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# Country report

## Gender equality



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# **Country report**

## **Gender equality**

How are EU rules transposed into  
national law?

## **Slovenia**

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Reporting period 1 July 2015 – 1 April 2016

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## **1. Introduction**

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

According to the Constitution of the Republic of Slovenia (hereinafter the Constitution), Slovenia is a democratic republic and a social state governed by law. The state's authority is based on the principle of the separation of legislative, executive and judicial powers, with a parliamentary system of government. Power is held by the people, and they exercise this power directly (through referendums and popular initiatives) and through elections. The Republic of Slovenia is represented by the President. The President has no influence over the composition of the government, which is the task of the Prime Minister and the National Assembly.

The National Assembly is the highest legislative authority in Slovenia. It consists of 90 deputies and has the right to enact laws. The deputies of the National Assembly, with the exception of the two representatives of minorities, are elected by proportional representation.

The Government of the Republic of Slovenia is the executive body and at the same time the supreme body of the state administration. Thus the function of the Government is twofold: executive-political and administrative. Its executive-political function involves mainly the execution of policies agreed by the National Assembly and the implementation of the laws and other regulations passed by the National Assembly. In accordance with the Constitution and with the laws and other general acts of the National Assembly, the Government sets, directs and harmonises the implementation of state policies. As the highest body of the state administration, it issues regulations and passes legal, political, economic, financial, organisational and other measures, which are needed for the development of the state and the regulation of conditions in all the areas of the state's jurisdiction. The Government proposes legislation, the state budget, national programmes and other general acts with which it determines the fundamental and long-term political direction of individual areas of state jurisdiction.

The task of the judiciary is to decide on the rights and duties of citizens, and charges brought against them. All courts in the Republic of Slovenia act in accordance with the principles of constitutionality, independence and the rule of law. The unified system of courts consists of courts with general and specialised jurisdiction. Courts with general jurisdiction include 44 district, 11 regional, and 4 higher courts and the Supreme Court. Specialised courts comprise four labour courts and a social court (they rule on labour-related and social insurance disputes) and the Administrative Court, which provides legal protection in administrative affairs and has the status of a higher court. The state prosecution holds a special place in the justice system, as it is an independent state authority, but also part of the executive branch of power. The General State Prosecutor is appointed by the National Assembly.

The Constitutional Court is the highest authority with regard to the protection of constitutionality, legality, human rights and basic freedoms and is separated from the regular judiciary system. It is composed of nine constitutional court judges, elected on the proposal of the President of the Republic by the National Assembly. In accordance with the Constitution, the Constitutional Court decides in particular on the conformity of laws (and other statutory instruments) with the Constitution (and with laws, respectively), on constitutional complaints of violations of human rights and fundamental freedoms by individual acts, on jurisdictional disputes between various state actors, on the unconstitutionality of the acts and activities of political parties, on appeals against a decision of the National Assembly regarding the confirmation of the election of deputies, on the accountability of the President of the Republic of Slovenia, the Prime Minister, and ministers, as well as on the conformity of a treaty with the Constitution in the process of ratifying the treaty.



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

- Employment Relationship Act, Official Gazette of the Republic of Slovenia, No. 22/2013.
- Protection Against Discrimination Act, Official Gazette of the Republic of Slovenia, No. 33/2016.
- Act on Equal Opportunities for Women and Men, Official Gazette of the Republic of Slovenia Nos 59/2002 and 61/2007.
- Act on the System of Salaries in the Public Sector, Official Gazette of the Republic of Slovenia, Nos 95/2007, 69/2008 and 107/2009.
- Pension and Invalidity Insurance Act, Official Gazette of the Republic of Slovenia, 96/2012 and 39/2013.
- Act on Volunteering, Official Gazette of the Republic of Slovenia, No. 10/2011.
- Parental Protection and Family Benefits Act, Official Gazette of the Republic of Slovenia, No. 26/2014.
- Health Care and Health Insurance Act, Official Gazette of the Republic of Slovenia, Nos 9/92, 13/93, 9/96, 29/98, 77/98, 6/99, 56/99, 99/2001, 42/2002 and 60/2002.
- Labour Market Regulation Act, Official Gazette of the Republic of Slovenia, No. 80/2010.
- Prevention of Undeclared Work and Employment Act, Official Gazette of the Republic of Slovenia Nos 36/2000, 118/2006, 12/2007, 29/2010, 57/2012, 32/2014.
- Social Security Act, Official Gazette of the Republic of Slovenia, No. 3/2007.
- Companies Act, Official Gazette of the Republic of Slovenia, No. 65/2009.
- Consumer Protection Act, Official Gazette of the Republic of Slovenia, No. 98/2004.
- Institutes Act, Official Gazette of the Republic of Slovenia, Nos 12/1991, 17/91, 5/92, 13/93, 66/93, 45/94, 8/96, 31/00 and 36/00.
- Insurance Act, Official Gazette of the Republic of Slovenia, Nos 109/2006, 90/2012,
- Collective Agreements Act, Official Gazette of the Republic of Slovenia, Nos 43/2006 and 45/2008.
- Labour and Social Courts Act, Official Gazette of the Republic of Slovenia, No. 2/04.
- Administrative Dispute Act, Official Gazette of the Republic of Slovenia, Nos 105/06, 107/09, 62/10, 98/11 and 109/12.
- Civil Procedure Act, Official Gazette of the Republic of Slovenia, Nos 73/07, 45/08, 45/08, 111/08, 57/09, 12/10, 50/10, 107/10, 75/12, 40/13, 92/13, 10/14 and 48/15).
- Legal Aid Act, Official Gazette of the Republic of Slovenia, Nos 96/04, 23/08, 15/14, 19/15.
- Regulation on the protection of health in the workplace of pregnant workers and workers who have recently given birth or are breastfeeding, Official Gazette of the Republic of Slovenia, No. 82/2003.
- Regulation on Measures to Protect the Dignity of Employees in Public Administration, Official Gazette of the Republic of Slovenia, No. 36/2009.
- Regulation on Internal Organisation, Post Classification, Posts and Titles within the Bodies of the Public Administration and Justice, Official Gazette of the Republic of Slovenia, No. 58/2003.
- Regulation on Criteria for Respecting the Principle of Gender-Balanced Representation, Official Gazette of the Republic of Slovenia, No. 103/04.

