



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

27 March 2018

Case Document No. 5

University Women of Europe v. Portugal
Complaint No.136/2016

**FURTHER RESPONSE OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 15 March 2018

University Women of Europe (UWE) v. Portugal

Complaint no. 136/2016

Portugal's response

Following the ECSR President's invitation, Portugal submits its response to UWE allegations registered in January 11.

I. ON THE ARGUMENTS RAISED BY UWE

On the structural approach to national equality policies and general legislative framework

Contrary to what is alleged in UWE's complaint, Portugal has been actively committed to changing the situation of systemic disadvantage that women suffer, namely in terms of decision-making and gender pay gap.

The prosecution of public policies in the fields of parenthood and equality are one of the compromises assumed by the Portuguese XXI Constitutional Government.

In this sense, the current Government's program establishes as fundamental the creation of conditions for the exercise of a responsible parenthood, promoting conciliation between work and family, as well as equality on family responsibilities. The actual government has also assumed the compromise to develop policies that assure equality between women and men, namely to implement the constitutional principle "equal wage for equal work or work of equal value".

Also in its program, the Government planned to work with social partners to introduce in collective agreements measures regarding work-life balance.

In a very fundamental way, the Government's policies clearly adopt a structural approach that tackles the various dimensions of discrimination against women, challenging the stereotypes that are their cause and effect. It is only by way of integrated policies that address all levels of women's disadvantages that effective transformation can be brought about.

For this purpose, the Government is developing, since 2015, an Agenda for Equality in the Labour Market and Companies (Agenda for Equality) which prioritises five interconnected areas: sexual segregation of professions, parenthood, work-life balance, decision-making, and pay disparities.

In this agenda, the Government clearly assumes the aforementioned structural approach, by developing parallel and articulated actions in all five areas. Concrete measures in these areas are better explained below.

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

This agenda has been integrated in the new National Strategy for Equality and Non-Discrimination 2018-2030 (Strategy 2030) which was approved on the 8th of march of 2018. It includes three action plans in the areas of

- Equality between women and men.
- Violence against women and domestic violence.
- And discrimination on the basis of sexual orientation, gender identity and expression, and sexual characteristics.

These plans define the concrete measures to be implemented in the first four years of duration of the strategy, in each area.

For the first time, this new strategy includes an express focus on intersectionality (multiple disadvantages) as a guiding principle, and is premised on working closely with social partners, municipalities and civil society

The action plan to promote equality between and men that is part of this new strategy incorporates all areas of the Agenda for Equality, and defines concrete targets and measures in all five. Also, innovative areas are added such as scientific and technological development, including inter alia through the promotion of digital skill among girls and older women aiming to ensure an equal participation in the future's digital economy.

Finally, it must be also underlined that annually the Government is obliged, under the Law 10/2001, May 21st, to present a Report to the Parliament on the progress achieved on gender equality in labour, employment and vocational training in Portugal.

a) Concerning the representation of women on decision-making positions

According to the last EIGE report on gender equality on Power and Decision Making¹, “despite political commitment and ongoing efforts to redress inequalities, women and men across the EU still face unfair challenges in many areas of life. This is the case with decision-making (...) however and despite the negative impact from economic crisis in Europe”, notably in Portugal there are some “positive trends”.

Recent data from the National Institute for Statistics (INE²) show, that in December 2017, the active rate for women (15 to 74 years old) is 62.2%. This strong presence of women in the labour market demonstrates that there are policies for promoting women's participation in the labour market in Portugal which is an important issue to achieve gender equality.

UWE accuses the Portuguese State of lack of results, slow progress and maintaining underrepresentation of women in decision-making positions.

¹ <https://euagenda.eu/publications/gender-equality-in-power-and-decision-making-review-of-the-implementation-of-the-beijing-platform-for-action-in-the-eu-member-states>

² Instituto Nacional de Estatística (INE) is the Portuguese acronym.

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

Regarding decision-making, mention to Law 67/2017, 1 august, was already made in Portugal's submission in reply to UWE's complaint.

