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EUROPEAN SOCIAL CHARTER

11th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF MALTA

- Article 2, 4, 5, 6, 26, 28 and 29 for the period 01/01/2013 - 31/12/2016
- Complementary information on Article 1§4, 10§3 and 20 (Conclusions 2016)

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CYCLE 2018

ELEVENTH REPORT ON THE

EUROPEAN SOCIAL CHARTER (REVISED)

submitted by the

Government of Malta

for Thematic Group Labour Rights
(1 January 2013 – 31 December 2016)

AND
additional information

for Thematic Group Employment, Training, and Equal Opportunities
(1 January 2011 – 31 December 2014)

2017

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***N.B. No reports on Articles 2(4), 21 and 22 were provided since these have not been ratified by Malta.**

I. INTRODUCTION

This Report by Malta is drafted within the context of the form for submission as adopted by the Committee of Ministers on the 26th March 2008.

The following information is to supplement previous information submitted by Malta with respect to the same provision under the European Social Charter and should be taken as additional information. Where a new provision of the Revised Charter has not been reported upon in previous Reports from Malta, full details of the situation of the respective Article in Malta will be provided.

II. PROVISIONS OF THE EUROPEAN SOCIAL CHARTER (revised)

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:
1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2 to provide for public holidays with pay;
3 to provide for a minimum of four weeks' annual holiday with pay;
4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Appendix to Article 2.6

Parties may provide that this provision shall not apply:
a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations

Article 2.1

The Organisation of Working Time Regulations provide for the limit of 48 hours weekly average, including overtime with the possibility for employees to give their consent to exceed such average. Moreover, it should be noted also that in Malta when an employee is on on-call time at the place of work, such on-call time is considered as working time.

Article 2.2

Wage Regulation Orders provide for the payment rates to be applied for work performed in public holidays.

Latest statistics show that in the private sector there are 326 collective agreements

covering 43,782 employees whilst in the Public Sector (including Pubic Service), there are 35 collective agreements covering 62, 365 employees.

Article 2.3

No new developments to declare for reporting period under review.

Article 2.4

(Not accepted)

Article 2.5

It should be noted that the Organisation of Working Time (S.L. 452.87) specifically stipulates that a worker is entitled to either two uninterruted rest periods each of not less than 24 hours, each preceded by a daily rest period, in each 14 day period, or one uninterruted rest period of not less than 48 hours, preceded by a daily rest period, in each such 14 day period.

Thus, by virtue of this regulation, an employee canot work more than 12 consecutive days without being granted a two day rest period.

Article 2.6

The Information to Employees Regulations (S.L. 452.83) stipulate that when an employer engages an emplyee, he is bound to furnish the employee either with a written contract or a letter of engagement or a signed statement by not later than eight working days from the commencement of employemet and such contract, letter of engagement or signed statement shall include the following infromation:

- Name , registration number and registered place of businessof the employer
- The date of commencement of employment
- Period of probation
- Normal rates of wages payable
- Overtime rates of wages payable
- Normal hours of work
- The periodicity of wage payments
- In the case of a fixed term contract of emplyment, the expected or agreed duration of the contract period
- The paid holidays, vacation leave, sick leave and other leave to which the employee is entitled
- The conditions under which fines may be imposed by the employer
- The title, grade, nature or category of the work for which the employee is employed

- Notice periods to be observed by the emplyer and the employee should it be the case
- The collective agreement, if any, governing the employee's conditions of work
- Any other relevant or applicable condition of employment

Where any of the above is regulated by law, or collective agreement, the employer may where appropriate, provide the information by giving the reference to the laws or collective agreement.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:
1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage fixing machinery, or by other means appropriate to national conditions.

Appendix to Article 4.4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Appendix to Article 4.5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.

Art 4.1

Maltese labour law revolves around the principle that a worker should be paid for his services. Such pay must not be less than the minimum set by law (national minimum wage or the minimum wage applicable to the sector concerned). In certain cases, the minimum wage is regulated by a collective agreement applicable per enterprise. This must not be lower than the statutory minimum wages.

Article 4.2

It is not possible for an employee to replace overtime payment with time off in lieu.

Article 4.3

The main law relating to Gender Equality and Employment is the Equal Treatment in Employment Regulations (Subsidiary Legislation 452.95). These regulations give effect to the relevant provisions of Council Directives 76/207/EEC, 2000/78/EC, 2000/43/EC, 2002/ 73/EC and 2006/54/EC. Moreover, their applicability is very wide in that they apply to all persons as regards both the public and private sectors and including service with the Government. The purpose of these regulations is to put into effect the principle of equal treatment in relation to employment by laying down minimum requirements to combat discriminatory treatment on the grounds of, among other grounds, sex.

