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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Iceland

Herdís Thorgeirsdóttir

Reporting period 1 January 2014 – 1 July 2015

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1. Introduction

1.1 Basic structure of the national legal system

The Icelandic legal system is a civil law system based on the Danish model. Its most prevalent feature is that its core principles are codified in a referable system, which serves as the primary source of law. The Constitution of the Republic of Iceland No. 33/1944 is the highest source of law and subsequently statutory legislation and regulatory statutes.

The judicial system in Iceland is based upon the Constitution. The Act on the Judiciary No. 15/1998 has more specific provisions on the structure of the courts. The administration of justice is covered by the Code of Civil Procedure No. 91/1991 and the Code of Criminal Procedure No. 19/1991. Other acts have various procedural provisions. The courts are organised into district courts and the Supreme Court. The courts are composed of lawyers having jurisdiction to deal with all legal questions. There are eight districts courts.¹

The current legislation on gender equality is the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 (GEA hereinafter). The aim of the act is to establish and maintain an equal status and equal opportunities for women and men, and thus to promote gender equality in all spheres of society. All individuals shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender.

The task of the Gender Equality Complaints Committee according to the GEA shall be to examine cases and to deliver a ruling in writing on whether provisions have been violated. The Committee's rulings may not be referred to a higher authority. The rulings of the Complaints Committee are binding on the parties to each case. The parties may refer the Committee's ruling to the courts.

Iceland is a party to all the main international human rights treaties. Iceland ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 18 June 1985. Iceland has been a member of the Council of Europe since 1950 and the European Convention on Human Rights was adopted into domestic law in 1994.

Iceland is a member of the European Economic Area (EEA). The EEA Agreement entered into force in 1994. The EEA Agreement provides for the inclusion of EU legislation in all policy areas of the Single Market. The EEA Joint Committee is the forum where decisions are taken by consensus to incorporate EU legislation into the EEA Agreement. Whenever an EEA-relevant legal act is amended or a new one adopted by the EU, a corresponding amendment needs to be made to the relevant Annex of the EEA Agreement. This is essential to maintain the homogeneity of the EEA. Such an amendment to the EEA Agreement should be taken as closely as possible to the adopted legislation on the EU side, with a view to permitting simultaneous application in the Community and in the EEA EFTA States. The decisions of the EEA Joint Committee are published in the EEA Supplement to the Official Journal of the European Union.

1.2 List of main legislation transposing and implementing Directives

Directive 2004/113 on Equal treatment between men and women in goods and services has been fully implemented with the following legislation:

¹ There is only one special court, the Labour Court having jurisdiction with respect to disputes in industrial relations.

- Act No. 79/2015 amending Act No. 10/2008 on Equal Status and Equal Rights of Women and Men, adding Article 24 a (not yet translated into English);
- Act No. 62/2014 amending Act No. 10/2008 on Equal Status and Equal Rights of Women and Men (employment, jobs);
- Act No. 79/2015 amending Act No. 10/2008 on Equal Status and Equal Rights of Women and Men (goods, services).

Directive 2010/41 on Equal treatment between men and women engaged in a self-employed capacity has been fully implemented with the following legislation:

- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men;
- The Social Security Act No. 100/2007;
- Act No. 95/200 on Maternity/Paternity Leave and Parental Leave.

Directive 2010/18 on parental leave has been fully implemented with the following legislation:

- Act No. 95/200 on Maternity/Paternity Leave and Parental Leave;
- Act No. 136/2011 that amends Act No. 95/2000;
- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men;
- Act No. 22/2006 on Payments to Parents of Chronically Ill or Severely Disabled Children.

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes. Article 65 of the Constitution No. 33/1944, as amended in 1995,² provides in its paragraph (1): Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status; and in its paragraph (2) Men and women shall enjoy equal rights in all respects.

During the Constitutional amendment process in 1995 the latter paragraph was added to the said Article 65; a clear indicator of the strong emphasis on the need for affirmative action to achieve gender equality without explicitly mentioning the need for temporary, positive measures in favour of the underrepresented sex.

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)?

Yes, apparently as the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 (Gender Equality Act) imposes duties on private actors on the labour market as well public actors and the principle laid out in Article 65 (2) is not confined to gender equality in the public sphere only.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. The Act on Equal Status and Equal Rights of Women and Men No. 10/2008 as amended by Act No. 162/2010, No. 126/2011 and No. 62/2014 (Gender Equality Act).

There are no other grounds provided for in the Gender Equality Act but gender. The other grounds are all covered by Article 65 of the Constitution.

² Act amending the Constitution No. 97/1995.

3. Implementation of central concepts

3.1 Sex/gender/transgender

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

The terms gender and sex are not explicitly defined in the Gender Equality Act, No. 10/2008, albeit they are widely used and referred to as such.

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

Yes. Act on legal status of individuals with gender identity disorder, No. 57/2012.

The objective of Act No. 57/2012 as stated in Article 1 is to guarantee individuals with a gender identity disorder an equal legal status with others, in keeping with human rights and human integrity.

An applicant who has been granted recognition as having a gender identity disorder by an Expert Panel enjoys all those legal rights pertaining to the acquired gender if he/she has fulfilled the criteria confirming that he/she is eligible for gender reassignment surgery (Articles 6(3) and 7).

Article 65 of the Constitution explicitly provides that 'Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status.' So the last mentioned criterion of 'other status' should cover this area of discrimination.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. Constitution Article 65; Article 24 Gender Equality Act No. 10/2008.

Article 2(1) of the GEA provides: When an individual receives less favourable treatment than another individual of the opposite sex receives, has received or would receive in comparable circumstances.

Yes, the definition in the GEA complies with the definition in Recast Directive 2006/54.

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

Yes. Article 24 of the GEA prohibits all forms of discrimination. Article 25 of the GEA provides that employers may not discriminate between women and men in wages and other terms of employment on grounds of their gender. Article 26 of the GEA prohibits discrimination at work and in its second paragraph it explicitly prohibits allowing maternity/paternity or parental leave or other circumstances related to pregnancy and childbirth to have a negative effect on decisions regarding promotion, changes of position, retraining, continuing education, vocational training, study leave, notice of termination, and working conditions.

Article 29 of the Act on Maternity/Paternity Leave and Parental Leave No. 95/2000 with later amendments protects the right to employment in Article 29 and in Article 30 it protects against the dismissal of pregnant women and women who have given notice of intended leave due to pregnancy.

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

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

No.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes, in Article 2(2) of the Gender Equality Act No. 10/2008.

This is when an apparently impartial requirement, standard of reference or measure has worse consequences for individuals of either sex compared with individuals of the opposite sex, unless this can be justified in a relevant manner with reference to a lawful aim and the methods used to achieve that aim are appropriate and necessary.

This definition complies with the EU definition.

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.

It is acknowledged by the authorities that research is lacking on the labour market regarding indirect sex discrimination in relation to other factors such as handicap, age or origin.³ In 2013 the percentage of people over 67 years of age was 11.7 % and there are discussions on ageism where women are victims rather than men. According to the Directorate of Labour the statistics in February 2015 for long-term unemployment are highest among women 55 years of age and older; 62 % in comparison with 48 % among men at the same age.⁴

To the author's knowledge, there is no case law where the courts have referred to the use of statistical data to establish a presumption of indirect sex 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.

The Gender Complaints Committee has been criticised over the years for granting too much scope to employers who are prohibited from discriminating between applicants for jobs on grounds of their gender. If the likelihood is adduced that, regarding appointment to a post, engagement or assignment, individuals have been discriminated against on grounds of their gender, then the employer must demonstrate that his or her decision was based on grounds other than the individual's gender. When assessing whether there has been a violation the Complaints Committee is to take into account educational qualifications, working experience, specialised knowledge or other special talents in the relevant position according to the law or regulations, or which must otherwise be considered as being of use in performing the job, as provided for in Article 26 of the GEA. The Complaints Committee has referred to court practice when granting scope to employers in assessing the educational qualifications and working experience of applicants. This means that in certain circumstances the nature of the post/job in question or of the applicant may justify hiring the one with a lower level of education or

³ https://www.velferdarraduneyti.is/media/rit-og-skyrslur-2015/Stada_karla_og_kvenna_29052015.pdf.

⁴ https://www.velferdarraduneyti.is/media/rit-og-skyrslur-2015/Stada_karla_og_kvenna_29052015.pdf, p. 10.

working experience. This need not be a violation but must be regarded as an absolute exception to the rule laid down in Article 26 of the GEA.⁵

The Complaints Committee has noticeably used the above exception in recent years in its rulings regarding the appointment/engagement of employees which objectively appear to be violations as the one employed has, for example, had a lower level of education.⁶

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

No, only the 'lack' of cases where indirect discrimination is claimed. The cases that have come before the courts concerning a violation of the GEA concern direct discrimination albeit another concept may be included.

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 is no explicit legislation addressing discrimination based on two or more grounds simultaneously.

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. Article 65 (2) of the Constitution implicitly permits positive measures to achieve gender equality as is evident from the explanatory report when adopted in 1995.⁷

Article 24 of the Gender Equality Act No. 10/2008.

Article 24 prohibits discrimination on grounds of gender but explicitly states in paragraph 2 that 'affirmative action shall not be regarded as being contrary to this Act.'

