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# Country report

Gender equality



Croatia  
2016

*Justice  
and Consumers*

**EUROPEAN COMMISSION**

Directorate-General for Justice and Consumers  
Directorate D — Equality  
Unit JUST/D1

*European Commission  
B-1049 Brussels*

# **Country report**

## **Gender equality**

How are EU rules transposed into  
national law?

### **Croatia**

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Reporting period 1 July 2015 – 1 April 2016

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Luxembourg: Publications Office of the European Union, 2016

ISBN 978-92-79-47018-9

doi:10.2838/485069

DS-04-16-692-EN-N

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## **1. Introduction**

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

Croatia is a unitary and indivisible democratic and welfare state (Article 1 of the Constitution). The Croatian legal system is a civil law system, and the government is organised on the principle of separation of powers into legislative, executive and judicial branches, but also limited by the constitutionally guaranteed right to local and regional self-government. The legal system is characterized by a hierarchy of legal norms, whereby laws must comply with the Constitution, and other regulations must comply with laws and the Constitution. The Croatian Parliament adopts laws, usually by a majority vote, provided that a majority of its representatives are present at the session. Organic laws regulating the rights of minorities are adopted by a two-third majority of all representatives and other organic laws, for example those elaborating constitutionally established human rights and fundamental freedoms (including anti-discrimination laws) are adopted by a majority vote of all representatives. Organic laws are thus laws whose adoption requires a special majority of votes. Adoption of this category of laws is stipulated in the Constitution (Article 83). Anti-discrimination legislation is organised around three main levels of protection: the Constitution (prohibition of discrimination and gender equality guarantee), special horizontal anti-discrimination (organic) laws and other laws containing anti-discrimination provisions.

The general and special jurisdiction of the courts is prescribed in the Judiciary Act and other special laws (such as the Civil Procedure Act, Criminal Procedure Act, etc.). The judicial power in the Republic of Croatia is exercised by regular and special courts (Article 14(1) and (2) of the Judiciary Act). Regular courts are municipal and county courts. The highest judicial authority is the Supreme Court of the Republic of Croatia. The municipal courts are vested with a general and broad open-ended catalogue of competences. In civil proceedings, they adjudicate in the first instance in disputes relating to civil, family, labour, housing and other areas of law, which are not part of the first instance jurisdiction of other courts in accordance with special laws (Article 34(2) Civil Procedure Act). Pursuant to the Anti-Discrimination Act, municipal courts have the subject-matter jurisdiction in litigation based on special legal action for protection against discrimination (Article 17(1) and 18(1) Anti-Discrimination Act).<sup>1</sup> County courts adjudicate in the first instance in disputes prescribed by law and decide on appeal against decisions of the municipal courts. In the field of equality law, county courts have subject-matter jurisdiction regarding joint legal actions (representative actions) for protection against discrimination.<sup>2</sup> The Supreme Court is the highest judicial authority, whose task it is to ensure uniform application of laws and the equality of all before the law (Article 116 of the Constitution of the Republic of Croatia). In civil proceedings, its competences include deciding on appeals against first-instance decisions of county courts and revisions as extraordinary legal remedies against (final and binding) second-instance decisions, in cases prescribed by law.

The Constitutional Court of the Republic of Croatia decides upon the compliance of laws with the Constitution, compliance of other regulations with the Constitution and laws,

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<sup>1</sup> Apart from the special legal action for the protection against discrimination, the Anti-Discrimination Act authorises any person who claims that her rights have been violated as a result of discrimination to seek protection in the proceedings deciding upon that right as the main issue (Article 16(1) Anti-Discrimination Act). The Gender Equality Act authorises any party who considers that her/his rights have been violated due to discrimination described in that Act to file a legal action with the regular court of general jurisdiction (Article 30(1) Gender Equality Act), in other words, to initiate litigation before a municipal court.

<sup>2</sup> Pursuant to Article 24(1) of the Anti-Discrimination Act, associations, bodies, institutions or other organisations set up in line with the law and having a justified interest in protecting the collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment, may bring a legal action against a person that has violated the right to equal treatment. Representative action is a form of collective redress available under Gender Equality Act as well, but the general conditions are prescribed in the Anti-Discrimination Act.



and on constitutional claims against individual decisions taken by government agencies, bodies of local and regional self-government and legal persons vested with public authority where such decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution of the Republic of Croatia (Article 125 of the Constitution of the Republic of Croatia). Every individual or legal person has the right to propose the initiation of proceedings to review the constitutionality of the law and the legality and constitutionality of other regulations (Article 38(1) of the Constitutional Act on the Constitutional Court of the Republic of Croatia<sup>3</sup>). Everyone may lodge a constitutional complaint with the Constitutional Court if he/she deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his/her rights and obligations, or about suspicion or accusation for a criminal act, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution (Article 62(1) of the Constitutional Act on the Constitutional Court of the Republic of Croatia).

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

- The Constitution of the Republic of Croatia (Official Gazette *Narodne novine* Nos. 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14);
- Anti-Discrimination Act (Official Gazette *Narodne novine* Nos. 85/08 and 112/12);
- Gender Equality Act (Official Gazette *Narodne novine* Nos. 82/08, 125/11, 20/12 and 138/12);
- Same-Sex Life Partnership Act (Official Gazette *Narodne novine* No. 92/14);
- Labour Act (Official Gazette *Narodne novine* No. 93/14);
- Act on Maternity and Parental Benefits (Official Gazette *Narodne novine* Nos. 85/08, 110/08, 34/11, 54/13 and 152/14);
- Safety-at-Work Act (Official Gazette *Narodne novine* Nos. 71/14, 118/14 and 154/14).

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<sup>3</sup> Croatia, *Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette *Narodne novine* Nos. 99/99 and 29/02.

## **2. General legal framework**

### **2.1 Constitution**

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

Yes. Gender equality, along with freedom, equal rights, national equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system, is one of the highest values of the Croatian constitutional order and a ground for interpretation of the Constitution (Article 3 of the Constitution).

A general equality provision with a non-exhaustive enumeration of prohibited discriminatory grounds is contained in Article 14 of the Constitution. It stipulates that everyone in Croatia shall have rights and freedoms, regardless of race, skin colour, sex, language, political or other opinion, national or social origin, property, birth, education, social status or other characteristics.

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

Yes. Article 17(1) of the Constitution prescribes situations in which individual constitutionally guaranteed rights and freedoms may be restricted (state of war or any clear and present danger to the independence and unity of the Republic of Croatia or in the event of any natural disaster). The extent of such restrictions must be proportionate to the nature of the threat, and may not result in the inequality of citizens with respect to race, colour, sex, language, religion, national or social origin (Article 17(2) of the Constitution).

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

Yes.

### **2.2 Equal treatment legislation**

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

Yes. The Gender Equality Act and Anti-Discrimination Act explicitly prohibit sex discrimination. The Gender Equality Act specifically aims at protection and promotion of gender equality as a fundamental value of the Croatian constitutional order and defines and regulates methods of protection against discrimination based on sex, while also creating equal opportunities for men and women (Article 1 Gender Equality Act). The Anti-Discrimination Act is a horizontal, 'umbrella' act in the field of prohibition of discrimination and creation of equal opportunities, and includes an exhaustive list of 21 prohibited discriminatory grounds (sex, race, ethnic origin, skin colour, language, religion, political or other opinion, national or social origin, property, trade union membership, education, social status, marital or family status, age, health, disability, genetic heritage, gender identity and expression and sexual orientation; Article 1(1) Anti-Discrimination Act).

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

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

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

No.

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

No. The Constitution contains an open anti-discrimination clause in its Article 14(1), guaranteeing equal rights and freedoms to every person, regardless of race, skin colour, sex, language, political or other opinion, national or social origin, property, birth, education, social status or other characteristics. One of the discriminatory grounds explicitly enumerated in Article 1(1) of the Anti-Discrimination Act is gender identity, but gender reassignment is not mentioned either in that Act or in the Gender Equality Act. Sex discrimination is defined in Article 6(1) of the Gender Equality Act in very broad terms, so as to include any difference, exclusion or restriction on the grounds of sex with the effect or purpose to jeopardise or frustrate recognising, benefiting from or exercising human rights and fundamental freedoms in the political, social, cultural, economic, civil or other area on the grounds of equality between men and women, education, economic, social, cultural, civil and any other sphere of life. Given the open equality clause in the Constitution, the broad definition of sex discrimination in the Gender Equality Act and the explicit prohibition of discrimination based on gender identity in the Anti-Discrimination Act, it could be claimed that discrimination due to gender reassignment is non-explicitly covered by the legislative framework.

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

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Direct sex discrimination is not explicitly prohibited in the Gender Equality Act. However, the Anti-Discrimination Act contains a specific provision (Article 9(1) Anti-Discrimination Act) stipulating that discrimination in all of its forms is prohibited. Articles 2-6 of the Anti-Discrimination Act define forms of discrimination (direct, indirect, harassment, sexual).

Article 7(1) of the Gender Equality Act defines direct discrimination as any treatment where, on the grounds of sex, one person is treated, has been treated or would be treated less favourably than another in a comparable situation. This definition applies within the scope of the Gender Equality Act.

Another definition of direct discrimination is provided within the scope of the Anti-Discrimination Act. Article 2(1) of the Anti-Discrimination Act defines direct discrimination as any treatment where, based on one of the discriminatory grounds covered by that Act (21 discriminatory grounds, see 2.2.1), one person is treated, has been treated or would be treated less favourably than another in a comparable situation.

Both definitions of direct discrimination (from the Gender Equality Act and the Anti-Discrimination Act) comply with the EU definition.

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

Yes. Article 6(2) of the Gender Equality Act prescribes any less favourable treatment of a woman related to pregnancy or maternity as discrimination. This definition is not

confined to maternity leave, but to maternity as such, and is therefore even wider in scope than Article 2(2)(c) of Directive 2006/54.

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

It is impossible to provide a comment on this question, because there is hardly any case law on direct sex discrimination. In anti-discrimination cases in general, the Croatian courts have a habit of literally repeating the definition of direct and indirect discrimination from the relevant legislation, without really explaining which definition applies to the facts of the case and why.<sup>4</sup> However, there are also examples of better interpretation of the concept of direct discrimination. In a recent decision of the Supreme Court, direct discrimination (based on sexual orientation) was interpreted to include the 'claimant's statement that homosexuals are persons who are unable to successfully play professional football due to their lack of aggression and devotion', because such a statement is 'liable to place one person (homosexual) in a less favourable position than another person (male heterosexual) in a comparable situation (hiring professional footballers)'.<sup>5</sup>

### 3.3 Indirect sex discrimination

- 3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

The same answer applies here as that given in 3.2.1. Under Article 7(2) of the Gender Equality Act, indirect discrimination occurs where a neutral legal provision, criterion or practice puts persons of one sex at a disadvantage compared to persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Under Article 2(2) of the Anti-Discrimination Act indirect discrimination occurs where a neutral legal provision, criterion or practice puts or would put persons at a disadvantage based on any discriminatory ground listed in that Act compared to other persons in a comparable situation, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

The two definitions seem to be equal, except that the definition from the Anti-Discrimination Act is grammatically more precise ('puts or *would* put'), which also includes future hypothetical situations in the definition of indirect discrimination, whereas the Gender Equality Act refers to the present condition ('puts'). Although there has been no case law that specifically addresses this issue, it is highly unlikely that the courts would adhere to the strict grammatical interpretation of the provision from the Gender Equality Act.

To prevent any potential deviant interpretation, it would be better to amend the provision of Article 7(2) of the Gender Equality Act to include the conditional ('would put').

- 3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination? Please provide some examples of cases, if available.

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<sup>4</sup> See, e.g. U-III-7490/2014; U-III-1016/2011; VSRH Revr-277/07; VSRH Revr-650/08; VSRH Revr-350/09; VSRH Revr-856/2012; VSRH Revr-1051/2013. In all of these cases the courts reached the conclusion that there had been 'no discriminatory behaviour' on any ground whatsoever.

<sup>5</sup> VSRH Rev-300/13.

There has not been any case law on indirect sex discrimination yet. Please refer to 3.3.4.

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

There has not been any case law on indirect sex discrimination yet. Please refer to 3.3.4.

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

Yes. The courts rarely issue decisions on the concept of indirect discrimination, partly due to the fact that legal claims involving indirect discrimination are almost non-existent.<sup>6</sup>

### **3.4 Multiple discrimination and intersectional discrimination**

3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to produce a new and different type of discrimination – explicitly addressed in national legislation?

