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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Denmark

Stine Jørgensen

Reporting period 1 April 2016 – 31 December 2016

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1 Introduction

1.1 Basic structure of the national legal system

Denmark is a constitutional monarchy, consisting of Denmark, Greenland and the Faroe Islands. Greenland and the Faroe Islands are not members of the EU.

The Danish judicial system is based on the traditions of civil law as in continental Europe and is more or less divided into private law and public law. In general, rules and legal principles are organised in a number of codes. The Danish labour market is to a very large extent covered by collective agreements. The collective agreements cover areas such as wages and parental leave rights. Collective agreements accordingly play a significant role in the legal landscape regarding work-related issues. The collective agreements must comply with the principle of non-discrimination. The system of courts has a unified structure. Thus, there are no special courts of law. Several specialised complaints boards are present under Danish law. In 2009 the Board of Equal Treatment was established. The board handles individual complaints on all grounds of discrimination. Decisions from the complaint board can be appealed to the courts. The administration of courts in Denmark is mainly regulated by the Administration of Justice Act.¹

According to the Danish civil law tradition, written legislation is one important legal source. Court decisions are also considered important sources of law. In Denmark the Minister for Gender Equality is responsible for all activities in the field of gender equality and the ministry co-ordinates the equality work of other ministries.

1.2 List of main legislation transposing and implementing Directives

Danish legislation is published electronically in Danish by the Danish State in the *Retsinformation*.²

The relevant Danish legislation on equality with regard to the subject of this report:

- Act on Equal Pay for men and women, Consolidation Act No. 899 of 5 September 2008 as amended by Act No. 513, 26 May 2014 (*Ligelønsloven*).
- The Act on Equal Treatment of Men and Women as regards Access to Employment etc., Consolidation Act No. 645 of 8 June 2011, as amended by Act No. 553 of 2012, Paragraph 13; and Act No. 217 of 2013 as well as Act No. 217, 5 March 2013 (*Ligebehandlingsloven*).
- Gender Equality Act, Consolidation Act No. 1678, 19 December 2013 (*Ligestillingsloven*).
- Act on the Prohibition of discrimination on the labour market, Consolidation Act No. 1349, 16 December 2008 (*Forskelsbehandlingsloven*).
- Act on Entitlement to Leave and Benefits in the Event of Childbirth, 1 Consolidation Act No. 571, 29 April 2015 (*Barselsloven*).
- Act on Maternity Equalisation in the Private Labour Market, Act No. 417, 8 May 2006, as amended by Act No. 288, 2010, Act No. 598, 2011, Act No. 326, 2012, Act No. 529, 2012, Act No. 1347, 2012 and Act No. 596, 2013 (*Barselsudligningsloven*).
- Act on Maternity for Self-employed Workers, Act No. 596, 12 June 2013 (*Lov om barselsudligning for selvstændigt erhvervsdrivende*). Repealed 1 April 2016.

¹ Denmark, Administration of Justice Act, Consolidation Act, No. 1308, 9 December 2014 as amended by Act No. 1313, 27 November 2013, Act No. 1460, 17 December 2013, Act No. 1621, 26 December 2013, Act No. 84, 28 January 2014, Act No. 403, 28 April 2014, Act No. 551, 2 June 2014, Act No. 733, 25 June 2014, Act No. 737, 25 June 2014 and Act No. 739, 25 June 2014.

² www.retsinfo.dk accessed 1 April 2017.

- Act on Equal Treatment between Men and Women in Insurance, Pension and Similar Matters, Consolidation Act No. 950, 14 August 2015 (*Lov om ligebehandling af mænd og kvinder i forbindelse med forsikring, pension og lignende finansielle ydelse*).³

³ Act No. 775, 29 August 2001, has been amended by Act No. 523, 2007, Act No. 517, 2008, Act No. 133, 24 February 2009 (which changed the title of the Act into the present title, the Act on Equal Treatment between Men and Women in Insurance, Pension and Similar Matters), Act No. 133, 2009, Act No. 1231, 2012, Act No. 1287, 2012, Act No. 1287, 19 December 2012 and Act No. 403, 28 April 2014.

2 General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

No.

2.1.2 Does the Constitution contain other Articles pertaining to equality between men and women?

No.

2.1.3 Can the Article(s) mentioned in the two previous questions be invoked in horizontal relations (between private parties)?

N/A.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. Gender Equality Act, Consolidation Act No. 1678, 19 December 2013.

Act on Prohibition against discrimination on the labour market, Consolidation Act No. 1349, 16 December 2008.

The Act on Equal Treatment of Men and Women as regards Access to Employment etc., Consolidation Act No. 645, 8 June 2011, as amended by Act No. 553, 2012, Paragraph 13; as well as Act No. 217, 2013, and Act No. 217, 5 March 2013.

The Equal Pay Act, Consolidation Act No. 558, 17 June 2008, as amended by Act No. 513, 2008 and Act No. 116, 2016.

Yes. According to section 1 in the Gender Equality Act,⁴ the purpose of the act is to promote equality between women and men, including equal integration, equal influence and equal opportunities in all of society, based in women's and men's equality. The goal was also to prevent direct and indirect discrimination on grounds of gender and to prevent harassment and sexual harassment.

According to section 1 of the Act on Equal Treatment of Men and Women as regards Access to Employment,⁵ the purpose is that there shall be no discrimination on the ground of sex. This applies to both direct discrimination and indirect discrimination, in particular by reference to pregnancy or to marital or family status.

Section 1 of the Act on the Prohibition of discrimination on the labour market states that discrimination on the labour market is prohibited with regard to race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin.

⁴ Denmark, Consolidation Act No. 1678, 19 December 2013.

⁵ Denmark, Consolidation Act No. 1349, 16 December 2008.

3 Implementation of central concepts

3.1 Sex/gender/transgender

3.1.1 Are the terms gender/sex defined in your national legislation?

No.

3.1.2 Is discrimination due to gender reassignment explicitly prohibited in your national legislation?

No.⁶ Discrimination due to gender reassignment is not explicitly covered in national law but is already covered by the other grounds mentioned in section 1 of the Act on Prohibition against discrimination on the labour market. The Act defines discrimination with regard to the Danish market and prohibits discrimination with regard to race, colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin. In the view of the expert, the general and broad prohibition against discrimination extends to the ground of gender reassignment. In 2016 the Board for Equal Treatment decided on a case on legal gender reassignment.⁷ The case was decided as a matter on discrimination on the ground of sex.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes:

- Act on Prohibition against discrimination on the labour market (*forskelsbehandlingsloven*), section 1(2).
- Act on Equal Treatment of Men and Women as regards Access to Employment etc, (*Ligebehandlingsloven*), section 1(2).
- The Gender Equality Act (*Ligestillingsloven*), section 2(2).

The definition of direct discrimination in the EU directives is repeated in the Danish implementing legislation with the same wording as used in the directives. See, for example, section 1(2) of the Equal Treatment of Men and Women as regards Access to Employment etc., stating that:

'Direct discrimination shall be understood as taking place where one person is treated less favourably than another is, has been or would be treated in a comparable situation on the ground of sex.'

The same text is repeated in the two other above-mentioned acts. Thus, the Danish definition complies with the EU definition.

⁶ In 2014, Denmark enacted new rules regarding gender reassignment in the Social Security Act section 3(5): 'The Economic and Interior Ministry accepts a written request and a new personal security number is given to persons who experience themselves as belonging to the other sex.'

Thus, the assignment of a new personal identity is dependent upon the person concerned by:

A written declaration that expresses the desire for a new personal identity based on a sense of belonging to the other sex.

That that person has followed a period of reflection of six months from the filing date and he/she confirms this in writing.

That the person is 18 years old at the time of the application.'

The Social Security Act (*Bekendtgørelse af lov om Det Centrale Personregistre*), Consolidation Act No. 878, 14 September 2009, as amended by section 35 of Act No. 1536, 21 December 2010, § 1 of Act No. 558, 18 June 2012, § 3 of Act No. 600, 18 June 2012 and § 1 of Act No. 1251, 18 December 2012.

⁷ Board for Equal Treatment, Case No. 9383/2016.

3.2.2 Are pregnancy and maternity discrimination explicitly prohibited in legislation as forms of direct sex discrimination?

Yes. According to section 1 of the Act on Equal Treatment of Men and Women as regards Access to Employment etc., discrimination on the ground of sex, in particular by reference to pregnancy or to marital or family status, is prohibited. Furthermore, direct discrimination shall be understood as taking place in connection with any form of discrimination in connection with pregnancy and during women's 14 weeks of maternity leave after childbirth, according to section 1(1) and (2) of the Act on Equal Treatment of Men and Women as regards Access to Employment etc.

The provision complies with Article 2(2) (c) of Directive 2006/54.

3.2.3 Are there specific difficulties in your country in applying the concept of direct sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

No.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes:

- Act on Prohibition Against Discrimination on the Labour Market (*Forskelsbehandlingsloven*) section 1(3)
- Act on Equal Treatment of Men and Women as regards Access to Employment etc., (*Ligebehandlingsloven*), section 1(3)
- The Gender Equality Act (*Ligestillingsloven*), section 2(3)

Indirect discrimination is defined in national legislation. There are two definitions of 'indirect discrimination'.

