



29.1.2024

## NOTICE TO MEMBERS

**Subject: Petition No 0736/2023 by I. A. (German) on protection against bullying in the workplace**

### 1. Summary of petition

The petitioner complains about bullying in their workplace, the European Molecular Biology Laboratory (EMBL), and the way it is handled internally, as well as general possibilities of legal protection with regard to this issue. Allegedly, as a result of the Federal Government granting them special status, the EMBL does not respect human rights and the workers' rights of German citizens. The petitioner states that she has been subjected to severe bullying in her workplace over the past few years. The petitioner explains that whilst she followed the procedure laid out in the EMBL's internal rules for these kinds of conflicts, she never really stood a chance. Allegedly, she was unable to obtain adequate legal protection because of the special status granted to the EMBL by the Federal Government; as an international organisation, the EMBL cannot be controlled by national courts. This would constitute a violation of human rights, including the right to a fair trial under Article 6 of the European Convention on Human Rights. According to the petitioner, the option of seeking justice before the ILO Administrative Tribunal is insufficient and moreover, the statistics show that no decision has ever been taken in favour of the employee.

### 2. Admissibility

Declared admissible on 15 November 2023. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 29 January 2024

#### *The Commission's observations*

The Commission condemns violence and harassment in workplaces and recognises the

importance of a work culture based on mutual respect, human dignity and the right to equal and non-discriminatory treatment.

As far as the EU occupational safety and health (OSH) at work legislation is concerned, Article 153(1) of the Treaty on the Functioning of the European Union (TFEU) states that *‘with a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: (...) (a) improvement in particular of the working environment to protect workers’ health and safety’*. According to paragraph 2 of the same Article, *‘To this end, the European Parliament and the Council: (...) (b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation (...)’*.

In that regard, an important number of EU Directives have been adopted based on Article 153 TFEU dealing with health and safety at work and laying down minimum requirements which shall be transposed by Member States in their national law. In this regard, Member States are allowed to maintain or adopt more stringent protective measures.

The central piece of EU legislation in this area is Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>1</sup> (hereinafter the Framework Directive) laying down, inter alia, the general principles concerning the prevention of risks, the protection of safety and health of workers at the workplace as well as general guidelines for the implementation of the said principles and establishing a number of obligations on the employer. It applies to all sectors both public and private, and covers all risks, including those with a psycho-social nature, such as stress, violence or harassment. In addition, in both the EU Strategic Framework on Health and Safety at work 2021-2027<sup>2</sup> and the Communication on a comprehensive approach to mental health<sup>3</sup>, the Commission highlighted the importance of improving the prevention against psycho-social risks at the workplace.

It should also be noted that a Framework Agreement on harassment and violence at work<sup>4</sup> was concluded by the social partners at EU level<sup>5</sup> on 20 April 2007, on the basis of Article 138 of the EC Treaty (now Article 155 TFEU). This agreement builds on the Commission consultation of the European social partners concerning violence at the workplace and its effects on health and safety at work<sup>6</sup>. Its aim is to increase the awareness and understanding of employers, workers and their representatives of workplace harassment and violence and to provide them with an action-oriented framework to identify, prevent and manage problems of harassment and violence at work. Under the Framework Agreement, *‘harassment occurs when one or more worker or manager are repeatedly and deliberately abused, threatened and/or humiliated in*

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<sup>1</sup> OJ L 183, 29.6.1989, p. 1.

<sup>2</sup> COM/2021/323 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0323&qid=1626089672913#PP1Contents>

<sup>3</sup> COM/2023/298 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0298>

<sup>4</sup> See link: <https://osha.europa.eu/en/legislation/guidelines/framework-agreement-harassment-and-violence-work>

<sup>5</sup> The European Trade Union Confederation (ETUC/CES), the Confederation of European Business (BUSINESSEUROPE), the European Association of Craft Small and Medium-sized Enterprises (UEAPME) as well as the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP).

<sup>6</sup> C/2004/5220 <https://ec.europa.eu/transparency/regdoc/rep/3/2004/EN/3-2004-5220-EN-1-0.Pdf>

*circumstances relating to work*<sup>7</sup>. The Framework Agreement also provides that ‘*harassment and violence may be carried out by one or more managers or workers, with the purpose or effect of violating a manager’s or worker’s dignity, affecting his/her health and/or creating a hostile work environment*’<sup>8</sup>. It follows from Article 155, paragraph 2, TFEU, that the Agreement must be implemented in accordance with the procedures and practices specific to management and labour in the Member States.