Yes. Article 6(1) of the Anti-Discrimination Act stipulates that multiple discrimination (discrimination against the same person on multiple (presumably more than one) grounds of discrimination) is considered as one of the severe forms of discrimination. A finding of multiple discrimination will be considered as a relevant circumstance when the court determines the amount of compensation for damages and penalty for misdemeanours established under that Act.

No mention is made of intersectional discrimination.

There are no proposals pending to incorporate the concept of intersectional discrimination in national legislation.

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

No. However, the gender equality bodies (the Ombudsperson for Gender Equality and the Office for Gender Equality) are active in promoting awareness about the categories of women who are especially at risk of multiple discrimination. These categories include women with disability, women in rural areas, women of Roma ethnic origin, female victims of sexual violence during the Croatian War of Independence,<sup>7</sup> and women in

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<sup>6</sup> See the Ombudsperson for Gender Equality (2012), *Special Report of the Ombudsperson for Gender Equality: Prevalence of anti-discrimination case-law*, <http://www.prs.hr/attachments/article/728/U%C4%8Destalost%20anti-diskriminacijskih%20predmeta%20u%20sudskoj%20praksi.pdf>, accessed 15 September 2015.

<sup>7</sup> In Croatia referred to as the Homeland War.

prostitution or victims of sex trafficking.<sup>8</sup> There is no case law on multiple discrimination involving sex as one of the grounds of discrimination.<sup>9</sup>

### 3.5 Positive action

#### 3.5.1 Is positive action explicitly allowed in national legislation?

Yes. The term used in the Gender Equality Act for positive action is 'specific measures'. Specific measures are defined as specific benefits enabling persons of a specific sex to have equal participation in public life, eliminating existing inequalities or ensuring them rights they were denied in the past (Article 9(1) of the Gender Equality Act). They shall be introduced on a temporary basis with a view to achieving genuine equality of women and men and they shall not be deemed to be discrimination (Article 9(2) of the Gender Equality Act). They are laid down in laws and other regulations regulating specific areas of public life. The Gender Equality Act contains general directions for the implementation of such measures, in that it requires that those measures shall serve to promote equal participation of women and men in legislative, executive and judicial bodies, including public services, and to gradually increase the participation of the underrepresented sex in order for its representation to reach the level of its percentage in the total population of the Republic of Croatia. Specific measures are to be introduced when one gender is 'substantially underrepresented'. Substantial underrepresentation of one gender in decision-making bodies in political or public life exists where representatives of that gender account for less than 40 %. This provision was drafted in accordance with the Council of Europe Committee of Ministers' Recommendation REC(2003)3 to Member States on balanced participation of women and men in political and public decision-making. In the area of employment, public administration bodies and legal persons that are majority-owned by the State shall apply specific measures and adopt action plans for the promotion and establishment of gender equality. Specific temporary measures in relation to all discriminatory grounds from the Anti-Discrimination Act, which are necessary and appropriate to achieve equality and which are based on laws, by-laws, programmes, measures or decisions, are stipulated as exceptions from discrimination in accordance with Article 9(2)(3) of the Anti-Discrimination Act.

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

Regarding the obligation for public administration bodies and legal persons that are majority-owned by the State to adopt action plans for the promotion and establishment of gender equality, there was a case in which a male applicant for the job of kindergarten teacher complained that he was discriminated against on the ground of sex, because a female applicant was employed, even though male teachers were underrepresented at the establishment.<sup>10</sup> The court found that this circumstance by itself is not sufficient to conclude that the male applicant was discriminated against on the ground of sex. The claimant also argued that he should have had an advantage in applying for the job because the respondent's establishment had adopted a plan for the

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<sup>8</sup> Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016; Office for Gender Equality (2015), *Report on the Activities of the Office in 2015*, <https://ravnopravnost.gov.hr/UserDocsImages/dokumenti/Izvje%C5%A1%C4%87e%20o%20radu%20Urada%20za%20ravnopravnost%20spolova%20Vlade%20RH%20u%202015.%20godini.pdf>, accessed 6 June 2016.

<sup>9</sup> There is one case involving discrimination on multiple grounds (age and union membership), where the court used actual comparators (workers working for the same employer) to assess the situation of the claimant (Bjelovar County Court, G-458/2012).

<sup>10</sup> Bjelovar County Court, GŽ-493/07.

promotion of gender equality. However, the court concluded that the plan was invalid, because, at the time of the application, it had not been confirmed by the Office for Gender Equality, which was a prerequisite for such a plan's validity according to the Gender Equality Act that was in force at that time (the same obligation exists in the current Gender Equality Act (Article 11(4))).

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

No. At the beginning of 2015, the Ombudsperson for Gender Equality launched a public campaign and a research study within the PROGRESS project 'Removing the glass labyrinth – equal access opportunities to the positions of economic decision-making'.<sup>11</sup> This public campaign includes the launching of a special website and media advertising, and the study aims to reach well-balanced participation of men and women in company boards and managerial positions in the 500 financially most successful companies in Croatia. The campaign also includes various educational seminars and the public promotion of gender equality in company boards. During 2015, the Ombudsperson for Gender Equality conducted four studies within this project, investigating the participation of men and women in managerial positions, employers' perception of the importance of gender-balanced business decisions and women's perception of the barriers that they encounter in their business surroundings. The majority of women in company boards and managerial positions stated that women are exposed to discriminatory barriers in business surroundings, but are not in favour of binding legal instruments enacting a certain gender quota in company boards. Instead, they believe that such acts should be adopted at company level, to reflect the commitment and will of employers.<sup>12</sup>

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

Yes. The Gender Equality Act prescribes that political parties and other candidates in elections for the European parliament, Croatian Parliament, as well as local and regional elections must gradually be obliged to establish gender-balanced election lists where candidates of one sex are underrepresented (less than 40 % of candidates) (Articles 12(3), 15(1) and (2) Gender Equality Act) until the third elections after the Act's entry into force at the latest (as it happens, these were the local elections in 2013). However, this obligation was not complied with, probably due to the lack of sanctions. On 13 February 2015, the Croatian Parliament adopted amendments to the Act on Parliamentary Elections,<sup>13</sup> which, inter alia, include the obligation to comply with the gender quota, with the objective of achieving a balanced participation of women and men in political and public life.

Article 21a of the amended Act on Parliamentary Elections<sup>14</sup> stipulates that political parties and independent candidates in parliamentary elections are obliged to comply with the principle of gender equality and to ensure a balanced representation of male and female candidates on their election lists. Independent candidates are also obliged to have election lists. In this case, the independent list has the same number of candidates as any party list, so the same percentage as a guarantee of a balanced representation of male and female candidates applies. The election list will be deemed to comply with

<sup>11</sup> <http://staklenilabirint.prs.hr/>, accessed 15 September 2015.

<sup>12</sup> Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvj%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

<sup>13</sup> Croatia, *Zakon o izborima zastupnika u Hrvatski Sabor*, Official Gazette *Narodne novine* Nos. 116/99, 109/00, 53/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/2011, 120/11 and 19/2015.

<sup>14</sup> Croatia, *Zakon o izmjenama i dopunama Zakona o izborima zastupnika u Hrvatski sabor*, Official Gazette *Narodne novine* No. 19/15.

these principles if it contains at least 40 % of candidates of both sexes. The implementation of this provision is guaranteed by clear sanctions for its violation: any election list which does not comply with the required 40 % gender quota is deemed invalid and will not be accepted by the State Election Committee. The effects of this amendment should be seen in the approaching parliamentary elections (October or November 2015). The current gender composition of the Croatian Parliament is not satisfactory, because women are underrepresented, with a share of only 24 %, compared to 76 % of male Members of Parliament.

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

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

Yes. The Gender Equality Act prescribes that harassment and sexual harassment shall be considered as discrimination within the meaning of that Act (Article 8(1) Gender Equality Act). Harassment is any unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and which creates an unpleasant, hostile, degrading or offensive environment (Article 8(2) Gender Equality Act).

The Anti-Discrimination Act defines harassment as any unwanted conduct caused by any of the discriminatory grounds within the scope of that Act with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading or offensive environment (Article 3(1) Anti-Discrimination Act). Both definitions comply with Directive 2006/54, but there is a slight grammatical and linguistic discrepancy. Whereas the Gender Equality Act refers to 'unpleasant', the Anti-Discrimination Act (as Directive 2006/54) mentions 'intimidating' environment. This implies that the definition from the Gender Equality Act could be interpreted even more extensively.

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

The Gender Equality Act applies in practically all spheres of public life (media, employment, political participation, education, access to goods and services) and the definition of harassment therefore covers a broader scope than employment.

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

Yes. The Gender Equality Act prescribes that harassment and sexual harassment shall be considered as discrimination within the meaning of that Act (Article 8(1) Gender Equality Act). Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that occurs with the purpose or effect of violating the dignity of a person, in particular when creating an unpleasant, hostile, degrading or offensive environment (Article 8(3) Gender Equality Act).

The Anti-Discrimination Act contains practically the same definition of sexual harassment (Article 3(2) Anti-Discrimination Act), with the difference that it refers to 'intimidating' rather than 'unpleasant' environment (see the explanation under 3.6.1).

Both definitions comply with Directive 2006/54, but the definition in the Gender Equality Act may be interpreted even more extensively.

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



The Gender Equality Act applies in practically all spheres of public life (media, employment, political participation, education, access to goods and services) and the definition of sexual harassment therefore covers a broader scope than employment.

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

Harassment and sexual harassment are explicitly considered as discrimination (Article 8(1) Gender Equality Act). There is no mention in this Act of 'any other less favourable treatment', but the Gender Equality Act contains a non-regression clause in Article 4, guaranteeing that provisions of that Act 'shall not be interpreted or implemented so as to restrict or diminish the content of warranties on gender equality enshrined in the universal rules of international law [and] the *acquis communautaire* of the European Community, [...]'.

### **3.7 Instruction to discriminate**

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

Yes. Instruction to discriminate is regulated in Article 6(5) of the Gender Equality Act as a broader 'incitement' (Cro. *poticanje*) of other person or persons to discrimination, and is considered as discrimination if this is done with intention. On the other hand, the Anti-Discrimination Act also prohibits incitement to discriminate, but does not prescribe intention as a constituent part of the definition (Article 4(1) Anti-Discrimination Act).

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

Given the conceptual differences between the terms 'incitement' and 'instruction', this provision is likely to cause diverging interpretations by the courts. Coupled with the fact that the scope and meaning of the 'instruction to discriminate' are still unclear in the CJEU's case law, the different treatment of the incitement to discriminate in various Croatian laws could become an issue. However, no national case law on this issue has been reported yet. It is interesting to note that the provision of Article 4(1) of the Anti-Discrimination Act originally contained intent as a constitutive element of incitement to discriminate, but this was erased by amendments to this Act in 2012, with the explanation that the amendment was necessary to align the legislation with Directives 2000/78 and 2000/43. Any existing case law where incitement to discriminate was asserted within the framework of the Anti-Discrimination Act refers to the period prior to amendments, where intent was necessary (see the decisions of the Supreme Court of the Republic of Croatia in cases GŽ-38/11 and GŽ-12/11).

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

Yes. Article 1(2) of the Anti-Discrimination Act prohibits discrimination by association: the placing of any person, or a person related to that person by kinship or other relationship, in a less favourable position on discriminatory grounds within the meaning of that Act.

Article 1(3) of the Anti-Discrimination Act prohibits assumed discrimination: the placing of a person in a less favourable position based on a misconception of the existence of discriminatory grounds within the meaning of that Act.

Article 5(1) of the Anti-Discrimination Act prohibits segregation, as a forced and systematic separation of persons, on any of the discriminatory grounds enumerated in that Act.

Article 6(1) of the Anti-Discrimination Act covers severe forms of discrimination. Apart from multiple discrimination (see the answer under 3.4.1), severe forms of discrimination also include repeated discrimination (discrimination committed several times), continued discrimination (discrimination lasting for a longer period of time), or discrimination whose consequences are particularly harmful for the victim.

#### **4. Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)**

##### **4.1 Equal pay**

##### **4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?**

Yes. Pursuant to Article 91(1) of the Labour Act,<sup>15</sup> an employer shall pay equal pay to women and men for equal work and work of equal value. Paragraph 2 of the same Article clarifies and describes what is understood by the concepts of equal work and work of equal value.

Article 13(1)(4) of the Gender Equality Act prohibits discrimination based on sex in the field of employment, in relation to conditions of employment and work, rights from and based on employment, including equal pay for equal work or work of equal value.