## **2. General legal framework**

### **2.1 Constitution**

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

Yes it does. According to Article 14 of the Constitution, in Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance.

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

Yes it does. According to Article 22 of the Constitution everyone shall be guaranteed an equal protection of rights in any proceeding before a court and before other state authorities, local community authorities, and bearers of public authority that decide on his or her rights, duties, or legal interests. According to Article 49, everyone shall have access under equal conditions to any position of employment.

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

Yes, they can be invoked between private parties.

### **2.2 Equal treatment legislation**

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

Yes it does. These are the Protection Against Discrimination Act (hereinafter the PADA) and the Act on Equal Opportunities for Women and Men (hereinafter the AEOWM).

According to Articles 1 and 2 of the PADA equal treatment shall be ensured irrespective of sex, nationality, racial or ethnic origin, religious or other belief, disability, age, sexual orientation, gender identity, gender expression, social standing, education or other personal circumstances in the area of employment, education, social protection, including social security and healthcare, access to and the supply of goods and services, which are available to the public, including housing etc. In addition, the AEOWM defines gender equality and equal treatment in Articles 4 and 5. According to Article 4 of the AEOWM gender equality means that women and men shall equally participate in all fields of public and private life and that they shall have equal status, equal opportunities for the exercise of all rights and for the development of their personal potential by which they contribute to social development, as well as equal benefit from the results arising from development. Furthermore, according to Article 5, equal treatment of women and men means the absence of direct and indirect forms of gender-based discrimination.

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

The implementation of central concepts is considered to be satisfactory.

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

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

No they are not.

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

Not directly. However, discrimination due to gender identity and gender expression is now explicitly covered with the PADA. Besides, it can be covered under 'other personal circumstances' in accordance with the PADA. There is no case law on this subject.

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

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes it is. Direct discrimination is defined in national legislation, with the AEOWM, PADA and the Employment Relationship Act-1 (hereinafter the ERA-1). According to Article 5/2 of the AEOWM, Article 6/1 of the PADA and Article 6/3 of the ERA-1, direct discrimination occurs when a person has been, is or could be treated less favourably than another person in an equal or comparable situation on the ground of his/her personal circumstances.

This definition complies with the EU definition of direct discrimination.

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

Pregnancy and maternity discrimination are not explicitly prohibited as forms of direct discrimination, but merely as forms of discrimination. Article 6/4 of the ERA-1 specifically defines less favourable treatment of workers in connection with pregnancy or parental leave as discrimination.

This provision complies with 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.

There are no specific difficulties in applying the concept of direct sex discrimination.

#### **3.3 Indirect sex discrimination**

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes it is. Indirect discrimination is defined in national legislation by the AEOWM, PADA and the ERA-1. According to Article 5/3 of the AEOWM, Article 6/2 of the PADA and Article 6/3 of the ERA-1 indirect discrimination occurs when an apparently neutral provision, criterion or practice in equal or comparable situations and under similar conditions has put, puts or might put a person with certain personal circumstances in a less favourable position compared to other persons, unless that provision, criterion or

practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

This definition complies with the EU definition of indirect discrimination.

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.

No statistical evidence is used in Slovenia in order to establish a presumption of indirect sex discrimination.

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 is no relevant case law in Slovenia regarding indirect sex discrimination.

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.

