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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Finland

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Reporting period 1 April 2016 – 31 December 2016

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1 Introduction

1.1 Basic structure of the national legal system

The Finnish legal system is based on statute law. The Government has the legislative initiative, but even legislative proposals made by MPs may be adopted. An agenda initiative has been in use since 2012.¹ In most cases, legislation is introduced by a Government Bill, but even the new citizens' initiative has been used for gender-related issues.² Gender equality legislation consists of constitutional and ordinary legislative provisions. The relevant case law consists of judgments by the Supreme Court (which has competence concerning civil, commercial and criminal law, including employment contracts and criminal-law provisions on discrimination), the Administrative Supreme Court (which has competence concerning administrative law, including the position of public servants) and the Labour Court (which has an exclusive mandate to decide matters concerning collective agreements).

1.2 List of main legislation transposing and implementing Directives

The Act on Equality between Women and Men (1986/609) is the main legislative instrument to implement EU directives in Finnish law. The Act has been amended several times (in 1988, 1992, 1995, 1997, 2001, 2005, 2009, 2011, 2014 and 2016). Originally, the Act was introduced in order to implement the requirements of the UN CEDAW Convention, and the amendments of 1995 were mostly intended to guarantee implementation of EU gender equality law. The provisions on the two equality bodies, the Equality Ombudsman and the Gender Equality Board, were originally given in the same legal act, but in 2014 the Gender Equality Board was merged with the former board for ethnic discrimination into the National Non-Discrimination and Equality Tribunal of Finland, which has a broad mandate to offer protection to persons who consider that they have been discriminated against on any ground of discrimination, under the Act on Non-Discrimination and the Equality Board.³ The Act on the Equality Ombudsman⁴ was also amended in 2014, but the function was not merged into that of the new Non-Discrimination Ombudsman, but the office of the Equality Ombudsman was transferred from the Ministry of Social Affairs and Health to the Ministry of Justice, where the other equality bodies were also located.

Other acts that are important as instruments to implement EU law are the Employment Contracts Act,⁵ which contains the provisions on family-related leaves, and the Sickness Insurance Act,⁶ which defines the benefits during those leaves. The gender equality requirements concerning pensions have been implemented through the legislation on mandatory pension schemes. Until the beginning of 2017, mandatory pension legislation was placed under separate pieces of legislation in the public employment (the State⁷ and the municipalities)⁸ and in the private employment sector.⁹ The pension legislation was

¹ The Finnish Constitution 1999/731 was amended in 2011 by adding Section 53(3) on the citizens' initiative, which allows an agenda initiative to be presented to Parliament by 50 000 citizens, in a manner further regulated by the Act on the Citizens' Initiative 12/2012. Where the proposal concerns EU legislation, Regulation (EU) No. 211/2011 of the European Parliament and of the Council on the citizens' initiative, OJ L 65/1 is to be followed.

² A citizens' initiative on the gender-neutral marriage act was presented to the previous Parliament, and was adopted although the Government then in power had agreed on not bringing a Bill on the matter to Parliament. A new citizens' initiative was started for overturning the amendment and re-introducing marriage as an institution between persons of different sexes. So far, the new initiative has collected over 97 000 signatures, which means that the initiative will be presented to Parliament.

³ *Laki yhdenvertaisuus- ja tasa-arvolautakunnasta* (Act on the Non-Discrimination and Equality Board) 2014/1327.

⁴ *Laki tasa-arvovaltuutetusta* (Act on the Equality Ombudsman) 2014/1328.

⁵ *Työsopimuslaki* (Employment Contracts Act) 2001/55.

⁶ *Sairausvakuutuslaki* (Sickness Insurance Act) 2004/1224.

⁷ *Valtion eläkelaki* (State Pensions Act) 1295/2006.

⁸ *Kunnallinen eläkelaki* (Municipal Pensions Act) 549/2003.

⁹ *Työntekijän eläkelaki* (Employees' Pensions Act) 395/2006.

reformed in 2016. The provisions on public-sector mandatory pensions were combined into one Act.¹⁰ The provisions concerning both the private and the public sector were changed as to the lowest retirement age of 63, which is to rise gradually to the age of 65. The mandatory pension schemes even cover entrepreneurs¹¹ and agricultural entrepreneurs.¹² All these schemes follow similar principles in general and in the issues that are relevant for EU gender equality law. The Criminal Code¹³ also contains provisions that enforce EU gender equality law by criminal-law sanctions. Chapter 47 of the Criminal Code on work-related crimes contains provisions on discrimination at work and an aggravated form of discrimination at work.¹⁴ Gross sexual harassment carries a criminal-law sanction.¹⁵

¹⁰ *Julkisten alojen eläkelaki* (Pensions Act of the public sector) 395/2016).

¹¹ *Yrittäjän eläkelaki* (Entrepreneurs' Pensions Act) 1272/2006.

¹² *Maatalousyrittäjän eläkelaki* (Agricultural Entrepreneurs' Pensions Act) 1280/2006.

¹³ *Rikoslaki* (Criminal Code) 1889/39.

¹⁴ *Työsyryntä* (work discrimination) under Chapter 47, Section 3 prescribes fines or imprisonment of up to six months for an employer or employer representative who, without an important and justifiable reason, puts an employee into an inferior position in employment or access to employment on the grounds of sex, among other grounds. In the crime of *Kiskonnantapainen työsyryntä* (extortionate work discrimination), the employer places an employee into a considerably inferior position by using the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, and carries a penalty of maximum two years of imprisonment.

¹⁵ Chapter 20, Section 5a on sexual harassment (*seksuaalinen ahdistelu*) was added to the Criminal Code in 2014.

2 General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

The Finnish Constitution, Section 6 on equality contains a general principle of equality before the law (Section 6(1)), a prohibition on discrimination of a person on the ground of sex, age, language, religion, conviction, opinion, health, disability or 'other reason that concerns his or her person'. The list of prohibited grounds is therefore non-exhaustive, and even grounds not mentioned are protected against discrimination (Section 6(2)). Further, the Section contains a provision on equal treatment of children (Section 6(3)) and a provision on promoting equality of the sexes 'in societal activity and working life, especially in the determination of pay and the other terms of employment', as provided by legislation (Section 6(4)). The legislation referred to is, according to the preparatory works, the Act on Equality between Women and Men, but not only that but also other legislation. The preparatory works for the Constitution state that the Section should be interpreted so that even the general principle of equality (expressed in Section 6(12)) contains a duty to promote equality in society. This means that all of the subsections of Section 6 of the Constitution may be considered relevant from the point of view of gender equality law, as the general principle of equality (Section 6(1)) should not be considered in a narrow way so as to preclude positive measures. Also, the prohibition of discrimination expressly mentions sex but as even other grounds are prohibited, the protection against discrimination should at least in principle even cover intersectional discrimination; equality of children necessarily involves equality of girls and boys, and the expressly stated duty to promote gender equality certainly is a highly relevant provision.

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)?

The Constitution may be invoked between private parties. One of the aims of the constitutional reform and the new Constitution, which came into force in 2000, was to stress the horizontal impact of fundamental rights. The fundamental rights are addressed at the legislator, but they also have an influence on legal practice through general principles and clauses of law. Section 22 of the Constitution stipulates that the public authority must guarantee that fundamental rights are effective, and Section 106 allows the courts not to apply a provision of an act which is in evident conflict with the Constitution. Since the constitutional reform, fundamental rights are referred to in case law, and Section 6 has been referred to in cases on sex discrimination.¹⁶

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. The Act on Equality between Women and Men, which contains provisions on equal treatment on the grounds of sex, is complemented by legislation on equality bodies. The Act on Equality contains a general prohibition of discrimination on the ground of sex in Section 7. The material scope of the Act on Equality is in principle quite broad, and Section 7 contains a definition of direct and indirect discrimination on the basis of sex, and a

¹⁶ On case law based on the Constitution, Section 6 see Anttila, O. (2013) *Kohti tosiasiallista tasa-arvoa? Sukupuolisyrjinnän kiellot oikeudellisen pluralismin aikana* Suomalainen lakimiesyhdistys, pp 141-151.

general prohibition of discrimination on that ground directed at all parties and persons. A violation of the Section may have an impact in administrative law, as the prohibition of discrimination is to be followed also by public authorities. The Section does not provide a victim of discrimination with a justiciable right to demand compensation for discrimination, however. The Act on Equality contains further prohibitions on discrimination in working life (Section 8), prohibition of victimisation (Section 8a), discrimination in educational institutions (Section 8b), discrimination in labour-market organisations (Section 8c), harassment at the workplace (Section 8d), and discrimination in the access to and supply of goods and services (Section 8e). Violations of these provisions carry the sanction of compensation to the victim of discrimination.

3 Implementation of central concepts

3.1 Sex/gender/transgender

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

No. The gender/sex distinction is not commonly used in the Finnish language, which does not have a linguistic gender and therefore lacks the term. The term gender has been introduced into the Finnish language as *sosiaalinen sukupuoli* (social sex), but it is not used even in the name of gender studies, which are referred to as *sukupuolentutkimus* (study of sex).

