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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Liechtenstein

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1. Introduction

1.1 Basic structure of the national legal system

The national legal system in Liechtenstein is - corresponding to its Constitution - a constitutional hereditary monarchy based on democracy and parliamentary government. Parliament (*Landtag*) is the representative body of the nation. Its main task is to pass legislation. For a law to enter into force, Parliament has to approve it, the sovereign has to give his consent and the Prime Minister has to countersign it. Finally it has to be published in the State Gazette (*Landesgesetzblatt*). Characteristic of direct democracy in Liechtenstein is the fact that each law that has not been declared as urgent by Parliament and every treaty according to international law are subject to a facultative referendum.

The main concepts of EU gender equality law have been implemented in Liechtenstein by the Gender Equality Act (*Gleichstellungsgesetz*, GLG).

The court system in Liechtenstein is rather simple and small. Jurisdiction in civil and criminal matters is in first instance with the County Court (*Landgericht*), in second instance with the Appellate Court (*Obergericht*) and the court of last resort is called Supreme Court (*Oberster Gerichtshof*). Courts of public law are the Higher Administrative Court (*Verwaltungsgerichtshof*) and the Constitutional Court (*Staatsgerichtshof*). All courts are based in Vaduz, the capital of Liechtenstein.

1.2 List of main legislation transposing and implementing Directives

List the main relevant national legislation on gender equality/prohibition on sex discrimination.

The following legislation is also available on the Internet:¹

- Constitution of Liechtenstein (*Verfassung des Fürstentums Liechtenstein*), LGBI.1921/15 as amended by LGBI. 2011 No. 594;
- Act on Gender Equality Law (*Gleichstellungsgesetz*, GLG), LGBI 1999 No. 96, as amended by LGBI 2011 No. 212;
- Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB), LGBI 1967 No. 34 (see the currently relevant version);
- Labour Code (*Arbeitsgesetz*), LGBI 1967 No. 6;
- Sickness Insurance Act (*Krankenversicherungsgesetz*, KVG), LGBI 1993 No. 95 as amended by LGBI 2013/6, LGBI 2014/149;
- Occupational Schemes Act (*Gesetz über die betriebliche Personalvorsorge*, BPVG), LGBI 2007 No. 13;
- Invalidity Insurance Act (*Invalidenversicherung*, IVG), LGBI 2006 No. 244;
- Old-Age Insurance Act (*Alters- und Hinterlassenenversicherung*, AHVG), LGBI 2006 No. 24 as amended by LGBI 2011/388 and LGBI 2011/541;
- Accident Insurance Act (*Unfallversicherung*, UVersG), LGBI 2006 No. 89;
- Unemployment Insurance Act (*Arbeitslosenversicherung*, ALVG), LGBI 2006 No. 155;
- Marriage Act (*Ehegesetz*), LGBI 1993 No. 53;
- Registered Partnership Act (*Partnerschaftsgesetz*), LGBI 2011 No. 350;
- Commercial Code (*Gewerbegesetz*), LGBI 2006/184.

¹ <https://www.gesetze.li/> (authentic version since 1 January 2013), accessed 21 October 2015.

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

No, the Constitution of Liechtenstein does not prohibit sex discrimination.

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

Yes, Article 31(2) of the Constitution addresses equality between men and women. The Article concerned was amended in 1992.² It briefly mentions that men and women have equal rights. According to this amendment the adaptation of legislation in order for it to be in line with gender equality is regulated by the law.

In addition, Article 31(1) of the Constitution contains the norm that all nationals of Liechtenstein are equal before the law. By a correct interpretation of constitutional law LGBTI. 1971 No. 22 the legislator states that the expression 'nationals' includes all persons with the Liechtensteinian nationality, with no discrimination between the sexes.

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

In general there is no direct effect of the abovementioned constitutional norms on horizontal relations.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

In Liechtenstein specific equal treatment legislation exists: the Gender Equality Act (GLG) was created in 1999 and adapted several times according to the framework of EU legislation. The GLG covers gender equality and prohibits sex discrimination and promotes the *de facto* equality between women and men. The GLG does not address any other discrimination grounds.

² Amendment to the Constitution by the State Gazette (LGBTI) 1992/81.

3. Implementation of central concepts

3.1 Sex/gender/transgender

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

There are no definitions of these terms in legislation.

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

Discrimination due to gender reassignment is not explicitly prohibited. Pursuant to Article 3 GLG the definition of the prohibition of discrimination states that nobody shall be discriminated against directly or indirectly on the grounds of sex. This could allow the interpretation that the prohibition of sex discrimination also covers discrimination due to gender reassignment. Such an interpretation is mentioned in the preparatory notes to the amendment of the GLG implementing Recast Directive 2006/54.³ The principle of equality between men and women shall not only apply to natural sex but also includes discrimination on the ground of gender reassignment with reference to Recital 3 of Recast Directive 2006/54.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Sex discrimination is prohibited by Article 3 GLG. The definition of direct discrimination is contained in Article 1(a)(a) GLG and exactly follows the wording of Directive 2006/54/EC. It therefore complies with the EU definition.

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

Pursuant to Article 3 GLG, pregnancy and maternity discrimination are explicitly prohibited as a form of direct sex discrimination according to Article 1(a)(a) GLG. Therefore the provision complies with Article 2(2)(c) of Recast Directive 2006/54.

