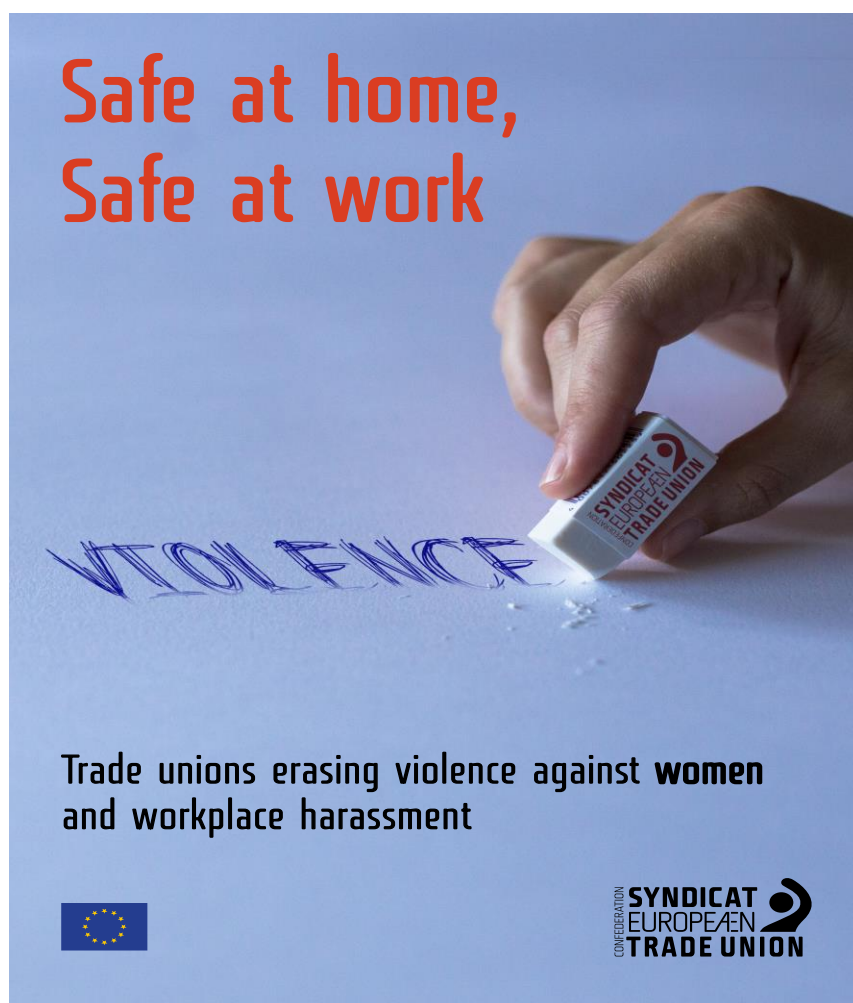


ETUC 'Safe at Home, Safe at Work'

GERMANY

Country Case Study¹



by
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¹ This report is one of eleven country case studies produced under the ETUC's project 'Safe at Home, Safe at Work', the findings from which are consolidated in the final synthesis report for the project.

1. Introduction

1.1 Overview

This report gives an overview of the country case study for Germany, which is one of eleven case studies prepared for the ETUC project 'Safe at Home, Safe at Work'. It documents the measures taken by unions to address gender-based violence at work. It covers two specific areas: a) gender-based violence in the workplace, which principally concerns sexual harassment at work and b) domestic violence at work. Both aspects of the report are discussed in relation to the overall legal context, the role of collective bargaining and other union initiatives, links and cooperation with civil society and women's organisations, as well as the challenges faced by unions and the recommendations made by unions for the future.

1.2 Methodology

The report draws on relevant information and data and is informed by four Interviews with women representatives from federal Unions, two interviews with women law NGO representatives, and three interviews with trade/women/criminal law experts, held in June/July 2016.

- Dr. Christiane Stockfisch federal board of directors DGB (German Trade Union Federation, Gender Equality and European Affairs)
- Ute Brutzki, Head of Gender Equality Department at Ver.di (United Services Union)
- Helga Petersen, Secretary for Family and Women's Affairs, EVG (Eisenbahn Verkehrs Gewerkschaft)
- Annegret Kortleben, Member of the Union of the Police
- Birte Rohles, Head of Department of Domestic Violence and Sexual Violence, Terre des Femmes e.v., Sabine Kräuter Stocken, Senior Public Prosecutor and member of DJB (German Lawyers Association) commission on domestic violence and criminal law.
- Hans Böckler Foundation, Dr. Manuela Maschke, Ministry of Social Affairs in Hessen, Nancy Gage Lindner, Sabine Jennen, Women and gender equality representative of Charité University, Berlin.

The interviews followed a pre-set questionnaire and were adapted to the content and functions of the interviewed persons. The interviews took between 30 and 60 minutes. All interviewees were women.

2. Context and legal background

2.1. Gender based violence at work

Gender based violence at work is prohibited under legislation (Belästigungsschutzgesetz) adopted in 1994, which transposed the EU Directive. The law was largely ineffective and was rarely evoked before the courts. In 2006, after a long legislative debate and process, Germany transposed several EU anti-discrimination directives (2000/48/78; 2002/73, 2004/113 EU) into German law and adopted the 'General Act of Equal Treatment' on the 14th of August 2016 (Allgemeines Gleichbehandlungsgesetz, AGG). The law is applicable in the private and public sectors. §.3 of the law gives protection against sexual violence and harassment and obliges employers to prevent and protect victims against sexual violence/harassment. Since Germany is a federal state, each Land (state) has adopted a regional Gender Equality Act prohibiting sexual harassment (sexuelle Belästigung), which gives protection to civil servants at the

regional level. These laws, which apply only to the public sector, define sexual harassment as discrimination and oblige the employer to sanction the perpetrator and to prevent any discrimination of the victim as a consequence of her/his complaint. In accordance with EU law, the employer is responsible for a) creating internally a complaints procedure, mechanisms to deal with the case, sanction the perpetrator(s), not discriminate the victim and prevent any form of sexual harassment. §.13 of the AGG gives the victim the right of appeal internally.

