitoring the changing organization of work: a commentary, *Sozial und Präventivmedizin*, Vol. 47, pp. 354–355; for further definitions of psychosocial risks, see WHO, Health impact of psychosocial hazards at work: An overview, 2010, https://apps.who.int/iris/bitstream/handle/10665/44428/9789241500272_eng.pdf?sequence=1&isAllowed=y

² See Article 3 of the ILO Convention No. 155/1981, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155

³ ILO, Workplace stress: a collective challenge, 2016, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_473267.pdf

⁴ ILO, List of Occupational Diseases, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_125137.pdf

⁵ European Parliament, Directorate general for internal policies, Policy department A: employment policy, Occupational health concerns: stress-related and psychological problems associated with work, 2013, p. 26, [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507455/IPOL-EMPL_ET\(2013\)507455_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507455/IPOL-EMPL_ET(2013)507455_EN.pdf)

⁶ European Commission, Report on the current situation in relation to occupational diseases' systems in EU Member States and EFTA/EEA countries, in particular relative to Commission Recommendation



recognised as an occupational disease only in a few EU Member States (Italy, Lithuania, Latvia, Romania and Hungary)⁷.

In addition, the survey ESENER-1 (European Survey of Enterprises on New and Emerging Risks, 2009⁸) had found that over 40 % of employers consider psychosocial risks more difficult to manage than 'traditional' OSH risks. More recently, the ESENER-3 (2019)⁹ has shown that just 21% of the workplaces that report having psychosocial risk factors in the EU28 perceive them as more difficult than other risks¹⁰.

The previous ESENER-2 survey (2014), had shown that 77% of establishments in the EU-28 identified at least one psychosocial risk factor as being present in their workplace, with 'having to deal with difficult customers, patients, pupils, etc.' and 'time pressure' reported most frequently. On the other hand, it pointed out that nearly half of smaller companies (with 5-49 workers) reported that they don't even have enough information on how to include psychosocial risks in risk assessments¹¹.

Another interesting finding from ESENER-3 regards the consideration of psychosocial risks as more difficult to manage than the other OSH risks: workplaces in the Nordic countries appear to report such risks as particularly difficult to manage more frequently (Finland scored 34 %), even though they are the same countries in which respondents tend to report a higher presence of measures and procedures to deal with those risks¹². However, it is worth highlighting that a procedure to tackle bullying or harassment is

2003/670/EC concerning the European Schedule of Occupational Diseases and gathering of data on relevant related aspects, 2013, p. 66.

⁷ European Parliament, Directorate general for internal policies, Policy department A: employment policy, Occupational health concerns: stress-related and psychological problems associated with work, 2013, p. 26, [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507455/IPOL-EMPL_ET\(2013\)507455_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507455/IPOL-EMPL_ET(2013)507455_EN.pdf)

⁸ ESENER is an extensive survey carried out by EU-OSHA which investigates how European workplaces manage safety and health risks in practice, by asking thousands of businesses and organisations across Europe to respond to a questionnaire; for further information, see <https://osha.europa.eu/en/facts-and-figures/esener>

⁹ The survey has been carried out in spring/summer 2019 and involved a total of 45,420 establishments – across all activity sectors and employing at least five people - in the 33 countries covered: the EU28 as well as Iceland, North Macedonia, Norway, Serbia and Switzerland. See EU-OSHA, Third European Survey of Enterprises on New and Emerging Risks (ESENER 3), 2019, p. 1, <https://osha.europa.eu/it/publications/third-european-survey-enterprises-new-and-emerging-risks-esener-3>

¹⁰ EU-OSHA, Third European Survey of Enterprises on New and Emerging Risks (ESENER 3), 2019, p. 8, <https://osha.europa.eu/it/publications/third-european-survey-enterprises-new-and-emerging-risks-esener-3>

¹¹ EU-OSHA, Second European Survey of Enterprises on New and Emerging Risks (ESENER-2). Overview Report: Managing Safety and Health at Work. European Risk Observatory, 2016, p. 40, <https://osha.europa.eu/en/publications/second-european-survey-enterprises-new-and-emerging-risks-esener-2-overview-report>

¹² EU-OSHA, ESENER 2019 - Background briefing, 2020, p. 12, <https://osha.europa.eu/it/publications/european-survey-enterprises-new-and-emerging-risks-esener-2019-background-briefing>



reported by 45 % of workplaces, whereas only one in three workplaces (33 %) reports having in place an action plan against stress¹³.

2.2 Relevant EU-level legislation: the Framework Directive on OSH

At a European level the terms ‘mental health’, ‘stress’ and ‘psychosocial risks’ are not mentioned in most pieces of legislation¹⁴. They are not even mentioned within the Framework Directive 89/391/EEC on safety and health at the workplace.

This Directive has been issued by the Council of the EU in accordance with Article 153 of the Treaty on the Functioning of the EU, which confers it the authority to adopt directives in the field of safety and health at work. The Framework Directive guarantees minimum OSH requirements throughout Europe, while Member States are allowed to maintain or establish stricter measures for the protection of workers. Therefore, legislative requirements in this field can vary across EU Member States, although each of them must ensure full compliance with those minimum standards.

The Framework Directive applies to all sectors of activity, both public and private, and also to areas covered by the individual directives adopted on the basis of the Framework Directive itself. Nonetheless, under the third paragraph of Article 16 thereof, where individual directives contain more stringent and/or specific provisions, these special provisions of individual directives prevail¹⁵.

