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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Lithuania

Tomas Davulis

Reporting period 1 January 2017 – 31 December 2017

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1 Introduction

1.1 Basic structure of the national legal system

The Republic of Lithuania is a unitary state where legislative authority is vested in the central government. The regulatory authority is vested in the Parliament (the *Seimas*), whereas the implementation and execution of legislation belongs to the main competences of the Government (*Vyriausybė*) and its ministries and agencies.

The Parliamentary Human Rights Committee supervises the implementation of the equal opportunities policies and assesses legislative initiatives in this field. Draft legislation is mainly drafted by the Ministry of Social Security and Labour, which is in charge of the implementation of the principle of equal treatment at the level of the Executive. The independent Equal Opportunities Ombudsperson is appointed by Parliament and is entrusted with supervising the implementation of equality legislation. He/she is the head of a public authority – the Office of the Equal Opportunities Ombudsperson – which is also responsible for the implementation of the principle of equal treatment on the number of other grounds.

The legislation in the form of ordinary laws (*istatymai*) is adopted by Parliament. The ordinary laws constitute the major instrument to establish imperative rules in the area of equal treatment. Resolutions (*nutarimai*) of the Government of the Republic of Lithuania make up a limited source of the gender equality law in Lithuania since they may regulate relations between individuals only in cases and to the extent determined by the ordinary laws.

1.2 List of main legislation transposing and implementing Directives

Lithuanian legislation transposing and implementing Directives:

- the Labour Code;¹
- the Equal Opportunities Act for Women and Men (EOAWM);²
- the Equal Opportunities Act (EOA).³

¹ Register of Legal Acts, 2016, No. 2016-23709, 2002.

² State Gazette, 1998, No. 112-3100. An unofficial translation into English is available on the Internet site of the Lithuanian Parliament at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=421709, accessed 20 June 2016. A new version of the Act was adopted on 8 November 2016. Register of Legal Acts, 2016, No. 26966, available (in Lithuanian) under <https://www.e-tar.lt/portal/lt/legalAct/TAR.746227138BCB/udzdoFTUTE>, accessed on 15 March 2017.

³ State Gazette, 2003, No. 114-5115. An unofficial translation into English is available on the Internet site of the Lithuanian Parliament at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389500, accessed 20 June 2016. A new version of the Act was adopted on 8 November 2016. Register of Legal Acts, 2016, No. 26967, available (in Lithuanian) under <https://www.e-tar.lt/portal/lt/legalAct/Odfc3020ac9311e6b844f0f29024f5ac>, accessed 15 March 2017.

2 General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes. The Constitution of 25 October 1992⁴ contains the general principle of equality. Pursuant to Article 29 of the Constitution all persons shall be equal before the law, the courts, and other State institutions and officials. The rights of the human being may not be restricted, nor may he/she be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views.

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

Yes. Section 48 (1) of the Constitution also lays down the right to fair remuneration for work where the concept of 'fair remuneration' (in accordance with the jurisprudence of the Constitutional Court)⁵ also includes the principle of fair remuneration without discrimination.

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

No. Despite the fact that the Constitution contains a clause on the direct effect of constitutional provisions (Section 6), the Constitutional Court has not elaborated on the possibility to rely thereon in disputes between private persons (horizontal effect).

The courts of general jurisdiction should then rely on ordinary laws, namely on the Equal Opportunities Act (EOA) and the Equal Opportunities Act for Women and Men (EOAWM). Moreover, the jurisprudence of the Supreme Court⁶ requires the courts to stay the proceedings and to refer the case to the Constitutional Court if there is uncertainty with regard to the conformity of legislation with constitutional provisions.

Since the concept of non-discrimination had not been developed autonomously by the Constitutional Court before accession to the European Union, the discrepancies between constitutional provisions and the relatively new equality legislation could hardly have been expected.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. There are several pieces of domestic equality legislation. The Labour Code of 19 September 2016 (in force since 1 July 2017) mentions, among the principles of labour law, the principle of fair remuneration and the general principle of the equality of employees irrespective of *inter alia* their gender, marital and family status as well as the intention to have children. There is also the special article devoted to the implementation of the principle of equal treatment in the area of employment (Section 26 of the Labour Code).

The Equal Opportunities Act for Women and Men (EOAWM) and the Equal Opportunities Act (EOA) have introduced the central concepts and provide basic rules, define the scope of their application, and establish the mechanisms for supervision and enforcement. One of the Lithuanian peculiarities, however, is a certain 'double coverage' of discrimination on the ground of sex by these two different Acts. The EOAWM is a special law dealing with

⁴ State Gazette, 1992, No. 333.

⁵ Ruling of 18 December 2001 of the Constitutional Court of the Republic of Lithuania.

⁶ Survey No. A2-7 of 2 June 1997 of the Supreme Court of the Republic of Lithuania. Teismu praktika, No. 7.

gender discrimination in particular whilst the Equal Opportunities Act (EOA) intends to deal with discrimination on the grounds stipulated by the EU equality directives of 2000 and a number of other domestic grounds, such as nationality, language, origin and social status. With the amendments from 2008, gender was also added to the list of the prohibited grounds of discrimination under the EOA.

3 Implementation of central concepts

In defining major concepts, the Lithuanian legislator has tried to keep in line with relevant European directives. There are only a small number of slight language differences in transposing the central definitions of the directives, but they are rather insignificant.

3.1 Sex/gender/transgender

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

No. The notions 'gender' and 'sex' are not specifically defined in national legislation.

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

No. Discrimination due to gender reassignment is not explicitly prohibited by Lithuanian equality legislation. There is also no case law that prohibits discrimination on the basis of gender reassignment. Since there are no cases it remains unclear whether discrimination on the grounds of gender reassignment would be viewed as sex discrimination.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. Pursuant to Section 2 (7) of the EOAWM direct discrimination means treatment where one person is treated less favourably on grounds of sex than another is, has been or would be treated under comparable circumstances. The Lithuanian definition is an almost literal translation of the corresponding provision in Directive 2006/54/EC.

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

No. Today there are no specific rules directly prohibiting discrimination in relation to pregnancy and maternity, maternity leave, parental leave, adoption leave and paternity leave. The majority of violations would definitely be covered by the general rules on non-discrimination in the Labour Code and the EOAWM. Less favourable treatment because of pregnancy, the birth of a child and breastfeeding is only directly prohibited in the area of the provision of services and the sale of goods (Section 7 p. 3 of the EOAWM).

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

There are no specific difficulties in applying the concept of direct sex discrimination.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes. In accordance with Section 2(4) of the EOAWM indirect discrimination shall mean an act or omission, a legal provision, an assessment criterion or practice that is formally the same for women and men, but whose implementation or application would put persons of one sex at a particular disadvantage compared to persons of the other sex, unless such act or omission, legal provision, assessment criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. The provision fully corresponds with that provided by Directive 2006/54/EC.

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.

There is no statutory requirement to use statistical data in order to establish the existence of indirect discrimination or the presumption of indirect discrimination. There have only been a few rather insignificant cases on indirect discrimination in the courts. In those cases the courts required the claimant to provide at least 'the facts' concerning possible indirect discrimination⁷ and had no opportunity to take a position on the possibility to use statistical data. In the view of the Equal Opportunities Ombudsperson indirect discrimination may be proved by 'statistics and research data that reflect the actual situation in the group of people in a certain area of social relations.'⁸

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

There are no cases where the concept of indirect discrimination would be scrutinised by the courts. The courts have not yet examined the exception of an objective justification.

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.

There are no cases where the concept of indirect discrimination has been properly examined by the courts. The rare practice of the Office of the Equal Opportunities Ombudsperson in investigating cases related to discrimination on grounds other than sex/gender still suggests that the concept of indirect discrimination will be correctly applied by the Office also in sex/gender-related cases.

3.4 Multiple discrimination and intersectional discrimination

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

No. There is no legislation on the prohibition of multiple or intersectional discrimination. There are also no proposals for the new legislation in this regard.

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. There is no practice where the courts have adopted a firm position on multiple discrimination. On one occasion the Supreme Court of Lithuania has been confronted with a claim based on *inter alia* possible multiple discrimination, when a woman challenged her dismissal because of discrimination based on pregnancy and disability. The court rejected the claim on the ground that the disability of the claimant was not known to the respondent.⁹

⁷ Ruling of 21 December 2011 of the Supreme Court of the Republic of Lithuania in case No. 3K-3-598/2012.

⁸ Annual Report 2013 of the Equal Opportunities Ombudsperson, available on the Internet site of the Office of the Equal Opportunities Ombudsperson <http://www.lygybe.lt/lt/metines-tarnybos-ataskaitos.html>, accessed 9 September 2015.