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

Yes. In the amendment of the Act on Equality in 2014, Section 1 of the Act was changed so that the aim of the Act is now to prevent discrimination on the basis of sex and to promote equality between women and men, especially in working life. According to an addition, the aim is also to prevent discrimination on the basis of gender identity or expression of gender (the word '*sukupuoli*' (sex) is used here to refer to what is here translated as gender). To Section 3, which contains the definitions used under the Act, subsections 5 and 6 were added. These define gender identity and expression of gender. Gender identity is defined as 'the person's own experience of (his or her) gender', and expression of gender as 'articulating one's gender by clothing, behaviour or in some other similar manner'. To Section 7, which contains definitions and a general prohibition of discrimination on the basis of sex, was added a new provision on discrimination on the basis of gender identity and expression of gender. The provisions do not expressly refer to gender reassignment, but gender reassignment involves gender identity and expression of gender, and the provisions protect persons who have undergone gender reassignment. There is no further definition of '*sukupuoli*' (gender) beyond the recognition that it may be expressed by choice of clothes and similar means.

The Act on Equality also contains provisions on positive duties for authorities, employers and organizers of education. A new positive duty was added to the Act in 2014. The new Section 6c contains an obligation to the holders of the positive duty to prevent discrimination on the ground of gender identity and expression of gender. The positive duty is to be taken into account when equality plans are prepared by employers and by educational institutions. These provisions exceed the requirements under EU law.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. In Section 7 (2), direct discrimination is defined as '(1) placing women and men in a different position on the basis of sex; (2) placing a person in a different position due to pregnancy or giving birth; (3) placing a person in a different position due to gender identity or expression of gender.' The definition complies with the definition of EU law. The definition does not refer directly to the element of comparison, nor does it require that the differential treatment is less favourable. Avoiding an open reference to a 'comparable situation' may be beneficial, as there is less emphasis on the need to present a comparator. Some type of comparison is still required to establish that a person is placed differently.

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

Yes. Section 7(2) defines discrimination based on pregnancy and giving birth as direct discrimination, and complies with EU law.

- 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. In Section 7(3), indirect discrimination on the basis of sex is defined as '1) placing a person in a different position by means of an apparently neutral provision, criterion or practice, if the person may de facto be disadvantaged by this means and 2) placing a person in a different position due to parenthood and childcare responsibility.' Section 7(4) further defines that the means mentioned under Section 7(3) are not discriminatory, if they are used for achieving an acceptable aim and if they are appropriate and necessary for achieving the aim.

The definition differs from EU law by not requiring that the person would suffer 'particular disadvantage', it is sufficient with any disadvantage, and further differential treatment on the basis of parenthood and childcare duties is defined as indirect sex discrimination. Unlike discrimination on the basis of pregnancy, indirect discrimination on the basis of parenthood and childcare may be suffered by men, not only women. Finnish law in these respects is more advantageous than EU law.

- 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.

Statistical evidence was used to establish indirect sex discrimination for example in case TT:1998-34,¹⁷ a judgment of the Labour Court on indirect discrimination. A collective agreement condition calculated pay bonuses on the basis of experience, and all 'lawful absences from work' not exceeding 30 days were to be counted as time to be taken into account in the calculation. The condition was apparently gender neutral, but disadvantaged women, as women were often on maternity leave which lasts much longer than 30 days, and also statistically women took parental leave much more often than men do. The Labour Court found that both maternity leave and parental leave were to be counted as time to be taken into account for the calculation of pay benefits. This means that the statistical fact that women use their right to parental leave was used to establish indirect discrimination.

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

A much-discussed case in which the objective justification test was used is Supreme Court case KKO 2004:59. This case concerned a situation where a municipality had laid off only part of its employees, justifying the need for lay-offs by economic difficulties. The personnel that was laid off worked in departments where the majority of employees was female (the social and health departments, where more than 90 % of employees were women), but not in departments where more than 90 % of the employees was male. The municipality justified the measure by claiming that personnel was laid off due to the budget objective to reduce net expenditure. The Supreme Court found that the disproportionate laying off of women could not be merely justified by binding budget frames. According to the Supreme Court, however, as the budget objectives were made for all departments without discrimination, and the expenditure of the female departments had been higher than that of the male departments, the measure had not been discriminatory, because

¹⁷ The case is available at <http://www.finlex.fi/fi/oikeus/tt/1998/19980034>, accessed 29 May 2017.

there were objective grounds to save expenses. The Supreme Court, unlike the lower courts before it, did not consider EU law in its judgment. The judgment has been criticized in legal literature for not applying the EU law justification test. The Supreme Court should have considered whether the budgetary grounds were sufficient to justify the measure, comparing them against several cases in EU case law. The Supreme Court did not proceed to consider whether it was necessary to lay off only female employees, or whether the economic objective could have been achieved by non-discriminatory measures.¹⁸

- 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.

Cases based on the prohibition of indirect discrimination have not been common in Finnish legal practice. The fact that the definition of indirect discrimination is separated from the prohibitions of discrimination in certain circumstances (in working life, in education etc.) under the Act on Equality may cause difficulties for understanding what indirect discrimination is under the specific prohibitions. Moreover, the Act on Equality is to be followed in cases of sex discrimination and discrimination on the basis of gender identity and expression of gender, but in cases of discrimination on any other ground it is the Non-Discrimination Act. The reform of the other Finnish act on discrimination, the Non-Discrimination Act, may further complicate the situation: this Act makes no clear distinction between exceptions to the prohibition of discrimination and justification of indirect discrimination, as the word 'justification' (*oikeuttamisperuste*) is used to describe both situations.¹⁹ Spill-over effects from the interpretation of the Non-Discrimination Act are to be expected, especially as the former Equality Board was merged into the unified Non-Discrimination and Equality Tribunal.

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. The reform of the non-discrimination law that came into force on 1 January 2015 was originally motivated, among other reasons, by the need to include provisions that would help address multiple and intersectional discrimination. Sex discrimination was prohibited by the Act on Equality between Women and Men in 1986, and discrimination on any other ground was prohibited by the Non-Discrimination Act in 2004. The latter Act was adopted hastily for the purpose of implementing Directives 2000/43/EC and 2000/78/EC, and at the time of passing it Parliament required that the Act soon be amended. In the first phase of the reform, unification of the two non-discrimination acts was discussed, but the idea was abandoned and finally only two equality bodies (the Equality Board and Discrimination Tribunal) were put together into a new National Non-Discrimination and Equality Tribunal of Finland.²⁰ The solution does not benefit the victims of multiple or intersectional

¹⁸ Anttila, O. (2013) *Kohti tosiasiallista tasa-arvoa? Sukupuoliserjinnän kiellot oikeudellisen pluralismin aikana* Suomalainen lakimiesyhdistys, pp. 306-308, and Schiek, D. 'Indirect Discrimination' (2007) in Schiek, D., Waddington, L., Bell, M. (eds) *Materials, Cases and Texts on national, supranational and international non discrimination law* Ius Commune Casebooks for international non/discrimination law. pp. 323- 475, at pp. 456-460.

¹⁹ For the concept of discrimination as defined in the reform of the Non-Discrimination Act and the criticism of the Constitutional Committee of Parliament presented in this respect when the Act was adopted, see <https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiakirjat&docid=pevl+31/2014>, accessed 29 May 2017, and Nousiainen, K. 'Age Discrimination and Labour Law in Finland: Legal Treatment of Younger and Older Workers in Ageing Society' in Numhauser-Henning, A., Rönömar, M. (eds) (2015) *Comparative and Conceptual Perspectives in the EU and Beyond*, Wolters Kluwer, pp. 167-184, at p. 178.

²⁰ Kantola, J., Nousiainen, K. (2008) 'Pussauskoppiin? Tasa-arvo- ja yhdenvertaisuuslakien yhdistämisestä' *Naistutkimus* 2008(2), pp. 6-20. The Parliament's Constitutional Committee noted in its statement of the

discrimination, as the rules concerning access to the new National Non-Discrimination and Equality Tribunal remain different for victims of sex discrimination and victims of discrimination on other grounds.

The new Tribunal has the competence to handle cases under both the Non-Discrimination Act and the Act on Equality. However, a victim of gender discrimination (unlike a victim of discrimination based on other prohibited grounds) does not have the right to submit a case to the new Tribunal, as the Act on Equality limits this right to the Equality Ombudsman and the main Social Partners. Concerning gender discrimination, the new Equality Board only has the mandate to prohibit the continuation of a discriminatory act, and the mandate of the new Non-Discrimination and Equality Tribunal therefore remains similar to the mandate of the previous Gender Equality Board. The new Tribunal has a broader competence over issues covered by the Non-Discrimination Act (concerning all other discrimination grounds): to confirm conciliation between the parties (Section 20 of the Non-Discrimination Act). The mandate of the Equality Ombudsman was extended to conciliation between the parties, and the mandate of the Tribunal to confirming agreements between them. The amendment brought the legislation to the same level as the Non-Discrimination Act, or discrimination grounds other than gender. On the other hand, the Tribunal has a mandate on employment-related gender discrimination, but no mandate in employment-related discrimination based on other discrimination grounds, as these are monitored by the Occupational Health Authorities. The disparity between victims of gender discrimination and victims of discrimination concerning access to the Board and the difference in the mandate to conciliate may complicate the process of handling cases of intersectional discrimination under the new equality legislation.

No reform of the amended legislation is to be expected.

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)?

No.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes. The Finnish Constitution's provisions on equality are explained in 2.1. The Act on Equality between Women and Men contains several positive action duties.