The employers’ obligation of preventive risk management is the guiding principle for the whole OSH legislation in the EU and it is enshrined in the Framework Directive. The approach taken to deal with psychosocial risks at work is based on this general duty for employers to protect their workers by identifying, assessing and combating at source any type of work-related risk which may endanger workers’ health and safety. It is for this reason that the EU Framework Directive on OSH does not explicitly refer to psychosocial risks, as this Directive lays down employers’ general duty to ensure the

¹³ EU-OSHA, ESENER 2019 - Background briefing, 2020, p. 11, <https://osha.europa.eu/it/publications/european-survey-enterprises-new-and-emerging-risks-esener-2019-background-briefing>. Moreover, the most frequently reported measure that workplaces use to try and prevent psychosocial risks is allowing employees discretion in how they do their job and this is particularly the case among micro (69 %) and small enterprises (68 %). Finland (91 %) has one of the highest proportions of workplaces reporting the implementation of such preventive measures. On the contrary, the least frequently reported measure to prevent psychosocial risks is intervening if excessively long or irregular hours are worked, with Polish workplaces reporting the lowest use of this measure (12 %). See EU-OSHA, ESENER 2019 - Background briefing, 2020, p. 10, <https://osha.europa.eu/it/publications/european-survey-enterprises-new-and-emerging-risks-esener-2019-background-briefing>

¹⁴ Leka, S., Jain, A., Iavicoli, S., Vartia, M., & Ertel, M., The role of policy for the management of psychosocial risks at the workplace in the European Union. *Safety Science*, 2011, 49(4), 559.

¹⁵ See the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0391>



safety and health of workers in every aspect related to work, “addressing all types of risk”¹⁶.

Despite this apparent lack of specificity on mental health issues, there is consensus that psychosocial risks in the workplace are to be considered as part of the wider notion of workers’ health, thus being included within the scope of the EU-level health and safety framework. Indeed, according to the EU Court of Justice case law (case C- 49/00 of 15 November 2001), «it follows both from the purpose of the directive, which, according to the 15th recital, applies to all risks, and from the wording of Article 6(3)(a) thereof, that employers are obliged to evaluate all risks to the safety and health of workers. It should also be noted that the occupational risks which are to be evaluated by employers are not fixed once for all, but are continually changing in relation, particularly, to the progressive development of working conditions and scientific research concerning such risks»¹⁷.

Therefore, psychosocial risks should be deemed to be included among the employers’ responsibilities outlined by the Framework Directive, as it obliges employers to address and manage all types of risk. Thus, employers are also obliged to assess and manage psychosocial risks, in accordance with the general principles concerning the prevention of occupational risks, which include the risk assessment and the implementation of all the means and procedures needed to eliminate or minimise work-related hazards. Such duty includes the implementation of workers’ information and training. Furthermore, pursuant to Article 6 of the Framework Directive, the employer shall be alert to the need to adjust these measures to take account of changing circumstances and aim to improve existing situations.

In particular, Article 6 states that «the employer shall implement the measures [...] on the basis of the following general principles of prevention: [...] adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health; [...] developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment»¹⁸. These aspects are specifically related to the psychosocial work environment, and thus also to workers’ mental health, even though there is no explicit mention of this specific objective of

¹⁶ European Commission, DG Employment, Social Affairs & Inclusion, Evaluation of policy and practice to promote mental health in the workplace in Europe. Final Report, 2014, p. 45, <http://ec.europa.eu/social/BlobServlet?docId=13871>

¹⁷ European Commission staff working paper, Report on the implementation of the European social partners’ Framework Agreement on work-related stress, 2011, p. 9, http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/0241/COM_SEC%282011%290241_EN.pdf

¹⁸ See the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0391>



protection¹⁹. In this way the Framework Directive is deemed to be directly concerned with some of the main sources of psychosocial stress in the workplace²⁰.

The same could be said about two more requirements laid down by Article 6: the employer, where he entrusts tasks to a worker, shall take into consideration the worker's capabilities as regards health and safety. Moreover, he shall ensure that the planning and introduction of new technologies are the subject of consultation with the workers and/or their representatives, as regards the consequences of the choice of equipment, the working conditions and the working environment for the safety and health of workers. Here it is worth mentioning again that the concept of health must be interpreted as including workers' mental health.

2.3 Further EU-level legislation of relevance to mental health

In addition to the EU Framework Directive, psychosocial risks are implicitly covered in other individual directives, including those on prohibiting direct or indirect discrimination on grounds of religion or belief, disability, age or sexual orientation (Directive 2000/78/EC), on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Directive 2006/54/EC) and on setting minimum standards of working hours (Directive 2003/88/EC)²¹. Moreover, the Directive on work with display screen equipment (Directive 1990/270/EEC) explicitly refers to "problems of mental stress" in the context of risk assessment. Mental stress is also addressed with the Directive on the introduction of measures to encourage improvements in the health and safety at work of pregnant staff and those who have recently given birth or are breastfeeding (Directive 1992/85/EEC).

Indeed, the latter Directive provides that guidelines on risk assessment must cover mental fatigue and other types of mental stress which pregnant, breastfeeding workers and those who have recently given birth incur in. On the other hand, Directive 90/270/EEC, which sets out the minimum health and safety requirements for work with display screen equipment, states that «employers shall be obliged to perform an analysis of workstations in order to evaluate the safety and health conditions to which

¹⁹ Leka, S., Jain, A., Iavicoli, S., Vartia, M., & Ertel, M., The role of policy for the management of psychosocial risks at the workplace in the European Union. *Safety Science*, 2011, 49(4), 559

²⁰ European Commission staff working paper, Report on the implementation of the European social partners' Framework Agreement on work-related stress, 2011, p. 21, http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/0241/COM_SEC%282011%290241_EN.pdf

²¹ EU-OSHA, Second European Survey of Enterprises on New and Emerging Risks (ESENER-2). Overview Report: Managing Safety and Health at Work. European Risk Observatory, 2016, p. 39, <https://osha.europa.eu/en/publications/second-european-survey-enterprises-new-and-emerging-risks-esener-2-overview-report>



they give rise for their workers, particularly as regards possible risks to eyesight, physical problems and *problems of mental stress*»²².

Directive 2003/88/EC on working time provides for a definition of "adequate rest", which «means that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term»²³. Article 8 also obliges Member States to take the measures necessary to ensure that night workers whose work involves special hazards or heavy physical or mental strain do not work more than eight hours in any period of 24 hours during which they perform night work.

Furthermore, Directive 2010/32/EU, implementing the Framework Agreement on prevention of sharps injuries in hospitals and the healthcare sector concluded by HOSPEEM and EPSU (OJ L L 134, 1.6.2010, 66), refers to psychosocial factors. It stipulates that both risk assessments and overall prevention policies have to take into account work-related psychosocial factors²⁴.