⁹ Ruling of 11 April 2014 of the Supreme Court of the Republic of Lithuania in case No. 3K-3-199/2014.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes. Positive actions are explicitly mentioned as exceptions to the principle of non-discrimination (Section 6 (6) of the EOAWM). They are defined as specific temporary measures laid down by specific laws, aimed at accelerating the guaranteeing of factual equal rights for women and men and which must be repealed upon the implementation of equal rights and equal opportunities for women and men. However, the reference to specific laws makes this action practically unenforceable since there are no other specific laws allowing these measures to be taken.

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.

In practice, positive action measures are forbidden in Lithuania (see above) - the reference to specific laws makes such positive action practically unenforceable since there are no other specific laws allowing these measures to be taken.

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

No.

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.

No. Individual proposals are periodically made to introduce quotas in political candidate lists but no such proposals have so far been implemented.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. Pursuant to Section 2 (5) of the EOAWM, harassment is unwanted conduct where a violation of the dignity of a person, or the intention to do so, and of creating an intimidating, hostile, degrading, humiliating or offensive environment occur because of sex. The national definition may be considered to be sufficiently precise despite the fact that it slightly differs from the definition provided by Directive 2006/54/EC.

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

Theoretically, the definition of harassment shall cover all areas which fall within the scope of application of the EOAWM and EOW (actions by state institutions and the provision of services - consumer protection, education, employment, public service, professional organisations). However, provisions expressly addressing harassment as a prohibited act or behaviour are lacking in the legislation. The EOAWM *expressis verbis* only requires harassment to be actively prevented in an employment relationship. The EOA, which also covers discrimination on the grounds of gender, broadens the scope of this provision to include education.

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. Sexual harassment is defined as unwanted insulting, verbal, non-verbal or physical conduct of a sexual nature by a person with the purpose or effect of violating the dignity of another person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment (Section 2 (6) of the EOAWM). The Lithuanian definition requires that the unwanted conduct is also insulting, which cannot be found in Directive 2006/54/EC.

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

Theoretically, the definition of sexual harassment shall cover all areas which fall within the scope of application of the EOAWM and EOW (actions by state institutions and the provision of services - consumer protection, education, employment, public service, professional organisations). However, provisions expressly addressing sexual harassment as a prohibited act or behaviour are lacking in the legislation. The EOAWM *expressis verbis* only requires harassment to be prohibited in an employment relationship. The EOA, which also covers discrimination on the grounds of gender, broadens the scope of this provision to include the area of education.

The Criminal Code of the Republic of Lithuania¹⁰ (Section 152) contains sanctions for most severe cases of sexual harassment where the victim is in a subordinate position.

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)?

Section 2 (1) of the EOAWM explicitly states that harassment and sexual harassment amount to discrimination. However, there is no provision to the effect that less favourable treatment based on the person's rejection of or submission to such conduct also amounts to discrimination (Article 2(2)(a) of Directive 2006/54).

3.7 Instruction to discriminate

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

Yes. An instruction to discriminate is clearly indicated as amounting to discrimination (Section 2 (1) of the EOAWM and Section 2 (1) of the EOA), but is not further defined either in the EOA or in the EOAWM.

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.

To date, there have been no cases related to the instruction to discriminate.

3.8 Other forms of discrimination

There is no domestic regulation on discrimination by association or assumed discrimination.

¹⁰ State Gazette, 2000, No. 89-2741.

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. Under labour legislation (Section 26 (2) p. 4 of the Labour Code) the employer shall observe the principle of equal pay for men and women for equal work and work of equal value.

The Labour Code requires companies with more than 50 employees to adopt a remuneration scheme and to make it available for employees. The system of remuneration for work shall specify categories of employees according to their position and qualification, and the remuneration for each of them and the amount of the base rate wage (the minimum and the maximum), the grounds and procedure for granting additional payments (bonuses and additional pay), and the procedure of wage indexing (Section 140 (3) of the Labour Code).

Section 140 (5) of the Labour Code adds that the system of remuneration for work must be developed in such a way as to avoid any discrimination based on gender or other grounds when it is applied. Men and women shall have equal pay for equal or equivalent work. Equal work shall mean the performance of work activities which, according to objective criteria, are equal or similar to another's work activities to the extent that both employees may be interchanged without significant costs to the employer. Equivalent work shall mean that, according to objective criteria, it is not lower skilled and less significant to the employer in the achievement of its operational objectives than other comparable work.

Section 6 p. 3 of the EOAWM also introduces the principle of equal pay. It stipulates that the employer is obliged to provide equal pay for work of equal value and to provide equal working conditions and equal benefits. Subjecting an employee to less (or more) favourable terms of employment or payment for work is considered to be a 'violation of equal rights for women and men' (Section 11 p. 1 of the EOAWM) and this is sanctioned according to administrative law rules. Administrative fines ranging from EUR 40 to EUR 1 200 for a breach of the EOAWM may be imposed by the Equal Opportunities Ombudsperson,¹¹ but in many cases the Ombudsperson issues a simple warning. Theoretically, a breach of labour legislation may be investigated by the State Labour Inspectorate but it is reluctant to evaluate a case of discrimination as a breach of labour legislation.

4.1.2 Is the concept of pay defined in national legislation?

The Labour Code contains two different definitions of pay. The general one (Section 139 of the Labour Code) and the discrimination-related one. (Section 26 (4) of the Labour Code). Under the general rule, a wage is remuneration for work performed by an employee under a contract of employment. Section 139 (2) of the Labour Code states that the employee's wage shall include:

- 1) the base rate wage (an hourly wage or a monthly salary);
- 2) an additional wage agreed upon by the parties or paid in accordance with labour law norms or the system of remuneration for work applied at the place of employment;
- 3) bonuses for qualifications;

¹¹ Section 81 of the Code on Administrative Offences, Register of Legal Acts, 2015, No. 11216.

- 4) additional pay for additional work or the performance of additional functions or assignments;
- 5) bonuses which are agreed upon by the parties or paid in accordance with labour law norms or the system of remuneration for work applied at the place of employment;
- 6) bonuses which are intended by the employer to provide incentives for good performance, as well as activities or performance results of the employee, the company, the subdivision or the group of employees.

Under a special rule, in cases of discrimination concerning wages, remuneration for work is considered to be a wage or any other consideration, including remuneration in cash or in kind, which the worker receives directly or indirectly in respect of his or her employment from employer (Section 26 (4) of the Labour Code). This special definition of pay is in line with EU law. Section 140 (6) of the Labour Code also clarifies that in implementing the principles of gender equality and non-discrimination on other grounds, the employee's wage without discrimination shall mean a non-discriminatory base rate wage and all the additional payments in cash or in kind which the employee receives directly or indirectly from the employer for his or her work.

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

Yes. In addition to the provisions of Section 26 of the Labour Code, Section 140 (5) of the Labour Code states that when applying the work classification system for determining wages, the same criteria shall be equally applied to both men and women, and the system must be developed in such a way as to avoid discrimination on the grounds of sex.

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

No. National law or case law does not explicitly require a comparator in establishing a violation of the principle of equal pay.

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

No. There are no parameters for establishing the equal value of the work performed.

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

Yes. Currently there are no provisions which are aimed at making the pay schemes or the exact pay visible for other persons who are not party to the contract of employment. However, this issue is addressed in the new Labour Code. Two special provisions have been introduced to strengthen transparency for the implementation of the principle of equal treatment:

- 1) The Labour Code now requires companies with more than 50 employees to adopt a specific internal document—a policy on equal opportunities (Section 26 (5) of the Labour Code). The Code is silent on the content and the status of this internal document but it is believed that the adoption of this document (in information and consultation procedures) will not be formal, but will trigger at least discussions on what has to be done to promote equal opportunities at the workplace. A works council becomes obligatory in companies employing 20 or more employees and the dialogue between representatives of the workforce and the employer will have to cover these issues;
- 2) Section 23 (2) of the Labour Code obliges companies with more than 20 employees to provide anonymised data on the average wages of employees according to gender and professional groups, except those in managerial positions, to works councils and

trade unions. This information will indicate problematic differences in pay for men and women and which has to be potentially dealt with by the social partners.

- 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. There is no specific provision in this regard.

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

Under previous legislation (Section 186 (3) of the Labour Code 2002) the wage of an employee had to depend upon the amount and quality of the work performed, the results of the activities by the enterprise, establishment or organisation as well as the demand and supply on the labour market. This declaratory provision had not been specifically interpreted by the courts. Today the new Labour Code contains no stipulations providing for possible exceptions to the principle of equality in remuneration.

- 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 outsourcing?