Section 4 of the Act on Equality contains the positive duty of the authorities to promote gender equality. The authorities are to promote the equality of women and men in all their activities, and adopt administrative methods of functioning that guarantee promotion of gender equality in preparatory work and decision-making. Section 4a contains a quota provision (Subsection 1) which requires that the proportion of both women and men in government committees, advisory boards and other corresponding bodies, and in municipal bodies and bodies established for the purpose of inter-municipal cooperation, but excluding municipal councils, must be at least 40 %, unless there are special reasons for the contrary. These public-body gender quotas do not affect elected bodies, only bodies nominated by elected bodies. Not meeting the target may lead to the nominating decision being overturned by an administrative court. The provision is an effective tool for gender balance in public-nominated bodies. Section 4a(2) of the Act contains a provision on gender quotas in public majority companies. Under the Section, if 'a body, agency or institution exercising public authority, or a company in which the Government or a municipality is the majority shareholder has an administrative board, board of directors or

Government Bill for the Non-Discrimination Act that the reform left victims of multiple discrimination with a weak protection.

some other executive or administrative body consisting of elected representatives, this must comprise an equitable proportion of both women and men, unless there are special reasons to the contrary.' The provision also applies to companies owned or co-owned by municipalities. Subsection 3 obliges authorities and other requested parties to nominate candidates for the bodies referred to in the section and, 'whenever possible', to propose both a woman and a man for every membership position. Because these administrative nominations take place subject to the requirements of administrative legislation, if they have been made unlawfully because the provisions in the Act on Equality have not been followed, they may be overturned by the administrative courts.

Under Section 5, authorities, educational institutions and other bodies providing education and training shall ensure that women and men have equal opportunities for education, training and professional development, and that teaching, research and instructional material support the attainment of the objectives in the Act on Equality. Gender equality is to be promoted in education and teaching in a manner that takes into account the age and development of children. Section 5a requires the provider of education to see to it that an equality plan is made in cooperation with personnel and students for each educational institution. The plan is to pay special attention to the election of students, teaching arrangements, learning differences, student assessment and prevention of sexual harassment and harassment on the basis of gender.

Under Section 6 Subsection 1, every employer shall promote equality between women and men in working life in a purposeful and systematic manner. Under Subsection 2, the employer shall, with due regard to the resources available and any other relevant factors, (1) act in such a way that job vacancies attract applications from both women and men; (2) promote the equitable recruitment of women and men in the various jobs and create equal opportunities for them for career advancement; (3) promote equality between women and men in the terms of employment, especially in pay; (4) develop working conditions to ensure that they are suitable for both women and men; (5) facilitate the reconciliation of working life and family life for women and men by paying attention especially to working arrangements; and (6) act to prevent the occurrence of discrimination based on gender. The employer's resources and other relevant factors are taken into account when the extent of this duty is determined.

Section 6a obliges an employer with a minimum of 30 employees to produce an equality plan concerning pay and other conditions of employment every other year. The plan is to be produced together with personnel representatives, and is to contain an assessment of the equality situation at the workplace, including information on the position and tasks of men and women, their pay and pay differentials, is to specify the measures for promoting equality and achieving equal pay, and is to contain an assessment of the results of the measures under the previous equality plan. Section 6b, adopted in 2014, contains provisions on how pay differentials are to be assessed by a procedure called 'pay mapping'. If pay differentials are found, the employer is to enquire into the causes of and reasons for the differentials. If pay consists of different pay forms, the most important of these are to be considered in this respect. If no justified grounds for the pay differentials can be shown, the employer is to take measures to remedy the situation.

Under Section 6c, added to the Act in 2014, authorities, educational institutions and employers are to prevent discrimination on the basis of gender identity and expression of gender purposefully and systematically, and this positive duty is to be taken into account when equality plans are drawn up for educational institutions and for workplaces.

Altogether, the scope of positive duties to promote equality exceeds what is required under EU law.

- 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.

The Finnish Act on Equality contains a number of positive duties for public and private actors. The problem with these provisions is that their implementation is not guaranteed by remedies or sanctions. The most powerful positive duty is probably the 'quota provision' under Section 4a, which has been amended several times, and which is by now well-known in state and municipal decision-making. The provision seems to have some spill-over effect even in areas which are outside its material scope, for example in organizations. Section 6c, which was amended in 2014, replaces a less stringent employer duty for 'pay mapping'. If an educational institution or employer does not fulfil the equality planning duty based on Sections 5a or 6a, the Equality Ombudsman may set a date by which the duty must be fulfilled (Section 19 of the Act), or bring submit a complaint for violation of these provisions to the Non-Discrimination and Equality Tribunal (Section 20 of the Act).

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

Yes. Section 4a(2) of the Act on Equality is explained under 3.4.2. The Corporate Governance Code for Finnish listed companies (2010)²¹ Recommendation 9 stipulates that both sexes are represented in company boards. The Corporate Governance Code is a self-regulatory instrument by the Securities Market Association, representing the Confederation of Finnish Industries EK, the Central Chamber of Commerce of Finland, and the NASDAQ OMX Helsinki Limited (Helsinki exchange). These organisations oppose gender quotas in listed companies and refer to an increase of women in the boards of listed companies since the Corporate Governance Code has been in use.

- 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.

Section 4a of the Act on Equality is described under 3.4.1.

3.6 Harassment and sexual harassment

- 3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. Section 7 of the Act on Equality defines discrimination, and Subsection 7(6) stipulates that harassment based on sex and sexual harassment are to be considered as discrimination. Subsection 7(7) further defines what is meant by harassment and sexual harassment. Section 7 only contains a general prohibition of discrimination, which does not involve a right to compensation for the victim. Sections 8b, 8c, 8d and 8e prohibit harassment in educational institutions, labour-market organisations, at workplaces and in the provision of goods and services.

- 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?).

The general prohibition under Section 7 of the Act on Equality prohibits harassment generally, exceptions being private relations, religious communities and the acts of Parliament and the President. As noted above, the general prohibition does not involve any compensation to the victim of harassment. Authorities are bound by the general prohibition, however, and violation of Section 7 may have administrative legal impact. The

²¹ See <http://cqfinland.fi/files/2012/01/suomen-listayhtioiden-hallinnointikoodi-cq2010.pdf>, accessed 29 May 2017.

specific prohibitions of harassment under Sections 8b to 8e extend the prohibition of harassment supported by the sanction of compensation to education, labour-market organisations, and the provision of goods and services.

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. Under Section 7 of the Act on Equality, Subsections 6-8 prohibit sexual harassment and harassment on the basis of sex, and define sexual harassment as 'verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the mental or physical integrity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment'. Harassment on the basis of sex is defined as 'unwanted conduct related to sex, sexual identity or expression of sex which is not sexual by nature and which with its purpose or effect violates the mental or physical integrity of a person and which creates an intimidating, hostile, degrading, humiliating or offensive environment'.

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?).

The prohibition covers a broader scope than EU law does, while remedies for the victim are available only in cases covered by EU law, concerning discrimination prohibited under Sections 8 and 8e on discrimination in working life, and in the access to and supply of goods and services. Section 8d stipulates that an employer's conduct is discriminatory, if s/he does not take available measures to remove harassment when s/he has been informed of it. The Finnish legal definition complies with EU law. The fact that Section 7 has a broad scope has an impact mostly because authorities have the duty to take the prohibition into account, even when there is no justiciable right for the victim to demand compensation. Section 8 b prohibits discrimination in educational institutions. An amendment adopted in 2016 extended the prohibition to institutions that provide basic education, which until then fell outside the material scope of the provision. The prohibition covers harassment, and gives the victim a right to compensation. The provision exceeds the requirements of EU law.²²

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)?

No. The Finnish Act on Equality does not contain a reference to the legal impact of a person's rejection or submission to discrimination, or more precisely to harassment.

3.7 Instruction to discriminate

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

Yes. Section 7(6) of the Act on Equality explicitly prohibits the instruction to discriminate as discrimination: 'an incitement or instruction to discriminate is to be considered as discrimination under this Act.'

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.

²² Section 8 b of the Act on Equality, which contains the prohibition of discrimination in educational institutions, was amended by Act 915/2016. The earlier wording of the section made an exception concerning basic education, i.e. the mandatory schooling for persons between 7 and 16.

3.8 Other forms of discrimination

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

Under Section 7(7) of the Act on Equality, 'discrimination is prohibited irrespective of whether it is based on a fact or assumption concerning the person him/herself or someone else', which covers both discrimination by association and assumed discrimination.

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. The principle of equal pay is referred to under Section 6(4) of the Constitution, as described above under 2.1.1, and under Section 8 of the Act on Equality. Section 8(3)4 of the Act on Equality prohibits implementing conditions of pay or other conditions of employment in a manner that an employee or employees are placed in a less advantageous position than one or several employees in the employer's employ who do equal work or work of equal value. There is no definition of pay in legislation, nor does the legislation explicitly implement Article 4 of the Recast Directive, or contain an explicit provision on what direct and indirect pay discrimination is. The provision on pay discrimination does not define 'equal work' or 'work of equal value'. According to the preparatory works,²³ the equal pay principle concerns work of equal value even if the jobs in question are very dissimilar, if they can be considered equally demanding; this may be considered especially important in Finland, where the labour market is deeply gender segregated. The preparatory works for Section 6a on 'pay mapping' also refers to an international interpretation of work of equal value being work that is equally demanding as other work, even when the work is dissimilar. The criteria for assessing the work must be non-discriminatory and applied in a non-discriminatory manner. The preparatory works also refer to the Preamble of the Recast Directive, Recital 9 for the principles to be followed when comparing different jobs as to their equal value.²⁴ Assessing what jobs are of equal value remains a problem, however.