§13 “(1) Employees shall have the right to lodge a complaint with the competent department in the firm, company or authority when they feel discriminated against in connection with their employment relationship by their employer, superior, another employee or third party on any of the grounds referred to under Section 1. The complaint shall be examined and the complainant informed of the result of the examination. (2) The rights of worker representatives shall remain unaffected.”

This internal appeal procedure is not a mandatory condition for the victim to file a claim before the competent Labour Courts. It is designed as a possibility for the employee and the employer to find an internal solution instead of a long and costly legal external procedure. She/he has two months to appeal internally and three months to file a claim before the court. Compensation for discrimination can also be claimed from the employer for not fulfilling their obligations, independently of the employer’s intention not to respond (§15). The victim is protected against any discrimination resulting from her appeal and can even refuse to execute the contract if protection against further harassment /discrimination is not guaranteed.

In §3 Section 4 AGG, the law defines sexual harassment as follows. The first case (§3 Sect. 3) applies to all criteria (sex, age, origin...), the second is special for sexual harassment (§ 3 Sect.4).

(3) Harassment shall be deemed to be discrimination when an unwanted conduct in connection with any of the grounds referred to under Section 1 takes place with the purpose or effect of violating the dignity of the person concerned and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

(4) Sexual harassment shall be deemed to be discrimination in relation to Section 2(1) Nos 1 to 4, when an unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, takes place with the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment.

In addition, German Penal Law gives protection, in any kind of situation and under certain conditions, against (sexual) violence. §177 of the Criminal Law prohibits sexual assault *but* until the penal law reform voted by the Parliament in July 2016² demands that there is evidence of physical resistance from the victim. The reformed article foresees not to exceed the physical resistance of the victim put presumes that the victim does not consent and is therefore protected by the law. This important reform brings Germany in accordance with the Istanbul Convention. Rape is prohibited in §177 Criminal Law and a new article is introduced strengthening the protection against sexual assaults committed individually and in groups.

² Deutscher Bundestag (German Parliament), 06/07/2016; recommendation and report on the legal amendment of German sexual penal law. Available at: <http://dip21.bundestag.de/dip21/btd/18/090/1809097.pdf>

2.2 Domestic violence at work

In Germany, there is no specific obligation for employers to protect or support victims of domestic violence at work. The milestone law in Germany in the field of protection of victims of domestic violence was adopted on 11th of December 2011 with the Violence Protection Act (GewaltschutzG). This law enlarges police' and judges' competencies but does not apply to special protection at the workplace. §1 Sect.1 obliges the perpetrator not to approach the protected person at the place where the victim usually is; this may also include the workplace. It does not oblige the employer to enforce or protect the victim even, although German Labour law provides unspecific obligations to care (Fürsorgepflichten) and the employer has the 'general' obligation to protect employees against any foreseeable risk and danger (for example, from clients or machinery) and to create and maintain a safe workplace.

Even though there are no legal obligations to protect employees specifically against domestic violence in the workplace, some employers have adopted on a voluntary basis, workplace policies (for example, The Body Shop and Barmer). These issues are elaborated in more detail in Section 4.

2.3 Collective bargaining

In the German 'pyramid of norms', there are laws (constitution, federal and regional laws, collective agreements (CA) followed by factory agreements (FA).

According to the Works Council Constitution Act (§ 87 Betr VG), the Works Council has an important right to participate in the decision making process ('Mitbestimmung') on a large list of subjects, such as recruitment procedure, time management, or the reconstruction of the company. The Works Council can even force the employer to negotiate and to conclude an agreement. The issue of sexual violence or harassment are not directly listed as obligatory topics for negotiation but can be proposed by one of the two parties and be dealt with on the basis of § 77 BetrVG. However, there is no obligation to conclude a FA.

Factory agreements, concluded on the basis of § 77 BetrVG, have the objective to define, in a more detailed manner, what is expected from each party and what sort of measures or sanctions can be expected. In any case, a factory agreement can never be less advantageous than a collective agreement.

CA and FA are binding upon concluding parties and among non members of unions under certain conditions; they have a directly binding impact on the individual labour contract. Collective agreements determine for instance salary, working time, holidays, general working conditions, dismissal and employment contracts.

Collective agreements have priority before factory agreements as long as they are more favourable for employees and are concluded by the employer and employee's union representations on different levels, either on the branches (metal, education...) or on the territory. The topic of gender based violence could theoretically be dealt with at the level of a collective agreement but since it concerns the question of company's culture, it is basically dealt with in company agreements. There are no examples of collective agreements but company and administration agreements dealing with sexual violence or harassment have been identified (for example, the Body Shop, Barmer, Berlin administration – Reinickendorf etc.).

3. Gender-based violence at work

3.1 Introduction: the role of unions in preventing and tackling gender-based violence at work

The issue of gender based violence and sexual harassment in the workplace are well integrated in trade union gender politics, but do not seem to be part of trade union 'priorities'. Minimum wages, women in management positions, gender quotas, the gender pay gap and maternity leave reform are trade union priorities in 2016 and the last couple of years. The topic is perceived as important but 'difficult' to deal with. It is still a taboo for many women and men, victims or not, to talk about the problem.

