



# The EU Mutual Learning Programme in Gender Equality

## Tackling sexual harassment

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Comments Paper – Portugal



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Justice



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# Sexual harassment: view from Portugal

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## 1. Country context

### 1.1. Policy based on legal action

In Portugal, the attention devoted to protecting the rights of harassed persons came late. The legal framework related to sexual harassment is dispersed in different articles and distinct laws. The current sexual harassment legal framework is a patchwork of changes and amendments in two main legislative areas: (i) labour and (ii) penal code.

The concept of harassment and sexual harassment was introduced in the labour code via the Law 7/2009 of February 12, 2009.

The regulation of harassment by the penal code stems from 2015. Sexual harassment is addressed in two different types of crime: stalking and sexual importunities.

A new law against harassment at work was approved in July 2017. This law is another set of amendments and changes made in other laws and is therefore not solving the problem of the legal patchwork affecting sexual harassment and/or bullying. Nevertheless, it introduces important changes and advancements for tackling sexual harassment and/or bullying at work.

The current Portuguese legal framework on sexual harassment has no direct reference or special focus on digital sexual harassment or abuse.

In Portugal, the legal protection – taking into consideration the different laws – becomes too abstract, not easily recognisable, and not easily understandable. There may be relevant consequences: (i) people avoid to present formal complaints, because it becomes unclear and unpredictable what will happen next; (ii) policy centred on legal action is not sufficient and its capacity for the general dissuasive prevention is questionable, partially, because not much attention is given to providing information about the existing legal protections, institutions of support, how and to whom to complain, or even general information about the phenomenon of sexual harassment and bullying.

### 1.2. The new harassment law

The new law of 2017 introduces important changes and advancements for tackling sexual harassment and/or bullying at work.

First, it incorporates some of the central concerns and problems diagnosed in the most recent research held in Portugal about sexual harassment and bullying at the workplace (Torres et al, 2016).

Secondly, even if the new law does not have a specific reference or a special focus on digital sexual harassment and/or bullying, it makes a difference by introducing the notion of "harassment at work" instead of "harassment at the workplace". By doing so, the frame of the law broadens to all forms of harassment that can occur through technologies, and incorporates a vision of the workplace as an extended locus.

Third, mechanisms are established to protect those who make complaints or agree to be a witness, prohibiting the companies from launching internal disciplinary proceedings against the workers as a mechanism of retaliation against those who complain or accept to testify. Furthermore, the dismissals made following a harassment complaint are considered to be abusive and unlawful, preventing employers from resorting to these actions.

Fourth, the law makes it compulsory for medium and large size companies (i) to have ethic codes which clearly define and reject sexual harassment and bullying, and to (ii) create an internal complaint system.

Fifth, all costs related to the damage that sexual harassment and/or bullying inflict on the health of workers are attributed to the undertakings, so that illnesses resulting from harassment are covered. However, this financial consequence for employers implies a cause-effect relation not always easy to prove by workers.

Sixth, the publication of a black list of companies convicted of harassment on the ACT (Authority for Working Conditions) website became obligatory.

## 2. Policy debate

### 2.1. Critical points and tensions between research and policy making

#### 2.1.1. Approach problem: regulation and sanction vs. a broader policy towards prevention and change

The focus on prevention and support in situations of sexual and moral harassment in the context of labour relations is relatively recent in Portugal. The policy debate must be reoriented towards a new paradigm in the design of policies tackling sexual harassment: from political action based on regulations to a policy oriented development of an action plan. This new policy stance should have at its core the multilevel context of sexual harassment and its potential multiple and intertwined causes, taking into account such aspects as power relations, gender and social relations and gendered organisations.

#### 2.1.2. Drift from reality

*Looking at the tree and missing the forest: the problem of focusing the law on large companies and organisations*

The law of 2017 tries to solve the problem that in most companies, institutions and national organisations the harassment is still virtually invisible and that there is no mobilisation for preventing and combatting it. Thus the law makes it compulsory for medium and large size companies (i) to have ethic codes that clearly define and reject sexual harassment and bullying, and (ii) to create an internal complaint

system. But the Portuguese economy is dominated by small and very small companies and the research (Torres et al, 2016) demonstrates that the large majority of sexual harassment cases in Portugal occur in organisations with up to 49 workers (59%), within these 33.9% cases occur in organisations with less than 9 workers. With this drift from reality, the current legal framework puts aside of the regulatory scheme all these employees and victims affected by harassment in small companies.

