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# Country report

Gender equality



Cyprus  
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# **Country report**

## **Gender equality**

How are EU rules transposed into  
national law?

### **Cyprus**

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Reporting period 1 January 2017 – 31 December 2017

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## **1 Introduction**

### **1.1 Basic structure of the national legal system**

The legal system of Cyprus is based on common law and equity, except where the Constitution provides otherwise. It is further based on the laws passed by the UK Parliament before Cyprus became independent (Article 29(1)(c) of the Court Law No. 14/60) and on the legislation which the House of Representatives of the Republic of Cyprus has passed since 1960.

The Constitution of Cyprus, which was drawn up in 1960 upon the establishment of the Republic, specifically entrenches most of the fundamental rights which existed at European level in 1960, and are guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms (now the European Convention on Human Rights) and the Charter of Fundamental Rights of the European Union. These fundamental rights were transferred to the Constitution resulting in European law being included and implemented in Cyprus.

The principle of judicial protection is enshrined under Article 30. The above-mentioned provisions, together with the safeguards of effective implementation of the constitutional provisions of fundamental rights, are envisaged in Article 35 of the Constitution and require, just as in EU law and international law on human rights do, the achievement of substantive equality and effective judicial protection. All Cypriot Courts have the right to monitor the constitutionality of laws.

Every Court decision is subject to appeal in the Supreme Court within 42 days of the publication of the judgment for civil cases, and 14 days for criminal cases. Judgments of the Industrial Tribunal Court can only be appealed on questions of law.

### **1.2 List of main legislation transposing and implementing Directives**

- Cyprus, The Court Law (*Οι περί Δικαστηρίων Νόμοι*), 1960 – (Art. 3) 1998 No. 14/1960 last amended by Law No. 191(I)/2014;
- Cyprus, Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*) as amended by Laws No.95/89, Official Gazette 2419 of 17 June 1989; 106(I)/1996, Official Gazette 3102 of 29 November 1996; 115(I)/1996, Official Gazette 3110 of 28 December 1996; 104(I)2002; Official Gazette 3620 of 05 July 2002; 127(I)/2006, Official Gazette 4090 of July 2006; No 51(I)/2010; and latest amendment Law 130(I)/2015;
- Cyprus, Annual Holidays Law (*Ο περί Ετησίων Αδειών μετ' Απολαβών Νόμος*), No. 8/1967 latest amendment Law No. 42(I)/2011;
- Cyprus, Termination of Employment Law (*Ο περί Τερματισμού Απασχολήσεως Νόμος*) No.24/1967; latest amendment Law No. 89(I)/2016;
- Cyprus, Equal Treatment for Men and Women as Regards Access to Employment and Vocational Training Law (*Ο περί Ίσης Μεταχείρισης Ανδρών και Γυναικών στην Απασχόληση και στην Επαγγελματική Εκπαίδευση Νόμος*) No. 205(I)/2002, Official Gazette 3658 of 6 December 2002 No. 176(I)/2007; Law No. 39(I)/2009 and latest amendment Law No. 150(I)/2014 (implemented Directives 76/207/EC, 97/80/EC and 2006/54/EC);
- Cyprus, Equal Pay between Men and Women for the Same Work or for Work to which Equal Value is Attributed Law (*Ο περί Ίσης Αμοιβής μεταξύ Ανδρών και Γυναικών για την Ίδια Εργασία ή για Εργασία Ίσης Αξίας Νόμος*) No. 177(I)/2002, Official Gazette 3638 of 27 September 2002, Law No. 193(I)/2004, latest amendment Law No. 151(I)/2014 (implemented Directives 75/117/EC, 97/80/EC and 2006/54/EC);
- Cyprus, Equal Treatment for Men and Women in Occupational Social Insurance Schemes Law (*Ο περί Ίσης Μεταχείρισεως Ανδρών και Γυναικών στα Επαγγελματικά Σχέδια Κοινωνικής Ασφάλισης Νόμος*) No. 133(I)/2002, which entered into force on 1



- January 2003, Official Gazette 3623 of 19 July 2002, Law No. 40(I)/2009 latest amendment Law No. 149 (I)/2014 (implemented Directives 86/378/EC, 96/97/EC, 97/80/EC and 2006/54/EC);
- The Provident Funds (Amendment) Law of 2002, Law No. 130(I)/2002, which entered into force on 1 January 2003, Official Gazette 3623 of 19 July 2002 (included in the Provident Funds Law No. 44/1981) has been abolished by the new Law No. 208(I)/2012. The latest amendment of this new Law was made by Law No. 143(I)/2015;
  - Equal Treatment of Men and Women as Regards Access to and Supply of Goods and Services Law (*Ο περί ΊσηςΜεταχείρισης Ανδρών και Γυναικών (Πρόσβαση σεΑγαθά και Υπηρεσίες και στην Παροχή Αυτών Νόμος*) No. 18(I)/2008, Official Gazette 4162 of 2 May 2008, latest amendment Law No. 89(I)/2013 (implemented Directive 2004/113/EC);
  - Cyprus, The Public Service Law of 1990 to 2009 (*ΟπερίΔημόσιαςΥπηρεσίαςΝόμοςτου 1990*) No.1/1990, latest amendment Law No. 100(I)/2015;
  - Cyprus, The Public Service (Wages, Allowances and other financial benefits of Civil Servants) Regulations of 1995, Official Gazette 2982, Annex III;
  - Cyprus, Law to Provide for Persons with Disabilities (*Ο περί Ατόμων με Αναπηρίες Νόμος*) No. 127(I)/2000, as amended by Law No. 57(I)/2004, 72(I)/2007 and 102(I)/2007 latest amendment Law No. 22(I)/2015;
  - Cyprus, Maternity Protection Law (*Ο περί Προστασίας της Μητρότητας Νόμος*) No. 100(I)/1997, Official Gazette 3207 of December 1997; Law No. 45(I)/2000 and the Maternity Protection (Amendment) Law No. 64(I)/2002, which entered into force on 31 May 2002, Official Gazette 3608 of 31 May 2002; amendment Laws No. 8(1)/2008 Official Gazette 4189 of 18 April 2008; No. 43(I)/2008 Official Gazette 4170 of 04 July 2008; Law No. 70(I)/2011 (implemented Directive 92/85/EEC); and latest amendment Law No. 118(I)/2016;
  - Cyprus, The Social Insurance Law (*Ο περί Κοινωνικών Ασφαλίσεων Νόμος*) 1980-2009 Law No. 41/1980; the Social Insurance (Amendment) (No.2) Law No. 51(I)/2001, Official Gazette 3487 of 6 April 2001, latest amendment Law No. 22(I)/2009, Official Gazette 4198 of 20 March 2009; and amendment Law Nos 93(I)/2009, 112(I)/2009 and 59(I)/2010 (implemented Directives 86/613/EEC and 2010/41/EEE) as amended by Laws 1(1)2017, 52(1)2017 and 115(1)2017;
  - Cyprus, The Parental Leave and Leave on Grounds of Force Majeure Law (*Ο περί Γονικής Άδειας και Άδειας για λόγους Ανωτέρας Βίας Νόμος*) of 2002, Law No. 69(I)/2002, which entered into force on 1 January 2003, Official Gazette 3610 of 7 June 2002, as amended by Law Nos. 111(I)/2007, 11(I)/2010 and 47(I)/2012 (implemented Directives 2010/18/EU);
  - The protection of maternity (health and safety) regulation of 2002 K.D.P 255/2002 and the laws concerning health and safety at work 1996 to 2002 and those concerning maternity protection 1997 to 2002, K.D.P. 255/2002;
  - The Part-Time Employees (Prohibition of Less Favourable Treatment) Law (*Ο περί Εργοδοτούμένων με Μερική Απασχόληση (ΑπαγόρευσηΔυσμενούςΜεταχείρισης) Νόμος*) No. 76(I)/2002 latest amendment Law No. 55(I)/2007 (implemented Directives 97/81/EC);
  - The Protection of Paternity Law No. 117/1/2017 (*Ο περί Προστασίας της Πατρότητας Νομος*) of 2017 (117(1) 2017) Official Gazette Part 1 (1) No. 4615 published on 24/07/2017;
  - Law facilitating the exercise of employee rights within the framework of the free movement of employees. No. 37(I)/2017 (*Νομός που προνοεί για την εφαρμογή των μέτρων που διευκολύνουν την άσκηση των δικαιωμάτων των εργαζομένων στο πλαίσιο της ελεύθερης κυκλοφορίας των*) No. 37(I)/2017) published in the Official Gazette Part 1(I) No. 4597 on 13/04/2017 (Directive 2014/54/EU).

## **2 General legal framework**

### **2.1 Constitution**

#### **2.1.1 Does your national Constitution prohibit sex discrimination?**

Yes. Equality between men and women is enshrined in Article 28(1) of the Constitution, which prohibits any direct or indirect discrimination against any person, inter alia, on the ground of sex (Article 28(2)).

Article 28(1) and (2) of the Constitution prohibit direct or indirect discrimination against any person, inter alia, on the ground of sex.

Article 28(1) of the Constitution provides that, 'all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby'.

Article 28(2) of the Constitution provides that, 'Every person shall enjoy all rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, sex, political or other convictions, national or social descent, birth, colour, wealth, social class or any ground whatsoever, unless there is express provision to the contrary in this Constitution.'

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

No.

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

Yes.

### **2.2 Equal treatment legislation**

#### **2.2.1 Does your country have specific equal treatment legislation?**

Yes. Equal Treatment Law No.205(I)/2002 as amended only covers sex discrimination.

### **3 Implementation of central concepts**

#### **3.1 Sex/gender/transgender**

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

No.

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

No. There is no legislation explicitly prohibiting discrimination due to gender reassignment yet, Article 28 of the Constitution prohibits any discrimination against any person. In Cyprus, no gender reassignment operations are performed.