GEA No. 10/2008 has the objective inter alia of promoting gender equality in all spheres of society, cf., its Article 1. Article 12 of the GEA provides that following local government elections the municipalities must appoint gender equality committees to examine equal status and equal rights within their municipality. These committees shall advise the local governments on matters which have a bearing on gender equality, and shall monitor and take initiatives on measures, including affirmative action, to ensure the equal status and equal rights of women and men in their municipality. Article 15 of the GEA provides that it must be ensured that men and women are equally represented in government and municipality committees, councils and boards. The GEA also imposes positive duties on private and public actors in the labour market 'to work specifically to put women and

⁵ Complaints Committee case No. 9/2015, 19 November 2015.

⁶ Complaints Committee case No. 9/2015, 19 November 2015.

⁷ *Greinargerð með frumvarpi til stjórnskipunarlagi nr. 97/1995* (not available in English).

men on an equal footing' within their enterprise or institution (Article 18). It is also mandatory for employers to take measures to protect their employees from sexual and gender-based harassment and violence, cf. Article 22 of the GEA. Positive action as a means to achieve full equality in practice between men and women is entailed in the strict provisions of the laws on public and private limited companies, where gender quotas are compulsory on the boards of directors of public and private limited companies (Act No. 2/1995).

Yes, Article 24 of the GEA is in full compliance with the above requirement.

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.

First and foremost it may be a question of attitudes, albeit there are no relevant case law examples.

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

Yes. The law on gender quotas in public limited and private limited companies became effective on 1 September 2013 stipulating that the sex ratio on the board of directors must not be lower than 40 % and the same applies for reserve directors. The law applies to companies where there are 50 employees or more on a yearly basis (Act on Private Limited Companies No. 138/1994 and Act No. 2/1995 on Public Limited Companies).

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.

Such measures have been left to the political parties themselves, where the majority take care in ensuring an equal representation in their lists of candidates and some are obliged by their own rules to rearrange the seats according to gender despite the outcome in pre-elections.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes/no. Article 22 of the GEA prohibits gender-based violence, gender-based harassment and sexual harassment.

Employers and directors of institutions and NGOs shall take special measures to protect employees, students and clients from gender-based violence, gender-based harassment and sexual harassment in the workplace, in institutions, in their work for, or the functions of, their societies or in schools. If a superior is charged with any of the above forms of conduct, he or she shall not be competent to take decisions regarding the working conditions of the claimant during the examination of the case, and the immediate superior shall take such decisions. (See Act No. 62/2014, Article 3 amending the GEA).

Article 2(3) defines gender-based harassment: Conduct which is connected with the gender of the person affected by it, is unwelcome to the person in question and is intended to impair the self-respect of the person in question and create a situation that is threatening, hostile, degrading, humiliating or insulting for the person in question, or which has this effect.

Article 2(5) defines gender-based violence: Violence based on gender, which results in, or could result in, physical, sexual or psychological injury or suffering on the part of the victim; also the threat of such and coercion, arbitrary deprivation of freedom, both in private life and in a public venue.

This definition complies with the EU definition found in Article 2(1)(c) of 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.

It covers the workplace, access to employment, vocational training and promotion.

The GEA's objective is to promote gender equality in all spheres of society.

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. Article 22 of the GEA prohibits sexual harassment. Employers and directors of institutions and NGOs shall take special measures to protect employees, students and clients from gender-based violence, gender-based harassment and sexual harassment in the workplace, in institutions, in their work for, or the functions of, their societies or in schools. If a superior is charged with any of the above forms of conduct, he or she shall not be competent to take decisions regarding the working conditions of the claimant during the examination of the case, and the immediate superior shall take such decisions. (See Act No. 62/2014, Article 3 amending the GEA).

Article 2(4) of the GEA defines sexual harassment: Any type of sexual behaviour which is unwelcome to the person affected by it and is intended to impair the self-respect of the person concerned, or which has this effect, particularly when the behaviour results in a threatening, hostile, degrading, humiliating or insulting situation. The behaviour may be verbal, symbolic or physical.

This definition complies with the EU definition found in Article 2(1)(d) of 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.

It covers the workplace, access to employment, vocational training and promotion.

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

Yes. Gender-based and sexual harassment are conditioned on being continued 'in spite of a clear indication being given that it is unwelcome.'

3.7 Instruction to discriminate

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

Yes. Article 24 of the Gender Equality Act No. 10/2008 (General prohibition against discrimination).

All forms of discrimination, direct or indirect, on grounds of gender are prohibited.

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 specific difficulties.

3.7.3 Is incitement to discrimination explicitly prohibited in your country?

Yes. Article 233 of the Icelandic Penal Code No. 19/1940.

'Anyone who does by means of ridicule, calumny, insult, threat or otherwise assault [a person or group of persons] on account of their nationality, colour, [race, religion, or sexual inclination] shall be subject to fines or imprisonment for up to two years.'

3.8 Other forms of discrimination

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

Apart from Article 65 of the Constitution already discussed and Article 14 of the European Convention on Human Rights adopted into the domestic legal system in 1994, see below.

Article 1 of the Law on Part-time work, No. 10/2004.

Article 37 of Act No. 38/2011.

As provided for in Article 1 of the Law on Part-time Work the objective of that act is to prevent part-time workers from being discriminated against.

Article 37 of the Media Law prohibits subliminal techniques in audiovisual commercial communications that include or promote any discrimination based on gender, racial or ethnic origin, nationality, religion, belief, disability, age or sexual orientation.

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. GEA No. 10/2008; Article 19 on wage equality and Article 25 prohibiting discrimination regarding terms.

Women and men working for the same employer shall be paid equal wages and enjoy equal terms of employment for the same jobs or jobs of equal value. By 'equal wages' is meant that wages shall be determined in the same way for women and men. The criteria on the basis of which wages are determined shall not involve gender discrimination. Workers shall at all times, at their choice, be permitted to disclose their wage terms. [The Minister may issue a regulation⁸ on the application of this provision in further detail, including the introduction of a wage equality standard as regards, for example, the requirements for certification bodies and the conduct of wage equality certification.]⁹ In assessing whether the work is of 'equal value' the criteria are based on a contextual and coherent evaluation. The underlying premise is that when this assessment or evaluation takes place the individuals in question are working for the same employer as provided in the first paragraph of Article 19 of the GEA. Significant changes have taken place in recent years and hence 'the same employer' covers employment in the same ownership, such as in the case of subsidiaries or branches. A job-classification system is used at the municipal level in Iceland. When such a system is used it is confirmed that the evaluation does not assess the performance of the employee but entails an analysis of the basic requirements that apply to those carrying out the job.¹⁰

Article 25 of the GEA provides that employers are prohibited from discriminating between women and men in wages and other terms of employment on grounds of their gender. If a likelihood is adduced that a woman and a man working for the same employer receive different wages for the same work, or work of equal value, then the employer shall have to demonstrate, if there is a difference in their wages, that the difference is explained on grounds other than their gender.

4.1.2 Is the concept of pay defined in national legislation?

Yes. Article 1 of Act No. 55/1980 on working terms and pension rights insurance.

'Wages and other working terms agreed between the social partners shall be considered minimum terms independent of sex, nationality or the terms of appointment, for all wage earners in the relevant occupation within the area covered by the collective agreement. Contracts between individual wage earners and employers on poorer working terms than those specified in the general collective agreement shall be void.'¹¹

Wages paid according to a collective agreement or working contract are considered to be individual property under Article 72 of the Constitution.

⁸ Regulation No. 929/2014.

⁹ Act No. 62/2014, Article 2.

¹⁰ Report by a working group on the equal rights pay policy in the general labour market (2008), p. 40, http://www.velferdarraduneyti.is/media/08frettir/Skyrsla_starfshops_um_jafnlaunastefnu_a_almennum_vinnumarkadi.pdf, accessed 25 June 2013.

¹¹ Act No. 69/1993, Article 5.

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

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

Article 24 of the GEA provides a general prohibition against discrimination, direct or indirect, on grounds of gender. Article 25 of the GEA prohibits discrimination regarding wages and other terms of employment on grounds of gender but does not include/repeat 'direct and indirect discrimination.'

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

No, this is not required by law albeit a job-evaluation system is used.

A job-classification system is used at the municipal level in Iceland. When such a system is used it is confirmed that the evaluation does not assess the performance of the employee but entails an analysis of the basic requirements that apply to those carrying out the job.¹²

Job evaluation can be used as a study tool, i.e. for assessing whether jobs which are traditionally done by women are undervalued as compared with jobs of equal worth which are traditionally done by men and, after this, to assess the advantage it would have for the state to introduce a job-evaluation system.

No hypothetical comparator is allowed.

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

No.

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

Yes. Article 19 of the GEA in paragraph 3.

When a new gender equality act was adopted in 2008 a new paragraph was added to the wage equality clause stipulating that 'workers shall at all times, upon their choice, be permitted to disclose their wage terms.' This clause has not been contested before a court of law or the gender equality complaints committee. It is, in my opinion, a superfluous attempt to cover transparency without any likelihood of a result as it is fairly unlikely that a man, for example, will disclose his higher wages to a woman colleague.

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

No. The unadjusted gender pay gap (using the Eurostat calculation) was 18.3 % in 2014.¹³

¹² Report by a working group on the equal rights pay policy in the general labour market (2008), p. 40, http://www.velferdarraduneyti.is/media/08frettir/Skyrsla_starfshops_um_jafnlaunastefnu_a_almennum_vinnumarkadi.pdf, accessed 25 June 2013.