There are no specific difficulties in applying the concept of indirect sex discrimination.

### **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, multiple discrimination is explicitly addressed in Slovene national legislation. According to Article 12 of the PADA multiple discrimination is a more serious form of discrimination which exists when a person is discriminated against on multiple grounds at the same time.

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, there is no relevant case law that addresses multiple discrimination and/or intersectional discrimination.

### **3.5 Positive action**

3.5.1 Is positive action explicitly allowed in national legislation?

Yes, positive action measures are explicitly allowed in national legislation.

Positive measures are defined in the PADA and the AEOWM. The PADA is a general act and defines the adoption and description of positive action measures, designed to ensure the actual equality of persons which are placed in a less favourable position, in particular due to their sex, nationality, racial or ethnic origin, religious or other belief, disability, age and sexual orientation. According to Article 17 of the PADA positive action measures may be adopted with the purpose of preventing or eliminating the consequences of such a position or as compensation for a less favourable position. They include: positive measures, which under the condition of the equal fulfilment of the prescribed criteria and conditions give priority to persons with a particular personal circumstance and are

applied in cases where an obvious disproportion of the representation of persons with that particular personal circumstance exists; or incentive measures, which give special benefits or implement special incentives for persons in a less favourable position. The AEOWM is in relation to the PADA a 'lex specialis'. It defines common grounds for the improvement of the status of women and the establishment of equal opportunities for women and men in various fields of social life. According to Article 7 of the AEOWM positive action measures are defined as temporary measures aimed at establishing equal opportunities for women and men, and promoting gender equality in specific fields of social life in which the non-balanced representation of women and men (which exists when the representation of one gender in a specific field of social life or in a part of such a field is lower than 40 %) or unequal status of persons of one gender is ascertained. They can be used to remove objective obstacles that bring about a non-balanced representation of women and men or an unequal status of persons of one gender, as well as to give special benefits in the form of incentives to the underrepresented gender or to the gender experiencing an unequal status. These incentives must be justified and in proportion to the purpose of the positive action measure. The AEOWM includes the following positive action measures: positive measures that give priority in the case of an equal degree of the fulfilment of the prescribed standards and conditions to persons of that gender which is underrepresented or which is experiencing an unequal status, until balanced or equal representation is achieved; encouraging measures that provide special benefits or introduce special incentives for the purpose of eliminating the non-balanced representation of women and men or unequal status on account of gender; and programme measures in the form of awareness-raising activities and action plans for the promotion and establishment of equal opportunities and gender equality.

This definition complies with the EU definition found in Article 157 TFEU(4).

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.

There are no specific difficulties in relation to positive action.

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

Slovenia adopted measures that aim to improve the gender balance on company boards with the Regulation on Criteria for Respecting the Principle of Gender-Balanced Representation (hereinafter the RCRPGBR) in 2004 (<http://www.pisrs.si/Pis.web/pregledPredpisa?id=SKLE4452>). However, those measures are only in force for state-owned companies.

Yes. According to the RCRPGBR, the principle of gender-balanced representation must be applied in nominating or appointing government representatives to management and supervisory boards of state-owned enterprises (executives and non-executives) and other entities of public law. The principle is therefore applied when the representation of one sex is at least 40 %. No sanctions apply if the principle is not respected.

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.

Due to a very low representation of women in politics the General Assembly decided to adopt positive action measures in the political field in order to promote gender-balanced representation in the decision-making processes. To this end, the European Parliament Elections Act was adopted in 2002, the Act amending the Local Elections Act in 2005 and the Act amending the General Assembly Elections Act in 2006. With those Acts they

introduced 40 % women quotas on candidate lists that need to be respected for elections to the European Parliament and local elections, and 35 % women quotas on candidate lists for parliamentary elections. In addition, there is a requirement that every second candidate in the first half of the candidate list has to be a woman. For elections to the European Parliament there is a rule that in the first half of the candidate list both genders must be represented by at least one candidate. No similar rule exists for parliamentary elections.

Besides, according to the RCRPGBR, the principle of gender-balanced representation must be applied in the composition of governmental bodies; in nominating or appointing government representatives in public enterprises and other entities of public law; and in the composition of expert councils, established by the Ministers. The principle is therefore applied when the representation of one sex is at least 40 %.

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

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

Yes, harassment is explicitly prohibited in national legislation.

Harassment is prohibited under Article 8/1 of the PADA, Article 7 of the ERA-1 and Article 2 of the Regulation on Measures to Protect the Dignity of Employees in Public Administration (hereinafter the RMPDEPA). According to the above-mentioned legislation harassment is unwanted conduct, based on any kind of personal circumstance, with the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment is deemed to be discrimination.

This definition complies with the EU definition found in Article 2(1)(c) of Directive 2006/54.