Article 28(2) provides that every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of (inter alia) sex unless there is express provision to the contrary.

#### **3.2 Direct sex discrimination**

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. Article 2 of Law No. 205(I)/2002, which transposed into national legislation the provisions of Recast Directive 2006/54/EC as amended defines 'direct discrimination' as the less favourable treatment of a person on grounds of sex or ethnic origin, religion or belief, age or sexual orientation, as regards employment and occupation.

Article 2(a) of this Law stipulates 'Direct discrimination is defined as where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation'.

In Article 2 of Law No. 177(I)/2002 as amended, the definition of direct discrimination is the same as that in Article 2 'direct discrimination' of Directives 2002/73/EC and 2006/54/EC.

In Law No. 133(I)/2002, transposing into national legislation the provisions of Directives 86/378/EEC and 96/97/EC I, Article 2 has a subtitle definition providing that 'Direct discrimination on grounds of sex', means unfavourable treatment on grounds of sex, directly and in particular associated with sex, pregnancy, childbirth, breastfeeding or motherhood.

This definition in my view complies with the EU definition.

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

Yes.

Article 2, in an interpretation of Law No. 205(I)/2002, as amended states: 'Discrimination on grounds of sex is interpreted as, any direct or indirect discrimination... and any less favourable treatment of a woman on grounds of pregnancy or childbirth, breastfeeding, motherhood, or any illness due to pregnancy or childbirth... constitutes sex discrimination' (Article 2(a) of Laws 40(I)/2006 and Article 2b of 2009).

Article 2, stating the definition in Law 177(I)/2002, as amended, explicitly provides that 'discrimination on grounds of sex', means 'direct or indirect discrimination on grounds of

sex and includes... any...less favourable treatment of a woman due to pregnancy or maternity allowance' (Article 2(b) of 38(I)/2009).

In Law No. 133(I)/2002 as amended it is explicitly stated that, in the statutes of Provident Funds (occupational pension schemes) the principle of equal treatment of men and women is applied. This does not constitute discrimination on the grounds of sex or protection of women by reason of maternity.

Provident Funds are arrangements that are agreed within the framework of free collective bargaining. They provide defined contribution lump-sum benefits to the employees who are covered in these agreements. However, for certain categories of employees (e.g. bank employees, employees of oil companies, government manual workers), the Provident Fund is compared with a defined benefit lump-sum based on the recent salary and the employee receives the higher of the two amounts.

Provident Funds are financed by contributions from employers and employees. Industry-based Provident Funds operate for certain categories of employees, such as construction workers, hotel employees etc. Trade unions also operate multi-employer Provident Funds. However, most of the Provident Funds operate on an enterprise basis and usually cover a small number of members. The Provident Funds have serious weaknesses in terms of the retirement income effectiveness, due to the fact that the members usually receive their entitlements when they change their employers and not when they reach pensionable age.

The above-mentioned laws transpose into national legislation the provisions of Recast Directive 2006/54/EC.

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

No.

### **3.3 Indirect sex discrimination**

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes. In Law No. 177(I)/2002 as amended, Law No. 205(I)/2002 as amended and Law 133(I)/ 2002 indirect sex discrimination is explicitly prohibited.

The definition given in Article 2 of these laws is the following: 'Indirect sex discrimination exists where an apparently neutral provision, criterion or practice places people of the one sex in a notably disadvantageous position, compared with people of the other sex, unless that provision, criterion or practice can be objectively justified by a legitimate purpose, and the means of achieving that purpose are appropriate and necessary.'

The definition of indirect discrimination of the above laws complies with the EU definition in 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.

No, there is no case law regarding indirect discrimination in which the issue of statistical evidence was raised.

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

The judgments issued by our national courts are in line with legislation and are satisfactory.

- 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 difficulties in applying the concept of indirect sex discrimination. Indirect discrimination mainly regards cases on equal pay. There is no case law on the issue yet, but there are complaints lodged with the Ombudsman.

### **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 are no proposals pending.

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

No.

### **3.5 Positive action**

The Supreme Court has strictly interpreted the constitutional principle of equality as meaning substantive equality,<sup>1</sup> and not allowing actual positive action.<sup>2</sup> The term 'substantive' in this context means 'absolute', so at that time any positive action taken in favour of the underrepresented or less privileged sex was considered to be contrary to the Constitution.

The Constitution of Cyprus had provisions which were incompatible with the ability of the Republic of Cyprus to fulfil its obligations as a Member State in endorsing the *acquis communautaire*, and so it was decided to amend it.

Law No. 127(I)/2006 on the Fifth Amendment of the Constitution added a new Article (A1) and so amended Articles 104, 106 and 107 (fundamental articles) of the Constitution. The Constitution allowed the amendment of these Articles because they were not fundamental articles. The Fifth Amendment of the Constitution introduced the principle that EU law is superior to the Constitution and the laws of Cyprus. As a result of these amendments, my opinion is that positive action measures are allowed. However, there is also the opposite opinion, as there has been no decision by the Supreme Court on whether the Fifth Amendment legalises positive action measures. Article 28 is a fundamental article of the Constitution and cannot easily be amended as long as the Cyprus problem (the Turkish occupation) is still unresolved. According to the general provisions of the Constitution, Article 1 states that the Republic of Cyprus consists of two communities, the Greek and the Turkish communities. In part 2 of the Constitution on Fundamental Rights and Liberties, Articles 6 and 35 state that both communities need to give their consent for constitutional amendments. The General Attorney of the Republic of Cyprus considered that these articles

<sup>1</sup> *Marina Christoforou v. Republic* (1985), 3CLR, pp. 8-68; *PelagiaEglezaki v. G. Attorney of Republic*, (1992), 1 S5CS, p. 697; see <http://www.cylaw.com/>.

<sup>2</sup> *Micrommatis v. The Republic*, 2CLR, p.12; *Constantinou v. The Republic*, Case 1063/99; see <http://www.cylaw.com/>.

are a fundamental aspect of human rights and substantive equality and therefore can't be amended.

3.5.1 Is positive action explicitly allowed in national legislation?

Yes, in Law No. 205(I)/2002 Article 2.

Positive action is defined as measures which, for the purposes of ensuring full and substantial equality between men and women in professional life, provide specific advantages for the underrepresented sex in posts or levels of occupational hierarchy or sectors of vocational training and especially for women or measures that prevent or balance the disadvantages of the professional life of such people.

This definition complies with the EU definition.

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

The Constitution of Cyprus had provisions which were incompatible with the obligation of the Republic of Cyprus to fulfil its obligations as a Member State in endorsing the *acquis communautaire* and so it was decided to amend it. Law No. 127(I)/2006 on the Fifth Amendment of the Constitution added a new Article A1 and also amended Articles 104, 106 and 179 of the Constitution. The Constitution allowed the amendment of these articles because they were not fundamental articles. The Fifth Amendment of the Constitution introduced the principle that EU law is superior to the Constitution and the laws of Cyprus. The Constitution has no reference to positive action measures. Such references are made in the laws mentioned below. As a result of these amendments, in the view of the author, positive action measures are allowed. Article 28 is a fundamental article and cannot easily be amended for reasons stated above under 3.5.

Law No. 205(I)/2002), as amended, was passed for the purpose of harmonising national law with Directives 76/207/EEC and 98/80/EC (2006/54/EC). This Law allows positive action measures for the purpose of ensuring full and substantial equality between men and women in professional life, provides for specific advantages for the underrepresented sex in posts or levels of occupational hierarchy or sectors of vocational training, especially for women, and allows measures that prevent or balance the disadvantages in the professional life of such people. The Law is applicable to all employees and refers to all activities that are related to employment, public and private, except those that are categorically excluded by the Law and where sex comprises a decisive factor in the execution of the activities. Positive action measures must be consistent with the Law and should serve its purpose.

Law No. 18(I)/2008, as amended by Law 89(I)/2013, allows positive action measures to be taken for the purposes of the Law, but does not specify these measures. It also prohibits any discrimination on the ground of sex in fields falling within the provisions of the Law (Directive 2004/113/EC).

The Public Service Law of 1990 to 2009 and the Public Service (Wages, Allowances and other financial benefits of Civil Servants) Regulations of 1995, as amended, have no provisions for positive action measures because all civil servants, male and female, have the same benefits and rights.

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

No.

There are no proposals pending that address the gender balance on company boards. A debate in the Cyprus Parliament has started regarding the introduction of positive measures on company boards, but no progress has yet been made.

No, there are no policy measures aimed at addressing the gender balance on company boards.

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

No, some political parties have adopted positive action measures on their ballot papers and in their political bodies. Specifically, the political party DYSI<sup>3</sup> has adopted the principle that 30 % of candidates on ballot papers must be women, and this also applies for political bodies within the party. The same measure was adopted by EDEK<sup>4</sup> and DIKO.<sup>5</sup>

In 2016, Parliament voted for the amendment of the Certain Legal Entities of Public Law (Appointment of the Board of Directors) Law of 1988 (Law No. 149/1988) to ensure that 30 % of either sex will be represented on the Board of Directors. This law would apply to any company since in Cyprus there are only limited companies and thus there is no separation between small, medium-sized and large companies. The President of the Republic, with Referral No. 2/16, exercised his power to refer the amendment of Basic Law No.149/1988 to the Supreme Court to decide whether or not the amended law conflicts with the Constitution. The amended law may conflict with Article 28 of the Constitution of the Republic of Cyprus, which, in subsection (1) provides that: 'All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby'. Moreover, Article 28(2) provides that, 'every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of... sex'. The Supreme Court decided that the amendment to the above law is unconstitutional under Article 28 (1), (2).<sup>6</sup>

The law of 2016 is contrary to and inconsistent with Articles 28 and 35 of the Constitution of the Republic of Cyprus and the Principle of Distinction Powers. According to the Applicant, the first reservation violates the principle of equality as enshrined in Articles 28 and 35 of the Constitution and binds the Executive, Legislative and Judicial Powers (see: Republic v. Arakian (1972) 3 CLR, 294). According to the petitioner's suggestion, the Law establishes the introduction of positive discrimination in favour of (where appropriate) the underrepresented gender, which is inconsistent with Article 28.