This initiative is fundamental to produce an actual change in the number of women and men in the boards and supervisory bodies of public and listed companies, raising it to at least 33,3%. This threshold is applicable to public companies as from 1 January 2018 and listed companies from 1 January 2020 (until then, 20% applies).

These companies must notify the Commission for Citizenship and Gender Equality (CIG) of any changes to the composition of their boards and supervisory bodies, within 10 days. This allows for close monitorisation of the impact of this law.

Adding to that minimum threshold, this law also imposes on all companies the adoption of equality plans that include, among others, work-life balance issues, equality in working conditions, and pay equality.

In this connection, the Commission for Equality in Labour and Employment's (CITE) is currently developing a guide for companies regarding these equality plans. The purpose of this guide is not only to help companies but also to facilitate monitorization of these plans by CITE and CIG and the issuing of recommendations. The guide will include sections on self-assessment and monitorization.

This tool will directly impact the companies' internal policies in terms of women's protection against discrimination at different levels.

Finally, the Government is initiating a project to create a platform that, among others, aims to facilitate monitorization of compliance with this law and produce permanently updated and systematised information in this regard, namely by facilitating reporting duties for companies and information-sharing between public entities.

Data collected from the companies report "Relatório Único" (RU) shows that 40.5% of the senior managers of private sector companies were women. In companies with 50 to 249 employees, the rate of feminisation reaches 46.8%. The RU is mandatory for employers covered by the Labour Code and specific legislation deriving from it; meaning that all companies with employees at their service are obliged to submit the RU.

The RU is an important tool to support labour inspection activity and provide data for statistical purposes.

To accelerate the needed balance in decision-making in public life, also on the 8th march this year, the Portuguese Government approved two bills, that will now go to Parliament.

One that establishes a minimum threshold of 40% amongst top civil servants, as well as in candidate lists and non-elective management and supervisory bodies of universities and in candidate lists and non-elective boards, disciplinary and supervisory bodies of public associations such as professional associations.

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

And a second bill that proposes fundamental amendments to the so-called “Parity law” regarding political decision-making (Law 3/2006, 21 august). This bill raises from 33% to 40% the quota of women in, among others, candidate lists for local, parliamentary and European elections. It proposes other three very important innovations:

- To ensure that women are placed in winnable seats, the rank-order rule now requires that the top two candidates are not of the same sex, and then that one out of every three candidates is of the underrepresented sex.
- Vacancies should be filled by the next person in the list belonging to the same sex.
- If a non-compliant list is not corrected, it is rejected.

The bill further establishes that, every five years, the Government presents a report to the Parliament on the impact of the law, including suggestions for improvement.

Looking at the public administration sector, as a significant employer of people with high qualifications. According the most update figures women in public sector³ represent 60% of the total. In 2016, 54.5% of middle managers and 32.7% of top managers were women⁴. These positions are occupied by women with high levels of qualifications. Experience in middle management functions is a relevant factor for career progression, so it will be expected that in the next few years women will also occupy more than 50% of top management positions in the public administration sector.

According to data from the INE⁵, in 2016, of the employed population in the professional group "representatives of the legislative power and executive bodies, executives, directors and executive managers" 35.8% were women, and we should take into account that in the period of financial crisis one of the impacts was the reduction of the number of leadership positions, especially in the most feminized sectors. Several studies on public sector adjustments in Portugal during the crisis reported extinction of public bodies having impact on employees and middle and top manager's reduction⁶.

b) On enabling female workers to exercise their rights

The Portuguese Labour Conditions Authority (ACT⁷) has been increasing the effectiveness of the administrative processes in the recent years. In this context, ACT continued to focus on promoting the reduction of the number of pending cases. In 2016 the administrative proceedings that were pending decreased 58% compared to the year of 2013.

³ https://www.dgaep.gov.pt/upload//DEEP/SIEP4T2017/DGAEP-DEEP_SIEP_2017T4_15022018.pdf

⁴ <http://cite.gov.pt/pt/destaques/complementosDestqs2/Relat%C3%B3rio%202016%20Lei%2010%202001.pdf> (Page 57)

⁵ <http://cite.gov.pt/pt/destaques/complementosDestqs2/Relatório%202016%20Lei%2010%202001.pdf> (Page 54)

⁶ ILO/EC, Presentation made at the ILO/EC "Public Sector adjustments in Europe" by Helena Rato, Portugal;

ILO, Talking through the crisis: Social dialogue and industrial relations trends in selected EU countries.