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

There seem to be no specific difficulties in applying the concept of direct sex discrimination because there is no case law on the topic. A rather likely reason for this is the persistent lack of awareness of all stakeholders involved in qualifying certain circumstances correctly according to sex discrimination legislation.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Sex discrimination is prohibited by Article 3 GLG. The definition of indirect discrimination is contained in Article 1(a)(b) GLG and exactly follows the wording of Recast Directive 2006/54/EC. It therefore complies with the EU definition.

³ BuA No. 132/2010, LGBI. 2011/212.

- 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.

To the knowledge of the expert statistical evidence is not used in order to establish a presumption of indirect sex discrimination because cases are not available.

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

There is no case law.

- 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.

The specific difficulty is in fact that there is no case law on the gender equality topic.

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?

There are no specific norms addressing these topics. To the expert's knowledge there are no proposals pending which aim to incorporate the concept of multiple discrimination and/or the concept of intersectional discrimination into national legislation.

- 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)?

There is no case law.

3.5 Positive action

- 3.5.1 Is positive action explicitly allowed in national legislation?

Positive action is allowed insofar as there is no discrimination if adequate measures are taken to achieve factual equality. This is laid down in Article 3(4)(a) GLG as an exception to the prohibition of the sex discrimination. Its definition complies with the EU definition of Article 157 TFEU (4).

- 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.

To the expert's knowledge there are no specific difficulties.

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

To the expert's knowledge there are neither measures nor proposals pending nor are there any policy measures that address gender balance in company boards.

- 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.

Since 2004 more than 200 women have successfully completed the training course in politics for women. The participants took the opportunity to empower themselves to actively communicate, decide and get involved in politics. The course emphasized the imparting of specific knowledge and practical experience. It covered the following topics in a total of six modules: political engagement – a challenge for me?; positioning; the political systems of Liechtenstein and Vorarlberg; rhetoric and reasoning; political structures; conflict management; public relations and media training. Since 2008 three modules take place in Liechtenstein and three take place in Austria. As part of the course, a network has been developed which functions as an information pool, a contact network and support for each participant. This course is designed to encourage women to have a positive view on political careers.⁴

3.6 Harassment and sexual harassment

- 3.6.1 Is harassment explicitly prohibited in national legislation?

Pursuant to Article 4(1) GLG, harassment is explicitly prohibited. The definition is contained in Article 1(a)(c) GLG and follows that in Recast Directive 2006/54.

- 3.6.2 Does the definition of harassment cover a broader scope than employment in your country? If so, please specify the scope.

According to Article 4(a) and (b) GLG the definition of harassment also covers the scope of the access to and the supply of goods and services.

- 3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Pursuant to Article 4(1) GLG sexual harassment is explicitly prohibited. The definition is contained in Article 1(a)(d) GLG and follows that in Recast Directive 2006/54.

- 3.6.4 Does the definition of sexual harassment cover a broader scope than employment in your country? If so, please specify the scope.

According to Article 4 (a) and (b) GLG the definition of sexual harassment also covers the scope of the access to and the supply of goods and services.

- 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)?

Article 4(2) GLG also specifies these issues.

3.7 Instruction to discriminate

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

According to Article 3(3) and Article 4(1) GLG the instruction to discriminate is explicitly prohibited and considered as discrimination on the grounds of sex.

⁴ For more information see: <http://www.frauenwahl.li/aktuelle-projekte/politiklehrgang-2014>.

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.

There are no specific difficulties.

3.7.3 Is incitement to discrimination explicitly prohibited in your country?

The incitement to discrimination is not explicitly prohibited.

3.8 Other forms of discrimination

There are no other forms of discrimination prohibited in national law.

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?

Article 3(2)(c) GLG implements the principle of equal pay and the definition corresponds to the wording of Recast Directive 2006/54.

4.1.2 Is the concept of pay defined in national legislation?

Article 1(a)(e) of the GLG in conjunction with Paragraph 1173(a) Article 9(3) of the Civil Code implement the concept of pay and the definition corresponds to the wording of Recast Directive 2006/54. This definition also complies with the definition of Article 157(2) TFEU.

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

Article 3(1) and Article 3(2)(c) of the GLG in conjunction with Paragraph 1173(a) Article 9(3) of the Civil Code implement Article 4 of the Recast Directive. The norm in the Civil Code was first introduced in 1993 and contains the prohibition of unequal pay for equal and equivalent work for men and women. Then Article 3(1) of the GLG implemented the prohibition of direct and indirect discrimination including the same criteria for both men and women in job classifications (Article 3(2)(c) GLG).

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

No.

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. There is no case law on the issue either.

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

No.

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?

Not to the expert's knowledge.

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

As there is no case law on the topic, such justifications have not yet been elaborated in Liechtenstein's legislation.

- 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?

Information campaigns in Liechtenstein on equal pay to raise awareness of all stakeholders involved are a certain indicator that instruments are needed in relation to the application of the principle of equal pay for equal work and work of equal value in practice. There is no case law on the topic, therefore specific difficulties have not yet been documented in judgments by the courts.

There is no case law on the topic.

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)?

Pursuant to Article 2 GLG gender equality applies to all private and public employment contracts as well as other working environments. Article 3(1) GLG stipulates the prohibition of direct and indirect discrimination based on gender. According to Paragraph 1173(a) Article 1(1) of the Civil Code (ABGB) an employee is obliged to work for the employer for a limited or unlimited period of time for a salary based on time or task including part-time work.

- 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)?

National implementing legislation has transposed the material scope of application of Article 14(1) (a)-(d) of Directive 2006/54 by norms of the Civil Code (ABGB) and the GLG. In Article 3(2) (a)-(d) GLG the wording has even literally copied the wording of the Directive. Regarding atypical employment contracts, Paragraph 1173(a) Article 8(b) ABGB regulates equal treatment of full-time and part-time workers as well as workers with temporary contracts and unlimited contracts. Case law is lacking in this field.