According to the Supreme Court, the Law violates Article 28 of the Constitution. Article 157 (4) TFEU and Article 23 of the Charter of Fundamental Rights of the EU do not apply. Article 157 (4) provides that, in order to ensure full equality between men and women at work, the principle of equal treatment shall not prevent Member States from maintaining or introducing measures providing for specific advantages which facilitate the least represented gender to continue a professional activity or to prevent or compensate for disadvantages in professional careers.

In the present case, with the main reservation of the Law, measures providing for special advantages in favour of the less represented gender with a view to ensuring gender equality at work are not maintained or adopted. Article 23 of the Charter of Fundamental Rights of the EU states that equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality does not exclude the

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<sup>3</sup> Democratic Rally.

<sup>4</sup> Movement for Social Democracy.

<sup>5</sup> Democratic Party.

<sup>6</sup> [www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_3/2017/3-201707-2--16Anaf.htm&qstring=149%20w%2F1%201988](http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2017/3-201707-2--16Anaf.htm&qstring=149%20w%2F1%201988).

maintenance or adoption of measures which provide for special advantages in favour of the less represented gender. Article 23 is not applicable in the present case, since the law does not provide for the application of EU law and Article 23 only applies in the case of the application of EU law. Therefore according to the Court, based on the above, the Law violates the principle of equality as enshrined in Article 28 of the Constitution and is applicable under Article 35 of the Constitution and is not exempt from any provision of EU law. It is therefore unconstitutional and invalid.

### **3.6 Harassment and sexual harassment**

#### **3.6.1 Is harassment explicitly prohibited in national legislation?**

Yes. Article 2(b) of Law 205(I)/2002 as amended by Law No. 40(I)/2006 provides that 'harassment' means undesirable conduct based on the sex of a person which offends the dignity of that person especially if it creates an intimidating, hostile, humiliating, embarrassing or aggressive environment.

The scope of the prohibition of harassment and sexual harassment is the same as the scope of Directives 2006/54/EC and 2004/113/EC. Therefore the author believes that it complies with EU law.

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

The prohibition covers any unwanted conduct or any form of conduct related to the sex of a person with the purpose of violating the dignity of women and men and the creation of an intimidating, hostile, degrading, humiliating or offensive environment in employment and vocational education / training and access to goods and services under Law 18(I)/2008 as amended by Law No. 89(I)/2013.

#### **3.6.3 Is sexual harassment explicitly prohibited in national legislation?**

Yes. Article 2(a) of Law 205(I)/2002 as amended by Law No. 40(I)/2006 provides that 'sexual harassment' means undesirable conduct of a sexual nature or other nature based on sex which offends the dignity of women and men during employment or vocational training or during access to employment or vocational training and is expressed in words or in deeds.

In the author's view this definition complies with the EU definition in Article 2(1)(d) of Directive 2006/54/EC. Through the aforesaid amendments of basic Law No. 205(I)/2002, the provisions on harassment on the grounds of sex and sexual harassment in Article 2(1) (d) of Directive 2006/54/EC have been specifically transposed into national legislation.

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

The prohibition covers any unwanted verbal or physical conduct of a sexual nature or any form of conduct related to the sex of a person with the purpose or effect of violating the dignity of women and men in employment or vocational training or during access to employment or vocational training and access to goods and services under Law 18(I)/2008 as amended by Law No. 89(I)/2013.

For the purposes of this law, vocational education/training means any form of education or training intended for the acquisition of a typical or substantial qualification or special skill for the practice of a profession, employment or work, regardless of the level of training of the trainees, even if the training programme includes sections of general education.



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

Yes, in Article 2 of Law No.205(I)/2002 as amended by Law No.39(I)/2009.

### **3.7 Instruction to discriminate**

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

Yes. In Article 2 of Law No.205(I)/2002 'Discrimination based on sex' means every action or omission which constitutes or entails unfavourable treatment based on gender, including sexual harassment, but not positive actions including protection of mothers due to pregnancy, childbirth, nursing, maternity or sickness due to pregnancy or childbirth, whilst any order or instruction to discriminate against any person because of their gender constitutes discrimination based on sex.<sup>7</sup>

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

There is no specific difficulty in applying the concept of equal treatment for men and women in employment. There is no case law on instruction to discriminate.

### **3.8 Other forms of discrimination**

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

Discrimination by association or assumed discrimination are not covered under national law regarding gender equality on grounds of sex. All the other forms of discrimination which violate fundamental human rights are prohibited under Article 28 of the Constitution.

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<sup>7</sup> The Law was amended by Law No. 40(I)/2006 to include the definition of the instruction to discriminate.

## **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. Law No. 177(I)/2002 as amended and Directive 75/117/EEC transposed the relevant provisions of the Recast Directive.

4.1.2 Is the concept of pay defined in national legislation?

Yes. Article 2 of Law No. 177(I)/2002 as amended defines 'pay' as the usual basic contribution and any other additional contributions paid directly or indirectly, either in money or in kind, by the employer to the employee in exchange for work provided. Article 3 of Law No. 177(I)/2002 provides that the purpose of this law is to ensure that the principle of equal pay between men and women for the same work or for work of equal value is applied.

Employers are obliged to protect all employees by taking all proper measures which promote the principle of equality between men and women and also promote social dialogue provisions which are relevant to Article 157 TFEU.

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

Yes. Article 5 of Law No. 177(I)/2002 as amended provides that any discrimination on grounds of sex is prohibited, with regards to all terms and conditions of pay for the same work or for work of equal value.

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

No.

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

No. In the public and semi-public sectors equal pay is applied in all jobs at all levels. Unfortunately, most employers in the private sector do not have job classification or job description schemes nor have they proceeded to performing an evaluation of every profession or post for the purpose of defining what is the same work or work of equal value.

In 2007, a study conducted by the department of Labour Relations of the Ministry of Labour, Welfare and Social Insurance on the gender pay gap concluded that posts mainly occupied by women are placed in a lower salary scale.<sup>8</sup>

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

Yes. Article 10(3) and 11 of Law 177(I)/2002.

The Minister of Labour, Welfare and Social Insurance appoints an Inspector to ensure the full and effective application of the provisions either by carrying out an investigation on

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<sup>8</sup> Available at:  
[http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/973E695E58AC528AC2257936003A3B18/\\$file/Executive%20Summary%20Gender%20Pay%20Gap.pdf](http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/973E695E58AC528AC2257936003A3B18/$file/Executive%20Summary%20Gender%20Pay%20Gap.pdf).

their own initiative for reviewing the law or by examining complaints submitted about violations of this Law. Furthermore, the Inspector's role is also to provide information, advice and suggestions and report problems to the Minister arising from the application of this Law and submit recommendations concerning measures that may be taken to tackle them.

Article 9(1) states that no person shall be dismissed from their work or subjected to adverse treatment by their employer for having made a complaint or testified or contributed in the prosecution of an offender or the taking of any other measures based on this Law.

Article 9(2) states that any employer who contravenes the provisions of subsection 1 of this section shall be guilty of an offence and liable upon conviction to a fine not exceeding CYP 1 000 (EUR 1 700).

Article 14 provides that every employer or representative thereof and every employee working for such employer must, if requested by the Inspector, give him/her any information, book, record, certificate or other document, or any other particular that he/she possesses, in relation to the matters regulated by this Law. The employer, his/her representatives or his/her employees must in general provide the means requested by the Inspector, necessary for him/her to enter, inspect, examine, investigate or exercise any other power of this Law in relation to the business of such employer.

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

No, the Recommendation on strengthening the principle of equal pay through transparency is not applied in Cyprus.

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

Law No.177(I)/2002 as amended provides that the maximum rights enjoyed by one sex shall also apply to the other sex. Any collective agreement or individual contract of employment which is contrary to the provisions of this Law is repealed. Further, under the same Law, every employer must provide equal pay to men and women for the same work to which equal value is attributed.

Under Article 5 (1) and (2) of Law No. 177(I)/2002, every employer must provide equal pay to men and women for the same work or for work to which equal value is attributed, irrespective of the sex of the employee. Furthermore, where a system of professional classification is used for the determination of pay, such a system must be designed in such a manner that discrimination based on sex is excluded.

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

No, the Inspector investigates most of the complaints (such as relating to wages, salary or discrimination based on the ground of sex) lodged against employers and therefore there are no difficulties in the application of the principle of equal pay for equal work and work of equal value in practice. The problems that these complaints reveal in the application of equal pay is that unfavourable treatment against women exists, women receive lower pay and women have fewer opportunities to be promoted at work.

There is no case law on the issue. However, a complaint lodged with the Ombudsman regarding equal pay was treated under the law on gender equality. Another complaint lodged was solved between the complainant and the employer.

## **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. Article 3 of Law No. 205(I)/2002 as amended by Law No. 39(I)/2009. Article 3 applies without any exceptions. It applies in any sector of activity, private or public, including the civil service, the judicial service, the public education service, the local administration authorities, legal persons or organisations under public or private law, the armed forces and the security forces.

The Law has provisions which ensure the implementation of the principle of equal treatment between men and women without direct or indirect discrimination, specifically in the field of access to employment, terms and conditions of employment, dismissal and vocational training, as well as membership of and participation in workers' and employers' organisations.

Cypriot law defines a 'worker' as any man or woman who works full time or part-time, for a fixed or indefinite period, continuous or not, whatever the place of employment, including workers working at home, but excluding self-employed people.