However, the lack of any clear and explicit reference to mental health in the current OSH regulation led 17 organisations – mainly patients associations – to sign a joint statement with the aim, inter alia, to urge the EU institutions to «devise better occupational health and safety policies and legislations that address the psychological risk factors in the work place»²⁵.

For the same reasons, stakeholders have stressed the need to make clearer the EU legislation on mental health in the workplace by either including specific terminology and harmonising it across other key pieces of legislation accordingly, or by the development of a clear interpretation of the legal provisions in this area by the European Commission²⁶.

²² See Article 3 of Directive 90/270/EEC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31990L0270>

²³ See Article 2 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003L0088>

²⁴ European Commission staff working paper, Report on the implementation of the European social partners' Framework Agreement on work-related stress, 2011, p. 10, http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/0241/COM_SEC%282011%290241_EN.pdf

²⁵ Joint-statement on mental health for the EU Health Policy Platform, 2016, p. 2, https://ec.europa.eu/health/sites/health/files/interest_groups/docs/ev_20161205_co02_en.pdf

²⁶ Leka, S., Jain, A., Iavicoli, S., and Di Tecco, C., An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges and the future, BioMed Research International, Special issue on Psychosocial Factors and Workers' Health & Safety, 2015, p. 16, <http://dx.doi.org/10.1155/2015/213089>



2.4 EU-level non-binding policies

Besides the abovementioned pieces of EU Law, a number of soft law instruments of relevance to mental health, such as voluntary policies, non-binding recommendations and guidance, have been developed and are applicable at the European level. Indeed, apart from Directives and other legally binding instruments (such as EU regulations, decisions, national pieces of legislation and ILO conventions, where ratified), there are many non-binding/voluntary ones, such as soft policies, which may take the form of recommendations, resolutions, opinions, proposals, conclusions of EU institutions, as well as social partner agreements, guidance or campaigns undertaken by recognised European and international committees, agencies and organisations²⁷.

In 2004 the EU social partners signed the “Framework agreement on work-related stress” and, in 2007, the “Framework agreement on harassment and violence at work” with the aim to help employers and workers identify and prevent or manage work-related psychosocial risks by providing them with action-oriented guidelines. The European Framework Agreement on work-related stress is considered as a key milestone in encouraging initiatives by social partners at national level and in raising awareness among the stakeholders responsible for developing prevention policies and actions²⁸.

Starting with the Green Paper on Improving Mental Health (2005), the European Commission itself has supported several initiatives at the EU level that contributed to raise awareness and to promote mental health²⁹.

In 2008 a European Pact for mental health and well-being was concluded³⁰. It was an informal commitment between governments and stakeholders (mainly from the health sector) to working together on mental health challenges and opportunities. The actions outlined with the Pact included: improving work organisation, organisational cultures and leadership practices to promote mental well-being at work; implementing mental health and well-being programmes with risk assessment and prevention programmes for situations that can cause adverse effects on the mental health of workers (stress, abusive behaviour such as violence or harassment at work, alcohol, drugs) and early intervention schemes at workplaces; providing measures to support the recruitment,

²⁷ European Commission, DG Employment, Social Affairs & Inclusion, Evaluation of policy and practice to promote mental health in the workplace in Europe. Final Report, 2014, p. 46, <http://ec.europa.eu/social/BlobServlet?docId=13871>

²⁸ Eurofound and EU-OSHA, Psychosocial risks in Europe: Prevalence and strategies for prevention, Publications Office of the European Union, Luxembourg, 2014, p. 64, <https://osha.europa.eu/en/publications/psychosocial-risks-europe-prevalence-and-strategies-prevention>

²⁹ See European Commission, Green Paper. Improving the mental health of the population: Towards a strategy on mental health for the European Union, 2005, https://ec.europa.eu/health/ph_determinants/life_style/mental/green_paper/mental_gp_en.pdf

³⁰ See the European Pact for mental health and well-being, 2008, https://ec.europa.eu/health/ph_determinants/life_style/mental/docs/pact_en.pdf



retention or rehabilitation and return to work of people with mental health problems or disorders.

In 2011, the European Pact resulted in Council Conclusions, which invited EU Member States to «take steps towards greater involvement of the health and social sectors along with social partners in the field of mental health and well-being at the workplace»³¹.

The Council also invited Member States and the Commission to start a Joint Action on Mental Health and Well-being, to be financed under the EU Public Health Programme 2008-2013 (Decision No 1350/2007/EC of the European Parliament and of the Council of 23 October 2007 establishing a second programme of Community action in the field of health, 2008-13). This Joint Action focused on mental health and schools³².

It followed a further Joint Action on Mental Health and Well-being – as part of the European Health Programme of the European Commission and the Member States in the period 2013 to 2016 – which addressed mental health at the workplace³³. The main aim of this joint action project was to «develop an action framework to support enterprises in adopting policies and practices which prevent mental ill-health and strengthen positive mental health».

This objective has been achieved by working with the representatives of eleven participating member states and their relevant stakeholders. The member states involved were Austria, Croatia, Finland, France, Germany, Hungary, Ireland, Iceland, Malta, the Netherlands and Slovenia. The action focused not on practices at enterprise level but on how the various stakeholders (apart from enterprises) can put in place a framework and supportive infrastructure which encourages enterprises to adopt initiatives that supports employees with mental health problems and promotes a positive corporate culture that prevents mental health at work.

The EU-OSHA launched a two-year European campaign, "Healthy Workplaces Manage Stress (2014-2015)", which specifically aimed at raising awareness of work-related stress and psychosocial risks and disseminating good practices to prevent and manage them successfully across European workplaces. One of the campaign outcomes is an e-guide which helps employers of small sized companies deal with psychosocial risks³⁴.