¹³ <https://www.hagstofa.is/utgafur/frettasafn/laun-og-tekjur/launamunur-kynjanna-var-183-arid-2014/>

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

The Gender Equality Complaints Committee in a case concerning a pay difference on 21 October 2014 held that a difference in education and subsequently wages based on different collective agreements did not justify a difference in wages for jobs of equal value.¹⁴

An objective reason can justify a difference in pay for jobs of equal value for the same employer.¹⁵ This was determined by the Gender Equality Complaints Committee when it heard a case where the claimant, a woman, received fewer paid overtime hours than a male colleague for shifts at a fire department where the male colleague had much more experience in dealing with emergency calls. The Complaints Committee held that objective reasons justified the arrangement within the fire department allocating more shifts to the man than the claimant, as the man's special task was to work after hours due to practices which entailed special training. His special tasks for the fire department were justified with his higher education and experience. There had not therefore been a breach of the wage equality clause of the GEA.

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

No relevant case law. In a pay survey of the municipality of Reykjavik in 2010 it was revealed that significant factors explaining the pay difference were due to overtime and car allowance benefits. One of the tasks of the municipalities' equality work plan for 2011-2015 was to check whether the managers within the municipality's administration were adhering to the rules regarding extra payments.

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)?

Articles 1. c and 26 of the GEA on the prohibition of discrimination at work and on engagement in employment. The GEA applies to all persons, both in the public sector and on the private market, including public bodies. It applies to men and women who are workers or employees (and civil servants) and candidates for work or employment.

Article 1 c of the GEA provides that the aim of gender equality legislation is to specifically improve the position of women and to increase their opportunities in society. Article 26 prohibits employers from discriminating between applicants for jobs on grounds of their gender. The same applies regarding promotion, changes of position, retraining, continuing education (lifelong learning), vocational training, study leave, notice of termination, the working environment and employees' working conditions.

The concept of a 'worker' is not defined in the GEA but Act No. 46/1980 on the working environment, health and safety in workplaces defines employees and their obligations. The Unemployment Insurance Act No. 54/2006 defines a wage earner and a self-employed individual. The Government Employees Act No. 70/1996 in defining its application also refers to what such hiring entails in its Article 1.

¹⁴ Case No. 1/2014.

¹⁵ Case No. 5/2012.

Article 24 of Act No. 46/1980 with subsequent amendments provides: Employee signifies, in this Act, each individual who holds a job for services paid by someone else. [Students and apprentices shall also be considered as employees, even though they work without payment, providing that their work constitutes part of formal studies.]

Article 3 of the Unemployment Insurance Act contains definitions:

a. Wage earner: Any person who engages in paid employment in the service of others in at least 25 % of full job capacity (full-time employment) each month, and for whom social security tax is paid according to the Social Security Tax Act.

[b. Self-employed individual: Any person who works in his/her own business or independent activity to the extent that he himself/she herself is obliged to pay tax deductions at source in respect of calculated wages and social insurance tax in respect of his/her work, either every month or in another regular manner according to rules set by [the Director of Internal Revenue on calculated remuneration.]

c. Studies: Continuous studies, practical or theoretical, in a recognised educational institution within the ordinary educational system in Iceland, lasting for at least six months. The term also refers to studies at university level and other studies for which comparable demands are made regarding preparatory education as are made for university-level studies. Individual short courses do not qualify as studies.]¹⁶

The Government Employees Act No. 70/1996 applies to anyone who is hired in the service of the government for a period exceeding one month, either by an indefinite contract, a fixed-term contract or temporarily, regardless of whether the person is a member of a labour union or to which union he/she is affiliated, as long as his/her job is considered to be his/her main occupation.

Yes, this definition of a 'worker' reflects the relevant case law of the CJEU. Employment appearing to be a mere marginal supplement is excluded from the scope of application of the 'worker' or 'wage earner' concept and the normal condition that the relevant employment is 25 % of full job capacity is in line with the 10-12 hours laid down in CJEU case law.¹⁷

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. Article 26 of the GEA.

The material scope of Article 26 of the GEA relates to work and engagement in employment with reference to promotion, changes of position, retraining, continuing education (lifelong learning), vocational training, study leave, notice of termination, the working environment and employees' working conditions. Article 26 (2) prohibits the allowing of maternity/paternity or parental leave, or other circumstances related to pregnancy and childbirth to have a negative effect on decisions under paragraph 1.

The scope of the protection under the GEA is not broader and is even slightly more limited as it does not cover membership of, and involvement in, an organisation of workers or employers as does Recast Directive 2006/54 in Article 14(1)d.

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

¹⁶ Act No. 142/2012, Article 1. 2) Act No. 37/2009, Article 1.

¹⁷ See the judgments in *Kempf* (C-139/85) and *Megner and Scheffel* (C_444/93).

Yes. Article 24 paragraph 3 of the GEA.

Article 24 of the GEA concerning a general prohibition on discrimination provides in its third paragraph that 'special consideration being given to women in connection with pregnancy and childbirth shall not be regarded as discrimination.'

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, in Article 24 of the GEA concerning a general prohibition on discrimination provides in its third paragraph that 'special consideration being given to women in connection with pregnancy and childbirth shall not be regarded as discrimination'

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.?

There are various insidious obstacles to realizing in practice the objectives of improving the position of women regarding, for example, promotion as recent examples in the Icelandic news have shown concerning recruitment at the Supreme Court of Iceland where 10 out of 11 judges are men and the evaluation committee is composed of only men despite Article 15 of the GEA on the equal representation of men and women in such committees and suggesting that out of the three qualified applicants (two men, one woman) a man should be appointed.

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?

No, not in the way which has been done in Article 2 of Directive 92/85.

Articles 7 and Article 9 of the Act on Maternity/Paternity and Parental Leave No. 95/2000 with subsequent amendments.

Article 7 paragraph 2 provides that an employee for the purposes of the Act on Maternity/Paternity and Parental Leave 'refers to anybody who is employed in a salaried position in the service of others amounting to at least 25 % of a full-time position each month. A self-employed individual refers to anybody who works for himself, irrespective of the type of company, to the effect that she/he is obliged to pay an insurance levy every month, or in another manner decided by the tax authorities.'

Article 9 of the GEA on the notification of maternity/paternity leave provides that 'when an employee intends to exercise the right to maternity/paternity leave, she/he shall notify her/his employer thereof as soon as possible and at least eight weeks prior to the expected date of confinement.'

Article 9 of the GEA provides that as soon as an employee has notified her employer about her intention to take maternity leave her rights as a pregnant employee are established.

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

Yes. Article 11 of the Act on Maternity/Paternity and Parental Leave.

Article 11 provides that: 'If the safety and health of a pregnant woman, a woman who has recently given birth to a child, or a woman who is breastfeeding a child, is considered to be in danger according to a special assessment, her employer shall make the necessary arrangements to ensure the woman's safety by temporarily changing her working conditions and/or working hours. If this is not possible for technical reasons, or other valid reasons, the woman's employer shall entrust her with other tasks; if this is not possible she/he shall grant her leave of absence for the length of time necessary to protect her safety and health. This provision shall be implemented under further rules to be issued by the Minister. Those changes, which are considered necessary in a woman's working conditions and/or working time, cf., the first paragraph 1, shall not affect her wages so as to reduce them or abridge her other job-related rights. If it is necessary to grant a pregnant woman leave under this Article, she shall be entitled to payment, cf. Article 13; i.e. a monthly payment.'

Yes, the content of Article 11 on safety and health in the workplace corresponds with the content of Articles 4-7 in Directive 92/85.

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. Article 30 of the Act on Maternity/Paternity and Parental Leave as well as Articles 29 and Article 24 of the GEA.

Article 30 of the Act on Maternity/Paternity and Parental Leave covers protection against dismissal. It is not permitted to dismiss an employee due to the fact that she/he has given notice of intended maternity/paternity leave or parental leave under Article 9 or 26 or during her/his maternity/paternity leave or parental leave, without reasonable cause, and in such a case, the dismissal shall be accompanied by written arguments. The same rule shall apply to pregnant women, and women who have recently given birth. The wording 'without reasonable cause' is in line with Article 10(1), i.e. excluding exceptional cases not connected with their condition, albeit Article 29 of the Act on Maternity/Paternity and Parental Leave stipulates that the employment relations between an employee and her/his employer shall remain unchanged during maternity/paternity leave and parental leave. The employee shall be entitled to return to her/his job upon the completion of maternity/paternity leave or parental leave. Should this not be possible, she/he shall be entitled to a comparable position with the employer according to a contract of employment.

If there is a reasonable cause unrelated to the condition spelled out in Article 30, the dismissal shall be accompanied by written arguments. The employer must prove that there is reasonable cause, cf. Supreme Court judgment No. 318/2008 where the Court did not find the explanations of the employer credible and deemed the dismissal to be illegitimate.

Article 29 of the Act on Maternity/Paternity and Parental Leave provides that the employment relations shall remain unchanged during the maternity leave. The employee is entitled to return to her job upon the completion of the maternity leave. Should this not be possible, she shall be entitled to a comparable position with the employer according to a contract of employment.

Payments do not cease during the maternity leave even if the employee's job is made redundant. The payments that an employee receives during maternity leave come from the Maternity/Paternity Leave Fund and are based on the employee's activities on the domestic labour market for six consecutive months prior to the birth of the child. The Maternity/Paternity Leave Fund is managed by the Directorate of Labour and financed through the collection of an insurance levy (cf., Insurance Levy Act) in addition to an interest on the Fund's deposits.