#### **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 definition applies to all persons in exercising their rights and duties and implementing human rights and fundamental freedoms. It covers employment, self-employment and occupation, membership and participation in an organisation of workers or employers or any other organisation whose members carry out a particular profession, social protection, including social security and health care, education and access to goods and services.

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

Yes, sexual harassment is explicitly prohibited in national legislation.

Sexual harassment is prohibited under Article 7 of the ERA-1, 8/2 of the PADA and Article 2 of the RMPDEPA. According to the ERA-1, PADA and the RMPDEPA sexual harassment is any form of undesired verbal, non-verbal or physical action or behaviour of a sexual nature with the effect or purpose of adversely affecting the dignity of a person, especially where this involves the creation of an intimidating, hostile, degrading, humiliating or offensive environment.

#### **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?).**

Sexual harassment covers not only employment but also membership and participation in an organisation of workers or employers or any other organisation whose members

carry out a particular profession, social protection, including social security and health care, education and access to goods and services.

- 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)?

According to Articles 7 of the PADA and 7/2 of the ERA-1 sexual harassment and harassment are deemed to be discrimination. And according to Article 7/3 of the ERA-1 and 7 of the PADA less favourable treatment as a result of the rejection of or submission to such conduct amounts to discrimination as well.

### **3.7 Instruction to discriminate**

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

Yes it is. According to Article 9 of the PADA, instructions to discriminate are deemed to constitute direct or indirect discrimination. Besides, they are recognized as direct or indirect discrimination in accordance with Article 6/3 of the ERA-1.

- 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.

There are no specific difficulties in relation to the concept of an instruction to discriminate.

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

Are any other forms of discrimination prohibited in national law, such as discrimination by association or assumed discrimination?

No, there are no other forms of discrimination prohibited in Slovene legislation.

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

In general the implementation of the legal framework regarding equal pay and equal treatment at work is considered to be satisfactory. However, there are some gaps as well. The concept of work of equal value and the term comparator are not defined, there is lack of information on comparable jobs and the salaries of comparators are extremely difficult to discover for a potential victim of discrimination to start judicial proceedings in relation to pay discrimination before the competent court.

##### **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 it is. According to Article 133 of the ERA-1 workers must be paid equally for equal work and for work of equal value regardless of their sex; any provisions in individual employment contracts or collective agreements or any acts by the employer that breach this principle are void. And Article 1 of the Act on the System of Salaries in the Public Sector (hereinafter the ASSPS) lays down the principle of equal pay for male and female workers for work in comparable posts, titles and functions in the public sector.

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

Yes it is. According to Article 126 of the ERA-1 the concept of pay covers a salary, composed of a basic salary (which must always be paid as a sum of money), a salary on the basis of work efficiency and benefits; and any other types of remuneration if so stipulated in collective agreements. This definition complies, in my opinion, with the one in the 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)?**

No it does not. It merely defines that workers must be paid equally for equal work and for work of equal value regardless of their sex.

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

Article 1 of the ASSPS lays down the principle of equal pay for male and female workers for work in comparable posts and functions in the public sector and provides a legal basis for publicly divulging salaries in the public sector. Besides the above-mentioned term *comparable posts and functions* in the ASSPS, which has not yet been interpreted by the courts, the term comparator has not yet been defined in Slovene law and is not required in Slovene law.

###### **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?**

No it does not. The concept of work of equal value is not defined.

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

No it does not. Data on the salaries of workers in the private sector are not considered to be personal data and are therefore not available to co-workers. Due to the lack of information on comparable jobs and the salaries of comparators it is therefore extremely



difficult for a potential victim of discrimination to start judicial proceedings in relation to discrimination before the competent court.

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?

No it is not.

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

No justifications for pay differences are allowed either in legislation or in the case law. There is no relevant case law on this subject.

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?

There is no relevant case law on this subject.

## **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, the personal scope in relation to access to employment, vocational training, working conditions etc. is defined in various provisions of the PADA, ERA-1 and PSA.

Common bases and premises for ensuring equal treatment of all persons as regards access to employment, vocational training and promotion and working conditions are determined by Articles 1 and 2 of the PADA, whereas concrete provisions are included in the ERA-1 and in the Public Servants Act (hereinafter the PSA). Article 6 the ERA-1 prohibits the discrimination of job applicants and employees on the ground of gender; Article 27 of the ERA-1 provides for equal treatment of job applicants in advertising a vacancy; Article 47 of the ERA-1 protects workers from harassment and sexual harassment and obliges employers to take measures to prevent harassment, sexual harassment and the bullying of workers and to protect workers against unfair dismissal due to gender, pregnancy and parenthood (Articles 90 and 115 of the ERA-1). In addition, the principle of equal access of civil servants to working positions is defined by Article 7 of the PSA.

Those provisions cover all workers who have entered into an employment relationship on the basis of a concluded employment contract. This definition also includes workers in 'atypical' employment such as those in fixed-term contracts, temporary agency workers, the unemployed performing public works, and part-time and home workers.