³¹ Council conclusions on 'The European Pact for Mental Health and Well-being: results and future action', 3095th Employment, social policy, health and consumer affairs Council meeting, Luxembourg, 6 June 2011, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lssa/122389.pdf

³² Joint Action on Mental Health and Well-being. Mental health and schools. Situation analysis and recommendations for action, [tps://ec.europa.eu/health/sites/health/files/mental_health/docs/2017_mh_schools_en.pdf](https://ec.europa.eu/health/sites/health/files/mental_health/docs/2017_mh_schools_en.pdf)

³³ Joint Action on Mental Health and Well-being. Mental health at the workplace. Situation analysis and recommendations for action, https://ec.europa.eu/health/sites/health/files/mental_health/docs/2017_mh_workplace_en.pdf

³⁴ See <https://osha.europa.eu/en/tools-and-resources/e-guides/e-guide-managing-stress-and-psychosocial-risks>



Even though there is no specific reference to mental health at the workplace, it is also worth mentioning the 2030 Agenda for Sustainable Development issued by the United Nations on 2015, as it states that «we envisage a world with equitable and universal access to quality education at all levels, to health care and social protection, where physical, mental and social well-being are assured»³⁵.

Lastly, in 2019 the Council gave particular emphasis to the persistent mental health issues, in evaluating the implementation of the OSH regulations in the EU. It stressed that «Psychosocial risks and work stress are among the most challenging and pressing OSH concerns. [...] Over one-quarter of all workers report that they experience work-related stress in all or most of their working time. [...] However, only 76% of workplaces in the EU28 report that they carry out risk assessments regularly. Of these workplaces only around two-thirds report that they include psychosocial risks within those assessments, partly as they lack information or the adequate tools with which to deal with these risks effectively»³⁶.

In this context, the Council invited Member States to enhance health promotion and prevention of work-related diseases, especially with regard to psychosocial and ergonomic risks, as a part of the obligatory risk assessment to be carried out by employers³⁷.

3 NATIONAL REGULATIONS ON MENTAL HEALTH AT WORK

The abovementioned Framework Directive establishes the minimum requirements for OSH and each Member State must ensure their compliance with these standards. Nonetheless, Member States are allowed to exceed the provisions of EU level legislation and set out more protective rules in their national legislation. Hence, this report analyses the legal frameworks of Finland, Poland and Spain with the aim to point out any pieces of legislation providing further binding requirements for workers' mental health protection in those countries. National policies, guidelines, programmes, strategies and other non-binding instruments on mental health in the workplace may be here mentioned as well, yet they do not constitute the primary object of this report.

Whilst a number of Member States keep their OSH legislation quite short and close to the EU Framework Directive, without mentioning psychosocial risks (for example,

³⁵ See see Paragraph 7 of the Resolution adopted by the United Nations' General Assembly on 25 September 2015. Transforming our world: the 2030 Agenda for Sustainable Development, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf

³⁶ Council of the European Union, A New EU Strategic Framework on Health and Safety at Work: Enhancing the implementation of Occupational Safety and Health in the EU. Draft Council Conclusions, Brussels, 25 October 2019, p. 5, <https://data.consilium.europa.eu/doc/document/ST-13321-2019-INIT/en/pdf>

³⁷ Council of the European Union, A New EU Strategic Framework on Health and Safety at Work: Enhancing the implementation of Occupational Safety and Health in the EU. Draft Council Conclusions, Brussels, 25 October 2019, p. 11, <https://data.consilium.europa.eu/doc/document/ST-13321-2019-INIT/en/pdf>



Luxembourg, Poland, Romania, Slovenia and Spain), others stress out in their legislation the need to specifically consider psychosocial risks or mental health when dealing with OSH (for example, Austria, Denmark, Estonia, Finland, France, Greece, Slovakia and Sweden)³⁸.

The national approaches to psychosocial risk prevention vary widely across the Member States. Common requirements covered by national legislations concern working time, prevention of discrimination and unequal treatment based on gender and psychological and/or sexual harassment. Only in a few countries there is an explicit legislative obligation to assess and prevent psychosocial risks in the workplace (for example in Austria, Belgium, Denmark, Italy and Sweden)³⁹.

3.1 Finland

In Finland, the legislative basis for OSH is the revised Occupational Safety and Health Act⁴⁰ (738/2002), first issued in 1958 and amended in 2002, and the Occupational Health Care Act⁴¹ (1383/2001). According to the Ministry of Social Affairs and Health⁴² the Finnish legal framework on OSH is meant to cover not only the safety of workers at the workplace but also their mental wellbeing.

The Occupational Safety and Health Act applies to all paid employment relationships and sets out minimum standards for safety and health at work in line with the EU Framework Directive, detailing the duties and responsibilities of the employers. It refers explicitly to both physical and mental risk factors⁴³.

In general, employers are obliged to ensure employees' safety and health at work, considering and covering all aspects of work, working conditions and the work environment, as well as the personal prerequisites of the employees, including professional skills, experience, age, gender and other relevant aspects. In accordance with the Framework Directive, the Act requires employers to plan the risk prevention by means of risk assessment, controlling hazards at their source, eliminating hazards – and

³⁸ Eurofound and EU-OSHA, Psychosocial risks in Europe: Prevalence and strategies for prevention, Publications Office of the European Union, Luxembourg, 2014, p. 58, <https://osha.europa.eu/en/publications/psychosocial-risks-europe-prevalence-and-strategies-prevention>

³⁹ EU-OSHA, Second European Survey of Enterprises on New and Emerging Risks (ESENER-2). Overview Report: Managing Safety and Health at Work. European Risk Observatory, 2016, p. 40, <https://osha.europa.eu/en/publications/second-european-survey-enterprises-new-and-emerging-risks-esener-2-overview-report>

⁴⁰ <https://www.finlex.fi/fi/laki/kaannokset/2002/en20020738.pdf>

⁴¹ https://www.finlex.fi/fi/laki/kaannokset/2001/en20011383_20091559.pdf

⁴² Occupational safety and health in Finland, Ministry of Social Affairs and Health brochures 2016:4, https://stm.fi/documents/1271139/1332445/STM_esite_Tyosuojelu_suomessa_verkkoonUK.pdf/a2bd9c8c-6de8-43c7-8516-c149840498e1

⁴³ See Chapter 1, Section 1: «The objectives of this Act are to improve the working environment and working conditions in order to ensure and maintain the working capacity of employees as well as to prevent occupational accidents and diseases and eliminate other hazards from work and the working environment to the physical and mental health, hereinafter referred to as health, of employees».



when this is not possible, minimizing them or substituting with less hazardous means – and arranging collective safety measures ahead of individual-based procedures. In addition, employers must provide employees with training, guidance and protective equipment, continuously monitor working conditions, environment and equipment, keep the risk assessment and the occupational safety and health policy up to date and evaluate the impact of any implemented measures on workers' safety and health.