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

Article 3(4)(b) of the GLG contains the exception regarding discrimination if a difference of treatment is made based on a characteristic related to sex, by reason of the nature of the particular occupational activity concerned or of the context in which it is carried out, if such a characteristic constitutes a genuine and determining occupational requirement. To the expert's knowledge there is no information available on the assessment of the occupational activities referred to in Article 14(2) of Recast Directive 2006/54. There have been no legislative changes in this regard in the GLG.

- 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)?

Article 3(1) of the GLG contains the exception on protection for women, in particular as regards pregnancy and maternity.

- 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.?

To the expert's knowledge there are no particular difficulties as documented.

5. Pregnancy and maternity protection; maternity, paternity, parental leave and adoption leave (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?

The law does not include such a definition.

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

Articles 35, 35(a) and 35(b) Labour Code regulate health protection, occupational activities, alternative work (equivalent work which replaces the actual work of a pregnant worker because it is too dangerous to her health) and the continued payment of wages during maternity, in particular during employment whilst pregnant. According to these provisions, working conditions for pregnant workers and women who are breastfeeding have to be adapted so that their health and that of their children are not affected. Pregnant women and breastfeeding mothers can only be employed with their consent. They are allowed to leave work by simple notification. Breastfeeding mothers are entitled to time off which is necessary for breastfeeding. Women are not allowed to work for eight weeks after childbirth. Pregnant workers are not allowed to work between 8 p.m. and 6 a.m. during the eight weeks preceding childbirth. The employer is obliged to offer them equal work between 6 a.m. and 8 p.m. The same applies in the case of a medical indication at any other moment during the pregnancy and for the period between 8 and 26 weeks after childbirth. Women are entitled to the continued payment of 80 % of their salary plus adequate compensation for the rest if their employer is not able to offer them equal work between 6 a.m. and 8 p.m. During the entire period described, the woman must not be deprived of any advantage with respect to her professional position in the company, her seniority or any promotion linked to her regular work. In the expert's view this implementation is correct since all the points in Article 4-7 mentioned in Directive 92/85 are covered by national legislation.

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)?

According to Paragraph 1173(a) Article 49(1)(b) ABGB the employer is not allowed to dismiss an employee during her pregnancy and up to 16 weeks after childbirth. Dismissal in exceptional cases is permitted in Paragraph 1173(a) Article 53(1) ABGB. Pursuant to Paragraph 1173(a) Article 18(3) ABGB the employer has to pay the same salary during pregnancy and confinement. Maternity leave follows childbirth for 16 to 20 weeks, during which period 80 % of the insured salary is paid to the employee.

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)?

Dismissal in ordinary cases is prohibited, but dismissal in *exceptional cases* is permitted; here the employer must cite important grounds in writing (Paragraph 1173(a) Article 53(1) ABGB). Such an important ground is any fact that makes it unacceptable, in the sense of *bonafide*, for the employer to continue the employment contract.⁵ The court has to decide if such a ground is duly substantiated. In any case the fact that the pregnant

⁵ For instance, this *could* include the situation of an employee stealing from the employer. However, the law does not define such cases, and as every case is exceptional it is too difficult to generalise the grounds in such delicate situations.

worker is incapacitated must not be considered as an important ground (Paragraph 1173(a) Article 53(2) and (3)).

5.2 Maternity leave

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

According to Article 15 of the Sickness Insurance Act (KVG) maternity leave is 20 weeks.

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

Pursuant to Article 15 KVG at least 16 of the 20 weeks of maternity leave have to be taken after childbirth. Four weeks can be taken before childbirth. It is also possible to take all 20 weeks after childbirth. Women having given birth are not allowed to work for 8 weeks after childbirth (Article 35(a)(3) Labour Code).

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?

Articles 35, 35(a) and 35(b) Labour Code regulate health protection, occupational activities, alternative work (equivalent work which replaces the actual work of a pregnant worker because it is too dangerous to her health) and the continued payment of wages during maternity, in particular during employment whilst pregnant. During the entire period described, the woman must not be deprived of any advantage with respect to her professional position in the company, her seniority or any promotion linked to her regular work (Article 35(b) Labour Code).

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

Pursuant to Article 35(b) Labour Code, the woman must not be deprived of any advantage with respect to her professional position in the company, her seniority or any promotion linked to her regular work, including 80 % of the regular salary if she cannot continue working (Paragraph 1173(a) Article 18(3) ABGB). This applies during the entire period of pregnancy and maternity. According to Article 14 and 15 KVG the employee has the right to receive 80 % of her insured salary during maternity leave.

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?

As referred to in Paragraph 1173(a) Article 18(3) ABGB and Article 35(b) Labour Code and Articles 14 and 15 KVG, pay or the allowance is at the same level as sick leave, i.e. 80 % of the insured salary of the employee. In principle there is no ceiling in absolute numbers stipulated in national law because it will result from the individual situation of the employee in the three-pillar social security system of Liechtenstein. Therefore the law refers to amounts in percentages of the insured income.

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

To the expert's knowledge this is uncertain, but it is quite conceivable that employers also negotiate individual solutions with their employees because this is an important part of the working culture in Liechtenstein.

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

Paragraph 1173(a) Article 18(3) ABGB stipulates that the employer has to continue to pay salary to the employee during absence due to pregnancy and childbirth, provided that the employment contract was concluded for a period of at least three months, or that the employment relationship has already lasted for more than three months. Article 15 KVG provides that benefits shall be paid to women for 20 weeks, at least 16 of which after childbirth, provided that the woman in question was insured before childbirth for a period of at least 270 days, of which three months must have been consecutive.