The Lithuanian system of remuneration is considered to be among the most liberal systems in the world, ranking 11th in the Global Competitiveness Report.¹² This can be mainly explained by the overwhelming dominance of individual agreements in the setting of wages and the absence of collective agreements. The major difficulty related to the practical implementation of the principle of equal pay lies in the fact that there is no case law. In the view of the author, we can also assume that the rules on confidentiality contribute to the reluctance of employees to challenge discriminatory practices in the area of pay. In practice, a difference in pay for women and men is rather considered to be a problem of equality law which is rather governed by public law instruments and not a problem relating to individual labour law.

4.2 Access to work and working conditions

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

Yes. National law provides for the scope of application of anti-discrimination legislation but its *ratione personae* does not encompass all persons who fall under the notion of a 'worker' in accordance with the case law of the CJEU. The scope of application of the principle of equal pay and equal treatment at work is quite confusing in Lithuania. The Labour Code and the EOAWM are applicable to 'employees' *stricto sensu*, i.e. persons involved in a relationship based on a contract of employment only. Therefore the reference to 'employees' (*darbuotojai*) means that the scope of application of the EOAWM¹³ does not explicitly include 'public servants' and other persons having a legal status other than that of an employee (e.g. notarial assistants, trainees, professional sportsmen/women, self-employed persons etc.). Therefore public servants will be covered by equality legislation either directly by the EOA or by the EOAWM by way of an analogy. Politicians, the highest ranking government officials, judges, public prosecutors, and military personnel do not fall within the categories of employees or public servants *stricto sensu*, but again, by way of a legal analogy, they may enjoy the same protection as public servants. However, court practice is lacking on this point.

¹² The Global Competitiveness Report 2015–2016, available under <http://wef.ch/gcr15>, accessed 23 November 2015.

¹³ However, the EOA fragmentally mentions 'public servants' alongside 'employees'.

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

Yes. The Labour Code expressly prohibits discrimination on the ground of sex in concluding, executing and terminating employment (Section 26 (2) of the Labour Code). The Labour Code contains further provisions expressly prohibiting direct or indirect discrimination as regards access to employment, vocational training and promotion, and working conditions (Section 26 (2) of the Labour Code). They are also repeated in the EOAWM and EOA. According to Section 6 p.1 of the EOAWM, an employer is obliged to apply gender-neutral recruitment and promotion criteria and conditions. In addition, the EOAWM obliges employers to provide equal working conditions and equal opportunities to improve qualifications, to provide equal benefits and to apply the principle of equal pay for equal work, including all payments. The special protection of women during pregnancy, childbirth and breastfeeding as well as requirements for safety at work which are applicable to women and are aimed at protecting women's health have been withdrawn from the scope of application of the principle of non-discrimination.

Another piece of equality legislation, namely the EOA, in its Section 7, states that when implementing equal treatment the employer, without regard to *inter alia* sex, must:

- 1) apply uniform selection criteria and conditions when appointing employees, or recruiting for the civil service, except for cases specified in paragraph 7 of Section 2 of the EOA;
- 2) provide equal working and civil service conditions and opportunities for vocational training, advanced vocational training, retraining, practical work experience, as well as providing equal benefits;
- 3) apply uniform criteria for assessing the work of employees and the performance of civil servants;
- 4) apply uniform criteria for dismissals from work and from the civil service;
- 5) offer equal pay for the same work or for work of equal value;
- 6) take measures to prevent harassment or instructions to discriminate against any employee or civil servant at the workplace;
- 7) take measures to prevent sexual harassment against any employee or civil servant;
- 8) take measures to ensure that an employee or civil servant who has filed a complaint relating to discrimination or is participating in discrimination proceedings, his or her representative or any person who is testifying or making statements on behalf of someone else are not subjected to persecution and are protected from any adverse treatment or adverse consequences;
- 9) take appropriate measures to enable disabled persons to have access to, participate in, or advance in employment, or to undergo training, including the adaptation of premises, unless such measures would impose a disproportionate burden on the employer.

Non-discriminatory access to employment and promotion for the self-employed are neither stipulated in the EOAWM nor in the EOA and therefore there is a substantial lack of conformity with EU law. The scope of Lithuanian law in this regard is therefore more limited than the scope of Article 14(1) of the Recast Directive.

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

Yes. According to Section 6 p. 1 of the EOAWM, an employer is obliged to apply gender-neutral recruitment and promotion criteria and conditions, except where the work can only be performed by persons of a particular sex, where the necessity of a particular sex may be based on the nature of the activity or the context in which it is carried out, provided that the objective sought is legitimate and complies with the principle of proportionality (the exception in Article 14(2) of Directive 2006/54/EC). There is no further legislative or

administrative elaboration of this provision. Case law is also lacking. The Lithuanian Government has also not assessed the occupational activities referred to in Article 14 (2) of Directive 2006/54.

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. Section 10 p. 1 of the EOAWM contains exceptions to the principle of equal treatment - special protection for women during pregnancy, childbirth and breastfeeding as well as requirements for physical training and health and safety at work applied to women and aimed at protecting women's health owing to their physiological properties shall not be considered to be a violation of equal treatment.

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

No particular difficulties can be observed.

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

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes. Section 2 (24) of the Law on the Safety and Health of Workers¹⁴ provides a definition of a pregnant worker: a pregnant worker is a worker who has provided her employer with a medical certificate confirming her pregnancy. This definition is completely consistent with the definition in Article 2 of Directive 92/85.

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

Yes. Section 37 of the Law on the Safety and Health of Workers regulates maternity protection. There is a general prohibition for pregnant women or women who have recently given birth or are breastfeeding to be assigned to perform work in conditions that may be hazardous and affect the health of the woman or the child. The list of hazardous conditions and dangerous factors which are prohibited for pregnant women, women who have recently given birth or are breastfeeding was approved by the Government. The list was adopted in 2003 and was newly approved on 21 June 2017¹⁵ to fully implement Directive 92/85 as modified by Directive 2014/27. Also in compliance with the list of hazardous conditions for work and working environment risk assessment results, the employer must establish the nature and duration of a potential effect on the safety and health of a woman who has recently given birth or is breastfeeding. Upon the assessment of this potential effect, the employer must take necessary measures to ensure that the above risk is eliminated. Where the elimination of dangerous factors is impossible, the employer shall implement measures to adjust the working conditions so that a woman who has recently given birth or is breastfeeding can avoid such risks. If the adjustment of her working conditions does not result in avoiding her exposure to risks, the employer must transfer the woman (with her consent) to another job (place of work) in the enterprise, establishment or organisation. Having been transferred to another job (place of work) in the enterprise, establishment or organisation, the pregnant woman, the woman who has recently given birth or is breastfeeding shall not be paid less than the average pay which she received before being transferred to another job (place of work). If transferring a pregnant woman to another job (place of work) to avoid her and her expected child's exposure to risks is not technically feasible, the pregnant woman shall, with her consent, be granted leave until she takes her maternity leave and shall be paid her average monthly salary during this period of extra leave. If, after maternity leave, it is not technically feasible to transfer a woman who has recently given birth or is breastfeeding to another job (place of work) to avoid her or her child's exposure to risks the woman shall, with her consent, be granted unpaid leave until her child reaches the age of one and her maternity insurance contributions, as prescribed by law, shall be paid during this period.

Pregnant women, women who have recently given birth or are breastfeeding may only be assigned to work at night, on rest days or on holidays, or posted to perform different work with their consent; if such employees refuse to work at night and submit a certificate that such work would affect their safety and health, they shall be transferred to daytime work (Section 37 (8) of the Law on the Safety and Health of Workers). Where it is not possible to transfer such employees to daytime work due to objective reasons, they shall be granted leave until they take maternity leave or childcare leave until the child reached the age of one. During the period of leave granted before the employee takes maternity leave she shall be paid her average monthly pay.

¹⁴ State Gazette, 2003, No. 70-3170.

¹⁵ Resolution of the Government No. 469 of 21 June 2017. Register of Legal Acts, No. 2017-10532.

There are some additional guarantees, for example, in addition to the general break to rest and to eat, a breastfeeding woman shall be given, at least every three hours, a break of at least 30 minutes to breastfeed. At the mother's request the breaks for breastfeeding may be joined or added to the break to rest and eat or given at the end of the working day, thereby shortening the working day accordingly. Payment for these breaks to breastfeed shall be calculated according to the average daily pay of the employee. Pregnant women, women who have recently given birth or are breastfeeding may not be assigned to work overtime without their consent.

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. There is a general prohibition on dismissing pregnant women. Section 61 (1) of the Labour Code provides that a pregnant woman's employment contract may be terminated from the day on which her employer receives a medical certificate confirming her pregnancy, and until her child reaches the age of 4 months but only in following cases: upon mutual agreement, resignation, resignation during a trial period, upon objective grounds where the law requires the termination of the contract and upon the expiry of the contract.