With regard to provisions specifically related to mental health, employers are required to take into account the physical and mental capacities of employees in designing and planning work, in order to avoid or reduce hazards or risks from the workload factors to the safety and health of the employees, pursuant to Section 13 of the Occupational Safety and Health Act. Thus, mental stress related to workload must be included in the risk assessment. Moreover, if it is noticed that an employee is exposed to workloads which endanger his health, the employer who has become aware of the matter must, under Section 25 of the Act, take measures to analyse the workload factors and to avoid or reduce the risk. Further provisions are specifically aimed at addressing the threat of violence and harassment, lone working, night working and work pauses.

The Occupational Health Care Act requires employers to provide and pay for the occupational health care services with the aim to prevent the risks and adverse effects that work and working conditions may cause employees. The Act applies to both public and private sectors and to all employment relationships covered by the Occupational Safety and Health Act, regardless of the company size, the organisation adopted for the enterprise and the industrial sector where the company operates. Any employer is obliged to provide for an occupational health care service even if he is employing just one worker. Employers are free to organise their own occupational health service or outsource it to municipal health care centres or to private service providers.

According to the Act the content of occupational health services is primarily preventive. Providing medical care is voluntary, but statutory occupational health care does include medical examinations due to a work-related illness.

The Occupational Health Care Act does not explicitly mention any arrangements of mental health care. Nevertheless, under Section 12 of the Act, the occupational health care provider must investigate and assess the healthiness and safety of the work and the working conditions through repeated workplace visits and other occupational health care methods, having regard to exposure substances in the workplace, the workload, the working arrangements and the risk of accidents and violence⁴⁴. Therefore, the occupational health care provider is directly involved in the recognition, prevention and management of psychosocial risks.

⁴⁴ The employer must sign a written service agreement with the occupational health care service and draw up a plan detailing how the services are to be implemented, according to the outcomes of the workplace survey which the occupational health care service performs.

Moreover, pursuant to Section 12 thereof, if an employee has reason to suspect that work burdens him excessively, causing a risk to his health, the occupational health care provider must perform a workload assessment if the employee presents sufficient grounds for this procedure.

Depending on the nature of work, the work conditions and the environment itself, the factors related to psychosocial risks and hazards to be analysed may differ. They can even be risk factors due to the poor functioning of the work community, such as harassment, unfair treatment or discrimination at work, which is specifically tackled by the Finnish Non-Discrimination Act (1325/2014).

As for non-binding sources, Finnish social partners signed a joint recommendation on 19 November 2007, to implement the European Framework agreement on work-related stress. The Finnish social partners' recommendation, which highlights the importance of preventing work-related stress and increases awareness, does not have the legal status of a collective agreement, as it is not based on a tripartite consensus, being formulated only between the two sides of industry without the involvement of the State⁴⁵. So, it is lacking of binding force, unlike the other national agreements.

In 2011 the Ministry of Social Affairs and Health laid down the "Policies for the Work Environment and Well-being at Work up to 2020". In these policies special attention is paid to those areas of OSH that deal with the work environment and well-being at work including psychosocial risks⁴⁶.

Also, in 2011 the central labour market organisations of Finland concluded a Framework Agreement to Ensure Competitiveness and Employment⁴⁷. The objective of the central labour market organisations is to continue the good co-operation with the Government aiming at economic growth, productivity and employment in Finland. To do so, social partners also target several risk factors for the development of mental health in the workplace, including workload and hence implicitly psychosocial issues as well⁴⁸.

Furthermore, a Well-being at Work Network was established in Finland: "The Well-being Guild of Entrepreneurs". It does not point out any obligations for employers, as it represents just an advice on stress management for entrepreneurs provided by veteran

⁴⁵ European Commission staff working paper, Report on the implementation of the European social partners' Framework Agreement on work-related stress, 2011, p. 77, http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/0241/COM_SEC%282011%290241_EN.pdf

⁴⁶ Eurofound and EU-OSHA, Psychosocial risks in Europe: Prevalence and strategies for prevention, Publications Office of the European Union, Luxembourg, 2014, p. 58, <https://osha.europa.eu/en/publications/psychosocial-risks-europe-prevalence-and-strategies-prevention>

⁴⁷ <https://www.slideshare.net/SAKkalvot/framework-agreement-by-the-central-labour-market-organisations-of-finland-to-ensure-competitiveness-and-employment-20112013>

⁴⁸ European Commission, Employment, Social Affairs & Inclusion, Promoting mental health in the workplace: Guidance to implementing a comprehensive approach, 2014, p. 56; <https://op.europa.eu/en/publication-detail/-/publication/c1358474-20f0-11e8-ac73-01aa75ed71a1/language-en>



entrepreneurs and well-being experts⁴⁹. The Guild was developed by an NGO with the support of the health sector and the labour sectors and disseminated in Finland between 2012 and 2016. Its main objective was to support the mental well-being of SMEs entrepreneurs and ensure that they have the skills and resources to take early action in case of onset of mental health problems.

Finally, in 2020, the Ministry of Social Affairs and Health issued The National Mental Health Strategy and Programme for Suicide Prevention 2020–2030⁵⁰. This strategy brings in a comprehensive approach of mental health in society and its different sectors and levels, in order to effectively prevent and manage mental disorders and reduce discrimination and stigmatisation associated with mental disorders. However, it does not contain any legally binding rules and is not addressed to mental health in the workplace⁵¹.

3.2 Poland

Article 66 of the Constitution of the Republic of Poland enshrines the right of every worker to safe and hygienic working conditions and states that the arrangements for the exercise of this right shall be determined by law as well as the employers' obligations. The Polish Labour Code, approved in 1974 with subsequent amendments, and the Regulation of the Minister of Labour and Social Affairs of 26 September 1997 on general rules for health and safety at work transposed the general principles of the Framework Directive.