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

Yes. Article 3 of Law No. 205(I)/2002 as amended.

The purpose of the Law is the application of the principle of equal treatment of men and women as regards access to vocational guidance, vocational education and training as well as the terms and conditions of their provision, access to employment, terms and working conditions, access to self-employment, terms and conditions of employment, including promotion, and terms and conditions of dismissal as well as the capacity of members and participation in trade unions or employers' organisations.

The scope is the same as the scope of Article 14(1) of Recast Directive 2006/54.

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

Yes. Article 4(2) of the Law stated above excludes from its scope of application the occupational activities which are laid down in the Schedule, where by reason of the context in which they are carried out, they constitute a determining factor which justifies their exclusion.

The Schedule (Section 4(2)) covers the following:

- Employment in a specific position for reasons of physiology (excluding natural health or resistance) or authenticity, as for artistic performances, where the filling of the position by a person of the other sex would cause a significant change in the nature of the position.
- Employment in a particular post, e.g. services outside of Cyprus, in a state where the legislation and customs are such that the specific services may not reasonably be provided by a person of the other sex.

- Employment in a specific position, where the position concerns the provision of services of a personal nature, such as home care for elderly people or people with disabilities.
  - The employment of men for the position of prison guards in men's prisons.
  - Employment in the security forces or private security bodies. In special forces the mission of which concerns the control and removal of violent individuals, the suppression of nuisance and the liberation of hostages or other people who are being illegally detained; in positions where the employment of a man or a woman is imposed for moral reasons or respect for the personality of the individual.
  - The employment of women working underground in mines.
- 4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

Yes, in Article 4(4) of the Law stated above.

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

No.

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

### **5.1 Pregnancy and maternity protection**

#### **5.1.1 Does national law define a pregnant worker?**

Yes. In Article 2 of Law No. 100(I)/1997 as amended by Law No. 70(I)/2011, a pregnant worker is any employee who presents a certificate by a registered doctor stating that she is pregnant and including the expected delivery date. She then has the right to maternity allowance.

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

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

Yes, in Regulation of 2002 K.D.P 255/2002 and the laws concerning health and safety at work 1996 to 2002 and those concerning maternity protection 1997 to 2002, K.D.P. 255/2002 Articles 3(1)(b), 3(2), (3), (4), (5), (7), 4(1), 5(1).

The employer shall make an assessment of the risks caused by working conditions to the pregnant woman and shall lay down the measures to be taken for the health and safety of the pregnant or breastfeeding employee or her child.

In the case of the application of a measure for the prevention of risks, which is not practically effective, then the employer amends the working conditions or the terms of the employment, or relieves the employee of her work and moves her to another type of work, without affecting any of her rights.

If the employee is engaged in night work and presents a medical certificate that her health and safety is affected, the employer exempts her from work and transfers her to day work without affecting any of her rights, or exempts her from work for the full period of her absence.

Based on the above, the implementation of Articles 4-7 of the Directive 92/85 is correct.

#### **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. Law No. 100(I)/1997 as amended in Article 4(1)(a).

An employee who informs her employer in writing that she is pregnant is protected against dismissal for the period starting at the beginning of her pregnancy, until three months after the end of the maternity allowance period.

In applicable cases, the burden of proof lies with the employer to prove the reasons for dismissal.

The above provision is not applied in the following situations: when

- (a) the employee is guilty of a misdemeanour or her behaviour justifies the severance of the employment relationship;
- (b) the business at which she is employed ceases to exist; and
- (c) her contract has expired.

The employer does not have the right to consider an employee who is on maternity allowance as redundant or to stop payment of her maternity allowance. If the business at

which the employee who is on maternity leave is employed ceases to exist and as a result she is made redundant, it is considered that she was dismissed because of her pregnancy and the employer has to prove that the business has ceased to exist.

- 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)?

This is regulated in Article 4(A) and 4(B) of Law 100(I)/1997 as amended. As mentioned above in 5.1.3, the employer has to justify the termination of the services of a pregnant employee, in exceptional cases.

## **5.2 Maternity leave**

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

Under Article 3(2) of Law No.100(I)/1997 as amended, the pregnant worker is entitled to a continuous period of maternity leave of 18 weeks.

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

Yes. Article 3(2) of Law No. 100(I)/1997 as amended stipulates that maternity leave is 18 weeks, which must be taken in the period starting no later than two weeks before the expected delivery.

The rest of the weeks left are taken after the delivery until the end of maternity leave. In this period, dismissal, notice of dismissal and actions for the permanent replacement of the pregnant worker are prohibited.

- 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, the laws concerning health and safety at work regulations 1996 – 2002 stipulate that employers must take measures to protect the health and safety of a pregnant worker or a woman who has recently given birth or a woman who is breastfeeding. The 1<sup>st</sup> and 2<sup>nd</sup> Schedule of the above-stated Regulations stipulate the potential natural, ergonomic, biological and chemical risks and hazards at work

- 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, Article 4(a) and 7 of Law No. 100(I)/1997 as amended stipulate that dismissal or notice of termination of services is not allowed during the period from the beginning of the pregnancy of which the worker gives written notice to her employer, up to three months after the end of her maternity leave. Furthermore, maternity leave may not affect any employment rights (including salary) of the worker.

- 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?

Maternity allowance is at a higher level than sick leave.

The weekly rate of benefit for maternity allowance is equal to 72 % of the weekly value of the insurance point of the insured person's basic insurance in the relevant contribution

year. The benefit is not payable to women who receive full wages during the maternity allowance period. If reduced wages are paid, the amount of such wages and the benefit payable cannot exceed full wages.

The weekly rate of benefit for sick leave is 60 % of the insurable earnings up to the basic earnings, increased by 20 % for a dependent spouse and by 10 % for each of the children or other dependants (the maximum number of dependent children and other dependants is two). In case there is no increase for the spouse, a 10 % increase is paid for up to two dependants. If both spouses are entitled simultaneously to a benefit, the increase for dependants is paid only to the spouse who is entitled to the increase with the greater amount. The weekly amount of supplementary allowance is equal to 50 % of the weekly value of the insurable earnings that exceeds the basic insurable earnings up to a maximum of twice the basic insurable earnings. The benefit is not payable if the employed person concerned receives full wages. If reduced wages are paid, the benefit payable, added to the wages paid, must not exceed full wages.

The Social Insurance Law 1980-2009 Law No. 41/1980 as amended applies.

The conditions for the payment of maternity allowance are: for the insured person to be on maternity leave and not to receive full salary or wages from her employer; for the insured person to have actual basic insurance at least equal to 0.50 of the insurance point; at least 26 weeks must have passed from the week of commencement of her insurance; and for the insured person to have actual or assimilated insurance equal to at least 0.39 of the insurance point within the relevant contribution year.

The insured woman is on maternity leave and she does not receive her whole salary or wages from her employer. The amount of maternity allowance is determined according to the weekly amount of paid and credited insurable earnings of the insured woman in the previous contribution year. If, for the period the insured woman is entitled to maternity allowance, she is paid part of her earnings by her employer, maternity allowance is reduced so that the total amount of her earnings and the benefit payable does not exceed full wages.

There is no ceiling in Cypriot law.

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

It depends on the contract agreement. This applies to both the private and the public sector.

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

As mentioned above in 5.2.5, the insured woman must have been insured for at least 26 weeks and have paid, up to the date of the commencement of the maternity allowance, contributions on insurable earnings not lower than 26 times the weekly amount of the basic insurable earnings. The insured woman must have been paid or been credited with insurable earnings in the previous contribution year not lower than 20 times the weekly amount of the basic insurable earnings.



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

Yes, Article 7 of Law 100(I)/1997 as amended by Article 6 of Law No.70(I)/2011 provides that maternity leave may not affect employment rights such as the right to return to the same post or, if not possible, to a post of no less value, the right to seniority and the right to promotion.

### **5.3 Adoption leave**

- 5.3.1 Does national legislation provide for adoption leave?

Yes, Article 3(3) of Law No. 100(I)/1997 as amended provides that an employee has the right to maternity allowance for a total duration of 16 weeks when taking care of a child under 12 for the purposes of adoption, with a right to maternity allowance.

- 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, this is covered in Article 2(A) of Law No. 100(I)/199 as amended.

The working adoptive mother is protected against dismissal for up to three months after the end of the maternity allowance. She is also protected from being issued with notice of dismissal during the period of maternity allowance.

Dismissal or notice of dismissal to a working woman who intends to adopt a child is prohibited, provided that the said worker has notified her employer with certification from the Department of Social Welfare Services that she intends to adopt a child. The said prohibition starts with the notification of the intention to adopt and is extended to up to three months after the end of the maternity leave.

### **5.4 Parental leave**

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

Yes. Law No. 47(I)/2012 was adopted and entered into force for harmonisation purposes with Directives 2010/18/EC and 97/80/EC.

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

Yes.

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

The law applies to all employees, men and women, who have completed six months with the same employer, including employees in part-time work or with fixed-term employment contracts or temporary employment contracts (Article 3 of Law 47(I)/2012).

- 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.

Every working parent has the right to a period of parental leave, unpaid, of a total of 18 weeks on the grounds of the birth or adoption of a child, for the care and upbringing of the child. The same provisions apply in the public and private sectors.

- 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?

Yes. According to Law No. 47(I)/2012 as amended every eligible employee, man or woman, is allowed to take unpaid parental leave of up to 18 weeks for each child. The right is individual and non-transferable. However, in the cases where one parent has taken parental leave of a minimum of two weeks, he/she is allowed to transfer to the other parent two weeks of the rest of the total duration of his/her leave.

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

Parental leave is taken with a minimum duration of one week and maximum duration of five weeks per calendar year (Article 7 of Law 47(I)/2012 as amended).