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

Yes. Articles 29 (the right to employment) and 30 (protection against dismissal) of the Act on Maternity/Paternity and Parental Leave.

5.2 Maternity leave

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

A parent working in the domestic labour market has an independent entitlement to maternity leave for up to three months and a joint entitlement with the other parent to an additional three months, which either parent may take in its entirety or the parents may divide it between them, cf. Article 8 of the Act on Maternity/Paternity and Parental Leave.

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

Yes. A mother shall take maternity leave for at least the first two weeks after the birth of her child, cf. Article 8, paragraph 3.

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. Article 11 of the Act on Maternity/Paternity and Parental Leave.

Article 11 provides that: 'If the safety and health of a pregnant woman, a woman who has recently given birth to a child, or a woman who is breastfeeding a child, is considered to be in danger according to a special assessment, her employer shall make the necessary arrangements to ensure the woman's safety by temporarily changing her working conditions and/or working hours. If this is not possible for technical reasons, or other valid reasons, the woman's employer shall entrust her with other tasks; if this is not possible she/he shall grant her leave of absence for the length of time necessary to protect her safety and health. This provision shall be implemented under further rules to be issued by the Minister. Those changes, which are considered necessary in a woman's working conditions and/or working time, cf., the first paragraph 1, shall not affect her wages so as to reduce them or abridge her other job-related rights. If it is necessary to grant a pregnant woman leave under this Article, she shall be entitled to payment, cf. Article 13; i.e. a monthly payment.'

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?

Yes. Article 29 of the Act on Maternity/Paternity and Parental Leave.

The employment relations between an employee and her employer shall remain unchanged during maternity leave and parental leave. The employee shall be entitled to return to her job upon the completion of maternity leave or parental leave. Should this not be possible, she shall be entitled to a comparable position with the employer according to a contract of employment.

Payments from the Maternity/ Paternity Leave Fund are ensured, cf. Article 13, to all parents who have been active on the domestic labour market for six consecutive months prior to the birth.

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 monthly payments during maternity leave to an employee shall amount to 80 % of her average total wages, cf. Article 13 of the Act on Maternity/Paternity and Parental Leave. The per diem sick pay from the Icelandic health insurance is at present (2015) ISK 1 414 for the individual for each day of the week and ISK 387 for each child under 18 in her/his custody. The Act respecting labourers' rights to wages on account of absence through illness and accidents No. 19/1979¹⁸ provides that minimum rights of workers during the first year of service with an employer are two days in respect of each month. After one year of employment a worker is entitled to total wages for one month out of every 12 months, after three years with the same employer, one month of total wages and one month with day wages out of every 12 months, and finally after five years with the same employer, one month of total wages and two months with day wages out of every 12 months.

¹⁸ Act Respecting Labourers' Rights to Advance Notice of the Termination of Employment and Wages on Account of Absence through Illness and Accidents, No. 19/1979.

There is a ceiling; the employee gets 80 % of her average total wages of up to ISK 370 000 per month or EUR 2 572, which is the ceiling in 2015 and 75 % of the average total wages exceeding that amount.¹⁹

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

No known examples.

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

Yes. Article 13 of the Act on Maternity/Paternity and Parental Leave.

According to Article 13 of the Act on Maternity/Paternity and Parental Leave a parent acquires the right to payments from the Maternity/Paternity Leave Fund after she has been active on the domestic labour market for six consecutive months prior to the birth.

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

Yes. Article 29 of the Act on Maternity/Paternity and Parental Leave (employment rights).

The employment relations between an employee and her employer shall remain unchanged during maternity leave and parental leave. The employee shall be entitled to return to her job upon the completion of maternity leave or parental leave. Should this not be possible, she shall be entitled to a comparable position with the employer according to a contract of employment.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes. Article 8 of the Act on Maternity/Paternity and Parental Leave (parents' rights in the labour market) and Article 13 (parents' rights to payments from the Maternity/Paternity Leave Fund).

Parents each have an independent entitlement to maternity/paternity leave for up to three months due to the primary adoption or reception of a child in permanent foster care. This right is conditioned on having been active on the domestic labour market for six consecutive months, cf. Article 13.

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

Yes. Act on Maternity/Paternity and Parental Leave No. 95/2000.

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)?

¹⁹ <http://www.faedingarorlof.is/upphaedir-faedingarorlofs-og-faedingarstyrks/> accessed on 24 September 2015.

Yes. Article 30 of the Act on Maternity/Paternity and Parental Leave (protection against dismissal).

Adoptive parents are protected against dismissal just like other parents on the domestic labour market without reasonable cause.

5.4 Parental leave

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

Yes, Directive 2010/18 has been fully implemented in national legislation.

Directive 2010/18 on parental leave has been fully implemented with the following legislation:

- Act No. 95/200 on Maternity/Paternity Leave and Parental Leave;
- Act No. 136/2011 that amends Act No. 95/2000;
- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men;
- Act No. 22/2006 on Payments to Parents of Chronically Ill or Severely Disabled Children.

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

Yes, it applies to both the public and private sector.

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, if the employee has been employed for six consecutive months by the same employer prior to primary adoption or permanent foster care, cf. Article 26 of the Act on Maternity/Paternity Leave and Parental Leave.

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.

Article 24 of the Act on Maternity/Paternity Leave and Parental Leave provides that parents working in the domestic labour market shall be entitled to parental leave for 13 weeks to take care of their child. In the event of the adoption or permanent foster care of a child, account shall be taken of the time when the child enters the home, provided that this is confirmed by the child welfare committee in question, or other competent bodies. If a parent has to fetch the child from another country, parental leave may begin at the beginning of the journey, provided that the relevant authorities or institution have confirmed that permission has been granted for the adoption of the child.

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

Yes, each parent shall have an independent right to 13 weeks of parental leave for each child and this right is non-assignable. The right to parental leave shall lapse when the child reaches the age of eight years.

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)?

According to Article 25 of the Act on Maternity/Paternity Leave and Parental Leave, a parent shall have the right to take parental leave in one continuous period. However, the employee shall be permitted to make other arrangements with her/his employer for the parental leave to be divided into number of periods and/or it can be taken concurrently with a reduced worktime ratio. According to Article 25 the employer shall make efforts to meet the wishes of the employee regarding the structure of the parental leave. An employee shall not be entitled to take parental leave amounting to more than 13 weeks in each 12-month period without special approval from the employer.

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)?

A notice period is covered by Article 26 of the Act on Maternity/Paternity Leave and Parental Leave. An employee who intends to exercise her/his right to parental leave shall notify her/his employer thereof as soon as possible and at the latest six weeks prior to the intended first day of the leave. Notice of parental leave shall be given in writing and shall state the intended starting date of the leave, its length and its structure. The employer shall sign the notification with the date on which it was received and deliver a copy thereof to the employee. The employer shall record the taking of parental leave, enabling the employee to obtain a certificate stating the number of days of parental leave if she/he wishes to do so.

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

Yes. Article 26 of the Act on Maternity/Paternity Leave and Parental Leave.

The employee must have been employed for six consecutive months with the same employer.

According to Act No. 19/2003 on temporary employment employees who are hired on a temporary basis shall not enjoy less advantageous terms than employees hired on a permanent basis unless this is justifiable on objective grounds, as stipulated in Article 4(2) of Act No. 19/2003.

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?

Yes. Article 27 of the Act on Maternity/Paternity Leave and Parental Leave covers a postponement or other changes regarding parental leave. Such a postponement shall only be permitted in the case of extraordinary circumstances in the operation of the company/institution which necessitate it. This is possible, for example, in the case of seasonal work, or if no qualified substitute can be found, or if a considerable number of employees apply to take parental leave simultaneously, or if the employee in question holds a key position in the top management of the company or institution.

5.4.10 Are there special arrangements for small firms?

None, apart from the circumstances listed in Article 27, as discussed above.

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?

Yes. Article 24 of the Act on Maternity/Paternity Leave and Parental Leave.

As stipulated in Article 24 of the Act on Maternity/Paternity Leave and Parental Leave, an entitlement to parental leave that expires without being used, in part or entirely, when the child reaches the age of eight years, shall become valid once again if the child is later diagnosed as suffering from a serious and chronic illness or a severe disability, if this occurs before the child attains, in full, the age of eighteen years.

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)?

Yes. Articles 29 and 30 of the Act on Maternity/Paternity Leave and Parental Leave.

Article 29 provides that the employment relations between an employee and her/his employer shall remain unchanged during parental leave. Article 30 protects the employee against dismissal, without reasonable cause, due to the fact that she/he has given notice of intended parental leave.

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?

Article 29 stipulates that the employee shall be entitled to return to her/his job upon the completion of parental leave. Should this not be possible, she/he shall be entitled to a comparable position with the employer according to a contract of employment.

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?

Article 28 of the Act on Maternity/Paternity Leave and Parental Leave provides that the rights which an employee has gained, or is gaining, at the start of parental leave shall remain unchanged until the end of the leave. At the end of the leave, these rights shall be valid, as shall any changes which may have been made on the basis of the law or wage agreements.

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

It remains unchanged, cf. Article 29 of the Act on Maternity/Paternity Leave and 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?