The federal Anti-discrimination agency (ADS) set the topic in 2015 on its agenda and launched a comprehensive survey on sexual harassment in the workplace, followed by a symposium and awareness raising campaign in 2016.³

Company initiatives connecting the risk of private violence with preventive policies commenced in 2007 but appear to have lost momentum in recent years.

Art. 17 Section 1 of the AGG defines the role and social responsibility of employees and trade unions to tackle discrimination, including sexual harassment.

Social Responsibility of the Involved Parties

(1) The parties to collective bargaining agreements, employers, employees and their representatives shall be required to **become actively involved** in achieving the goal set out in Section 1 within the context of their duties and scope of action.

As mentioned above, trade unions have the right to participate in decision making on topics such as work behaviour and protection at work. Starting in the 1980s unions started to tackle the topic, although in recent years this has not been a high priority.

It is a topic dealt with in detail on the website of some unions (Ver.di, DGB, IG Metal) under the gender/women section. Mostly, the definition of sexual harassment is given with examples, the appeal procedure is described and the responsibility of the employer to prevent, to intervene and to sanction are detailed. Nevertheless, interviews with union members showed that minimum wage, the gender pay gap and representation of women in management are given more importance.

Due to AGG, a committee with Works Council representatives, has the legal obligation to listen to and help victims of sexual harassment and sexual violence in the workplace. They have the task to demand the employer to react, to sanction and to protect. If the employer denies or neglects their obligations to prohibit and prevent sexual harassment, the Works Council or trade union may assert before the Court *but they are not permitted to assert on behalf of the victim* in a concrete case of sexual harassment or discrimination.

Social Responsibility of the Involved Parties

(2) Where the employer commits a gross violation of the provisions of Part 2 in an enterprise in which the conditions pursuant to Section 1(1) first sentence of the Works Constitution Act are present, the **Works Council or a trade union represented in the enterprise may also**

³

http://www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Geschlecht/sexuelle_Belaestigung/sexBelaestigung_node.html

assert before a court the rights set out in Section 23(3) first sentence Works Constitution Act if the preconditions therein are present; Section 23(3) second to fifth sentences of the Works Constitution Act shall apply mutatis mutandis.
No claims of the person suffering discrimination shall be asserted in the application.

The function and the tasks of the Works Council (Betriebsrat) with regard to health and safety at work⁴

The Works Council has a key role in representing employees on health and safety issues. It has a general responsibility to try to ensure that the health and safety provisions and accident prevention measures are observed and to support the appropriate health and safety authorities and other bodies in their efforts to eliminate hazards by offering suggestions, advice and information.

The employer is responsible for health and safety in the workplace and is obliged to appoint occupational doctors and health and safety specialists, although for smaller companies these will be provided by external bodies. The occupational doctor and health and safety specialist are required to cooperate with the Works Council in carrying out their tasks.

The Works Council, which can be set up in all workplaces with five or more employees, plays an important role in health and safety. In addition, in larger workplaces (more than 20 employees) a health and safety committee (Arbeitsschutzausschuss) should be set up. It consists of the employer or the employer's representative, two members of the Works Council, the works doctor(s), the health and safety specialist(s) and employees with health and safety tasks. Finally, there are also nominated individual employees with health and safety tasks (Sicherheitsbeauftragte), who are also members of the health and safety committee.

3.2 Data and evidence

In 2004, the Federal Ministry of Women (BMFSFJ) edited an important study on 'Life schemes of women with regard to gender based violence in Germany' ('Situation, security, Health and safety of women in Germany').⁵ This comprehensive survey was based on more than 10 000 interviews of women aged 15-85 living in Germany. The study underlined that especially young women, trainees and older women in precarious labour contracts are exposed to gender based violence and harassment in the workplace. The survey showed that even though most of the violence acts are committed in the private sphere (69%), 19% of the acts are committed in the workplace by colleges, superiors and third persons/clients. 52,2% of the interviewed women had already experienced sexual violence and harassment either in a public space, at work or in the private sphere. These results are confirmed by a study of the European Fundamental Rights Agency in March 2014 which estimates the percentage of women having experienced sexual violence since the age of 15 in Germany of 60%, one third of which were committed in the workplace.⁶

⁴ Act relating to Works Doctors, Safety Engineers and other Occupational Safety Experts (Occupational Safety Act) 1973
Works Constitution Act 1972
Social Code (VII)

⁵BMFSFJ (Federal Ministry for Women, seniors, family and youth), main survey on the situation and health of women in Germany, 2003. Available at: <https://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/langfassung-studie-frauen-teil-eins.property=pdf.bereich=bmfsfj.sprache=de.rwb=true.pdf>

⁶Fundamental Rights Agency, 2015, violence against women survey. Available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>

More recently in 2015, the ADS (Federal Anti-Discrimination Agency) undertook a survey among more than 1000 men and women⁷ in order to find out the patterns of gender based violence in the workplace, the number of victims and also the knowledge of the existing law (AGG) and appeal mechanisms. The results show that perpetrators are first of all colleagues on the same hierarchy level, followed by clients and third persons and lastly by superiors. The findings of this ADS survey show that employees are unaware of the legal definition of what sexual harassment in the workplace really means; they often think the experiences and conducts they experience are legally not prohibited.