The Polish Labour Code requires employers to organise work in such a way as to ensure that the work is less strenuous, especially monotonous work and work at a predetermined pace, under Article 94. It also establishes the employers' duty to ensure safe and hygienic working conditions and provide systematic training of employees in occupational safety and health. Moreover, employers must prevent mobbing, harassment and discrimination⁵² in employment, in particular on the grounds of sex, age, disability, race, religion, nationality, political opinion, trade union membership,

⁴⁹ Stavroula Leka, Aditya Jain, EU compass for action on mental health and well-being, Mental health in the workplace in Europe - Consensus Paper, 2017, p. 28, https://ec.europa.eu/health/sites/health/files/mental_health/docs/compass_2017workplace_en.pdf

⁵⁰ <http://urn.fi/URN:ISBN:978-952-00-5401-4>

⁵¹ The only mention of that matter can be found into one of the proposals of the guideline (p. 20): «Improving mental health literacy and skills in the workplace via training and programmes supporting leadership and periods of transitions. The wellbeing of employees is the most important asset for organisations, and mental health is an essential part of this. Improving ways of identifying undue burden and occupational burnout in employees is needed as is the preparation of an operational programme for good mental health in working life».

⁵² The Polish Labour Code clarifies that the concept of discrimination includes “indirect discrimination”, which is the case if, as a result of apparently neutral provisions, criteria or actions taken, there are or could be disadvantages in working conditions, as well as in the continuation or conditions of the employment relationship, in access to training or in career development for particular categories of workers. This constitutes an indirect discrimination unless the provision, criterion or action taken is objectively justified by a legitimate aim to be achieved and the means to achieve that aim are appropriate and necessary.



ethnic origin, religion, sexual orientation and on the grounds of fixed or indefinite employment or full-time or part-time work.

Even though the Labour Code does not make any reference to mental health, psychosocial risks and work-related stress, these issues are implicitly addressed with the obligations which employers are made responsible for. The same applies to Trade Union Act (1991). Under Article 29 thereof, trade unions are entitled to request the employer to carry out at his expense appropriate examinations/tests/checks of risk factors in the case of a justified suspicion that there is a threat to the life and health of employees in the workplace. This provision refers to a "threat to the life or health of workers", without specifying whether such a danger needs to be due to physical, chemical or biological hazards, so it is deemed to be including psychosocial risks as well⁵³.

In Poland a piece of legislation is specifically dedicated to the protection of mental health. Indeed, the Mental Health Protection Act (1994) regulates the mental health services to be provided by governmental bodies, local government administration bodies and other institutions established for this purpose. The promotion of mental health and prevention of mental disorders as well actions against the discrimination of people with mental disorders, even by means of the implementation of appropriate social attitudes towards them, fall within the scope of the protection of mental health, as outlined by the Act (Article 2). However, it is not specifically focused on occupational mental health.

As part of the actions required by the Mental Health Protection Act, in 2017 the Council of Ministers adopted the National Mental Health Programme for 2017-2022, with the aim to provide people with mental disorders with comprehensive, multi-faceted and universally accessible health care and other forms of care and assistance necessary to enable them to fully participate in family and social life⁵⁴.

One of the main objectives of the Programme, which is supervised by the Minister of Health, is the development of actions to prevent stigmatisation and discrimination of people with mental disorders. Another important objective concerns the professional and social activation of people with mental disorders, aiming to implement any legal or organisational solutions needed to develop assisted employment and social entrepreneurship, adjusted to the needs of persons with mental disorders, as well as to increase their access to vocational rehabilitation, vocational counselling and vocational training.

The Polish social partners adopted a Joint Declaration on Preventing and Combating Work-Related Stress on 14 November 2008, to implement the 2004 European Framework agreement on work-related stress. However, this Declaration is not binding for the signatories and does not set out any obligations for the employers, as it just aims

⁵³ J. Jankowiak, Law of a company trade union organisation under Article 29 of the Trade Union Act, SP 2007, No. 11, p. 1-3.

⁵⁴ <https://www.mindbank.info/item/6830>



to increase employers', unions' and employees' awareness, both of the consequences of work-related stress and of good methods to counter it.

In the opinion of the Ministry of Labour and Social Affairs, the Central Institute for Labour Protection and employers' organisations, the Polish legal framework on OSH also requires employers to assess and manage psychosocial factors, as they have a statutory obligation to assess occupational risks by taking into account all working environment factors. Yet the trade union confederation NSZZ Solidarność points out that none of the norms currently in force includes any explicit obligation for employers to assess and prevent psychosocial risks at work⁵⁵.

3.3 Spain

The protection of workers' mental health is stated in the Spanish Constitution (1978), namely Article 40.2, where public authorities are entrusted to ensure occupational safety and hygiene. Other fundamental pieces of legislation in this field are the Law on the prevention of occupational risks (Ley 31/1995, Ley de Prevención de Riesgos Laborales)⁵⁶ and the Regulation on the prevention services (RD 39/1997, Reglamento de los Servicios de Prevención)⁵⁷.

Law 31/1995 transposes the European Framework Directive on OSH and, although it only refers to occupational risks in general, the jurisprudence of the High Court of Justice of Cantabria of 2 November 2007 clearly establishes that Law 31/1995 applies to psychosocial risks⁵⁸. Its articles most relevant to the protection of workers are:

- Article 14, which requires employers to ensure the safety and health of workers, by preventing occupational risks and setting in place all necessary measures to protect workers' health and safety. Such measures include risk prevention plans, risk assessment, information, consultation and participation and training of workers, health surveillance and actions in case of emergency. Employers are also obliged to continuously monitor the preventive actions set up at the workplace and must make all arrangements needed to adapt them to any changes affecting work performances.
- Article 15.1, under which employers must adapt the work to the individual, especially as regards the design of the work stations, the choice of work

⁵⁵ European Commission staff working paper, Report on the implementation of the European social partners' Framework Agreement on work-related stress, 2011, p. 69, http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/0241/COM_SEC%282011%290241_EN.pdf

⁵⁶ <https://www.insst.es/documents/94886/200952/Act+31+of+8th+November+1995+on+prevention+of+occupational+risks>

⁵⁷ See <https://www.insst.es/documents/94886/200952/Royal+decree+39-1997+of+17th+January,+by+virtue+of+which+the+Regulations+for+Prevention+services+are+approved>

⁵⁸ European Parliament, Directorate general for internal policies, Policy department A: employment policy, Occupational health concerns: stress-related and psychological problems associated with work, 2013, p. 55, [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507455/IPOL-EMPL_ET\(2013\)507455_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507455/IPOL-EMPL_ET(2013)507455_EN.pdf)



equipment and the choice of working procedures and production techniques, with a purpose, in particular, to diminish monotonous and repetitive work and to reduce their effect on health. Employers are also required to plan and implement preventive actions integrating all aspects of the work environment, e.g. working conditions, work organisation and schedule, social relations.

