

COMPARATIVE STUDY OF THE PSYCHOSOCIAL RISKS PREVENTION ENFORCEMENT BY THE EUROPEAN LABOUR INSPECTORATES

Manuel Velázquez

Labour and Social Security Inspector

ABSTRACT

This study examines the action programme of the SLIC for the European campaign of inspection on psychosocial risks and the concepts of psychosocial risks used in the campaign. Secondly, It is analysed the impact of the Labour Inspection actions in the law enforcement on psychosocial risks together with other factors that also determine the enforcement such as the legislation in force, the trade union pressure, the social pressure and the own interest of the companies, doing a comparative study of the guides of inspection on this matter approved by the authorities from the United Kingdom, Austria, Italy, France and Spain. It is concluded that the common matter for all the inspectorates is the proactive law enforcement of the psychosocial risk management, that legislation emanated from the Framework Directive 89/391 is directly applicable to the management of these risks and that there is a basic consensus on certain principles of management on psychosocial risks in all guides reviewed.

RESUMEN

En este estudio se analizan las acciones programadas desde el SLIC para la campaña europea de inspección sobre riesgos psicosociales haciendo un primer análisis de los conceptos de riesgo psicosocial que se utilizan en la campaña. Se examina después el impacto de las acciones de la inspección de trabajo en el control de la aplicación de los riesgos psicosociales junto con otros factores que también determinan dicha aplicación como son la legislación vigente, la presión sindical, la presión social y el propio interés de las empresas. A continuación, se hace un estudio comparado de las guías de inspección sobre esta materia aprobadas por las autoridades de Reino Unido, Austria, Italia, Francia y España. Se concluye que el ámbito común de todas las inspecciones es la vigilancia proactiva de la gestión de riesgos psicosociales, que la legislación que emana de la Directiva Marco 89/391 es de aplicación directa a la gestión de estos riesgos y que hay un consenso básico en torno a algunos principios de gestión de los riesgos psicosociales en todas las guías examinadas.

SYNTHÈSE

Dans cette étude il s'agit d'analyser les actions programmées par le SLIC dans le cadre de la campagne européenne d'inspection sur les risques psychosociaux au travail et les concepts sur les risques psychosociaux que sont utilisées dans la campagne. Ensuite, il s'agit d'analyser, l'impact des actions de l'Inspection du Travail dans le contrôle de l'application la prévention des risques psychosociaux et d'autres facteurs qui déterminent aussi cette application comme la législation en vigueur, la pression syndicale, la pression sociale et le propre intérêt des entreprises. On fait aussi une étude comparée des guides d'inspection adoptés par les autorités du Royaume-Uni, de l'Autriche, de l'Italie, de la France et de l'Espagne. A travers cette étude, on perçoit les points communs de toutes les inspections et la surveillance proactive de la gestion des risques psychosociaux, mais également la législation qui dérive de la Directive-Cadre 89/391 du 12 juin 1989 et qui s'applique directement à la gestion de ces risques. Il s'agit de montrer qu'il existe un consensus de base autour de quelques principes de gestion des risques psychosociaux au sein de tous les guides examinées.

1. THE EUROPEAN CAMPAIGN OF THE SLIC ON PSYCHOSOCIAL RISKS

Throughout the year 2012 the most of European labour inspectorates which are SLIC members has been developing a campaign about psychosocial risks in the workplace.

The SLIC is the European Senior Inspectors Committee and all its members have in common the competence of law enforcement on occupational safety and health (OSH). This is their point in common, but the nature of the inspectorates in each country varies considerably.

In general terms, the inspectorates could be classified in those which are only competent in occupational health and safety, those competent in health and safety in general, covering also non-labour aspects, and the so-called generalist inspectorates, which cover all the labour conditions and not only occupational health and safety matters.

There is not an inspectorate model per each European State given the fact that in some of them, such as Italy, some of these models coexist simultaneously and in other countries such as Germany the officers of the Insurance Mutuality for work-related accidents (Berufgenossenschaften) can act as well as inspectors together with the inspectorates of the Federate States or Länder.

There is not either an absolute agreement among the States about the scope of the occupational health and safety given the fact that there are bordering issues susceptible of being considered in or out of this legislation in each State. Working time and violence at work are, in particular, two clear examples of issues which could be considered as occupational health and safety or as labour law rights, or as both together, depending on each Member State. This circumstance, as we will see later, is going to be relevant in the course of the European campaign.

The SLIC has been organising inspection campaigns for all of its members over a decade. In this occasion, the psychosocial risks campaign is being led by the Swedish inspectorate and to carry out it a series of guides and brochures have been disclosed and are available on Internet in the website of the Swedish Labour Environmental Authority¹.

Moreover some European labour inspectorates have also approved specific guidelines about their actions in psychosocial risks, some of them before the campaign. In this report we are going to make a comparative study of some of those guides or guidelines, in particular those ones approved by the authorities of the United Kingdom², France³, Italy⁴, Austria⁵ and Spain⁶.