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

Under Paragraph 1173(a) Article 36(b) ABGB, after maternity leave women return to their jobs or to equivalent jobs on terms and conditions that are no less favourable to them, and they benefit from any improvement in working conditions to which they would have been entitled during their absence.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Paragraph 1173(a) Article 34(a)(1)(b) ABGB provides for an adoption leave of four months which is not paid. The age limit for adopted children is five. If the employee has been employed for more than a year or if the contract is concluded for more than one year, the employee is entitled to four months' adoption leave. In case of successive fixed-term contracts with the same employer the sum of these contracts is taken into account for the purpose of calculating the qualifying period. The employee as parent shall live together in the same household with the child and care for the child mainly him- or herself.

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

There are no further measures to address specific needs of adoptive children except for the higher maximum age of the adopted child compared to the biological child.

5.3.3 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)?

There is no specific protection against dismissal for workers who take adoption leave but if the employer gives notice only to avoid the exercise of the rights of the employee based on the employment contract (in this case the right to adoption leave), the notice is considered discriminatory according to Paragraph 1173(a) Article 45(c) ABGB. Such a notice can be formally objected to in writing by the employee. After the end of the adoption leave - pursuant to Paragraph 1173(a) Article 34(c) ABGB - the employee has the right to return to his or her former job or, if this is not possible, to equivalent or similar work on terms and conditions which are no less favourable to him or her.

5.4 Parental leave

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

By amendment of the Civil Code⁶ - in Paragraph 1173(a) Article 34(a) to 34(c) ABGB - Directive 2010/18 has been explicitly implemented in Liechtenstein.

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

National legislation is applicable to both public and private employment contracts.

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?

Normally national legislation also covers contracts of employment related to part-time work, fixed-term work or contracts with a temporary agency.

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 total duration of parental leave is four months.

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

The right to parental leave is individual and not transferable from one parent to the other.

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 employee is entitled to take parental leave on a full-time, part-time or hourly basis, taking into account the justified interests of the employer and the employee.

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

The notice period is three months, and the employee has to notify the start and the end of the parental leave.

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

Paragraph 1173(a) Article 34(a) (1) and (2) ABGB provides that if the employee has been employed for more than a year or if the contract is concluded for more than one year, the employee is entitled to four months of parental leave. In case of successive fixed-term contracts with the same employer the sum of these contracts is taken into account for the purpose of calculating the qualifying period.

⁶ State Gazette, LGBl. 2012/402.

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

The employer may request that the employee select a different period if there are reasonable work-related grounds, such as the fact that the work in question is seasonal work, that no replacement can be found in time, that a certain number of employees are all asking for parental leave at the same time, or because the employee's position in the company is of strategic importance.

5.4.10 Are there special arrangements for small firms?

According to Paragraph 1173(a) Article 34(b)(3) ABGB in companies with fewer than 30 employees the employer has the right to defer the period of parental leave in all cases where the planned leave would interfere with the operations of the company.

5.4.11 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?

To the expert's knowledge there are no such special rules.

5.4.12 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)?

There is no specific protection against dismissal for workers who take adoption leave but if the employer gives notice only to avoid the exercise of the rights of the employee based on the employment contract (in this case the right to parental leave), the notice is considered discriminatory according to Paragraph 1173(a) Article 45(c) ABGB. Such a notice can be formally objected to in writing by the employee.

5.4.13 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?

After the end of adoption leave - pursuant to Paragraph 1173(a) Article 34(c) ABGB - the employee has the right to return to his or her former job or, if this is not possible, to equivalent or similar work on terms and conditions which are no less favourable to him or her.

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

Yes, according to Paragraph 1173(a) Article 34(c)(1) ABGB.

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

The employment contract is suspended during the period of parental leave.

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

The employee has to pay the contributions for social benefits during parental leave. Healthcare is always a private duty for people living in Liechtenstein.

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

No, it is unpaid leave.

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

No, it is unpaid leave.

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

Liechtenstein only aimed at the implementation of the minimum requirements of Directive 2010/18.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

No.

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)?

No.

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)?

Paragraph 1173(a) Article 29(5) ABGB governs the absence of employees in case of force majeure for urgent family reasons. Employees are entitled to time off from work for one to three days per incidence in case of sickness or accident of family members living in the same household evidenced by medical certificate. This applies only until other care is organized and is not applicable if a child is e.g. in hospital and the care is provided for there. It is paid leave pursuant to Paragraph 1173(a) Article 18(3) ABGB, provided that the employment contract was concluded for a period of at least three months, or that the employment relationship has already lasted for more than three months. The employer has to continue to pay 80 % of the salary to the employee during the absence, as is also true in cases of absence due to illness. Generally employees are also entitled to take such a period of time off from work several times per year.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

Surrogacy is not allowed in Liechtenstein (Article 138(c) ABGB).

5.8 Leave sharing arrangements

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

No.

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

No.

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?

National law does not grant workers the legal right to reduce working time on request. Pursuant to Paragraph 1173(a) Article 36(a) Civil Code the employer has to inform employees regarding part-time and fixed-term employment contracts. The employer shall consider requests from full-time workers who want to change to a part-time position, as far as possible. Moreover the employer shall timely inform employees about available jobs in order to facilitate the change from part-time to full-time or the other way round. The employer also has to inform the trade union about the availability of such part-time work. Working part time is not restricted to certain groups or based on specific conditions or eligibility criteria.