Yes, cf. Article 28, which provides that the rights which an employee has gained, or is gaining, at the start of parental leave shall remain unchanged until the end of the leave. At the end of the leave, these rights shall be valid, as shall any changes which may have been made on the basis of the law or wage agreements. There is no accumulation of rights during the leave.

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

Parental leave, unlike maternity and paternity leave, is not accompanied by payment from the Maternity/Paternity Leave Fund, cf., Article 24 of the Act on Maternity/Paternity Leave and Parental Leave. There are no payments in parental leave unless a special contract has been entered into between the employee and employer on the basis of the principle of freedom of contract.

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.

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)?

As regards the compliance of the Icelandic law with the requirements specified in the Directive, the Act on Maternity/Paternity Leave and Parental Leave exceeds the duration of the Directive of four months with 13 weeks parental leave for each parent.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes. Act on Maternity/Paternity Leave and Parental Leave.

Article 8 of the above act provides that each parent shall have an independent entitlement to maternity/paternity leave for up to three months due to a birth, primary adoption or reception of a child in permanent foster care. This right shall not be assignable. The parent acquires the right to payment from the Maternity/Paternity Leave Fund after she/he has been active on the domestic labour market for six consecutive months, cf. Article 13.

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. Act on Maternity/Paternity Leave and Parental Leave.

Article 30 protects against dismissal due to the fact that the employee has given notice of intended paternity leave and may not be dismissed without reasonable cause. Article 29 stipulates that the employment relations between the employee and employer shall remain unchanged during the paternity leave.

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. Act No. 22/2006 on Payments to Parents of Chronically Ill or Severely Disabled Children, covers the right of parents to financial assistance when they are not able to pursue employment or studies due to the special care required by their children who have been diagnosed as suffering from chronic illnesses or severe disabilities.

Article 8 of the above act provides that a parent (a wage earner or a self-employed person) who withdraws from paid employment due to the pressing circumstances that arise when his/her child is diagnosed as suffering from a serious and chronic illness or a severe disability may have a joint right, with the child's other parent, to income-related payments.

According to Article 11 of the act the amount is 80 % of his/her average aggregate wages, based on a twelve-month period ending two months prior to the diagnosis of the child.

When determining the length of time during which parents are jointly entitled to receive payments under Article 8 or 14, the executive body shall make a comprehensive assessment of the family's circumstances in the light of the pressing circumstances that arose when a child was diagnosed as suffering from a serious and chronic illness or a severe disability, as stipulated in Article 18 of the act. The frame of reference shall be the family's circumstances at the time when it is requested that payments begin, and attention shall be given, amongst other things, to the degree of illness or disability suffered by the child, cf. Articles 26 and 27, the extent of services provided by a diagnostic and treatment institution, the child's care requirements as defined in a certificate issued by a specialist at the diagnostic and care institution that is providing the child with services, cf. also Article 25, and the placement services available from public bodies.²⁰

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

A draft law on altruistic surrogacy was put before the Althing (the national Parliament) during its 144th session in 2014-2015 but has not yet been adopted.

The draft law on altruistic surrogacy is under discussion in Parliament.

According to the draft, the surrogate mother while pregnant has all the same rights as pregnant women with regard to health services. According to Article 23 of the draft law the surrogate mother and her spouse are entitled to maternity/paternity leave and parental leave under the Act on Maternity/Paternity Leave and Parental Leave No. 95/2000.

5.8 Leave sharing arrangements

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

No. Maternity leave is non-assignable apart from the exceptional circumstances, cf. Article 8 of Maternity/Paternity Leave and Parental Leave Act discussed below.

Article 8 of the Act Maternity/Paternity Leave and Parental Leave No. 95/2000.

Should one of the parents die before the child reaches the age of 24 months, the right to maternity/paternity leave which the deceased has not utilized shall revert to the surviving parent. In the case of adoption or permanent foster care, the time limits shall be based on 24 months after the child enters the home. In the event of the reversion of rights, the rights of the deceased parent shall become the rights earned by the surviving parent under this Act.

²⁰ Cf. Act No. 158/2007, Article 14.

A parent who, due to illness, the consequences of an accident or the serving of a prison sentence, is unable to care for her/his child during the first 24 months after the child's birth, may assign her/his unused entitlement to maternity/paternity leave to the other parent, in part or in its entirety. The same shall apply in cases when, for the same reasons, a parent is unable to attend to a child during the first 24 months after the child arrives in the home under primary adoption or permanent foster care. This shall apply irrespective of whether or not the parents have joint custody over the child.

As stipulated in Article 10 of the Act on Maternity/Paternity Leave and Parental Leave, an employee has the right to take the maternity/paternity leave in one continuous period. She/he is also permitted to make arrangements with her/his employer for the maternity/paternity leave to be divided into a number of periods and/or that it will be taken concurrently with a reduced worktime ratio, cf., however, Article 8(3) which makes it mandatory for the mother to take leave for at least the first two weeks after the birth of her child. However, maternity/paternity leave may never be taken in periods of less than two weeks at a time.

The basis is set forth in Article 8 of the Maternity/Paternity Leave and Parental Leave Act, which also stipulates that: The employer shall make efforts to meet the wishes of the employee regarding the structure of the maternity/paternity leave under this provision.

It may do so in practice but Article 8 of the Maternity/Paternity Leave Act is clear, see above.

Article 8 of the Act on Maternity/Paternity Leave and Parental Leave provides in its third paragraph that if an employer is unable to accept the wishes of the employee regarding the structure of the leave, the employer, having consulted the employee, shall propose another arrangement within one week of the date of receiving the notification. This shall be done in writing and the reasons for the altered arrangement shall be stated.

Parents each have an independent entitlement to maternity/paternity leave for up to three months. This entitlement is not assignable.

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

No. Each parent has an independent entitlement to parental leave which is not assignable, cf. Article 24 of the Act on Maternity/Paternity Leave and Parental Leave.

5.9 Flexible working time arrangements

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

Yes, to a certain extent. Article 21 of the Gender Equality Act No. 10/2008 in its provision on the reconciliation of work and family life (Article 21) provides that employers shall take the measures which are necessary to enable women and men to reconcile their professional obligations and family responsibilities. Amongst other things, such measures shall be aimed at increasing flexibility in the organisation of work and working hours in such a way as to take account of both workers' family circumstances and the needs of the labour market, including facilitating the return of employees to work following maternity/paternity or parental leave or leave from work due to pressing and unavoidable family circumstances.

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

Yes, but it is only codified in the Government Employees' Act No. 70/1996. Its Article 13 provides that employees shall have a right to flexible working hours. The head of an agency must agree to the wishes of employees in this respect, cf. Paragraph 1, Article 17, provided that this does not interfere with the services of the agency towards the public. If the head of an agency rejects the request of an employee the decision may be referred to the Minister in charge.

Most collective agreements entail provisions providing for flexible arrangements upon request, cf. VR the commercial and office workers' union embracing almost 30,000 members (almost 10% of the population in Iceland). For instance, it is permissible to arrange the working hours during the day; e.g. to start before 9 am but never earlier than 7 am.²¹ If one skips the 30-minute coffee break one can leave 30 minutes earlier. Other kinds of flexible arrangements are subject to freedom of contract between the employer and employee.

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

There are no legal provisions concerning right to work from home or remotely. This is subject to collective agreements and freedom of contract. Act no. 27/2000 prohibits the termination of employment due to family responsibilities, stating in Article 1: 'No person's employment may be terminated solely because of his or her family responsibilities. "Family responsibilities" here refers to the employee's responsibilities towards his or her children, spouse or close relatives who live in the employee's home and clearly need his or her care or custody, for example as a result of illness or disability.'

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?

Subject to freedom of contract between the employer and employee.

²¹ VR collective agreement 2015, <http://www.vr.is/kaup-og-kjor/vinnutimi/>.

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?

Direct and indirect discrimination on grounds of sex are prohibited, albeit this is not codified as such in the Pension Act No. 129/1997 which provides for a mandatory affiliation to the pension fund provided for in the applicable collective agreement for all workers between the ages of 16 to 70. Participation in workers' pension schemes is determined by the collective agreement on which the basic wages for each worker are determined. The general pension age is 67 and the qualifying condition is to have resided in Iceland for at least 40 years (three years for a reduced pension) between the ages of 16 and 67, and to have an annual income below EUR 25 423 (ISK 4 148 420). A pension supplement is granted if the insured's annual income does not exceed a certain amount. Social allowances (means-tested) are paid for living expenses such as housing and medicine costs if the insured's annual income does not exceed a certain amount.

Article 24 of the Gender Equality Act prohibits all forms of discrimination, direct or indirect, on grounds of gender, albeit affirmative action is not seen as being contrary to the GEA if there are valid reasons behind a decision and special considerations regarding women with pregnancy and childbirth shall not be regarded as discrimination.

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 specified in Directive 2006/54 is covered by the Act on Working Terms and Pension Rights Insurance, No. 55/1980, as amended by Act No. 58/1985, No. 33/1987, No. 21/1991, No. 69/1993, No. 129/1997, No. 145/2004 and No. 76/2010.