¹ The website is <http://www.av.se/slic2012>

² "HSE, Topic inspection pack, work related stress, september 2009" available at: <http://www.hse.gov.uk/foi/internalops/fod/inspect/stress.pdf>

This campaign is a good opportunity to analyse and compare the real practice in the European States about the application of the Framework Directive 89/391 on psychosocial risks and to discuss about the standards which should be applied for its management. Approving binding standards for all the stakeholders could only be possible by a Directive and this prospect is not currently considered. However, we can verify some common criteria in the practice of the Inspectorates and this one will be the aim of this study.

2. THE DISCUSSION ABOUT THE SCOPE OF THE PSYCHOSOCIAL RISKS

The first controversial issue is about the scope of psychosocial risks concept.

The campaign has adopted the concept given by the European Agency for Occupational Health and Safety: “psychosocial risks are understood to be those aspects of the design, organization and management of work, and its social and environmental context, which can cause psychological, social or physical harm”⁷

However, as we are going to analyse below, this definition is not explanatory enough in order to define accurately these risks.

2.1. Stress and violence in the workplace

The definitions and concepts that the Bilbao Agency and the most of the European scientific literature are handling, have interpreted that psychosocial risks mainly involve stress and violence in the workplace.

There are three European social agreements between business and union organizations that have also contributed to establish this idea. These instruments are the Framework Agreement on Work-related Stress (2004), the Framework Agreement

³ The guide isn't available on the Internet. The document “l'approche des pouvoirs publics en matière de risques psychosociaux” can be found in <http://www.travailermieux.gouv.fr/IMG/pdf/editopsya.pdf>

⁴ The circular letter of the Italian Ministry of Employment about stress is available at: http://www.lavoro.gov.it/NR/rdonlyres/1C0B1EF9-60B8-489C-8667-9DFEA8D63F35/0/20101118_LC.pdf and the instructions for its correct management: <http://www.ciip-consulta.it/attachement/documento.pdf>

⁵ “Evaluation of risk assessment of mental job strain in control and advisory activities - Guidelines for the Inspectorates”, available in English at: http://www.av.se/dokument/inenglish/European_Work/Slic%202012/Austrian_tool.pdf

⁶ Guidelines of the Labour and Social Security Inspectorate on psychosocial risks, available at: http://www.empleo.gob.es/itss/web/Atencion_al_Ciudadano/Normativa_y_Documentacion/Documentacion/Documentacion_ITSS/001/Guia_psicosociales.pdf. A summary in English is available in: http://www.av.se/dokument/inenglish/European_Work/Slic%202012/GUIDELINES_LSSI_SPAIN.pdf

⁷ T. Cox and E. Rial-Gonzalez, ‘Work-related stress: the European picture’, European Agency for Safety and Health at Work Magazine, No 5, 2002, pp. 4–6. <http://osha.europa.eu/publications/magazine/5>

on Violence and Harassment at Work (2007) and the Multisectoral Guidelines to tackle Third-party Violence and Harassment (2010).

The legal value of these agreements is very vague since they are not binding in the European or National legislation, nor have the legal force that some collective agreements hold in some national legislation. They are just “gentlemen agreements”, designed with a promotional purpose rather than a regulatory one, since their content is ambiguous and unclear.

In any case, these agreements have not supposed an useless effort since its content has been incorporated at least once as a reference in a National preventive legislation, just as it has happened in the Legislative Decree 81/2008 of Italy concerning the Work-related Stress Agreement. In other cases, these agreements have been useful to establish guidelines for the regulatory authorities, such as it has occurred in Spain with the guidelines dictated by the Labour and Social Security Inspectorate about harassment and violence⁸ and by some Courts’ judgements. In this campaign these agreements have also acquired an important value, since they are the only reference at a European level regarding psychosocial risks and they reflect a European social consensus in these matters.

The problem is that these agreements do not have either some coherent and unitary principles. The Work-related Stress Agreement clearly fits into the Framework Directive 89/391 on occupational safety and health at work, as it is specifically mentioned in its fifth section.

On the other hand, the Violence and Harassment agreement (2007) only recognizes in an ambiguous way, through a simple footnote, its interdisciplinary nature since violence and harassment not only affect the occupational health and safety directives but also those relating to equal treatment. However, the basic preventive action principles of Article 5 and 6 of the Framework Directive 89/391/EEC are not mentioned in its fourth section and it is only laid down a specific reference to the disputes management procedures on harassment.

However, the Multisectoral Guidelines (2010) openly recognize the multi-disciplinary and multi-offensive nature of the violent behaviours, since it is mentioned not only the labour rights to dignity and equal treatment but also the need to assess the health and safety risks derived from third-party violence and harassment.

The way to tackle this conceptual dispersion is different in each country. On the one hand, it would not be a problem for the inspectorates so called generalist, such as the French and the Spanish ones, which cover not only the protection of occupational

⁸ Guidelines or “Technical Criteria” of the Spanish Labour Inspectorate No 69/2009 and 87/2011 about violence and harassment and robbery risk at work, respectively.

health and safety, but also the protection of the employees' rights, like dignity and equal treatment.