The regulations concern all stages of employment life, ranging from the conditions for access to employment, such as the advertising of opportunities for employment, to the actual conditions of employment, including remuneration and dismissals. Membership of and_involvement in trade unions or in employers' associations also falls within the remit of these regulations.

At the outset, one must make a reference to the definition of the term "principle of equal treatment" which means the absence of direct or indirect discriminatory treatment on any of the grounds. "Discriminatory treatment" is stated to mean any distinction, exclusion, restriction or difference in treatment, whether direct or indirect, on any of the grounds (including, sex) which is not justifiable in a democratic society. The law states that discriminatory treatment includes:

- harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct;
- instruction to discriminate against persons on grounds of sex;
- any less favourable treatment of a woman related to pregnancy or maternity leave; and
- in so far as the ground of sex is concerned, any less favourable treatment of a person who underwent or is undergoing gender reassignment (where a person is considering or intends to undergo, or is undergoing or has undergone, a process, or part of a process, for the purpose of reassigning the person's sex by changing physiological or other attributes of sex)

Regulation 3 expressly prohibits 'discriminatory treatment'. Indeed, this holds that "it shall be unlawful for a person to subject another person to discriminatory treatment, whether directly or indirectly, on the grounds of sex, including discriminatory treatment related to gender reassignment and to pregnancy or maternity leave. Discriminatory treatment can be direct or indirect. Direct discriminatory treatment occurs where one person is treated less favourably than another is, has been, or would be, treated in a comparable situation. On the other hand, indirect discriminatory treatment occurs where an apparently neutral provision, criterion or practice would put persons of a particular ground, as sex, at a disadvantage when compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

NCPE, the Government entity with the remit to monitor the implementation of all equality legislation to ensure that Maltese society is free from any form of discrimination, organised a conference on the gender pay gap in 2015. This was the first public event during which the issue in Malta was discussed. This conference continued raising awareness on the importance of addressing the gender pay gap. It delved into this matter from various perspectives including the causes of the gender pay gap in Europe and in Malta; how the gender pay gap is calculated as well as the effects and repercussions of the gender pay gap on pensions.

Moreover, in 2015, NCPE issued a press statement on an investigation concluded by NCPE's Commissioner which determined the occurrence of gender discrimination in the wage of a female employee. The complaint concerned alleged discrimination or differential treatment on the grounds of sex in pay/wage or other work-related benefits. The complainant alleged that she was receiving a lower wage than the male employees who were in a similar or same rank and responsibilities. NCPE's Commissioner noted that while all of the managers' wages differ in amount, the gap between the male managers' wages is smaller than the one between the average male manager wage and the complainant's wage. Moreover, NCPE's Commissioner deemed that the company's arguments, that there is no set salary scale for managers, should not act as a detriment towards the company's employees and the company should strive for more transparency in the manner in which wages are set for managers.

The Equality Mark Certification is another initiative through which NCPE reaches out to companies to be able to assess their policies and practices related to gender equality and pay. The Equality Mark is awarded to the companies that foster gender equality, following an assessment of set criteria, one being equality in recruitment and employment conditions, including equal pay for work of equal value. Certified companies can use the Equality Mark logo in all their correspondence, including adverts in the printed media, thus raising further awareness on the Equality Mark and on NCPE's role in this regard. By December 2016, there were 71 certified organisations employing over 18,600 persons.

NCPE has raised awareness by publishing articles and press statements in the printed media and participated on TV and radio programmes to discuss matters related to equal treatment and to address specific subjects in this regard. NCPE also utilises social media to pass on targeted messages to a wide range of audiences. In addition, NCPE's website is a source of information on NCPE's remit and functions as well as on equality.

Harassment

The regulations lay down that no person shall harass another person by subjecting him to unwanted conduct or requests relating to any of the grounds, when such conduct or request takes place with the purpose, or which has the effect of violating the dignity of the person who is so subjected, and of creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected.

Sexual Harassment

The law states that no person shall sexually harass another person by subjecting him to any form of unwanted verbal, non-verbal or physical conduct or request of a sexual nature, when such conduct or request takes place with the purpose, or which has the effect of violating the dignity of the person who is so subjected, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment for the person who is so subjected.

Equal Pay for Work of Equal Value

An important principle of gender equality is the principle of equal pay for work of equal value. The regulations too address this principle and state that it shall be the duty of the employer to ensure that for the same work or for work to which equal value is attributed, there shall be no direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration. Moreover, the employer shall ensure, in particular, that where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

Genuine occupational requirement

With regards to access to employment, including the training leading thereto, a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate.