The self-employed are protected by Article 2 of the PADA as well. According to this Article equal treatment shall be ensured irrespective of sex, nationality, racial or ethnic origin, religious or other belief, disability, age, sexual orientation, gender identity, gender expression, social standing, education or other personal circumstances, in relation to conditions for access to self-employment, including selection criteria and recruitment conditions irrespective of the type of activity and at all levels of the occupational hierarchy.

Volunteers are also specifically protected against discrimination under Article 10 of the Act on Volunteering. According to this provision, volunteers must be treated equally upon joining the organization and when performing voluntary work irrespective of personal circumstances such as gender, ethnicity, race or ethnic origin, invalidity, age, sexual orientation and other personal circumstances.

The definition of a worker is provided in Article 5 of the ERA-1.

According to Article 5 of the ERA-1 a worker is any natural person who has entered into an employment relationship on the basis of a concluded contract of employment.

This definition of a 'worker' is quite narrow but is adequate as far as the Directive is concerned. However, it has not yet been further developed by the Slovene case law.

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, the material scope in relation to (access to) employment is defined in the PADA.

According to Article 2 of the PADA, equal treatment shall be ensured irrespective of sex, nationality, racial or ethnic origin, religious or other belief, disability, age, sexual orientation, gender identity, gender expression, social standing, education or other personal circumstance, in relation to conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions irrespective of the type of activity and at all levels of the occupational hierarchy, including promotion; access to all forms and levels of career orientation and counselling, vocational and professional education and training, further vocational training and retraining, including practical work experience; employment conditions and working conditions, including the termination of the employment contract and salaries; and membership of and participation in an organisation of workers or employers or any other organisation, whose members carry on a particular profession, including the benefits that such organisations provide.

The scope of this definition is the same as the scope of Article 14(1) of Recast Directive 2006/54.

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

Yes, exceptions are provided in the PADA and ERA-1. Article 13 of the PADA allows a difference of treatment on the grounds of a specific personal circumstance if such differentiated treatment is justified by a legitimate objective and the means of achieving that objective are appropriate, necessary and proportionate. Differentiated treatment based on grounds of sex, nationality, racial or ethnic origin, religious or other belief, disability, age or sexual orientation therefore does not constitute discrimination where by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is appropriate and necessary.

Besides, there are two provisions in the ERA-1 allowing for exceptions to equal treatment. Article 6/5 of the ERA-1 provides the legal grounds for such exceptions and Article 27/1 of the ERA-1 allows for an exception when advertising a vacancy only for men or only for women if the recruitment of one particular sex constitutes a genuine and determining working requirement, provided that the objective is legitimate and the requirement is proportionate.

I am not aware of any available information on an assessment by the Member State of the occupational activities referred to in Article 14(2).

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, it has been implemented with the ERA-1.

Article 115/1 of the ERA-1 prohibits the termination of the employment contract of a female worker during the period of pregnancy and during the time that she is breastfeeding until the child reaches the age of one. This special measure is equally related to a woman's biological condition during and after pregnancy and the relationship between a woman and her child over the period which follows pregnancy and childbirth. Furthermore, according to Article 181 a female worker may in general not carry out underground work in mines. There are some exceptions for women who must spend a certain period of their work experience doing underground work in mines as part of their professional education, for women who are in leading positions in mines and women who are employed in healthcare and the social services or in other cases where they must go underground into a mine to perform non-manual work. There is another exception defined in Articles 146/2 and 185/2 which prohibit overtime work and night work by female workers during pregnancy and for another year after she has given birth or throughout the time she is breastfeeding if the risk assessment of such work indicates a risk to her or her child's health.

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.?

There are no 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.

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

The implementation of EU directives regarding pregnancy and maternity is considered to be satisfactory. Slovenian law even goes further than what EU requires, for example in providing for longer maternity and parental leave and higher benefits during leave, or by prohibiting an employer from requiring certain information from the applicant.

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

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

A pregnant worker is defined in the Regulation on the protection of health in the workplace of pregnant workers and workers who have recently given birth or are breastfeeding (hereinafter the Regulation protecting workers due to pregnancy and maternity), but only for the purpose of this Regulation.

According to Article 2 of the Regulation protecting workers due to pregnancy and maternity a pregnant worker is a worker who notifies her employer about her condition with a medical certificate. The period of pregnancy runs from the pregnancy notification given by the employee to the employer up until the delivery.

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

Yes they are correctly implemented in the ERA-1 and the Regulation protecting workers due to pregnancy and maternity.