There is not any problem either for the inspectorates from Belgium, Finland and Sweden, where violence in the workplace is specifically included into the occupational health and safety legislation.

However, with regard to other countries like the United Kingdom, it is considered that violence and harassment issues are out of OSH legislation and therefore the intervention of its health and safety inspectorate (HSE) should be limited to stress prevention⁹.

In any case, stress and violence are concepts that are interacting continuously and have a wide field in common. The stress agreement points out in its second section that violence and harassment are potential factors of stress and the fourth section states that the exposure to abusive behaviours is one of the variables that must be analysed in the situations relating to stress.

On the other hand, the factors that cause stress are also, although in different grade and proportion, factors that cause violence in the workplace. It would not be useful or effective to carry out, unless a needless risk of repetition, a separated evaluation of the factors which cause stress and cause violence.

Only the external or third-party violence prevention can have important differences in the preventive management when it turns up in an exceptional way and does not take part of the usual and ordinary risks of the employees when they are dealing with clients or users.

It exists, therefore, a common and wide enough field for all the European Labour Inspectorates regarding to violence and stress prevention as long as they are referring to purely preventive and proactive actions of the psychosocial risks evaluation and the adoption of measures that tend to remove or reduce the risk factors that they originate.

The main difference in the violence and stress management is found in the ways of intervention, either when violence situations are detected in the risks assessment or in the so-called reactive actions, which are those ones derived from a complaint of the employees or an investigation of a work-related accident or illness.

With regard to the reactive actions, one of the issues which have been pointed out by the generalist inspectorates, such as those from France and Spain, is that the most of the complaints submitted in this matter are about harassment or violence in different grades and types, and there aren't barely any complaints about work-related stress. In

⁹ "HSE, Topic Inspection Pack ..." page 5-6

conclusion, the most of the reactive inspection actions are due to violence and harassment behaviours and the inspections on work-related stress are mainly proactive.

In the management of the reactive actions the different models of inspection come out again. In the generalist inspectorates, inspectors carry out a multidisciplinary action. On the one hand, they deal with the alleged violation of the employees' rights such as dignity or equal treatment, and on the other hand, with the management of the preventive measures demanded to the employer in order to prevent such behaviours, restoring the health of the affected employees and avoiding similar situations in the future.

The safety and health inspectorates whose OSH legislation also covers violence, can also act in a reactive way but only inside the frame of that legislation.

Lastly, the safety and health inspectorates whose legislation considers that violence is included into the labour law rules, should avoid acting in this matter. It is clearly pointed out in this manner by the British Inspectorate (HSE) when their reactive inspection actions regarding to stress related complaints are restricted to those cases where there is an evidence that an important number of employees are being affected and can proceed to an intervention at organizational level, but the inspectors must not investigate individual stress complaints, since in these cases it is difficult to prove a causal connection with the factors that cause stress "beyond any reasonable doubt"¹⁰.

The SLIC European campaign is based, however, on purely preventive and proactive (not reactive) actions in companies from certain sectors which are considered especially exposed to psychosocial risks. Therefore, this is the field that can be considered as common to all European labour inspectorates.

2.2. The involvement of the working time

Another bordering issue is relating to working time. Working time takes part in the labour law since its origin in most of the European countries. The employee's wage is usually measured in worked hours and the length of the working day is in the core of the disputes and conflicts between employers and employees at sector or company level. The gain of more incomes is also the best incentive to overtime and, the clearer the relationship between working time and wage, the higher the employee's trend to make the higher number of working hours as possible.

However, since the approval of the Directive 93/104, replaced by the current Directive 88/2003, and the judgment of the European Court of Justice in 12th November 1996 (C-84/94 United Kingdom v. Council), working time is also considered as a part of the

¹⁰ "HSE, Topic inspection pack ... " page 5.

basic content of the occupational safety and health legislation at European level and in the national legislation of the EU members.

The relationship between working time and safety and health presents, at least, three possible courses:

On the one hand, there are the employee's health damages caused by the amount of work demand, either because of the excessive number of working hours without a pause, or because of the absolute lack of rest break, particularly in intense jobs which must be done within a narrow period of time.

Secondly, these health damages could be the consequence of a schedule arrangement that does not let the employee to rest properly and can cause sleeping disorders, as it usually happens in night and shift works.

Lastly, another factor of health risk can be found in the work-life balance such as in the so-called double presence (job and other homely activities).

The consequences of the exposure to these risks can be not only stress but also the fatigue or tiredness associated with the organization of the working time. All the national guides of the European campaign examine the risk factors related to the working time and the assessment methods for psychosocial risks also include this matter. For that reason, the Spanish inspection guide has also included the fatigue caused by the working time schedule as a psychosocial risk.