As stated in the Act on the Prohibition Against Discrimination on the Labour Market indirect discrimination shall be understood as taking place where an apparently neutral provision, criterion or practice put persons of one gender at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary. The same definition is repeated in the Act on Equal Treatment of Men and Women as regards Access to Employment etc. Thus, the Equal Treatment Act and the Act on Prohibition against discrimination on the labour market use the term 'sound and proper' (*saglig*) instead of 'legitimate' (*legitim*) as stated in the directive. Under Danish labour law, working conditions will normally be considered sound and proper if they result from collective bargaining and can be seen as an expression of what the labour market organisations on both sides regard as reasonable.

As stated in the Gender Equality Act section 2(3) indirect discrimination is defined as a situation where a provision, criterion or practice, which is apparently neutral, would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means for achieving that aim are appropriate and necessary. Thus, the Gender Equality Act uses the word 'legitimate' (*legitim*) in accordance with the underlying directive.

In my view the Danish legislation as stated above in the previous answer complies with the directive.

3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination? Please provide some examples of cases, if available.

No.

3.3.3 Is in your view the objective justification test applied correctly by national courts? Please provide some examples of cases, if available.

Yes.

3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

No.

3.4 Multiple discrimination and intersectional discrimination

3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to produce a new and different type of discrimination – explicitly addressed in national legislation?

No. In general, there is no definition of multiple discrimination in Danish equality law.⁸

3.4.2 Is there any case law that addresses multiple discrimination and/or intersectional discrimination (where gender is one of the grounds at stake)?

Yes. A case concerning a Muslim headscarf at the Danish Court of Appeal East, U2000.2350Ø, concerned a schoolgirl who had brought a religious discrimination claim when a department store, Magasin, refused to allow her to be a trainee in school practice for a week, because she came to the workplace wearing a headscarf. The department store justified its actions by reference to its guidelines for employees' dress. The guidelines were vague. They required staff to be decently dressed. The Court of Appeals held that the department store had violated the Discrimination Act's prohibition against discrimination on the basis of religion and required the store to pay compensation. Multiple discrimination was not addressed specifically.

The most important Danish case, U2005.1265H, was decided by the Supreme Court in 2005. In this case, a supermarket, Føtex, dismissed a young Muslim woman when she began to come to work wearing a headscarf four years after she had begun her employment at Føtex. The Danish Supreme Court held that Føtex's dress code indirectly discriminated against Muslim women who wear headscarves for religious reasons, but

⁸ In the Administration of Justice Act section 56 concerns multiple discrimination. This section was amended in 2009. The purpose of the section is to prohibit judges from exhibiting any religious or political symbols or views in the courtroom during hearings.

A judge must not appear in hearings in a manner that is likely to be perceived as a statement concerning any religious or political affiliation or a statement on his or her position on religious or political issues in general.

In the preparatory works, the Ministry of Justice, on behalf of the Danish Government, explained that the proposed ban will include cases where the judge during the hearing visibly wears a Christian cross, where the judge wears Muslim headgear like the hijab, or where the judge wears a Jewish calotte (kippa). Also, the judge must not express any support or criticism of any specific political parties, visibly wear a party badge or anything similar, or express in any way his/her personal political position on other important community issues, regardless of whether they are international, national or local issues.

In the preparatory works, the Ministry of justice stated that the proposal was in accordance with the Danish Constitution, with Articles 9 and 10 ECHR and with the Employment Framework Directive, 2000/78/EC.

that the dress code did not violate the Discrimination Act's prohibition against discrimination because it was justified by a legitimate and neutral objective and the principle of proportionality had been complied with.

The cases do not give rise to any particular difficulties with the concepts of multiple discrimination and/or intersectional discrimination.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes, the Gender Equality Act section 3.

Under the Equal Treatment Act, the responsible Minister may permit measures for the promotion of gender equality aiming at promoting equal opportunities for women and men, in particular by removing factual inequalities which affect access to employment, training, etc.

The definition mentioned in the Gender Equality Act section 3 is:

'Measures promoting gender equality that aim to prevent or compensate for discrimination on grounds of sex.' This definition in my view complies with the EU definition found in Article 157 TFEU (4).

Under section 3 (1) in the Gender Equality Act, the competent minister may allow, regardless of the general prohibition of discrimination on grounds of sex, special measures to promote equality when the purpose is to prevent or compensate for discrimination on grounds of gender. Positive action is permitted as temporary measures to overcome the effects of past stereotypes or learning new skills. The positive action must therefore be discontinued after achieving the desired equality in this particular field. One example is the YDUN research programme⁹ that targets women scientists and aims to strengthen talent utilization in Danish research by promoting a more equal gender balance in the Danish research environment.

Furthermore, specific rules are laid down in Public Order on Measures that Promote equality without dispensation, No. 340, 10 April 2007 (*Bekendtgørelse om initiativer til fremme af ligestilling - Adgangen til at iværksætte ligestillingsfremmende initiativer uden dispensation*). Due to section 1 of the Public Order, employers, governments and organizations may implement development initiatives for a limited period of up to two years to attract the underrepresented gender without a dispensation from the minister. It is a precondition for such initiatives that one gender is represented with 25 % or less. It is allowed to establish courses or training activities of up to six months for one sex, if the purpose is to promote equality between women and men and to promote women's and men's equal access to employment, education and management.

3.5.2 Are there specific difficulties in your country in relation to positive action? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

No.

3.5.3 Has your country adopted measures that aim to improve the gender balance in company boards?

⁹ <http://ufm.dk/forskning-og-innovation/tilskud-til-forskning-og-innovation/hvem-har-modtaget-tilskud/2014/ydun-bevillinger-fra-det-frie-forskningsrad-oktober-2014>.

Yes, the Financial Statement Act section 99 B.

The Financial Statement Act, Consolidation Act No. 323, 11 April 2011, as amended by § 1 of Act No. 341, 27 April 2011, § 2 of Act No. 477, 30 May 2012, § 11 of Act No. 546, 18 June 2012, § 4 of Act No. 1231, 18 December 2012, § 1 of Act No. 1232, 18 December 2012, § 7 of Act No. 1287, 19 December 2012, § 4 of Act No. 1383, 23 December 2012 and § 10 of Act No. 634, 12 June 2013.

The approximately 1 100 large Danish companies must set targets for the proportion of the underrepresented sex in the supreme governing body must report on the status of the achievement of the set targets, including why the company may not have achieved the desired objective. Large companies are obliged to draw up a policy to increase the proportion of the underrepresented sex on companies' other management levels, and must explain the policy.

If there is no underrepresentation of one gender in the supreme governing body, it is sufficient to disclose this in the management report. If there is no underrepresentation of one gender on the company's other management levels, it is sufficient to disclose this in the management report.

3.5.4 Has your country adopted other positive action measures to improve the gender balance in some fields, e.g. in political candidate lists or political bodies? If so, please describe these measures.

Yes.

The Gender Equality act section 11 and 12.

Due to section 11 in the Gender Equality act, the Boards and other management bodies of the institutions and companies within the governmental administration shall have a balanced composition of women and men. The management must set targets for the proportion of the underrepresented gender, develop a policy to increase the number of the underrepresented gender on their executive levels and report the status of the achievement of the set targets to the Gender Equality Minister.

For appointments not covered by section 11, the responsible minister must ensure that the members appointed by the minister are balanced in terms of gender, according to section 12 in the gender equality act. Also in accordance with section 12, if other authorities or organizations propose board members, they shall suggest both a woman and a man.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. The EU provisions on harassment on the ground of sex and sexual harassment, which are found in Directives 2006/54 and 2004/113/EC, have been transposed into Danish legislation mainly by being literally repeated in the definitions of discrimination in Section 1 of the Act on Equal Treatment of Men and Women as regards Access to Employment etc., Section 1(a) of the Equal Pay Act, Section 3(a) of the Act on Equal Treatment of Men and Women in Insurance, Pensions and Similar Financial Services and in Section 2a of the Gender Equality Act.

Article 2(2)(a) of Directive 2006/54/EC and Article 4(3) of Directive 2004/113 have been specifically transposed in Section 1(4) of the Equal Treatment Act and Section 2a(1) of the Gender Equality Act respectively. The wording of the Danish implementing provisions slightly differs from the underlying Directives but the meaning is the same.

According to the Act on Equal Treatment of Men and Women as regards Access to Employment etc., harassment, as defined in Section 1 (5), shall according to section 1(4) of the act be deemed to be discrimination on the ground of sex and is consequently prohibited. Any person's rejection of or consent to that type of conduct must not be used as grounds for a decision concerning the person in question.

According to section 1(5), harassment shall be understood as taking place when any form of unwanted verbal, non-verbal or physical conduct is exhibited in relation to one person's sex for the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

According to the Gender Equality Act section 2a (2) harassment occurs where there is unwanted conduct related to a person's sex with the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment. The Gender Equality Act does not only cover the labour market but is intended to promote equality between women and men, including equal integration, equal influence and equal opportunities in all of society.