Pay discrimination has been discussed to some extent in Finnish legal doctrine,²⁵ which has tended to stress that the distinction between direct and indirect discrimination is not always clear.²⁶ For example, Anja Nummijärvi has explained this as follows: If a neutral norm has collectively differential impact, this establishes the assumption that the norm itself is discriminatory. Collective considerations are not necessary when it has to be decided whether a norm that is per se neutral has been applied in a manner that is discriminatory in a particular case. If the application of certain criteria cannot be objectively justified, then it can be assumed that pay differentials are caused by gender. Nummijärvi refers both to *Danfoss* and to Finnish case law on pay discrimination when she claims that drawing the line between collective and individual assessments, or direct and indirect discrimination, is not always easy. As to what evidence is to be presented for indirect discrimination, Nummijärvi notes that statistics may be used to establish an assumption of indirect discrimination and to reverse the burden of proof, but that statistical evidence in cases like *Danfoss* is too difficult to provide, and that any suitable evidence may be used to establish the assumption.²⁷ The preparatory works for an amendment to the Act on Equality also draw attention to the difficulty in distinguishing between direct and indirect discrimination in certain cases,²⁸ and the Equality Ombudsman has not always made the distinction between direct and indirect pay discrimination, but has merely stated that pay differentials must be justified.²⁹

²³ Government Bill HE 57/1985 vp.

²⁴ Government Bill HE 19/2014 vp, p. 116.

²⁵ Ahtela, K. *Tasa-arvo ja yhdenvertaisuus*, Talentum Media 2006, pp. 109-139, Nieminen, K. *Tasa-arvolaki työsuhteessa* WSOY 2005, Nummijärvi, A. *Palkkasyrjintä. Oikeudellinen tutkimus samapalkkaisuuslainsäädännön sisällöstä ja toimivuudesta*. Edita 2004, Anttila, O. *Kohti tosiasiallista tasa-arvoa? Oikeustieteellinen tutkimus sukupuolisyrynnän kielloista* (forthcoming).

²⁶ Nummijärvi 2004.

²⁷ Nummijärvi 2004, 302.

²⁸ Government Bill HE 90/1994, 17.

²⁹ For example, Opinion of the Equality Ombudsman, Dnro 5/53/02.

There are also cases where the main issue has been whether a comparison may be made if there are both women and men among those with lower pay. The Labour Court has held that the burden of proof may be shifted onto the respondent if the claimant can present at least one comparator of the opposite sex who has better pay for equal work, irrespective of the fact that there are both women and men in lower and higher pay brackets doing equal work.³⁰ The Supreme Court and the Supreme Administrative Court, however, decided in cases concerning the new pay system for judges that because both men and women were placed in lower bracket offices, pay discrimination could not be in question. The claimants had not even managed to establish an assumption of discrimination, which, according to the Act on Equality, would reverse the burden of proof onto the respondent.³¹ It seems that both the Supreme Court and the Supreme Administrative Court dismissed the argumentation in the preparatory works referred to above.³² These courts did not proceed to consider whether indirect discrimination could have been in question. Evidence of indirect discrimination would have required a comparison of how female and male judges were positioned in different pay brackets.

Section 6a, described above under 3.4.1, aims at increasing pay transparency.

4.1.2 Is the concept of pay defined in national legislation?

No.

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. Section 7 of the Act on Equality defines direct and indirect discrimination, and Section 8 prohibits pay discrimination, in principle using the definitions under Section 7. It may still be difficult to distinguish direct and indirect pay discrimination in practice, as pointed out above. The preparatory works refer to the possibility that the general prohibition of discrimination under Section 7 may be applied to pay discrimination in some cases which are outside the scope of Section 8, when the employees do not do equal work or work of equal value, if an employee is placed at a disadvantage on the basis of sex. Section 7 does not give a victim of discrimination the right to compensation under the Act on Equality, but compensation under tort law is possible.³³

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

Yes. The preparatory works³⁴ for the provision on pay discrimination state that the equal pay principle contains the idea of comparison. When considering whether pay discrimination has taken place, it has to be judged whether the tasks are so similar as to be the same or if they may be considered equally demanding. A hypothetical comparator is not allowed, but in pay discrimination concerning pregnancy, the comparison may be made with the person herself (if she had not become pregnant).

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. The preparatory works for the Act on Equality explain that in establishing whether equal work or work of equal value is in question, attention should be paid, on the one hand, to the quality and contents of the job, and, on the other, to the conditions under which the job is done. In deciding whether equal work is in question, attention shall be

³⁰ Labour Court TT:2002-7-10.

³¹ Cases of the Supreme Court KKO 2009:78 and the Supreme Administrative Court KHO 2005:51.

³² *Nummijärvi* 2004, 302.

³³ Government Bill 57/1985 vp, p. 16.

³⁴ Government Bill HE 57/1985 vp.

paid to the differences used in job classifications. Yet, the preparatory works also state that if the system of classification used in a collective agreement de facto discriminates on the basis of gender, the labour-market parties shall develop the agreement in question.³⁵ The Equality Board has argued in a similar fashion in a case on pay discrimination.³⁶

On the one hand, the starting point for job classifications is that attention should be paid to the classifications used in collective agreements when deciding whether two jobs include equal work or the work is of equal value, but, on the other hand, the preparatory works also admit that such classifications may be based on discriminatory grounds. No legislative clarification concerning how classifications should be assessed has been undertaken. The issue of job assessment has been very much in the hands of the labour market's central organisations. In 1990, the issue was taken up by a Working Group on Job Assessment, established by the Social Partners. The issue soon proved to be complicated and one which could give rise to conflicting claims. There have been several working groups as well as studies concerning job assessment in various branches, but so far there has been little real development.

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

Yes. The employer is to provide the victim of alleged pay discrimination 'information on the grounds of his/her pay and other information that is necessary for assessing whether there has been discrimination', under Section 10.3 of the Act on Equality. It is clear on the basis of other provisions of the Act, however, that the employer is not obliged to provide information on a comparator who refuses the disclosure of his/her pay details. A representative of the employees may receive information on an individual employee's pay only with his/her consent, but at the request of the alleged victim of pay discrimination, the representative may request that information from the Equality Ombudsman. The Ombudsman requests the employer to supply the information, if there are reasonable grounds to suspect discrimination, under Section 17.3 of the Act.

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?

Yes. The positive employer duty under Section 6 b of the Act on Equality requires a regular pay audit (pay mapping) to be performed. If pay differentials are found, the employer is to enquire into the causes and reasons for these differentials.

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

The prohibition of pay discrimination in Section 8(1)3 contains no specific justifications for pay differences, but Section 8(3) refers to the definition of indirect discrimination under Section 7 and the justifications that may be used in that context. All pay differentials are not discriminatory, and justified pay differences may be based on the demands of the tasks, personal performance, longer work experience, special responsibility, uncomfortable working times, the wide employability of the employee, or factors connected to working conditions. For a limited period of time, differentials may also be justified by the merging of two organisations, the introduction of a new pay system, or changes in tasks or market-based factors.³⁷

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?

³⁵ Government Bill HE 57/1985, 19.

³⁶ Equality Board opinion No. L 2/2005.

³⁷ Government Bill 19/2014, pp. 117-118.

Indirect discrimination in the application of the equal pay principle was the focus in Case TT: 1998-34, where the Labour Court assessed a collective agreement which did not accept maternity leave fully as a period to be taken into account when calculating experience, while all permissible periods of absence were defined as time to be taken into account. The Labour Court held that the condition of the collective agreement was indirectly discriminatory.

The choice of comparator and the burden of proof have been a focus in several cases. Labour Court Case TT:2002-7-10 required that, in order to be justified, a cause for pay differentials has to explain all cases where differentials appear. The case also concerned the burden of proof, but later Supreme Court case KKO 2009:79 and Supreme Administrative Court case 2005:51 were based on a different interpretation, see under Section 4.1.1.

Pay during compulsory temporary transfer of a pregnant worker because of risk to her and her child's safety and health has caused difficulties. Case C-471/08 *Parviainen v. Finnair Oyj*, referred to the Court of Justice by the Helsinki District Court (*Helsingin käräjäoikeus*), concerned the calculation of pay, and supplementary allowances in particular. Pay is not mandatory during maternity leave, but many collective agreements provide an entitlement to pay at least during some part of the leave. Problems have arisen when employers have limited the entitlement in cases when new maternity leave begins while the employee is still on unpaid parental leave. The Labour Court referred two cases concerning the right to limit pay that is paid according to a collective agreement to an employee on maternity leave in case the employee begins a new maternity leave while being on childcare leave. The Court of Justice held in Joined Cases C-512/11 and C-513/11 that Directive 96/34 precludes a provision in collective agreements that a pregnant worker who interrupts a period of unpaid parental leave does not receive the pay to which she would have been entitled were the maternity leave had been preceded by a minimum period of work.