2.3. The interaction with other risks

Moreover the previous considerations, we should take into account that safety and health are not organized by blocked disciplines and the interaction among different types of risks is frequent and usual.

The first interaction is relating to psychosocial risks and the safety conditions in the workplace, since there are a lot of studies which show that one of the most common causes of accidents in the workplace lays on work organization¹¹. Factors such as the inadequate distribution of tasks, bad communications between employees, the workers' fatigue or tiredness or the lack of control on the work process are common

¹¹ Among others, in Spain it can be looked up "Análisis cualitativo de la mortalidad por accidentes de trabajo en España 2005 – 2007" INSHT, where it can be seen that the defined material conditions in the workplace are only a recurrent cause in 45.46% of the studied accidents and that the most common and recurring cause of accidents (95.46%) lays in the organization of work. The INSHT report in 2009, using other parameters, concludes that the prevention management resources is a cause in 65.2% of the accidents, the work organization affects to 55.3% and individual factors are a cause in 35.2% of the accidents. Available at:

<http://www.oect.es/Observatorio/Contenidos/InformesPropios/Desarrollados/Ficheros/mortalidad2009.pdf>

causes of work-related accidents and at the same time psychosocial risks factors. As a matter of fact, there is not a real division between material conditions, social relationships and people's behaviour when we analyse the reasons of the work-related accidents.

Moreover the psychosocial risks assessment can contribute sometimes in a better way than others to identify the hazards for the prevention of work-related accidents. A recent experience in the Inspectorate of Bilbao (Biscay) from 2008 to 2011 showed that one way to intervene in companies with a high rate of minor accidents caused by alleged unsafe behaviours of the employees was through a good management of psychosocial risks in factors such as support, demand, control, role and communications.

On the other hand, it is also known the relationship between stress and physical and mental disorders caused by the exposure to physical agents such as noise and vibrations or chemical and biological agents.

In the same manner, a frequent relationship between work-related stress and musculoskeletal disorders has been also observed.

Lastly, although stress, violence and fatigue are not properly considered as illnesses, they can be the immediate cause of physical, psychological and behaviour disorders. The relationship between these risks and mental health is more obvious than in others. Even so, given the multi-causal nature of these illnesses, most of the European countries do not admit them in their professional illnesses lists.

Consequently, it is not efficient to separate or disentangle psychosocial risks from other occupational hazards and a possible rollback of the stakeholders to the preferential treatment of the so-called traditional hazards (falls, noise, chemicals, etc.) should not entail the exclusion of psychosocial risk factors in the risks management.

3. FACTORS THAT AFFECT THE EFFECTIVE APPLICATION OF RISK PREVENTION RULES IN THE WORKPLACE

Since their origin, the main role of labour inspectorates is to ensure the effective enforcement of laws relating to working conditions¹² and currently there is a low level of compliance of prevention rules with regard to psychosocial risks management at European level.

¹² Pointed out by the Article 2.1 of the Agreement n°81 OIT, an instrument ratified by all the countries that belong to the European Union and that constitutes their only common standard relating to inspections roles and competences.

This has been highlighted by the ESENER survey¹³, conducted in 2009 by the European Agency for Safety and Health at Work among employers of companies with over 10 employees from 27 European countries, and so it can be directly observed in the selected survey data of the Figure No 1¹⁴, although there are notable differences between several countries.

Figure No 1: Presence of procedures which cope with general prevention risks and psychosocial risks in companies

Countries	RISKS ASSESSMENT	PROCEDURES TO DEAL WITH BULLYING OR HARASSMENT	PROCEDURES TO DEAL WITH VIOLENCE	PROCEDURES TO DEAL WITH WORK-RELATED STRESS L
Belgium	93	65	50	32
France	65	20	22	15
Spain	95	18	18	18
Italy	99	10	8	20
United Kingdom	98	80	72	58
Germany	78	19	10	16
EU 27	88	30	26	26

However, as the survey also reflects, the pressure of the Labour Inspectorates is not the only factor that contributes to the fulfilment of the legal obligations related to prevention and not even the most important.

The ESENER survey deals with this matter by asking the polled employers about which were the factors that drove to the fulfilment of the risks prevention rules (LRP) in general and of the psychosocial risks management rules (R-Psy) in particular¹⁵. A selection of these selected data is provided in the Figure No 2.

¹³ The complete report in English can be downloaded in: http://osha.europa.eu/en/publications/reports/esener1_osh_management. A

¹⁴ ESENER Report, pages 26 and 44

¹⁵ ESENER Report, pages 53 and 57

Figure No 2: Reasons to carry out the psychosocial risks management

Pays	Fulfilment of legal obligation		Request from the employees or their reps		Client requirements or concerns about organisation reputation		Staff retention and absence management		Pressure from the Labour Inspectorate		Economic performance related reasons	
	PRT	R-Psy	PRT	R-Psy	PRT	R-Psy	PRT	R-Psy	PRT	R-Psy	PRT	R-Psy
Belgium	94	71	88	44	70	29	72	16	58	21	47	15
France	91	59	83	40	65	29	68	12	43	11	43	11
Spain	96	85	80	37	74	30	60	18	59	16	54	14
Italy	92	65	73	20	56	10	33	8	57	6	35	2
United Kingdom	95	71	66	33	70	23	47	13	50	16	39	13
Germany	90	53	77	42	64	22	62	19	80	22	59	11
EU 27	91	63	76	36	67	26	59	17	57	15	52	11

As it can be observed at a glance, the factors which drive to the application of the labour risks management in the enterprises are significantly inferior when it comes to psychosocial risks management. We are going to analyse these factors.