Measures promoting full equality

The regulations expressly hold that acts done in connection with maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers are not against the law as long as they are implemented with a view to ensuring full equality in practice between men and women in working life.

Employees' and employers' organizations

It is unlawful for a registered organization under the Employment and Industrial Relations Act, or for the governing body or any officer or official representative of such organization to subject a person to discriminatory treatment (example, by refusing or failing to accept an application for membership). Moreover, a registered organization under the Employment and Industrial Relations Act, or the governing body or any officer or official representative of such organization, cannot subject a member to discriminatory treatment, for instance, by denying access to any benefit provided by the organization or limiting access to such benefit.

Other duties imposed on the employer and on any organisation to whom the Regulations apply

It shall be the duty of the employer or any person or organisation to whom the regulations apply, to use appropriate means to bring the provisions of these regulations as well as of any measure taken to further the aim of these regulations to the attention of his employees, or of the organisation's members, as the case may be, or to any other persons who may be affected by the actions of the employer or the organisation concerned.

The regulations also state that the employer has the duty to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.

Redress

In so far as the means of redress are concerned, where an allegation is made that some form of discriminatory treatment has occurred, the person making the allegation, or the Director responsible for industrial and employment relations, if either deems fit, shall have the right to send a written notification to the employer or any person or organisation to whom the regulations apply of the alleged discriminatory treatment received, giving any relevant details and requesting a reply. On receipt of such notification, the respondent shall submit a written reply within ten working days of the date of receipt of such notification, giving the respondent's version of events and any grounds for disputing the allegations, as well an explanation of any relevant procedures adopted by the respondent to prevent discriminatory treatment.

A person claiming to have been subjected to discriminatory treatment in relation to his employment, may, within four months of the alleged breach, refer the matter to the Industrial Tribunal for redress. Moreover, a person who alleges that any other person has committed in his or her regard any unlawful act under the regulations shall, within four months of the alleged breach, have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful act and, where applicable, to order the payment of compensation for such damage suffered. In both kinds of proceedings, where persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before the Court or Industrial Tribunal, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the defendant to prove that there has been no breach of the principle of equal treatment on the hearing of the complaint, and the Court or Industrial Tribunal shall uphold the complaint if the defendant does not prove that he did not commit that unlawful act.

Besides proceedings before the Industrial Tribunal and the Civil Court, the Department of Industrial and Employment Relations can institute criminal proceedings against an alleged perpetrator of any of the offences contemplated in these Regulations. In such case, any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding two thousand

and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Article 4.4

Maltese emplyment law does not provide for the possibility of taking special leave to seek employment.

No data is available as regards the granting of longer notice periods than those generally applied for, as provided for by section 36, para 5(f) of EIRA in the case of employees occupying technical, administrative, executive or management posts.

In the event of liquidation, bankruptcy or insolvency and in the event of the death of employers who are natural persons, the same notice periods as described in Para 36 (5) of EIRA apply.
The policies on "Notice of Termination of Employment" applicable to public officers are available at Section 1.14 of the Manual on Resourcing Policies and Procedures (http://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual_on_Resourcing_Policies_and%20Procedures.PDF). The policies concern notice of termination in the case of indefinite employment as well as in the case of definite employment.

These policies were incorporated in the said Manual after being originally established through clauses 13.1 and 13.2 of the Collective Agreement for Employees in the Public Service effective for the period 1 January 2011 – 31 December 2016. Clauses 13.1 and 13.2 of the quoted Collective Agreement were, in turn, based on the provisions of article 36 of Employment and Industrial Relations Act (Chap. 452 of the Laws of Malta - http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918&l=1).

This Directorate would like to clarify, however, that termination of indefinite employment (i.e. dismissal) on the part of the Government (as the employer) for reasons of "economic, technological or organisation circumstances requiring changes in the workforce", or for any other reason apart from dismissal on disciplinary grounds, is not resorted to once the probationary period has been satisfactorily completed. Whenever such factors affect the workforce, existing public officers are re-assigned to other Ministries/Departments/Entities according to the exigencies of the Public Administration. In fact, there is no provision in the above mentioned Manual to cater for the event of dismissal in the case of indefinite employment, other than dismissal on disciplinary grounds.

This Directorate would also like to point out that, in the case of public officers holding only a definite employment, whose employment is terminated, Government offers a more favourable option to public officers than the one stipulated in EIRA. Instead of paying to the Government a sum equal to one-half of the full salary to which s/he would have become entitled if s/he had continued in his/her contract for the remainder of the

time agreed upon, a public officer has the option of working a period of notice of 4 weeks' duration, or of working part of the 4-week notice period combined with the payment of a proportionate amount of the sum referred to above. These obligations are likewise applicable to the Government (as the employer) in the case of dismissal from a definite employment, other than for disciplinary reasons in terms of the PSC Disciplinary Regulations (S.L. Const. 03 - http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8971&l=1) or termination due to the loss of the right to work in Malta in terms of the Immigration Act (Chap. 217 of the Laws of Malta - http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1).