⁷ Autoridade para as Condições de Trabalho (ACT) is the Portuguese acronym.

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

Noteworthy is also the significant increase of the number of convictions in court when compared to previous years - up 63% compared to 2015 - which reflects the investment in this area⁸.

ACT will continue to develop specific programs related to gender equality in its annual plans⁹ in order to reduce and eliminate discrimination, as it did in the last years:

“Promote gender equality and the dignity of working conditions; identify, eliminate and/or reduce discrimination in hiring, remuneration systems, vocational training and performance assessments; enhance the gender dimension in inspection activities; train and raise the awareness of labour inspectors for the acquisition of specific skills in the identification and characterization of gender-based discrimination in the workplace, in particular indirect discrimination; implement inspection activity support instruments which make it possible to indicate situations of discrimination and noncompliance with labour legislation in the field of gender equality.”

The National Strategy for Safety and Health at Work 2015-2020: "Towards Safe, Healthy and Productive Work" sets the overall framework for the prevention of occupational risks and the promotion of well-being at work for 2015-2020. It was approved by the Resolution of the Council of Ministers no. 77/2015, of September 18, and entered into force on September 21 of the same year.

This National Strategy 2015-2020, in which ACT plays a crucial role, is structured in 31 measures, based on 3 strategic objectives and 6 operational objectives. Measure 3 provides for the development of prevention actions aimed at specific audiences, namely women.

Therefore, during the years 2015 and 2016, ACT, in cooperation with the social partners and other institutional partners, developed a set of occupational risks prevention actions targeted at specific audiences: 16 information and awareness-raising sessions targeted at 410 people.

ACT also publishes the proceedings adopted in the context of equality and non-discrimination.¹⁰

CITE, as the national mechanism responsible for pursuing gender equality in work and employment, the protection of maternity and paternity and the reconciliation of professional, family and personal life, undertakes a regular activity of general information about these rights, by increasing the rights' literacy of workers, provides legal support to alleged sex_ discrimination victims, as well as receives complaints and delivers legal opinions concerning equality and non-discrimination in labour and employment. By fulfilling its mission, CITE is facilitating access of sex discrimination victims to justice, namely women who continue to be discriminated in the labour market.

⁸ Data provided by ACT

⁹ The plans and strategies of working conditions authority are available in [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/PlanoActividades/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/PlanoActividades/Paginas/default.aspx)

¹⁰ [http://www.act.gov.pt/\(pt-PT\)/CentroInformacao/Igualdade%20laboral%20entre%20homens%20e%20mulheres/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/CentroInformacao/Igualdade%20laboral%20entre%20homens%20e%20mulheres/Paginas/default.aspx)

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

Article 20 of the Constitution of the Portuguese Republic establishes that all persons shall have effective access to justice and to courts, in order to defend their legally protected rights and interests. Justice cannot be denied on the basis of financial constraints. Thus, the legal framework on access to justice and to courts is enshrined in Law no. 34/2004, of July 29, comprising legal information and legal protection which covers the modalities of legal advice and legal aid.

Nationals and EU citizens, as well as stateless persons with valid EU residence permit, that demonstrate insufficient financial means, are entitled to legal protection.

The legal framework on legal aid aims at facilitating and assisting citizens in their access to courts, so as to ensure that nobody is denied the right to either enforce or defend their rights in a court of law due to economic insufficiencies or by reason of their social or cultural status.

Legal aid shall be granted regardless of the applicant's procedural position and of legal aid already having been granted to the counterparty.

The principle of equality is furthermore guaranteed by Article 13 of the Portuguese Constitution.

According to Law no. 34/2004 (Article 8-A), people lacking financial means are entitled to free legal representation in court as well as legal advice.