Pursuant to Paragraph 1173(a) Article 34(b)(4) ABGB there is a possibility to take parental leave in the form of part-time work, which is by its nature intended for parents and is limited in time to the date that the child is 3 years old, or 5 years old in case of adoption. Legitimate interests of both employer and employee are to be considered here. There is no allowance or payment to cover the shortfall in salary resulting from the reduced hours.

It is worth mentioning that the Office for Equal Opportunities in Liechtenstein has information on its website concerning reduced working hours. A project from 2011 which was nominated for the Gender Equality Prize – a prize that promotes initiatives with regard to gender equality – also includes incentives for men⁷ to encourage them to make use of reduced working hours in order to achieve a better work-life balance and to also take on family work. The project functions as a model for a structure in companies to integrate more jobs that combine home-office and in-house work as well as part-time work.

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

National law does not grant workers the legal right to adjust working time patterns on request. Pursuant to Paragraph 1173(a) Article 36(a) Civil Code the employer has to inform employees regarding part-time and fixed-term employment contracts. The employer shall consider requests from full-time workers who want to change to a part-time position, as far as possible. Moreover the employer shall timely inform employees about available jobs in order to facilitate the change from part-time to full-time or the other way round. The employer also has to inform the trade union about the availability of such part-time work.

Paragraph 1173(a) Article 36(a)(d) ABGB stipulates that the employer shall as far as possible facilitate the access of part-time workers to managerial positions and to vocational training and shall promote professional advancement and mobility. According to Paragraph 1173(a) Article 36(a)(2) ABGB the employer has to inform fixed-term workers about permanent posts that become vacant. In addition, the employer has to

⁷ Project for the Gender Equality Prize 2011 in Liechtenstein concerning telework and part-time work; <http://www.llv.li/files/scg/pdf-llv-scg-telearbeit.pdf>, accessed 12 May 2015.

facilitate the access to vocational training for them as far as possible. The employer also informs the trade union about vacant fixed-term posts in the company.

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

To the expert's knowledge there is no legal right to work from home or remotely temporarily or otherwise on request. It is an agreement between the employer and the employee if the interests of both parties are respected.

It is worth mentioning that the Office for Equal Opportunities in Liechtenstein has an information on its website concerning telework. A project from 2011 which was nominated for the Gender Equality Prize – a prize that promotes initiatives with regard to gender equality – also includes incentives for men⁸ to encourage them to make use of reduced working hours in order to achieve a better work-life balance and to also take on family work. The project functions as a model for a structure in companies to integrate more jobs that combine home-office and in-house work as well as part-time 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?

According to Article 36 Labour Code, protection is foreseen for employees with family obligations, if they have to raise children aged up to 15 years or need to take care of relatives or persons closely connected with the family. This has to be taken into account when fixing their working hours. Such an employee can choose whether they agree to work overtime, and he or she can ask for a lunch break of at least an hour and a half.

⁸ Project for the Gender Equality Prize 2011 in Liechtenstein concerning telework and part-time work; <http://www.llv.li/files/scg/pdf-llv-scg-telearbeit.pdf>, accessed 12 May 2015.

6. Occupational pension 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?

Article 3(1) and (2) (e) and (f) GLG prohibit direct and indirect discrimination on grounds of sex in occupational social security schemes.

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

The personal scope of national law relating to occupational social security systems corresponds to that specified in Article 6 of Directive 2006/54. According to Article 2 GLG all private and public employment contracts as well as self-employed persons are included. Article 1(a)(f) GLG provides for application to persons whose activity is interrupted by illness, maternity, invalidity, old age, occupational and non-occupational accident, occupational disease and unemployment. There is no case law on the topic.

6.3 Is the material scope of national law relating to occupational social security schemes 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 of national law relating to occupational social security systems corresponds to that specified in Article 7 of Directive 2006/54. Article 2 GLG applies to all private and public employment contracts including public servants. Article 1(a)(f) GLG provides for application to persons whose activity is interrupted by illness, maternity, invalidity, old age, occupational and non-occupational accident, occupational disease and unemployment. Article 3(2)(f) GLG also stipulates the prohibition of discrimination for social security systems which provide for other social benefits, in particular survivors' benefits and family allowances. There is no case law on the topic.

6.4 Have the exclusions from the material scope as specified in Article 8 of Directive 2006/54 been implemented in national law?

Article 3(4)(d) GLG provides for an exclusion in voluntary occupational social security systems. For employers different contributions can be determined in order to achieve the same or similar level of benefits for men and women or to complete the necessary funds covering the expenses of the insured benefits.

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?

Article 3(1) and (2) (e) and (f) GLG prohibit direct and indirect discrimination on grounds of sex in occupational social security schemes. These provisions prohibit sex discrimination as mentioned in Article 9 of Directive 2006/54. There is no case law on this topic.

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

Article 3(4)(c) GLG grants an exception to the prohibition of discrimination if sex is used as an actuarial factor for the benefits or contributions in voluntary occupational social security systems. There is no case law on this topic.

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.

Not to the expert's knowledge.

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?

Article 3(1) and (2) (e) and (f) GLG have implemented the principle of equal treatment for men and women in matters of social security. Direct and indirect discrimination on grounds of sex in statutory social security schemes is therefore prohibited, as regards the scope of such schemes and the conditions of access to them. Moreover, the obligation to contribute and the calculation of contributions shall occur without sex discrimination. Furthermore the law provides for non-discrimination of the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

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

The personal scope of national law relating to statutory social security systems corresponds to that specified in Article 2 of Directive 79/7. According to Article 2 GLG all private and public employment contracts as well as self-employed persons are included. Article 1(a)(f) GLG provides for application to persons whose activity is interrupted by illness, maternity, invalidity, old age, occupational and non-occupational accident, occupational disease and unemployment. There is no case law on this topic.