If the person is on maternity leave, the termination of employment is prohibited except in the case of the expiry of the contract (Sections 131 (2), 65 (6) of the Labour Code)

According to the Law on Sickness and Maternity Social Insurance, in the case of maternity leave the benefit shall be paid in full at the start of the leave.

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)?

There is a general requirement to provide for substantial grounds for dismissal.

5.2 Maternity leave

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

The duration of maternity leave is 70 calendar days before childbirth and 56 calendar days after childbirth (in the event of a complicated childbirth or the birth of two or more children this is 70 calendar days) (Section 132 (1) of the Labour Code). Maternity leave is completely voluntary and is very often linked to a person's willingness to receive the maternity allowance.

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

Yes, the new Labour Code consolidates a new provision that if the woman does not use her maternity leave, the employer must grant a 14-day instalment of leave immediately after childbirth, regardless of the request of the woman (Section 132 (1) of the Labour Code).

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

Yes. Pursuant to Section 37 of the Law on the Safety and Health of Workers, after having been transferred to another job (place of work) in the enterprise, establishment or organisation, the pregnant woman, the woman who has recently given birth or is breastfeeding shall not be paid less than the average pay she received before being

transferred to another job (place of work). If transferring a pregnant woman to another job (place of work) to avoid her and her expected child's exposure to risks is not technically feasible, the pregnant woman shall, with her consent, be granted leave until she takes her maternity leave and shall be paid her average monthly salary during this period of extra leave. If it is not technically feasible to transfer a woman who has recently given birth or is breastfeeding after her maternity leave to another job (place of work) to avoid her or her child's exposure to risks, the woman shall, with her consent, be granted unpaid leave until her child reaches the age of one and her insurance contributions, as prescribed by law, shall be paid during this period.

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

Yes. There is a new general provision concerning all types of leave. Pursuant to Section 131 (2) of the Labour Code, the employer shall ensure the right of an employee to return to the same or an equivalent job (position) after a special-purpose leave on conditions which are no less favourable than the former working conditions, including wages, and to benefit from any improvement in working conditions, including the right to a pay rise, to which he or she would have been entitled if he or she had been working. The maternity benefit is paid by the State Social Insurance Fund (see below).

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?

Pursuant to Section 18 of the Law on Sickness and Maternity Social Insurance, the amount of the maternity allowance during a period of maternity leave shall amount to 100 % of the allowance beneficiary's reimbursed remuneration. The amount of the sickness allowance paid by the State Social Insurance Fund shall amount to up to 80 % of the reimbursed remuneration of the allowance beneficiary. The maternity benefit is higher than that provided in the case of sickness, but the preconditions are more difficult to meet. Only employees who have worked for more than 12 months over the last 24 months qualify for maternity benefit. In order to qualify for sickness benefit this period is only 3 months in the last 12 months (or 6 months in the last 24 months).

According to Section 6 of the Law on Sickness and Maternity Social Insurance, there is a minimum maternity benefit (EUR 228). After a recent ruling by the Lithuanian Constitutional Court¹⁶, the maximum ceiling for maternity benefit was lifted as it was non-constitutional. In the Court's view, the legislator cannot impose a limit on maternity benefit if the contributions themselves are not subject to a maximum limit. However, this line of argumentation was not upheld in a later ruling concerning parental leave benefits¹⁷. The Court stressed the necessity to ensure the financial stability of the state's social insurance system and higher unlimited contributions to the state's social insurance scheme were justified by the principles of the state's social orientation and social solidarity.

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

No. Additional supplements provided by the employer in the case of maternity leave are very rare.

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

¹⁶ Ruling of 15 March 2016 by the Lithuanian Constitutional Court.

¹⁷ Ruling of 24 January 2018 by the Lithuanian Constitutional Court.

Yes, there is a general requirement of 12 months of employment during the last 24 months: women are entitled to a maternity allowance during the maternity leave if by the first day of the maternity leave they have the necessary sickness and maternity social insurance record of no less than 12 months during the last 24 months, except for young medical doctors (who are residents) and persons under 26 years of age who have not acquired the necessary social insurance record because of their full-time studies, if the maternity leave is granted within 12 months after the completion of their studies.

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. Pursuant to Section of 131 (2) of the Labour Code, an employer shall ensure the right of employees to return to the same or an equivalent job (position) after this leave and subject to conditions which are no less favourable, including their wages, as well as to benefit from any improvement in conditions, including wages, to which they would have been entitled during their absence.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes. If a person adopts or fosters a baby or child, she/he is entitled to parental leave of three months (Section 134 (2) of the Labour Code).

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

Yes. Protection against dismissal and any violation of the other rights of adoptive parents is granted to the same extent as others who are taking maternity or parental leave simply due to the fact that the same legal provisions would apply.

5.4 Parental leave

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

Yes. Parental leave until the child has reached the age of three is granted to the mother, the father and also to other relatives who are in fact raising the child until he/she reaches the age of three (Section 134 (1) of the Labour Code).

Parental leave and adoption leave are granted subject to the choice of the family and may be taken as a single period or be distributed in parts. During parental leave the employee receives a social benefit – a parental allowance paid by the State Social Insurance Fund for a period of up to two years. The person concerned retains his/her job, with the exception of cases where the enterprise has been dissolved. At the end of the parental leave, workers have the right to return to the same job on the same terms as before their leave. Unlike what is stipulated regarding maternity leave, there is no explicit provision that the worker shall benefit from any improvement in working conditions to which he/she would have been entitled during his/her absence because of parental leave. In addition, the law does not provide for the minimum non-transferable period of parental leave or adoption leave, as required by Directive 2010/18/EC.

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

In Lithuania there is a distinction between civil servants and employees. Section 134 of the Labour Code is applicable to all employees *stricto sensu*, i.e. employees having a contract of employment. Public servants and other persons employed on grounds other than a contract of employment (judges, higher officials) are covered by the provision of Section 134 of the Labour Code by virtue of Section 5 of the Law on Public Service¹⁸ which establishes the principle of the subsidiary application of labour laws in cases not stipulated by special provisions of the Law on Public Service.

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?

The rules on parental leave do not differ in relation to the contract of employment – they apply equally to the employment relationships of part-time workers, fixed-term contract workers or temporary workers.

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

The maximum length of the leave is the same for all sectors and is fixed until the child reaches the age of three.

5.4.5 Is the right of parental leave individual for each of the parents, a family entitlement or a combination of the two? How many months are reserved for each parent on a take-it or leave it basis?

Leave can be considered to be a family entitlement, but the legal status of a valid marriage is not required. In practice this can be a more individual right because there is no system to prevent both parents taking parental leave, if only one of them applies for social insurance benefit.

According to Section 134 of the Labour Code, parental leave until the child reaches three years of age shall be granted, subject to the choice of the family, to the mother (adoptive mother), father (adoptive father), grandmother, grandfather or any other relative who is actually raising the child, also to the employee who has been recognised as the guardian of the child. The leave may be taken as a single period or be distributed in portions. Employees entitled to this leave may take it in turn. The parents can take the parental leave in turn, but they cannot transfer their right to social benefit during the parental leave to other parents. The law does not provide for the minimum non-transferable period of parental leave or adoption leave, as required by Directive 2010/18/EC.

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)?

There is no flexibility. It can only be taken full time.

¹⁸ State Gazette, 2002, No. 45-1708.

Variations can be considered insofar as they concern social benefits – those on parental leave may choose whether they receive the parental allowance in the period before the child reaches the age of one year or for the period before child reaches the age of two – there is a difference in the amount of the allowance if one option or the other is taken.

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)?

Pursuant to Section 134 (3) of the Labour Code, the employee intending to make use of parental leave or to return to work before the end of the leave must give the employer a written notice thereof at least fourteen days in advance. A longer notice period may be established in a collective agreement.

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

Yes. In the case of adopting a baby or a child, parental leave of up to three months is granted by law (Section 134 (2) of the Labour Code). Parental leave is granted subject to the choice of the family and may be taken as a single period or be distributed in parts.

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

No. The right to parental leave is in no way related to the period of service or the type of employment contract – every employee with an effective contract of employment may apply for parental leave and the employer is obliged to grant that leave. The only hypothetical exception can be the case when the contract will end before the notice period of 14 days expires. However, even in this case the courts will most probably defend the employee's right to parental leave. This conclusion can be drawn from numerous cases decided by the courts in which they have held that the right of an employee to apply for parental leave has an absolute nature and the employer may neither revise nor oppose the will of an employee.