After consultation between employer and employee, the starting date of parental leave may be postponed, for reasons related to the proper operation of the company, e.g. when the duties of the employee are of a specific character and it is not possible to find a replacement, and where a significant number of workers ask for parental leave at the same time.

- 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)?

An employee who is about to exercise the right to parental leave, is required to notify the employer in writing, three weeks before the beginning of the parental leave, providing the duration and dates of the parental leave (Article 6 of Law 47(I)/2012 as amended).

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

Yes, this is covered in Article 3(3) of the Law stated above as amended by Article 2 of Law No. 8(I)/2008 and Article 2(a) of Law No. 70(1)/2011.

The working adoptive mother has the same rights as the biological mother.

Working women who are about to adopt a child under 12 are entitled to maternity leave. By providing notice in writing to their employer expressing their intention to undertake the care of a child for adoption purposes, at least six weeks in advance, adoptive mothers are entitled to 16 weeks of maternity leave.

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

As mentioned above in 5.4.1, the worker must have completed six months of work with the same employer in order to benefit from parental leave (Article 3 of Law 47(I)/2012 as amended).

When considering the length of service, the time period of fixed-term contracts with the same employer is also taken into account.

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?

After consultation between employer and employee, the granting of parental leave may be postponed for reasons related to the proper operation of the organisation.

5.4.11 Are there special arrangements for small firms?

No.

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

Yes, this is covered in Article 5(d) of Law 47(I)/2012 and, regarding a child with a disability who is under the age of 18, also by the Law related to persons with disabilities.

Parental leave is a right for people with a child with a disability until the age of 18. The definition of disability according to the general disability law, the Persons with Disabilities Laws 2000-2007,<sup>9</sup> states that 'disability' has the meaning of any form of inadequacy or impairment which permanently or for an unspecified duration of time causes a physical, intellectual or mental restriction to the person, and taking into account the history and other personal data of the individual, significantly reduces or excludes the possibility of execution of one or more activities or functions that are considered normal and significant for the quality of life of any person of the same age who does not experience the same inadequacy or impairment.

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, Article 10(1) of Law No. 69(I)/2002 as amended by Law No. 47(I)/2012 explicitly states that workers shall have the right to return to the same job, or if that is not possible, to return to a comparable or similar job, which may in no case be less than the post the worker occupied before taking the parental leave.

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?

As mentioned above in 5.4.12., Article 10(1) of Law 47(I)/2012 as amended stipulates that the employee, when returning to work after the end of the parental leave, will return to his/her previous or a similar 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?

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<sup>9</sup> Department for Social Inclusion of Persons with Disabilities – Ministry of Labour, Welfare and Social Insurance, [http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipa32\\_gr/dsipa32\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipa32_gr/dsipa32_gr?OpenDocument).

Article 10(4) of Law 47(I)/2012 as amended provides that the acquired rights of the worker on the day of commencement of parental leave shall be maintained as such until the end of it.

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

As mentioned above in 5.4.14., the status of the worker's contract is kept the same as it was before the commencement of parental leave, including any changes that may arise by law, collective agreements or practice (Article 10(4) of the Law).

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

Yes.

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

Parental leave is unpaid in the private and public sector.

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?

No.

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)?

Article 4(1) of Law No. 47(I)/2012 as amended provides that the duration of parental leave for a widow/widower can last up to 23 weeks instead of 18 (the standard duration of parental leave).

Under the provisions of the Law, in case of a child with a disability, the worker is entitled to parental leave until the child turns 18 on the grounds of the provisions of Law No. 127(I)/2000 as amended.

## **5.5 Paternity leave**

5.5.1 Does national legislation provide for paternity leave?

Yes, the Law on the Protection of Paternity Leave of 2017 (No. 117 (I) /2017). Article 3 (1) of the Law provides that an employee whose wife has given birth to a child or has had a child through a surrogate mother, or an employee who, together with his wife has adopted a child aged up to the age of 12, has a right to paternity leave for two consecutive weeks within the period which begins with the week of the delivery or adoption of the child and expires after 16 weeks

Article 4 of Law No. 117 (I) /2017 provides that an employee must give his employer written notice of his intention to exercise the right to paternity leave two weeks before the commencement of the paternity leave

The right to paternity leave concerns equality but also the additional help / support a mother needs, as well as the right of the father to be with his / her child. This is why this modification is made specifically during the period of maternity leave.

(Paternity leave is only granted to fathers who are married to the mother but the Ministry of Labour, Welfare and Social Insurance has suggested to the government that the right to paternity leave be extended to couples who have a child without having married or who have a cohabitation agreement.

During paternity leave the employee receives a paternity allowance under Social Insurance Law No. 59 (I) /2010, Articles 17 (3), 17 (1) (c) and (g) as amended by Social Insurance Law No. 115 (I) /2017 and under Article 3 (2) of the Amended Protection of Paternity Law No. 117 (I) /2017. The allowance is calculated according to the basic insurable earnings (for 2018 this is fixed at EUR 174.38 per week), which is equivalent to one basic unit on the insurable record. **Basic Insurance:** the insurable earnings for each year up to the amount of the basic insurable earnings, meaning up to one insurance point. **Benefit year:** the period beginning on the first Monday of July of each year and ending on the last Sunday prior to the first Monday of July of the following year. **Contribution year:** for employees whose salary is fixed on a monthly basis it means the calendar year and for other insured persons it means a period of 52 or 53 weeks, beginning on the first Monday of each year and ending on the Sunday prior to the first Monday of the following year. **Insurable earnings:** the amount of earnings on which the insured person pays contributions. **Insurance point:** the result of the conversion of the actual and assimilated insurable earnings into insurance points.

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)?

Article 5 (1) of Law No. 117 (I)/2017 explicitly forbids an employer to terminate the employment of an employee or to give notice of the termination of his employment during the period which starts from the date the employee gives written notice of his intention to exercise his right to paternity leave and expires upon the end of the paternity leave.

An employer who violates his obligations under the above-mentioned Articles 3, 5 and 6 of the Law is guilty of an offence and in the case of a conviction is subject to a penalty of up to EUR 7 000, in accordance with Article 15 of Law No. 117 (I)/2017.

## 5.6 Time off/care leave

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

Yes, Article 12(1) of Law No.69(I)/2002 as amended by Law No.47(I)/2012 covers leave on grounds of force majeure for urgent family reasons, e.g. illness or accident affecting dependent family members.

The rules as stated in Article 12(1) of this Law include illness or accident affecting dependent family members which necessitates the immediate presence of the employee.

The worker is entitled, after submitting an application and without receiving any payment, seven days per year for reasons of force majeure.

## 5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

No. The Medically Assisted Human Reproduction Law of 2015 (Law 69(I)/2015) does not explicitly stipulate whether or not the surrogate mother is entitled to parental leave. However, Article 22(2,) (b) of the Law states that the couple wishing to have a child

through surrogacy are the parents of the child to be born and therefore, they have all the rights and responsibilities of parenthood as they must receive the child immediately after birth. According to the expert's view, the parents are entitled to parental leave. The surrogate mother is not entitled to parental leave.

## **5.8 Leave sharing arrangements**

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

No.

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

Yes, this is covered in Law No. 69(I)/2002 as amended by Law No. 11(1)/2010, as amended by Law No. 47(I)/2012.

A father is allowed to transfer to the mother part of his parental leave provided that he uses at least two weeks; the employee is obliged to give his/her employer at least three weeks written notice of the date of the beginning and end of his/her parental leave and the period of absence. The period of absence of an employee on parental leave can be extended for reasons of force majeure.

Any employed parent is entitled to unpaid parental leave of a maximum of 13 weeks in total for the birth or adoption of a child, in order for the parent to take care of and participate in the raising of the child (Article 4(1)).

Any employee is entitled, upon application, to unpaid leave of up to seven days each year, on grounds of force majeure by reason of a family emergency and related to an illness or an accident affecting any dependant of the employee which makes the immediate presence of the employee indispensable. In the case of a husband and wife, each of them is individually entitled to such leave (Article 12(3)).

The 'donor parent' does not retain the right to at least one month of leave for his/her own use (see Clause 2 of Directive 2010/18).

## **5.9 Flexible working time arrangements**

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

Yes, this is covered in Law No.76(I)/2002 as amended and Law 98(I)/2003.

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

Yes, this is covered in Article 8 of Law No. 76(I)/2002 as amended and Law 98(I)/2003 as amended by Law 13(I)/2007.

Part-time employment in the sense of limited hours of work was always permitted in Cyprus in the framework of individual labour agreements and in 2002 with the Law regarding part-time employees (Prohibition of unfavourable and discriminatory treatment) L. 76(I)/2002.

With Law 98(I)/2003 on fixed-term work, Cypriot legislation was aligned with the Council Directive 99/70/EC aiming to abide by the principle of non-discrimination of fixed-term workers and to prevent abuse arising from the use of successive fixed-term employment contracts.

Issues of the organisation of working time according to flexible working principles which favour and regulate variation in working hours, such as annual hours, flexi-time, compressed working week etc., have not been specifically regulated by law in Cyprus. However, on the basis of case law, and certain collective agreements, on some occasions solutions or practices have been tried which deviate from the traditional patterns of working hours.

As a result of the harmonisation process of Cypriot law, Law 63(I)/2002 was aligned with Directives 93/104/EC of the Council concerning certain aspects of the organisation of working time and 2000/34/EC of the European Parliament and of the Council.

In Cyprus it is legal to arrange working time in the form of flexible working hours, even at a maximum, where periods of increased work may be alternated with periods of reduced work, either fewer working hours per day, or through granting corresponding days off, or a combination of the two. It is also considered legal to arrange the distribution of working hours within the same day, as long as there are no specific regulations to the contrary regarding certain categories of professions.