##### **4.1.2 Is the concept of pay defined in national legislation?**

Yes. The notion of 'pay' in Croatian labour legislation is defined in the context and for the purposes of implementation of the equal pay principle. It includes the basic or minimum wage and any other consideration in cash or kind, which the worker receives directly or indirectly in respect of his/her employment from the employer, based on the employment contract, collective agreement, employment rules or other regulations (Article 91(3) Labour Act). This definition complies with the definition of Article 157(2) TFEU.

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

Yes. Article 13(1)(4) of the Gender Equality Act prohibits any discrimination in the field of employment and occupation in the public or private sector, including public bodies, in relation to employment and working conditions, all occupational benefits and benefits resulting from occupation, including equal pay for equal work and work of equal value.

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

It seems that the Croatian judiciary takes a predominantly formalistic approach in equal pay cases and overemphasises the importance of a comparator. Under Article 20(1) of the Anti-Discrimination Act, a party claiming violation of his/her right to equal treatment shall make it plausible that discrimination has taken place. In this case, it shall be for the respondent to prove that there has been no discrimination. However, a claimant will be required to refer to a comparator, if he/she is to succeed in an equal pay case. According to present Croatian case law, a party will have to refer to an actual comparator. For example, the claimant will be required to prove that the respondent should have treated him/her equally to another person in a comparable situation, whereby any difference in formal requirements overturns comparability (e.g. where a job classification system exists, any formal difference might exclude comparability).<sup>16</sup> The performance of actual tasks by the claimant will be relevant only where there is no legally prescribed salary classification system. Otherwise, employers will be found in breach of a specific

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<sup>15</sup> Croatia, *Zakon o radu*, Official Gazette *Narodne Novine* No. 93/14.

<sup>16</sup> See, for example, Supreme Court cases VS RH Revr-1676/09 (salary in public services; determination of salary prescribed by law) and VS RH Revr-135/09 (even where a job classification system exists, the pay should be based on actual work and tasks performed by a particular worker, not the job title and description).

obligation arising out of binding legislation or subordinate regulations if they disregard the salary classification system.

The comparator should be a person employed by the same employer.

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

Yes. Article 91(2) of the Labour Act provides that two persons of different gender perform equal work and work of equal value if:

- they perform the same work in the same or similar conditions or they could substitute one another at the workplace;
- the work one of them performs is of similar nature to that performed by another, and the differences between the work performed by them and conditions under which it is performed have no significance in relation to the overall nature of the work or they appear so rarely that they have no significance in relation to the overall nature of the work;
- the work one of them performs is of equal value as that performed by another, if one takes into account the criteria such as qualifications, skills, responsibilities, conditions under which the work is performed and whether the work is of a manual nature or not.

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

Yes. Article 90 of the Labour Act regulates the issue of salary determination. The employer is obliged to pay the salary stipulated by regulations, collective agreement, employment rules or employment contract. If the basis and parameters for the determination of salary are not stipulated in a collective agreement, any employer employing more than 20 employees shall stipulate them in employment rules. If there is neither a collective agreement nor employment rules on salary determination, and the employment contract does not provide sufficient information to determine the salary, the employer shall pay the employee 'adequate salary'. Adequate salary is salary usually paid for equal work, and if it cannot be determined, the court will decide on it in accordance with the given circumstances. The term 'adequate salary' is different from the term 'minimum salary'. Adequate salary is understood as salary paid for work of equal or similar competence performed within employer's economic branch of activity or similar branch (County Court in Split, GŽ-19903/97).

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

There are still no legislative acts or proposals to address wage transparency, in either the public or private sectors. The initiative launched in July 2015 by the previous Government and the adoption of the Action Plan for the determination and regulation of the salary system in the Republic of Croatia 2015-2016,<sup>17</sup> which included the adoption of the new Act on Salaries in the Public Sector, came to an end with the entry into office of the new Government in January 2016. There have been no announcements of any legislative activity in this area. Meanwhile, according to the available data, the

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<sup>17</sup> Government of the Republic of Croatia, <https://vlada.gov.hr/UserDocsImages//Sjednice/2015/241%20sjednica%20Vlade//241%20-%208.pdf>, accessed 15 September 2015.

unadjusted gender pay gap revolves around 10 % (10.2 % in 2015, 10.4 % in 2014 , 9 % in 2013<sup>18</sup>).

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

Justifications for pay differences include salary classification systems prescribed by law (in the public sector), which apply irrespectively of gender, as well as differences in formal qualifications (educational degree) for the job.

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

The wording of Article 91 of the Labour Act (equal pay) only allows actual comparators, i.e. the comparator should be a person employed by the same employer.

By way of exception, it may be a person employed by different employers in the event of temporary agency work (agency and user as employers). Article 46(5) of the Labour Act (Employment contract for temporary work) provides that the amount of the agreed salary of the assigned employee should not be '...lower and less favourable, respectively, than the salary (...) of an employee who is employed with the user in the same job, to which the assigned employee would have been entitled if he or she had entered into a contract of employment with the user.' This provision is broad because it prohibits different salaries for the assigned employee and the employee working with the user irrespectively of gender, i.e. it also applies to employees of the same gender.

Examples of case law in the field of equal pay for men and women are the following. In a Supreme Court case<sup>19</sup> the female claimant asserted having been paid less for work of equal value, when she actually performed tasks of a higher skilled worker. The Court concluded that since the determination of salary in public services is prescribed by law (categories and coefficients), the respondent may only pay the claimant in accordance with her qualifications, because they would otherwise contravene the explicit and legally binding rule (in the end, her claim failed). In a case with a similar factual background, the Constitutional Court in decision U-III/579/2008 of 15 April 2010 confirmed it involved neither discrimination nor a breach of the constitutional guarantee of equality before law. In one judgment of the Supreme Court, the formal job classification was deemed crucial for denying comparability.<sup>20</sup> In another ruling in an equal pay case, the Supreme Court adopted a contradictory approach, concluding that the title of the job and its classification do not automatically give the right to be paid equally to another worker with the same job title, but that the pay depends on the actual work and tasks performed by a particular worker.<sup>21</sup> However, a difference in formal qualifications will overturn comparability and justify difference in pay.

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<sup>18</sup> Eurostat, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender\\_pay\\_gap\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics); accessed 2 November 2016; Croatian Bureau of Statistics, Average monthly gross and net earnings of persons in employment by sex, [www.dzs.hr](http://www.dzs.hr); accessed 2 November 2016; Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

<sup>19</sup> VS RH Revr-1676/09.

<sup>20</sup> VS RH Revr-246/10.

<sup>21</sup> VS RH Revr-135/09.

## **4.2 Access to work and working conditions**

### **4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?**

Yes. Article 13(1)(1) to (7) of the Gender Equality Act prohibits any discrimination in the field of employment and occupation in the public or private sector, including public bodies, in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity, and at all levels of the professional hierarchy, promotion, access to all types and to all levels of education, professional guidance, vocational training, advanced vocational training and retraining, employment and working conditions, all occupational benefits and benefits resulting from occupation, including equal pay for equal work and work of equal value, membership of, and involvement in, organisations of workers or employers, or any professional organisation, including the benefits provided for by such organisations, balance between a professional and private life, and pregnancy, giving birth, parenting and any form of custody.

'Employee' or 'worker' is defined as any natural person performing certain tasks in an employment relationship for an employer (Article 4(1) Labour Act). 'Employer' is any natural or legal person who employs an employee and for whom the employee in an employment relationship performs certain tasks (Article 4(2) Labour Act). An employment relationship is based on employment agreement (Article 10(1) Labour Act). The employer shall assign the worker a job and pay him or her for the work carried out, whereas the worker shall personally perform the job assigned, following the employer's instructions given according to the nature and type of work (Article 7(1) Labour Act). The term 'work' is not expressly defined in legislation, but the criteria for its definition may be inferred from legislative definitions of the terms 'worker' (employee), 'employer' and 'employment relationship', as well as from the definition of essential rights and obligations in an employment relationship.

Therefore, work is performed in an employment relationship and defined by it. The focus is on the employment agreement, rather than on the activity performed. If the employer and the worker conclude a contract for the performance of work which, in view of the nature and type of the work to be carried out and the employer's powers in respect of this work, has the characteristics of a type of work for which an employment relationship should be established, the employer shall be deemed to have concluded an employment agreement with the worker, unless the employer proves the contrary (Article 10(2) Labour Act).

The definition of worker or employee complies with the relevant case law of the CJEU.

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

Yes. Article 13(1)(1) to (7) of the Gender Equality Act prohibits any discrimination in the field of employment and occupation in the public or private sector, including public bodies, in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity, and at all levels of the professional hierarchy, promotion, access to all types and to all levels of education, professional guidance, vocational training, advanced vocational training and retraining, employment and working conditions, all occupational benefits and benefits resulting from occupation, including equal pay for equal work and work of equal value, membership of, and involvement in, organisations of workers or employers, or any professional organisation, including the benefits provided for by such organisations, balance between a professional and private life, and pregnancy, giving

birth, parenting and any form of custody. The scope is broader than the scope of Article 14(1) of Recast Directive 2006/54, because it includes discrimination in relation to the work-life balance, as well as pregnancy, giving birth, parenting and any form of custody.

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

Yes. This exception has been implemented in Article 9(1)(4) of the Anti-Discrimination Act. It stipulates that the placing of a person in a less favourable position shall not be considered to be discrimination in relation to a particular job, when the nature of the job is such or the job is performed under such conditions that its characteristics related to any of the discriminatory grounds in that Act (gender included) present an actual and decisive condition for performing that job, provided that the purpose to be achieved is justified and the condition appropriate.

There is no information available on an assessment in relation to Article 31(3) of Recast Directive 2006/54.

4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

Yes. Articles 30-36 of the Labour Act regulate the employment protection of pregnant women, women who have recently given birth or women who are breastfeeding. These provisions include a guarantee of equal treatment, safe working conditions, employment rights and protection from dismissal, as well as the right to return to the previous or an equivalent job after using some of the rights and benefits associated with pregnancy and maternity.

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

Legal provisions regarding the protection for women, especially the right to return to the previous or an equivalent job after using some of the rights and benefits associated with pregnancy and maternity (Articles 30-36 Labour Act) are quite clear. However, in practice it is not always easy to realise this guarantee, especially if a reorganisation of work has led to a change in or termination of the job previously performed by a woman returning from maternity leave. For example, one employer (a government agency) offered a female worker who wanted to work half-time after returning from parental leave the option to stay at home, (i.e. not to come to work, but still receive the stipulated salary), because a work reorganisation had led to the abolition of her job while she was on parental leave, and there was no other equivalent job that she could perform.<sup>22</sup> In other words, the employer wanted to comply with its legal obligations, but failing to find any adequate job, offered the worker the option to stay at home, while still receiving the salary. The female worker found this option offensive because she wanted to go back to work. This is of course an extreme example, which received a lot of media attention, but the reality of unfavourable economic trends in Croatia could lead to a worsening of the work position of people returning from maternity or parental leave, despite the clear legislative provisions.

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<sup>22</sup> This story was reported in the media in 2015, and the employer even explicitly confirmed its accuracy; see e.g. <http://www.jutarnji.hr/vijesti/hrvatska/druga-strana-price-o-zeni-koja-je-odbila-placu-za-neradprocitajte-hakom-ovu-istinu/373726/>, accessed 6 June 2016. However, there has been no follow-up case law and nor was an official complaint made.

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

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

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

Yes. Definition of a pregnant worker is provided in Article 6(1)(10) of the Act on Maternity and Parental Benefits<sup>23</sup> and Article 3(1)(30) of the Safety-at-Work Act.<sup>24</sup> Both Acts define pregnant worker as a worker who has informed the employer of her condition in writing. Both definitions comply with Directive 92/85.

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

Yes. Article 31 of the Labour Act prescribes that employers are obliged to offer pregnant workers, workers who have recently given birth and workers who are breastfeeding, and who are working in jobs which represent a risk to their health and life or to the baby's health and life an annex to their employment contract, stipulating a transfer to other adequate jobs for the duration of this condition. If no adequate job is available, such worker is entitled to paid leave. This annex to the employment contract shall not result in a decrease of salary of the worker. Article 39 of the Safety-at-Work Act stipulates the obligation of the employer to implement special protection for these categories of workers from risks associated with pregnancy and maternity.

#### **5.1.3 Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?**

Yes. Article 34(1) of the Labour Act prohibits dismissal during pregnancy, use of maternity, parental, adoption leave and other types of leave in relation to pregnancy and maternity, including 15 days following the last day of the use of those rights. However, the employment contract of such workers ends with the death of the employer (if this is a natural person), cessation of craft by virtue of law and the deletion of an individual trader from the official registry (Article 34(3) Labour Act). In exceptional cases, dismissal due to business reasons is allowed in the procedure of the winding-up of a company, in accordance with special regulations (Article 34(4) Labour Act). Although this is not explicitly mentioned in the Labour Act, pregnancy and maternity do not prevent expiration of a fixed-term employment contract.