Regardless of financial condition, article 7 of the Code of Labour Procedure (Decree Law no. 480/99, of November 9) provides that: “Without prejudice to the legal aid system, where the law so requires or the parties so request, the Public Prosecutor's Office shall exercise the sponsorship of workers and their families”.

The Labour Code (Law no. 7/2009, of February 12), in the Chapter I, Subsection III – Equality and Non-Discrimination, provides for the burden of proof to be reversed in case of a discrimination claim. Article 25, no. 5, provides that “It is incumbent on those who claim discrimination to indicate the worker(s) in relation to whom they considered to be discriminated against, and the employer must prove that the difference in treatment is not based on any discrimination factor”, guaranteeing that the worker does not cease to exercise his/her rights due to difficulties in obtaining proof.

To protect workers who have been victims of harassment, and also because reprisals often arise in the form of harassment, the Portuguese Labour Code has been amended by Law no. 73/2017, of August 16, which introduced a specific provision stating that the complainant and the witnesses indicated by the employee cannot be sanctioned disciplinarily by the employer (article 29, no. 6, of the Labour Code, approved by Law no. 7/2009, of February 12).

This amendment to the Labour Code also clearly establishes that employers must adopt codes of conduct to prevent and combat harassment in the workplace and must initiate disciplinary procedures when becoming aware of harassment situations.

c) About the lack of monitoring and control of the implemented policies

The new National Strategy for Equality and Non-Discrimination 2018-2030 pays particular heed to the need to create instruments that allow for close and rigorous monitoring.

Therefore, this very recently approved strategy includes, for the first time, output, outcome and impact indicators with clear targets to be met. Moreover, the strategy expressly establishes that each of the three action plans must be evaluated on the third year of duration in terms of processes, and in order to feed the revision of the plan itself. Adding to this, implementation reports must be produced every year of implementation and in the end of each four-year plan of action.

The 1st Report on Wage Differences by Economic Activity's¹¹ main purpose was to draw a picture of the situation with respect to the gender pay gap by branch of activity. And according to its legal basis, the Report should be seen as part of a set of tools and public measures adopted in order to mitigate the impact of the crisis on female employment.

As stated in the Portugal's submissions on the merits of the complaint, in October 2017, the 1st Report led to the identification of recommendations for policies addressed to public entities and social partners.

The tools available at CITE's website were developed to allow companies to self-assess in terms of pay gap. It was designed to allow companies to self-regulate in this matter and voluntarily adopt measures and practices that can correct the unjustified gaps. In the last year (2017), 860 users logged in 1004 times to the Gender Pay Gap Calculator and 159 completed the self-assessment survey, these numbers reveal the relevance of the tools.

The tools are being upgraded to a more efficient collection of data resulting from their use, as well as a better articulation of the tools with the measures foreseen under the new National Strategy for Equality and Non-Discrimination 2018-2030 – Portugal + Equal.

d) Regarding the alleged absence of information on the powers, human resources and budget of the gender equality bodies

CITE has legal powers aimed at protecting against discrimination, namely, providing legal services and information, answering employees and employers queries about applicable legislation, give assistance to victims of sex discrimination at work, employment or vocational training in cooperation with judicial bodies and the conciliation of disputes, in case of individual conflict, when requested by both parties.

The Opinions (“Pareceres”) issued by CITE that are related with the dismissal of pregnant worker, any worker who has recently given birth or who are breastfeeding, as well as the legal opinions related with the refusal of part-time or flexitime work for male or female workers with one or more children under the age of 12, are legally binding.