However, the state social insurance record is required to qualify for a parental leave benefit. According to the Law on Sickness and Maternity Social Insurance, the state social insurance record means the periods during which state social insurance contributions for sickness and maternity social insurance are paid or had to be paid as required by law, as well as the periods during which the insured person was in receipt of a state social allowance (e.g. sickness, maternity, paternity or unemployment allowances). The social insurance record of self-employed persons or persons who receive an income from sport or performing activities or under copyright agreements shall be determined according to the social insurance contributions which have been paid. If such contributions have been paid at the amount of a minimum monthly wage, the social insurance record of one month shall be acquired. In cases where the contributions have been paid at an amount which is smaller or larger than the minimum monthly salary, the social insurance record shall be considered to be proportionally shorter or longer as the case may be.

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

No. There are no situations where employers are allowed to refuse to grant parental leave.

5.4.11 Are there special arrangements for small firms?

No. There are no special arrangements for small firms.

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

No. There are no special arrangements with regard to the parents of children with a disability or a long-term illness.

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

Yes. The taking of parental leave can in no way constitute a ground for treating an employee differently. Section 131 (2) of the Labour Code states that an employee shall retain his or her job (position) during the period of any leave. There is a general prohibition on giving notice of the termination of an employment contract and on summarily dismissing an employee during his or her leave (Section 65 (6) of the Labour Code). The worker shall benefit from any improvement in working conditions to which he/she would have been entitled during his/her absence because of parental leave (Section 131 (2) of the Labour Code). In addition, there is a priority right to retain a job in the case of redundancy for all workers who are raising children (adopted children) under 14 years of age (Section 57 (3) p. 2 of the Labour Code) and the priority to choose the time when the annual leave is to be taken (Section 128 (4) of the Labour Code).

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

According to Section 131 (2) of the Labour Code, during the period of this leave the employee shall retain his or her job (position).

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

The rights acquired by the worker shall be maintained until the end of the parental leave. It seems that the new provision on limiting the use of the right to paid annual leave (the acquired right to paid annual leave shall be exercised during the period of the following three years (Section 127 (5) of the Labour Code) shall not be applicable in the case of parental leave, but the provision has been applicable from 1 December 2015 and as yet there is no practice relating to its practical application.

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

The original employment contract will remain valid. The length of uninterrupted work for the employer continues to be counted, but the parental leave will not be taken into account when calculating the length of service for annual paid leave (Section 127 (4) p. 3 of the Labour Code). Employees on parental leave are considered to be members of staff (in accordance with Section 17 of the Labour Code). The only exceptions are related to collective law: the laws on the transposition of European Directives 2009/38/EC, 2001/86/EC, 2003/72/EC eliminate employees on parental leave from the total number of employees within an enterprise. Employees on parental leave are not taken into account when establishing the total number of employees for the establishment or European works council or an European Company works council or special negotiating committees. However, the employees on parental leave are not excluded from participation in domestic works councils at the company level.

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

There is full continuity of the entitlements to social security. According to Section 6(4) p. 5 of the Law on Health Insurance,¹⁹ the state takes over the payment of contributions for parents/adoptive parents raising a child under eight years of age, one of the guardians providing guardianship for a child under eight years of age in the family, one of the parents/adoptive parents raising two or more minor children, and one of the guardians/carers providing guardianship for/taking care of two or more minor children in the family.

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

The employer is not obliged to pay the salary or other benefits during parental leave, except in cases foreseen by individual contracts, collective agreements or other normative acts. Financial support for those on parental leave is provided by the state social insurance scheme. During parental leave a worker is entitled to a state social security allowance paid by the State Social Insurance Fund according to the Law on Sickness and Maternity Social Security of 21 December 2000.²⁰

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

During parental leave a parental allowance is paid by the State Social Insurance Fund for a period of up to two years in both the public and private sectors. The amount of the allowance is subject to the length of the leave and the third year of the leave is always unpaid.

The same rules apply to the public and the private sector. According to Section 21 of the Law on Sickness and Maternity Social Insurance, the amount of a maternity (paternity) allowance from the end of maternity leave until the child reaches the age of one shall amount to 100 % of the allowance beneficiary's reimbursed remuneration, if the insured person chooses to receive this allowance until the child reaches the age of one. If the insured person chooses to receive a maternity (paternity) allowance until the child reaches the age of two, the amount of the said allowance from the end of a maternity leave until the child reaches the age of one shall amount to 70 % of the allowance beneficiary's reimbursed remuneration and until the child reaches the age of two – 40 % of the allowance beneficiary's reimbursed remuneration. If the insured person chooses to receive a maternity (paternity) allowance until the child reaches the age of two, he/she is allowed to work during the second year without losing the payment of the benefit.

According to Article 6 of the Law on Sickness and Maternity Social Insurance, the maximum of allowances may not exceed the sum of two average national monthly wages during the previous six months before the establishment of the right to an allowance. Currently the cap is EUR 1 685 monthly. The minimum monthly allowance is EUR 228. The allowances are subject to income tax (15 %) and sickness insurance (6 %).

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

Despite the fact that the Lithuanian Labour Code is heavily loaded with family-friendly arrangements such as restrictions on redundancy, prolonged notification periods for employees having children, the employee having to consent to being sent on a business trip and to being assigned to night work or overtime, there are no other guarantees related

¹⁹ State Gazette, 2002, No. 123-5512.

²⁰ State Gazette, 2000, No. 111-3574.

to parental leave except the right of an employee to take additional unpaid leave of up to three months during the maternity leave or parental leave of the spouse (Section 137 (1) p. 3 of the Labour Code).

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes. Pursuant to Section 133 of the Labour Code, men shall be entitled to paternity leave – for the period from the date of the birth of a child until the child reaches the age of one month. During the paternity leave the allowance is paid by the State Social Insurance Fund. The amount of a paternity allowance shall be 100 % of the allowance beneficiary's reimbursed remuneration. There are no conditions to be granted leave, but the state social insurance record of 12 months during the last 24 months is necessary to qualify for an allowance. The maximum allowance may not exceed the sum of two average national monthly wages during the previous six months before the establishment of the right to an allowance. Currently the cap is EUR 1 685 monthly. The minimum monthly allowance is EUR 228.

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. There is a general prohibition on giving notice of the termination of an employment contract and on dismissing an employee during his/her leave, except in the case of the expiry of the contract (Section 61 (3) of the Labour Code).

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)?

Lithuanian legislation provides for care leave in the case of the illness of a member of the employee's family (his or her spouse, child, mother or father) regardless of the size of the employer or the nature of the employment.

The Law on Sickness and Maternity State Social Insurance provides for the right to state social benefit in the case of care leave. The leave can only be taken full time.

In the case of care leave the state sickness social insurance allowance will be paid in accordance with provisions of Article 10 of the Law on Sickness and Maternity State Social Insurance. The allowance will be paid for the first seven days. If the employee takes care of a child up to seven years of age who is hospitalised, or a member of the family takes care of a child who is under 18 years of age with a severe illness, the allowance will be paid for a maximum of 120 days in any calendar year.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

No. Parental leave is not granted in the case of surrogacy.

5.8 Leave sharing arrangements

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

No. There is no right to share (a part of) maternity leave or paternity leave.

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

No. Both parents are entitled to the right to take parental leave until the child will reach the age of three - parents may choose who will take the leave. There are no rules on the transferability of parental leave and/or the sharing of 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?

In accordance with Section 40 (5) of the Labour Code, a reduction to part-time work is possible without the consent of the employer, inter alia, at the request of:

- a) a pregnant woman;
- b) a woman who has recently given birth;
- c) a breastfeeding woman;
- d) an employee raising a child under three years of age;
- e) an employee who is alone and is raising a child under 14 years of age or a disabled child under eighteen years of age.

There are no eligibility criteria or time limits set by law to request part-time work. The obligation is available to all employees. In addition, there is a right to return from part-time employment to full-time employment after 2 weeks notice. Maternity leave or parental leave cannot be taken in the form of part-time work.

Part-time work means that the employee will be paid *pro rata temporis*. No state social insurance allowance is provided by the law to cover the shortfall in the salary. There is no right to return to the prior working arrangement. No incentives are provided for men to make use of the right to reduce their working time.

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

No. There is no right to adjust working time patterns for employees having family responsibilities. However, in accordance with Section 138 (3) of the Labour Code, employees raising a disabled child under 18 years of age or two children under 12 years of age shall be granted an additional rest day per month (or have their weekly working time shortened by two hours), and employees raising three or more children under 12 years of age shall be entitled to two additional rest days per month (or have their weekly working time shortened by four hours accordingly) and paid their average wage.

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

The Government of Lithuania has consolidated the special rules on distance work. However, distance work can only be arranged on the basis of a special mutual agreement between the employer and employee. No family-friendly special arrangements have so far been provided by the legislation.

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?

Yes. The prolonged minimum annual leave of 25 work days (whilst the normal minimum leave is 20 work days) is granted to employees who, as single parents, are raising a child

under the age of 14 or a disabled child under the age of 18 (Section 138 (1) of the Labour Code).