According to Article 184 of the ERA-1 a female worker may not carry out work that might present a risk to her or her child's health due to exposure to risk factors or working conditions during pregnancy and throughout the time she is breastfeeding. Provisions on the assessment of any risk to the safety or health and any possible effects on the pregnancy or breastfeeding of the workers concerned, and on measures and actions to be taken with respect to health and safety at work based on the results of the assessment are contained in the Regulation protecting workers due to pregnancy and maternity. If during pregnancy and throughout the time a female worker is breastfeeding she carries out work involving exposure to risk factors and procedures and working conditions, defined in more detail in the Regulation protecting workers due to pregnancy and maternity, the employer must take appropriate measures in order to temporarily adjust the working conditions or the working time if the risk assessment indicates a risk to her or her child's health. If a female worker carries out the work referred to and the risk to her or her child's health cannot be avoided through a temporary adjustment of the working conditions or the working time, the employer must provide the female worker with other appropriate work. The female worker shall be obliged to perform other appropriate work and shall be entitled to a salary equivalent to the salary she would receive for the performance of her own work if this is more favourable to her. If the employer fails to provide the female worker with other appropriate work, it must ensure that during her absence from work for this reason her salary compensation complies with the Article 137 of the ERA-1 regarding salary compensation. In addition to the above-mentioned legislation, Articles 146/2 and 185/2 of the ERA-1 prohibit overtime work and night work by female workers during pregnancy, and for another year after she has given birth or throughout the time she is breastfeeding if the risk assessment of such work indicates a risk to her or her child's health. Furthermore, Article 181 of the ERA-1 prohibits underground work in mines for female workers. However, there are some exceptions for women who must spend a certain period of their work experience doing underground work in mines as part of their professional education, for women who are in leading positions in mines and women who are employed in healthcare and social

services or in other cases where they must go underground into a mine to perform non-manual work.

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, dismissal is prohibited from the beginning of the pregnancy until the end of the maternity leave.

According to Article 115 of the ERA-1 the dismissal of women is absolutely prohibited during the period of pregnancy and during the time that they are breastfeeding a child up to one year of age. The dismissal of parents is also absolutely prohibited during the period that they are on parental leave in the form of full absence from work and for one month after returning to work. If the employer, when cancelling the employment contract of a worker and/or during the period of notice, is not aware of the pregnancy of the worker, special legal protection against dismissal shall apply if the worker immediately or, in case of obstacles which did not occur due to her fault, immediately after the elimination of these obstacles, but not after the expiry of the period of notice, informs the employer of her pregnancy, which shall be proved by submitting a medical certificate.

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)?

Yes the employer is obliged to indicate substantiated grounds for the dismissal in writing.

According to Article 115/5 of the ERA-1 an employer may cancel the employment contract and the worker may be dismissed after obtaining preliminary consent from the labour inspectorate if reasons for an extraordinary cancellation exist or due to the introduction of a procedure for termination by the employer.

## **5.2 Maternity leave**

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

Female workers are entitled to a maternity leave of 105 days (15 weeks) according to Article 19/1 of the Parental Care and Family Benefits Act-1 (hereinafter the PPFBA-1).

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

Yes, there is. According to Article 19/2 of the PPFBA-1 15 days of the maternity leave are compulsory.

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 there is. According to Article 186/3 of the ERA-1 the employer must enable the worker to start performing work consistent with that worker's employment contract after the end of parental leave.

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, there is. In accordance with Article 186/4 of the ERA-1 rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of parental leave. Immediately after the worker returns to work, he/she may exercise acquired rights or rights that have improved during the worker's absence from work, if he/she could not exercise them during his/her absence.

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?

No, maternity and parental benefits are not at the same level as sick leave. They are higher. Their amount is defined under Articles 42 to 47 of the PPFBA-1. In the event of the worker's absence from work the salary compensation amounts from 70 % to 100% of the worker's salary in the preceding month for full-time work depending on the reason for taking sick leave (illness or an injury at work, illness or an injury not related to work, taking care of a close family member). Sick leave is defined in Article 31 of the Health Care and Health Insurance Act (hereinafter the HCHIA), Article 6 of the Public Finance Balance Act (hereinafter the PFBA) and Article 137 of the ERA-1.

According to Article 41 of the PPFBA-1 insured persons on maternity leave are entitled to the maternity benefit which is equal to 100 % of their average salary over the twelve months immediately prior to the date on which the benefit was claimed. There is no ceiling for maternity benefit.

According to Articles 145 and 146 of the PFBA, which was adopted in May 2012 in the context of cost-cutting measures, the parental benefit and the paternity benefit no longer equal 100 % of the average salary over the twelve months prior to the date on which the benefits were claimed, but amount to 90 % of the average salary over the twelve months prior to the date on which the benefits were claimed. However, parental benefit amounts to 100 % of the average salary over the twelve months prior to the date on which the benefits were claimed if it does not exceed EUR 763.06. In addition, there is a ceiling for parental benefits. The amount of parental benefits may not be higher than twice the average monthly salary in the Republic of Slovenia.