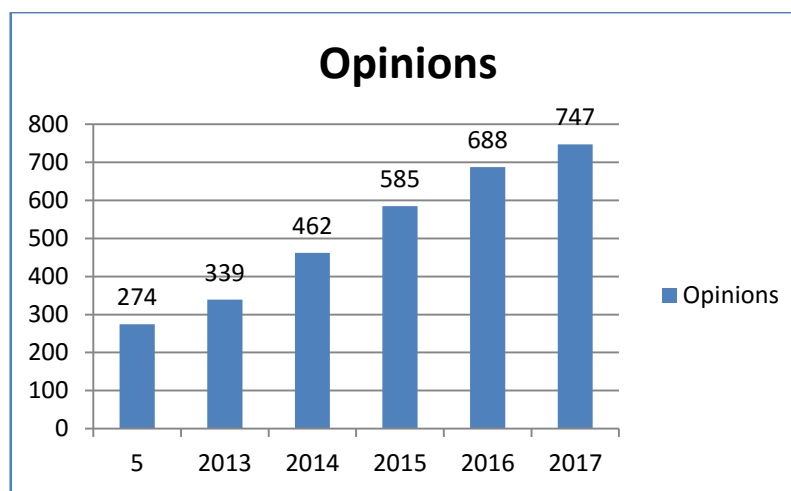
¹¹ http://cite.gov.pt/asstscite/downloads/legislacao/ResolCM_13_2013.pdf

CITE's opinions related to the violation of other legal provisions on equality and non-discrimination between women and men in work and employment are not legally binding administrative decisions, but if the employer does not follow CITE's legal opinion the worker may appeal to the courts which rarely contradict the opinion delivered by CITE.

As an evidence of the CITE activity it is the amount allocated to pursue the mission. The budget increased from 451 198.00€ in 2017 to 826 607.00€ in 2018. This amount includes core funding and project based funding.

The salaries of CITE's employees who are civil servants, as well as the CITE's premises are not included in this budget. CITE has 22 employees (March 2018).

Legal opinions issued by CITE each year from 2012 to 2017:



Source: CITE

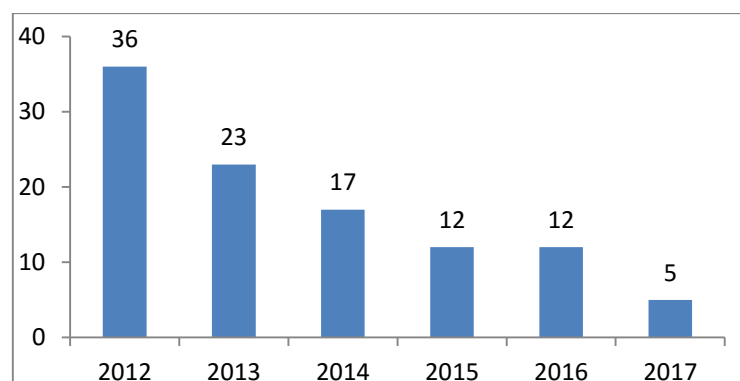
The increase in the number of legal opinions demonstrates the usefulness of the service provided by CITE, the recognition by users and also a better knowledge of workers' rights due to the awareness campaigns developed by CITE in cooperation with the National Authority for Labour Conditions (ACT).

CITE also reports that the number of complaints on discrimination has been declining since 2014.

Every year there are complaints that after being addressed by CITE are sent to the ACT for assessment, visit to the workplace and eventual inspection action. The Labour Inspectorate has, among others, the specific obligation of ensuring compliance with legislation regarding equality and non-discrimination between women and men at workplace and has the mandate to impose fines.

Number of complaints CITE sent to ACT, by year:

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL



Source: CITE

Response to employees and employers about applicable legislation, by year and means of contact

	2012	2013	2014	2015	2016	2017
In person	125	109	124	80	69	73
Free phone line	1844	2041	2213	2031	2201	2175
Post/e-mail)	272	363	259	1251	1450	1761
TOTAL	2241	2513	2596	3362	3720	4009

These figures show that people have tended to focus on non-presence service, a free of charge service and accessibility of new technologies also influence this trend.

The Portuguese labour inspectorate exists for 100 years and operates under the steering of ACT. The organic law was initially defined by Decree-Law n. 326-B/2007, of September 28, and succeeded to the General Labour Inspectorate (IGT) and the Institute for Safety and Health at Work (ISHST).

Nowadays the ACT activity is ruled by the Regulatory Decree n. 47/2012, of July 31, and is integrated in the Ministry of Labour, Solidarity and Social Security (MTSSS). This organic law aims to promote an organizational improvement and the rationalization of the structures at central level and, particularly, of decentralized services, promoting a thorough restructuring and reorganization of the ACT units in order to optimize human and financial resources.