This Directorate has noted the conclusion of the Committee concerning the 1-week period of notice applicable to probationary periods. However, as regards the Public Service, attention is drawn to the provisions of Section 1.8.8 of the above mentioned Manual regarding extension or termination of the probationary period. The policy provides for termination of the probationary period by the Permanent Secretary under delegated authority, but, prior to dismissal, the officer is entitled to appeal to the Public Service Commission (an autonomous body appointed under article 109 of the Constitution of Malta [http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1] to regulate, *inter alia*, discipline in the Public Service of Malta). The decision to terminate the probationary period does not take effect unless confirmed by the Commission.

Article 4.5

An employer is not allowed to make deductions from the employee's wage except where permitted by law or by an order of a competent court.

If the employer does not allow an employee to work the full weekly hours, the employee has the right to be paid his/her full weekly wage as agreed in the contract of employment.

If an employee fails to work the total number of hours in a week as agreed in the contract of service, the employer may deduct from the total wage due to the employee only that part which corresponds to the hours lost.

Unless it is agreed in a collective agreement or specified in a contract of employment or written statement and authorised by the Director of Industrial and Employment Relations, the employer cannot impose fines on his/her employees which are be deducted from an employee's wages. Fines have to be approved by the Director and such authorisation is generally given for one year. When the one year has elapsed, the employer needs to apply again. If the fine is deemed to be excessive, the request is refused.

Suspension without pay or with reduced pay is considered as a fine and is only permitted if it is agreed in the collective agreement or a prior authorisation from the Director of Industrial and Employment Relations has been given.

If an employee changes from part-time to full-time or vice versa, and the same duties are continued, the rate of pay should not be decreased. But, if there is agreement that the post and related duties are changed, new conditions, including different rates of pay, may apply.

In the letter of engagement or signed statement that the employer is bound to give to the employee, by not later than eight working days from the commencement of employment , according to the Information to Employees Regulations (S.L. 452.83), the employer has to describe the conditions under which fines may be imposed by the emplyer. Thus, the employer has to state what rule has to be observed by the employee (example, no smoking or personal mobiles have to switched off).

Regarding art 11 (2) EIRA, this states that wages shall be paid directly to the employees to whom they are due except as may otherwise be provided by any law or in virtue of an order made by a competent court or where the employee or employees concerned agree to the contrary. The first two exceptions are strong safeguards as they are given effect to by a law or by the courts. Regarding the third exception, the employee has to agree so that a part of his wages is assigned to a third party. We have no information on what this involves in practice. It is however important to have an agreement in writing.
Regarding article 15, the latter states that except where expressly permitted by the provisions of this Act or required by any other law, or where ordered by or in virtue of an order of a competent court, or permitted in an agreement entered into between an employer or employers or an organisation of employers on the one hand and a trade union or trade unions representative of the employees concerned on the other, an employer shall not make any deductions nor enter into any contract with an employee authorising any deductions to be made from the wages to be paid by the employer to the employee.

Unless expressly provided by or under this Act or any other law, an employer shall not compute as part of the wages of an employee any other benefit or income, even though granted or paid by the employer, which is payable on account of any cause other than the contract of service.

Notwithstanding the provisions of this article, at the request in writing of an employee, the employer may make deductions from the wages of such employee for the purpose of a superannuation or thrift scheme or for any purpose in the carrying out of which the employer has no beneficial financial interest, direct or indirect. This applies for instance, in the case of the check off system, where the employee decides to pay the trade union membership fee by a deduction from his wages. This provision is also applicable where the employee agrees to have deducted from his wages an amount of money for charitable purposes.

Deductions in the form of direct or indirect payments for the purpose of obtaining or retaining employment shall not be made from the wages of an employee by an employer, or by any intermediary or labour contractor or recruiter.

It is important to note that article 36 EIRA does not envisage deductions. The compensation due in any of the circumstances listed therein is not to be deducted automatically from a wage.

Furthermore, to date, no Order was made by the Minister for Justice intended to amend the limit under which any salary or wage cannot be attached, since this is still set at €698.81.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

As regards inspections of registers it should be noted that on the 9th December 2016, after extensive consultations with the social partners, a new law on recognition of trade unions came into force. This is a new development as previously, recognition was not regulated by law.

In terms of the Recognition of Trade Unions Regulations (SL 452.112), the verification exercise which determines which union must be granted recognition by the employer is carried out by the Director of Industrial and Employment Relations. The following are the main rules established by the regulations;

(a) The verification process has to be completed within 28 days.