7.3 Is the material scope of national law relating to statutory social security schemes 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 material scope of national law relating to statutory social security systems is broader than specified in Article 3 Paragraphs 1 and 2 of Directive 79/7. Article 2 GLG applies to all private and public employment contracts including public servants. Article 1(a)(f) GLG provides for application to persons whose activity is interrupted by illness, maternity, invalidity, old age, occupational and non-occupational accident, occupational disease and unemployment. Article 3(2)(f) GLG also prohibits discrimination in social security systems which provide other social benefits, in particular survivors' benefits and family allowances. There is no case law on this topic.

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

Since 2010 the pensionable age is equal for men and women, at 64 for both. Pursuant to Article 55 of the Old-Age Insurance Act (AHVG), an exclusion for the determination of the pensionable age under Directive 79/7 is no longer maintained. The same applies to advantages for parents who dedicate time to the upbringing of their children, which are equally divided between them (unpaid parental leave). They benefit from so-called '*Erziehungsgutschriften*', a fictitious income, which is added to the calculation of the pension for the period dedicated to family work. In any case, caring periods for children and other relatives in the same household count for less than the full crediting of work periods for pension purposes (Article 63 *sexies* (c) AHVG).

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

Since Article 3 (1) and (2)(e) and (f) GLG implemented the principle of equal treatment for men and women in matters of social security, direct and indirect discrimination on

grounds of sex in statutory social security schemes is prohibited, including the calculation of contributions and benefits. The exception to the prohibition of discrimination if sex is used as an actuarial factor for the benefits or contributions granted in Article 3(4)(c) GLG is not applicable to statutory social security systems. There is no case law on the topic.

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.

Not to the expert's knowledge.

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?

The main legislation transposing Directive 2010/41/EU is the GLG, the Sickness Insurance Act (KVG) and the Act providing for occupational pension schemes (BPVG). The transposition of Directive 2010/41 was carried out simultaneously with that of Directives 2006/54 and 2004/113. Liechtenstein did not take additional measures to transpose Directive 2010/41 because it considered transposition into national legislation as unnecessary, since the issues were already covered by existing law.

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)

Article 2(a) of Directive 2010/41 has not been transposed specifically to create new definitions of self-employed workers or self-employment. The Commercial Code (CC) contains a definition of self-employment according to which it is a gainful activity at one's own account and risk (Article 2(3) CC). This means that the already existing conditions, e.g. in the Old-age Insurance Act⁹ (AHVG), are relevant when defining the income of self-employed persons for insurance purposes (Article 42 AHVG).

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.

In general all self-employed workers are covered when applying the prohibition of discrimination on the grounds of sex (Article 3(2) GLG). The agricultural sector is therefore also included (Article 15 AHVV – Regulation to the AHVG)¹⁰.

National legislation also recognises life partners (Article 54*bis* AHVG)¹¹ by equal treatment of spouses and life partners, marriages and registered life partnerships, and judicial dissolutions of life partnerships and divorces. Furthermore the Act on Registered Partnerships¹² (PartG) provides for the compensation for partners of self-employed persons participating in the enterprise. The amount of the compensation is calculated on the basis of the nature of the work and the period during which it was performed. The standard of living of the spouses as a whole and the maintenance allowance are also taken into consideration in this calculation.

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 more restricted or broader than specified in Article 4 Directive 2010/41/EU?

Article 3(2)(a) GLG transposes Article 4 of Directive 2010/41 partly into national law. According to Article 3(2)(a) GLG the prohibition of discrimination applies to the access to self-employment irrespectively of the field of activity and professional position including career advancement. Article 3 GLG was amended in the framework of the transposition of Directive 2006/54 and has not added to the protection for self-employed persons by the implementation of Directive 2010/41.

⁹ State Gazette, LGBl. 1952/29 as amended by 2011/541.

¹⁰ State Gazette, LGBl. 1982/35 as amended by 2011/419.

¹¹ State Gazette, LGBl. 1952/29 as amended by 2011/388.

¹² State Gazette, LGBl. 2011/350.

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?

To the knowledge of the expert no specific positive action has been taken by Liechtenstein regarding gender equality in the area of self-employment.

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

The system for social protection in Liechtenstein covers sickness, accident, maternity, pensions and invalidity of self-employed workers. The mandatory system for sickness, accident and maternity insurance is laid down in the Sickness Insurance Act¹³ (KVG). Pursuant to Article 7 KVG persons domiciled in Liechtenstein or working in Liechtenstein are insured for the costs of nursing, and this is mandatory for self-employed and their spouses. Furthermore, self-employed persons can be insured for sickness benefits on a voluntary basis (Article 8 KVG). According to Article 34 of the Old-Age Insurance Act, AHVG, self-employed persons are insured for pensions if they are domiciled in Liechtenstein or if they are employed or self-employed. It is mandatory for self-employed persons and their spouses. Spouses and life partners are equally treated (Article 54*bis* AHVG). Under the Occupational Schemes Act¹⁴ (BPVG) self-employed persons can be insured for old age, invalidity and death. It is voluntary for both the self-employed (Article 5 BPVG) and their spouses (Article 3(1)(e) BPVG). For all these insurances self-employed persons have to pay contributions to the insurance companies periodically based on their regular income.