The definitions of harassment and sexual harassment in the EU directives are repeated in the Danish implementing legislation with the same understanding as in the directives.

3.6.2 Please specify the scope of the prohibition on harassment (e.g. does it cover employment and access to goods and services; is it broader?).

Yes, the Gender Equality Act section 2a (2) covers more than just the labour market. This act covers all the functions of Danish society.

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes, in the Gender Equality Act section 2a and the Act on Equal Treatment of Men and Women as regards Access to Employment etc. section 1(6)

According to the Gender Equality Act section 2a, sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature in relation to a person's sex with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

According to the Act on Equal Treatment of Men and Women as regards Access to Employment etc. section 1(6) sexual harassment shall be deemed to be discrimination on the ground of sex and is consequently prohibited. Any person's rejection of or consent to that type of conduct must not be used as grounds for a decision concerning the person in question.

This definition in my view complies with the EU definition in Article 2(1) (d) of Directive 2006/54.

3.6.4 Please specify the scope of the prohibition on harassment (e.g. does it cover employment and access to goods and services; is it broader?).

Yes. The Gender Equality Act does not only cover the labour market but is intended to promote equality between women and men, including equal integration, equal influence and equal opportunities in all of society. The aim of the act is to prevent direct and indirect discrimination on grounds of gender and to prevent harassment and sexual harassment. In accordance with section 1 a, the act applies to any employer, authority and organization within the public sector, authorities and organizations, and all persons who provide goods and services that are available to the public in both the public and private sectors, including public bodies, and which are offered outside private and family

life and transactions in that context. According to section 2a (3) sexual harassment is prohibited.

3.6.5 Does national legislation specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amounts to discrimination (see Article 2(2)(a) of Directive 2006/54)?

Yes.

3.7 Instruction to discriminate

3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?

Yes. The Act on Equal Treatment of Men and Women as regards Access to Employment etc. (*Ligebehandlingsloven*) section 1(7).

According to the Act on Equal Treatment of Men and Women as regards Access to Employment etc. section 1(7) an instruction to discriminate against a person because of gender is considered to be discrimination. However, this term is not defined.

3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

No.

3.8 Other forms of discrimination

Are any other forms of discrimination prohibited in national law, such as discrimination by association or assumed discrimination?

In its decision of June 24, 2011 no. 101 / 2011 (2500013-10) the Danish Board of Equality referred to the CJEU case of *Coleman*. The Board stated that, due to this case, an individual may not be discriminated against through his/her association with another person in Denmark.

4 Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)

4.1 Equal pay

4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?

Yes.

General comment on equal pay

In Denmark, equal pay between men and women is governed by the Equal Pay Act, which dates back to 1976 when it was adopted to implement the Equal Pay Directive. It has been amended on several occasions. The latest amendment was in 2016.

Collective bargaining is of paramount importance in all wage issues in Denmark. The collective agreements must comply with the right to equal payment for men and women. This interpretation is supported by a mediation agreement from 28 March 1973, which abolished different pay rates for men and women in collective agreements between members of the LO, the Danish Confederation of Trade Unions, and the DA, the Confederation of Danish Employers, which have been the two main organisations since 1 April 1973 (i.e. three months after Article 141 EC then Article 119 EEC - became directly applicable in Denmark due to the *Defrenne-II* judgement). In practice, there are neither express unequal pay clauses nor express equal pay clauses in Danish collective agreements. If gender equality is not explicitly mentioned in a collective agreement, that agreement is interpreted as - tacitly - providing for equal pay. This implicit way of regulating the issue does not contribute to a better understanding of the notion of pay. Collective agreements in Denmark are private contracts, hence, in principle, a matter for the contracting parties.

With regard to data collection on equal pay, the Equal Pay Act was amended in 2014.

Under section 5a(subsection 2-5) of the Equal Pay Act an entity shall prepare gender-divided wage statistics for all or parts of the company for a calendar year when in that year the company employed workers equal to at least ten full-time employees, including at least three men and three women, and 1) the company has not complied with the duty to submit salary information for the year to Statistics Denmark, which is made obligatory by the Act on Statistics Denmark,¹⁰ or to an employer's organization or 2) the company has complied with the duty to submit salary information for the year to Statistics Denmark, as is obligatory under the Act on Statistics Denmark or to an employer's organization, but they have not received gender-based wage statistics for the year before 1 September of the following year.

Gender-segregated wage statistics should cover all employees in the company who are paid for the working time. The statistics cover a period of 12 months and show the pay gap between men and women in groups of employees calculated in accordance with the classification DISCO-08 or a similar classification system, when there are at least three men and three women at a particular ISCO group level or equivalent group level. The wage concept used should include all employees in the wage statistics.

When receiving or preparing business-segregated wage statistics, the company must: 1) Inform employees that the company is subject to the rules on gender-based wage statistics, within two months of the statistics being received or drawn up. 2) disclose gender-based wage statistics for the company's employee representatives, no later than

¹⁰ The Act on Statistics Denmark, Consolidation Act No. 599, 22 June 2000.

two months after the statistics have been received or drawn up. If there is no employee representative in the company, the company must disclose the statistics to any employee no later than two months after an employee's request. For the sake of the company's legitimate interests, the company can decide that the statistics are confidential. 3) Ensure the opportunity to discuss the gender-divided wage statistics not later than two months after a representative's request. Is there no employee representative in the company, the company must ensure the possibility to discuss statistics within two months on the request of any employee.

In 2016 the Equal Pay Act was amended by Act No. 116, 2016. The amendment came into force on 15 February 2016. Following this amendment, Section 5 of the Equal Pay Act stipulates that only companies with a minimum of 35 full-time workers are under the obligation to prepare a yearly gender-segregated wage statistic (until the introduction of the amendment the obligation to prepare gender-segregated wage statistics applied to companies with a minimum of 10 full-time workers). Further, the duty to prepare a gender-segregated wage statistic now only applies to companies that employ a minimum of 10 men and 10 women with comparable job functions. The preparatory work stated that the amendment is assessed to have negative equality consequences due to the limitation of the scope of companies obliged to prepare gender-segregated wage statistics. The purpose of the amendment was to link the duty to prepare gender specific statistics to the obligation imposed on companies to inform and listen to workers on work-related issues. The preparatory work also mentioned a wish to ease the administrative burden on smaller companies.

Specific answer to question:

The Equal Pay Act section 1 contains the definition of equal pay.

According to section 1(1) of the act, it is a violation of the act if gender is the reason for a different salary. This applies to both direct and indirect discrimination. Under section 1(2) employers must ensure that women and men have equal pay, in respect of all aspects and conditions of pay for equal work or work of equal value. In particular, where a job classification system is used for determining pay, it must be based on the same criteria for male and female employees and must be so arranged as to exclude any discrimination on grounds of sex. The assessment of the value of labour must be based on an overall assessment of relevant skills and other relevant factors.

The act shall not apply to the extent that a corresponding obligation applies to provide equal pay under a collective agreement.

Equal Pay Act section 1 a

There is direct discrimination if a person on grounds of sex is treated less favourably than another person is, has been or would be treated in a comparable situation. Any less favourable treatment of a woman related to pregnancy and a woman's 14 weeks' absence after birth is considered as direct discrimination.

Indirect discrimination, where a provision, criterion or practice which is apparently neutral, would affect persons of one sex more than persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate purpose and the means of achieving that aim are appropriate and necessary.

Harassment occurs where there is unwanted conduct related to a person's sex with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

4.1.2 Is the concept of pay defined in national legislation?

Yes. The Equal Pay Act section 1 a (3).

The salary is the ordinary basic or minimum wage and all other benefits which the employee receives directly or indirectly from the employer in cash or in kind for the work done.

This definition complies with the definition of Article 157(2) TFEU.

4.1.3 Does national law explicitly implement Article 4 of Recast Directive 2006/54 (prohibition of direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration)?

Yes. The Danish Equal Pay Act was amended in 2008 in order to implement the Recast Directive (2006/54) in matters of equal pay. The amendment came into force on 15 August 2008.

Section 1 of the Danish Equal Pay Act was amended so as to follow closely the wording of Article 4 of the Recast Directive.

4.1.4 Is a comparator required in national law as regards equal pay?

No, but a comparator is often used to set out or prove a difference in treatment.

4.1.5 Does national law lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions?

No.

4.1.6 Does national (case) law address wage transparency in any way?

Yes, to some extent, Danish law takes the transparency of wages into account by imposing an obligation for employers to provide information.

The obligation to collect data on salaries is found in the Equal Pay Act section 5a (subsection 2-5). See above at section 4.1.1 of this report.

4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country? If so, how?

No.

4.1.8 Which justifications for pay differences are allowed in legislation and/or case law?

None.

4.1.9 Are there specific difficulties related to the application of the principle of equal pay for equal work and work of equal value in practice? For example in case of out-sourcing?

No.

4.2 Access to work and working conditions

4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?

Yes. The Act on Equal Treatment of Men and Women as regards Access to Employment etc. sections 2, 3 and 4.