- 81% do not know that their employer is obliged to protect against sexual harassment and 70% do not know about a responsible person inside the company to talk to.
- 60% of Working Councils representatives⁸ admitted that nothing in their company is done to prevent sexual harassment even though it is their task to insure and to control that the employer fulfils its prevention duties.
- 46% of interviewees were not aware about prevention or measures undertaken in their companies.⁹
- A further 2% of victims are dismissed as a consequence of their internal complaint and 5% quit their job in order to protect themselves.

3.3 Collective agreements and workplace policies

In Germany, gender based violence is addressed in collective agreements under four main titles: 1) constructive conflict management, 2) fair and loyal behaviour at the workplace, 3) protection against discrimination, mobbing and diversity, and less often explicitly 4) sexual harassment.

Thanks to a comprehensive qualitative and quantitative scientific analysis conducted by the Charité University Clinic in 2016 in cooperation with the Hans Böckler Stiftungs database,¹⁰ the following elements can be emphasized:

- 92 collective agreements dealing directly or indirectly with the issue were identified (46 collective agreements in the public sector ('Dienstvereinbarung'), 31 in the private sector ('Betriebsvereinbarung'), 9 directives, 9 framework directives and one template agreement. In all cases, unions were involved in drafting the relevant instrument.¹¹
- Only five were explicitly named sexual harassment on the workplace, 11 were related to conflict management, 28 on anti-discrimination/diversity, and 48 on fair and loyal behaviour.
- The length of the agreement varies from between 1 and 15 pages.
- The majority were after 2006, when the AGG entered into force
- Prevention measures very often only comprise training.
- The concept and wording gender based violence is not permitted in German workplace policies with regard to the workplace. The word would risk to reducing the issue to physical violence, such as assault or rape.

⁷ ADS, 2015, survey on sexual harassment at the working place. Available at: http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Umfragen/Handout_Umfrage_sex_Belaestigung_am_ArbPlatz_Beschaefigte.pdf?__blob=publicationFile&v=2

⁸ Antidiskriminierungsstelle (Federal Agency on Anti-discrimination) 03/ 2015 : Leitfaden für Beschäftigte und Betriebsräte, p. 28
⁹DGB (Deutscher Gewerkschaftsbund/German Unions Federation), "Sexual harassment : no means no", 03/2015. Available at: <http://einblick.dgb.de/++co++40b3dc32-ce20-11e4-a37c-52540023ef1a>

¹⁰ Hans Böckler Foundation, data base of collective agreements on sexual harassment, tolerance and collegiality, launched in 2012. Available at: http://www.boeckler.de/cps/rde/xchg/hbs/hs.xsl/4132.htm?bvdocu.theme.grid=95_5293

¹¹ Due to the companies right to data protection, the original texts of the agreements and other company documents are only exceptionally

Examples, published by the ADS as good practices are cited here:

- **Volkswagen AG** (592 600 employees, automobile and logistic industry) started in 1996 with a company agreement,¹² which was an initiative of the Works Council to prevent and inform of all kind of discrimination, mobbing and sexual harassment.¹³ The agreement is called 'Partnerschaftliches Arbeiten am Arbeitsplatz' / collegial working at the workplace.
- Since 2009, **Deutsche Telekom AG (DTAG)** (Telecommunications with 225 243 employees) has dealt with the topic of violence prevention at the workplace. Sexual harassment and violence are part of this policy. A company directive called 'Policy on personal security' entitles each employee to have a workplace free of physical and psychological violence and a 'fear-free' working environment. The directive serves as a communication and awareness raising instrument. DTAG also proposes training workshops for management in order to raise awareness and to give individual advice. Further, DTAG trained and nominated 'harassment managers' who give advice, orientation and support to employees and victims. A working group on 'harassment management' meets on a regular basis and gives advice and supervision to the harassment managers.
- Since 2012, **Charité – University Clinic Berlin** (university hospital, research and science, 13 100 employees) is actively dealing with the issue of sexual harassment because the medical and caring environment seems to increase the need to clarify notions and limits of intimacy and harassment. Two brochures have been published on the topic, giving practical advice to employees, students, patients and managers about the internal appeal procedure and victim's rights. In 2014 Charité initiated a project called 'Watch-Protect-Prevent'¹⁴ and launched in the same year a survey on the topic amongst its employees. The results and findings of an analysis of more than 115 existing company's agreements dealing with sexual harassment in Germany, undertaken by Charité in cooperation with the Hans Böckler Stiftung, influenced the draft a workplace policy in the form of a 'directive' on the prevention and treatment of sexual harassment at Charité'. This directive covers in its scope employees and students of Charité and will be adopted by the board in the summer of 2016. Represented unions have contributed intensively on the elaboration of the directive.
- Under the topic 'threat management', the Alliance for security in business and companies launched in 2013 guidelines to inform and sensitize on the importance of threat management ('Bedrohungsmanagement') and violence prevention, including sexual violence and harassment. In smaller and bigger companies.¹⁵ It underlines the importance of trained and supervised internal and visible 'threat managers', and to communicate information about the topic to employees.
- **Deutsche Bahn AG** adopted in January 2016 a company agreement 'for equal treatment and protection against (sexual) harassment and discrimination'. It copies parts of the legal obligations of the ADG (appeal procedure, sanctions) and goes further in providing training sessions for managers and employees.¹⁶ Deutsche Bank also forsee external help-lines for its staff and is active in empowering and training female employees, including training on self defence against physical and sexual violence

¹² VW is the only company having integrated the topic into a collective agreement.