3.1. Psychosocial risks legislation

According to this survey, the main reason why the enterprises take care of the occupational health and safety is the fulfilment of legal obligations as it is pointed out by the 91% of the polled employers. However, this rate decreases to 63% when it comes to psychosocial risks.

When we deal with psychosocial risks we know in advance that there is not yet a specific European directive about this topic excepting the ones related to partial aspects such as harassment due to discriminatory reasons (Directives 2000/43 and 2002/73, among others) or other collateral aspects like the working time (Directive 2003/88).

Besides the already mentioned Directives, which have been transposed to every national legislation, some States have decided to legislate about psychosocial risks in the workplace, either in a general way like Norway, the Netherlands, Finland and Belgium, or in a more particular way relating to just a part of these risks, like the legal

reference to the European agreement about the work-related stress in Italy or the legislation about the “moral” or psychological harassment in the workplace in France.

Moreover these specific legislative actions, there is already occupational health and safety legislation in all the European countries. Its scope is general for the prevention to all risks and can be directly applied to psychosocial risks exposures without any specific legal rules.

It should be considered that the Directive Framework 89/391, and the national rules which transpose it, **must be applied to all to risks** in the present and in the future as it stated the judgment by the European Court of Justice the 15th November 2001, Commission v. Italy (Case C-49/00)¹⁶.

In most of the states it is necessary to apply directly the basic standards of the Framework Directive 89/391 and this presents a challenge for one of the main principles of the European OSH legislation such as its not prescriptive, finalist and process-based nature.

This principle entails that the measures which should be applied in each case are not the ones established in a predetermined way by a legal rule, as previously happened in the old OSH regulations, but those measures which can be considered the most adequate to risks prevention following up a management process that in some cases is going to need a previous evaluation or analysis of the risks by an expert. This finalist principle of the standards’ implementation should be applied to any kind of risk and psychosocial risks should follow up the same way.

In the inspection guides from Austria, France and Spain it is clearly expressed the basic principles on law enforcement which are those laid down in the Article 6 of the Framework Directive 89/391 and consist, basically, of the employer’s duty of applying the necessary measures in order to protect the security and health of the employees by following up the principles, among others, of avoiding risks and evaluating those which cannot be avoided, planning the prevention and cooperating with other companies in their implementation.

The application of these rules and principles should be direct and therefore there is no room for a formalist interpretation of the rule or a prescriptive application of the

¹⁶ This judgment literally points out: (12) *It must be noted, at the outset, that 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. (13) It should also be noted that **the occupational risks which are to be evaluated by employers are not fixed once and for all, but are continually changing in relation, particularly, to the progressive development of working conditions and scientific research concerning such risks.***

principles of the new legislation as it has usually happened in Spain. It should not, for example, be required the risks assessment in any circumstance and situation, this is only appropriate when the risk cannot be avoided or when it is necessary to decide which are the most adequate measures.

Furthermore, the rights to dignity, health or physical, psychic or moral integrity are stated, in one way or another, in all the European legislations and in the European Charter of Fundamental Rights.

Therefore, there is no legal loophole and it is not essential to legislate specifically about this matter, without prejudice of the advantages in legal certainty that would entail a specific legislation.

In any case, the existence of specific legislation about psychosocial risks does not seem to be a determinant factor in the application of measures by the States. The countries with a higher level of application according to the ESENER survey are Ireland and the United Kingdom, without any specific legislation in these matters.

Everything seems to point out that there are other factors that have more influence in the real practice of their management than the fact of having a specific legislation about psychosocial risks. For instance, the general certainty for the employers that the current legal rules, although they are general and abstract, can be applied to this kind of risks¹⁷.

With regard to this, in United Kingdom the HSE has approved, after a long public debate, the Stress Management Standards¹⁸, while in Ireland, some Codes of practice have been approved by the authorities about harassment¹⁹, clarifying the implementation of the current legal rules to this behaviour.

3.2. Employee's pressure

According to the ESENER survey, the second reason that drives to the implementation of the labour risks prevention rules is the complaint of the employees and their

¹⁷ An interesting study about the factors that affect the application of the laws is the one offered by the Justice Ministry of the Netherlands (Table of Eleven, a versatile tool)

http://www.sam.gov.lv/images/modules/items/PDF/item_618_NL_The_table_of_Eleven.pdf The first premise to the fulfilment is the knowledge and clarity of the legal standards.