EU provisions on gender equality in access to work and working conditions, including dismissals, are in Denmark implemented in the Equal Treatment Act sections 2, 3 and 4 by and large by repeating the text of the underlying directives. The law applies equally to both the public and private sector, with no exceptions.

Under the Act on Equal Treatment of Men and Women as regards Access to Employment etc. section 2 employers must treat men and women equally in recruitment, transfers and promotions.

Under the Act on Equal Treatment of Men and Women as regards Access to Employment etc. section 3 any employer who employs men and women shall treat them equally as regards access to vocational guidance, training, vocational training and retraining. Under section 3(2) equal treatment also applies to any person engaged in guidance and training activities.

Under section 4 of the Act on Equal Treatment of Men and Women as regards Access to Employment etc. any employer that employs men and women must treat them equally with regard to working conditions. This also applies to dismissals.

National laws do refer to the concept of a 'worker' in general, but not specifically. The concept is not consistent throughout the different areas of legislation.

It varies slightly from act to act and thus the legislation contains various definitions of employees.

A person may, for example, be employed in relation to a Pension Act, but will not necessarily be considered as an employee in relation to the Salaried Employees Act. Thus, the definition of a worker must be considered in connection with the relevant act.

The Employment Contracts Act applies to all employees whose employment has a duration of longer than one month and if the average weekly working hours exceed eight hours.

Furthermore, Directive 91/533EC¹¹ is implemented in the Danish Employment Contract Act.

This definition of a 'worker' reflects the relevant case law of the CJEU.

4.2.2 Is the material scope in relation to (access to) employment defined in national law (see Article 14(1) of the Recast Directive 2006/54)?

Yes, the Equal Treatment Act section 2. Employers must treat men and women equally in recruitment, transfers and promotions.

¹¹ Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288 of 18.10.1991, pp. 32-35.

Is this scope broader or more limited than the scope of Article 14(1) of Recast Directive 2006/54? There is in fact no difference.

4.2.3 Has the exception on occupational activities been implemented into national law (see Article 14(2) of Recast Directive 2006/54)?

Yes. The Act on Equal Treatment of Men and Women as regards Access to Employment etc. section 13.

If it concerns occupational activities and training and it is strictly relevant that the practitioner is of a particular sex, and this requirement is proportionate to the economic activity, the competent minister may derogate from the main rule. Thus, the minister can allow measures that remove inequalities that affect access to employment, education, etc.

4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

Act on Equal Treatment of Men and Women as regards Access to Employment etc. chapter 3 in general. Due to this part of the act, an employer may not dismiss an employee or demote an employee to a less favourable position due to the fact that the employee has insisted on exercising her/his right of absence on the grounds of pregnancy or maternity/paternity/parental leave.

4.2.5 Are there particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.?

No.

5 Pregnancy, maternity, and leave related to work-life balance (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes to some extent, but not directly. Maternity, Paternity and Parental Leave and Benefit Act section 1.

The purpose of this law is to ensure parents are entitled to leave for pregnancy, childbirth and adoption, and to ensure that parents have the labour market right to maternity pay during leave for pregnancy, childbirth and adoption, etc.

This definition is consistent with the definition in Article 2 of Directive 92/85.

5.1.2 Are the protective measures mentioned in the Articles 4-7 of Directive 92/85 implemented in national law?

Yes. On which measures see below. Working Environment Act (*Bekendtgørelse af lov om arbejdsmiljø*), Consolidation Act No. 268, 18 March 2005, as amended by Act No. 300, 19 April 2006, Act No. 175, 27 February 2007, § 29 of Act No. 512, 6 June 2007, § 39 of Act No. 106, 26 February 2008, Act No. 559, 17 June 2008, Act No. 1395, 27 December 2008, § 7 of Act No. 482, 12 June 2009, § 2 of Act No. 1272, 16 December 2009, and Act No. 508, 19 May 2010.

According to the Working Environment Act section 15 the employer shall ensure that the working conditions are safe and healthy.

According to the Working Environment Act section 42 the workplace shall maintain safe and healthy working conditions and all recognized health and safety norms and standards must be followed.

According to the Working Environment Act section 15 the competent minister can determine a legally binding public order regarding the performance of work.

According to the Public Order on the Performance of Work, No. 559, 17 June 2004, section 8, the employer must take into consideration the employee's age, experience, the specific tasks of the employee's position, and other qualifications. Specifically sensitive groups of workers, including pregnant and breastfeeding employees, must be protected against the dangers that specifically affect them. The employer is required to assess the risks for pregnant and breastfeeding women. If there is a risk the employer shall take the necessary steps to ensure that these risks are avoided.

5.1.3 Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?

Yes, but only if the worker is dismissed on the ground of pregnancy. The statutory provisions on discrimination related to pregnancy and maternity, maternity leave, paternity leave, parental leave and adoption leave are to be found in the Equal Treatment Act, which contains a prohibition on discrimination on grounds related to pregnancy and maternity, maternity leave, paternity leave, parental leave and adoption leave, and in the Maternity, Paternity and Parental Leave and Benefit Act which entered into force on 3 July 2006.

Equal Treatment Act section 9.

An employer may not dismiss an employee or replace this with another less favourable treatment because the latter has insisted on exercising her right of absence, has been absent due to the Maternity, Paternity and Parental Leave and Benefit Act or otherwise on grounds of pregnancy, childbirth or adoption.

Is dismissal permitted in exceptional cases as defined in Article 10(1)? If so, please explain.

An employer can dismiss on other grounds.

If an employee is made redundant during her maternity leave, the employer bears the burden of proof. Public benefits will replace the salary due to an agreement in the contract, the period of employment and the collective agreements, etc. Thus, the employee is protected as are other employees.

5.1.4 In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

Yes, due to the general employment law in Denmark, the Salaried Employees Act section 2.

Salaried Employees Act, Consolidation Act No. 68, 21 January 2005 as amended by § 7 of Act No. 542, 24 June 2005, § 58 of Act No. 566, 9 June 2006 and Act No. 312, 30 April 2008.

5.2 Maternity leave

5.2.1 How long (in days or weeks) is maternity leave? Please specify the relevant legislation and Article(s).

According to sections 6 and 7 of the Maternity, Paternity and Parental Leave and Benefit Act (*Barselsloven*),¹² a woman is entitled to up to 18 weeks' maternity leave, which can be extended depending on the health of the mother / foetus. Please note that collective agreements also contain maternal, paternal and parental leave rights for employees.

Right to absence before childbirth

A woman is entitled to a leave of absence from work due to pregnancy from the beginning of a four-week period preceding the expected date of confinement.

A pregnant woman is entitled to a leave of absence prior to the four-week period before the date of confinement if it appears from a medical assessment that the pregnancy is taking an abnormal course, thereby involving a risk to the woman's health or to the health of the foetus in case of continued employment, or the special nature of the work involves a risk to the foetus, or where the pregnancy prevents her from carrying out her work due to public authority requirements, and the employer is unable to offer her any suitable alternative employment.

Right to absence after childbirth

A mother shall have a right and a duty to take a leave of absence for the first two weeks

¹² Furthermore, in Denmark statutory provisions on discrimination related to pregnancy and maternity, maternity leave, paternity leave, parental leave and adoption leave are mainly found in the Act on Equal Treatment of Men and Women as regards Access to Employment etc., which contains a prohibition on discrimination on grounds related to pregnancy and maternity, maternity leave, paternity leave, parental leave and adoption leave. In addition, the force majeure clause in the Parental Leave Directive (96/34/EC, repealed and replaced by 2010/18/EU) has been implemented in the Act on Employees' Rights to Leave for Special Family-Related Reasons, which entered into force on 1 April 2006.

after childbirth. Subsequently, she shall be entitled to be absent for another 12 weeks.

5.2.2 Is there an obligatory period of maternity leave before and/or after birth?

Yes. According to section 7 of the Act on Entitlement to Leave and Benefits in the Event of Childbirth the mother has a right and a duty to take a leave of absence for the first two weeks after childbirth.

5.2.3 Is there a legal provision insuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

Yes, see 5.1.2.

5.2.4 Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) during the pregnancy and maternity leave?

Yes. The Maternity, Paternity and Parental Leave and Benefit Act section 1 is a mandatory rule stating that the purpose of the act is to ensure that parents are entitled to a leave of absence for pregnancy, childbirth and adoption, and to ensure that parents have the labour market right to maternity pay during leave for pregnancy, childbirth and adoption, etc.

5.2.5 Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

The level of compensation is the same

Due to the Act on Entitlement to Leave and Benefits in the Event of Childbirth section 2(1), all parents governed by the act are entitled to a leave of absence under the Act. Under section 2(2), benefits under the Act shall be granted in the form of maternity benefits to employees and self-employed persons. Under section 2(3), it is a condition for the right to maternity benefits for the persons referred to in subsection (2) that the person in question fulfils the employment requirement under section 27 for employees or section 28 for self-employed persons. In accordance with section 6(1) of the act, a woman is entitled to an absence from work due to pregnancy from the beginning of a four-week period preceding the expected date of confinement.