Moreover, the EU actively participates in discussions and negotiations at the institutional meetings of the International Labour Organization in Geneva (International Labour Conference, Governing Body), notably on the adoption of conventions, recommendations, resolutions and other important texts. On 21 June 2019, the 108<sup>th</sup> (Centenary) International Labour Conference of the International Labour Organization adopted the Violence and Harassment Convention, 2019 (n°190), together with the Violence and Harassment Recommendation, 2019 (No. 206). The Violence and Harassment Convention aims to protect workers and other persons in the world of work irrespective of their contractual status, including persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants. It applies to violence and harassment in the ‘world of work’, which goes beyond the workplace and includes, among others, work-related facilities and communications, travel and social activities. The Violence and Harassment Convention also specifically covers gender-based violence and harassment in work contexts. The Convention and the Recommendation seek to establish an inclusive, integrated and gender-sensitive approach for the prevention and elimination of violence and harassment in the world of work.

Since the EU is committed to promoting human rights and decent work, including safe and healthy working conditions, equality between women and men and to ending discrimination, both internally and in its external relations, the Commission made a proposal for a Council Decision that will enable Member States to ratify the said Convention for the matters falling under EU competence<sup>9</sup>. On 18 September 2023, the Council adopted a general approach for a Council Decision inviting Member States to ratify the Convention<sup>10</sup>.

The EU OSH Directives and in particular the above-mentioned Framework Directive, have to be transposed into national law and implemented by the Member States. As regards Directive 89/391/EEC, Germany has communicated the national measures transposing this Directive. It is therefore the transposing national legislation that would apply to the concrete situations in all individual cases in which German law is applicable. It should also be noted that, where German legislation is applicable, the competent national authorities have the responsibility to enforce the national provisions transposing the EU OSH legislation. As the Commission does not have investigative powers to assess individual cases, those should be resolved through recourse to the national competent enforcement authorities, including national labour inspectorates in all cases where the national legislation transposing EU OSH legislation applies. However, in this concrete case, it seems that it should first be established by the competent German authorities whether national legislation is applicable in case of an alleged harassment and whether German courts would have jurisdiction in case of disputes between the European Molecular Biology

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<sup>7</sup> Section 3 of the Framework Agreement.

<sup>8</sup> Section 3 of the Framework Agreement.

<sup>9</sup> COM/2020/24 final.

<sup>10</sup> No. 12080/23 ([https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CONSIL:ST\\_12080\\_2023\\_INIT&qid=1695311295243](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CONSIL:ST_12080_2023_INIT&qid=1695311295243))

Laboratory (EMBL) and its staff. Namely, the EMBL is an intergovernmental organisation with its own legal status, established by an intergovernmental agreement<sup>11</sup> and has its own internal rules and provisions including dispute settlement mechanisms as provided for in the Headquarters Agreement between the Government of the Federal Republic of Germany and the European Molecular Biology Laboratory (Article 2)<sup>12</sup>.

Moreover, it should be noted that in any case, under the Treaties on which the European Union is based<sup>13</sup>, the Commission has no general powers to intervene in the day-to-day administration of justice in individual Member States, including on the handling of individual cases. As regards the reference made to Article 6 of the European Convention of Human Rights (ECHR), it should be noted that the ECHR is not an EU law instrument. While the right to an effective remedy and to a fair trial is also enshrined in Article 47 the Charter of Fundamental Rights of the EU, the Charter only applies to Member States when they are implementing EU law<sup>14</sup>. As explained above, this is yet to be established in this case.

### *Conclusion*

At EU level, measures have been taken to address improvements of the working environment to protect workers' health and safety, in particular the Framework Directive adopted under Article 153(2) TFEU applicable in all sectors and addressing all risks, including those of psycho-social nature, such as harassment, bullying and mobbing. In addition, the Framework agreement on harassment and violence at work covers harassment and violence in all their forms and in all sectors.

The Commission considers that the German authorities must establish, by interpretation of the relevant international agreements establishing and governing the functioning of the EMBL, whether German law transposing the EU OSH legislation is applicable in the concrete case and therefore whether the German authorities are competent for ensuring controls and supervision regarding the correct application of those provisions. In individual cases, such as this at hand, it is for the national enforcement authorities to establish their competence and if competent to establish whether national provision transposing EU OSH Directives are applicable so to ensure that they are properly enforced.

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<sup>11</sup> [https://www.embl.org/documents/wp-content/uploads/2020/05/un\\_agreement.pdf](https://www.embl.org/documents/wp-content/uploads/2020/05/un_agreement.pdf)

<sup>12</sup> <https://www.embl.org/documents/wp-content/uploads/2020/05/agreementDE.pdf>

<sup>13</sup> Treaty on European Union and Treaty on the Functioning of the European Union.

<sup>14</sup> Article 51(1) of the Charter.