¹⁸ "Stress Management Standards" can be found in <http://www.hse.gov.uk/stress/standards>

¹⁹ "Procedures for addressing bullying at the workplace" which can be found in <http://www.lrc.ie/documents/publications/codes/6Bullying.pdf>, the Code of practice for employers and employees on the prevention and resolution of bullying at work which can be found in http://www.hsa.ie/eng/Publications_and_Forms/Publications/Occupational_Health/CoP_Bullying.pdf and the Code of practice on sexual harassment and harassment at work which can be found in <http://www.equality.ie/Files/Code%20of%20Practice%20on%20Sexual%20Harassment%20and%20Harrasment.pdf>

representatives (76%). However, with regard to the psychosocial risks, this factor is only relevant for the 36% of the polled ones.

The survey also points out a positive correlation between the presence of the prevention delegates and the application of the preventive rules²⁰.

One of the best indicators of the union pressure is the removal of the aspects related to the psychosocial risks to negotiations and collective agreements. In the United Kingdom and France we have observed the formalization of agreements between employers and unions about these matters²¹ that are not a mere translation of the European agreements, as it has happened in Spain, but agreements with a clear added value.

The collective negotiation about psychosocial risks in Spain has barely surpassed the frame of the big enterprises' agreements and has a low presence in sectoral negotiations. Any typical aspects of the negotiation as the working time, the functional mobility and the supplementary payments for productivity have been not envisaged from the psychosocial risks prevention²² either.

In any case, when we examine union pressure it should be useful to make a distinction between different sectors as it has been done in the ESENER survey. It is considered that psychosocial risks are more important in the public health system and in social work (49%) while in construction they become less relevant (29%). These data has something to do with the employees' higher or lower awareness of these risks in each sector. However, there can also be other objective factors that explain this level of awareness like the low stability and the mobility which the employees of the last sector have to undergo.

It is necessary to bear in mind that the union pressure falls more into big enterprises than into the smaller ones in which usually exists less workers' representation. The ESENER survey also studies this issue and there's a graphic that shows how the psychosocial risks management increases with the size of the enterprise although the differences aren't so obvious²³. Furthermore, it is pointed out that in smaller enterprises the effect of the workers representatives' presence is deeper than in the ones that have a lack of them²⁴.

²⁰ ESENER. Summary of the four reports of secondary analysis, page 8
<http://osha.europa.eu/es/publications/reports/esenersumma>

²¹ A good example are the guidelines for violence and harassment prevention in the workplace ("Preventing workplace harassment and violence") agreed by employers and unions in the United Kingdom (available at http://www.workplaceharassment.org.uk/wp-content/uploads/2009/11/HRE_100_Guidance_report.pdf). In France, the agreement about stress adds its own contents to the European agreement (available at http://www.journal-officiel.gouv.fr/publications/bocc/pdf/2009/0002/CCO_20090002_0002_0020.pdf).

²² Journal of the Spanish Ministry of Employment and Social Security n° 98

²³ Figure n° 31 in the ESENER report, page 47

²⁴ ESENER Summary of the four reports of secondary analysis, page 8

3.3. Social pressure

The third factor that drives to the application of preventive measures is the clients' complaint or the enterprise's concern about their social reputation (67%). However, when it comes to psychosocial risks this factor is only relevant for the 26% of the polled ones.

The visibility of the psychosocial risks is remarkably lower when the psychical illnesses which derive from them don't usually have the legal consideration of accident or professional illness in the European States.

According to WHO data, mental illnesses are generally hidden, considering that a great part of them are not medically treated and their origin is multi-factorial or multi-causal²⁵. The current data about the effect of psychosocial risks in the employees' mental health is only provided by polls and surveys, not by official statistics²⁶.

However, there might be certain issues which can come out. In particular, some situations of psychosocial risk can affect more than one enterprise, especially when there are conflicts between employees of different enterprises sharing a common workplace, as it occurred in Spain in 2001, the first case of harassment or bullying that led to a great public debate.

Another factor is the administrative and judicial processes for harassment which normally have a wide effect on press and public opinion. The affected enterprises can be involved in this cause.

Lastly, another factor is the negative publicity caused by continuous suicidal episodes of the employees. This has been the case of France Telecom in France that has taken place to preventive actions in this matter at a national level by the French Parliament and the Government²⁷.

²⁵ Green Paper of the European Commission "Improving the Mental Health of the population. Towards the European strategy of mental health for the European Union", page 4 and appendix I. Available at http://ec.europa.eu/health/ph_determinants/life_style/mental/green_paper/mental_gp_en.pdf

²⁶ The surveys made to the EU workforce 2007 reveal that 27,9% (around 55,6 million) of the employees stated that they underwent exposures that affected their mental health and around 14% of the people with health problems related to the workplace suffer from stress, depression or anxiety as a main health disorder (ESENER. Summary of the four reports of secondary analysis, page 12).