There is no ceiling in national law.

5.2.6 Are statutory maternity benefits supplemented by some employers up to the normal remuneration?

Yes. Some collective agreements provide for the full salary to be paid during all or a part of the leave. Other collective agreements have a cap on the salary. Several collective agreements provide a portion of the parental leave to the father together with the salary. Due to the collective agreement between the State and the union, the mother has the right to her full salary during the maternity leave of six weeks before the expected date of confinement and 14 weeks after birth. Fathers are entitled to two weeks of paid paternity leave.

5.2.7 Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)?

Yes. The Maternity, Paternity and Parental Leave and Benefit Act section 3.

The right to maternity benefits depends upon the person's legal residence in Denmark. The person requesting benefits must from the beginning of the leave fulfil the EU regulation on the coordination of social security schemes covered by Danish social security legislation. The maternity benefit may be paid while the woman in question has been sent abroad by an employer established in the country of employment for a maximum of one year and when issued the income may be taxed in Denmark. The maternity benefit can also be granted to a person who, during the period of absence, has remained abroad for a certain period which will be disregarded when assessing whether the employment requirement is met. Persons who, according to an international social security agreement, are subject to Danish social security legislation are also entitled to maternity benefits, even if they do not stay in Denmark. A person who at the start of a period of absence is entitled to maternity benefits in accordance with the above rules retains the right to maternity benefits for the remainder of that period, regardless of where the person is living.

5.2.8 In national law, is there a provision that guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

Yes. Section 8a of the Equal Treatment Act.

This provision provides that parents who have exercised their right to a leave of absence according to the Maternity, Paternity and Parental Leave and Benefit Act Sections 6-14 have the right to return to the same or an equivalent job that is no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes. The Maternity, Paternity and Parental Leave and Benefit Act section 8.

Prospective adoptive parents who reside abroad to receive a child each have a right to be absent from work for up to four weeks before receiving the child. The child is received by the parents when the formal conditions to return home with the child are met. Prospective adoptive parents, who are to receive an adopted child in Denmark, are entitled to leave for up to one week prior to receiving the child, if the child is not already residing in the adopter's home. In the first 14 weeks after receiving the child one of the adopting parents at a time is entitled to leave. There is a right to a simultaneous absence for the parents for two consecutive weeks. The right to be absent under parental leave, according to Section 8(7), can start in the first 14 weeks after receiving the child. Section 8(7) provides: After the 14th week after receiving the child adopters have the right to a leave of absence from work during parental leave according to Sections 9 and 10, i.e. the normal rules on parental leave. Thus, adopting gives the same rights as in the above described maternity situations except regarding the adoption of children from Denmark, in which cases the pre-leave is only one week, according to section 8(3).

5.3.2 Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?

Yes. The same rights as the above-mentioned with regard to maternity leave; the act concerns all parents.

5.4 Parental leave

5.4.1 Has Directive 2010/18 been explicitly implemented in your country?

Yes. The Act on Equal Treatment between Men and Women as regards Employment and Occupation was amended with effect from 8 March 2013 in order to implement Directive 2010/18/EU of 8 March. The amended Act entitles parents to request flexible working arrangements when returning after a break due to parental leave. In addition, the law specifies that the protection of pregnancy, childbirth or adoption not only applies to dismissals, but also includes less favourable treatment, and that the rules on the burden of proof also apply to this situation. At the same time it states that less favourable treatment obliges the employer to pay compensation.

5.4.2 Is the national legislation applicable to both the public and the private sector (see Clause 1 of Directive 2010/18)?

Yes.

5.4.3 Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

Yes.

5.4.4 What is the total duration of parental leave? If the provisions regarding duration differ between the public and the private sector, please address the two sectors separately.

Under the present Danish rules on parental leave the father and mother can agree to share the paid parental leave of 32 weeks as they please. If they want the mother to take the whole leave and the father to take no parental leave at all, they are free to do so.

Thus, the total duration of leave in connection with pregnancy and childbirth is 52 weeks on full benefit, which for most workers is considerably lower than full pay. The 52 weeks firstly include maternity leave, to commence four weeks before the expected confinement and lasting until 14 weeks after the birth of the child, secondly paternity leave for two weeks, and thirdly parental leave for 32 weeks. Only the mother can be on maternity leave. Only the father can be on paternity leave.

In the maternity leave period, the father is entitled to two weeks of paternity leave.

Parents are entitled to 32 weeks of a leave of absence each, but they will only receive benefits for 32 weeks between them. The duration of parental leave has not been revised with the entry into force of Directive 2010/18. There is no difference in the duration of parental leave in the public sector and the private sector.

5.4.5 Is the right of parental leave individual for each of the parents?

Yes. The right to parental leave as a right to be absent from work is individual for each of the parents. The right to benefits is shared. If one of the parents, for example the mother, takes 32 weeks of parental leave with benefits, the other parent can only take 32 weeks of leave of absence with no benefits. This construction supports a gendered division of labour between the parents since most women tend to make use of parental leave.

5.4.6 What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into account the needs of both employers and workers and if so, how is that done (see Clause 3 of Directive 2010/18)?

Parental leave can take the form of full-time or part-time leave. Under Section 11 of the Act on Maternity, Paternity and Parental Leave and Benefit employed workers have the right to resume work and defer at least eight weeks and a maximum of 13 weeks of the leave of absence in accordance with Section 9 of the Act. The right to postpone a leave of absence can only be used by one of the parents. The deferred absence shall, when exercised, be used in a continuous period.

Section 12 of the Act on Maternity, Paternity and Parental Leave and Benefit provides that in agreement with the employer, an employed worker may return to work full time or part time.

In connection with the agreement for the partial resumption of work during absence it can be agreed that the right to a leave of absence is extended for a period corresponding to the time during which the work has been resumed.

In connection with the agreement on returning to work full time during the absence it can be agreed that the right to a leave of absence is deferred for a period corresponding to the time in which the work has been resumed. If an employee resigns before the postponed right to a leave of absence is utilised, this right is subject to an agreement between the employee and the new employer on the deferred right to a leave of absence. The right to return to work does not include the mother's absence during the first two weeks after birth. The various available options thus allow the needs of both employers and workers to be taken into account.

Under Section 2 of the Act on Maternity, Paternity and Parental Leave and Benefit the right to a leave of absence under the Act applies to all parents with no qualifying period. The right to maternity, paternity or parental leave benefit, on the other hand, only exists if the person claiming such a benefit has fulfilled a qualifying period in accordance with Section 27 for employees or Section 28 for the self-employed. Section 27 of the Act on Maternity, Paternity and Parental Leave and Benefit stipulates the employment requirements for employees and states that an employee is entitled to maternity benefits from Payment Denmark (*Udbetaling Danmark*; the Danish authority which pays the benefit), where the employee:

- 1) has participated in the labour market continuously for the last 13 weeks before the period of absence begins and during this period has been employed for at least 120 hours;
- 2) would have been entitled to unemployment benefit or another benefit instead under the Act on Unemployment Insurance, if he or she had not been entitled to benefits under this Act;
- 3) within the past month has completed vocational training for at least 18 months;
- 4) is in work training in a programme that is regulated by or under the Act; or
- 5) is employed in a flexible job according to Section 70(c) of the Act on Active Employment.

The calculation of the above 13-week period includes periods that the employee:

- has worked as an employee;
- has worked as a self-employed person immediately prior to working as an employee and the company has met the employment requirement according to Section 28;
- is receiving benefits under the Act on Sickness Benefits or benefits under this Act;

- has received unemployment benefit or an allowance in lieu thereof;
- is on annual leave with pay or holiday pay;
- has received compensation during a period of notice from the Employees Guarantee Fund; or
- is the subject of a labour dispute.

For self-employed persons', section 28 of the Maternity, Paternity and Parental Leave and Benefit Act grants the right to maternity benefits, subject to the condition that, within the last 12 months, they have been self-employed for at least half the normal contractual working week for at least six months, which includes the last month immediately prior to the absence. The condition for the payment of maternity benefits is that the employment requirements in Section 27 or 28 have been met at the start of the period of absence.

In case of successive fixed-term contracts with the same employer (as defined in Council Directive 1999/70/EC on fixed-term work), the sum of these contracts is taken into account for the purpose of calculating the qualifying period. The employer cannot require a postponement of the period of leave.

There are no special arrangements for small firms. There are no special rules/exceptional conditions for access to and the modalities of the application of parental leave to the needs of parents of children with a disability or a long-term illness.

However, it should be noted that under the Directive, Member States may authorise modalities for parents with disabilities. Denmark has until now chosen not to use this possibility. In accordance with usual Danish practice it is up to the parties to collective agreements rather than the legislator to provide for mechanisms to promote the maintenance of contact between workers and employers during the period of leave.

Thus, the Danish regulation is compatible with the minimum requirements of the Directive.

5.4.7 Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done? (see Clause 3 of Directive 2010/18)?

Under Section 16 of the Act on Maternity, Paternity and Parental Leave and Benefit there is a notice period of 16 weeks.