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. Gender discrimination in the access to employment, in employment, working conditions and dismissals are prohibited under Section 8 of the Act on Equality, which use the terms employer and employee. The personal scope of the provision depends on how an employee is defined under the Act.

Section 3(1) of the Act on Equality defines an employee as a person who under a contract binds her/himself to work under an employer's direction and monitoring against pay or other remuneration, or is in an office or similar service to the State, a municipality or another public community (authority). When Directive 2002/73/EC was transposed,³⁸ the definition of 'employee' was amended from one based on labour-law criteria to a broader one by adding that the Act's provisions on employees apply 'as appropriate, to persons working in other legal relationships that are comparable to an employment relationship'. The preparatory works explain that the definition refers to forms of work that take place under circumstances similar to those under employment contracts, such as independent workers or entrepreneurs, freelancers, persons with their own professional practice, or persons who do care work in families under an assignment agreement, being paid by public funds under social welfare legislation. Independent workers and entrepreneurs are only covered if they sell their own skills, even though they may act as entrepreneurs in the

³⁸ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Text with EEA relevance) OJ L 269, 5 October 2002 pp. 15-20.

sense meant by unemployment or pension legislation. A person similar to 'employee' cannot be one who engages in activities which involve a proper enterprise risk, or employs others. The decisive factor is the actual nature of the activity, not its legal form.³⁹

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, but not clearly, as the scope of the prohibition of discrimination in access to employment relies on the definition of 'employee'.

Section 3, Subsection 1 of the Act's definition of an 'employee' applies 'as appropriate, to persons working in other legal relationships which are comparable to an employment relationship.' The preparatory works explain that the definition refers to forms of work that take place under circumstances similar to those under employment contracts, such as independent workers or entrepreneurs, freelancers, persons with their own professional practice, or persons who are engaged in care work in families under an assignment agreement' which is paid by public funds under social welfare legislation. Independent workers and entrepreneurs are only covered if they sell their own skills, even though they may act as entrepreneurs in the sense meant by unemployment or pension legislation. A person similar to an 'employee' cannot be one who engages in activities which involve a proper enterprise risk, or one who employs others. The definition of an employee thus covers self-employed persons in work-like situations, and in these cases offers remedies and sanctions. The definition does not give protection against discrimination when establishing a business and other business-related situations, however. In this respect the scope of the prohibition of discrimination under Finnish law is narrower than that of EU law.

Gender discrimination in access to vocational training is prohibited under Section 8 b which prohibits discrimination in educational institutions, which includes discrimination in electing students.

Gender discrimination with regard to membership of and in a labour market organisation is prohibited under Section 8c of the Act on Equality.

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 prohibition of gender discrimination in the access to employment under Section 8(1) contains an exception which allows nominating a less qualified person of the opposite sex to a job for a 'weighty and acceptable reason'.

There has been no assessment of the implementation of Article 14(2).

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)?

Yes. Special protection of women due to pregnancy and childbirth is not to be considered as gender discrimination, under Section 9 (1) of the Act on Equality.

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.

³⁹ *Hallituksen esitys Eduskunnalle laiksi naisten ja miesten välisestä tasa-arvosta annetun lain muuttamisesta* (Government Bill on amendment of the Act on Equality between Women and Men), HE 195/2004 vp.

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?

No.

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

Yes. If the tasks or working conditions of a pregnant employee endanger her or her child's health, and the risks involved cannot be removed, the employee is to be assigned other tasks that are suited for her work capacity and qualifications, under the Employment Contracts Act (55/2001) Chapter 2, Section 3(2). The Sickness Insurance Act (1224/2004), Chapter 9 Section 4 contains provisions on special maternity benefits for employees in cases where their normal work is impossible due to risks during pregnancy and no other work can be found by the employer.

Under the Act on Occupational Safety, the employer is responsible for assessing the risks in employment, taking into account among other factors the sex of the employee (Section 10), and to plan the working environment so that the risks are eliminated, taking into account the employees whose safety at work requires specific measures (Section 12). The employee is not to be exposed to chemical, physical or biological factors that pose risks to his or her reproductive health (Sections 28-40). Government Regulation (603/2015) on risks to actors that endanger reproductive health lists substances that create a risk, and requires that they are replaced with less dangerous substances if possible. Section 3 of the Regulation contains further provisions to protect a pregnant employee, by removing risks or assigning the employee other tasks. There are no specific provisions on night work during pregnancy or after childbirth. The assessment of the risks to the employee or her child cover the possible risks caused by night work. The Ministry of Social Welfare and Health has published guidelines to be followed when assessing risks in the context of an employee being transferred to special maternity leave and benefits.⁴⁰

Breastfeeding is regulated under the Occupational Health and Safety Act 738/2002. Under Section 48(2), pregnant women and breastfeeding mothers shall, when necessary, have the opportunity to rest in a break room or other suitable place. Problems connected to breastfeeding are seldom discussed, as the great majority of mothers only return to work when they have finished breastfeeding.

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. Under Section 8(2) of the Act on Equality, the action of an employer shall be deemed to constitute prohibited discrimination if the employer 'upon employing a person, selecting someone for a particular task or training, or deciding on the duration or continuation of an employment relationship or the pay or other terms of employment, acts in such a way that the person finds herself/himself in a less favourable position on the basis of pregnancy or childbirth or by some other gender-related reason'. Under the Employment Contracts Act, the employer is not entitled to terminate the employment contract of an employee who is pregnant or on family leave on normal grounds of termination (Chapter 7, Section 9(1) of the Employment Contracts Act). There are no exceptions to this rule.

⁴⁰ *Ohjeet vaaran arvioimisesta erityisäitiysrahan tarvetta harkittaessa* (Guidelines on risk assessment at decisions on the need of special maternity benefits), at <http://urn.fi/URN:NBN:fi-fe201504225419>, accessed 29 May 2017.

- 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)?

In the event of dismissal due to economic or production reasons, the employer is to explain the grounds of dismissal (Chapter 9, Section 3 of the Employment Contracts Act), but there is no explicit requirement of this being done in writing. If an employer dismisses a pregnant employee or an employee on family-related leave, the dismissal is assumed to be caused by pregnancy or use of family-related leave, unless the employer shows another cause (Chapter 7, Section 9(2)). An employer may dismiss a pregnant employee or an employee on family-related leave using normal grounds of dismissal only if the employer ceases all operations. Under Chapter 12, Section 1 of the said Act, the employer is liable for the loss suffered by the employee by an intentional or negligent breach of obligations arising from the employment relation or the Act on Employment Contracts. Section 2 of the Chapter provides rules on compensation for unfounded termination of employment contract (3-24 months' pay).

5.2 Maternity leave

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

Normal maternity leave lasts 105 weekdays, which is the maternity benefits period. The days between and including Monday to Saturday (six days per week) are counted as week days, and so the leave is roughly four months. The provisions are in Chapter 4, Section 1 of the Employment Contracts Act, and the maternity benefits period referred to is defined in the Sickness Insurance Act. This means that any amendments of the family-based leave benefits automatically change the leave periods under the Employment Contracts Act. The other pieces of legislation on employment, such as the State, Municipal and Church Employment legislation follow the provisions of the Employment Contracts Act.

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

Yes. No work is allowed during two weeks before the estimated time of birth or two weeks after delivery. Otherwise, the employee may work with the employer's consent during the maternity benefits period, if the work in question does not endanger her or the child's safety. Both the employee and the employer may at any point interrupt the work (Employment Contracts Act Chapter 4, Section 2(1)).

- 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. While the employee is on a family-related leave, such as maternity leave, s/he is entitled to return to his/her previous work, or if that is not possible, to work that corresponds to his/her former work under the employment contract, or if even that is not possible, other work under the employment contract (Employment Contracts Act Chapter 4, Section 9).

- 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 Employment Contracts Act (55/2001), Chapter 4 defines family-based leaves, including maternity leave, and the Sickness Insurance Act (1224/2004), Chapter 9 contains provisions on benefits to be paid under those leaves, including the maternity benefits (Sections 1-5 of Chapter 9 of the Sickness Insurance Act).

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 allowance during maternity leave (the entitlement begins when a woman has been pregnant for 154 days) calculated on the basis of former income from work is higher than the sickness leave benefits for approximately 9 weeks of the maternity leave, being 90 % of the yearly income up to EUR 50 606, and then 32,5 %. After that, the benefits are similar to the sickness leave benefits, or 70 % of the income (Chapter 11, Section 1 of the Sickness Insurance Act). There is no absolute ceiling, but in higher income brackets, the benefit covers a lower percentage of income.

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

Yes. It is very common that the employer pays the normal pay during the first months of maternity leave, but usually not more than for three months.⁴¹ The higher benefits during the first period of maternity leave are in fact meant to compensate the employers of women for the expenses caused by the collective agreements, as when the employee receives full pay during maternity leave, her employer is entitled to the maternity benefits under Chapter 7, Section 4 of the Sickness Insurance Act.

Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)? Yes. The right to any family-related benefits including maternity benefits requires that the person in question has been insured in Finland for 180 days immediately before the calculated date of birth, although being insured in some other EU Member State is considered equivalent with being insured in Finland, under Chapter 9, Section 1 of the Sickness Insurance Act. Even persons who do not have an income from employment receive a minimum benefit.