¹³ Volkswagen (VW), HR career website, 2016. Available at: http://www.volkswagen-karriere.de/de/was_uns_ausmacht/unsere_werte/partnerschaftlichesverhalten.html

¹⁴Charité, "Watch protect prevent" (wpp project on sexual harassment at Charité University hospital, 2015. Available at: <https://wpp.charite.de>

¹⁵ ASW (Allianz für Sicherheit in der Wirtschaft e.V.), guidelines on management of situations of threat and harassment, 2013. Available at: http://asw-bundesverband.de/fileadmin/user_upload/leitfaden_-_blatt/14_10_16_-_Leitfaden_-_Bedrohungsmanagement_neues_Design.pdf

¹⁶Eisenbahn und Verkehrsgewerkschaft /Union of trains and traffic (EVG), publications on gender related issues, discrimination and prevention of sexual harassment. Available at: <https://www.evg-online.org/Arbeitswelt/Chancengleichheit/Publikationen/index.html/> see KBV 'Für Gleichbehandlung und Schutz vor Diskriminierung'.

perpetrated by clients.

3.4 Union awareness raising, campaigns and training programmes

In recent years, trade unions have published information on sexual violence at work and awareness raising campaigns have been developed.

- In 1985, the German Trade Union Federation (DGB) for the first time dedicated its 11th federal women conference to the topic of gender based violence and sexual harassment at the workplace. In its final conclusions, the DGB women appealed to the Presidency of DGB to become aware of the importance of the topic, to inform women and men on their rights, to train management internally and to provide information and help. In 1987 DGB published for the first time guidelines entitled 'No Means No'. The brochure, which has been updated several times, contains definitions, information and orientation for women and men.
- The 13th Federal Congress of DGB condemned any act of sexual harassment or sexual assaults and violence. The 20th Federal Congress of DGB in 2014 took a decision¹⁷ 'against sexual harassment at the workplace' in order to tackle concretely the sensibilisation campaigns with training measures and other forms of sensibilisation internally and externally for its members.
- The DGB website offers detailed information on the actual legal situation (AGG) and the appeal procedures and in 2016 published comprehensive guidelines ('Handlungsempfehlung') with examples of company agreements for its members on the topic.
- IG Metall edited in 2008 comprehensive guidelines of 40 pages for Works Councils and employees on the topic of gender based violence, containing detailed analysis of German labour law jurisprudence and concrete advice to handle the issue.¹⁸
- In 2011 EVG proposed two training sessions per year for its members entitled 'Enough is Enough', dealing with stress management, mobbing, sexual harassment and protection strategies.

3.5 Links and cooperation with civil society and women's organisations

Trade unions interviewed stated that they had regular 'contact' with representatives of German women NGOs. However, no concrete cooperation exists and the NGO Terre des Femmes stated that it is willing to create partnerships with unions and common projects might be foreseen in the future.

3.6 Challenges faced by unions

The topic of gender based violence at the workplace is not seen as a priority in 2016. Achieving legislative reform in the field of maternity leave, part-time and equal pay are the main priorities of union gender experts. Even though Germany tackled a very important reform of its sexual penal law, in the summer of 2016, with regard to violence, the topic is not linked to employment, with the main focus being on the private and public sphere. Works Council members are still male dominated and often do not 'see' the issue or are not in contact with (potential) victims. The consequence is that they do not see the necessity to act and to take more pro-active information measures.

¹⁷ 20th Congress of DGB AO21

¹⁸ Board of IGM, 01/2008, guidelines and advice on sexual harassment. Available at: https://www.igmetall.de/docs_0190617_Belaestigung_IGM_Handlungshilfe_1887d0684c09257bc7acee2090d7e93a691e7bd1.pdf

Even though the survey of the ADS in 2015 revealed that only 29% of the interviewed persons declare they identify a designated person (by a union or by the employer) in the company they could talk to, there is limited willingness from Works Council members to do carry out information and campaigning in order to fulfil their role and responsibility. The topic is (still) seen as complicated and difficult.

Further, women victims rarely seek protection and advice in case of sexual harassment and violence. Even though the law protects a victim against any disadvantage resulting from her appeal/complaint, women often fear that they might have negative consequences on their professional career and their professional 'reputation' and perspectives. A woman complaining, fears being accused by the employer or colleagues as being (co)-responsible by provoking the situation. As long as a company does not proactively tackle the issue with campaigns and intelligent communication, the topic remains 'taboo'.

3.7 Recommendations from unions

- Gender experts in the trade unions are aware of the fact that the issue of gender-based violence and sexual harassment are not yet sufficiently tackled by employers or unions. Some women in the unions recommended that the ETUC and/or EU could have a role in creating a new dynamic and give more input and even obligations on the issue. They hope the ongoing initiatives of ETUC and this comparative study will inspire, show good practices and give new ideas.
- Innovative awareness raising training or information modules for union representatives, employers and employees focusing for instance on the impact of violence (domestic and workplace linked) on health, economic consequences (absences) for companies, are seen as useful.
- A study with a concrete evaluation of national specific good practices which could serve as credible, convincing "models" in negotiations with companies are also suggested.
- A better and stronger cooperation between unions, NGOs and employers is needed on the issue and there is also a need for a cultural change in the workplace so that it becomes easier and less threatening for victims to make an internal complaint to the works council or the management of the company. In order to reach this cultural change, companies must understand that a pro-active policy creates a "win-win" situation for both sides, victims and companies (more effective workforce, identification, image, sane work atmosphere).
- Others priorities identified include the impact of digitalization on women in the workplace and women's career development.