The mandatory insurance of pension rights implies the obligation of membership in a pension fund and of the payment of contributions to a pension fund by everyone on the labour market and, as appropriate, to other parties pursuant to an agreement on supplementary insurance benefits. All employees and employers or self-employed persons are obliged to ensure their pension rights through membership of a pension fund from the age of 16 years until 70 years of age. Membership of a pension fund, the payment of pension contributions and the division of the contributions between the employee and employer respectively shall be as prescribed in the collective bargaining agreement which determines the minimum terms of employment in the occupation concerned, or in a specific Act, as appropriate. No one may be refused membership of a pension fund for reasons of health, age, marital status, family size or gender, as stated in Article 2 of the Pension Act. All employers are required to deduct pension contributions from their employees' wages (4 %) and submit them to the respective pension funds together with their corresponding contributions (8 %).

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.

Through contributions to acquire pension rights in mutual pension funds, a pension fund member shall obtain the right to an old-age pension, disability pension and spouses' and children's pensions, for him/herself, his/her spouse, and children, as appropriate, which may not be less extensive than provided for in Chapter III of the Pension Act.

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

No, the exclusions listed in Article 8 are not explicitly laid down in the Social Security Act No. 100/2007. Its material scope, according to Article 1, is the social security pension insurance and the social security occupational injury insurance. The social security health insurance is covered by the Health Insurance Act.

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?

The Supreme Court held in a case before it in 2012 that the pension rights of a man in a divorce case did not fall under the rubric of 'matrimonial property' under the Law in Respect of Marriage No. 31/1993.²² The claimant in this case referred to Article 102(2) of the Marriage Act which states that pension rights should not be excluded from divorce settlements if apparently unreasonable. The couple in this case had been married for 35 years. His income had been considerably higher than hers and subsequently he was expecting a higher old-age pension, albeit there was no concrete calculation presented with regard to their expected pension.

Women of the above generation, in particular, who married in the 1960s, 1970s and 1980s and whose careers have been interrupted by having children or working part time, or who have started working outside the home later in life, have not been able to add much to the modest income provided by social security through the mandatory occupational fund. There are no advantages granted to persons (women) who have brought up children, specifically concerning periods of interruption to employment.

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

No.

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

No.

²² Supreme Court case No. 568/2012.

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. Article 2(9) of the Gender Equality Act No. 10/2008 and Article 25 of the GEA.

Article 2(9) defines terms as such wages together with pension rights, holiday rights and entitlement to wages in the event of illness and all other terms of employment or entitlements that can be evaluated in monetary terms. Article 25 of the GEA prohibits discrimination regarding terms on grounds of gender.

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.

Under the Social Security Act No. 100/2007, with later amendments, any person who is resident in Iceland is regarded as being insured (cf., however, Article 29), providing that other conditions of this Act are met, unless other provisions are made in international agreements. Residence, for the purpose of the first paragraph, refers to a legal domicile in the sense of the Legal Domicile Act.

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.

Pension insurance includes old-age pensions, invalidity pensions, age-related invalidity supplements, pension supplements, invalidity allowances and child pensions, cf. Article 16 of the Social Security Act. The Unemployment Insurance Act No. 54/2006 provides for unemployment insurance covering wage earners and self-employed individuals on the domestic labour market in the event of their becoming unemployed. Unemployment benefit shall be paid from the Unemployment Insurance Fund, which is financed by the employment insurance tax (cf. the Social Security Tax Act) and interest on the balance held in the fund, cf. Article 5.

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.

There are no derived benefits. The determination of the pensionable age is the same for both sexes.

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

No.

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

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?

Yes. Directive 2010/41 on Equal treatment between men and women engaged in a self-employed capacity has been fully implemented with the following legislation:

- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men;²³
- The Social Security Act No. 100/2007;
- Act No. 95/200 on Maternity/Paternity Leave and Parental Leave.

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)

The Unemployment Insurance Act, No. 54/2006, Article 3 (b) defines a self-employed individual: Any person who works in his/her own business or independent activity to the extent that he himself/she herself is obliged to pay tax deductions at source in respect of calculated wages and social insurance tax in respect of his/her work, either every month or in another regular manner according to rules set by [the Director of Internal Revenue on calculated remuneration.]

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.

Not all self-employed workers are considered to be part of the same category with regard to unemployment. There is a special unemployment fund for benefit payments to farmers, small fishing-vessel owners and lorry drivers.²⁴ Other self-employed individuals, just like wage earners, are entitled to apply to the Directorate of Labour for unemployed benefit when becoming unemployed.

Under the Unemployment Insurance Act No. 54/2006 cohabiting partners, if registered, are covered like spouses. Under the Social Security Act No. 100/2007 (see Article 49) two unmarried individuals have the same rights to benefits as couples if registered in Registers Iceland, providing that they have a child together or are expecting a child together or have been cohabitating together consecutively for more than one year. The same applies to the benefit entitlements of the one that survived his/her spouse. This provision was amended subsequent to amendments to the Law in Respect of Marriage, No. 31/1993 with law No. 65/2010 where the term 'two individuals' replaced 'aman and a woman.'

With regard to tax rules, cohabiting same-sex partners may request to be taxed together, in the same way as married couples and cohabiting couples of the opposite sex, who have registered their cohabitation, who have lived together for at least one year or

²³ The Gender Equality Act No. 10/2008 gives effect to Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, to which reference is made in Annex XVIII of the Agreement on the European Economic Area as amended by the Decision of the EEA Joint Committee No. 33/2008. In addition, this Act gives effect to Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, to which reference is made in Annex XVIII of the Agreement on the European Economic Area as amended by the Decision of the EEA Joint Committee No. 84/2011.

²⁴ Article 7 of the Unemployment Insurance Act No. 54/2006.

have or expect a child together (Act 90/2003 on income tax). Furthermore, a rule providing for a tax-free personal allowance that is transferable between spouses has been extended so that it is also transferable between cohabiting partners (Act 45/1987 on the settlement of taxes).

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 1 of the Gender Equality Act No. 10/2008 provides: 'All individuals shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender.' This aim shall be reached by, amongst other means as stated in 1 (c), specifically improving the position of women and increasing their opportunities in society.

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?

There are no outstanding examples of authorities taking 'advantage of the power to take positive action.' As regards measures aimed at promoting entrepreneurship initiatives among women, there is an Innovation Centre under the Ministry of Industries, which is to be a choice for start-up companies looking for service support and assistance in their financing.²⁵

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

Yes, the whole population in Iceland is covered by the national social security scheme. The whole working population is covered by the Pension Act Fund No. 129/1997.

Under Act No. 100/2007 on Social Security any person who is resident in Iceland is regarded as being insured, provided that other conditions of the Act are met. Residence refers to legal domicile in the Legal Domicile Act. Pension insurance includes old-age pensions, invalidity pensions, age-related invalidity supplements, pension supplements, invalidity allowances and child pensions.²⁶

Two unmarried individuals have the same rights to benefits as couples if their cohabitation is registered in Registers Iceland, a special institution that belongs to the Ministry of Interior,²⁷ providing that they have a child together or are expecting a child together or have been cohabitating together consecutively for more than one year. The same applies to benefit entitlements of the one that survived his/her spouse. Confirmed cohabitation (people of the same sex) has the same legal effect as a marriage with regard to social security, social care and insurance, housing and health care.

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

The Act on Maternity/Paternity Leave and Parental Leave No. 95/2000 with subsequent amendments applies to self-employed parents as well as those employed by others. The Act defines a 'self-employed' individual as referring to anybody who works for him/herself, irrespective of the type of company, to the effect that it is mandatory for

²⁵ <http://www.nmi.is/english>, accessed 14 August 2014.

²⁶ Article 16, Act No. 100/2007.

²⁷ *Þjóðskrá Íslands*, Registers Iceland: <https://www.skra.is/english/organisational-chart/>

him/her to pay an insurance levy every month, or in another manner decided by the tax authorities.²⁸

The Maternity/Paternity Leave Fund is financed through the collection of an insurance levy in addition to interest on the Fund's deposits.²⁹

Does the maternity allowance meet the requirement of sufficiency in Article 8(3) and, if so, which criterion has been used, i.e. subparagraph (a), (b) or (c)?

The Maternity/Paternity Leave Fund (the Fund) makes payments to parents who have entitlements to payments during maternity/paternity leave. Each parent, the self-employed as well, is entitled to leave for up to three months due to a birth, primary adoption or reception of a child in permanent foster care. This right is not assignable. In addition, parents have a joint entitlement to an additional three months, which either parent may use in its entirety or the parents may divide it between them. A parent acquires the right to payments from the Fund after she/he has been active on the domestic labour market for six consecutive months prior to the birth of a child or the date on which a child enters the home in the case of adoption or permanent foster care. The work contribution of a self-employed parent shall be based on the payment of the insurance levy on calculated remuneration for the same period. The monthly payment shall amount to 80 % of her/his average total wages during the reference period. The maximum payment per month in 2015 is ISK 370 000 which is EUR 2 584.

The maternity allowance is granted on a mandatory basis to parents working in the domestic labour market, employed by others or self-employed. The Maternity/Paternity Leave Fund makes the payments to parents who have an entitlement thereto. The Fund is financed through the collection of an insurance levy and the Minister of Welfare shall ensure that the Fund has sufficient funds at all times to meet its obligations.

There are various recruitment agencies that anyone can seek assistance from but always at their own initiative or they can seek assistance from the municipalities. There is also a service centre at the Directorate of Labour.

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

Yes. The Act on Mandatory Occupational Pension Funds No. 129/1997 (Pension Act).