5.4.8 Did the Government take measures to address the specific needs of adoptive parents (see Clause 4 of Directive 2010/18)?

The right to leave of absence regulated in the Act on Maternity, Paternity and Parental Leave also covers absence in the event of adoption.

5.4.9 Is there a work and/or length of service requirement in order to benefit from parental leave?

Yes. Under Section 2 of the Act on Maternity, Paternity and Parental Leave and Benefit the right to a leave of absence under the Act applies to all parents with no qualifying period. The right to maternity, paternity or parental leave benefit, on the other hand, only exists if the person claiming such a benefit has fulfilled a qualifying period in accordance with Section 27 for employees or Section 28 for the self-employed. Section 27 of the Act on Maternity, Paternity and Parental Leave and Benefit stipulates the employment requirements for employees and states that an employee is entitled to maternity benefits from Payment Denmark (*Udbetaling Danmark*; the Danish authority which pays the benefit), where the employee:

- 1) has participated in the labour market continuously for the last 13 weeks before the period of absence begins and during this period has been employed for at least 120 hours;
- 2) would have been entitled to unemployment benefit or another benefit instead under the Act on Unemployment Insurance, if he or she had not been entitled to benefits under this Act;
- 3) within the past month has completed vocational training for at least 18 months;
- 4) is in work training in a programme that is regulated by or under the Act; or
- 5) is employed in a flexible job according to Section 70(c) of the Act on Active Employment.

The calculation of the above 13-week period includes periods that the employee:

- has worked as an employee;
- has worked as a self-employed person immediately prior to working as an employee and the company has met the employment requirement according to Section 28;
- is receiving benefits under the Act on Sickness Benefits or benefits under this Act;
- has received unemployment benefit or an allowance in lieu thereof;
- is on annual leave with pay or holiday pay;
- has received compensation during a period of notice from the Employees Guarantee Fund; or
- is the subject of a labour dispute?

For self-employed persons', section 28 of the Maternity, Paternity and Parental Leave and Benefit Act grants the right to maternity benefits, subject to the condition that, within the last 12 months, they have been self-employed for at least half the normal contractual working week for at least six months, which includes the last month immediately prior to the absence. The condition for the payment of maternity benefits is that the employment requirements in Section 27 or 28 have been met at the start of a period of absence.

In case of successive fixed-term contracts with the same employer (as defined in Council Directive 1999/70/EC on fixed-term work), the sum of these contracts are taken into account for the purpose of calculating the qualifying period. The employer cannot require a postponement of the period of leave.

There are no special arrangements for small firms. There are no special rules/exceptional conditions for access to and the modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness. However, it should be noted that under the Directive Member States may authorise modalities for parents with disabilities. Denmark has until now chosen not to use this possibility. In accordance with usual Danish practice it is up to the parties to collective agreements rather than the legislator to provide for mechanisms to promote the maintenance of contact between workers and employers during the period of leave.

Thus, the Danish regulation is compatible with the minimum requirements of the Directive.

5.4.10 Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?

No.

5.4.11 Are there special arrangements for small firms?

No.

5.4.12 Are there any special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness?

No, not according to the Act on Maternity, Paternity and Parental Leave and Benefit. The Act on Social Services (*serviceloven*) section 42, however, provides parents with a right to compensation for the loss of earnings if it is necessary to maintain a mentally impaired child or a child who suffers from a long-term illness in their home

5.4.13 Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave (see Clause 5 of Directive 2010/18)?

Yes. The same rights as the above-mentioned with regard to maternity leave; the act concerns all parents.

5.4.14 Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?

Yes, according to section 8a of the Act on Equal Treatment of Men and Women as regards Access to Employment, parents who have exercised the right to a leave of absence (due to the Act on Entitlement to Leave and Benefits in the Event of Childbirth sections 6-14,) have the right to return to the same or an equivalent job, which is no less favourable to them, and to benefit from any improvement in working conditions that they would have been entitled to during their absence.

5.4.15 Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?

Yes.

5.4.16 What is the status of the employment contract or employment relationship for the period of the parental leave?

The status of the employment contract or employment relationship remains the same during the period of the parental leave as before the leave, due to section 8a of the Act on Equal Treatment of Men and Women as regards Access to Employment.

5.4.17 Is there continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave?

Yes.

5.4.18 Is parental leave remunerated by the employer? If so, how much and in which sectors?

No.

5.4.19 Does the social security system in your country provide for an allowance during parental leave? If so, how much and in which sectors?

Yes. Approx. EUR 550 per week for 32 weeks.

5.4.20 In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see Clause 8 of Directive 2010/18)?

Danish law complies with the Directive but provides nothing extra in terms of favourable parental leave provisions, except for what was already mentioned above (ex. 32 weeks of a leave of absence per parent).

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes. Maternity, Paternity and Parental Leave and Benefit Act section 7(3)

A father or co-mother has the right to leave for two weeks after the delivery or the receipt of a child in the home or, with the agreement of the employer, within the first 14 weeks after the birth.

5.5.2 Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

Yes. The same rights as the above-mentioned with regard to maternity leave; the act concerns all parents.

5.6 Time off/care leave

5.6.1 Does national legislation entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

Yes. Workers are entitled to time off from work on grounds of force majeure for urgent family reasons in case of sickness or an accident.

The force majeure clause in the Parental Leave Directive has been implemented in the Act on Employees' Rights to Leave for Special Family-Related Reasons, which entered into force on 1 April 2006.

The conditions for having access to such time off from work or more detailed rules have not been further specified. The entitlement to such time off from work has not been limited to a certain amount of time per year and/or per case.

In the Act on Social Service, Consolidation Act No. 1284, 17 November 2015, section 42 concerns economic compensation in the event of leave to take care of children with a severe illness or handicap. Under sections 118 and 119, an employee may be granted leave from work to take care of close relatives with a substantial and permanent physical or mental incapacity or incurable disorder, or a relative who is in a terminal condition. In such cases, the employee on leave will be employed by the local council to take care of the relative who is ill at home. The payment is approximately EUR 2 500 per month for a maximum period of six months to be prolonged by three months in special cases. Under section 120 of the act, an employee can either be awarded a public remuneration to care for a dying family member or agree with the employer on a reduced time without a salary reduction. In the latter case, the employer receives a salary reimbursement from the municipality.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

Under the Maternity, Paternity and Parental Leave and Benefit Act section 13, the mother is entitled to a leave of absence for 14 weeks after the child's adoption, if the child is given up for adoption before the 32nd week after the birth. In cases where the mother is suffering from a pregnancy-related illness, a prolonged absence is possible, but only until 46 weeks after birth.

Parental leave is not available in the case of surrogacy, which might result in a very insecure legal position, in particular for a woman who tries to become the legal mother to a child carried by another woman. Under Section 31 of the Children Act an agreement that a woman who gives birth to a child after birth shall surrender the baby to someone else is invalid. Under Section 33 of the Adoption Act help must not be given or received in order to make a connection between a woman and another who wants the woman to give birth to a child for the adoptive mother.

5.8 Leave sharing arrangements

5.8.1 Does national law provide a legal right to share (part of) maternity leave?

No.

5.8.2 Is there a possibility for one parent to transfer part of the parental leave to the other parent?

Yes. Parents can share the parental leave, which makes a transfer irrelevant. To some extent, there are flexible parental leave arrangements in Denmark. Flexibility in most cases requires that there is an agreement with the employer. This possibility of sharing leave between the parents in practice mostly leads to traditional gender roles, where mothers make use of all or the main part of the parental leave.

5.9 Flexible working time arrangements

5.9.1 Does national law provide workers with a legal right (temporarily or otherwise) to reduce working time on request?

Yes, but only to some extent. This is governed by the Equal Treatment Act.

According to the Equal Treatment Act section 8a(2), the employee has the right to ask the employer about changes to her working hours and work patterns within a specified period, when the employee returns from maternity leave.

It is not a legal right to obtain modified work schedules.

The employer is obliged to consider the written application from the employee and to provide a written response.

Under the Equal Treatment Act section 9, the employer cannot expose the employee to 'less favourable treatment' if the employee has applied for modified work schedules.

Under Section 16 (2) of the Equal Treatment Act the employer must provide compensation if an employee is dismissed or if an employee is experiencing less favourable treatment contrary to section 9 of the act.

In accordance with the Maternity, Paternity and Parental Leave and Benefit Act it is possible to extend the parental leave with some degree of public benefits.

Parents who are employees and who are entitled to parental leave under the Act may postpone eight to 13 weeks of the 32-week parental leave.

Only one parent may postpone parental leave and the postponed leave must be kept together and be taken before the child is nine years of age.

The employee is not entitled to partially resume work at the same time.

The right to return to prior working arrangements is to some extent protected, if the prior work still exists.

With regard to collective agreements and a change of working hours after maternity leave, for example: The collective agreement in the financial sector: Parents with children under 12 years of age are entitled to an agreement on reduced working hours. According to the collective agreement in the financial sector, Clause 80, employees are entitled to a reduction in working hours from the traditional 37 hours to 30 hours per week. There must be an agreement with the employer. The agreement should apply for a period of three to 12 months. It is also possible to arrange for four periods of three months. It is a requirement that the parties conclude a specific agreement for each period. The employer can refuse to enter into the contract if it is inconsistent with the operational conditions. In such situations, the employer must then discuss the rejection with the trade union representative, and explore alternative options.