4. Domestic violence at work

4.1 Overview

Germany has signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). A reform of German sexual penal law was adopted by the German Bundestag with a large majority (601 votes, with none against and only a handful of abstentions) on 7th July 2016. This reform opens the way for the ratification process of the Istanbul convention. However, the convention does not apply to employers and therefore does not create direct obligations or new responsibilities.

German Labour Law obliges employers of all sizes to create a working environment free of danger for health, life and property of its employees. Further, there is an obligation to protect and inform employees of any risks linked to their work and prevent any violations of the rights

of employees.¹⁹ It is a question of interpretation, how far these obligations to protect may be interpreted ('Fürsorgepflichten, §§617-619 German Civil Code/ BGB).

A few employers such as the Local Administration in Berlin have identified obligations to protect and support employees also against domestic violence. So far there is no jurisprudence or regulation on the issue.

German penal law obliges the employer to intervene and to help any person in an appropriate way in case of an immediate and acute threat of his/her life.²⁰

After a period of at least six weeks of absence for health reasons, maternity or other reasons in a year, employers have the obligation to conduct a re-integration interview with the employee.²¹ The internal re-integration management aims to find solutions and support to facilitate and help the employer and employee if necessary. These appointments could also be used to detect if the woman is a victim of domestic violence. There are only a few workplace policies (The Body Shop, Bezirksamt Friedrichshain) explicitly including the topic, that were in the interviews.

In 2002 Germany adopted in 2002 the violence protection Act (GewSchG) which can provide the victim under certain conditions a quick and efficient protection against domestic violence by the family/civil courts. It does not foresee employers' obligations or responsibilities but can oblige the presumed perpetrator to abstain from the victims' workplace.

4.2 Data and evidence

Data from union surveys or reports is not available since the topic has not yet been set on union agendas.

The first official national survey on domestic violence was carried out 2004.²² It showed that 25% of women in Germany, one in four, experienced domestic violence at least once in their lifetime (physical, sexual, economic, psychological, emotional, social) committed by former or actual partner. 40% of women have experienced physical or sexual violence; 42 % of women have experienced psychological violence.

- 25% of women in Germany have experienced sexual or physical violence at least once since their 16th birthday,²³
- Women having split or divorced from their partner are most exposed to violence.
- Depending on the form of violence they have experienced, 56%-80% of the women have psychological consequences (sleep problems, depression, fears)
- Every year, 45 000 women look for a shelter in 435 women houses all over the country.
- In 2014, in *Berlin*, 15 254 cases of domestic violence have been registered by the Police. 2.277 women and children found shelter in special women protection houses and apartments.²⁴
- The economic costs of domestic violence in Germany are estimated at about 14,8

¹⁹ §§ 241 Sect. 2, 617 ff. BGB (German Civil Code).

²⁰ §323c StGB, Unterlassene Hilfeleistung (non assistance of a person in danger).

²¹ § 84, Abs. 2, ninth social law code (Sozialgesetzbuch)

²² Bundesministerium für Familien, Senioren, Frauen und Jugend (Hg.): Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland.

^{23,24} Wieners, Helbrendt and others, 'Häusliche Gewalt in Partnerschaften', p. 67, 2012

²⁴ <https://www.berlin.de/sen/frauen/keine-gewalt/haeusliche-gewalt/artikel.20187.php>

Billion Euro per year,²⁵ including the costs of justice, police, medical care, and costs for their absence at the workplace.

- 37% of victims of the physical and 47 % of sexual violence did not speak about their experiences at all. Figures are even higher when women are still in a relationship with the perpetrator.

4.3 Employer initiatives on a voluntary basis

Since 2007 several national and international companies and local administrations have created workplace policies, and have shared their positive experiences on the issues in publications and in conferences. These organisations are also in a large majority woman. These company initiatives stem from the employers' obligation to prevent and protect against any threat of life and health; and on economic ground recognise that the earlier a woman is protected against domestic violence, the better is also in terms of protection of her health and integrity, her presence at work and her work performance.

4.4 The role of unions in addressing domestic violence at work

As mentioned above, there is no legal obligation for trade unions to conclude agreements on domestic violence at work in Germany.

German trade unions are not actively tackling the impact of domestic violence at the workplace. There is so far no official initiative or common existing position but among the unions (DGB, Ver.di, VEG and others) there appears to be consensus that the issue does not belong directly to the employer's/unions responsibility or sphere. It is seen as an important, challenging but 'private problem' which should be dealt with by external competent public services, in health, help/advice boards and NGO's. Unions recognise that there are *potential risks* for the women who expose their situation and their fragility to the employer and the implication and information of employers therefore seen to be counter-productive. Most unions fear that the women may be directly or indirectly discriminated by the employer or her manager because of their specific knowledge of the situation she is facing. The protection of the employee and the need for confidentiality of her privacy are mentioned as obstacles to setting the issue on union agendas.

There appear to be no guidelines or awareness raising of the role unions can play on this topic. The interviews showed that if an employee and victim of domestic violence actively seeks help and support from trade union representatives, they would try to give assistance in an informal way, for example, by advising a woman to seek help from company social services or assistance if this exists, or to seek help from a specialist NGO or health service.

Larger companies have instituted, in the last 5-10 years, external or internal confidential social advice services or confidential telephone hotlines. Psychologists or social workers respond to all kinds of social problems (financial, divorce, addiction, care or child care problems etc.) employees might face in their private or professional sphere. These services do not officially mention domestic violence or sexual harassment at work as a motive to contact them, but would, in the opinion of trade unions also give support and help within the limits of their competencies.

In conclusion, it appears that women trade union representatives do not see the necessity to tackle the issue from the union or employers point of view since sufficient and very competent actors, including specialist NGO's and help services exist in Germany.