The ACT mission's is to promote the improvement of working conditions through:

- Enforcement of labour standards;
- Enforcement of legislation on safety and health at work;
- promoting policies to prevent occupational hazards.

The ACT is managed by an Inspector General assisted by two Deputies General Inspectors. Recently a new board was appointed. For the first time for the top positions two women were appointed. The headquarters is in Lisbon and exercises powers throughout the mainland. The nuclear structure of ACT integrates the Central Services (located in Lisbon) and local branches all over the country. This decentralized structure is intended to ensure a presence throughout all the national territory, in order to ensure the proximity to the recipients of its action.

The ACT has an OSH Advisory Committee composed by one representative of social partners.

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

According to the Decree-Law no. 102/2000, of June 2, labour inspectors have technical autonomy and do not need approval to carry out inspection procedures, when there is any infraction of the regulations falling under the scope of their competencies. They are independent of outside interests, as guaranteed by their statute of public employee.

Labour inspectors and the leaders of local branches are forbidden to carry out any other activity that may affect their independence, impartiality, authority or the dignity of their function (article 22 of the Decree-Law no. 102/2000, of June 2).

The ACT has the necessary powers of authority resulting from its statutes in order to promote the improvement of working conditions, in line with the principles of the International Labour Organisation Conventions (ILO) 81, 129 and 155¹² (articles 1, and 2 of the Regulatory Decree no. 47/2012, of July 31).

Also, as a clear sign of the importance of the law enforcement, ACT is making efforts to increase the number of labour inspectors. So, in 2016 there were 314 inspectors, in 2018 in result of a new public recruitment 37 new labour inspectors are already following the initial training and it is also taking place a recruitment process for more 80 new labour inspectors. In total, it is expected a reinforcement of 117 (37+80) inspectors, which means a total of 431 labour inspectors.

All the labour inspectors will have specific training on equality and non-discrimination issues.

According to their legal statute (Decree-Law no. 102/2000, of June 2), labour inspectors:

a) respond to requests from employers and employees and their representatives and to complaints regarding the application of working conditions laws, including non-discrimination;
b) inform and advise employers and employees and their representatives on all matters of its competences, including non-discrimination, in different ways:

- personally in the local branches;
- during inspective visits:
- through written information;
- through a telephone line: 180.000 persons (2016);
- through social media (facebook¹³, youtube, twitter: 1582 information (2016);
- in workshops and seminars;
- through mass media.

The ACT also developed information materials available in the website, such as: FAQ, legislation, check-lists, mandatory forms and a simulator for calculating the compensation due for termination of employment contracts, in 2016 the accesses reached 2.5 million .

To carry out its mission, in line with ILO Conventions, labour inspectors are allowed to:

- visit and inspect any workplace at any time of the day or night and without prior notice;

¹² All three ratified by Portugal.

¹³ <https://pt-pt.facebook.com/ACT.GOV.PT/>

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

- interrogate the employer, workers and anyone else who is in the workplaces on any matters concerning compliance with law provisions, regulations or agreements, alone or before witnesses;
- adopt warnings;
- adopt infringement proceedings, issuing notices of infringement, making reports to other entities or undertaking preliminary investigations.

In addition to the powers mentioned above, the Portuguese labour inspectors have others established by their professional statute which are relevant for the carrying out of their work, including:

- ordering that, within a deadline, the modifications needed to ensure compliance with legal regulations are carried out at workplaces;
- notifying the employer to adopt prevention measures in the area of occupational risk assessment;
- obtaining the collaboration and being accompanied by properly qualified experts and technical staff;
- promoting the cooperation of entities with competence in the area of working conditions;
- reporting situations regarding working conditions to other entities in the context of their competencies;
- instructing the employer to determine how much is owed to the workers or to social security
- requesting the collaboration or intervention of police authorities in those cases the inspection action is blocked;
- reporting to the Public Prosecutor those criminal situations described in the law, including those foreseen in the Labour Code or those in the Penal Code.

All inspection data is recorded in a system which allows reading and cross-checking of information (SINAI). The system also allows reporting the activity, doing some reports and statistics and some procedures directly into the system. This process is of course with full respect of fundamental rights to privacy and data protection.