²⁷ The details of this parliamentary debate can be followed in <http://www.senat.fr/dossier-legislatif/s95960391.html>

3.4. Employers' own interest

Another reason, unfortunately less relevant than the previous ones, is the employer's own interest in managing the prevention in an adequate way, either to decrease absenteeism in their employees (59%) or to improve their performance (52%). When it comes to psychosocial risks, the percentages of these answers are practically insignificant despite both issues should be the logic result of a good psychosocial risks management by the employer.

Only 17% of the employers think that this procedure is relevant in order to manage absenteeism and only 11% think it is useful for improving the performance. There is, therefore, a low level of employers' awareness about the usefulness of the psychosocial risks management which can be related, in some cases, to the lack of practice, especially in the countries where there is a lower level of implementation, or it can be related to the lack of efficiency or useful results of the psychosocial risks management already carried out.

The successful practice of the psychosocial risks management is not always ensured and requires the concurrence of some factors that are not always present, such as the technical training of the experts who carry it out, the enterprise's and employees' knowledge about their aims and that the situation's context suits an honest and open dialogue free of distorting elements between the partners such as labour disputes.

The ESENER survey also reveals which could be some of these barriers or obstacles. 53% of the polled ones state that it's a delicate issue, 50% talk about the unawareness, 49% about the lack of resources such as time, staff or money and another 49% about the lack of training in prevention experts²⁸.

3.5. Inspectors' pressure

Lastly, the ESENER survey's data also reveals which is the importance of the Inspection pressure as a factor that affects the fulfilment of the legal obligations in prevention. This is an influential factor for an average 57% of the polled ones but when it comes to psychosocial risks it is only relevant for a 16%.

This could mean that the level of inspection demands in this matter has been until this moment lower than in other risks. The European campaign is a good opportunity to improve this situation.

4. THE ROLE OF THE LABOUR INSPECTORS

As we have already pointed out, Labour Inspectors carry out the law enforcement by the companies. It is not their role to assess the risks or examine the quality and

²⁸ ESENER Report Page 59

technical correction of those assessments or the implemented measures, but only to verify their accordance with the law.

As we have seen, Europe has several inspectorate models and inspectors have different kinds of training, more general or specialized. However, the main difference in this campaign among the several ways of acting by the inspectors is not abided by any of these models but by the way and manner of carrying out the inspection visits.

Specifically, inspectors from Sweden, Denmark, Finland and the Netherlands carry out a survey among the employees of the enterprise using questionnaires to identify psychosocial risk factors in order to evaluate the management carried out by the enterprise, while the other inspections do not accept this practice, as they consider that it must be exclusive for the companies' experts or their prevention services. They only carry out a supervision of the preventive actions that have been done by the companies. This aspect has been pointed out with particular clarity by the Austrian inspection guide and it is also implicit in the guides from Italy, France, UK and Spain.

It is possible that the verifications of the inspectors in the first group of countries could be more incisive, but when it comes to practice it could be difficult to observe a difference between the inspectors' tasks and the psychosocial risks assessment that the company's experts must carry out. There might be confusion between the role of the experts hired by the company and the role inspectors whose only mission is enforcing legal standards.

There is an agreement, however, that the inspector must check the workplace holding interviews with the employer and the employees or their representatives about the psychosocial risks in the workplace and the inspector must make some observations about it²⁹.

The Austrian guide points out that the inspector must verify psychosocial risk "indicators" such as absenteeism, accident rate and the information obtained by the Inspector during the visit³⁰.

The questionnaire of the French Labour inspectorate lies down that the inspector should carry out previously a more general exam of the workplace conditions in the inspected company. Before focusing on the psychosocial risks management, the Inspector must make a prior review of the employment contracts, the working time, the physical environment of the workplace and the running of the occupational health and safety committees in the company, as possible indicators of psychosocial risks.

²⁹ Guide for the Inspectors by the European campaign, available in: http://www.av.se/dokument/inenglish/European_Work/Slic%202012/English_1.pdf and the validation list of stress in the workplace, available at:

http://www.av.se/dokument/inenglish/European_Work/Slic%202012/English_11.pdf

³⁰ Evaluation of risk assessment of mental job strain ... page 7

Meanwhile, the Spanish guide also raises the need for the inspector to carry out interviews with the employees or their representatives in order to establish the possible psychosocial risk factors in the workplace with a script of the interview in its first appendix³¹.

These interviews, however, cannot be put on the same level as a risk assessment since they are made with a clear law enforcement purpose and in particular to set evidence that can give enough certainty to the inspection actions of requirement or punishment in the case of a breach by the company of its legal requirements, especially in those cases where the company denies the alleged existence of such kind of risks in the workplace.

5. COMMON PRINCIPLES IN THE PSYCHOSOCIAL RISKS MANAGEMENT PROCESS

Most of the inspection guides are focused on psychosocial risks and in some cases are only focused on stress, such as it happens in the guidelines from the United Kingdom, Austria³² and Italy.