5.9.2 Does national law provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request?

No. The parties can agree on an adjustment to the working hours, a time credit and time accounts in the employment contract and by collective agreements.

The working hours and patterns must appear in the employment contract. Thus, the time for work is agreed in individual contracts between the employer and employee but contractual freedom can be limited by regulation and collective agreements.

The employer bears the responsibility that the agreements comply with legislation and collective provisions, including agreements on working time.

The standard working week for full-time employees is 37 hours a week.

According to the Danish Working Environment Act, for every 24 hours an employee must have at least 11 consecutive hours of rest. Furthermore, an employee must never work more than six consecutive days. This is therefore in compliance with Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000.

5.9.3 Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

No. In some sectors, this can be agreed between the parties to the employment contract, but then the main rules on rest periods and rest days will apply to employees who work at home and the employee must have 11 hours of rest in each period of 24 hours and a weekly day off. However, there might be exemptions from the rules on rest periods and rest days when working at home if the employee organizes the working hours him/herself or if the working hours are due to the specific characteristics of the work and cannot be measured or predetermined. In this case, the employee must be given a compensatory period of rest.

In some parts of the public sector, employees have been restricted by law or collective agreements from the possibility to work from home, see Act on the Extension and Renewal of Collective Agreements and Agreements for Certain Groups of Employees in the Public Sector, No. 409, 26 April 2013. The same principle has been adopted in the collective agreement concerning high school teachers. Both the law and the collective agreement are applicable from August 2014. Thus, employees in specific parts of the public sector have, both by law and by collective agreements, been precluded from the possibility to work at home. This has occurred for primary school teachers by a legal act and high school teachers by collective agreements. The teachers must be present at work throughout the working day. It is the management that determines where a teacher is required to work. This was adjusted in some municipalities by local agreements between the school board and the municipality in 2015.

5.9.4 Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can “bank” hours to take time off in the future?

No.

6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?

Yes. The principle of equal treatment for men and women in occupational pension schemes is governed in Denmark by the Act on Equal Treatment between Men and Women in Insurance, Pensions and Similar Matters. In Denmark most occupational pension schemes are defined as contribution schemes. During the last 25 years a number of pension schemes have been established in connection with the renewal of collective agreements in 1989 and 1993. Most of these schemes use actuarial calculations that result in women receiving the same monthly benefits as men for whom identical contributions have been paid.

This is known as the unisex basis of actuarial calculations. A few older schemes, for example the one applying to lawyers, have also adopted the unisex calculation.

In 1998, a new Act providing for unisex occupational pension schemes was adopted. The main provision in the Act prohibits provisions in occupational pension schemes according to which men and women are treated differently on grounds of sex as regards the determination and calculation of contributions and benefits.

Of special importance is that the Act prohibits both different contributions and different benefits, also in cases where the reason for different treatment is actuarial factors. However, the prohibition of sexual differentiation on grounds of actuarial factors only applies to workers who joined the scheme after 1 July 1999.

6.2 Is the personal scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.

The same.

6.3 Is the material scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.

The same.

6.4 Has national law applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54?

No.

6.5 Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?

No.

6.6 Is sex used as an actuarial factor in occupational social security schemes?

No.

6.7 Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

No.

7 Statutory schemes of social security (Directive 79/7)

7.1 Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?

Yes. In connection with the implementation of Directive 79/7/EEC, Denmark revised its social security legislation to make it sex-neutral with effect from 1984.

Denmark therefore did not opt to make use of the possibilities for derogation provided by the Directive, but instead chose to make its social security legislation gender-neutral.

7.2 Is the personal scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

No.

7.3 Is the material scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

No.

7.4 Has national law applied the exclusions from the material scope as specified in Article 7 of Directive 79/7? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.

No.

7.5 Is sex used as an actuarial factor in statutory social security schemes?

No.

7.6 Are there specific difficulties in your country in relation to implementing Directive 79/7? For example, due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

Denmark implemented Directive 79/7 in 1980 by removing all direct discriminatory elements in the legislation (one example is the widows pension which was abolished in 1980). However, the principle on equal treatment of men and women with regard to social security was first made visible by legislation in 2000 when the Equality Act was passed. Therefore the principle on equal treatment of men and women with regard to social security has been rather invisible in Danish legislation until 2000. There is very little Danish case law on the directive. One example is a Supreme Court decision from 2004 published in U.2005.602H. This case concerned the compensation level for sickness benefit for a person who was on parental leave. The compensation level was calculated on the basis of the paternity benefit and not on the basis of the income before paternity leave. Since most women take maternity leave this calculation was argued to be indirectly discriminatory. The Supreme Court however found that the calculation of the compensation level was not discriminatory but rather expressed the general principle for calculation of social security benefits.

8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 Has Directive 2010/41/EU been explicitly implemented in national law?

Yes. The Directive on self-employed and helping spouses is implemented in Denmark in the Equal Treatment Act section 5a, which extends the prohibition against sex discrimination to anyone who makes decisions on access to or conditions of work as a self-employed person or helping spouse.

8.2 What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)

No, there is no specific act on self-employment in Denmark.

In Denmark, gender equality in employment and self-employment is governed by the Equal Pay Act (*Ligelønsloven*), the Act on Equal Treatment of Men and Women as regards Access to Employment (*Liegebehandlingsloven*) and the Gender Equality Act (*Ligestillingsloven*). These three acts complement each other. Most provisions on the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such a capacity, are found in the Equal Treatment in Employment and Occupation Act. However, there is no definition of self-employment in Danish law.

8.3 Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.

Yes. National law does not have specific rules defining life partners. Danish law does not in general treat life partners as married people. Danish law distinguishes between legal rights, taxation and the transfer of money between married couples and life partners.

With regard to the taxation of the life partner of a self-employed person, the life partner does not have the same rights as a married partner, due to the Act on Taxation at source (*Kildeskatteloven*), No. 1403, 7 December 2010, section 4(1), section 10(3), and the Act on the Taxation of Personal income (*Personskatteloven*), No. 1163, 8 October 2015, section 7(5-10) and section 8 a (4).

The married partner can be jointly taxed with the self-employed person. This is not possible for a life partner.

Thus, in general, life partners are not recognised as equal to spouses. But on the other hand, the directive is not clear with regard to the obligations that must be implemented in national law.

In the leading Supreme Court judgment,¹³ there is a difference between the legal position of unmarried life partners and spouses, not only with regard to self-employed workers but also in general. This judgment did not concern self-employed workers but compensation with regard to taxation due to the cessation of cohabitation between life partners and stated that it is a legal right that a State treats spouses and life partners differently.

¹³ Supreme Court, U2012, 1629 H, case No. 94/2010 of 01-02-2012.

8.4 How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment the same, more restricted, or broader than specified in Article 4 Directive 2010/41/EU?

The Directive on self-employed persons and helping spouses was implemented in Denmark in the Equal Treatment Act, which extends the prohibition against sex discrimination to anyone who makes decisions on access to or conditions of work as a self-employed person or helping spouse, see section 5 of the act.

8.5 Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?

No.

8.6 Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)?

Yes. Under section 45 of the Sickness Benefits Act, Consolidation Act No. 938, 12 August 2015, a self-employed worker and spouse can take out insurance cover.

It follows from section 45 that individuals, who have an income from self-employment, are ensured the right to sickness benefits from the municipality during the first two weeks of the period of illness. The sickness benefit is approx. EUR 600 per week.

The premium for sickness insurance is determined relative to the amount of guaranteed sick pay and the period it covers. The total premiums must be fixed so that they are estimated to cover 55 % of expenditure of the guaranteed sick pay from the third day of absence, and 85 % if guaranteed sick pay from the first day of absence.

The Minister for Employment shall lay down rules for sickness insurance for the self-employed, including rules on the amount of the price, the collection of premium contribution fees for a failure to pay for the premium admission on time, resignation, exclusion, etc.

8.7 Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law?

Yes. Act on Maternity for Self-employed Workers, No. 596, 12 June 2013. The Act was repealed in April 2016. It was repealed because its effects were limited. Only very few self-employed persons made use of the fund.

Self-employed persons still have right to maternity leave but there is no joint insurance fund compensation for the loss of income. Self-employed persons are eligible for maternity allowance under the Act on maternity leave.

8.8 Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)?

Yes. See above in section 8.6 of this report.

8.9 Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law.

No.

8.10 Is Article 14(1) (a) of Recast Directive 2006/54 implemented in national law as regards self-employment?

Yes. The Equal Treatment Act section 5

Equal treatment also applies to any person who introduces provisions and takes decisions on access to exercise an independent profession. This also applies to the establishment, equipping or extension of a business or the launching or extension of any other form independent activity, including its financing.

9 Goods and services (Directive 2004/113)

9.1 Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?