- Article 22.1, which places an obligation on the employer to enact a periodical surveillance of the health status of workers, designed to be adequate for the actual risks inherent in the tasks assigned to each of them.
- Article 25.1, with regard to the protection of the health of workers particularly sensitive to certain risks. It makes employers responsible for ensuring the safety and health of workers who are particularly sensitive to work-related risks, due to their own personal or biological factors, including those who have a recognised condition of physical, mental or sensory disability. To this end, the risk assessment and management need to take into account such issues, so that the tasks assigned to disabled or particularly sensitive workers are not such as to prejudice their health nor to endanger other workers. In addition, workers cannot be assigned to any works with psychophysical demands they are manifestly unable to meet, due to personal conditions or to other transitory situations⁵⁹.

Regulation on the prevention services establishes the necessary minimum training for performing the functions of the prevention service, which are broken down into three levels: basic, intermediate and higher, in the last of which are included the preventive specialities and disciplines of occupational health, safety at work, industrial hygiene and ergonomics and applied psychosociology (Article 34)⁶⁰. Pursuant to Article 20 thereof, employers who have to outsource one or several external prevention services or some preventive activities, for lack of sufficient own resources to carry out them, are required to conclude a written agreement. Where the object of outsourcing is the specialty of ergonomics and applied psycho-sociology, the agreement must provide for the commitment of the external prevention service to identify, assess and propose corrective measures, where appropriate, taking into account all existing risks of this nature within the company.

There is another piece of legislation where mental health is explicitly addressed, even though it is in respect of public health and not the occupational safety and health. In the

⁵⁹ The action of assigning or maintaining a worker in conditions which are not compatible with the worker's physical or psychological conditions constitutes a breach of law which is classified as a "very serious infringement" (infracción muy grave), under Article 13.4 of Royal Decree on labour infringements and penalties (Real Decreto Legislativo 5/2000, por el que se aprueba el texto refundido de la Ley sobre Infracciones y Sanciones en el Orden Social). The same classification applies to any decisions made by the employer involving discrimination with respect to remuneration, working hours, training, promotion and other conditions of work, on grounds of age, sex, ethnicity, disability, marital status, religion or belief, political beliefs, sexual orientation, union membership among others (see Articles 8.11- 8.13 bis).

⁶⁰ The minimum content of the training programme required for carrying out higher level functions includes a module of 40 hours dedicated to Ergonomics and Applied Psychosociology, which encompasses mental workload, stress, assessment and harmful consequences of psychosocial factors, psychosociological intervention (see Annex VI of Regulation on the prevention services).

preamble of the Law on public health (Ley 33/2011, Ley General de Salud Pública) mental health is indeed mentioned as one of the emerging issues to be tackled with public health services, together with intellectual disability, as much as the full integration of minority ethnic groups and other situations of social exclusion. Under Article 12 thereof, the public health surveillance includes work-related risks, although they are not the main subject covered by that law.

Law on public health refers to occupational health too, stating this is meant to achieve the highest level of physical, mental and social well-being of workers according to the environmental features and the risk factors related to the workplace, by promoting prevention, diagnosis and medical treatment of work-related diseases, as well as the following adaptation and rehabilitation required (Article 32). Health action in the field of occupational health is designed to be developed in coordination with both employers and workers' representatives (Article 33).

As for the non-binding instruments in the field of psychosocial risks prevention, in 2005 and 2007 Spanish social partners incorporated the main principles of the European Framework Agreement on work-related stress into the biennial “Interconfederal Agreements on Collective Bargaining” (Acuerdos interconfederales para la negociación colectiva — AINC)⁶¹. However, as already mentioned, these agreements are not legally binding and only provide recommendations to signatories' member organisations for their collective bargaining.

The Spanish Strategy on Mental Health of the National Health System, adopted in 2006 and updated in 2009, includes objectives related to mental health at work, as it recommends that regions should support the prevention of work-related stress, burn-out and mental disorders associated with work⁶².

Moreover, the Spanish National Commission for Safety and Health, which is a coordinating body comprising representatives of national and regional administrations, had set up a working group on psychosocial risks, as required by the first Spanish strategy on occupational safety and health (2007-2012). The aim of this group was to analyse public policy on psychosocial risks and to develop an action plan aimed at raising awareness and improving implementation of measures on psychosocial risks in establishments⁶³. This working group included representatives of regional

⁶¹ European Commission staff working paper, Report on the implementation of the European social partners' Framework Agreement on work-related stress, 2011, p. 50, http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/0241/COM_SEC%282011%290241_EN.pdf

⁶² European Parliament, Directorate general for internal policies, Policy department A: employment policy, Occupational health concerns: stress-related and psychological problems associated with work, 2013, p. 56, [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507455/IPOL-EMPL_ET\(2013\)507455_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507455/IPOL-EMPL_ET(2013)507455_EN.pdf)

⁶³ Eurofound and EU-OSHA, Psychosocial risks in Europe: Prevalence and strategies for prevention, Publications Office of the European Union, Luxembourg, 2014, p. 59, <https://osha.europa.eu/en/publications/psychosocial-risks-europe-prevalence-and-strategies-prevention>



administrations, central government and social partners. In addition, the Spanish Regions have been, and some of them and still are, developing new initiatives on promotion of mental health and prevention of mental disorders, involving partners of different sectors⁶⁴.