This additional unpaid leave (Section 137 (1) of the Labour Code) shall be granted at the request: a) of employees raising a child under 14 years of age - for up to 14 calendar days; b) of employees raising a child with disabilities under 18 years - for up to 30 calendar days; c) of the father during the maternity leave and parental leave of the mother as well as of the mother - during the parental leave of the father – for up to three months.

In addition, the law provides a right to choose the exact time of the annual leave (Section 128 (4) of the Labour Code). Pregnant women and employees who are alone and are raising a child under the age of 14 or a child with disabilities under the age of 18 have the right to choose the exact time of the annual leave after six months of uninterrupted work at an enterprise.

The Labour Code also contains a few other measures which intend to increase family-related flexibility for workers: the right to unpaid time off for personal needs with the consent of the employer (Section 137 (3)), the enhanced right to request distance work (Section 52 (2) of the Labour Code), a job sharing contract (Section 93 (3) of the Labour Code) if the employee has children.

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

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

Yes. Pursuant to Section 9 (1) of the EOAWM, it shall be prohibited to discriminate against persons on grounds of sex when establishing and applying social security provisions including those that amend or supplement the state social insurance system:

- 1) when establishing possibilities for participation and usage;
- 2) when establishing the contributions and their amount;
- 3) when establishing benefits including additional benefits for spouses and dependent persons as well as when establishing the duration of the right to benefits and their retention.

Discrimination is defined by the Section 2 (1) of the EOAWM and encompasses both direct and indirect discrimination.

Discrimination shall be prohibited when establishing and applying social security provisions in cases of sickness, disability, old age, early retirement, accidents at work and occupational diseases or unemployment and social security provisions that provide for any type of social benefits including survivor's and orphan's pensions, benefits and material allowances.

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

Section 9 (3) of the EOAWM declares that the prohibition of discrimination on grounds of sex shall apply for employed persons including self-employed persons, persons who have terminated their employment due to sickness, maternity, accident or forced unemployment as well as jobseekers, pensioners, disabled employees and persons who are entitled to demand benefits on their behalf.

This means that public servants and other categories of state employees who are covered by the system of state pensions (officials and military personnel, scholars and judges) are clearly covered by the principle of non-discrimination to this extent. The same is true for self-employed persons, who are not yet mentioned elsewhere in equality legislation.

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

Occupational social security schemes in the private sector were introduced in 2006 but are still very rare in Lithuania. The pension and social security schemes for public servants form part of the general statutory scheme, accompanied by specific state pension schemes for officials and military personnel, scholars and judges. Different pensionable ages in occupational pension schemes are expressly prohibited under the EOAWM.

In 2008 the EOAWM was supplemented to include new provisions on the prohibition of discrimination based on sex in social security schemes, including provisions that aim to supplement or replace the state social security system. Exclusions related to the type of occupational social security scheme are not provided by the law. Section 9 (2) of the EOAWM cites examples of prohibited actions: discrimination is prohibited in the establishment of possibilities to participate in and enjoy social protection, in the determination of contributions and their level, in the determination of allowances including

those granted to spouses and dependants, as well as in the determination of the duration of the payment of allowances.

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

Exclusions related to the type of occupational social security scheme are not provided by the law.

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

No case law has been identified so far. Occupational pension schemes are very rare in Lithuania.

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

No case law has been identified so far.

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.

Occupational pension schemes are very rare in Lithuania and statutory state social insurance pension schemes together with state pensions scheme dominate. State pensions could be considered as occupational pensions and the principle of equal treatment should be applied without exception. However, the vast majority of state pensions are directly linked to the statutory pensionable age which is (temporarily) different for women and men (see below).

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. The principle of equal treatment is consolidated in Sections 9 and 15 of the EOAWM and is equally applied for occupational and statutory social security schemes. All categories of employees including public servants and higher officials are covered by all types of state social security schemes whilst the majority of self-employed persons are covered by fewer statutory pension schemes.

The EOAWM amendments of 2008 have significantly broadened the scope of application of the equal treatment principle which now applies to the state social security schemes in the same way and to the same extent as occupational pension schemes, the only exception being the different pensionable ages (see below).

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

The EOAWM simply establishes the principle of non-discrimination in state social security schemes - section 9 (3) of the EOAWM declares that the prohibition of discrimination on grounds of sex shall apply to employed persons including self-employed persons, persons who have terminated their employment due to sickness, maternity, accident or forced unemployment as well as jobseekers, pensioners, disabled employees and persons who are entitled to demand benefits on their behalf. The scope of the national provision is the same as that of Article 2 of Directive 79/7.

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

The principle of non-discrimination is applied to all statutory social security schemes as Section 9 (2) provides that discrimination shall be prohibited when establishing and applying social security provisions in cases of sickness, disability, old age, early retirement, accidents at work and occupational diseases or unemployment and social security provisions that provide for any type of social benefits including survivor's and orphan's pensions, benefits and material allowances.

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

Section 10 p. 3 of the EOAWM provides for a temporary exception for different pensionable ages for women and men in the statutory pension schemes. For a long time the pensionable ages for men and women were different: 60 for women and 62.5 for men. The pensionable age for women has been increased by four months annually from 2012 and for men by two months annually, and the retirement age for both men and women will reach 65 in 2026. One should keep in mind that in Lithuanian labour law some employees' guarantees (notification periods or a priority in retaining a position where dismissals are concerned) are related to the statutory pensionable age of the workers, which is still different for women and men.

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

No. There is no legislation or practice which would allow for different amounts of benefits for men and women because of the life expectancy being statistically different between the sexes.

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.

The State statutory pension scheme based on the Law on the Pensions of State Social Insurance of 18 July 1994²¹ contains a temporary exception with regard to a different pensionable age for women and men. This exception is applied both to the private and public sectors which means that the exception for public servants may not be in conformity with the principle of equal treatment.

First of all, all public servants are covered by this State statutory pension scheme just like employees in the private sector. Therefore public servants' access to an old-age pension differs for women and men for all public employees.

Secondly, there is a direct link between the State statutory pension scheme, based on the principle of social insurance (the Law on Pensions of State Social Insurance), and the system of state pensions, based on the principle of merit or the type of occupation. In accordance with the Law on State Pensions of 22 December 1994²² there are also first and second degree state pensions, state pensions for victims, state pensions for officials and military personnel, state pensions for scholars and state pensions for judges. All those pensions (except the pension for officials of the internal services) are granted to persons who have reached the pensionable age which is established by the Law on the Pensions of State Social Insurance. This basically means that men and women qualify for state pensions at different pensionable ages.

²¹ State Gazette, 1994, No. 59-1153.

²² State Gazette, 1994, No. 101-2018.

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

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

Yes. The transposition of Directive 2010/41/EU is very minimal. The EOAWM was slightly amended to include a formal obligation for state institutions to observe the principle of equal treatment and the Annex to the EOAWM was amended to state that this amendment serves as the transposition of Directive 2010/14/EU.

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 notion of a self-employed person (Lithuanian law perceives such persons to be owners of individual enterprises, members of partnerships, persons in a registered individual economic activity, persons with business certificates, farmers and their partners, sportsmen/women and artists) only emerges within the legal framework of taxation and state social insurance.

The EOAWM and EOA do not address self-employed persons, except in the regulation devoted to state social security schemes.

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.

Self-employed persons are not defined by the EOAWM. The notion of a self-employed person (Lithuanian law perceives such persons to be owners of individual enterprises, members of partnerships, persons in a registered individual economic activity, persons with business certificates, farmers and their partners, sportsmen/women and artists) only emerges only within the legal framework of taxation and state social insurance.

Spouses of self-employed persons are not mentioned in national equality legislation. Life partners are not recognised under Lithuanian law.

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

Section 4 of the EOAWM is called 'The Duty of State and Municipal Institutions and Agencies to Implement Equal Rights between Women and Men.' In the process of transposition it has been amended to introduce the new obligation of state and municipal authorities and institutions to prevent sex discrimination, and was supplemented by the new obligation not to violate the equal rights of women and men when providing administrative or public services. Since Directive 2010/41/EU is meant to govern all relations between self-employed persons and their spouses with third parties, Lithuanian law fails to include the relationships with state companies, public bodies or private persons (notaries) etc. within its scope.

The Lithuanian legislator has not laid down the principle of equal treatment of self-employed persons, except in the area of social security schemes (Section 9 (3) of the EOAWM). In addition, it does not grant explicit rights not to be discriminated against on the grounds of sex for spouses of self-employed persons. The novelty of the amendment of 13 March 2012 is significant only insofar as there was no similar stipulation in the

EOAWM before this. However, there is nothing that could prove even the hypothetical possibility of increased protection for self-employed persons in access to self-employment or other areas of life.

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?