(b) Once recognition is granted, no one can request recognition for a period of one year from the date on which recognition is granted. Moreover, no claims can be made during the period starting three months before the expiry of a collective agreement up to three months after expiry.

(c) A request for recognition has to be made by a union to the employer, always copying the director of industrial and employment relations.

(d) The Director, upon receiving a copy of the request as stated above, shall request the following lists –

From the union –

Union members including proof of membership through a presentation of records and up to date records of payment.

From the employer –

List of employees and in case of check off, the relevant list of employees

(e) All the information has to be transmitted within 48 hours

(f) The Regulations contemplate three scenarios –

Scenario 1 –

Where there is no recognized union and a union seeks to be recognized;

If the requesting union fails to send lists above within 48 hours, union is deemed not to have more than 50% of employees as its members.

If the requesting union sends lists but has less than 50% of employees as its members, verification is complete, union does not enjoy recognition and parties are informed.

If the union does have more than 50% of employees as its members, director is to inform the parties and the union starts to enjoy recognition.

Scenario 2 –

Where there is a recognized union and another union seeks to be recognized;

If the requesting union fails to send lists above within 48 hours, union is deemed not to have more than 50% of employees as its members.

If the requesting union sends lists but has less than 50% of employees as its members, verification is complete, union does not enjoy recognition and the parties are informed.

If requesting union has more than 50% of employees as its members, a ballot is triggered. In that case, recognized union has to send lists and all information within 48 hours.

Scenario 3 –

Where there is no recognized union and two unions or more make a request for recognition;

If requesting unions do not send documents within 48 hours OR if neither has more than 50% of employees as their members, verification is complete and recognition is not granted.

If only one has more than 50% of employees as its members, recognition is granted to the latter.

If both enjoy more than 50% of employees as members, a ballot is held.

(g) The ballot –

The Director is responsible for the logistics and date of the ballot. Every party must cooperate.

Only members of unions concerned (who are employees) can participate.

Ballot based on the majority of valid votes cast.

Ballot paper is to be done in prescribed format.

The ballot shall be based on a free and secret vote.

The Director and the representatives from each union shall be the only persons present during the ballot.

The result is communicated by the Director to unions, employers and the employer has to publish the result at the workplace.

(h) Top management can be excluded from lists/ballot according to article 67 of EIRA. The employer who excludes top management must inform the Director within one week from the request for recognition.

According to Article 61 of EIRA, the Minister for Employment and Industrial Relations may establish fees to be charged for registration of trade unions and employers' associations. However, to date such fees have not been established and thus registration of trade unions and employers associations is free.

As regards measures taken in the legislation on prohibition of acts of interference by employers' and workers' organisations against each other, it should be noted that in the Recognition of Trade Unions Regulations (S.L. 452.112) which came into force on the 9th December 2016, stipulate that where there is a recognized union at the place of work, no claims for recognition by other unions can be made during the period starting three months before the expiry of a collective agreement up to three months after the expiry date of that collective agreement. Such a provision is a safeguard for the recognized union and the employer as other unions could not make recognition claims during the period when both recognized union and employer would be negotiating a new collective agreement.

As explained above, on the 9th December 2016, a new law on recognition of trade unions came into force. Such regulations on representativeness do not present in any way a direct or indirect obstacle to the founding of trade unions and non-recognized unions can still exercise key trade union prerogatives such as representing employees on an individual basis.

In Malta, collective negotiations are carried out between the employer and the recognized union. A trade union which is not recognized may participate in these negotiations if the employer and recognized union give their consent.

Furthermore, during the period 1/1/2013 to 31/12/2016, Subsidiary Legislation 234.51 – The Merchant Shipping (Maritime Labour Convention) Rules, entered into force. This subsidiary legislation essentially implements the 2006 Maritime Labour Convention. Maltese law in this regard, therefore, fully reflects and implements the international, multilaterally agreed ILO standards in the area.

Article 6 – The right of workers to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:
1 to promote joint consultation between workers and employers;
2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise
4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously
entered into.

Appendix to Article 6§4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 6.1

All categories of employees are taken into account when considering joint consultation in the undertaking, be they full time, part time, indefinite contract employees, definite contract employees etc.

Article 6.2

Amendments to the Employment and Industrial Act were effected so that members of a disciplined force, of any rank, can join a trade union of his or her choice. By "disciplined force" , it is included the naval , military and air force of the Government of Malta, the Malta Police Force, any other police force established by law in Malta, the Malta prison services and the Assistance and Rescue Force.