Finally, other soft law tools are the different Technical notes on prevention (NTP), published by the National Institute for occupational safety and health (Instituto Nacional de Seguridad y Salud en el Trabajo – INSST; former INSHT). Several Technical notes specifically address issues related to psychosocial risks at work, such as the following:

- NTP 318 Stress: generation process in the workplace.
- NTP 443 Psychosocial Factors: evaluation methodology.
- NTP 450 Psychosocial Factors: phases for its evaluation.
- NTP 476 Psychological harassment at work: mobbing.
- NTP 507 Sexual harassment at work.
- NTP 603 Psychosocial risk: the demand-control-social support model (I).
- NTP 604 Psychosocial risk: the demand-control-social support model (II).
- NTP 702 The psychosocial risk assessment process.
- NTP 703 The COPSOQ method (ISTAS21, PSQCAT21), for evaluating psychosocial risks.
- NTP 704 Syndrome of being burned by work or “burnout” (I): definition and generation process.
- NTP 705 Syndrome of being burned by work or “burnout” (II): consequences, evaluation and prevention.
- NTP 732: Syndrome of being burned by work “burnout” (III): Measurement instrument.
- NTP 759 Workaholism.
- NTP 780 The Employee Assistance Program (PAE): Individual intervention in the prevention of psychosocial risk.
- NTP 840 The INSL method for the identification and evaluation of psychosocial factors.
- NTP 856 Development of competences and psychosocial risks (I).
- NTP 860 Psychosocial intervention: INRS guide for prevention agents.
- NTP 854 Psychological harassment at work: definition.
- NTP 856 Triangular Analysis System of Harassment (SATA): a method of analysis of psychological harassment at work.
- NTP 857 Development of competences and psychosocial risks (II). Example of application in teaching.

4 CONCLUSIONS

This report analyses the EU level legislation on OSH with the aim to identify the employers’ obligations in preventing risks to workers’ mental health and in order to compare such obligations with any further laid down in the legal frameworks of Finland,

⁶⁴ EU compass for action on mental health and wellbeing. Annual report (2018). Summary and analysis of key developments in Member States and stakeholders, 2018, p. 16, https://ec.europa.eu/health/sites/health/files/mental_health/docs/2018_compass_activityreportssummary_en.pdf

Poland and Spain. The ultimate goal is to detect any national regulations setting out stricter duties for employers in the field of prevention from risks to workers' mental health.

The Framework Directive 89/391/EEC on safety and health at the workplace guarantees minimum OSH requirements throughout Europe. Each Member State is obliged to ensure full compliance with these minimum requirements and, on the other hand, is allowed to maintain or establish stricter measures for the protection of workers.

The Framework Directive enshrines the employers' obligation of preventive risk assessment and management, as the preventive approach is the guiding principle for the whole OSH legislation in the EU. Thus, employers are required to identify, assess and combat at source all types of work-related risk which may endanger workers' health and safety.

Even though the Framework Directive does not explicitly refer to psychosocial risks, the employers' general duty to ensure the safety and health of workers in every aspect related to work is interpreted as including psychosocial risks as well. This is because the notion of workers' health is sufficiently wide to include mental health issues, so that risks of this kind are deemed to fall within the scope of the Framework Directive. Therefore, employers are obliged to assess and manage psychosocial risks as well, in accordance with the general principles concerning the prevention of occupational risks, which include the risk assessment and the implementation of all the means and procedures needed to eliminate or minimise work-related hazards.

By reviewing the legal frameworks of Finland, Poland and Spain, the analysis focused on detecting any pieces of legislation in those countries providing for binding requirements in respect of preventing risks to mental health, in addition to the obligations laid down in the EU Directives. Emphasis was placed on binding regulations, whilst non-binding instruments have been only mentioned for the sake of completeness.

In Finland, the Occupational Safety and Health Act, approved in 2002, transposes the EU Framework Directive and sets out minimum standards for safety and health at work, detailing the duties and responsibilities of the employers. In accordance with the Framework Directive, the Act indeed requires employers to plan the risk prevention by means of risk assessment, controlling hazards at their source, eliminating hazards – and when this is not possible, minimizing them or substituting with less hazardous means – and arranging collective safety measures ahead of individual-based procedures. With regard to provisions specifically related to mental health, employers are required to take into account the physical and mental capacities of employees in designing and planning work, in order to avoid or reduce hazards or risks from the workload factors to the safety and health of the employees.

Although the Finnish legal framework does not set out any additional obligations for employers in the field of prevention of risks to mental health, it clearly includes the

matter in the scope of regulation, as the Occupational Safety and Health Act refers explicitly to both physical and mental risk factors in outlining the hazards to be prevented at the workplace.

The Polish Labour Code, approved in 1974, establishes the employers' duty to ensure safe and hygienic working conditions in line with the EU Framework Directive. It also requires employers to organise work as to ensure the minimisation of strenuous and monotonous tasks as well as work at a predetermined pace.

Even though the Labour Code does not make any reference to mental health, psychosocial risks and work-related stress, these issues are implicitly addressed with the obligations which employers are made responsible for. In general, the Polish legal framework on OSH does not provide for any stricter preventive obligations on employers in the field of workers' mental health.

Finally, in Spain the Framework Directive is implemented by the Law on the prevention of occupational risks, approved in 1995. It requires employers to ensure the safety and health of workers, by preventing occupational risks and setting in place all necessary measures to protect workers' health and safety. Employers are also obliged to adapt the work to the individual, especially as regards the design of the work stations, the choice of work equipment and the choice of working procedures and production techniques, with a purpose, in particular, to diminish monotonous and repetitive work and to reduce their effect on health. Furthermore, employers are required to plan and implement preventive actions integrating all aspects of the work environment, e.g. working conditions, work organisation and schedule, social relations.

Although the Spanish Law on the prevention of occupational risks only refers to work-related risks in general, it is interpreted as covering psychosocial risks as well. The Spanish legal framework on OSH was also found in line with the EU level provisions and setting out no further preventive obligations on employers' side aimed at achieving higher standards of workers' mental health protection.

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