Yes. Denmark has had a Gender Equality Act since 2000. In 2007, Denmark partially implemented the Supply of Goods and Services Directive, except for Article 5 on gender equality and actuarial factors in insurance contracts, which is governed in the Act on Equal Treatment of Men and Women in Insurance, and Similar Financial Matters.

9.2 Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any.

Directive 2004/113 has been merged into the pre-existing Gender Equality Act. In general, the definitions and substantive provisions of Directive 2004/113 are correctly transposed into Danish law.

9.3 Has national law applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education?

No.

9.4 Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law.

Yes, In the Gender Equality act, section 3a. This section implements the article 4(5) in the directive.

9.5 Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?

Yes. The Act on Equal Treatment of Men and Women in Insurance, and Similar Financial Matters, Consolidation Act No. 950, 4 August 2015, section 5.

The purpose of the act is to ensure the equal treatment of women and men 1) in the working population, including the self-employed, workers who are temporarily out of work due to illness, maternity, accidents or involuntary unemployment and persons seeking employment, and retired and disabled workers and those claiming under relatives in the occupational schemes, and 2) the purpose of insurance and related financial services.

9.6 How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 *Test-Achats* ruling in national legislation.

The Act on Equal Treatment of Men and Women in Insurance, and Similar Financial Matters was amended in 2012 and 2014 to adopt the CJEU decision in the *Test-Achats* case.

Sections 5 and 18 of the Act on Equal Treatment between Men and Women in Insurance, Pension and Similar Matters was adjusted after the C-236/09, *Test-Achats* case in 2012 (Act No. 1287, 19 December 2012) and in 2014 (Act No. 403, 28 April 2014).

2012 amendment:

Section 18b of the act relates to the use of gender as a factor in calculating premiums and benefits for insurance and related financial services. In the existing Danish Act it was possible, due to section 18b (2-4), to use gender as a parameter in the calculations. Following the CJEU's decision in *Test-Achats*, these provisions were deleted in Danish law in 2012.

2014 amendment:

In 2014, section 5(2) of the act was abolished following the *Test-Achats* ruling. Before the adjustment of the act, there was an opportunity to emphasise gender with regard to pension arrangements. With the legislative amendment, the entire area of insurance and pensions is now subject to a unisex principle.

9.7 Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)?

No.

9.8 Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.

No.

10 Violence against women and domestic violence in relation to the Istanbul Convention

10.1 Has your country ratified the Istanbul Convention?

Yes. In Act No. 168, 26 February 2014, an amendment to the Criminal Law Act (*Lov om ændring af straffeloven (Gennemførelse af Europarådets konvention til forebyggelse og bekæmpelse af vold mod kvinder og vold i hjemmet)*). The act came into force on 1 July 2014.

Denmark has ratified the Istanbul Convention. It is stated in the preparatory works to the ratification act that almost the whole content in the convention was already in compliance with the obligations in the convention, and only a few new rules were needed, see the amended act to the Criminal Law Act, No. 168, 24 February 2014.¹⁴

However, Denmark has not implemented stalking as a specific crime in the Danish Criminal Law Act.

The following was introduced to the Criminal Law Act section 94(4) following Denmark's accession to the Istanbul Convention:

Section 94 of the Criminal Law Act has been changed. In section 94, subsection 4, the limitation period to present a complaint has been prolonged with regard to notification. Thus, the limitation period will start from the date the victim is 21, if the victim was under 18 or for children under 15 when the crime was committed. Furthermore, forced marriage, forced abortion, forced sterilization were added to the list of crimes in the act.

¹⁴ Latest version of the Criminal Law Act: Consolidation Act No. 873, 9 July 2015 as amended by Act No. 152, 18 February 2015.

11 Enforcement and compliance aspects (horizontal provisions of all directives)

11.1 Victimisation

11.1.1 Are the provisions on victimisation implemented in national legislation and interpreted in case law?

Yes. The provision on victimisation in the underlying directives is repeated in the Danish implementing legislation.

The protection against victimisation complies with the Directives.

11.2 Burden of proof

11.2.1 Does national legislation and/or case law provide for a shift of the burden of proof in sex discrimination cases?

Yes. The Equality Act section 2.

The provisions on the shared burden of proof in the underlying directives are repeated in the Danish gender equality legislation. In addition, the Equal Treatment Act provides for a reversal of the burden of proof in the case of a dismissal during pregnancy, maternity, paternity or parental leave.

Under section 2 of the act no person shall expose another person to direct or indirect discrimination on grounds of sex. An instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination. Direct discrimination is when a person on the ground of sex is treated less favourably than another is, has been or would be treated in a comparable situation. Indirect discrimination is where a provision, criterion or practice which is apparently neutral would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

If a person considers that he/she has been wronged and there are facts from which it may be presumed that there has been direct or indirect discrimination, it is up to the opposing party to prove that the principle of equal treatment has not in fact been violated.

The rules on the burden of proof comply with EU law, specifically in light of case C-415/10 *Kelly and Meister*.

11.3 Remedies and Sanctions

11.3.1 What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender equality law? Please specify the applicable legislation.

Under the Equal Treatment Act the typical sanction for a breach of the duty not to discriminate on grounds of sex is compensation, which may cover both economic and non-economic loss.

In equal pay cases the typical remedy is the payment of the difference in payment between the woman and the male comparator. Interest to compensate for the loss sustained can be awarded. The substantive right to equal pay or compensation for a breach of the ban on sex discrimination will usually be time-barred after five years. In

principle a fine can also sanction violations of the Equal Treatment Act. In practice that only happens in the case of sex-discriminatory job advertisements. There is no criminal sanction in the Equal Pay Act.

The consequences (remedies and sanctions, civil and/or criminal) in a case of discriminatory harassment are the same as for other discrimination cases.

In case law in employment cases, the typical remedy against the employer who is the addressee is monetary compensation. For the harasser/fellow worker who is not an addressee there is no remedy under discrimination law.

It is a breach of the duties under the employment contract to commit unlawful harassment. Depending on the concrete circumstances it may give the employer the right under employment law to take disciplinary measures, to transfer the worker to other work and in serious cases to dismiss him/her.

11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

Yes. The Danish remedies and sanctions meet the standards of being effective, proportionate and dissuasive and are enforced when heard in the courts or by complaint boards. The typical sanction for a breach of the duty not to discriminate on grounds of sex is to pay the victim compensation, which may cover both economic and non-economic losses.

11.4 Access to courts

11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.

Yes, access to the courts and complaint boards is, as stated, more than satisfactory in Denmark. I do not have any further comments.

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

Yes, access to the courts and complaint boards is, as stated, more than satisfactory in Denmark. I do not have any further comments.

11.4.3 What kind of legal aid is available for alleged victims of gender discrimination?

No specific legal aid is available in gender discrimination cases. If an alleged victim of gender discrimination seeks guidance on how to get access to complaint board, the person can contact the Equality Complaints Board directly.

Alleged victims can file complaints with the Equality Complaints Board (*Ligebehandlingsnævnet*) but only by means of written evidence. All cases can be brought before the ordinary courts, which can hear all kinds of evidence.

Thus, there are no special rules for equality cases on access to the courts. Alleged victims of discrimination will clearly have access. For interest groups their legal standing depends on how concrete an interest they have in the case.

11.5 Equality body

11.5.1 Does your country have an equality body that seeks to implement the requirements of EU gender equality law?

Yes. The Equality Complaints Board (*Ligebehandlingsnævnet*) has the competence to decide on individual complaints. All decisions from the Equality Complaints Board are published in full text in Danish on the Board's website: www.ligebehandlingsnaevnet.dk

The board does not have the competence to produce reports and recommendations on sex equality issues.

11.6 Social partners

11.6.1 What kind of role do the social partners in your country play in ensuring compliance with and enforcement of gender equality law? Are there any legislative provisions in this respect?

Generally, the social partners play a predominant role on the Danish labour market. If a claim is based on a collective agreement the social partners are the only ones who can enforce it. In addition, most employment law cases brought before the ordinary courts are brought by a trade union on behalf of a member.

11.7 Collective agreements

11.7.1 To what extent does your country have collective agreements that are used as means to implement EU gender equality law? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

On the one hand, collective agreements – just as other contracts they bind the parties thereto and no one else – are, however, a very important source of law in Denmark.

Gender equality legislation is subsidiary to collective agreements providing for similar protection as prescribed by legislation.

On the other hand, collective agreements in Denmark cannot be extended to cover employers who are not parties thereto. There are thus no generally applicable collective agreements in Denmark.

12 Overall assessment

As stated in this report, Denmark has transposed the EU directives into national law. Denmark thus applies the EU legislation. Due to an interpretation which is in conformity with EU law, the EU directives create legal rights in vertical situations. Thus, I find the current status of the implementation to be satisfactory and do not find any major gaps or requirements due to the lack of implementation.

With regard to the gap between male and female salaries, and with regard to male and female employment in general, there is still a difference in Denmark. The public sector seems to attract more female than male employees and public sector salaries are generally lower than in the private sector. This is not relevant with regard to the implementation of the EU directives, but is a challenge facing Danish society with regard to gender equality.

Annexes

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