By virtue of these amendments, a trade union representing members of a disciplined force shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory arbitral or judicial nature on behalf of the members of the disciplinary force which it represents. Furthermore, negotiations commenced in 2016 for a new sectoral agreement which is still on-going.

Article 6.3

Regarding the court of inquiry m we reiterate that no court of inquiry has ever been established since the promulgation of EIRA. The law is also silent on whether there should be the joint consent of the parties in order to have a binding decision.

With regards to the public service, an ad hoc conciliation mechanism is applicable which is established through the public service collective agreement 2011 – 2016. Clause 8 of this agreement encourages the prompt and amicable resolution of differences between the Government as the employer and the trade unions.

This conciliatory structure is made up of a Chairman and two members, and all members are appointed in consultation with the trade unions signatories to the Agreement. The collective agreement also establishes that both parties shall endeavour to use this conciliatory structure before any industrial action is resorted to by the trade unions.

The application of this conciliatory mechanism has proved to be a very positive experience for both parties since the Government and trade unions do not have the opportunity to refer matters to the industrial tribunal.

Article 6.4

A member of a disciplined force shall be entitled to be a member of a registered trade union of his choice. A trade union representing members of a disciplined force shall not be entitled to limit its membership to any particular rank in the said force. The trade union shall be entitled to negotiate conditions of employment and to participate in dispute resolution procedures of a conciliatory, mediatory, arbitral or judicial nature on behalf of the members of the disciplined force which it represents but it shall not be entitled to take any other action in a disciplined force in contemplation or furtherance of a dispute.

It is to be noted that the right of members of the Armed Forces of Malta to be members of a trade union shall be regulated only under the Malta Armed Forces Act.

Article 21 – The right of workers to be informed and consulted within the undertaking

(Not accepted)

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

(Not accepted)

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1 to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2 to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix to Article 26

It is understood that this article does not require that legislation be enacted by the Parties.
It is understood that paragraph 2 does not cover sexual harassment.

Article 26.1

Article 9 of the Equality for Men and Women Act defines sexual harassment and addresses the liability of employers and means of redress. Sub-paragraph 2 states that:

I. Persons responsible for any work place, educational establishment or entity providing vocational training or guidance or for any establishment at which goods, services or accommodation facilities are offered to the public, shall not permit other persons who have a right to be present in, or to avail themselves of any facility, goods or service provided at that place, to suffer sexual harassment at that place.

II. It shall be a defence for persons responsible as aforesaid to prove that they took such steps as are reasonably practicable to prevent sexual harassment.

Article 17 of the Equality for Men and Women Act gives power to the NCPE Commissioner to initiate investigations on cases that violate the right to dignity at work on the receipt of a complaint in writing. The Commission may itself refer the issue to the competent civil court or to the Industrial Tribunal for redress.

The table below illustrates the number of complaints on sexual harassment investigated by NCPE for the period 2013-2016.

Complaints on sexual harassment investigated by NCPE 2013-2016				
Year/ Sexual Harassment	**Women**	**Men**	**Ex-Officio**	**Total**
2013	6	5	1	**12**
2014	7	3	0	**10**
2015	6	2	1	**9**
2016	4	0	0	**4**

In addition to the social media, articles, website and such, NCPE also developed a poster in 2015 to reiterate the illegality of sexual harassment and NCPE's role in this regard. This poster was disseminated to local councils; to entities and departments within the public administration; and to relevant stakeholders. The poster is available on:
http://ncpe.gov.mt/en/Documents/Updates%20and%20Upcoming%20events/annual%20conference%202015/sexual%20harassment%20A3%20HI.pdf

NCPE has also provided training sessions covering the issue of sexual harassment throughout these years, with 23 sessions in 2013, 48 in 2014, 45 in 2015 and 32 sessions in 2016. These sessions provide further information on the rights and responsibilities related to sexual harassment and were delivered to a wide range of participants including students, employers and employees in the public and private sectors, asylum-seekers and union officials.

NCPE offers assistance on policy drafting regarding equality and sexual harassment policies with both private and public entities. NCPE ensures that these policies are not only relevant to the needs of the company but also, that they foster equality, in line with legislation on equal treatment.

The aforementioned Equality Mark Certification is also important to prevent and take action on sexual harassment at the work place. One of its criteria is, in fact, that companies have in place policies and initiatives on equality and sexual harassment. NCPE provides the necessary assistance to companies to draft and/or improve on such policies.

Also, NCPE issued a newsletter in June 2015 especially dedicated to employers, covering various topics including the Equality Mark Certification, and the legal obligations of employers in relation to sexual harassment, thus raising more awareness on equality between men and women at the work place.