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

Maternity benefits are governed by Article 12-15 KVG and are only granted in cases where self-employed women or helping spouses have been insured on a voluntary basis according to Article 8(2) KVG. Insured women will receive a maternity allowance equivalent to 80 % of the insured income during a period of 20 weeks, of which at least 16 weeks have to be after childbirth, provided that the woman was insured before childbirth for a period of at least 270 days, of which 3 months must have been consecutive (Article 15(2) and 14(3) KVG). The maternity allowance therefore meets the requirement of sufficiency in Article 8(3) subparagraph (a) of Directive 2010/41.

To the knowledge of the expert no specific implementation measures have been taken in relation to Article 8(4) of this Directive.

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

As already mentioned above under point 8.1, Liechtenstein did not explicitly transpose Directive 2010/41 into national legislation. Please see 8.6 regarding the implementation of Article 10 of Recast Directive 2006/54.

¹³ State Gazette, LGBl. 1971/50 as amended by 2014/149.

¹⁴ State Gazette, LGBl. 1988/12 as amended by 2013/6.

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.

Not to the expert's knowledge.

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

Article 3(2)(a) GLG transposes the scope of application of Article 14(1)(a) of Directive 2006/54. The wording in the GLG is taken literally from Directive 2006/54.

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?

Directive 2004/113 has been transposed into national legislation by amendment of the GLG which entered into force on 8 June 2011. According to Article 4(a)(1) GLG direct and indirect discrimination on grounds of sex in the access to goods and services is prohibited.

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 Article 4(a) GLG corresponds to the scope of Article 3 of Directive 2004/113. The wording is copied literally from Directive 2004/113 into national law. There is no case law on the topic.

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

Article 4(a)(4) (b) and (c) GLG implements the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113. The contents of media and advertising and the field of education are therefore excluded from the prohibition of discrimination.

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.

Article 4(a)(5)(b) GLG stipulates that no discrimination exists if the provision of goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. There is no case law on this topic.

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)?

National law does not ensure the content of Article 5(1) of Directive 2004/113 explicitly, but recognises it implicitly by regulating the specific exceptions of Article 5 (2) and (3) of Directive 2004/113 in the GLG. Differences are still allowed except when costs are related to pregnancy and maternity.

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.

Article 4(a)(5)(c)(1) – (3) GLG implements Article 5(2) of Directive 2004/113 and is still in force because the *Test-Achats* ruling of the CJEU does not automatically affect EEA law. The EEA Committee is competent there. In principle the CJEU ruling is applicable to exchanges of services between EU residents. Therefore, differences in premiums and benefits are still provided for.

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)?

Positive action measures in relation to the access to and the supply of goods and services are regulated in Article 4(a)(5)(a) GLG. To the knowledge of the expert there are no specific examples to report in this regard.

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.

The prohibition of discrimination on the grounds of pregnancy, maternity or parenthood in relation to the access to and the supply of goods and services is regulated in Article 4(a)(1) GLG. There is no case law on this topic.

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

10.1 Has your country ratified the Istanbul Convention?

No, Liechtenstein has not yet signed and ratified the Istanbul Convention. According to the answer of the Government to the query of Parliament of 5 March 2015, Liechtenstein has the intention to ratify the Istanbul Convention in the near future, but not in 2015 because of other urgent reporting on UN Human Rights Conventions which are to come first in 2015.¹⁵ The expert is not aware of any financial impact that may result from accession.

¹⁵ Query from Parliament to Government concerning the Istanbul Convention, of 4 and 5 March 2015; for details see http://alt2.gmq.biz/pdf.aspx?xsl=http://www.landtag.li/config/anfrage2pdf.xslt&xml=http://www.landtag.li/files/temp/kleineanfrage_86328.xml, accessed 9 November 2015.

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

11.1 Victimisation

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

Article 7(a) GLG has implemented the provisions on victimisation in national legislation. The GLG includes a provision concerning the prohibition of any reprisals for the employee him/herself and any other employees involved in the case, as a reaction to a complaint within the business or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment. Furthermore, specific protection in the case of so-called revenge dismissals is foreseen where persons are dismissed as a reaction to a complaint within the business or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Article 10 GLG). In the expert's opinion, the protection against victimisation complies with the Directives.

11.2 Burden of proof

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

According to Article 6 GLG, discrimination covered by Articles 3 to 4(b) GLG is assumed if the person concerned is able to furnish *prima facie* evidence. Liechtenstein has practically no case law concerning anti-discrimination law. Therefore it is not clear how the shift of burden of proof will be applied in practice in sex discrimination cases.

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.

Pursuant to Article 5 and Article 7(b) GLG a person who is discriminated against by receiving unequal pay has the right to compensation for the difference in salary from the date of initiating proceedings to five years earlier, and after that date until the termination of the employment contract.

According to Article 5(1)(a-c) GLG a person discriminated against has the right to demand before the court or the administrative authority that any imminent discrimination is forbidden or abolished, existing discrimination is removed, or a discrimination is declared if it is still disruptive.

If any discrimination is found in refusing an appointment or in the termination of a private employment contract, the person in question is entitled to compensation on the basis of the determined salary (Article 7(c) GLG). In the first case the prescription period is three months from the moment of the employee being informed of the refusal by the employer. In the second case the person has to appeal to the employer in writing within the notice period (normally a three-month notice period) and if the contract is not continued the prescription period is six months from the end of the contract (Paragraph 1173(a) Article 48 ABGB). The compensation for discrimination by refusing an appointment corresponds to a maximum amount of three monthly salaries. This amount is the same even if there are more persons demanding compensation. The compensation for discrimination in the termination of a private employment contract also corresponds to the amount of three monthly salaries in total, or at least EUR 4 600 respectively (CHF 5 000), when it concerns (sexual) harassment (Article 7(c)(3) GLG).