Only the abovementioned cases of dismissal are allowed during pregnancy and use of maternity and parental rights. If the employment status of a person changes due to one of these reasons, or, for example, due to expiration of a fixed-term employment contract, the basis for the recognition of maternity and parental benefits under the Act on Maternity and Parental Benefits also changes. Under Article 52(1) of the Act on Maternity and Parental Benefits, a beneficiary is required to inform the competent body (Croatian Health Insurance Institute) of any change which affects the recognition of a right under that Act, within eight days. Since all rights arising from the Act on Maternity and Parental Benefits are recognized in accordance with a formal decision of the competent body (Article 44(1) Act on Maternity and Parental Benefits), in such case the competent body will have to issue a new decision, taking into account the changed circumstances i.e. the change of the basis for the recognition of rights.

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<sup>23</sup> Croatia, *Zakon o roditeljnim i roditeljskim potporama*, Official Gazette *Narodne novine* Nos. 85/08, 110/08, 34/11, 54/13 and 152/14.

<sup>24</sup> Croatia, *Zakon o zaštiti na radu*, Official Gazette *Narodne novine* Nos. 71/2014, 118/2014 and 154/2014.



- 5.1.4 In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

Dismissal during this period is allowed only in the procedure of the winding-up of a company.

In case of dismissal for business reasons in the procedure of winding-up, dismissal has to be in writing and contain a statement of reasons (Article 34(4) in conjunction with Articles 115(1) and 120 of the Labour Act). Article 121(2) of the Labour Act could affect the realisation of the dismissal because it states that the obligatory notice period must be suspended during pregnancy or during the use of any maternity, parental or adoption related rights. However, there is no case law interpreting the combined application of these provisions.

## **5.2 Maternity leave**

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

Article 12(1) to (5) of the Act on Maternity and Parental Benefits regulate the duration of maternity leave for employed and self-employed mothers. Maternity leave consists of two parts: non-transferable compulsory maternity leave and additional maternity leave which is transferable to the father. Compulsory maternity leave lasts 98 days: 28 days before confinement and 70 days after confinement. The day of the expected confinement is determined by the chosen gynaecologist. In exceptional cases, compulsory maternity leave may start 45 days before confinement, depending on the health condition, which is determined by the chosen gynaecologist. Additional maternity leave starts after expiry of the compulsory maternity leave and lasts until the child is six months old.

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

Yes. Article 12(2) and (4) of the Act on Maternity and Parental Benefits regulate compulsory maternity leave. It is non-transferable and lasts 98 days: 28 days before confinement and 70 days after confinement. In exceptional cases, depending on the health condition of the pregnant woman, compulsory maternity leave may start 45 days before confinement.

- 5.2.3 Is there a legal provision insuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

Yes. Article 31 of the Labour Act prescribes that employers are obliged to offer pregnant workers, workers who have recently given birth and workers who are breastfeeding, and who are working in jobs which represent a risk to their health and life or to the baby's health and life an annex to their employment contract, stipulating a transfer to other adequate jobs for the duration of this condition. If no adequate job is available, such worker is entitled to paid leave. This annex to the employment contract shall not result in a decrease of the salary of a worker. Article 39 of the Safety-at-Work Act stipulates the obligation of the employer to implement special protection for these categories of workers from risks associated with pregnancy and maternity (including transfer to another appropriate job, or paid leave). Article 20(1) of the Act on Maternity and Parental Benefits guarantees the right of pregnant workers, workers who have recently given birth and workers who are breastfeeding to be protected from exposure to health and safety risks at work, in accordance with the provisions on labour protection and safety at work.

Article 20(6) of the Act on Maternity and Parental Benefits stipulates that pregnant workers, workers who have recently given birth and workers who are breastfeeding are not obliged to perform night work during these periods, provided that they present a certificate issued by a competent gynaecologist stating that this is necessary for their health and safety or for the health and safety of the baby.

5.2.4 Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) during the pregnancy and maternity leave?

Yes. Article 30(1) of the Labour Act prohibits the employer from offering a pregnant worker, a worker who is breastfeeding or has recently given birth the conclusion of a modified labour contract on less favourable conditions. Article 32 of the Labour Act stipulates that if prior duration of employment is important to acquire specific rights arising from employment or related to employment, the periods of maternity, parental or adoption leave, and the use of other related rights shall be considered as work in full-time working hours. Article 24(1) of the Act on Maternity and Parental Rights guarantees the right of an employed or self-employed parent to salary compensation during maternity and parental leave.

5.2.5 Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

Maternity benefits (paid during maternity leave) for employed or self-employed persons amount to 100 % of the monthly earnings of the insured person, calculated on the basis of the average salary received in the six months preceding the maternity leave (Article 24(1) Act on Maternity and Parental Benefits). There is no ceiling. The allowance is higher than the average sick pay (see answer under 5.6.1).

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

No.

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

Yes. A minimum period of insurance is required: 12 months of consecutive insurance or 18 months with interruptions in the last two years. The prescribed insurance period is the period that the person has accumulated on the basis of his/her employed or self-employed activity or on the basis of salary compensation after termination of employment. If this condition is not fulfilled, the insured person is entitled to salary compensation amounting to 50 % of the budget calculation base (currently EUR 217 (HRK 1 663) per month) (Article 24(7) Act on Maternity and Parental Benefits).

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

Yes. Article 36(1) and (2) of the Labour Act guarantee the right of workers returning from maternity, parental, adoption leave or other types of leave associated with childcare responsibilities to return to the same job as that performed before exercising one of these rights, and if the need for such job no longer exists, the employer shall offer the worker an employment contract for another appropriate job, whose conditions shall not be less favourable than the conditions of the previous job. Article 36(3) of the

Labour Act stipulates that a worker who has used some of the maternity and parental rights is entitled to additional professional training if there has been a change in techniques or method of work during the use of one of those rights, and is entitled to any other benefit arising from improved working conditions.

### **5.3 Adoption leave**

#### **5.3.1 Does national legislation provide for adoption leave?**

Yes. The extent of rights granted to adoptive parents depends on their employment status and the age of the adopted child (Article 34(2) Act on Maternity and Parental Benefits). If both parents jointly adopt a child, they are both entitled to adoption-related rights and use them, typically, in equal parts, unless they declare in writing that only one parent will use adoption-related rights (Article 34(3) Act on Maternity and Parental Benefits). However, this does not exclude other sharing possibilities. An employed or self-employed adoptive parent is entitled to adoption leave, on the condition that the other parent is not a biological parent of the child (Article 35(1) Act on Maternity and Parental Benefits). The right to adoption leave is acquired on the day that the adoption decision becomes final. The duration of adoption leave is six months for a child younger than 18. In the event of adoption of twins or simultaneous adoption of two or more children or if the adopted child is a third or consecutive child in the family, or in the event of adoption of a child with a developmental disability, the adoption leave of six months is prolonged by 60 days (Article 36(2) Act on Maternity and Parental Benefits). Adoption leave is conceived as an equivalent of maternity leave, so there is no change in length if only one parent takes adoption leave. The allowance for adoption leave is paid in the same amount as for maternity leave (see answer 5.2.5). After the expiry of the adoption leave, the adoptive parent is entitled to parental leave as stipulated for biological parents, in accordance with the Act on Maternity and Parental Benefits.

#### **5.3.2 Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?**

Yes. Article 34(1) of the Labour Act prohibits dismissal during pregnancy, use of maternity, parental, adoption and other types of leave in relation to pregnancy and maternity, including 15 days following the last day of the use of those rights.

### **5.4 Parental leave**

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

Yes, by the Labour Act (Official Gazette *Narodne novine* No. 93/14) and the Act on Maternity and Parental Benefits (Official Gazette *Narodne novine* Nos. 85/08, 110/08, 34/11, 54/13 and 152/14).

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

Yes. Article 6(1) of the Act on Maternity and Parental Benefits defines the term 'employment' for the purposes of application of that Act as 'work of a natural person performed for employer in return for remuneration, based on employment contract or work performed by a natural person appointed or elected for permanent post in a certain governmental, local or regional body'.

#### **5.4.3 Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-**

term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

Yes. There is no specific provision on this, as it would be superfluous: 'employed parent' within the meaning of the Act on Maternity and Parental Benefits (Article 7(1)(1)) is a person 'in employment relationship with a domestic or foreign employer having its registered seat in Croatia'. An employment relationship is based on an employment contract (Article 10(1) Labour Act) (regardless of whether fixed-term or open-ended, part-time or full-time, etc.).

5.4.4 What is the total duration of parental leave? If the provisions regarding duration differ between the public and the private sector, please address the two sectors separately.

Parental leave is an individual right of each employed or self-employed parent, which they cannot use simultaneously. The duration of parental leave is 8 months combined (for the first and the second child), or 30 months combined (for the third and each child after that, or for twins). As a rule, both parents use parental leave, each for 4 or 15 months (depending on the number of children), whereas 2 months are granted on a non-transferable basis. If, in accordance with their agreement, the right to parental leave is used by only one parent, its duration is 6 or 30 months. Parental leave may be used until the child turns 8.

If only one parent uses parental leave, its duration is six months (for the first and the second child). The same applies for single parents. If both parents take the leave, its duration is eight months combined (i.e. usually four months one parent, and four months the other parent; out of which two months are supposed to be non-transferable).

There is no differentiation between the public and the private sector.

5.4.5 Is the right of parental leave individual for each of the parents?

Yes. Article 13(3) of the Act on Maternity and Parental Benefits states that the right to parental leave is an individual (personal) right of both employed or self-employed parents. Thus, parental leave is considered a personal right of each parent, even though there is a combined duration of total leave.

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

Employed or self-employed parents are entitled to use parental leave in its entirety or in parts. In the latter case it can be used in up to two periods per year, each time for at least 30 days. Parental leave may be used until the child turns 8. There is no possibility to take part-time parental leave (e.g. only some days a week).

5.4.7 Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done? (see Clause 3 of Directive 2010/18)?

Both the Labour Act and the Act on Maternity and Parental Benefits are silent on the question of a notice period in relation to the employer when a worker takes parental leave for the first time. The only prescribed notice period is the one in relation to the Croatian Health Insurance Institute (15 days before the starting date of the leave,

Article 44(4) Act on Maternity and Parental Benefits). Employed parents who intend to change the modality of their use of parental leave or to take up the unused part of parental leave are obliged to notify their employer at least 30 days in advance and obtain the employer's written consent. The employer is entitled to deny or postpone the employee's intended change for up to a maximum of 30 days (Article 47(1) and (2) Act on Maternity and Parental Benefits), in accordance with the provisions on labour relations. This is a rather vague provision, because the only situation in which the employer will be required to provide an alternative is in connection with the protection of health and safety at work of a woman who has recently given birth or is breastfeeding. In other cases, a worker who is not satisfied with the employer's decision and believes that their labour rights have been violated has no other option but to request protection of his rights and initiate legal proceedings in a labour dispute before the competent court.

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

No. Other than the right to adoption leave and other general forms of temporal support and/or cash allowance, there are no other specific measures designed for adoptive parents.

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

No. Prior length of work is only taken into account for the calculation of salary compensation during parental leave.

5.4.10 Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?

Only when employed parents intend to change the modality of their use of parental leave or to take up the unused part of parental leave are obliged to notify their employer at least 30 days in advance and obtain the employer's written consent. The employer is entitled to deny or postpone the employee's intended change for up to a maximum of 30 days (Article 47(1) and (2) Act on Maternity and Parental Benefits).

5.4.11 Are there special arrangements for small firms?

No.

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

Yes. There are special modalities of leave suited for parents of children with a disability or a long-term illness. They are separate from maternity and parental leave and include:

1. part-time work (half of the full working time) due to increased care for a child under three years of age: after parental leave, one of the employed or self-employed parents is granted this right if a child needs increased care for health and developmental reasons, according to the professional opinion and assessment by the family physician and the competent committee of physicians designated by the Croatian Health Insurance Institute (Article 16 Act on Maternity and Parental Benefits);
2. leave of absence due to care for a child with severe developmental disabilities until the child turns eight: after maternity or after/during parental leave, one employed

or self-employed parent of a child with a severe bodily or mental impairment or severe mental illness is granted this right based on the findings and professional opinion of the competent body for medical expertise in accordance with the rules of the mandatory health insurance system. Both parents have to be employed or self-employed before taking up this right and for its entire duration (Article 23(1) Act on Maternity and Parental Benefits);

3. part-time work (half of the full working time) due to care for a child with severe developmental disabilities until the child turns eight, and after that time for as long as the need exists: after maternity or after/during parental leave, one of the employed or self-employed parent of a child with a severe bodily or mental impairment or severe mental illness is granted this right based on the findings and professional opinion of the competent body for medical expertise in accordance with the rules of the mandatory health insurance system. Both parents have to be employed or self-employed before taking up this right and for its entire duration. This right may be granted for a certain period of time, depending on the results of the expertise (Article 23(2) Act on Maternity and Parental Benefits).