The ACT imposes fines and publishes the violations that constitute serious offenses in the website¹⁴ as well as information related with non-discrimination¹⁵.

All the results of labour inspectorate are public and published in the institutional website¹⁶ as well as the information about the specific national action developed to promote gender equality at work.¹⁷

¹⁴ [http://www.act.gov.pt/\(pt-PT\)/CentroInformacao/San%C3%A7%C3%B5es%20de%20publicidade%20aplicadas/Documents/sancoes_ assorias_jan18.pdf](http://www.act.gov.pt/(pt-PT)/CentroInformacao/San%C3%A7%C3%B5es%20de%20publicidade%20aplicadas/Documents/sancoes_ assorias_jan18.pdf)

¹⁵ in [http://www.act.gov.pt/\(pt-PT\)/CentroInformacao/Igualdade%20laboral%20entre%20homens%20e%20mulheres/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/CentroInformacao/Igualdade%20laboral%20entre%20homens%20e%20mulheres/Paginas/default.aspx)

¹⁶ [http://www.act.gov.pt/\(pt-PT\)/SobreACT/DocumentosOrientadores/RelatorioActividades/Paginas/default.aspx](http://www.act.gov.pt/(pt-PT)/SobreACT/DocumentosOrientadores/RelatorioActividades/Paginas/default.aspx)

¹⁷ [http://www.act.gov.pt/\(pt-PT\)/CentroInformacao/Igualdade%20laboral%20entre%20homens%20e%20mulheres/Paginas/A%C3%A7%C3%A3onacionaldepromo%C3%A7%C3%A3odaigualdadeg%C3%A9neronotrabalho.aspx](http://www.act.gov.pt/(pt-PT)/CentroInformacao/Igualdade%20laboral%20entre%20homens%20e%20mulheres/Paginas/A%C3%A7%C3%A3onacionaldepromo%C3%A7%C3%A3odaigualdadeg%C3%A9neronotrabalho.aspx)

The infractions to the majority of the Labour Code rules about discrimination constitute very serious offenses and labour inspectors adopted legal proceedings such as the application of fines, so the statement mention in the GEFDU Réplique's, that there are no consequences for the violation of these rights, is false.

e) Regarding the alleged lack of independence of the equality bodies

The CITE is an equality body with a tripartite and equilateral composition, having four members from the state, four members from the trade union confederations (CGTP-IN and UGT) and four members of the employers' confederations (CCP¹⁸, CIP¹⁹, CAP²⁰ and CTP²¹), whose mission is the promotion and monitoring of social dialogue on gender equality, amongst other areas.

It is a combined mechanism, as its structure is between a single headed equality body and a collegiate-headed body. It has a president and a vice-president nominated by the minister responsible for the employment/labour area and a "board" of 12 members who are nominated by the government and by the social partners. This tripartite and equilateral board gives independence to CITE's decisions on discrimination cases, which are all discussed at the tripartite meetings that take place twice a month, or exceptionally by the initiative of the presidency or by request of a third of its members.

The tripartite commission validates a deliberation if the majority of its members are present. The deliberations are always based on the votes of the majority. The president is entitled to casting vote. CITE's President cannot decide on her/his own without a deliberation of the CITE's commission, and this commission is tripartite and equilateral. So, there is no doubt that CITE is an independent equality body.

f) About equal pay, wage statistics and wage comparisons

In Portugal, as in the majority of countries the collection, production and the dissemination of the statistical indicators are being continually improved.

For instance regarding gender pay gap, by the statistics developed by the Strategy and Planning Office of the Ministry of Labour, Solidarity and Social Security (GEP²²) using existing sources (such as staff tables, social security data and earnings surveys) is being developed:

- a Barometer of gender wage inequality for branch (testing in the first half of 2018). It allows identifying a national indicator of wage inequality, by sector of activity.
- Balance of the gender wage inequality by company (implementation in the first half of 2019). It allows defining a coefficient of wage inequality, making possible the comparability of the positioning of the companies vis-à-vis the sector of activity and vis-à-vis the country. This tool

¹⁸ Represents Commerce and Services.