#### *What about precarious employment and labour market insecurity?*

A scenario of flexibility in the labour market, fixed term jobs (or of similar kind), low pay, risk of unemployment and vulnerability to retaliations certainly constrains workers from complaining about sexual harassment and/or bullying at work. Moreover, in Portugal the majority of women and men affected by sexual harassment and/or bullying at work have a precarious position on the labour market with different forms of non-standard contracts: fixed term contracts, temporary work, grants, training grants, etc. However, the new law shows no active concern with the flexible and insecure characteristic of the Portuguese labour market.

#### *What about the public sector?*

The new law seems to have been designed almost exclusively for the private sector. The public sector, with a majority of women employees, is not explicitly mentioned in this new law against sexual harassment in the workplace.

## **3. Learning**

### **3.1. Danish policy**

Taking into consideration the characteristics of the Portuguese policy against sexual harassment, it would be interesting to incorporate in the Portuguese national policy the following: (i) the importance to define a policy against sexual harassment focusing on prevention and targeting young people and digital media; (ii) to make schools and the educational system a pivotal player for social change.

When it comes to the sharing of erotic/nude pictures among adolescents, as described in the Danish discussion paper, a clear conceptual definition of the phenomenon is needed. This conceptual clarification must define a clear cut between consented and not consented sharing of erotic/nude pictures.

Furthermore, research is needed, because this phenomenon must be understood as part of broader social context where gender, sexuality and technologies intersect. Sharing erotic pictures online, showing sexual readiness, can be intertwined with the emergence of a femininity out-and-proud proclamation (Jackson and Scott, 2004) questioning the sexual double standard that attributes sexual hyperactivity to men and sexual containment to women. This collides with the persistence of traditional and hegemonic masculinity. For boys/men this abusive behaviour (sharing nude pictures of other persons without their consent) may be a way to fit in the hegemonic masculinity model. Those pictures work as proof of their masculinity based on hyperactive heterosexual sexuality and the women/girls in the pictures are seen as proof of their sexual competence.

To have in-depth knowledge and understanding of the phenomenon is essential to design an adequate policy and to define specific informative campaigns. The content of informative campaigns should be derived from research results but formulated in a more simple language. These campaigns should be the result of a knowledge transfer process.

The use of known Youtubers as spokespersons can be beneficial, but their messages should be framed by a predefined script. This script must be the result of knowledge transfer from research into information campaigns and to the general public, so its contents can be empirically grounded in the field and in youth reality.

In conclusion, sharing nude/erotic pictures of others without their consent, having or not having the aim of humiliating them, must be perceived and tackled as a form of violence. Like rape, sexual assault, or sexual harassment, posting nude/erotic pictures of someone else without their consent is an abusive behaviour resulting in the humiliation of the other.

### 3.2. French policy

The French discussion paper poses the question of how public and private transport companies protect their own employees against sexual harassment. What is needed in Portugal in this respect is an institutional transformation and organisational culture change, based on an (i) internal policy condemning sexual harassment, including this statement in the ethical code and even in employment contracts; (ii) a reporting mechanism allowing the workers to present their complaints knowing in advanced all procedures; (iii) extending the definition of workplace sexual harassment beyond the physical office space, and beyond staff directly employed by the company; (iv) protection provided for any work-related incident of sexual harassment, no matter the time or place it occurs, and whether the harasser is a co-worker, client, customer or vendor.

## 4. Conclusions and recommendations for fighting sexual harassment

Sexual harassment and bullying prevention has to be comprehensive and integrated. Preventing harassment in an integrated way means planning a coherent action that involves different dimensions: (i) socio-cultural; (ii) political; (iii) legal; (iv) punitive (sanctions); (v) pedagogical and training.

To prevent and correct harassment in the workplace it is necessary to intervene on two levels:

- The **proactive level**: carried out as primary prevention actions. This form of prevention avoids the occurrence of situations of harassment, their continuity (reiterated) and the maintenance of a possible organisational climate of tolerance for harassment and people who practice harassment over others.
- The **restitution level**: includes secondary prevention actions (when harassment already occurred) and tertiary prevention (repairing the damages or losses caused by the organisational climate, work processes and the perpetrator).

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