Article 26.2

NCPE works to combat discrimination based on gender in the access to and supply of goods and services by virtue of the Access to Goods and Services and their Supply (Equal Treatment) Regulations (LN 181 of 2008). According to this Legal Notice:

> *Harassment and sexual harassment shall also be deemed to constitute discrimination for the purposes of these regulations. A person's rejection or submission to harassment or sexual harassment may not be used as a basis for a decision affecting that person.*

Moreover, NCPE also works to safeguard equal treatment on the grounds of racial and ethnic origin in the access to and supply of goods and services by virtue of the Equal Treatment of Persons Order (LN 85 of 2007):

> *harassment shall be deemed to be discrimination when it is related racial or ethnic origin and takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.*

NCPE disseminates information on rights and responsibilities emanating from its remit through participation in media programmes as well as through training sessions on specific topics with different stakeholders.

Article 28 – Right of Workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice"

An employees' representative has the right not to suffer any detriment including dismissal because of any activity that he has undertaken in his function as an employees' representative. If he considers that he has been victimized, discriminated or harassed in any way, he can seek redress at the Industrial Tribunal. If the Tribunal decides in favour of the employee representative, the Tribunal can award compensation.

In determining the amount of such compensation, the Tribunal will take into consideration the real damages and losses incurred by the employees' representative as well as other circumstances such as the employees' representative's age and skills as may affect the employment potential of said worker. It should be noted that there is no capping or ceiling which limits the amount of compensation that the Tribunal may order.

Employees' representatives would still enjoy the protection afforded above even after such employees' representatives would have ceased to function as employees' representative.

It should be noted that in Regulation 8 of the Employee (Information and Consultation) Regulations (S.L.452.96) it is stipulate that the employees' representative is entitled to take reasonable time off with pay during his or her working hours in order to perform his or her functions as employees' representative.

Moreover, in Collective agreements, it is normally stipulated that the employees' representative may be allowed all the facilities in order to execute his obligations as an employees' representative such as the possibility of posting notices on the company's notice board (sometimes the recognized union would have its own notice board at the place of work) the possibility of distributing information leaflets, the possibility of talking to workers etc.

Article 29 – Right to information and consultation in procedures of collective redundancy

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix to Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

No new developments to report during the reporting period.

Additional information - Thematic Group: Employment, Training, and Equal Opportunities, review period 01/01/2011 to 31/12/2014.

Article 1 – Right to work Paragraph 4

Although the law is silent in this regard, the prevailing practice is that an employee is allowed time off from work, and this is usually on a paid basis, in order to attend training as directed by the employer. In the case of training which has nothing to do with his/her employer and the place of work, the employee can utilize the entitlement of vacation leave. In the latter case, vacation leave is paid. An employee is normally entitled to 192 hours of leave per year.

Article 10 – Right to vocational training Paragraph 3

Although the law is silent in this regard, the prevailing practice is that an employee is allowed time off from work, and this is usually on a paid basis, in order to attend training as directed by the employer. In the case of training which has nothing to do with his/her employer and the place of work, the employee can utilize the entitlement of vacation leave. In the latter case, vacation leave is paid. An employee is normally entitled to 192 hours of leave per year.

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

The law is silent on the use of comparisons of pay and jobs outside the company concerned. However, in equal pay litigation cases, the Industrial Tribunal has discretion and is empowered to regulate its own procedure. Thus the Tribunal is not prohibited by law to make such comparisons.

On the issue of collective agreements and gender equality, the Employment and Industrial Relations Act (CAP 452), in article 5 thereof, holds that where the conditions of employment are prescribed in a collective agreement, the employer or employers being a party thereto shall, within fifteen days of the signing of such agreement, send to the Director of Industrial and Employment Relations a copy thereof duly authenticated. The Director is, in terms of law, a mere recipient of the collective agreement.

The Equal Treatment in Employment Regulations recognize the role which collective agreements may play in promoting equality of treatment, including gender equality. Indeed, the very first regulation holds that the regulations are without prejudice to the introduction and implementation of provisions in collective agreements or any other agreement entered into between employers and employees, which lay down anti-discrimination rules as long as the latter rules respect the minimum requirements in the regulations themselves. Thus no collective agreement can go below the minimum legal requirements of this law. The minimum requirements have to be adhered to at all costs.

Indeed, regulation 13 continues to build upon the preceding rule by stating that "Any provisions contrary to the principle of equal treatment in any law, individual or collective contracts or agreements, internal rules of undertakings, or rules governing any registered organisation in terms of the Act, shall, on entry into force of these regulations, be considered null and void."

Equal Rights

NCPE did not have any cases of alleged discrimination between women and men in pay where comparison across companies was required.
In 2015, an investigation was concluded by NCPE's Commissioner determining the occurrence of gender discrimination in the wage of a female employee. A press statement was issued to raise further awareness with employers to enhance transparency in the way wages are set.