Lithuania has not made use of the power to take or allow positive action. Moreover, the Lithuanian EOAWM even generally prohibits positive action, if this affirmative action is not regulated by special law. No such laws have been adopted in Lithuania since 1998, when the EOAWM was adopted.

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

Yes. The Lithuanian state social protection system is quite complicated in terms of its coverage, the types of contributions and the benefits. The rules on the social protection of self-employed persons cannot be considered as a system – it is rather a mixture of different provisions of distinct types of social insurance or even taxation which sometimes also covers self-employed persons. After crisis-related amendments to the social insurance system in 2008, many self-employed persons were covered for the first time by different types of social and health-related insurance on a mandatory basis. There are still considerable differences between persons under a contract of employment and those engaged in individual activity. Obviously, the benefits for self-employed persons are limited in terms of risk and the types of allowances (not all risks are covered) as well as regarding the amount of the benefits (the contributions of self-employed persons to the social scheme are prefixed or subject to upper limits while the contributions of employees and public servants are not).

The majority of them are only covered by pension insurance (age, disability and widows/widowers' pensions). Helping spouses of other categories of self-employed persons and persons treated as such may participate in voluntary social insurance schemes. All these persons may be covered by pensions and sickness and maternity state social insurance on a voluntary basis. Still, there are national social schemes granting certain services and cash benefits awarded to these women regardless of their social insurance, financial situation or professional activity (e.g. birth grants).

The spouses of self-employed persons are not explicitly covered by social protection legislation. We can only report that helping spouses of farmers are covered by the mandatory health social insurance scheme only if they are registered as partners. Spouses of other categories of self-employed persons are not specifically mentioned in the legislation - they may be insured against certain risks (pension and maternity (paternity) and parental benefits - see above) on a voluntary basis like any other natural person legally residing in the territory of Lithuania. Still, there are national social schemes granting certain services and cash benefits to these women regardless of their social insurance, financial situation or professional activity (e.g. birth grants).

However, strong protection against any attempts at discrimination in the area of social protection is provided by Articles 9 and 15 of EOAWM, which expressly prohibit discrimination against self-employed persons. Their family members are mentioned there as well – there shall be no discrimination on the grounds of sex when establishing the level of contributions, when establishing benefits including additional benefits for widows and dependent persons as well as when establishing the duration of the right to benefits and their retention. However, there are no examples of the practical application of the said provisions in the courts or by the Equal Opportunities Ombudsperson.

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

Yes. In Lithuania different groups of self-employed persons are covered differently the rules on maternity benefits. Persons engaged in a registered economic activity and farmers and their partners as well as sportsmen/women and artists are insured on a mandatory basis whilst the others may be insured on a voluntary basis. The mandatorily ensured categories of self-employed persons will receive the benefits (subject to maximum limits) which amount to 100 % of the insured salary (the salary which was the basis for the social insurance contributions) for a maximum of 126 days of leave, if they were ensured for at least 12 months during the last 24 months. No option is available to choose the maternity allowance system. Depending on the type of activities, the payment of contributions may be made by the client or by the self-employed person (either four times yearly or once yearly together with an annual declaration of income).

The level of maternity benefits depends on the insured salary - the level of income which was the basis for the calculation of maternity insurance contributions.

A comparison with the allowances awarded to a person in the case of sickness (Article 8(3)(a) of Directive 2010/41/EU) is not difficult to make since the sickness-related level of allowance is lower than maternity benefits. However, if the person's income was lower than the minimum wage, the maternity benefits will be proportionately lower.

There is no legislation in Lithuania which provides for any payments in cases of a loss of income or profit or any other family-related allowance (the benefits stipulated in Article 8(3)(b)-(c) of Directive 2010/41/EU). Temporary replacement services or similar national social services are not provided in Lithuania. Spouses of self-employed persons are not subject to the regulation on maternity allowances. Life partners are not recognised in Lithuania.

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

No. There are no such occupational social security schemes for self-employed persons in Lithuania.

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. No exceptions are foreseen.

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

No. Article 14 (1) a) of Directive 2006/54/EC which prohibits discrimination of the grounds of sex in access to self-employment has not been transposed in Lithuania.

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. The EOAWM *prima facie* meets the requirements of Directive 2004/113/EC as it prohibits any discrimination in the area of 'consumer protection' (Section 7 of the EOAWM). The EOAWM only addresses relationships between consumers and salespersons, producers and service providers, as it states that salespersons, producers and service providers must apply equal payment terms or guarantees for the same or equally valued products, goods and services to all consumers irrespective of their sex. They also have to assure that there will be no humiliation, restriction of rights or the granting of privileges, or the forming of any public attitudes towards the superiority of one sex over the other when providing information on their products, goods and services or when advertising them. Furthermore, the EOAWM lists discriminatory acts such as granting different conditions of payment or guarantees for the same and equally valued goods, services or products or allowing different opportunities for selecting goods; presenting information about products, goods and services or advertisements promoting the public opinion that one sex is superior to another; discrimination against consumers on grounds of sex; and intimidation of a person who has complained about discrimination. There will be no direct discrimination if the sale of goods or the provision of services to persons of a certain sex or to the majority of a certain sex is justified by a legitimate aim, provided that these restrictions are appropriate and necessary.

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

The EOAWM does not clarify whether access to goods and services is covered to the full extent. The structural deficit lies in the fact that the law differently defines what are the duties of the individuals (in Chapter II called "Implementation of Equal Rights for Men and Women") and what are the breaches of the principle of equal treatment (in Chapter III called "Violation of Equal Rights of Women and Men"). Only actions listed in Section 13 of the EOAWM (Chapter III) and not of the Section 7 (Chapter II) will invoke the administrative penalty. In addition, section 7 of the EOAWM (Chapter II) does not prohibit situations where the refusal to supply goods or to provide services is based on the consumer's sex (the payment conditions and guarantees are included in the scope of the principle of non-discrimination). The already criticized inconsistency of the Lithuanian legislator when describing the duties of private persons and the administrative breaches of the principle of discrimination leads to a different evaluation of the action in the private and public sphere.

In addition, there is a certain uncertainty as to whether all relations in the area of the provision of services will be covered. In Section 7 of the EOAWM 'Implementation of Equal Opportunities for Women and Men in the Field of Consumer Protection' the term 'consumer' plays a central role. In accordance with Section 6.350 of the Civil Code, the consumer is always perceived as a physical person only. The supply of goods or the provision of services can be practically denied to female entrepreneurs, female commercial agents and legal persons who are represented by physical persons of a certain sex.

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

No. The exceptions in the application of the principle of equality related to the media and education have not been implemented in the EOAWM, but the EOAWM is not applicable in the sphere of private and family life (Section 1 (2) of the EOAWM).

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.

There is no other statutory regulation on an admissible difference in the treatment of both sexes when accessing goods and services. The Office of Equal Opportunities Ombudsperson investigates individual complaints in the sphere of goods and services. For example, a woman on parental leave until the child reaches three years of age was refused the consumer's credit for financing the purchase of domestic electrical appliances. The intention is not seen as a prerequisite to prove discrimination but the complaint was dismissed by the Equal Opportunities Ombudsperson on the ground that there was no evidence that the company had the intention to discriminate against women on parental leave. The even quotas for boys and girls in access to a Jesuit high school were also justified by the Equal Opportunities Ombudsperson who considered that there was a 'credible' proportionate representation of both sexes. The Equal Opportunities Ombudsperson also saw no violation of equal treatment in the activities of the 'pink taxi' company which was established to provide operational services for women only.

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

Yes. Section 93 (2) of the Law on Insurance²³ clearly states that when calculating insurance premiums and insurance benefits, the insurer shall not take the gender of the insured person or the gender of a policy holder as a factor which is relevant to the risk of the insurance. In addition, Section 93 (3) prohibits the use of factors related to pregnancy and motherhood when calculating the risk of the insurer.

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.

Under the Law on Insurance, insurance companies were allowed to apply sex-differentiated contribution rates after a risk evaluation within the sphere of insurance. With the amendments of 2013²⁴ Lithuanian law now complies with the CJEU ruling in *Test-Achats*.²⁵ Today Section 93 (2) of the Law on Insurance reads: when calculating insurance premiums and insurance benefits, the insurer shall not take the gender of the insured person or the gender of the policy holder as a factor which is relevant to the risk of the insurance. In addition, Section 93 (3) prohibits the use of factors related to pregnancy and motherhood when calculating the risk of the insurer.

9.7 Has your country adopted positive action measures in relation to access to and the supply of goods and services

No. No positive measures have been adopted in relation to access to and the supply of goods and services in Lithuania.

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.

²³ State Gazette, 2003, No. 94-4246.

²⁴ State Gazette, 2013, No. 46-2247.

²⁵ Case C-236/09 *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres* [2011] ECR I-00773.