This facility is always provided in the framework of the current tripartite system of consultation with the social partners and regulation of the relevant issues through collective agreements. Therefore in Cyprus, unlike other countries, a variation of arrangements for the organisation of working time may be implemented provided that employers and employees have reached a mutual agreement and there are no provisions in the collective agreements to the contrary.

Another common form of work in Cyprus is fixed employment of people who are self-employed but are dependent on one employer.

5.9.3 According to case-law the evidence of dependence of the employee on the employer is 'one of the basic conditions' that establishes the existence of an employment relationship that is substantially different from the cases of contractual provision of services. Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

Distance working or working from home on a regular basis using modern communication and information technology has not been the object of specific laws in Cyprus.

Existing legislation and case law accepts the discretionary authority of the employer to modify in good faith and with good reason the place of work without this being considered an action of unilateral breach of the employment contract (or without harmfully affecting any of the employee's work conditions). In this context it is important that case law recognises the employer's right to select the production and organisation methods, this implying the right to select the use of information technology for the work carried out by the employees. Nevertheless, in view of the general principle of labour law to prevent unilateral, harmful changes to working conditions, it is considered that the option of the employee to change to the status of teleworker, if this is not part of the initial job contract, must be voluntary (with the consent of the employee). However, the refusal of the employee to opt for telework may justify the termination of the employment relationship, since the need to employ a person with the status of teleworker is a business decision of the employer.

Moreover, the Social Insurance Scheme does not make a distinction for telework and therefore classifies all persons employed in the service of the employer, regardless of the place, the time and the mode of working, as compulsorily insured employees.<sup>10</sup>

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<sup>10</sup> Department for Social Inclusion of Persons with Disabilities – Ministry of Labour, Welfare and Social Insurance, [www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd32\\_gr/dsipd32\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd32_gr/dsipd32_gr?OpenDocument).

This concerns Law No. 76(I)/2002 and Law No.98(I)/2003 as amended.

It is not only certain groups (e.g. parents or relatives) who are entitled to the right to work from home or remotely.

There is no special provision under the law, so in the view of the author it depends on negotiations between the employer and the employee.

Such a right cannot only be exercised for certain purposes (e.g. caring for a child, or for a disabled person), provided that the worker enjoys equal treatment with workers in full-time employment.

There is no time limit for requesting such right and the right is not tied to a specific trigger. Furthermore, the size of the employer is not a qualifying condition.

Whether employers are obliged to comply with requests to work remotely depends on the needs of the employer. The employer can refuse depending on the needs of the employment.

There is a right to return to prior working arrangements, but if there is no such position available it should be a similar position with the same terms.

There are no measures in place specifically to encourage men to make use of such legal rights.

All the above answers depend on agreement between the employer and the employee.

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, these are found in the collective agreement between the trade unions and the employers in the tourist industry, where workers can postpone their leave during the winter season.



## **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, this is covered in Article 3(I), 4(1) and (2) of Law No. 133(I)/2002, as amended.

### **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.**

National law covers the same scope as the Directive. There is no case law to date.

### **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.**

National law covers the same scope as the Directive. There is no case law to date.

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

Yes, this is covered by Article 3(b) 1A and 1B of Law No. 133(I)/2002 as amended by Law No. 40(I)/2009.

The Occupational Social Insurance Scheme by its new definition (Law No. 40(I)/2009 Recast Directive implementation) describes a scheme that provides benefits to employees in the public and private sectors and to employees and self-employed people in the same company or group of companies, which supplement or replace the benefits under the Social Insurance Scheme.

### **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. There is no difference between men and women in the occupational pension scheme. Men and women enjoy the same benefits.

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

In Cyprus, sex is not used as an actuarial factor in occupational social security schemes.

### **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.**

In Cyprus there is a clear distinction between statutory pension schemes and occupational pension schemes. More precisely, the General Social Insurance Scheme (GSIS) and the social pension scheme are considered to be statutory, whereas occupational pension schemes for employees in the public service and the broader public sector, the voluntary provident fund schemes and other similar pension schemes fall under the category of occupational pension schemes. Under all occupational pension schemes, men and women enjoy equal treatment as provided in the Equal Treatment for Men and Women in Occupational Social Insurance Schemes Law as amended by Law No. 40(1) 2009. There are no exceptions.

## **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, this is covered in the Social Insurance Law 1980-2009, Law No. 41/1980 and Social Insurance (Amendment) (No.2) Law No. 51(I)/2001.

The General Social Insurance Scheme (GSIS) falls under Directive 79/7/EEC and covers anyone gainfully occupied in Cyprus, either employed self-employed.

The general Social Insurance Scheme provides the following benefits and social security: sickness benefit (in cash), unemployment benefit, old-age pension, employment injury benefit (in cash and in kind), maternity benefit (in cash), disability benefit (in cash and in kind) and survivor's benefit.

### **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 Law stated above serves the same scope as Article 2 of the Directive.

### **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 para. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.**

The Law stated above serves the same scope as Article 3 Paragraphs 1 and 2 and, in particular, the GSIS provides for the following benefits: disability pension, old-age pension, widow's pension, sickness benefit, unemployment benefit, employment injury benefit, orphan's benefit, maternity grant, marriage grant, funeral grant and maternity allowance (Articles 22-42 of Law No. 41/80).

As regards the survivor's benefit, a widow's pension is payable only to a widow. A widower's pension is payable only if a widower is permanently incapable of self-support. Currently, there is a proposal for an amendment to the law as regards a pension being made payable to a widower.

### **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.**

Before 2010 the exception in 7(1)(d) of the Directive applied to men only in national law covering 'the granting of increases of long-term disability, old age, accidents at work and occupational disease benefits for a dependent wife'. In 2010, however, working women were reaching pensionable age and therefore a need was identified to amend the legislation in order to cover both men and women. There was no justification to continue applying the exception only to men. The relevant Law is No.59(I)/2010 as amended.

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

No, the level for all benefits is the same for men and women.

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

No.

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

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

Yes, Directive 2010/41/EU relating to the principle of equal treatment between men and women who are self-employed has been implemented through Social Insurance (Amendment) Law No.59(I)/2010 as amended and Law No.40(I)/2009 as amended, which is based on the Recast Directive.

According to Articles 24, 29 and 30 of the Social Insurance (Amendment) Law No.59(1)/2010, self-employed women are entitled to maternity allowance for a period of 18 weeks and in case of adoption for a period of 16 weeks. The Social Insurance Law provides for maternity allowance and social protection for women who are self-employed, as well as for the wives of self-employed workers, as stipulated in Articles 2, 7 and 8 of Directive 2010/41/EU. It should be noted that in Cyprus, maternity allowance started to be granted to beneficiaries by the Social Insurance Services in 1983.

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

There is no definition of 'self-employed workers' or 'self-employment' in Law No.59(1)/2010, but the Law refers to the Second Schedule, Part I, under the title 'self-employed', where it is stated that the term 'self-employed' covers any employment in Cyprus of a person who is pursuing a gainful activity, provided such activity is not insurable under the First Schedule, Part I, under the title 'Employees, Insurable and Non-Insurable Employments'.

The First Schedule refers to employment in Cyprus of a person on the basis of a contract of work or training, or under such circumstances from which an employer-employee relationship can be derived. On the basis of the above, it is considered that Article 2(a) has been transposed into the national legislation of Cyprus.

### **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.**

All self-employed workers are considered to be part of the same category and are all covered under the General Social Insurance Scheme. The agricultural sector is not treated differently.

The law pertaining to civil partnerships was passed by the Representatives of the Republic of Cyprus on 26 November 2015 and came into effect on 9 December 2015. A civil partnership concluded following the provisions of Law 184(I)/2015 has results and consequences that are equivalent to those of marriage, following the provisions of the Marriage Law. Nevertheless, the Adoption Law is exempted.

Cypriot national law only covers spouses (on an individual basis) of self-employed persons. Same-sex marriage has not been legalised in Cyprus.

#### **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?**

In Cyprus the principle of equal treatment is safeguarded in Article 28.2 of the Constitution, which states: 'Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his/her... sex... unless there is express provision to the contrary in this Constitution'.

Article 5 of the Constitution states: 'Every person has the right to exercise any profession or carry out any business or gainful activity, subject to conditions relating to qualifications, or which are necessary only for public safety or public order or public health'.

Article 10(1) of Law No. 205(I)/2002 as amended by Law No.39(I)/2009(implementing Directive 2006/54/EC) provides that men and women enjoy equal treatment and there shall be no discrimination on grounds of sex as regards access to self-employment, the terms and conditions for its exercise and termination of its exercise and as regards access to education or vocational training, including practical work experience that is needed in order to have access to and exercise such a profession. Furthermore, it provides that the provisions of Article 10 apply to every individual or legal person or organisation under public or private law responsible for the matters mentioned in this Article. The contents of Article 4(1) of Directive 2010/41 and of 14(1)(a) of Directive 2006/54 were included in Article 10 of Law No. 39(I) 2009.

The national law of Cyprus has not precisely transposed the contents of Article 4(1) of the Directive which give additional protection to self-employed persons, but it is considered that Article 10(1) of Law No. 205(I)/2002 as amended provides sufficient implementation.

The material scope of national law is the same as that specified in Article 4.

#### **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?**

The Cypriot Government has not yet taken any positive action up to now.

Law No. 205(I)/2002 as amended by Law No. 39(I)/2009 and 150(I)/2014 provides for positive actions, including the taking of such actions in favour of self-employed people (Articles 2 and 6).

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

Yes, Article 7 of Social Protection Law No. 59(I)/2010 as amended by Law No. 194(I)/2014) falls under Directive 79/7/EEC<sup>11</sup> and covers anyone gainfully occupied in Cyprus, either employed or self-employed.