5.2.7 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. Under Chapter 4, Section 9 of the Employment Contracts Act, an employee has the right to return from family-related leave (maternity, paternity and parental leave) to his or her former job. If that is not possible, s/he is to be offered equivalent work under his or her employment contract, and if that is not possible, work under his or her employment contract.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes. Chapter 9, Section 12 of the Sickness Insurance Act contains provisions on the parental benefit period for adoptive parents. The benefit is paid for 234 weekdays (Monday-Saturday) after the birth of the child, or minimum 200 weekdays if the child comes into the custody of the adoptive parents later than 54 weekdays after the birth. Under the Employment Contracts Act, an employee has the right to the leave periods defined under the Sickness Insurance Act. The employee further has the right to care leave

⁴¹ It is common that employees covered by the collective agreement receive pay during the 72 first weekdays of maternity leave, see for example the site of the Union of Health and Social Care Professionals in Finland, <https://www.tehy.fi/fi/apua/vapaat/aitiysvapaa-ja-aitiysajan-palkka>, accessed 11 June 2017. The collective agreement of employees in the tourist, restaurant and leisure services allows three months of pay in the beginning of the maternity leave for employees who have worked for a minimum of one year before the leave, <https://www.pam.fi/media/pdf-tessit/marava-tes-1.5.2014-31.1.2017.pdf>, accessed 29 May 2017.

to take care of his or her child or a child who resides permanently in his or her household until the child is three years old. The adoptive parents' right to care leave continues until two years after adoption, Chapter 4, Section 3 of the Employment Contracts Act. The care leave does not carry the right to pay or income-related benefits, but only to a flat-rate benefit. Amendments introduced in 2017 give same-sex couples rights and benefits equal to those of adoptive parents.⁴²

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. See above under 4.3.1.

5.4 Parental leave

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

No. The provisions under Chapter 4 of the Employment Contracts Act and Chapter 9 of the Sickness Insurance Act contain the rights that are ensured in the Directive.

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.

The duration is 158 weekdays (Monday – Saturday).

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

Yes. The right depends on the provisions on parental benefit in the Sickness Insurance Act (Chapter 9). Eligibility for parental benefit requires that the recipient has had social insurance in Finland or in another EU member state for 180 days before the calculated day of birth or, in case of adoption, before the child is taken in the care of the adoptive parent(s). Both parents have an individual right to parental benefit, in the sense that a father's right to parental benefit does not depend on that the mother fulfils the criteria for benefit. However, the right to parental benefit does depend on the birth mother in the sense that only a person married to the mother or living with her in marriage-like circumstances is entitled to parental benefit. The rule excludes non-resident fathers, but covers same-sex marital partners and cohabitants (Sickness Insurance Act, Chapter 9, Sections 1,2 and 1,3). When the mother does not participate in the care of the child, or when the father is responsible for the care of the child, the requirement that a father is married or cohabits with the mother is waived (Sickness Insurance Act, Chapter 9, Section

⁴² The amendment of the Sickness Insurance Act, by Act 6/2017, were mainly motivated by the need to take into account the amendment of the Marriage Act in 2014, which introduced gender-neutral marriage in Finland. It was previously impossible to apply all social security provisions to same-sex marriage partners.

8,1-2). An amendment of these provisions was made in 2017 in the context of an amendment of the Marriage Act in 2015 which introduced gender neutral marriage.

The whole parental leave is transferable between the parents. The leave may be shared between the parents, or taken by only one of them. Each parent may take his or her care period in two separate parts. The parents may not be on parental leave at the same time, except when they both work part time and are on part-time benefit, as explained under 5.4.6. As the whole parental leave period is transferable between the parents, the parents are free to choose the traditional solution where the mother uses the right to the whole parental leave. Only 1-3 % of fathers use their right to parental leave. The number of fathers taking parental leave has not increased since 1995.⁴³

Paternity leave is in practice used to supplement the parental leave. Paternity leave of up to 54 weekdays is reserved for fathers. A father who participates in the care of the child and is not employed at the time is entitled to paternity benefit and leave (Sickness Insurance Act, Chapter 9, Sections 6-7). In order to achieve more balanced sharing of baby care, the right to the maximum length of paternity has been made dependent on whether it is used by the father individually, and whether or not it is taken during the maternity leave. When paternity leave is not taken simultaneously with maternity leave, it is used *de facto* as an equivalent of parental leave. Only 18 weekdays of the paternity leave of 54 weekdays may be taken during the mother's parental or maternity leave period. This means that 36 weekdays (or 6 weeks) of the leave are lost, if the father does not use his right to leave individually. In a sense, this part of the paternity leave functions as a non-transferable parental leave. The provision on paternity leave under Chapter 9, Section 7 of the Sickness Insurance Act is assumed to fulfil the non-transferability requirement of a part of parental leave under EU law. One third of fathers use their right to paternity leave (1-54 days) after the parental leave period.⁴⁴

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)?

The parents may divide the parental leave into two parts, which have to be at least 12 days long (Employment Contracts Act, Chapter 4, Section 1(2)). Parental benefits may be paid as partial benefits if the mother and father agree to share the benefits: they are both paid partial benefits simultaneously, provided they have both agreed on part-time work with their employer so that they both work at least 40 and at most 60 % of full-time work. The employer has no obligation to agree to part-time work, however, and may refuse the request by the employee, but only if the part-time work would cause serious harm to production and service by the workplace, which cannot be avoided by reasonable reassignment of work. The employer has to present the grounds for refusing the request for part-time work in these cases (Employment Contracts Act, Chapter 4, Section 4). Even an entrepreneur has the right to partial parental benefits, if the work in his or her enterprise is cut by 40 to 60 %. (Chapter 9, Section 9 of the Sickness Insurance Act).

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

⁴³ *Tietoa perhevapaiden käytöstä* (Data on the use of family related leaves). National Institute for Health and Welfare, Statistics on the use of family related leaves by fathers, <https://www.thl.fi/fi/tutkimus-ja-asiantuntijatyo/hankkeet-ja-ohjelmat/perhevapaatutkimus/tilastotietoa-perhevapaiden-kaytosta> accessed 2 July 2017.

⁴⁴ *Tietoa perhevapaiden käytöstä* (Data on the use of family related leaves). National Institute for Health and Welfare, Statistics on the use of family related leaves by fathers, <https://www.thl.fi/fi/tutkimus-ja-asiantuntijatyo/hankkeet-ja-ohjelmat/perhevapaatutkimus/tilastotietoa-perhevapaiden-kaytosta> accessed 2 July 2017.

length of such notice periods and how is that done? (see Clause 3 of Directive 2010/18)?

The employee has to inform the employer on the use of maternity, paternity and parental leave two months ahead of the planned use of the leave, but when the leave period is 12 days or less, the notice period is one month. If the two-month notice period is impossible because the employee's spouse returns to work, the notice period may be one month, provided that the leave does not cause serious damage to the employer's production or service. The employee may for an acceptable reason change the time of the leave by informing the employer a month ahead. The parent of an adoptive child may inform the employer about a change to the time of the leave for an acceptable reason, as soon as it is possible (Chapter 9, Section 3 a, Employment Contracts Act).

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

No.

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

No. There is no requirement concerning the length of employment for eligibility for parental leave.

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, not when full-time parental leave is in question. The employer and the employee may agree that the employee works part-time during the parental leave (Chapter 4, Section 3 (2) Employment Contract Act). As part time work requires an agreement, and the conditions of such an agreement are not defined under the Employment Contracts Act, the employer's agreement may depend on the operation of the organisation.

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?

Yes. Special care benefits may be paid to a person who participates in the care or rehabilitation of his or her child necessary due to illness or disability, and these benefits may also under certain circumstances be paid to the person who cares for his spouse's child or adoptive child, or other child that she or he cares for as a parent. The child must be under 16 and the care of short duration (Sickness Insurance Act Chapter 10, Sections 1 and 2). If the employee needs to be absent for the specific need of care of a family member or some other person close to the employee, the employer has to try to arrange the work so that the employee may be absent from work for that purpose (Chapter 4, Section 7(a) of the Employment Contracts Act). The employee is not entitled to a family-based leave in these cases, however, so that this leave has to be negotiated with the employer.

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. Chapter 7, Section 9 of the Employment Contracts Act prohibits dismissal of an employee on the ground of pregnancy or due to the fact that the employee uses his or her right to family-related leave. Section 9(2) contains a presumption that if a pregnant person or person on family-related leave is dismissed, the dismissal is presumed to have been caused by the pregnancy or use of family leave, unless the employer can prove otherwise. Further, under Section 9(3), an employer may dismiss a person on maternity, paternity or parental or care leave only if the employer's activities cease completely. Further, the Act on Equality, Section 7(3) defines placing a person in a different position due to parenthood and childcare responsibility as indirect discrimination on the ground of sex.

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. Section 9, Chapter 4 of the Employment Contracts Act entitles the employee to return primarily to his/her former job, but if that is not possible, to corresponding work which is covered by his/her employment contract, or if even that is not possible, to other work covered by his/her employment contract.

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?

In principle, as the employment contract remains valid and intact, the rights of the worker are maintained.

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

The employment contract remains valid.

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?

To the author's knowledge, parental leave and paternity leave (unlike maternity leave) are seldom (if ever) remunerated through collective agreements. Individual employment contracts do not contain provisions on pay during family-related leaves.