In this case, the complainant alleged that she was receiving a lower wage than the male employees who were in a similar or same rank and responsibilities. NCPE's Commissioner noted that while all of the managers' wages differ in amount, the gap between the male managers' wages is smaller than the one between the average male manager wage and the complainant's wage. Following the opinion issued in relation to this complaint, NCPE was informed that negotiations between employer and employee (complainant) resulted in a substantial increase in salary when compared to her male counterparts.

Equal opportunities

NCPE raises awareness on the gender pay gap and on the promotion of equal opportunities to combat gender segregation in employment through its participation in various programmes on the media.

Moreover, various articles were published by NCPE on the printed media on the benefits of having more women on boards and decision-making positions. Press Releases were also issued in 2015 to raise further awareness on the gender pay gap.

NCPE is working on a set of initiatives[1] (Jan 2016 – December 2017) to raise awareness on the importance of men's role in gender equality; to break down stereotypes tied to traditional gender roles; to highlight the benefits of sharing family and domestic responsibilities through the uptake of various incentives by women and men; and to increase overall awareness of the various types of family friendly measures and the benefits and responsibilities of making use of such measures.

- An online social media campaign, combined with a roving exhibition van visiting post-secondary and tertiary educational institutions are raising awareness on gender equality, equal economic independence, the sharing of

[1] These initiatives are carried out as part of the EU co-funded project *'Equality Beyond Gender Roles' JUST/2014/RGEN/AG/GEND/7785*.

domestic duties and care responsibilities, and the importance of the creation of balance between work and private life.

- Students participated in a drama activity entitled 'Theatre in Education' with the aim of challenging notions tied to traditional roles of men and women.
- Training is being provided to employers with the aim of providing information on family-friendly measures and discussions on the topic.
- A Business Breakfast was organised for employers to discuss family friendly measures (FFMs) and flexible working arrangements.

OPM Circular 15/2012: Gender Mainstreaming – In Practice: The Committee asks information on the results of the monitoring and evaluation made by NCPE in this sense.

Since 2012, the assessment and monitoring of the implementation of gender mainstreaming in the public administration is carried out through an annual report compiled by departments and entities on the measures taken and the progress achieved in the sphere of gender equality and gender mainstreaming. A reporting template is forwarded to entities and departments to facilitate the annual reporting on the initiatives taken. NCPE has also strengthened the reporting procedure by simplifying the template utilised for this reporting requirement, and provides training on the gender mainstreaming strategy and the respective reporting obligations.

A significant increase in the number of reports received was evident in 2016 (110 reports in 2016 compared to 58 reports in 2015). NCPE receives these reports and carries out an analysis of the information received. Based on this analysis, NCPE prepares a report for the attention of the Permanent Secretary of the Ministry for European Affairs and Equality (MEAE) on the implementation of gender mainstreaming in the public sector with recommendations on the way forward.

In order to ensure that there is an understanding of gender mainstreaming and the related reporting obligations in the public sector and service, NCPE provides training and information sessions to public officers on the concept of gender mainstreaming, the updated reporting template and the related reporting process.

Tools on gender mainstreaming are available online on NCPE's website.

NCPE will continue working to foster a stronger commitment to the implementation of gender mainstreaming.

Gender Balance in Decision-Making:

NCPE concluded the project Gender Balance in Decision-Making in December 2015[2].

- Two research studies were published, providing findings and recommendations that can be utilised by policy makers to improve the gender balance in decision-making positions: One analysed the gender-balanced representation in decision-making in various fields and what is hindering this balance; and another on gender quotas and

[2] *Gender Balance in Decision-Making ESF 3.196 is an EU co-funded project.*

related measures that enhance the gender balance in the boardrooms and gender electoral quotas.

- The Directory of Maltese Professional Women aimed at giving further visibility to professional women and their competences is online on NCPE's website. Throughout 2016, more professional women registered on the Directory. NCPE continues to raise awareness on this tool through its website, social media, newsletter, articles in newspapers and participation in programmes on the media. By mid-June 2017 the Directory listed two hundred thirty-four profiles of professional women.

- A mentoring programme empowered thirty women to participate in decision-making positions. They were guided and supported by professionals who occupy high-level jobs to acquire the necessary knowledge and skills. Mentees reported that this programme was beneficial to their professional lives. It provided them with new insights and further prospects for their career advancement, as well as personal skills and competences in relation to decision-making. Some mentees reported positive career progression as a result of this experience.

  Following this mentoring programme, NCPE also held a workshop to explore the possibilities to follow-up or develop further mentoring programmes.