The GSIS covers the following branches of social security: old-age pension, widow's pension, sickness allowance, unemployment allowance (which does not apply to the self-employed), employment injury allowance, maternity allowance, disability pension, orphan's benefit, marriage grant and maternity grant.

There is only one system of social protection and this is mandatory. It is based on payment of contributions. In the case of self-employed people, the contribution is 15.6 % of the

<sup>11</sup> Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security OJ L 6 of 10 January 1979, pp. 24-25.

insurable income of the person concerned, 11.6 % is paid by the self-employed person himself/herself and 4 % by the State. The insurable earnings of a self-employed person are fixed by regulation according to occupational categories.

A person who is employed in the service of his/her spouse (who is self-employed) is insured as a self-employed person.

Under the GSIS spouses can benefit from social protection but life partners cannot.

Everyone, both workers and self-employed people, is insured under the GSIS, which is mandatory and covers spouses. Life partners are not covered and a life partner who is self-employed must be insured independently from his/her life partner. There is no voluntary system under the GSIS for people working in Cyprus.

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

Yes, Social Insurance Law No. 59(I)/2010 as amended by Law No.194(I)/2014 provides for maternity allowance and social protection for women who are self-employed as well as for wives of self-employed people as stipulated in Articles 2,7 and 8 of Directive 2014/41/EU. It should be noted that in Cyprus maternity allowance started to be granted to beneficiaries by the Social Insurance Services in 1983.

The maternity allowance meets the requirement of sufficiency in Article 8(3), by using all of the criteria stated in Article 8 Paragraph 3 subparagraphs (a), (b) and (c).

The maternity allowance is granted on a mandatory basis and there is no choice of systems. According to Articles 24, 29 and 30 of the Social Insurance Law, self-employed women are entitled to maternity allowance for a period of 18 weeks and in case of adoption of a child for a period of 16 weeks. Maternity allowance is payable to an insured employed woman, a self-employed woman or a voluntarily insured woman in the service of a Cypriot employer abroad. Maternity allowance is determined according to the weekly amount of paid and credited insurable earnings of the insured woman in the previous contribution year.

Maternity allowance is composed of the basic and the supplementary benefit. The weekly rate of the basic benefit is equal to 72 % of the weekly average of the basic insurable earnings of the beneficiary, in the previous contribution year. The weekly amount of the supplementary benefit is equal to 72 % of the weekly average of insured earnings of the beneficiary, beyond her basic insurable earnings. The basic and supplementary benefits cannot exceed 72 % of EUR 4 533 per month. Employers may supplement the benefit up to the beneficiary's full wages. Public-sector employers do this. In the private sector it depends on the contract of service. Although the rate of 75 % was reduced to 72 % in 2014 because of the economic crisis, the maternity allowance is considered sufficient. The allowance is not the same as the sickness allowance. Moreover, it is not subject to taxes.

There are no services supplying temporary replacements or national social services. A person who is in the service of his/her spouse or is in the service of his/her life partner is insured as a self-employed person. Life partners are not yet recognised under Cyprus national law in terms of entitlement to the same benefits as spouses.

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

Yes, the GSIS, Law No.59(I)/2010 as amended, covers anyone gainfully occupied in Cyprus, either employed or self-employed. Following the provisions of the GSIS, the principle of equal treatment is applied.

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

No.

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

Yes, this is covered in Article 10(1) of Law No. 39(I)/2009 as amended.

Men and women enjoy equal treatment and there shall be no discrimination on grounds of sex as regards access to self-employment, the terms and conditions for its exercise and termination of its exercise and as regards access to education or vocational training, including practical work experience that is needed in order to have access to and exercise such a profession. Furthermore, it stipulates that the provisions of Article 10 apply to every individual or legal person or organisation under public or private law responsible for matters mentioned in this Article. The contents of Article 4(1) of Directive 2010/41 and of 14(1)-(a) of Directive 2006/54 were included in Article 10 of Law No.39(I)/2009.

## **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?**

All articles of Directive 2004/113/EC have been incorporated in Law No. 18(I)/2008 as amended.

Any direct or indirect discrimination on grounds of sex is prohibited, based on Article 2 of Law No. 18(I)/2008 as amended.

### **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 above law applies to everyone who supplies goods and services to the public, both in the public and the private sector, and offered outside private and family life (Article 3 of Law No. 18(I)/2008 as amended). The scope is the same as in national law.

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

The relevant Law No. 18(I)/2008 as amended by Law No.89(I)/2013 does not apply in education, in mass media and advertisements regarding employment, or in vocational activities, as these matters are covered by other legislative provisions (Article 4(3) of Law No. 18(I)/2008 as amended).

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

Article 5(3) of Law 18(I)/2008 as amended does not provide differently from Article 4(5) of Directive 2004/113: 'The different treatment in relation to the supply of goods or services exclusively or primarily to persons of one sex, does not constitute discrimination pursuant to the law, in so far as this can be justified by a legitimate aim and the means of achieving that aim, and the supply is necessary.'

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

Yes, Article 7(1) of Law No.18 (I)/2008 as amended ensures that in all new contracts concluded after 21 December 2007 at the latest, it is prohibited to give rise to differences between the individual premiums and benefits, and in the event that the premiums' curator notes any differences arising on grounds of sex, the matter is referred to the office of the Commissioner for Administration (Ombudsman).

Article 9(1) states: 'When the Ombudsman ascertains any prohibited discrimination based on the Law, this requires the person committing the infringement to make a retroactive adjustment.'



**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.**

Law No. 18(I)/2008 was amended in order to comply with the interpretation by the CJEU in *Test-Achats*. In particular, Article 7 of Law No. 18(I)/2008 was amended by adding to Section 2 a new provision, stating that Section 1 (which prohibits discrimination on grounds of sex in insurance contracts that leads to differences in calculating premiums and benefits) applies to all new insurance contracts from 21 December 2012.

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

Yes, Article 6 of Law 18(I)/2008 as amended provides for positive actions and serves its purpose. There are no specific measures stated under the amended Law.

There is no case law to date.

**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.**

Article 7(5) of Law 18(I)/2008 as amended provides that 'the costs of pregnancy and maternity allowance may not lead to differences between the individual premiums and benefits'. Based on the above article, there are no specific problems on the grounds of pregnancy and maternity allowance in relation to the access to and supply of goods and services.

There is no case law to date.

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

### **10.1 Has your country ratified the Istanbul Convention?**

Yes, the Convention was ratified in Cyprus on 10 November 2017 with Law No 14(111)2017 (4237) published in the Republic of Cyprus Gazette in accordance with Article 52 of the Constitution.

Two bills to implement the Convention, regarding a) Criminalisation of violence against women and b) Criminalisation of harassment and stalking of women, are still pending a final vote in parliament.

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

### **11.1 Victimisation**

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

Yes, Article 9(1)(a) of Law No. 205(I)/2002 as amended provides that men and women are treated equally, while any discrimination on grounds of sex with regard to working conditions and conditions of dismissal is prohibited.

Article 17(1) of Law No. 205(I)/2002 as amended provides that, in addition to the compensation provided by the Law (Article 15), the dismissal is absolutely void, as well as any detrimental change in the working conditions of the employee who has made a complaint or protest aiming at the implementation of equal treatment, or the employee who has parried or denounced sexual harassment.

Article 17(2)(a) of the Law stated above provides for cases in which a candidate is not hired for a job or is not accepted for professional orientation, education, or training, due to a complaint or protest aiming at the implementation of equality or sexual harassment.

Article 17(4) of the above Law states that the provisions are also applied to any person who helped the worker or candidate as regards the conduct or the support for the complaint or protest in any way, including judicial or extra-judicial testimony.

Article 9(1)(b) of Law No. 177(I)/2002 as amended provides to employees protection from adverse treatment by their employer because they presented a complaint or testified or helped to prosecute a violator of the law.

Article 9(2) provides that the violating employer is guilty of an offence and in the case of conviction is liable to a fine of up to EUR 1 700 (CYP 1 000).

The protection against victimisation complies with the Directives.

### **11.2 Burden of proof**

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

The burden of proof in civil cases is based on the balance of probabilities. In criminal cases, the guilt of the defendant must be proved beyond reasonable doubt.

In 1967 the Annual Holidays with Pay Law<sup>12</sup> No. 8/1967 as amended established the Industrial Tribunal Court (Article 12). In the same year, the Termination of Employment Law No. 24/1967, as amended<sup>13</sup> provided for a period of notice for dismissal and for compensation and established the Redundancy Fund. The employer has the burden of proof for dismissal and termination of services.

In cases before the Industrial Dispute Tribunal based on Law No. 24/67 as amended, the burden of proof is on the employer.

Directive 97/80/EC has been transposed into national law so that the shift of the burden of proof is provided.

The rules on the burden of proof comply with EU law.

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<sup>12</sup> The Annual Holidays with Pay Law, No. 8/67 as amended.

<sup>13</sup> The Termination of Employment Law, No. 24/1967 as amended.

### 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.

With regard to the legislation on equality law, the remedies and sanctions are compensation, reinstatement for criminal cases before the Industrial Dispute Tribunal, fines, penalties, sanctions and imprisonment.

- a) Law No. 205(I)/2002 as amended
- b) Law No. 177(I)/2002 as amended
- c) Law No. 47(I)/2012
- d) Law No. 100(I)/1997 as amended
- e) Law No.18(I)/2008 as amended

(a) Under Law No. 205(I)/2002 as amended by Law No. 150(I)/2014, Article 15(1) provides that the adjudication of industrial dispute cases is reserved to the exclusive jurisdiction of the Supreme Court by virtue of Article 146 of the Constitution (for employees in the public sector) and to the jurisdiction of the Industrial Disputes Court for the trial of industrial disputes and remaining disputes of private law arising by virtue of implementation of this Law. Under Paragraph 2, in case of an action before the District Court by virtue of Paragraph 6 of Article 146 of the Constitution and provided that the conditions of an actual right for a just and equitable compensation are satisfied, the Court awards the maximum of the following two amounts:

- (a) just and equitable compensation by virtue of Paragraph 6 of Article 146, or
- (b) the whole of the actual damage sustained, including overtime remuneration and pecuniary compensation for any moral or bodily injury which was caused by the decision, act or omission declared void in accordance with Paragraph 4 of Article 146 of the Constitution.