Regarding private employment contracts, appealing to an arbitration board is obligatory under Article 11 GLG before bringing the claim to court. The same applies to cases in the area of goods and services.

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.

From a theoretical legal view it can be stated that the remedies and sanctions as described above under point 11.3.1 meet the standards of being effective, proportionate and dissuasive. As there is no case law in gender equality matters, it is not possible to evaluate the application of these instruments in practice.

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.

From a legal point of view, Article 5 GLG safeguards for everyone who is discriminated against on the grounds of sex the access to courts or administrative boards in order to use the proper remedy. In Liechtenstein there is still no case law concerning anti-discrimination law and it is not easy to identify the reasons for this. Combined with other factors such as fear of victimization it is imaginable that people are deterred from filing a complaint by the specific situation in Liechtenstein. After all, it is a very small country where nearly everybody knows everyone else, and anti-discrimination lawsuits are still considered as very delicate issues in spite of all the useful awareness-raising campaigns initiated by the Office of Equal Opportunities.

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.

Article 7 GLG gives organisations that have had their seat in Liechtenstein for five years and that deal with equality matters between women and men in a broad sense the opportunity to defend the interests of employees in sex discrimination cases before the courts. In Liechtenstein there are in fact two such organisations, namely the *LANV* (employee association) and *infra* (information and contact point for women) which can bring group actions.

Individual persons affected by sex discrimination need to give their prior authorisation when the legal action in the name of the organisation is to state that discrimination has taken place. Before bringing the case to court the employer's opinion has to be heard. The court's decision takes the form of a declaration that discrimination has (not) been shown. In order to receive compensation, the individuals concerned will each have to start separate and individual proceedings, although this will be much easier following a group action. It should be mentioned that the amended GLG includes a new possibility for organisations to bring a claim in the name of the person concerned, to participate in the name of that person or only to participate in the procedure to help the person concerned (Article 7(1)(b) GLG).

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

As referred to in Article 19(2)(a) GLG, the Office for Equal Opportunities supports alleged victims of gender discrimination in pursuing their complaints. Furthermore the section

with regard to women's issues in the LANV (employee association) is available to address problems concerning gender discrimination.

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?

Articles 18 and 19 GLG provide for the Gender Equality Commission and the Office for Equal Opportunities.¹⁶ Since March 2005 the Office for Equal Opportunities has dealt with equal opportunities. Pursuant to Article 19 (1) and (2) (d) GLG, it is committed to doing work for legal and *de facto* gender equality. The Office for Equal Opportunities shall prepare opinions and participate in the process of the creation of law proposals insofar as it is relevant for gender issues.

Its competence has been modified with regard to its independent position. Article 19(3) GLG explicitly states that the Office for Equal Opportunities shall be independent with respect to its tasks of counselling public authorities and the private sector, executing public relations as well as studies and recommendations on the appropriate measures to public authorities and the private sector. The social dialogue is guaranteed in Article 19(2)(e) GLG where the Office for Equal Opportunities shall cooperate with public or private institutions; the government report explains that the term institutions shall also include the social partners. According to Article 19(2)(h) GLG the Office for Equal Opportunities exchanges information with the competent European institutions which are active with regard to the protection against gender discrimination.

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 dialogue is guaranteed in Article 19(2)(e) GLG where the Office for Equal Opportunities shall cooperate with public or private institutions; the government report explains that the term institutions shall also include the social partners.

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 bargaining (especially the so-called *Gesamtarbeitsvertrag*, GAV, Paragraph 1173(a) Article 101 *et seq.* ABGB) is an instrument used in Liechtenstein's private law, whose function is rather similar to the law itself. This particular collective bargaining agreement (GAV) puts into force clauses between the parties which override individual employment contracts and partly override the legal regulations and can also apply to third parties. The GAV is mutually agreed and signed by the employees' representatives (the trade union LANV) and by the representatives of the employers (the GWK). The contracting parties wish to achieve several goals by signing the GAV, such as preserving the industrial peace, settling disputes by mutual consent, enhancing the social, economic and environmental development of each branch of trade, and keeping Liechtenstein's marketplace competitive in a social market economy by encouraging

¹⁶ For more details, see the website <http://www.llv.li/#/12395/stabsstelle-chancengleichheit>, accessed 9 November 2015.

innovations and a modern labour organisation. This also includes equal opportunities for men and women with regard to equal pay. A third of all GAVs explicitly contain a clause concerning equal opportunities between men and women. It is worth mentioning that the GAVs that mention equal opportunities between men and women apply to the largest number of employees (such as in the metal industry, the non-metal industry and the building trades). Finally, it should be mentioned that under Article 6(a) GLG all contractual clauses, employment rules, statutes of associations, collective agreements and all other agreements and rules which contravene gender equality are null and void.

12. Overall assessment

From a purely theoretical legal view it can be confirmed that the implementation of the EU gender equality *acquis* in Liechtenstein is satisfactory. However, because of the lack of case law concerning gender equality it is difficult to assess whether enforcement is satisfactory as well. Nevertheless, active awareness-raising campaigns¹⁷ are conducted concerning gender equality.

¹⁷ See on the website of the Gender Equality Office citing various projects <http://www.llv.li/#/11351/veranstaltungenprojekte> , accessed 8 February 2016.

Annexes

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