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. Parental leave carries parental benefits at the level of sickness insurance benefits. The benefits are income-related, but a minimum benefit is paid for persons without income from the labour market (or from entrepreneurship). All sectors are covered, including self-employment, agricultural entrepreneurship and other entrepreneurship.

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)?

The personal scope of the family-related benefits is clearly broader than what Directive 2010/18 requires, as it even covers the self-employed and entrepreneurs. The leave is also longer than the minimum required under the Directive. In 2017, the right to parental

leave was extended to persons who are married to or live with the mother in circumstances that resemble marriage, and adoptive mothers married to the biological mother which also exceeds what is required under EU law.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes. The paternity leave covers a maximum of 54 weekdays, but only 18 days if the leave coincides with maternity or parental leave. The provision aims at promoting fathers' use of their right to family-related leaves, and at alleviating the imbalance in the use of parental leave, which is fully transferable between the parents. The right to paternity leave previously depended on the parents living together, but an amendment in 2017 gave a father who does not live with the mother an individual right to paternity and parental leave, provided he is responsible for the care of the baby.⁴⁵

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. See in 4.5.12.

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. Chapter 4, Section 7 contains provisions on force majeure leave for urgent family reasons. The employee has a right to leave, if his or her presence is required due to an unforeseeable and compelling reason caused by illness or accident in his or her family. The number of times force majeure leave may be taken is not limited.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

No. Surrogacy is illegal in Finland.

5.8 Leave sharing arrangements

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

No. Paternity leave may be taken simultaneously with maternity or parental leave. As explained above under 4.5.5, a father who takes paternity leave during the mother's maternity leave or when the mother takes parental leave, loses days of his paternity leave.

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

Yes. Parental leave is transferable between the parents. Only part of the paternity leave is non-transferable.

⁴⁵ The provision was amended by Act 6/2017.

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/no. There is no general right to reduced working time. An employee does, however, have the possibility to partial care leave to take care of his or her child or other child living permanently in the household until the second school year in basic education ends (when the child is about 9 years old), provided the employee has been in his or her present employment for at least six months. For the care of a disabled child, the partial leave may continue until the child is 18 (Chapter 9, Section 4 of the Employment Contracts Act). The leave and its conditions have to be negotiated with the employer, however. The employer may refuse the leave only if it causes serious damage to the production and service at the workplace, which cannot be avoided by reasonable rearrangement of work (Subsection 2 of the provision). If an employee has the right to partial leave, but its conditions cannot be negotiated, the employee has the right to one period of partial care leave each year, of a length and at a time that the employee proposes. The length of the partial care leave has to be negotiated and therefore also depends on the employer. Then the partial leave consists of working days of six hours, or 30 hours per week.

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

No.

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

No. There is no legislation on a legal right to work remotely (nor an obligation to do so), unless based on an employment contract. The Social Partners have given guidelines concerning remote work. There are model contracts for remote work, and many labour unions provide recommendations on remote work.

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/no. Section 7 of the Act on Equality contains a general prohibition of discrimination on the basis of sex, and social security schemes are under the material scope of the Act. There is no remedy or compensation for a victim of discrimination in the Act on Equality, however. The general principles of administrative law under the Act on Administration (434/2003), Chapter 2, Section 6 include the principle of equal treatment.

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 Finnish sickness, disability, maternity and parental benefits as well as pension schemes are statutory and mandatory, and operative in all fields where people have earnings as employees or entrepreneurs. They cover self-employed persons and agricultural entrepreneurs. The scope of the national law is broader, as it even covers entrepreneurs.

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 material scope covers the scope of Article 7, and as noted in 5.1, even entrepreneurs.

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?

Yes. Article 9(h) mentions the setting of different levels of benefit 'except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex' in certain cases.

The Finnish Employment Accidents Act (608/1948) Section 14(1) (192/1987), Section 18 b(1) and 18b(3) (1642/12992) allowed a lump-sum compensation for the accident in certain cases, and the lump sum was calculated using sex as an actuarial factor. The Supreme Administrative Court referred a case (KHO 2013:105) concerning such a lump-sum compensation to the EU Court of Justice. In Case C-318/13, the EU Court interpreted Directive 79/7/EEC Article 4(1) to preclude national regulation of employment accident insurance which uses sex-segregated life expectancy calculations as an actuarial factor, if this results in a lower lump-sum compensation for a man than for a similarly situated woman. It was for the Finnish Supreme Administrative Court to decide whether Finnish legislation evidently violated EU law, in which case X would be entitled to compensation by the State. The Finnish Supreme Administrative Court found (KHO:2015:8) that the use of sex-segregated life expectancy in calculating lump-sum compensation under the Employment Accidents Act breached EU law, and that X had suffered a loss due to the Act. The breach was not sufficiently evident to warrant reparation by the State, as decisive EU case law (Case C-236/09) was of a later date than relevant decisions concerning X's right to benefit by Finnish courts, and no infringement procedure had taken place.

The Employment Accidents Act (608/1948) has now been replaced by the Act on Employment Accidents and Occupational Diseases (459/2015), which will come into force on 1 January 2015. The latter Act does not contain a provision which would use sex as an actuarial factor.

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

See above in 5.4.

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.

The Finnish occupational security schemes are not easily comparable to either statutory or occupational social security schemes. They are mandatory and based on statute, but the benefits paid under the schemes are related to occupational income (including income from acting as an entrepreneur, as well as persons on stipends). The classification problem does not involve special problems of equality, however. Rather, the broad coverage is a bonus.

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 Section 7 of the Act on Equality, see 5.1.

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.

As explained above, the occupational (mandatory) social security covers 'the working population - including self-employed persons, workers and self-employed persons whose activity is interrupted by illness, accident or involuntary unemployment and persons seeking employment - and retired or invalidated workers and self-employed persons'. Statutory schemes further cover persons who have no income from these sources, under the national pension scheme, unemployment benefits etc.

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.

The scope is broader, as explained above.

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 exclusions have been implemented.

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

See 5.4.

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.

No.

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?

No. The Act on Equality is the main legal instrument to implement Directive 2010/41/EU. The prohibition of discrimination under Section 7 of the Act is general, and may be applied to self-employed persons, but Section 8 that guarantees justiciable rights and access to remedies against discrimination in working life is not fully applicable to the self-employed. Section 3, subsection 1 of the Act's definition of an 'employee' applies 'as appropriate, to persons working in other legal relationships that are comparable to an employment relationship.' The preparatory works explain that the definition refers to forms of work that take place under circumstances similar to those under employment contracts, such as independent workers or entrepreneurs, freelancers, persons with their own professional practice, or persons who are engaged in care work in families under an assignment agreement which is paid by public funds under social welfare legislation. Independent workers and entrepreneurs are only covered if they sell their own skills, even though they may act as entrepreneurs in the sense meant by unemployment or pension legislation. A person similar to an 'employee' cannot be one who engages in activities which involve a proper enterprise risk, or one who employs others. The definition of an employee thus covers self-employed persons in work-like situations, and in these cases offers remedies and sanctions. The definition does not give protection against discrimination when establishing a business and other business-related situations, however.

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)

It is not self-evident what the term 'self-employed' refers to under Finnish legislation, and especially what the term 'spouse of a self-employed person' refers to. A person may establish an enterprise, but the obligation to register only exists if the enterprise has a business location or employs persons other than the spouse or under-age child of the entrepreneur. No documents are needed to establish an enterprise, unless the entrepreneur wishes to run it in a company form, but naturally the entrepreneur is obligated to submit a tax declaration and follow any special regulations of his or her line of activity.

The self-employed are covered under health and social welfare legislation. Provisions on how the income, to be divided between spouses for tax and social welfare purposes, is to be calculated are in under various different Acts. Maternity, paternity and parental benefits are paid for all entrepreneurs and their spouses under Chapter 9 of the Sickness Insurance Act (1224/2004). The benefits are calculated on the basis of occupational income during a preceding period, and persons without income are entitled to minimum benefits on the grounds of residence. The Act on Entrepreneurs' Pensions (1272/2006) covers entitlement to old-age pension, part-time pension, rehabilitation pension, disability pension and family pension for an entrepreneur's widow or widower. The pension accrues in a manner similar to employment-based pension schemes on the basis of occupational income, and it also accrues during maternity, paternity and parental leave periods and sickness periods. There is no regulation as to how spouses or life partners who run an enterprise together are to divide the income from the enterprise between themselves for purposes of the entrepreneurs' pension scheme.

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.

Agricultural employees (a very small group) are covered as employees, and the agricultural entrepreneurs' social welfare benefits are covered under the separate Act on Agricultural Entrepreneurs' Pensions (1280/2006), which provides pensions similar to those in the Entrepreneurs' Pensions Act, and the Act also applies to persons who work on stipends.

Life partners are recognised in civil law by the Act on dissolving the mutual household of cohabiting partners (26/2011), which defines persons who have cohabited for five years or who have or have had a child under joint custody. The Act contains rules on dividing the partners' property and on compensating the input that a partner has given to the mutual household, including working or funding the household or economy, some parts of social welfare and protection, but not in all respects.

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 Act on Equality between Women and Men (609/1986) is the main legislative tool that prohibits discrimination. The Act was not amended in order to transpose Directive 2010/41/EU, and it was assumed that Finnish legislation would not need to be amended in other respects either.

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 specific positive action has been taken.

