

## 5. CHECKLIST: MAKING THE GENDER RECAST DIRECTIVE WORK FOR TRANS PEOPLE

The first part of this checklist aims to spell out the minimum criteria that EU member states & EEA countries had to comply with by the implementation date of the Gender Recast Directive (15 August 2008). The second part of the checklist provides a set of current good practices already implemented by some member states, and should serve as a stimulus to exceed the minimum standards required by the Gender Recast Directive. The last section of the checklist enumerates the steps necessary for member states to offer legal gender recognition, a demonstrated prerequisite to ensuring equality for trans persons in employment and occupation.

TGEU strongly recommends that member states and the Commission use this comprehensive checklist to evaluate compliance with the Gender Recast Directive on national level.

### 5.1 Minimum criteria<sup>23</sup>

**Trans people are included in the interpretation of employment non-discrimination legislation based on the grounds of sex:**

- *Implicitly through interpretation by domestic judges/other administrative institutions; or*
- *Explicitly through an express reference to 'gender reassignment' in legislation.*

**Trans people benefit from the full extent of protections established in the Directive, i.e.:**

- *The full material scope, namely, conditions for access to employment, self-employment and occupation, including promotion and dismissals; membership and involvement in an organisation of workers or employers or other professional organisations; and working conditions, including pay; and*
- *Against all forms of discrimination, namely, direct or indirect discrimination, 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 including gender reassignment; any less favourable treatment related to pregnancy or maternity leave; and pay discrimination.*

**Trans individuals are included in sick and invalidity schemes and employers make such schemes available.**

**Where the retirement age for men and women varies, the retirement age for trans individuals is based on their gender identity and not on their birth sex.**

**Trans individuals and their spouses/partners can avail themselves of occupational social security schemes and pensions schemes; and such schemes cover industrial accidents and professional diseases, and unemployment benefits.**

**Gender mainstreaming is used as a tool to ensure full gender equality in practice, and such measures are extended to trans people.**

**Trans people are included within the remit of the national [gender] equality body.**

**No laws, regulations and/or administrative provisions exist that are contrary to the principle of equal treatment of trans people as stipulated in the Directive.**

### 5.2 Good practices

**Equality legislation implementing the Directive into national law and/or consolidated national anti-discrimination legislation includes an express reference to:**

- *The right to self determined gender identity;*
- *The right to gender expression; and*
- *Intersectional or multiple discrimination.*

**Equality legislation makes an express reference to the periods of gender reassignment and:**

- *Prohibits discrimination and dismissal relating to an absence from work due to gender reassignment;*
- *Prohibits discrimination against someone based on the fact that this a person intends to undergo, is undergoing, or has undergone the process (or part of the process) of gender reassignment; and*
- *Covers absences from work in order to undergo and recover from gender reassignment within the scope of sick leave.*

**The collection of information about an applicant's gender identity, gender expression and/or gender reassignment during the selection process, whether during the application or interview stage is prohibited (unless such information is solely used for employment equality monitoring purposes and follows strict rules against data disclosure and discrimination).**

**The unconsented disclosure of personal details related to the person's gender identity, gender expression or gender reassignment, as well as the disclosure of the gender history or former name to employers, fellow employees and/or clients is prohibited.**

**The national [gender] equality body has a wide mandate ensuring that:**

- *Discrimination does not occur in any area of life in society;*
- *Equal rights and opportunities for trans people are actively promoted; and*
- *It is able to provide advice and other support so as to help enable anyone who was subjected to discrimination to claim their rights.*

**Dialogue between trans organisations and other entities, such as public bodies, trade unions, and any other organisations focusing on combating discrimination on the basis of gender identity and gender expression is encouraged.**

**The right to gender identity and gender expression are included in public awareness raising campaigns explaining the provisions of the law.**

**Specific attention is paid to ensure that trans people are reached through targeted awareness raising campaigns.**

**Any policies and practices that may directly or indirectly discriminate against or disadvantage trans people are considered contrary to equality legislation and public policy.**

**Proactive statutory duties to ensure trans equality mainstreaming across the government are introduced.**

**Public authorities make active, targeted, and systematic efforts to promote equality irrespective of gender identity and/or gender expression.**

**An equality policy framework covering the right of gender identity and gender expression is adopted and it contains measurable targets on employment inclusion of trans people.**

### 5.3 Legal gender recognition

**Legal gender recognition procedures, based on the right to self-determination, are quick, transparent and accessible and meet the criteria established in TGEU's Legal Gender Recognition in Europe (2013) Checklist Gender Recognition Legislation.<sup>24</sup>**

**Changes to employment and educational related documents reflecting a change of name and gendered information are possible without legal gender recognition.**

**Change of name and gendered information on documents issued by public or private institutions/organisations extends also retroactively to:**

- *Birth certificates;*
- *Identification documents (including ID Cards, Driver's Licences and Passports);*
- *Social security numbers (in countries where they are gendered);*
- *Educational certificates;*
- *Employment certificates/documentation; and*
- *Other documentation that may be relevant for the purposes of employment and occupation.*