²⁵ Survey of the Social Ministry of Niedersachsen, vgl. BT-Drs. 14/849, S. 3.

A German Union representative referred to the European Transport Federation, which is currently drawing up a three-hour training kit on violence against women for its members and their employees in the transport sector. This training kit will be presented to its affiliates in autumn 2016 and will be available on the national level from 2017/2018 onwards. This was seen as a positive initiative.

4.5 Collective agreements and workplace policies

There are very few examples, including of union participation, in developing workplace policies or agreements on domestic violence at work.

In 2007, the German NGO Terre des Femmes was the first organisation to be active in promoting the first workplace policies in companies based in Germany.

In November 2007, Friedrich Ebert Foundation and Terre des Femmes organised a joint conference on the issue in Berlin,²⁶ and a second conference was held in 2009. Since 2007, the Berlin Senate Administration (department of equality and gender) has been involved in the development of workplace policies.²⁷

A list of employers²⁸ providing workplace policies is published on the website of Terre des Femmes, the large majority of these employers belong to the public sector, very often City administrations.

The Berlin Senate has collaborated since 2007 with the local administration of 'Charlottenburg-Wilmersdorf' and 'Reinickendorf', and the working group of official women representatives and the NGO 'BIG',²⁹ on the transposition and introduction of work-life balance policies. The Body Shop, district exchanges of Charlottenburg/Wilmersdorf and Reinickendorf, and the headquarters of the health insurance company Barmer GEK Berlin, have established workplace policies.

The following are good practice examples:

a. The District exchange of Berlin Reinickendorf adopted in 2011 with the staff council a binding agreement ('Dienstvereinbarung') on the topic called 'NO to 'domestic violence', courage for a confidential conversation at the workplace'

This agreement foresees concrete measures such as the blocking of phone calls, protecting of information on the phone number or addresses of employees, professional dislocation, flexible working hours (to help the victim in finding a new apartment, schools for kids etc.), psychological advice, contacts to competent NGO's such as 'Terre des Femmes' or 'BIG.eV.' and the exercise of its 'domestic authority' (Hausrecht) in order to guarantee the physical and psychological protection at the workplace. The Management level has a special role in detecting and supporting a potential victim of domestic violence and therefore attends training sessions on the topic integrated in management training programs.³⁰

²⁶ <http://library.fes.de/pdf-files/do/05378.pdf>

²⁷ <https://www.berlin.de/sen/frauen/keine-gewalt/institutionen-gegen-gewalt/artikel.22036.php>

²⁸ Arnold Verladestysteme ; BarmerGEK, Regionalstelle Berlin ; Bezirksamt Charlottenburg-Wilmersdorf (Berlin) ; Bezirksamt Reinickendorf (Berlin) ; Bezirksamt Pankow (Berlin)
Gerhard Rösch GmbH ; Landkreis Peine ; Region Hannover ; Stadt Buchholz ; Stadt Mainz ; Stadt Oranienburg ; Stadt Wolfsburg ; Senatsverwaltung für Arbeit, Integration und Frauen (Berlin) ; The Body Shop

²⁹ Berliner Initiative gegen Gewalt an Frauen <http://www.big-berlin.info>

³⁰ <https://www.frauenrechte.de/online/images/downloads/hgewalt/workplace/Beispiel-WPP-Vereinbarung.pdf>

b. 'The Body Shop' published a 'model' of its workplace policy.³¹ After an introduction about the reason for the policy, the programme is detailed in ten chapters:

1. Definition of domestic violence and intention to ban any sort of violence at the workplace
2. Confidentiality
3. The right to privacy (if the employee does not want any support, The Body Shop assures respect of her choice and discretion);
4. Anti- discrimination
5. What can be done if the employee does not come to work because of domestic violence?
6. Protection at work (modification of working hours and switch of the office if necessary)
7. Distribution of support and communication lists
8. Support of employees by management, social services, medicines, advice boards, unions...)
9. Training for management on adequate reaction
10. Awareness raising of all employees by communication and publication of workplace policies

Besides this workplace policy, The Body Shop has run a parallel public campaign for its clients and employees on the destructive effects of domestic violence on children and especially girls. Further, different cosmetic articles and other items with the inscription 'Stop Violence in the Home' were produced, and a part of the profit was given to NGO's such as Terre des Femmes.

c. Charité University Clinics has set the draft of a workplace policy on its agenda. So far, there is no official policy but from 2010-2012, staff were trained on domestic violence and the detection of it.

The internal medical service included domestic in its 'check list' when examining a new employee. Further, Charity created the position of a nominated person for the protection against violence ('Gewaltschutzbeauftragte'). The nominated person also coordinates the first medical service on the protection against violence (Gewaltschutzambulanz)³² situated in Charité since 2014.

Evaluation of workplace policies

The first evaluation on the efficiency of these very first workplace policies in Germany was carried out in 2010.³³ It shows that workplace policies are important instruments to tackle domestic violence efficiently:

- More than 80% of the interviewed persons in the institutions knew about the existence of workplace policies;
- 85% believed that it is an efficient instrument to help victims;
- More than 80% think that domestic violence is not a 'private problem'.
- 30,1% of the interviewed women have already been at least once victim of domestic

³¹ p. 64 « Schritt für Schritt gegen häusliche Gewalt », Terre des Femmes e.V. /Senatsverwaltung für Arbeit, Integration und Frauen, 2012 : <https://www.frauenrechte.de/online/index.php/tdf-online-shop/product/176-schritt-fuer-schritt-gegen-haeusliche-gewalt>

³² <https://gewaltschutz-ambulanz.charite.de>

³³ Die Daten wurden zwischen September 2009 und January 2010 erhoben. Die Perspektive von Expertinnen und Experten sowie Führungskräfte wurde durch qualitative Interview-Leitfäden erfasst, die Einschätzung der Mitarbeiterinnen und Mitarbeiter mittels quantitativer anonymer Fragebögen erhoben. Die Studie steht zum Download bereit unter http://frauenrechte.de/online/images/downloads/hgewalt/workplace/TDF_Workplace-Policy.pdf

- violence.
- For the management level, efficient measures such as training, communication and clear guidelines helped to identify victims and to give concrete aid and support.