The Act on Mandatory Occupational Pension Funds No. 129/1997 (Pension Act) requires that all employees and self-employed persons between the ages of 16-70 must be members of an approved pension fund. The mandatory contribution is currently a minimum of 12 % of total earnings (all types of taxable wages). If the self-employed person is using her/his own identification number he/she pays the whole 12 % and likewise if he/she is working as a contractor. If the self-employed person has a private limited company then he/she as an employee pays 4 % and the company pays 8 %. If there is a supplement payment then the self-employed employee's share is 2-4 % and the private limited company's share is 2 %. Subsequently, it is mandatory to pay 0.10 % to a vocational rehabilitation fund.

A business operator or self-employed person, as well as others who make payments subject to contributions, must, upon the conclusion of the revenue year, specify on their wage payment slips, or by other means prescribed by the Directorate of Internal

²⁸ See Act No. 45/1987 on the Withholding of Public Levies at Source.

²⁹ Insurance Levy Act No. 113/1990.

Revenue, the amount upon which each person's contributions were based, together with the total amount of contributions paid to a pension fund.

The contribution can be split into two parts. The first part shall ensure a minimum benefit for the member. This minimum shall provide the person who has paid for 40 years a lifelong old-age pension every month amounting to at least 56 % of the monthly wages from which the contribution was paid. Furthermore, it shall ensure a minimum disability and survivor's pension, which are defined in the Act. The second part can go either towards acquiring additional pension rights in a pension fund or into individual pension plans (accounts). The funds define the minimum benefit. One fund can for example define it so that all of the 12 % contribution goes to cover minimum benefits, while another might for example only need 10 % for the minimum and then the extra 2 % can be saved elsewhere. Banks, insurance companies, securities undertakings and pension funds can receive contributions for supplementary insurance benefits.

According to law 113/1990 all employers are required to pay a social security contribution based on the total wages/salaries they pay to their employees or in the case of the self-employed of their own presumptive employment income. This contribution is a wage-related tax. The contribution for 2014 is 7.59 % of paid wages of which 6.04 % goes to the funding of the social security system, 1.45 % goes to the unemployment fund, 0.05 % to the Wage Guarantee Fund and 0.05 % to the Export Office. This social security contribution must be paid every month.

Income is defined as in the Income Tax Act No. 90/2003. In the case of a couple, income as a basis for calculating the old-age and invalidity pension shall be divided equally between the partners when benefits are calculated. Which of the couple is the owner of the assets forming the income, or whether it constitutes individual property or matrimonial property, shall be of no significance. Persons who are aged 67 years or older, and who have been resident in Iceland for at least three calendar years between the ages of 16 and 67, are entitled to old-age pensions.

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

No.

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

Yes. The Gender Equality Act, No. 10/2008.

Article 1 of the GEA explicitly states that all individuals shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender. Article 1 c. states that the aim of the GEA is specifically to improve the position of women and increase their opportunities in society. Article 24 of the GEA is a general prohibition on all forms of discrimination on grounds of gender.

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. Article 24 a inserted into the Gender Equality Act No. 10/2008 with Act No. 75/2015 (not yet translated into English).

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.

As the Goods and Services Directive has just been implemented there is no case law which refers to it. The implementation in the Gender Equality Act No. 10/2008 in Article 24 a. prohibits any discrimination regarding access to and providing goods and services, albeit not covering such activities in the private sphere.³⁰ Costs related to pregnancy and maternity shall not result in differences in individuals' premiums and benefits.

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?

Yes. Article 37 of the Media Law No. 38/2011.

Article 29 of the Gender Equality Act No. 10/2008.

Article 37 of the Media Law prohibits subliminal techniques in audiovisual commercial communications that include or promote any discrimination based on gender, racial or ethnic origin, nationality, religion, belief, disability, age or sexual orientation.

Article 29 of the Gender Equality Act No. 10/2008 provides that 'advertisers and those who design or publish advertisements shall ensure that the advertisements are not belittling or disrespectful towards either sex and that they do not run contrary to gender equality in any way. Such advertisements may not be published in the media or any other public venue.'

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

Yes, Article 24 (a), paragraph 2 provides that costs related to pregnancy and maternity shall not result in differences in individuals' premiums and benefits.³¹

³⁰ [24. gr. a. Bann við mismunun í tengslum við vörukaup og þjónustu.
Hvers konar mismunun á grundvelli kyns er varðar aðgang að eða afhendingu á vöru sem og aðgang að eða veitingu þjónustu er óheimil. Ákvæði þetta gildir þó ekki um aðgang að eða afhendingu vöru annars vegar eða aðgang að eða veitingu þjónustu hins vegar á sviði einka- og fjölskyldulífs. Jafnframt gildir ákvæði þetta ekki um málefni er varða störf á vinnumarkaði.
Hvers konar mismunun á grundvelli kyns við ákvörðun iðgjalds eða við ákvörðun bótafjárhæðar vegna váttryggingarsamnings eða samkvæmt annarri skyldri fjármálaþjónustu er óheimil. Kostnaður tengdur meðgöngu og fæðingu skal ekki leiða til mismunandi iðgjalda og bóta fyrir einstaklinga.
Ef leiddar eru líkur að því að mismunun samkvæmt ákvæði þessu hafi átt sér stað, hvort sem hún er bein eða óbein, skal sá sem talinn er hafa mismunað sýna fram á að ástæður þær sem legið hafi til grundvallar meðferðinni tengist ekki kyni nema unnt sé að réttlæta meðferðina á málefnalegan hátt með lögmætu markmiði og aðferðirnar til að ná þessu markmiði séu viðeigandi og nauðsynlegar.]¹⁾

¹⁾ [L. 79/2015, 1. gr.](https://www.ventill.is/frumvarp/218/)
³¹ [https://www.ventill.is/frumvarp/218/.](https://www.ventill.is/frumvarp/218/)

Article 24 (a) paragraph 1 excludes access to goods and services in the sphere of private and family life. Furthermore, it does not cover matters related to jobs on the labour market.

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. Article 24 a (2) of GEA No. 10/2008.

Article 24 a (2) explicitly states in its paragraph 2 that any discrimination regarding the calculation of premiums and benefits for the purposes of insurance and related financial services is prohibited.

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.³²

This exception is not relevant.

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.

³² Article 5 of Directive 2004/113 implementing the principle of equal treatment between men and women in the access to and supply of goods and services: '1. Member States shall ensure that in all new contracts concluded after 21 December 2007 at the latest, 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. 2. Notwithstanding paragraph 1, Member States may decide before 21 December 2007 to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. The Member States concerned shall inform the Commission and ensure that accurate data relevant to the use of sex as a determining actuarial factor are compiled, published and regularly updated. These Member States shall review their decision five years after 21 December 2007, taking into account the Commission report referred to in Article 16, and shall forward the results of this review to the Commission. (...)'

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

10.1 Has your country ratified the Istanbul Convention?

Yes. Iceland ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence on 11 May 2011.

Icelandic law does not entail a specific penal clause that covers all components of domestic violence although various provisions both in the General Penal Code No. 19/1940 as well as other acts of law render violations punishable. Most cases of domestic violence fall under Article 217 paragraph 1 of the General Penal Code on minor assault. According to paragraph 2 of Article 217 the victim must request an official prosecution as criminal proceedings will not be instituted unless this is required in the public interest. Hence if a public interest issue is not considered to be at stake the victim must press charges against the assailant. Thus, the pre-existing legislation does not fully comply with the Istanbul Convention.

Not yet. Full accession to the Istanbul Convention is under way according to the Minister of Justice's reply to a question in the Althing (Parliament) during its 144th session (2014-2015).³³

It has been suggested that a provision on the criminalization of forced marriage will be included in the General Penal Code (Art. 37 of the Istanbul Convention), in a draft which is to be proposed in the autumn of 2015. Measures will also be taken to establish jurisdiction over any offence in accordance with Article 44 of the Istanbul Convention. The statute of limitations for initiating any legal proceedings (with regard to the offences established in accordance with Articles 36, 37, 39 and 39) will be updated in accordance with the requirement of Article 58 of the Istanbul Convention. Minor amendments will be made regarding rules on compensation to ensure the granting of compensation within a reasonable time (Article 29(3) of the Istanbul Convention).

It is furthermore suggested to issue a regulation on the basis of the Act on Foreigners No. 96/2002 where gender-based violence against women may require the right to enhanced protection. Such a regulation would also entail a provision calling for a gender-sensitive interpretation in line with Article 60 (2) of the Istanbul Convention. Other amendments are foreseen in the Act on Foreigners regarding the granting of permission for a temporary residence in the case of divorce or the dissolution of cohabitation for women victims of gender-based violence.

It is furthermore suggested to include information on gender-based violence in teaching materials in accordance with Article 14 of the Istanbul Convention.³⁴

³³ 144th Parliamentary session (2014-2015); Doc. 1390; item 732.

³⁴ www.velferdarraduneyti.is/vitundarvakning/fraedsluefni/.

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. Article 27 of GEA No. 10/2008 (Prohibition against dismissal, etc., in connection with a complaint or a demand for redress); Article 30 (Prohibition against a waiver).