Remuneration during these types of leave is granted in the form of salary compensation, based on the prescribed parameters of calculation in Article 24(4) and Article 24.a of the Act on Maternity and Parental Benefits.

- 5.4.13 Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave (see Clause 5 of Directive 2010/18)?

Yes. Article 34(1) of the Labour Act prohibits dismissal during pregnancy, use of maternity, parental, adoption and other types of leave in relation to pregnancy and maternity, including 15 days following the last day of the use of those rights. Other than dismissal, there is no other provision explicitly protecting the worker from less favourable treatment.

- 5.4.14 Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?

Article 36(1) and (2) of the Labour Act guarantee the right of workers returning from maternity, parental, adoption or other types of leave associated with childcare responsibilities to return to the same job as that performed before exercising one of these rights, and if the need for such job no longer exists, the employer shall offer the worker an employment contract for another appropriate job, whose conditions shall not be less favourable than the conditions of the previous job.

- 5.4.15 Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?

Article 32 of the Labour Act stipulates that if prior duration of employment is important to acquire specific rights arising from employment or related to employment, the periods of maternity, parental or adoption leave, and the use of other related rights shall be considered as work in full-time working hours. Therefore, all rights also accrue during parental leave. Article 84(4) and (5) of the Labour Act stipulates that an employee who has not used annual leave in the calendar year in which it was acquired due to maternity, parental, adoption leave or similar rights is entitled to use that leave upon return to work, but no later than the end of the calendar year of her/his return to work. This is an example of explicit provision guaranteeing the maintenance of acquired rights prior to the take-up of parental leave.

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

Parental leave is treated as a special type of leave, which does not affect the course of duration of an employment contract.

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

Yes.

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

No. Parental benefits are paid from the state budget.

5.4.19 Does the social security system in your country provide for an allowance during parental leave? If so, how much and in which sectors?

Parental benefits (allowance or salary compensation) for employed and self-employed parents are paid at the expense of the state budget. Parental benefits (paid during parental leave) for employed or self-employed persons is 100 % of the monthly earnings, but cannot exceed a maximum of 80 % of the budget calculation base (currently EUR 347 (HRK 2 660.80) per month) (Article 24(2) Act on Maternity and Parental Benefits). It cannot be lower than 50 % of the budget calculation base (currently EUR 217 (HRK 1 663.00) per month) (Article 24(3) Act on Maternity and Parental Benefits). The sector of employment or self-employment is irrelevant.

5.4.20 In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see Clause 8 of Directive 2010/18)?

More favourable conditions than those envisaged in Clause 2.2 of Directive 2010/18 are prescribed with a view of promoting gender equality in the use of parental leave, in that two months of the parental leave are non-transferable. Also, the fact that there is no postponing of parental leave due to justifiable reasons related to the operation of organisation (Clause 3.1.c of Directive 2010/18) can be considered more favourable for workers.

## **5.5 Paternity leave**

5.5.1 Does national legislation provide for paternity leave?

No.

5.5.2 Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

Not applicable.

## **5.6 Time off/care leave**

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

Yes. Under Article 39(1)(5) of the Compulsory Health Insurance Act,<sup>25</sup> a worker is entitled to paid leave to take care of a close family member (child or spouse). The beneficiary is entitled to salary compensation in the duration of 60 days per illness for a child younger than 7, 40 days per illness for a child from 7-18 and 20 days per illness for a child older than 18 years and for a spouse. Leave is taken on a full-time basis, and compensation of salary is paid by the employer, at the expense of the Croatian Health Insurance Fund (i.e. the employer is reimbursed for the full amount by the Croatian Health Insurance Fund). The amount of compensation is 100 % of the calculation base (the average salary in the six months preceding the care leave) if a child is younger than 3, and 70 % of the calculation base in all other cases. Salary compensation may not exceed EUR 561 (HRK 4 257.28). The size of the employer is irrelevant.

## **5.7 Leave in relation to surrogacy**

### **5.7.1 Is parental leave available in case of surrogacy?**

Surrogacy is not legally regulated in Croatia.

## **5.8 Leave sharing arrangements**

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

Yes. Compulsory maternity leave (98 days: 28 days before confinement and 70 days after confinement) is non-transferable (Article 12(2) Act on Maternity and Parental Benefits). Additional maternity leave (from the 71<sup>st</sup> day after confinement until a child is 6 months old) is transferable to the father. All rights are prescribed by law, although rights of employed parents may be extended in collective agreements, an agreement between works council and employer, in employment rules or in employment contracts, at the expense of employers and on conditions and manners determined in employers' statutes (Article 26 Act on Maternity and Parental Benefits). The size of the employer neither is a qualifying condition, nor does it affect the nature of the entitlement.

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

Yes. Parental leave is transferable, in its entirety or in parts (Article 14(4) Act on Maternity and Parental Benefits). If only one parent uses parental leave, its duration is 6 months for the first and second child, and 30 months for twins, the third and each consecutive child. If parents share parental leave, its duration is 8 months for the first and second child, and 30 months for twins, the third and each consecutive child. This provision is implemented and interpreted so that 2 months of parental leave are granted on a non-transferable basis (i.e. if a mother uses 6 months of parental leave, the father is entitled to the remaining 2 months or vice versa. If the other parent does not use the 2 months, the duration of parental leave for the first and second child is 6 months). In the case of twins, or for the third child and each child after that, the law is quite ambiguous in this regard and the at least one-month non-transferable rule (under clause 2.2 Directive 2010/18) is not so clearly implemented.

Parental leave may be used as a right to work half of the full working time (Article 15(4) Act on Maternity and Parental Benefits), but not simultaneously by both parents.

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<sup>25</sup> Croatia, *Zakon o obveznom zdravstvenom osiguranju*, Official Gazette *Narodne novine* Nos. 80/13 and 137/13.



## **5.9 Flexible working time arrangements**

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

Yes, but only in relation to maternity and parental leave.

Additional maternity leave may be used by a mother as a right to work half of the full working time, which does not affect the right to transfer additional maternity leave to the father (Article 15(1) and (3) Act on Maternity and Parental Benefits), i.e. these two arrangements can be used simultaneously. Parental leave may be used as a right to work half of the full working time (Article 15(4) Act on Maternity and Parental Benefits), but not simultaneously by both parents. This right can be used until the child is eight years old. Its duration is twice as long as any remaining unused parental leave. Other forms of legal right to work half-time are designed for parents of children with a disability or long-term illness (see answer 5.4.11).

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

The possibility of flexible working-time arrangements is prescribed for certain categories of workers and it is unrelated to maternity or parental responsibilities.

Readjusting working-time patterns is basically the employer's prerogative and is regulated under Article 67 of the Labour Act. It is conditioned on the nature of the work. The average working time during readjustment may not be longer than full or part-time work (i.e. 40 hours per week or less if agreed upon in the employment contract). The duration of the readjustment is limited to 12 consecutive months. This readjustment of working hours is either agreed in the employment contract or in a collective agreement, or in an agreement concluded between the employer and the works council. If the readjustment is not agreed in any of these agreements, the employer determines the readjustment in the working plan, which must be submitted to the labour inspectorate.

Flexible working-time arrangements are prescribed for certain categories of workers under Article 88(3) of the Labour Act. Where working time is impossible to measure or set in advance or where workers determine working hours independently due to the specific nature of the work (managers, employed family members living in a joint household with the employer etc.), the provisions of the Labour Act regulating working time, night work, daily and weekly rest are not applicable, provided that such provisions are inserted in the employment contract. The categories of workers falling under this provision are listed in an exemplary, non-exhaustive manner. This provision relates to the issue of working hours. The preconditions for its application are that working time is impossible to measure or set in advance or that workers determine working hours independently. Consequently, the part-time/full-time work distinction is not directly relevant for its application.

Another option, which in practice allows more flexibility in working time arrangements, is the breastfeeding break, pursuant to Article 19 of the Act on Maternity and Parental Benefits. A female worker who is breastfeeding her child is allowed a two-hour break per working day, regardless whether the child's father is using any of the rights guaranteed under the same act. However, this right only applies to female workers on full-time contracts, until the child reaches one year of age. It can be used on a one-time basis or two times per day (in the latter case, the duration of the break is one hour per break). The break is remunerated by the Croatian Health Insurance Fund (at 100 % of the budget calculation base, recalculated on an hourly rate) and is included in the duration of the working time. Recent analysis shows that only a marginal number of women use this option and it is usually used at the end of the working time, so in effect it shortens the

full working time by two hours.<sup>26</sup> However, this right (or its equivalent) is not recognised for adoptive mothers or male workers in general.

5.9.3 Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

There is no legal right for workers to request to work from home or remotely.

Article 17(1) of the Labour Act prescribes the obligatory content of the employment contract, where the location of the workplace is at the worker's home or another location other than the employer's premises. Apart from this obligatory content prescribed for general employment contracts, such contracts must include provisions on working time, engines or equipment which the employer is liable to provide, install and maintain, use of the worker's own equipment and tools and compensation of costs for that purpose, compensation of other costs in connection with performance of work and provisions on professional training and development of a worker. There is no guarantee of return to prior working arrangements. Working from home or remotely is based on an agreement between the employer and the employee. Where no consent on either side exists, no such working arrangement can apply.

The salary of a worker who works from home or remotely must not be lower than the salary of a worker who works at the employer's premises and performs the same or similar work (Article 17(3) Labour Act).

5.9.4 Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future?

Yes. Article 66(9) of the Labour Act, which regulates the distribution of working time, opens up the possibility of 'banking' hours. It can be regulated only through collective agreements, as a total fund of working hours during a period of uneven distribution of working hours (up to four or six months). The total working hour fund during this period cannot exceed an average of 45 hours per week, including overtime.

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<sup>26</sup> 160 women used this right in 2015. See for more details, Ombudsperson for Gender Equality (2015) *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

## **6. Occupational social security schemes (Chapter 2 of Directive 2006/54)**

### **6.1 Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?**

Article 8(1)(3) of the Anti-Discrimination Act includes in its field of application the area of social security, including social welfare, pension, health and unemployment insurance. It does not differentiate between statutory and occupational social security schemes. Occupational social security schemes in Croatia are rare. The legal possibility of establishing occupational pension schemes exists in the framework of the Act on Voluntary Pension Funds. This Act regulates both open-ended and closed voluntary pension funds. Voluntary closed pension funds (part of the third or voluntary pension pillar) are financed by employers, unions or associations of independent or occupational activities.<sup>27</sup> The Act specifically refers to the transposition of Recast Directive 2006/54 and Directive 2010/41 (Article 2). Article 183 of this Act requires that the application of the statutes of the closed voluntary pension funds shall not directly or indirectly cause any differential treatment of men and women or allow inequalities in rights from the voluntary pension insurance based on gender. Examples of prohibited differential treatment are listed in a non-exhaustive manner to include access to membership; compulsory or optional nature of participation; laying down different rules regarding access to membership or the minimum period of membership required to obtain the benefits; setting different conditions in the event of suspension of rights, during maternity leave or taking care of children; different conditions applicable only to members of one sex upon termination of membership; etc.

The Act on Pension Insurance Companies<sup>28</sup> also transposes Directives 2006/54 and Directive 2010/41 in its field of application (establishment and operation of statutory and voluntary pension insurance companies and regulation of statutory and voluntary pension schemes). It contains a specific clause on gender equality (Article 105), which specifies that the calculation of pension paid under that Act must not, directly or indirectly, result in inequality or denial of rights based on gender. It further states, in a non-exhaustive manner, what is understood under 'inequality or denial of rights' (different conditions of calculation of qualifying periods, different ages as condition for recognition of rights, unless otherwise prescribed and different amounts of pension due to diverging conditions applicable solely to persons of one sex).

### **6.2 Is the personal scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.**

Closed pension funds financed by employers, unions or associations of independent or occupational activities by their legal definition can accept only workers employed by the employer, members of the union or members of the association and self-employed persons as their members (Article 120 Act on Voluntary Pension Funds). The personal scope is in line with the personal scope of this Act and is also in line with Directive 2006/54.