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

No, statutory maternity benefits are not supplemented by employers.

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

Yes there are. In order to be entitled to parental benefits the relevant persons need to be insured pursuant to Article 41 of the PPFBA-1 before the day of the commencement of the individual type of parental leave. If they are no longer insured but were previously insured for at least twelve months in the past three years prior to exercising the right to parental benefits, they are entitled to parental benefits as well.

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 there is. According to Article 186/3 of the ERA-1 the employer must enable the worker to start performing work consistent with his/her employment contract after the end of the parental leave.

### **5.3 Adoption leave**

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

Yes it does. However, adoption leave is no longer a separate category of leave but is counted as parental leave.

According to Article 39 of the PPFBA-1 the adoptive parent or the person to whom the child has been entrusted for raising and nursing for the purpose of adoption are entitled to parental leave of the same duration as birth parents until the child finishes the first year of primary school. The adoptive parent may start using the parental leave at the latest 15 days after the child is placed in the family for the purpose of adoption and must inform the employer of the use of parental leave not later than three days after the reason for its use arises.

#### **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, national legislation provides for protection against dismissal for workers who take parental leave (since adoption leave is no longer a separate category of leave but is considered as parental leave) and specifies their rights after the end of adoption leave.

As regards dismissals related to parental leave, Article 90 of the ERA-1 includes among the unlawful reasons for the ordinary termination of an employment contract absence from work due to parental leave. Furthermore, the dismissal of parents is absolutely prohibited during the period that they are on parental leave in the form of full absence from work and for one month after returning to work according to Article 115 of the ERA-1.

According to Article 186/3 of the ERA-1 the employer must enable the worker to start performing work consistent with his/her employment contract after the end of the parental leave. Furthermore, in accordance with Article 186/4 of the ERA-1, rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of parental leave. Immediately after the worker returns to work, he/she may exercise acquired rights or rights that have improved during the worker's absence from work, if he/she could not exercise them during his/her absence.

### **5.4 Parental leave**

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

Yes it has been.

Directive 2010/18 was implemented with the adoption of the PPFBA-1 in April 2014.

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

The national legislation is applicable to both the public and the private sector. There is no distinction between state and private employees.

- 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?

Part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency are able to access maternity, paternity and parental rights in the same manner as all other insured persons if they are included in the system of insurance for parental protection.

- 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.

According to the PPFBA-1, the duration of parental leave is 260 days, which are distributed between the parents. The parental leave may be extended by 90 days for twins; by 90 days for each subsequent child when several children are born alive at the same time; by as many days as the pregnancy was shorter than 260 days in the case of a premature child; and by 90 days on the basis of an opinion delivered by the medical board in the case of the birth of a child in need of special care.

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

Yes, each of the parents has an individual right to a parental leave of 130 days, where the mother may transfer 100 days to the father and 30 days are non-transferable; the father may transfer all of the 130 days to the mother.

- 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)?

According to Article 34 of the PPFBA-1 parental leave can be taken in a continuous series of days on a full-time or a part-time basis.

- 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)?

The time schedule for a partial absence from work shall be agreed by the parents between themselves and their employer according to Article 34 of the PPFBA-1. Therefore the national legislation takes sufficient account of the interests of workers and of employers in specifying the length of such periods of notice. If an agreement cannot be reached, the right to the use of the leave will be decided by the Centre for Social Work, where it shall consider the child's interests. An employee is obliged to inform the employer of his or her intention to use parental leave 30 days prior to the envisaged commencement of the leave in accordance with Articles 186/2 of the ERA-1 and 18/1 of the PPFBA-1. Parents who have transferred part of their parental leave according to Article 36 of the PPFBA-1 may use it in a continuous series in the form of full or partial absence from work, not more than twice a year for a period of at least 15 calendar days, until a child finishes the first year of primary school. Parents do not have to inform their employers prior to the commencement of the transferred leave because the written agreement, concluded 30 days prior to the expiry of maternity leave according to Article 33 of the PPFBA-1, has already been submitted to them. But they have to inform their employer of any change in the use of parental leave within three days after the



emergence of the reason for changing the written agreement according to Article 37 of the PPFBA-1.

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

No, the Government did not take any measures to address the specific needs of adoptive parents according to Directive 2010/18.

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

Yes there is. In order to be entitled to parental benefits the relevant persons need to be insured pursuant to Article 41 of the PPFBA-1 before the day of the commencement of the individual type of parental leave. If they are no longer insured but were previously insured for at least twelve months in the past three years prior to exercising the right to parental benefits, they are entitled to parental benefits as well. This rule also applies to successive fixed-term contracts with the same employer regarding the sum taken into account for the purpose of calculating the qualifying period.

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?

The PPFBA-1 does not provide for situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation. However, the time schedule for a partial absence from work may be agreed between the employers and the parents.