Article 27 prohibits employers from dismissing employees for demanding redress on the basis of the GEA. Furthermore, employers shall ensure that employees are not subjected to injustice in their work, e.g. as regards job security, terms of employment or performance assessment, on the grounds of having submitted a complaint or provided information regarding gender-based or sexual harassment or sexual discrimination. Furthermore, if a likelihood is adduced that the employer has violated this provision, he/she shall have to demonstrate that the dismissal, or the alleged injustice, is not based on the employee's demand for redress, complaint or provision of information regarding gender-based or sexual harassment or sexual discrimination. This shall not apply if the dismissal takes place more than one year after the employee has made his/her demand for redress under the GEA.

Article 30 of the GEA stipulates that 'no person may waive the rights set forth in this Act.'

The above Article 27 complies with Article 24 (victimisation) of the Recast Directive.

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, GEA No. 10/2008 provides for a shift in the burden of proof. An alleged victim of discrimination has to establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination. It is, however, for the respondent to prove that there has been no breach of the principle of equal treatment.

In Section IV of the GEA No. 10/2008: Prohibition against discrimination on grounds of gender, the burden of proof is placed on the employer (Article 25: Prohibition against discrimination regarding terms; Article 26: Prohibitions against discrimination at work and on engagement in employment; Article 27: Prohibition against dismissal).

If the likelihood is adduced that the above provisions have been violated, the employer must demonstrate that the difference or decision was based on grounds other than the gender of the claimant.

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.

Section V of the Gender Equality Act No. 10/2008 deals with sanctions (Article 31) and fines (Article 32). Article 31 on compensation for financial and non-financial loss provides that 'anyone who deliberately or through negligence violates this Act shall be liable to pay compensation according to the ordinary rules. Furthermore, the party in question

may be ordered to pay the party affected by the violation compensation for non-financial loss, if appropriate, in addition to compensation for financial loss.'

Article 32 stipulates that 'violations of this Act, or of regulations hereunder, may be punishable by fines unless heavier penalties are prescribed in other statutes. Fines shall be paid to the State Treasury. Cases involving violations of this Act, or of regulations issued hereunder, shall be handled as criminal cases.'

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.

Submitting a case to the Gender Equality Committee appears to be an effective remedy in light of the relatively large number of cases. It may be assumed that the most common violations of the Gender Equality Act are regarding wage equality as the gender-based pay gap remains. That means that although the burden of proof rests on the employer it is still difficult for the claimant to gather enough evidence to bring a case before the Complaints Committee. The clause permitting workers to disclose their wage terms is anything but a guarantee of transparency. Indeed it may serve as a scapegoat for not rectifying the problem. It is not enough to codify principles into law if they exist mostly in theory and are not practical and effective. This dubious clause has not been contested before a court of law.

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.

The Directorate of Labour may come to the assistance of the victim given certain conditions: that the conduct is not confined to one sole incidence; that the employee is still at work; and that the complaint has been dealt with at work.

The Supreme Court's judgment in 2011 in a sexual harassment case held that there had been no violation of the GEA, which is not very encouraging for victims. The woman in this case claimed non-pecuniary damages from the company she worked for as her superior had sexually harassed her during a working trip. The Supreme Court held that the behaviour of the man was indeed 'completely inappropriate' (inviting her to join him in a hot tub where he sat naked; knocking on her door an hour after she had bid him goodnight), but that more explicit ('other things and more') sexual behaviour was required to be considered as sexual harassment.³⁵

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.

The standing of various types of legal entities is acknowledged under Icelandic law. All kinds of groups are involved, ranging from relatively informal associations to major limited liability companies and the State itself.

In past decades the development of legislation on legal procedure in Iceland has been towards expanding the access of various associations to the courts, especially for the purpose of protecting the interests of particular association members or those of the

³⁵ Supreme Court judgment No. 267/2011.

associations generally. Paragraph 3 of Article 25 of the Civil Procedure Act No. 91/1991 authorised an organisation or association of people to conduct a case in its own name for acknowledgement of members' specified rights or exemptions from specified duties, provided that it was in accordance with the purpose of the organisation or association to protect the interests covered in the claim in the lawsuit.

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

The legal aid scheme in Iceland is based on Chapter 20 of the Act on Civil Procedure and the Regulation on legal aid issued by the Ministry of the Interior. Individuals who intend to participate in proceedings in a civil case before an Icelandic court may apply for legal aid to the Ministry of the Interior in Iceland. The Ministry then submits the application to the Committee on Legal Aid, which decides whether to grant legal aid or deny the application. The conditions for legal aid can be found in Article 126 of the Act on Civil Procedure. Legal aid is only granted if the applicant has sufficient reason to initiate proceedings or to defend himself in civil proceedings in court in Iceland and one of the following conditions are fulfilled: (1) The applicant's financial situation is such that he/she could not afford to defend his/her interests and the case is of such a nature that it would be considered appropriate that legal aid in the case would be financed by public funds; (2) The outcome of the case would have great general significance or matter greatly to the employment, social status or other personal status of the applicant.

The Legal Aid Committee looks at factors such as whether the applicant has tried to settle the case, for example by administrative appeals, and whether there is a possibility that the case would be successful in court, by looking at the case law of the courts; hence in light of the Supreme Court's decision in the 2011 judgment mentioned above, the prospects of legal aid for alleged victims of sexual harassment are not very promising.

11.5 Equality body

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

Yes. The Centre for Gender Equality's (*jafnréttisstofa*) website: jafnretti.is.

Its task as stipulated in Article 4 of the Gender Equality Act No. 10/2008 is to monitor the Act and hence its concern are all the grounds which form the basis of prohibition against discrimination.

The tasks of the Centre for Gender Equality are listed in Article 4 of the GEA No. 10/2008 where monitoring the application of the GEA is listed first. Its role is also, amongst other things, to advise authorities, institutions, NGOs and individuals on gender equality issues; to provide assistance to gender equality committees, gender equality counsellors and representatives of local authorities; institutions and companies; to mediate in cases of dispute referred to the Centre for Gender Equality on the basis of the GEA; and to investigate whether there is a reason to request the Gender Equality Complaints Committee to examine a matter when there is a suspicion of a breach of the GEA by an institution or enterprise. Such parties are obliged to provide the Centre with requested information and the Centre may fine them if they do not obey.

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 Gender Equality Forum called by the Minister of Welfare within a year of Parliamentary elections, cf., Article 10 of the GEA, to discuss gender equality issues shall be open to all, 'the Gender Equality Council shall invite members of the *Althingi* (Parliament), representatives of national and local government institutions, including their gender equality representatives and representatives of the social partners and non-governmental organisations with gender equality issues on their agenda', as stated in the above Article 10 of the GEA.

Social partners such as the Feminist Association and the Federation of Women's Associations do occasionally set items on the agenda for general discussion.

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 take note of the GEA albeit they do not take the initiative to implement EU gender equality law. They are usually declared to be generally applicable but are not legally binding.

12. Overall assessment

The translation of the EU gender equality acquis into domestic law is on the whole satisfactory although one significant exception must be mentioned. This is with regard to addressing wage transparency. When a new gender equality act was adopted in 2008 a new paragraph was added to the wage equality clause stipulating that 'workers shall at all times, upon their choice, be permitted to disclose their wage terms'. This clause has not been contested before a court of law or the Gender Equality Complaints Committee. It is, in my opinion, a superfluous attempt to cover transparency without any likelihood of a result as it is fairly unlikely that a higher paid individual (most often a man) will disclose his higher wages to a woman colleague. Fighting gender-based pay discrimination requires real transparency. There seem to be numerous ways for employers to discriminate. An (hypothetical) example may be mentioned: it is quite common that high-ranking civil servants (often men) also occupy jobs outside the administration, for instance in academia. Their part-time work contribution may be stated as being a higher percentage than is the actual reality to cover their higher pay.

The Gender Complaints Committee has been criticised over the years for granting too much scope to employers who are prohibited from discriminating between applicants for jobs on grounds of their gender. If the likelihood is adduced that, regarding an appointment to a post, engagement or assignment, individuals have been discriminated against on grounds of their gender, then the employer must demonstrate that his or her decision was based on grounds other than the individual's gender. When assessing whether there has been a violation the Complaints Committee is to take into account educational qualifications, working experience, specialised knowledge or other special talents in the relevant position according to the law or regulations, or which must otherwise be considered as being of use in performing the job, as provided for in Article 26 of the GEA. The Complaints Committee has referred to court practice when granting scope to employers in assessing the educational qualifications and working experience of applicants. This means that in certain circumstances the nature of the post/job in question or of the applicant may justify hiring the one with lesser education or working experience. This need not be a violation but must be regarded as an absolute exception to the rule enlisted in Article 26 of the GEA.³⁶

The Complaints Committee has noticeably used the above exception in recent years in its rulings regarding the appointment/engagement of employees which objectively appear to be violations as the one employed has for example had a lower level of education.³⁷

Finally, the indirect discrimination of ageism which impacts both sexes, but relatively more women, is not being adequately dealt with. Women who are older than 60 have a hard time in entering the labour market. When people are dismissed age is not mentioned although that is often the alleged reason when other factors are mentioned such as a reorganisation of the workplace. There are more unemployed women than men and 26 % of those unemployed are older than 50. A Member of Parliament focusing on ageism has said that these numbers must be taken with a grain of salt since there is much latent unemployment especially among women older than 50.³⁸

³⁶ Gender Equality Complaints Committee case No. 9/2015, 19 November 2015.

³⁷ Gender Equality Complaints Committee case No. 9/2015, 19 November 2015.

³⁸ <http://www.althingi.is/altext/raeda/145/rad20151015T114353.html>.

Annexes

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