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<sup>27</sup> Croatia, *Zakon o dobrovoljnim mirovinskim fondovima*, Official Gazette *Narodne novine* No. 19/14.

<sup>28</sup> Croatia, *Zakon o mirovinskim osiguravajućim društvima*, Official Gazette *Narodne novine* No. 22/14.

**6.3 Is the material scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.**

Since there are practically no other occupational social security schemes apart from closed voluntary pension funds in Croatia, the material scope of the national law is more restricted than specified in Article 7 of Directive 2006/54.

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

No.

**6.5 Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?**

No. Article 183 of the Act on Voluntary Pension Funds (see answer under 6.1) almost literally transposes Article 9(1) (a) to (k) of Recast Directive 2006/54. As always when such approach in transposition is used, there are discrepancies in the wording which may be unintentional results of translation and simplification. In any case, only practice will show whether true compliance with Article 9 of Recast Directive 2006/54 has been achieved. What was 'lost' in translation should be interpreted in line with the Recast Directive. For example, different rules for the 'reimbursement of contributions' from Article 9(1)(d) of the Recast Directive are transposed as different rules in relation to 'expected rights' upon termination of membership in Article 183(2)(1) of the Act on Voluntary Pension Insurance Funds, which is a rather vague term and it is questionable whether it includes reimbursement of contributions as well. However, since Article 183 of the Act on Voluntary Pension Funds, like Article 9(1) of Recast Directive 2006/54, contains 'examples' of discrimination, it calls for the widest possible interpretation. This means that other discriminatory behaviour, which is not expressly mentioned, could be sanctioned as well.

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

No.

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

There are no specific difficulties.

## **7. Statutory schemes of social security (Directive 79/7)**

### **7.1 Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?**

Yes. Although there are no specific guarantees of equal treatment in legislative instruments regulating social security benefits (i.e. the Pension Insurance Act, the Statutory Health Insurance Act, the Act on Employment Mediation and Unemployment Benefits, etc.), the general provisions of the Gender Equality Act and the Anti-Discrimination Act cover this field and fully implement Directive 79/7. For example, Article 8(1) of the Anti-Discrimination Act defines its field of application, explicitly referring to the field of social security, including the areas of social welfare, pensions, health and unemployment insurance (Article 8(1)(3) Anti-Discrimination Act).

### **7.2 Is the personal scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any.**

Statutory social security schemes cover all categories specified in Article 2 of Directive 79/7.

### **7.3 Is the material scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.**

Statutory social security schemes cover all schemes that provide protection against the risks listed in Article 3 of Directive 79/7.

### **7.4 Has national law applied the exclusions from the material scope as specified in Article 7 of Directive 79/7? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.**

Between 2010 and 2030, the different pensionable ages for male and female workers and self-employed persons (currently the only exclusion from Directive 79/7 in Croatian legislation) will be gradually equalised and the retirement age increased from 65 to 67 (for both sexes) by 2038. The right of women to continue working even after reaching the currently prescribed retirement age for women (until reaching the retirement age currently prescribed for men) has been confirmed in a judgment of the County Court in Varaždin.<sup>29</sup> An example of less favourable positions of women in statutory sickness insurance in practice include lower salary compensation for sickness when a woman takes sick leave (e.g. to take care of a sick child) in the six months after her return from parental leave. This is because sickness benefits are calculated in the range of 100 % to 70 % of a calculation base, which is the average salary paid in the six months prior to the month in which sick leave is taken, depending on the reason for sick leave. However, the calculation base for the sickness benefits of a woman who returns from parental leave and who takes sick leave to take care of a sick child under three will include the average amount of cash allowances received during parental leave (which cannot be more than 80 % of the calculation base, i.e. currently around EUR 347 (HRK 2 660.80), resulting in much lower sickness benefits than those calculated from the average salary. Since only around 3 % of fathers take parental leave, female workers are usually more strongly affected by this provision.

<sup>29</sup> Varaždin County Court, GŽ-473/03 of 20 December 2002. A female worker reaching the statutory prescribed retirement age for women (which is gradually to be equalised with that of men) is entitled to retire when she reaches the currently applicable retirement age for women, but may not be forced to do so by the employer (as is often the case in practice).

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

No.

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

There are no specific difficulties.

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

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

Yes, by the Act on Maternity and Parental Benefits (Official Gazette *Narodne novine* Nos. 85/08, 110/08, 34/11, 54/13 and 152/14), the Act on Pension Insurance Companies (Official Gazette *Narodne novine* No. 22/14), and the Act on Voluntary Pension Funds (Official Gazette *Narodne novine* No. 19/14).

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

The Income Tax Act<sup>30</sup> provides the most detailed description of self-employed activities for the purposes of taxation of income from those activities. Article 18 specifies that self-employed activities are activities of craftsmen, four categories of independent activities performed by 1. health workers, veterinarians, lawyers, notaries, auditors, architects, insolvency managers, court interpreters, translators, tourist guides, and similar; 2. freelance scientists, writers, innovators, and similar; 3. freelance teachers, pedagogues, and similar; 4. freelance journalists, artists and sportsmen; and persons employed in agriculture and forestry.

The Act on Maternity and Parental Benefits defines self-employment as 'work of a natural person by which he/she independently performs gainful economic or professional activity as his/her only or main occupation, and is subject to obligation to pay income or profit tax, in accordance with tax laws and regulations' (Article 6(1)(2) Act on Maternity and Parental Benefits).

The Act on Voluntary Pension Funds defines self-employed persons as those who 'perform independent work, for example crafts or similar activity, freelancers, people employed in agriculture and other, or a self-employed person in accordance with the regulations of another Member State' (Article 3(1)(9) Act on Voluntary Pension Funds).

### **8.3 Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.**

Croatian law mainly defines self-employment in terms of tax obligations and less so in terms of employment rights beneficiaries. Due to several categories of self-employment in the Republic of Croatia, there is still certain confusion on the precise definition of self-employment. A positive development is that social protection legislation uses the term 'self-employed persons', which is broader and can encompass all sub-categories of self-employed persons, thus minimizing the risk of exclusion from coverage. Agricultural and forestry sectors are included in the definition of self-employment. Life partners enjoy the same scope of social rights as spouses and the legal effects of long-term cohabitation (longer than three years) are the same as the legal effects of marriage. Social legislation explicitly includes partners into the personal scope.

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<sup>30</sup> Croatia, *Zakon o porezu na dohodak*, Official Gazette *Narodne novine* Nos. 177/2004, 73/2008, 80/2010, 114/2011, 22/2012, 144/2012, 43/2013, 120/2013, 125/2013, 148/2013, 83/2014 and 143/2014.

#### **8.4 How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment the same, more restricted, or broader than specified in Article 4 Directive 2010/41/EU?**

Article 8(1)(1) of the Anti-Discrimination Act regulates its field of application in a broad manner, by stating that it applies to all conduct of state authorities, local and regional authorities, legal persons with public prerogatives and conduct of all legal and natural persons in various areas, including the possibility of performing self-employed activities. This field of application is broad enough to include the widest possible cases of discrimination in the area of self-employment.

#### **8.5 Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?**

The Government's 'Guidelines for the development and implementation of active employment policy measures in the period 2015 to 2017'<sup>31</sup> is a national strategic document that sets priorities and goals in the overall employment policy. It contains three types of activities (services, measures and subsidies) aimed at labour market interventions and the majority of those activities are implemented by the Croatian Employment Service. The promotion of gender equality in employment and self-employment is one of the underlying elements of all activities.

According to the data gathered by the Ombudsperson for Gender Equality, the labour market interventions in 2015 included more women (60.1 %). However, the share of male beneficiaries is larger for the interventions that include subsidies (55.9 %).<sup>32</sup> The Ministry of Entrepreneurship and Crafts has also approved more subsidies to male applicants (69.3 %).

According to the Office for Gender Equality, the preparations for the adoption of the new National Policy for Gender Equality for 2016-2020 are fully underway.<sup>33</sup> It is expected that the new policy will include the same or similar areas as the previous one, meaning that the strengthening of female entrepreneurship will be included as one of the policy priorities.

The Croatian Bank for Reconstruction and Development (HBOR) implements the programme of subsidized loans for female entrepreneurs (companies, crafts, natural persons, cooperatives and institutions in which women hold at least 51 % of ownership or in which women are head of the management board).

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

No. There is no special system of social protection of self-employed persons (i.e. they are covered by the same legislation applicable to workers). The social protection system in the Republic of Croatia is available to all workers, including self-employed workers. It covers mandatory pension, social and health insurance. Self-employed workers are

<sup>31</sup> 'Guidelines for the development and implementation of active employment policy measures in the Republic of Croatia in the period from 2015 to 2017', <http://www.mrms.hr/wp-content/uploads/2015/02/smjernica-apz.pdf>, accessed on 6 June 2016.

<sup>32</sup> Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvie%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

<sup>33</sup> Office for Gender Equality (2015), *Report on the activities of the Office in 2015*, <https://ravnopravnost.gov.hr/UserDocsImages//dokumenti/Izvie%C5%A1%C4%87e%20o%20radu%20Urada%20za%20ravnopravnost%20spolova%20Vlade%20RH%20u%202015.%20godini.pdf>, accessed 6 June 2016.



entitled to the following benefits: disability, survivor, sickness, work injury, occupational disease, unemployment, maternity and parental benefits, new-born child assistance, income-based child allowance and social welfare. Currently, there is only a public social protection system, but self-employed workers can benefit from voluntary pension insurance through payment of contributions. Spouses and life partners are eligible to benefit from social protection in accordance with relevant national law. This is a mandatory requirement: for example health or pension insurance of the main beneficiary covers spouses, minor children and life partners. There are no mandatory schemes for the self-employed worker that are voluntary for his/her spouse or life partner, or vice versa.

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

Yes. The status of self-employed parents regarding maternity/parental rights is equal to that of parents who are employees (Article 9(1) of the Act on Maternity and Parental Benefits), provided that they have the status of insured person in the compulsory health and pension insurance. Self-employed parents within the meaning of the Act on Maternity and Parental Benefits include persons who themselves perform certain activities. Consequently, the position of female spouses of self-employed workers (including non-marital spouses) is determined according to their own employment, self-employment, unemployment or other status within the meaning of the Act on Maternity and Parental Benefits. Under the Crafts Act<sup>34</sup> (Article 30) members of the craftsman's family (spouse, children, parents, adoptive parents, adopted children, children of a spouse and other dependent family members) are entitled to help the craftsman with the performance of his activities (without having to be employed by him). However, there is no provision granting the spouses of self-employed workers social protection or maternity benefits based exclusively on this family relationship. These entitlements are provided in accordance with their personal status in the statutory insurance (i.e. pension, sickness, unemployment).

Maternity allowance meets the requirement of sufficiency because it covers the total amount of previous remuneration as stipulated in Article 8(3) of Directive 2010/41/EU. The criterion used in Croatian legislation is the one stipulated in subparagraph (b) i.e. the average loss of income in relation to a comparable preceding period. The maternity allowance is granted on a mandatory basis but based on the request of applicant. There is no available choice of systems. The Croatian Health Insurance Institute pays the allowance. In relation to Article 8(4), there are no existing services supplying temporary replacements or an access to services to be alternative to or part of the allowance.

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

Yes. The principle of equal treatment of self-employed persons in occupational pension schemes is implemented through the gender equality clause in the Act on Pension Insurance Companies (Article 105), which specifies that the calculation of pension paid under that Act shall not, directly or indirectly, result in inequality or denial of rights based on gender. It further states, in a non-exhaustive manner, what is understood under 'inequality or denial of rights' (different conditions of calculation of qualifying periods, different ages as a condition for recognition of rights, unless otherwise prescribed and different amounts of pension due to diverging conditions applicable solely to persons of one sex). Closed pension funds financed by associations of independent or

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<sup>34</sup> Croatia, *Zakon o obrtu*, Official Gazette *Narodne novine* No. 143/2013.

occupational activities are obliged to accept all members of the association and self-employed persons as their members (Article 120 Act on Voluntary Pension Funds).

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

No.

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

Yes. Article 8(1)(1) of the Anti-Discrimination Act prescribes its field of application in broad areas of private and public life. It is applicable to the conduct of all state authorities, local and regional authorities, legal persons with public prerogatives and to the conduct of all legal and natural persons in relation to the possibilities of performance of self-employed activities.