The EOWMA does not explicitly address transsexual people, pregnant women, or women who have recently given birth. An implicit protection by way of interpretation is be provided instead. However, the lack of complaints and the absence of public debates indicate the difficulties in understanding the whole scope of the possible discriminatory actions prohibited by the Directive and the EOAWM. The protection is not sufficiently clear and precise so as to allow individuals to understand their rights and for goods and service providers to understand their legal obligations as far as transsexual people, pregnant women, and women who have recently given birth are concerned. For example, the national legislation remains silent on the question of whether the harassment or sexual harassment of an employee by third parties (such as clients or customers) constitutes a violation of the principle of non-discrimination. Legislation is also silent on whether employers are liable if they fail to take reasonably practicable steps to prevent such harassment.

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

10.1 Has your country ratified the Istanbul Convention?

No. The Istanbul Convention was signed by the Lithuanian Foreign Minister in 2013 but the process of ratification is still pending at the level of the Ministry of Social Security and Labour which oversees the implementation of gender equality policies at the national level. There is a special working group composed of representatives from governmental and non-governmental institutions and organisations which has been established to explore the perspectives of ratification. The official decision shall first be made by the Government before the IC will be submitted to Parliament for ratification.

On 7 March 2013 the Member of Parliament Marija Aušrinė Pavilionienė appealed to the President of Lithuania Dalia Grybauskaitė asking for an initiative to be taken so that the Istanbul Convention could be signed and ratified. Also a few additional initiatives by politicians and other organisations have been taken on the ratification of the Istanbul Convention. The Minister of Social Protection and Labour was questioned on the matter in Parliament on 16 December 2014.

There are no concerns with regard to the possible financial impact stemming from accession to the IC. The process of ratification has been halted for political reasons. A strong public debate has been triggered concerning the principal question of whether the mentioning of 'gender identity' in Article 4 Section 3 of the IC and the definition of 'gender' which encompasses socially constructed roles (Article 3 c) of the IC) will not lead to the wider protection of LGBT in Lithuania. Conservative MPs, in particular female MPs, have displayed strong disagreement with ratification because of the fear that the ratification will trigger the process of the formal recognition of LGBT rights in Lithuania. However, the President of the Republic has expressed her support for ratification²⁶, but the process of joining the Convention has currently been halted.

²⁶ Press release by A.M.Paviloniene, Member of Parliament, 19 March 2013, available http://www.lrs.lt/sip/portal.show?p_r=15375&p_k=1&p_t=132796, accessed 5 December 2015.

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

11.1 Victimisation

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

Yes. Section 11 p. 4 of the EOAWM prohibits the employer from persecuting an employee, a representative of an employee or an employee who is testifying or providing explanations about a complaint or another legal procedure concerning discrimination on grounds of sex. Those actions by an employer shall be considered as a violation of equal rights and may be sanctioned with an administrative fine.

11.2 Burden of proof

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

Yes. Section 26 (5) of the Labour Code and Section 3 of the EOAWM contain a provision on the reversal of the burden of proof when examining complaints or disputes between persons arising from discrimination on the ground of sex. This rule has to be applied in the civil courts of general competence or in the Commissions on Individual Labour Disputes. If there is a dispute in the administrative courts involving public servants, the rule on the reversal of the burden of proof shall also be invoked. However, the Highest Administrative Court has rejected the right of the Equal Opportunities Ombudsman to shift the burden of proof to the accused employer in a procedure investigating a complaint by the Office of the Ombudsperson.

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.

In case of a violation of the principle of non-discrimination four different types of sanctions may be imposed. Criminal sanctions may be imposed following a criminal offence. Serious discrimination on the grounds of *inter alia* sex shall be punishable by a community service order, arrest or imprisonment for up to three years, but there have been no cases so far. Administrative fines ranging from EUR 40 to EUR 1 200 for a breach of the EOAWM may be imposed by the Equal Opportunities Ombudsperson, but in many cases the Ombudsperson issues a simple warning. A violation of equal opportunities for women and men or the sexual harassment of colleagues, subordinates or customers may result (but not necessarily shall result – this is left to the employer to decide) in disciplinary sanctions imposed on the related employee, e.g. dismissal.

The rules on the judicial enforcement of rights are no less favourable than those governing similar domestic actions. In cases of a discriminatory refusal or dismissal compensation may be awarded but the court is free not to reinstate the employee. In the case of financial claims by an employee, the court may grant the employee the payment of interest when the employer has breached financial duties: 0.06 % interest per day of delay.

In addition, in all cases the court may award financial compensation for non-material damage caused by discrimination. The compensation for non-material damage has no maximum amount. However, the courts are reluctant to award a high amount of compensation for non-material damage. For example, for a discriminatory refusal to employ Roma women as waitresses in a bar, the employer was obliged to pay

compensation of approximately 2½ times the minimum wage for non-material damage instead of employment.

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

The legal preconditions for guaranteeing the functioning of the system of effective, proportionate and dissuasive sanctions are in place. However, in general, the Equal Opportunities Ombudsperson and the courts are rather reluctant to impose severe sanctions for breaches of equality legislation.

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.

Access to the courts is generally safeguarded for alleged victims of discrimination but is no longer directly laid down in the EOAWM (former Section 12 of the EOA). Cases on discrimination are still very rare. A person who has suffered discrimination on grounds of sex, sexual harassment or harassment shall have the right to demand that the guilty persons must reimburse any pecuniary and non-pecuniary damage in the manner prescribed by the Civil Code of the Republic of Lithuania (Section 18 of the EOAWM).

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.

Since 2008 the EOAWM has allowed a victim to be represented in administrative procedures and court proceedings by organisations representing workers and employees and by other legal persons having a legitimate interest. This right for NGOs has been confirmed by the Highest Administrative Court,²⁷ and this has confirmed the possibility of the rights of victims to be defended. However, cases regarding discrimination on grounds of social origin, nationality or age have started to dominate the poor landscape of discrimination cases.

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

Special legal aid other than the advice of the Equal Opportunities Ombudsperson (Section 12 (1) of the EOAWM) is not provided by the state.

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 Office of the Equal Opportunities Ombudsperson (in Lithuanian - *Lygių galimybių kontrolierius*) (http://www.lygybe.lt/lt/titulinis_10.html) is an independent state institution that supervises the implementation of the principle of equal opportunities in the labour law of the European Union and in the EOAWM and the EOA in Lithuania. The Office investigates complaints, supervises implementation by the public institutions and employers, hears cases of administrative offences and imposes administrative sanctions, consults victims of

²⁷ Ruling of 7 November 2013 of the Highest Administrative Court in case No. A-492-2078/2013.

discrimination, assists public organisations and NGOs, collects, analyses and summarises data on equal opportunities in Lithuania, submits recommendations, etc.

The Lithuanian equality body was primarily established to combat gender discrimination. Since 2008 the competences of the Office have been extended to cover also the grounds of race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

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 impact of the social partners in the promotion of gender equality is rather weak. Neither specific measures to fight inequalities, for instance in pay, nor policy measures such as gender mainstreaming strategies are on the agenda of the social partners.

In practice, the social partners do not attempt to explain or promote the principle of equality unless there is a focused initiative sponsored by European funds.

11.7 Collective agreements

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

Collective agreements are binding, but the impact of collective bargaining in promoting equal opportunities is less than fractional. The inclusion of these issues on the agenda of collective bargaining is not strived for by either of the parties: for employees it is more desirable to at least have a collective agreement on wages or other working conditions than to consider gender equality issues which are, according to both parties, believed to be the task of the state authorities or to be irrelevant.

12 Overall assessment

In the view of the expert, the formal implementation of the EU gender equality directives in Lithuania is considered to be satisfactory. National legislation has traditionally been heavily loaded with guarantees for women and persons raising children, which is why it is not difficult to maintain a formally women-friendly environment. However, there are significant gaps related to more sophisticated questions, such as the formal way of approaching the issue, the inconsistent coverage of the legislation (public servants, workers, self-employed persons) or the lack of any evidence of a real practical implementation of non-discrimination legislation. Uncertainty has been created by adopting two different pieces of legislation that regulate the issue of gender equality in slightly different ways and to a different extent. The EOAWM is a *lex specialis* but the later EOA is more advanced in terms of coverage and the precision of its obligations. Despite a great deal of political attention, the practical implementation of the principle of equality in the workplace is rather weak: only a few cases have been brought before the courts, the issue has not received any special attention from the social partners and it is definitely not among the priorities of individual employers and employees. Employees, trade unions and even lawyers are reluctant to use the powerful instruments offered to them by the national legislation transposing EU law. The EU-funded initiatives alone are insufficient to promote a real enforcement of equality rights. NGO activities are fragmental and limited to surveys and public campaigning only.

Annexes

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