In any case, the aim of the European campaign is monitoring the preventive management of the company. If the company did not assess the risks the Inspector should notify the company an improvement notice or injunction in order to carry it out within a certain period of time. In this case, the Inspector must wait for the implementation to examine the risks assessment process³³.

In this section we are going to collect the main points in common of the inspection guides about the supervision of the psychosocial risks management process.

a) The need to prepare an evaluation of psychosocial risks

There is a general agreement about the convenience of not carrying out the psychosocial risks evaluation in an unexpected way but preceded by preliminary actions focused on expressing the employer's commitment with the evaluation and its results, informing the employees, and especially their representatives, about its aim

³¹ Acting guide of ITSS ... page 20 y 21

³² The Austrian inspection guide offers a general approach of the management from the employee's health point of view, physical and mental. The guide focus on the stress prevention and the stress risk factors management, including physical agents as the noise, lighting, lack of space, atmosphere, safe team work,..., with a special mention of the dimensions and categories of the mental load.

³³ So is shown in the general guide of the European campaign page 4

(http://www.av.se/dokument/inenglish/European_Work/Slic%202012/Spanish_1.pdf) and in the document about the basic questions of the campaign

http://www.av.se/dokument/inenglish/European_Work/Slic%202012/Spanish_5.pdf. The Spanish inspection guide divides the inspection in two phases, a first one to check that the psychosocial risks evaluation has been carried out and a second one to examine the evaluation (page 20).

and content and making the evaluation technicians carry out a previous task in order to check the enterprise's organization and establish the best ways to carry out the assessment.

This is pointed out in the guide model of the European campaign³⁴ and in the British guide in what is called the first stage of the process³⁵. The Spanish and Italian guides add to this point a consideration about a previous establishment of analysis units for the assessment by uniform jobs or group of jobs³⁶.

b) The evaluation method

The guides of the European campaign do not consider the most valid and efficient evaluation methods but they include some questionnaires of the European Agency for Safety and Health at Work.

Some guides like the British one make an explicit mention to the Stress Management Standards approved by the HSE in 2004 which we have previously named. It is considered a valid way to fulfil the legislation although it is not the only possible one³⁷.

The guides of Austria and Spain make a description of the current evaluation methods in each country. In the Spanish guide there is a special mention to the need of confidence provided by the methods and their scientific validation.

In the Italian guide it is made a distinction between a preliminary evaluation in order to determine the presence of psychosocial risk factors and a deep evaluation when these risks are already identified. To carry out this second evaluation some methods elaborated by state and regional authorities are mentioned. In any case, it is also requested a scientific validation of the method³⁸.

All the guides also establish the need of using quantitative as well as qualitative techniques in order to study the risks.

It seems clear, in any case, that the request of a unique assessment method is not viable. However, it could be more reasonable a future elaboration of common management standards on psychosocial risks at European or International level.

³⁴ 35 Available at http://www.av.se/dokument/inenglish/European_Work/Slic%202012/Spanish_6.pdf

³⁵ Topic Inspection pack ... page. 17

³⁶ Guide of the ITSS ... page 22 and 23 and Stress lavoro correlato. Indicazioni per la corretta gestione ...page 20 and 21

³⁷ Topic Inspection pack ... page 11-16

³⁸ Stress lavoro correlato. Indicazioni per la corretta gestione ... page1

c) The experts' role

All the guides also agree that the people who carry out the evaluation must be properly trained. It could be a company's expert or an external service.

It is also interesting to remark at this point the considerations of the Belgian guides about the "Sobane strategy" which describe the expert assessor as a "facilitator", that is to say, a person that advises and collaborates with the employers and the employees, who must be the real drivers of this process³⁹.

d) The employees' participation

There is a full coincidence in all the guides about the employees' participation as a basic element to identify the risks, in order to make the right decisions during the preparation and the run of the process and to adopt the necessary measures at the end of the assessment.

It could not be possible to carry out a good assessment without taking into account this principle.

e) The measures that derive from the evaluation

There is also a general agreement when it comes to pointing out that measures which derive from the assessment could be primary (about the organization), secondary (about the individuals) and tertiary (about the damaged people) and that the first ones must have priority over the others.

Defining specifically these measures is going to depend on the negotiation between the parts and the experts' assistance in the use of human resources techniques.

f) Carrying out the measures, its planning and its control

There is also an agreement to follow up the general risks prevention principles without any exception relating to carrying out and planning the measures.

g) The evaluation in small enterprises

The evaluation in small enterprises should be carried out in a summarized way pursuant to some guides like the Italian and Spanish ones in order to simplify the bureaucratic burdens of these companies.

³⁹ Stratégie Sobane et méthode de dépistage DEPARIS, page48
<http://www.emploi.belgique.be/publicationDefault.aspx?id=4212>

The prevention management in small enterprises is a recurring object of study by the European Agency and that concerns especially the authorities of all the European States and the Committee. It is, therefore, an issue that requires a deeper and more specific consideration.