## **9. Goods and services (Directive 2004/113)**

### **9.1 Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?**

Yes. Both the Anti-Discrimination Act and the Gender Equality Act implement Directive 2004/113 in their respective fields of application. Both Acts also go beyond the scope of application of this Directive. Article 6(4) of the Gender Equality Act explicitly prohibits any discrimination in relation to the access to and supply of goods and services. Article 8(1)(8) of the Anti-Discrimination Act specifies its field of application in the area of access to and supply of goods and services. The latter also explicitly mentions that it is aligned with Directive 2004/113 (Article 1.a ADA).

### **9.2 Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any.**

The material scope of national law is broader, because it covers the content of media, advertising and education. Article 14 of the Gender Equality Act obliges all educational authorities and facilities to ensure equal access to all levels of education and vocational training, as well as to promote gender equality contents in their curricula. Article 16 of the Gender Equality Act obliges the media to use their programme, programme framework, programme guidelines and self-regulating acts to promote awareness on the equality of women and men. It also prohibits any public display of women and men in an insulting, degrading or demeaning manner, based on sex or sexual orientation.

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

No.

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

Under Article 9(2)(7) of the Anti-Discrimination Act, any less favourable treatment in the access to and supply of goods and services and sports shall not be deemed discriminatory if the provision of the goods and/or services is reserved exclusively or primarily to members of one sex or persons with disabilities, provided that such treatment is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

There has been no relevant case law regarding this exception in the field of gender equality.

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

Yes. Exceptions to the general prohibition of discrimination on particular discriminatory grounds (Article 9 Anti-Discrimination Act) were amended and redefined in 2012. A provision which stipulated that the differences in premiums and benefits where the use of sex was a factor of calculation was not deemed to be discrimination was removed with effect from 30 June 2013, in view of the decision of the Court of Justice of the EU in the

*Test-Achats* case. Age as a factor of calculation still remains an acceptable exception (Article 9(2)(6) Anti-Discrimination Act).

**9.6 How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 *Test-Achats* ruling in national legislation.**

Following the *Test-Achats* ruling of the CJEU, the use of sex as a factor in the calculation of premiums and benefits was removed from the list of acceptable exceptions to the prohibition of discrimination listed in Article 9 of the Anti-Discrimination Act with effect from 30 June 2013.

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

No.

**9.8 Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.**

Yes. There are two specific fields in which problems regarding discrimination on the grounds of pregnancy, maternity or parenthood persist in relation to access to and the supply of goods and services: the first is the field of health services, notably reproductive health; and the second is the field of banking and financial services.

In the field of reproductive health, problems reported in the previous reporting period continue. The issues primarily concern access to legally induced termination of pregnancy, accessibility of modern forms of contraception and different standards of care and protection of women during delivery (giving birth). Regarding the first issue, health workers in many health institutions in Croatia refuse to perform abortions, based on the so-called 'appeal of conscience' or 'conscientious objection'. This is a personal right of health workers, but health institutions are nevertheless obliged to engage a qualified person to perform this procedure. However, a study conducted by the Ombudsperson showed that abortion could not be performed in 20 % of health institutions because all health workers in the institutions had a conscientious objection to abortion. Many of these hospitals are in rather remote areas, meaning that women in need of such a service had to travel to another facility far from their place of residence.<sup>35</sup> In addition, the Croatian Health Insurance Fund does not cover the cost of performing such procedures, unless an abortion is necessary due to medical reasons. The second issue regarding access to health care concerns the accessibility of modern forms of contraception, in particular the EllaOne emergency contraceptive or 'morning after' pill. Even though this pill was made available in pharmacies without prescription (following a decision taken by the European Commission), the pharmacies in Croatia have to follow the guidelines issued by the Croatian Ministry of Health, which require that anyone buying this contraceptive must fill in a form and give certain information about their sexual behaviour and reproductive health. Pharmacies are instructed not to issue the contraceptive, depending on the answers that are given. The third issue concerns unequal standards of care and protection of women giving birth, depending on the

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<sup>35</sup> Ombudsperson for Gender Equality (2014), *Annual Report for 2014*, [http://www.prs.hr/attachments/article/1555/01\\_IZVJESCE\\_2014\\_CJELOVITO.pdf](http://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf), accessed 6 June 2016. See also Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

hospital.<sup>36</sup> For example, maternity units in several clinical hospitals do not comply with required quality standards, the practice of organising and charging maternity courses differs, the possibility of a partner being present at childbirth is limited in some hospitals, the fees for voluntary abortions may vary significantly from hospital to hospital, etc. These standards and prices should be equalised to ensure equal quality and standard of care.

In the field of banking and financial services, there are reports of discriminatory treatment in relation to the granting of loans to pregnant women, or to persons (of both sex) who use maternity and parental leave. Some banks tend to unjustifiably categorise such clients as an excessive risk and assess their loan capacity by income during parental leave, which is lower than their usual salary. The situation of pregnant women asking for loans was analysed in a study conducted by the Ombudsperson for Gender Equality in 2013,<sup>37</sup> and following recommendations issued by the Ombudsperson for Gender Equality, many banks changed their practices. However, there were still reports throughout 2015 that male clients have been treated less favourably by the banks because they were on parental leave or were not recognised by insurance companies as eligible for certain compensation in life insurance policies for newborn children, with the explanation that such compensation is only for mothers who have such policies.<sup>38</sup>

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<sup>36</sup> See also United Nations Committee on the Elimination of Discrimination against Women (2015), *Concluding observations on the combined fourth and fifth periodic reports of Croatia*, 28 July 2015, CEDAW/C/HRV/CO/4-5.

<sup>37</sup> Ombudsperson for Gender Equality (2013), *Annual Report for 2013*, <http://www.prs.hr/index.php/izvjesca/izvjesce-o-radu-za-2013>, accessed 15 September 2015.

<sup>38</sup> Ombudsperson for Gender Equality (2015) *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

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

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

No. The Convention was signed on 22 January 2013, but has not yet been ratified. Financial concerns related to the accession have not been discussed so far.

Ratification was not on the Parliament's agenda and there is no formal debate on this topic. The importance of the Convention and its ratification has been discussed in the Committee for Gender Equality of the Croatian Parliament, which held a thematic session in November 2013 regarding this issue. There are no available documents to report. Several non-governmental organisations involved in the protection of women against violence have urged Parliament to ratify the Convention as soon as possible. The Ombudsperson for Gender Equality invited Parliament to ratify the Convention in the Activity Report for 2014,<sup>39</sup> and has undertaken public campaigns to promote the importance of the Convention in 2015.<sup>40</sup> The Office for Gender Equality also reports that it has undertaken several public awareness-raising campaigns throughout 2015.<sup>41</sup> However, no further steps to ratify the Convention have been taken by the Croatian Parliament in the reporting period.

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<sup>39</sup> Ombudsperson for Gender Equality (2014), *Activity Report for 2014*, available at: [http://www.prs.hr/attachments/article/1555/01\\_IZVJESCE\\_2014\\_CJELOVITO.pdf](http://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf), accessed 6 June 2016.

<sup>40</sup> Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvj%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

<sup>41</sup> Office for Gender Equality (2015), *Report on the activities of the Office in 2015*, <https://ravnopravnost.gov.hr/UserDocsImages//dokumenti//Izvj%C5%A1%C4%87e%20o%20radu%20Urada%20za%20ravnopravnost%20spolova%20Vlade%20RH%20u%202015.%20godini.pdf>, accessed 6 June 2016.

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

### **11.1 Victimisation**

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

Yes. Victimisation in relation to sex discrimination and other discriminatory grounds is prohibited within the material scope of application of the Gender Equality Act and the Anti-Discrimination Act, respectively. Article 2 of the Gender Equality Act provides that no one shall suffer adverse consequences for giving a statement before competent bodies as a witness or victim of sexual discrimination or for alerting the public to sexual discrimination. Article 7 of the Anti-Discrimination Act provides protection against victimisation in a more detailed manner, specifically mentioning reporting or witnessing discrimination, refusing to comply with a discriminatory order or participating in any other proceedings in connection with discrimination. The concept of victimisation in both Acts reflects the scope of the same concept as per the EU anti-discrimination directives, inasmuch as it requires a causal relationship between complaining about discrimination (as a witness or victim) and victimisation, although it remains doubtful whether it covers third party victimisation. The definition of victimisation in Article 7 of the Anti-Discrimination Act is wider, or, better said, more detailed than the definition of victimisation from Article 2 of the Gender Equality Act, because it includes more examples of actions which could lead to victimisation. However, the Gender Equality Act refers more broadly to "adverse consequences", whereas the Anti-Discrimination Act refers to "adverse treatment". The Gender Equality Act is *lex specialis*, but in the case of victimisation due to sex discrimination, there would be no obstacles to applying the definition from the Anti-Discrimination Act. In any case, in spite of some insecurity and different wording of these Articles, both Acts have to be interpreted in line with the case law of the CJEU. The Gender Equality Act expressly contains an EU-friendly interpretation clause or non-regression clause in Article 4, guaranteeing that provisions of that Act 'shall not be interpreted or implemented so as to restrict or diminish the content of warranties on gender equality enshrined in the universal rules of international law [and] the *acquis communautaire* of the European Community, [...]'. Unfortunately, there is no domestic case law to report on these issues.

In May 2016, a legislative proposal to amend the Gender Equality Act was submitted to the Croatian Parliament. The amendment concerns the definition of 'victimisation', in an effort to align the provision of Article 2 of the Gender Equality Act with Article 24 of Directive 2006/54. As part of its activities regarding monitoring of compliance of national legislation in Member States with Directive 2006/54 (5570/13/JUST), the European Commission expressed its doubts as to whether the standard of protection against victimisation is the same in the Anti-Discrimination Act (as *lex generalis*) and the Gender Equality Act (as *lex specialis*) and gave specific recommendations to adjust this provision. According to the proposal, the amended provision of Article 2 of the Gender Equality Act is now formulated to include all persons, not just victims or witnesses of discrimination, and all complaint procedures, formal or informal, in which such persons participated. The formulation of the provision as well as the description of actions that should not serve as a basis for victimisation is fairly broad. Given this expert's opinion from the previous reporting period, it is doubtful whether such an amendment is really necessary. However, given the lack of domestic case law on victimisation (still nothing to report) and the tendency of the Croatian judiciary for overly formalistic interpretations of the laws, the amendment might contribute to more legal certainty. At the time of writing this report the legislative procedure is still pending in the Croatian Parliament.

## 11.2 Burden of proof

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

Yes. The wording of the two main anti-discrimination laws in Croatia, the Anti-Discrimination Act and the Gender Equality Act, on the burden of proof slightly differs, which may lead to inconsistent interpretation. Under Article 20 of the Anti-Discrimination Act, a party claiming discrimination does not have to prove it with any degree of certainty – it suffices to establish probability (Croatian: *učiniti vjerojatnim*) that the discrimination occurred ('shall make it plausible that discrimination has taken place'), while the respondent has to prove the opposite with sufficient degree of certainty. Failing this, it is considered that the right to equal treatment was violated.<sup>42</sup> In two Supreme Court cases, GŽ-25/11 and GŽ-41/11 (involving discrimination based on sexual orientation), the rules on the burden of proof from the Anti-Discrimination Act were interpreted so as to shift the burden of proof to prove that there had been no discrimination to the respondent, when the meaning of the statements made was obvious in itself (degradation and humiliation).<sup>43</sup> In another case dealing with the burden of proof from the Anti-Discrimination Act, the court interpreted the 'standard of probability' to mean that a party claiming discrimination has to prove that 'he/she was placed in less favourable position which might be a consequence of direct or indirect discrimination' on any of the grounds listed in this Act.<sup>44</sup> This interpretation seems to come close to the burden of proof provision from the Gender Equality Act, although the wording is formulated much more broadly. According to Article 30(4) of the Gender Equality Act, a party claiming that his/her right has been violated has to present facts that raise the suspicion that discriminatory behaviour has occurred; the burden of proof then shifts to the opposing party who has to prove that there has been no discrimination. Theoretically, this is an even lighter burden than proving the probability under the Anti-Discrimination Act. The application of the rules on the reversal of the burden of proof is a challenging task for the Croatian judiciary.

Case law involving sex discrimination dealing with the interpretation of the burden of proof from the Gender Equality Act is still non-existent. Several discrimination cases interpreting the burden of proof rules deal with factual situations which occurred prior to the coming into force of the Gender Equality Act, and apply the burden of proof rules that were at that time contained in the old Labour Act (2004).<sup>45</sup> These rules were worded similarly to Article 30(4) of the Gender Equality Act ('raise suspicion').<sup>46</sup>

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<sup>42</sup> Whereas the first-instance court in this case found that the probability of discrimination requirement had not been satisfied, the appellate court was of the opinion that it was enough for the claimant in a representative action to present the respondent's statement to the court and concluded that the 'purposive meaning of that statement was evident in itself: humiliation and degradation of that category of persons'. The claimant showed with probability that discrimination of the target group occurred as a result of that statement, which was enough for the burden of proof to shift to the respondent.

