



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Directorate D: Equality  
Director

Brussels, 04.03.2015  
JUST/D1/ *Anes(2015)3649846*

Ms Anne Gaspard  
Executive Director  
EQUINET  
138 Rue Royale  
1000 Brussels

**Subject: Implementation of Directive 2010/41/EU**

Dear Ms Gaspard,

I refer to Directive 2010/41/EU<sup>1</sup> of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

Article 15 of the Directive requires Member States to "communicate all available information concerning **the application** of this Directive to the Commission by 5 August 2015" and requires the Commission to draw up a report for submission to the European Parliament and to the Council by 5 August 2016. That Article also requires the Commission's report to take the viewpoints of stakeholders into account.

The report will be partly based on information from the Member States and I attach a copy of the questionnaire that we have sent to them. This is solely for your background information and is not a request for EQUINET to reply to these questions, which are specifically targeted at the Member States. However, we would very much appreciate information from EQUINET on behalf of the national equality bodies or from the national equality bodies themselves as regards Article 11 and its implementation. As you know, Article 11 provides that equality bodies are also to be competent to promote, analyse, monitor and support the equal treatment of all persons covered by this Directive. What would be particularly useful would be your and your members' views on the implementation of this provision, including how successful this implementation has been, what challenges equality bodies have faced in implementing this provision, examples of its application in practice, any relevant case law and any other information that EQUINET or the national equality bodies consider relevant for the report. Any additional information outside the context of Article 11 provided by EQUINET or the national equality bodies would also be welcome.


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<sup>1</sup> OJ L 180, 15.7.2010, p.1

I also attach a link to a report published by the Commission on 11 May 2015 for your information. This report was prepared by the European network of legal experts in gender equality on the implementation of this Directive in Member States ([http://ec.europa.eu/justice/gender-equality/files/your\\_rights/self\\_employed\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/your_rights/self_employed_en.pdf)).

It would be very helpful if you were able to reply to us either by post to the address at the bottom of the first page or by e-mail to [JUST-D1-UNIT@ec.europa.eu](mailto:JUST-D1-UNIT@ec.europa.eu) within 10 weeks of receiving this letter. If you have any queries please do not hesitate to contact Alison Fraser (e-mail: [alison.fraser@ec.europa.eu](mailto:alison.fraser@ec.europa.eu) or tel: (00 32) 02 296 5009).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Saastamoinen', with a long horizontal line extending to the right.

Salla SAASTAMOINEN

Annex: Questionnaire addressed to the Member States

## Questionnaire to Member States

### Article 1 – subject matter

Have there been any difficulties in your country with overlap of the coverage of this Directive with Directives 2006/54/EC, 79/7/EEC and 2004/113/EC?

### Article 2 - scope

Has your national law defined "self-employed" or "self-employment"? What conditions have been laid down by national law? Is this definition the same for any or all other legal purposes?

Are all self-employed workers covered? For example, are "small entrepreneurs", "business persons" or the agricultural sector treated differently?

Does your national law recognise life partners? If so, please describe the scope and the requirements in relation to such recognition. How does the legislation transposing this Directive ensure that both spouses and life partners are covered?

### Article 3 - definitions

This Directive, as opposed to its predecessor, sets out the definitions for direct discrimination, indirect discrimination, harassment and sexual harassment. How have these definitions been transposed into your national law for the purposes of implementing this Directive?

### Article 4 – principle of equal treatment

Has your national law been changed in the implementation of this article? If so, how does it differ from the implementation of article 4 of the previous Directive? In particular how have paragraphs 2 and 3 been implemented?

### Article 5 – positive action

Has your country used this provision and taken positive action with a view to ensuring full equality in practice between men and women in working life? If so, please describe what type of action your country has taken and its effectiveness.

### Article 6 – establishment of a company

If your country recognises life partners, how has your national legislation been amended to reflect the fact that Article 6 of this Directive extends coverage to life partners?

Are there any statistics on how many companies have been established between spouses or life partners in your country?

### Article 7 – social protection

Does a system for social protection for self-employed workers exist in your country? If so please describe how it works and what it covers. For example does it cover pensions, health, etc.?

If such a system is in place, how has the requirement to ensure that spouses and life partners can benefit from social protection in accordance with national law been implemented? Has your country made such systems mandatory or voluntary for spouses and life partners?

Are there any schemes in your country which are mandatory for the self-employed worker but voluntary for his/her spouse or life partner, or vice-versa?

#### Article 8 – maternity benefits

How has the new requirement for a "sufficient maternity allowance" been implemented in your country? How many weeks does the allowance last for?

Is it granted on a mandatory or voluntary basis? How does it work in practice? How has your country ensured that it is "sufficient"? In other words which of the requirements in Article 8(3) does it meet, i.e. subparagraphs (a), (b) or (c)? Please specify the rules for the calculation of the benefit and any ceilings laid down under national law.

Are there existing services supplying temporary replacements or existing national social services in your country? If so, have these been extended to female self-employed workers and female spouses and life partners? Or did these services already extend to these groups? Has your country taken the option, provided for in the last sentence of Article 8(4), to provide for access to those services to be alternative or a part of the allowance? If so how does this work in practice? Please describe the precise nature of these services.

#### Article 9 – defence of rights

How has Article 9 been implemented in your national law?

How has Article 9(2) been implemented to ensure that associations, organisations and other legal entities, which have a legitimate interest, can engage on behalf of, or in support of, the complainant?

#### Article 10 – compensation or reparation

How has Article 10 on compensation or reparation been implemented?

#### Article 11 – equality bodies

How has Article 11 been implemented in your national law? Do you have any statistics showing the instance of assistance to self-employed workers bringing complaints of discrimination on grounds of sex? Prior to the coming into force of this Directive, did the equality body or bodies in your country already cover discrimination of self-employed workers and their spouses or life partners on grounds of sex?

#### Article 12 – gender mainstreaming

Are there any examples in your country of the implementation of this Article in practice?

#### Article 13 – dissemination of information

How has the dissemination of information required by this Article been carried out?

Article 14 – level of protection

Is the level of protection provided in your country greater than that required by the Directive?  
If so, please describe in which aspects the protection is greater.

Finally, it would also be of great assistance if you could provide information on any relevant national case-law, including references or links to case reports. Should you wish to draw our attention to any other issues as, for example, examples of best practices please feel free to do so.