¹⁹ Represents Industry.

²⁰ Represents Agriculture.

²¹ Represents Tourisme.

²² Gabinete de Estratégia e Planeamento (GEP), is the Portuguese acronym.

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

will be also useful for the ACT activity regarding the companies that require monitoring in this area.

The gender pay gap in Portugal (mainland) has been decreasing in recent years and accordingly with the most recent data, in 2016, it was 15,8% vs. 16,7% (in 2015 and 2014).

Continente										
	Disparidade salarial					Remuneração média mensal (€)				
	Base		Canho			Base			Canho	
Ano	%	€	%	€	Homens	Mulheres	TOTAL	Homens	Mulheres	TOTAL
2010	18,0	175,7	20,9	248,1	977,6	801,8	900,0	1185,7	937,6	1076,3
2011	18,0	176,9	20,9	249,5	985,2	808,4	906,1	1196,2	946,7	1084,6
2012	18,5	185,3	21,1	256,5	999,9	814,5	915,0	1213,0	956,5	1095,6
2013	17,9	177,6	20,8	251,1	993,8	816,2	912,2	1209,2	958,1	1093,8
2014	16,7	164,8	20,0	240,2	985,0	820,3	909,5	1203,3	963,1	1093,2
2015	16,7	165,1	19,9	240,9	990,0	825,0	913,9	1207,8	966,9	1096,7
2016	15,8	157,1	19,1	232,6	997,4	840,3	924,9	1215,1	982,5	1107,9

Fonte: GEP/MTSSS, Quadros de Pessoal

On November 28th, 2017, Government presented a bill to the Parliament (n.106/XIII) which is currently being discussed, to approve measures to promote equal pay between women and men for equal work or work of equal value.

This law requires the production of regular data on pay disparities per sector and company (prepared by the Strategy and Planning Office of the Ministry for Labour, Solidarity and Social Security).

Companies are required to have a transparent pay policy, based on the objective evaluation of job components. If pay discrimination is alleged, it is incumbent on the employer to demonstrate an objective pay policy.

Also companies, based on the statistical information, can be notified by labour inspectorate to present an evaluation plan. After implementation, justification of pay disparities/correction of pay discriminations must be communicated. The evaluation plan must be implemented two years after its presentation.

This applies to companies with 250 or more employees in two first years, and with 100 or more thereafter.

Any worker is entitled to request an opinion by the Commission for Equality in Labour and Employment (CITE) on a potential situation of pay discrimination on the basis of sex. Company is given the opportunity to show otherwise.

MINISTÉRIO DO TRABALHO, SOLIDARIEDADE E SEGURANÇA SOCIAL

In the new National Strategy for Equality and Non-Discrimination 2018-2030, among many others, the following concrete measures regarding the pay gap, are planned to start this year:

- a study on the Icelandic Equal Pay Standard, to learn from the Icelandic experience
- a project to ensure the effective application across sectors of job evaluation systems that are analytical and based on objective non-discriminatory criteria. This allows wage grids to be reviewed according to the value attributed to jobs under this objective and non-discriminatory evaluation system. This is a fundamental tool to help companies analyse their own pay systems and understand what part is unexplained and must be corrected.
- inspection actions by the Labour Inspectorate.
- integrating training in wage negotiating skills for unemployed people, with a particular focus on women.

II. CONCLUSIONS

On the basis of the foregoing considerations we recognize that there is still a way to achieve gender equality and we are striving to improve as we have tried to demonstrate.

In our defense, we should highlight the new Strategy for Gender Equality, the National commitment with the respect of human rights of women. Portugal was the first EU member to ratify the most recent International Convention on women rights, the Istanbul Convention and the third member of Council of Europe.

Even the actual possibility of being target of this complaint, is a sign of our good faith. Because we have ratified the collective complaints procedure believing it would aim “to increase the effectiveness, speed and impact of the implementation of the [European Social] Charter”.

All the arguments and evidences that we presented should be taken in to account not to condemn, but to encourage us to continuously improve the national policies, the monitoring mechanisms and a better submission of our experience and best practices.