Employers describe the outcome as a 'win-win' situation; it efficiently helps women to get out of the cycle of violence and contributes to a positive workplace atmosphere. It fulfils in a concrete way employer's health and safety prevention responsibilities and shows that the employer 'takes care' of its employees.

4.6 Union awareness raising, campaigns and training programmes

As mentioned before, the Unions in general welcome the initiatives undertaken so far by companies,³⁴ but are reluctant to address the issue as a priority. As a consequence, no union action, campaign or training programme deals officially with the topic. Unions are interested and follow developments on the international and European level; also they participated in the first conference on domestic violence run by Friedrich Ebert Foundation and Terre des Femmes in 2007.

4.7 Links and cooperation with civil society and women's organisations

Terre des Femmes e.V. is since 2007 the NGO in Germany coordinating and impulsing initiatives of workplace policies in the field of domestic violence. On its website,³⁵ information on all ongoing and past projects, partners, conferences and best practices are published. It is the main NGO reference for employers, willing to develop and experience workplace policies in Germany.

BIG eV³⁶ (Berlin Initiative against violence towards women), created in 1993 in Berlin aims to combat domestic violence and to help victims in three ways. *a) Coordination:* BIG Koordination examines, develops and optimizes strategies and establishes cooperation in order to improve the protection of women and their children from domestic violence and to hold perpetrators accountable. *b) Prevention:* it offers preventive education programs on domestic violence at no charge for children and teens, their parents and all those working at schools. *c) BIG Hotline:* is the first point of call for women experiencing domestic violence and/or their support network. Help, support, information or professional guidance is given via an anonymous call at 030 - 611 03 00, the official German stop-violence hotline.

Deutscher Frauenrat (National Council of German Women's Organizations) is an umbrella organization of more than 50 nation-wide women's associations and organizations. Frauenrat is a lobby group with the mission to bring forward equal opportunities, non discrimination and to protect women in need. The fight against gender based violence is a very important topic. Frauenrat contributed to the reform of the recent penal law reform with regard to rape and sexual aggression.

Deutscher Juristinnenbund (DJB)³⁷ is The German Women Lawyers Association. This NGO was re-established by very committed women lawyers in 1948. It considers itself successor of the German Women Lawyers Society (Deutscher Juristinnen-Verein) founded in 1914, which was forced to disband when Hitler assumed power in 1933. It has approximately 3000 members (lawyers and economics) and works in five thematic commissions. Gender based

³⁴ see the comment in the FES documentation on Unions intervention.

³⁵ <http://www.frauenrechte.de/online/index.php/themen-und-aktionen/haeusliche-und-sexualisierte-gewalt/unser-engagement/workplace-policy>

³⁶ <http://www.big-berlin.info/node/269>

³⁷ <https://www.djb.de/verein/german-women-lawyers-association/>

violence in and outside the workplace is a core issue and experts actively contributed to the recent penal law reform on the definition of rape and sexual assault. Unions and these NGOs know each other very well, but do not (yet) cooperate on the topic of gender based violence and domestic violence.

4.8 Challenges faced by unions

The main challenges identified by unions include:

- Scepticism: there no consensus on whether or not it is helpful for women to have workplace policies or even an additional risk (to lose career perspectives or to be kicked out).
- The missing cooperation between unions/NGOs on the issue;
- The number of other important gender topics on their agenda (equal pay, maternity, discrimination, part time) and no political or strategic decision to handle the topic.

4.9 Recommendations from unions

- Some Union representatives would like to see European initiatives on the issue and recommended more information and the sharing of effective good practices, as well as common legal standards, on the basis that German initiatives and prevention politics are not efficient enough.
- Further, they deplore the actual legal situation. Under German law it is not possible for a union to act on behalf of the victim in the interest of a general interest (collective action); women employees have less trust in the legal system and there is limited jurisprudence on the responsibility of employers to prevent and sanction sexual harassment at the workplace.
- More needs to be done to implement training and awareness raising campaigns, including with a focus on domestic violence in the workplace, in companies and in unions themselves.
- Women NGO such as Terre des Femmes recommend that the EU and ETUC be more active in disseminating information about the economic and human gains for pro-active companies. This could include incentives or awards for good practice and initiatives at the national or EU level.
- Up-to-date evaluation on good practices, as well as surveys and data collection, is also needed.
- For DJB, the existing law has to be applied efficiently and legal action strengthened (introduction of a collective/class action besides the individual action and a prolongation of the delay to file a claim).³⁸ In the private sphere, it is recommended that innovative workplace polices should to be better promoted.
- Others unions identified other priorities of addressing the impact of digitalization on women workers, equal pay and women's career development, and to concentrate their efforts on these topics.

³⁸ DJB (German Womens Lawyers Association), August 2016, press release 10 years of Antidiscrimination Law (AGG). Available at: <https://www.djb.de/Kom/K1/pm16-21/>