In each case the above amount carries a legal interest from the date the above damage was caused until the date of the payment of the compensation in full. Under Paragraph 3, the Industrial Disputes Court awards just and equitable compensation which covers at least the whole of the real damage, including the overtime, and pecuniary compensation for any moral or bodily injury to the claimant. Moreover, in each case the above amount shall carry a legal interest from the day of infringement until the day the compensation is paid in full. In case of dismissal, under Paragraph 4 Article 15, the Industrial Disputes Court orders the re-employment of the worker and compels the employer to accept his/her services, provided that the worker claims this as a remedy.

Article 17A(i) provides for extrajudicial protection. Everyone is entitled to the protection of the Chief Inspector when lodging a complaint under Article 27(i) which aims, inter alia, to promote equality between men and women. Under Article 17 A(2) everyone is entitled to lodge a complaint to the Ombudsman even if the discrimination has ended(Directive 76/207).

b) Under Law No. 177(I)/2002 as amended, Article 22(2) provides, with regard to Article 6 of Article 146 of the Constitution (for administrative cases), that if the conditions of the material right for a fair and reasonable compensation are fulfilled, the competent District Court shall award the beneficiary whichever of the following two amounts is greater:

- (a) the fair and reasonable compensation awarded under Paragraph 6 of Article 146 of the Constitution, or

(b) the total real damage and pecuniary satisfaction for any moral damage of the claimant caused by the decision, action or omission, which was declared void in accordance with Paragraph 4 of Article 146 of the Constitution.

In each case the legal interest rate shall be added to the awarded amount from the date the above damage occurred until the full payment of the compensation.

Article 22(3) provides that the Industrial Disputes Court awards a fair and reasonable compensation, covering most of the assessed damage and includes pecuniary satisfaction for any moral damage caused to the claimant by the offender and, in either case, the legal interest rate shall be added to the awarded amount from the day the contravention took place until the full payment of the compensation.

Irrespective of the penalties provided above in subsection 3, the Industrial Disputes Court shall, where deemed necessary, issue an Order of binding recognition of the rights of the applicant in relation to the contravention about which the complaint has been made (Article 22(4)).

Article 24(I) provides that whoever intentionally contravenes the provisions of Section 5, which prohibits any gender discrimination on equal pay terms for the same work or for work to which equal value is attributed, shall be guilty of an offence and be punished with a fine not exceeding EUR 6 860.74 (CYP 4 000) or by imprisonment not exceeding six months or with both such penalties.

Article 25(1) provides that whoever intentionally

- (a) obstructs an inspector or committee member in the exercise of any powers delegated to them by the law;
- (b) refuses to answer or provides false information in a search;
- (c) fails to present any record, certification, book or any other document or evidence required by law;
- (d) removes any posted document which was posted following commands of the inspector;
- (e) obstructs, or attempts to obstruct, a person from appearing before the Inspector or the Committee is guilty of an offence and shall be punished by imprisonment not exceeding three months or with a fine not exceeding EUR 5 145.55 (CYP 3 000), or with both such penalties.

An Inspector is appointed by the Minister of Labour, Welfare and Social Insurance for the implementation of this legislation.

The Committee for the Inspection and Assessment of Work is appointed by the Minister of Labour, Welfare and Social Insurance in collaboration with the workers' and employers' movements and comprises three members.

Article 23 A I of the Law stated above provides extrajudicial protection for every person affected by any infringement of this Law. The person is entitled to lodge a complaint with the Ombudsman even if the relationship under which the claim for discrimination exists has expired.

Paragraph 1 of Article 146 of the Constitution states: 'The Supreme Court has exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision of an act or omission of any origin, authority or person exercising any executive or administrative authority is contrary to any of the provisions of the Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person'.

Upon such recourse the Court may, by its decision

- (a) confirm such a decision or act or omission, or

- (b) declare that such omission ought not to have been made and that whatever has been omitted should have been performed (Article 146(4)).

Paragraph 6 of Article 146 of the Constitution states that any person granted a judicial review before the Supreme Court is entitled to claim compensation by submitting an action to the District Court.

Access to courts

c) Article 19 of Law No. 47(I)/2012 states that the competent Court for civil cases falling under the Law is the Industrial Disputes Court.

Article 20 provides that any employer that infringes the provisions of the law is guilty of an offence and in case of a conviction is subject to a fine not exceeding EUR 7 500 (Directives 96/34 and 2010/84).

d) Article 9 of Law No. 100(I)/1997 as amended provides that if the employer violates the Law and is found guilty, they are subject to a fine not exceeding EUR 6 840.93 (CYP 4 000). The competent court is the Industrial Disputes Court.

e) Article 8(1) of Law No. 18(I)/2008 as amended provides that every person affected by a violation of the Law has the right to pursue their legal rights before the competent court. The exclusive jurisdiction of the Supreme Court is maintained under Article 146 of the Constitution to resolve disputes arising from the present Law, while for resolving cases in relation to gender discrimination the competent court is the District Court.

Further, the claimant has extrajudicial protection in being allowed to lodge a complaint with the Ombudsman for the violation of the principle of equal treatment.

Article 16(i) of this law states that whoever violates the provisions on gender discrimination, in case of conviction will be punished with a fine not exceeding EUR 7 000, or by imprisonment not exceeding six months or with both such penalties (Directive 2004/113).

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.

Because of the financial hardship Cyprus is suffering, in the view of the author the sanctions are satisfactory.

#### **11.4 Access to courts**

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

The author believes that access to courts is safeguarded for alleged victims of sex discrimination.

The enforcement of the law before the Industrial Disputes Court is easier, because the burden of proof lies with the employer.

In order to obtain a conviction against the employer in criminal cases, the prosecution will have to provide evidence in court that will prove the case beyond reasonable doubt.

The relevant laws are Law No. 24/67 as amended and Law 8/67 as amended. The Industrial Disputes Court was established under this Law.

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.

In the view of the author, access to the courts is safeguarded for anti-discrimination/gender equality interest groups. Law No.24/67 as amended stipulates that the applicant must submit his/her application to the Industrial Disputes Court no later than one year after the relevant event.

Based on Article 146(3) of the Constitution, the applicant must submit the application to the Supreme Court no later than 75 days after the relevant event.

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

Legal aid is not available for cases before the Industrial Disputes Court or for cases of alleged victims of gender discrimination before the Supreme Court.

## **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?

a) The Office of the Commissioner for Administration (Ombudsman)

Address ERA House, 2 Diagorou Street, 1097 Nicosia, Cyprus

Website [www.ombudsman.gov.cy](http://www.ombudsman.gov.cy)

b) Commissioner for Gender Equality

Address 125 Athalassas Avenue, 1461 Strovolos, Nicosia, Cyprus

Website [www.mjpo.gov.cy](http://www.mjpo.gov.cy)

c) The Gender Equality Committee for Employment and Vocational Training under the auspices of the Ministry of Labour, Welfare and Social Insurance

Address Clementos, 1061 (Office 312) Nicosia, Cyprus

Website [www.eif.gov.cy](http://www.eif.gov.cy)

These bodies investigate complaints concerning allegations of discrimination in the workplace on the grounds of sex.

The purpose of these bodies is to implement the provisions of the law and the principle of equality.

If the employer does not comply with the decision of the Commissioner of Administration, the Commissioner may issue an order ordering compliance and imposing a fine.

In the Gender Equality Committee for Employment and Vocational Training the report of the Commissioner is submitted as evidence before the Industrial Disputes Court.

## **11.6 Social partners**

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

The social partners play an important role in the application of gender equality law through the Labour Advisory Body.

### **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 'gentlemen's agreements' and currently have no force of law. Collective agreements are used as a tool to promote gender equality, to comply with EU Law and to amend or eliminate any direct or indirect discrimination against one sex in existing provisions. Collective agreements are mainly drawn up as gender neutral or gender blind, with the exception of maternity provisions. Gender equality principles have also been incorporated into collective labour agreements.



## **12 Overall assessment**

In the view of the author, the Republic of Cyprus has integrated into national legislation all relevant Treaty provisions, legislation and case law of the Court of Justice of the European Union (CJEU) in relation to gender equality. According to the national legislation on gender equality on grounds of sex as stated above, the majority of gender equality regulation has been implemented.

In the public sector and semi-governmental organisations, there is equal pay for men and women. In the private sector, however, there is a wage gap between men and women to the detriment of women (15.6 %). Progress has been made on the principle of equality on issues related to social insurance and the occupational pension scheme. Collective agreements cover matters related to parental leave and leave on grounds of force majeure. Furthermore, there is extra-judicial and judicial protection regarding any breach of the principle of equality between men and women.

## **Annexes**

### **Bibliography**

1. Ministry of Labour, Welfare and Social Insurance, Department of Labour Relations (2007), *Gender pay gap* (report available in Greek [http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/973E695E58AC528AC2257936003A3B18/\\$file/Final%20Report%20Gender%20Pay%20Gap%2012%2011%2007.pdf](http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/973E695E58AC528AC2257936003A3B18/$file/Final%20Report%20Gender%20Pay%20Gap%2012%2011%2007.pdf)).
2. Department for Social Inclusion of Persons with Disabilities Ministry of Labour, Welfare and Social Insurance (2013), *First report of Cyprus For The Implementation Of The UN Convention On The Rights Of Persons With Disabilities*.

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