<sup>43</sup> In both cases, which share the same factual background, the first-instance courts concluded that the claimants had not made discrimination plausible, i.e. did not show probability that the respondent's statement had caused direct discrimination. See judgments of the Zagreb County Court Pnz-8/10 and Pnz-7/10. There are no similar reported cases on the burden of proof involving gender discrimination.

<sup>44</sup> Bjelovar County Court, GŽ-458/2012.

<sup>45</sup> The anti-discrimination case-law in general is still rather confusing, partially because the claimants themselves claim that discrimination occurred, without specifically stating on which grounds; or even change the grounds of discrimination during court proceedings. See, e.g. cases VSRH Revr-856/2012; VSRH Revr-650/2008.

<sup>46</sup> In one case involving a claim of sexual harassment at work (Bjelovar County Court, GŽ-2000/2012), the court found that the standard for shifting the burden of proof was satisfied, because the claimant substantiated her claim with the written proof from a third-party (telecom operator), warning her employer that his company is not registered for providing phone sex services. In one decision of the Croatian Constitutional court (U-III-7490/2014), the Constitutional Court found that 'subjective assessment' of the claimant that she deserves promotion does not suffice to prove that she has been placed in a less favourable position.



## 11.3 Remedies and Sanctions

- 11.3.1 What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender equality law? Please specify the applicable legislation.

A victim of discrimination is entitled to seek damages in accordance with the general provisions for compensation of damages. The Gender Equality Act and the Anti-Discrimination Act prescribe sanctions for violations of its provisions (punishable as a misdemeanour) in the form of monetary fines. Sexual harassment is also punishable under the Criminal Act (Article 156).<sup>47</sup>

The Gender Equality Act authorises any party who considers that her/his rights have been violated due to discrimination described in that Act to file a legal action before the regular court of general jurisdiction (Article 30(1) Gender Equality Act), in other words, to initiate litigation before a municipal court. The Anti-Discrimination Act prescribes the main features of the special legal action for the protection against discrimination (Article 17(1) Anti-Discrimination Act): action for determination of discrimination, action for prohibition or elimination of discrimination, action for damages and request to publish in the media the ruling establishing the violation of the right to equal treatment, at the respondent's costs. In addition, the Anti-Discrimination Act authorises any person who claims that his/her rights have been violated as a result of discrimination to seek protection in proceedings deciding upon that right as the main issue (Article 16(1) Anti-Discrimination Act).

Pursuant to Article 24(1) of the Anti-Discrimination Act, associations, bodies, institutions or other organisations set up in accordance with the law and having a justified interest in protecting collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment, may bring a legal action against a person that has violated the right to equal treatment. Representative action is a collective remedy available under the Gender Equality Act as well, but the general conditions are prescribed in the ADA. So far, it has predominantly been used by associations fighting against discrimination based on sexual orientation.<sup>48</sup>

- 11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

Yes. The legislative framework regarding the remedies and sanctions is satisfactory, but practice and case law are still scarce.

## 11.4 Access to courts

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

Pursuant to the Anti-Discrimination Act, municipal courts have the subject-matter jurisdiction in litigation based on special legal action for protection against discrimination (Article 17(1) and Article 18(1) Anti-Discrimination Act). County courts adjudicate in the first instance in disputes prescribed by law and decide on appeal against decisions of the municipal courts. In the field of equality law, county courts have subject-matter jurisdiction for joint legal actions (representative actions) regarding the protection

<sup>47</sup> Croatia, *Kazneni zakon*, Official Gazette *Narodne novine* Nos. 125/11, 144/12, 56/15 and 61/15.

<sup>48</sup> See for example County Court in Zagreb Pnz-8/10 and Pnz-7/10.

against discrimination. The Supreme Court is the highest judicial authority, whose task it is to ensure uniform application of laws and the equality of all before the law (Article 116 of the Constitution of the Republic of Croatia). In civil proceedings, its competences include deciding on appeals against first-instance decisions of county courts and revisions as extraordinary legal remedies against (final and binding) second-instance decisions, in cases prescribed by law.

Apart from the special legal action for the protection against discrimination, the Anti-Discrimination Act authorises any person who claims that her/his rights have been violated as a result of discrimination to seek protection in the proceedings deciding upon that right as the main issue (Article 16(1) Anti-Discrimination Act). The Gender Equality Act authorises any party who considers that her/his rights have been violated due to discrimination described in that Act to file a legal action to the regular court of general jurisdiction (Article 30(1) Gender Equality Act), in other words, to initiate litigation before a municipal court. Despite the relatively satisfactory normative basis, victims of discrimination are often reluctant to initiate court proceedings, given their expected length, cost and 'stigma' associated with such cases.<sup>49</sup>

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

Pursuant to Article 24(1) of the Anti-Discrimination Act, associations, bodies, institutions or other organisations set up in line with the law and having a justified interest in protecting collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment, may bring a legal action against a person that has violated the right to equal treatment. Representative action is a form of collective redress available under the Gender Equality Act as well, but the general conditions are prescribed in the Anti-Discrimination Act. So far, civil society organisations have been active in seeking protection of the right to equal treatment. Various organisations have been involved in several court cases, either as sole claimants or as interveners, but predominantly in the field of discrimination based on sexual orientation.<sup>50</sup>

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

Many civil society organisations involved in the protection against discrimination offer free legal advice to victims of gender discrimination. The Ombudsperson for Gender Equality receives claims of discrimination, and many victims feel more confident complaining to the Ombudsperson in out-of-court, less formalistic proceedings at no cost.

## 11.5 Equality body

11.5.1 Does your country have an equality body that seeks to implement the requirements of EU gender equality law?

Yes. The most important body entrusted with the implementation of gender equality requirements is the Ombudsperson for Gender Equality (<http://www.prs.hr>). This is an independent body in charge of combating discrimination in the field of gender equality.

<sup>49</sup> Almost 40 % of respondents in a survey on gender equality and discrimination in Croatia conducted in 2010 replied that they would not report gender discrimination by any of the institutional means (i.e. complaint to the Ombudsperson for gender equality, Court, etc.). See Kamenov, Ž., Galić, B. (2011), *Rodna ravnopravnost i diskriminacija u Hrvatskoj* (Gender equality and discrimination in Croatia), Ured za ravnopravnost spolova.

<sup>50</sup> See, for example, cases before County Court in Rijeka P-15/10; County Court in Zagreb Pnz-8/10 and Pnz-7/10.

Its tasks include receiving complaints of and providing assistance to natural persons or legal entities in the field of gender discrimination, investigating individual complaints prior to legal proceedings and conducting mediation processes with the consent of the parties, as well as collecting and analysing statistical data on cases of sexual discrimination and conducting independent surveys concerning discrimination, publishing independent reports and exchanging available information with corresponding European bodies. The increasing workload of the Ombudsperson for gender equality (especially regarding individual complaints; about 300 – 400 annually) shows the relevance of this office. In addition, the Ombudsperson for Gender Equality issues numerous recommendations and warnings *ex officio*, and conducts research in various fields of gender equality, whose results serve as a valuable contribution and platform for the promotion of gender equality in Croatia and encourage change in discriminating practices.

Other authorities entrusted with the enforcement of the GEA include the Office for Gender Equality, as well as other bodies at regional and local levels. The Office for Gender Equality (<http://www.ured-ravnopravnost.hr/site/>) is a technical service of the Government for the implementation of activities related to the enforcement of gender equality. State administrative bodies are obliged to appoint a gender equality coordinator. Local and regional self-government units are required to establish committees for gender equality.

## **11.6 Social partners**

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

Social partners are obliged to comply with the provisions of the Gender Equality Act and measures for achievement of gender equality when conducting collective negotiations and concluding collective agreements at all levels (Article 11(6) Gender Equality Act). Pursuant to the Anti-Discrimination Act (Article 15 Anti-Discrimination Act), the Public Ombudsman shall consult social partners (representative associations of trade unions and employers of a higher level) and civil society organisations when drawing up regular reports, opinions and recommendations on the occurrence of discrimination. The Ombudsperson for Gender Equality has no equivalent obligation.

## **11.7 Collective agreements**

11.7.1 To what extent does your country have collective agreements that are used as means to implement EU gender equality law? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

Collective agreements are binding on their parties, but also on all persons who, at the time of the conclusion of such an agreement, were or subsequently become members of the association that is a party to the collective agreement (Article 194 Labour Act). The competent Minister has the authority to extend the application of a collective agreement to other employers, if there is a public interest for such an extension and if the collective agreement was concluded with unions that have the largest number of members and employer's associations with the largest number of workers at that level of application (Article 203 Labour Act).

The general conclusion from the analysis of the collective agreements in view of gender equality, equal opportunities and work-life balance conducted by the Ombudsperson for Gender Equality in 2009 is that social partners need further instructions regarding the legal framework for equal treatment and equal opportunities, given that many collective

agreements themselves contain provisions that generate inequalities based on sex.<sup>51</sup> Out of 120 collective agreements analysed, only 7 contained provisions on equal pay and only in a general manner. There are no monitoring mechanisms for this obligation whatsoever.

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<sup>51</sup> *Analiza kolektivnih ugovora*, <http://www.prs.hr/index.php/analize-i-istrazivanja/obrazovanje-3/180-analiza-kolektivnih-ugovora>, accessed 15 September 2015.

## 12. Overall assessment

The EU gender equality *acquis* in general has been properly transposed in the existing legislative instruments. However, the two horizontal Acts (the Gender Equality Act and the Anti-Discrimination Act) may cause confusion and include overlap, since both of these normative instruments prohibit gender discrimination. The proper implementation in actual practice takes time. It is still hard to evaluate the capacity of the national judiciary to apply gender equality law. Case law in this field is still scarce, despite the fact that gender continuously ranks among the top three of discriminatory grounds, according to various studies.<sup>52</sup>

In the last decade, a significant normative expansion of anti-discrimination legislation occurred, introducing new legal terminology and standards, which were more often than not left undefined, open for interpretation, indeterminate and sometimes inconsistent with other laws. The 'weakness' of the Croatian judicial system is poor accessibility and non-publication of case law, which transfers into the field of application of anti-discrimination legislation and is the likely cause of inconsistent interpretation, inefficiency and low visibility of decisions in this area. Specifically regarding gender equality, the public perception of inequality seems to exceed by far the actual case law on gender equality and related issues. For example, gender discrimination is considered the third most common ground of discrimination in the labour market by employed and unemployed persons.<sup>53</sup> However, case law specifically relating to gender discrimination is extremely scarce. The crucial reason for incoherent and sporadic case law in anti-discrimination cases is the fact that decisions are not published and updated regularly and they are very hard to come by. Media attention is reserved for high-profile cases (such as those in the field of discrimination based on sexual orientation, usually involving civil society organisations). Furthermore, media coverage of certain cases may not always be accurate. The examination of case law of lower courts often boils down to personal contacts and collegial assistance by judges. The published case law (judgments of the Supreme Court, judgments of the Constitutional Court, selected judgments of county courts) is classified in a non-transparent manner and case-law search engines are far from user-friendly. Perhaps these hurdles might not appear so difficult for a seasoned researcher or other persons skilled and trained to investigate different areas of anti-discrimination protection, but to an average user and to those who should benefit from it the most - the victims of discrimination - they might be insurmountable. It also has a negative impact on uniformity and efficiency of judicial protection throughout Croatia, because until the Supreme Court takes a position on a certain issue (which may not necessarily happen), the courts are basically left without the possibility of knowing the positions and interpretations of other courts. Their only points of reference are internal interpretations of that particular court, provided that they exist. There is no legal obligation for courts to publish final and binding judgments, or judgments pending appeal. Although courts at all levels have their own websites where, applying the rules on anonymization, case law could be published, in most cases this is not done at all.

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<sup>52</sup> For a study on the prevalence of gender discrimination in the Croatian labour market see Franc, R. (ed.) (2010) *Raširenost i obilježja diskriminacije na hrvatskom tržištu rada* (Prevalence and characteristics of discrimination in the Croatian Labour Market), Zagreb, Institut Ivo Pilar.

<sup>53</sup> Franc, R. (ed.) (2010) *Raširenost i obilježja diskriminacije na hrvatskom tržištu rada* (Prevalence and characteristics of discrimination in the Croatian Labour Market), Zagreb, Institut Ivo Pilar.

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