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

Yes. See above, in 5 and 6. The statutory and mandatory social security covers the self-employed, and there is no alternative system.

Life partners are considered as family members. If they participate in their partner's enterprise, they are covered in their own right. There is no regulation as to how spouses or life partners who run an enterprise together are to divide the income from the enterprise between themselves for purposes of the entrepreneurs' pension scheme. The Act on Agricultural Entrepreneurs' Pensions (1280/2006) provides pensions similar to those in the Entrepreneur's Pension Act. An agricultural entrepreneur is defined under Section 3 as a person who alone or together with others runs an agricultural business on a minimum of five hectares of agricultural land, is a professional fisherman/fisherwoman without being in employment, runs reindeer husbandry, performs these activities as a family member of the entrepreneur, or is in life partnership with the entrepreneur. The provisions on agricultural enterprises in company form are similar to those for other enterprises. The annual income from agriculture is calculated per hectare of land or forest (or the number of reindeer for reindeer herders). Unlike in other entrepreneurs' pension schemes, the income cannot be divided freely between the spouses or life partners for pension purposes. Under Section 18 of the Act, the agricultural income is to be shared so that one third is calculated for each spouse, and only one third may be divided between them as they agree.

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

Yes. The Sickness Insurance Act (1224/2004), Chapter 9 contains provisions on benefits to be paid regarding family-related leaves, including maternity benefits (Sections 1-5 of Chapter 9 of the Sickness Insurance Act). The provisions cover self-employed persons, whose benefits are defined on the basis of their previous income from self-employment.

Where the income from self-employment is not high enough to warrant income-based maternity benefits, the right to minimum benefits will provide a reasonable income.

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

No. There has been no specific implementation of Article 10 of the Recast Directive, as Finnish legislation was assumed to be in line with the requirements under the article. An earlier amendment of the Act on Equality broadened the definition of 'employee' under the Act to include, 'as appropriate, persons working in other legal relationships that are comparable to an employment relationship'. Such a person does not need to work under the direction and supervision of an employer, or work on the premises of the person who pays for the service, or use equipment provided by that person, according to the preparatory works of the provision. The definition covers, according to the preparatory works, independent workers and entrepreneurs, persons with their own professional practice, or persons who do care work in families under an assignment agreement. Independent workers are only covered, however, if they sell their own skills and their work does not involve a genuine entrepreneur's risk. Finnish legislation is therefore rather ambiguous as to whether all self-employed persons are covered under the Act on Equality.

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?

No. As explained in 8.8, the Act on Equality applies or does not apply to self-employed persons, depending on whether the self-employed person falls under the expanded definition of 'employee'.

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. Section 8e of the Act on Equality defines offering goods and services as discrimination, if it falls under the definition of discrimination (including direct and indirect discrimination under Section 7 of the Act).

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.

The material scope of the provision coincides with that of the Directive.

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?

Yes. Section 8e(3) contains the exceptions allowed by Article 3(3) of the Directive.

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.

Section 8e(2) allows the provision of goods or services exclusively or primarily to members of one sex if it is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The Equality Ombudsman has considered that offers to one sex only are justified if their value in money is small, e.g. when special offers are made due to the yearly mother's or father's day celebration, or offers made to women on women's day, provided the benefit involved is of small monetary value. Some public baths and swimming halls offer some times for men and women separately, and public saunas are offered for men and women separately.

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. Section 10, Chapter 31, of the Act on Insurance Companies (521/2008) prohibits the use of sex as actuarial factor in the calculation of premiums and benefits in consumer insurances. Sex may be used as actuarial factor in other than consumer insurance policies, if sex is a factor that has an impact in the risk calculation, assessed on the basis of actuarial facts and statistics.

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 provisions that allowed the use of sex as actuarial factor were repealed and the new provision described above adopted in 2012. This means that the exception is no longer relevant concerning consumer insurances. Employers have started to provide pension schemes for some of their employees (typically for directors or high executives) that are not considered as consumer insurances, and as they are not statutory schemes, sex may then be used as actuarial factor.

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. The Penal Code was amended before the ratification (introducing stalking and physical sexual harassment as crimes), and an Act on compensation for shelter providers from state funds was introduced at ratification. The latter Act was introduced to provide compensation for the municipalities and (a few) private providers of shelters. When Parliament accepted the Government Bill on ratification (HE 155/2014) in 2014, it requested that the shelter provision shall be improved, that special services to victims are provided and that the NGOs that are active in the area receive appropriate funding (Response of Parliament EV 307/2014 vp - HE 155/2014 vp). There was expert criticism on the substantive law requirements of the Convention being fulfilled by Finnish law, and Parliament's Employment and Equality Committee noted this criticism and called for follow-up measures (Report of the Committee TyVM 15/2014 vp).

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.

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. Section 9a of the Act on Equality stipulates that if the alleged victim of gender discrimination shows in a court or before an authority facts on the basis of which it may be assumed that discrimination on the basis of sex has taken place, the respondent has to show that gender equality has not been violated, but that the treatment has been caused by an acceptable ground other than sex. This provision on the burden of proof is not applied in criminal-law matters. Under Section 10, the employer has a duty to give an explanation of his/her acts to a person who alleges to have been discriminated against in employment or access to employment. As to access to employment, the employer is to provide information on the grounds of selection to the post, the education, work and other experience of the selected person and other grounds that have had an impact on that person being selected.

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.

The remedies under the Act on Equality include the right to compensation through a court within two years after the violation has taken place (Section 12 of the Act). Compensation is available for violations of Section 8 and 8a-d, which cover discrimination in working life, in educational institutions, in labour-market organisations, and in the provision and access to goods and services. The compensation under the Act on Equality does not exclude compensation under the Act on Torts or labour legislation, nor does it preclude the victim's right to use administrative-law remedies. A municipal decision to employ an official may be reversed, if the decision is found to violate the Act on Equality, and the person discriminated against may thus be reinstated. Discrimination has been criminalized under the Criminal Code, Chapter 11, Section 11. The scope of the provision covers market and occupational activities, services to the public, activities of the authorities and other public activities and in arrangements of a public occasion or general meeting; the prohibited grounds cover sex and family relations. Under Chapter 47 on work-related crimes, Section 3 criminalizes work discrimination and Section 3a extortions work discrimination. Under the Criminal Code, the act must be intentional and the burden of proof lies with the prosecutor or claimant.

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.

The compensation under the Act on Equality is appropriate in the sense that there is no upper limit, except for cases where several applicants to a post have been discriminated against. It is problematic, however, that the compensation may, under Section 11, be

reduced or removed altogether, if considered reasonable when taking into account the economic circumstances of the violator, his or her attempts to prevent harmful effects caused by the act, or other circumstances. These grounds are not in line with the requirements of effectiveness, proportionality and dissuasiveness of compensations. It is possible to be compensated through criminal law or on a tort-law basis, but then the rules of the burden of proof and the intentionality requirements are different from those under the Act on Equality.

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.

There is no formal barrier to access to courts, but in practice access may be prevented by excessive costs.

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.

Finnish procedural law does not give specific standing to interest groups in legal cases. Such groups may, of course, subsidise or assist a complainant, but they have no formal role.

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

The Equality Ombudsman gives advice to victims under Section 19 of the Act on Equality, and an opinion as to the alleged discrimination. The Ombudsman has a mandate to assist a victim in court, but the mandate has never been used so far. Legal aid is provided by public legal aid offices, but the cost of the aid is income-related, and is not available for persons with a higher income.

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?

The equality bodies include the Equality Ombudsman, <https://www.tasa-arvo.fi/fi/etusivu>, who monitors the Act on Equality and sex discrimination, and the Non-Discrimination and Equality Tribunal, <http://yvtltk.fi/en/index.html>. The Tribunal, which started in this form in the beginning of 2015, merges the functions of the former Gender Equality Board and the Discrimination Tribunal, and monitors the Act on Equality between Women and Men and the Non-Discrimination Act, which covers all other grounds of discrimination except sex/gender.

The tasks of the Equality Ombudsman are to advise, monitor, and decide on cases to be brought to the Non-Discrimination and Equality Board. An amendment of the Act on Equality in 2016 provided the Ombudsman with the mandate to conciliate parties to a discrimination case (in practice, the Ombudsman had often attempted to help parties to reach an agreement before). The Ombudsman has the right to visit workplaces, educational institutions, labour-market organisations and service providers in order to monitor the Act on Equality. The Non-Discrimination and Equality Board may decide discrimination cases brought to the Board by the Ombudsman or by the social partners. Victims of gender discrimination may not bring a case to the Board themselves. An amendment of the Act on Equality in 2016 gives parties in a case of discrimination that

have reached an agreement the right to have that agreement confirmed by the Non-Discrimination and Equality Board.

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?

The social partners have the right to bring cases of sex discrimination (but not other cases of discrimination) to the Non-Discrimination and Equality Board. The social partners are influential in proposing and drafting legislation in all issues of working life, and that has included all gender equality law. The collective agreements have a strong impact on work conditions and pay, and the social partners traditionally have joint discussions on gender equality issues.

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).

Collective agreements are not used to implement EU gender equality law, except possibly as soft-law measures in the form of recommendations addressed to the national social partners.

12 Overall assessment

EU law has generally been implemented correctly. However, access to remedies and legislation on compensation are not de facto satisfactory, even where there is no infringement of the formal aspects of EU law.

Annexes

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