5.4.11 Are there special arrangements for small firms?

There are no special arrangements regarding the size of the employer.

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 some special rules for access to and the modalities of the application of parental leave to the needs of parents of children with a disability or a long-term illness.

In the case of the birth of a child who needs special care, parental leave may be extended by 90 days on the basis of an opinion delivered by the medical board according to Article 29/5 of the PPFBA-1. Furthermore, parental leave may also be extended by 90 days if it is established that the child suffers from a disturbance in physical or mental development or a long-term severe illness after full parental leave has been used and the child has not yet reached the age of 18 months according to Article 32 of the PPFBA-1.

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 there are. As regards dismissals related to parental leave, the ERA-1 in Article 90 includes among the unlawful reasons for the ordinary termination of an employment contract an absence from work due to parental leave. Furthermore, the dismissal of parents is absolutely prohibited during the period that they are on parental leave in the form of full absence from work and for one month after returning to work according to Article 115 of the ERA-1. In addition, Article 6 of the ERA-1 protects workers against less

favourable treatment in connection with parental leave and defines the less favourable treatment of workers in connection with parental leave as discrimination.

- 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?

According to Article 186/3 of the ERA-1 the employer must enable the worker to start performing work consistent with his/her employment contract after the end of the parental leave.

- 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?

According to Article 186/4 of the ERA-1, rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of parental leave. Immediately after the worker returns to work, he/she may exercise acquired rights or rights that have improved during the worker's absence from work, if he/she could not exercise them during his/her absence.

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

During the exercise of rights in the period of the parental leave, workers remain employed under the terms of the existing 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?

When receiving parental benefits during the period of parental leave, persons entitled to them are covered by the compulsory pension and disability insurance, unemployment insurance and parental protection insurance by rates applicable to social security contributions according to Article 45 of the PPFBA-1.

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

No, parental leave is not remunerated by the employer.

- 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?

All workers on parental leave, irrespective of the sector in which they work, are entitled to parental benefits during parental leave. Parental benefits are paid by the Ministry of Labour, Family, Social Affairs and Equal Opportunities according to Article 98 of the PPFBA-1. According to Articles 42 to 47 of the PPFBA-1 which define the amount of parental benefits in connection with Articles 145 and 146 of the PFBA, which was adopted in May 2012 in the context of cost-cutting measures, parental benefits are no longer equal to 100 % of the average salary over the twelve months prior to the date on which the benefits were claimed, but amount to 90 % of the above-mentioned basis for the calculation of parental benefits. However, parental benefit amounts to 100 % of the average salary over the twelve months prior to the date on which the benefits were claimed if it does not exceed EUR 763,06. In addition, there is a ceiling for parental benefits. The amount of parental benefits may not be higher than twice the average monthly salary in the Republic of Slovenia.

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)?

National legislation is more favourable since the length of the parental leave is longer than required by EU law and parents taking parental leave are entitled to parental benefits.

## **5.5 Paternity leave**

5.5.1 Does national legislation provide for paternity leave?

Yes, national legislation provide for paternity leave.

According to the PPFBA that was in force until April 18 2014, fathers were entitled to a period of paternity leave of 90 days, out of which 15 days had to be used until the baby was 6 months old and 75 days until the child was three years old. Only 15 days of the paternity leave was paid. For the second part, the Republic of Slovenia ensured the father only the payment of social security contributions from the minimum salary.

According to Articles 25-28 of the new PPFBA-1, which has been in force from April 18 2014 onwards, paternity leave of 30 days is granted to the father on a non-transferable basis. The father must use 15 days of paternity leave before the baby is six months old by days on a full-time or a part-time basis. Another 15 days must be used before the child finishes the first year of primary school in a continuous series of days on a full-time or a part-time basis. During the period of paternity leave insured persons are entitled to paternity benefit which is equal to 90 % of their average salary over the 12 months immediately prior to the date on which the benefit was claimed. However the paternity benefit is equal to 100 % of their average salary over the 12 months immediately prior to the date on which the benefit was claimed if it does not exceed EUR 763,06 per month.

However, the new PPFBA-1 has allowed a delay in the implementation of the new measures, including paternity leave, in the transitional provisions. In the three years after the GDP rises by 2.5 % at the very least, the paid paternity leave will be extended by five days a year, while the unpaid paternity leave will shorten by 25 days a year. According to the Government's decision of 25 September 2015, which established that the GDP had grown in 2014 by more than 2.5 %, the new regime of paternity leave is applicable from 1 January 2016 onwards. It applies to all fathers of newborns who exercise their right to paternity leave for the first time and to fathers of children under three years of age who have not yet exercised or have not yet taken the full advantage of unpaid paternity leave. According to the transitional provisions of the new PPFBA-1 (mentioned above), fathers in 2016 are eligible to 20 days of paid paternity leave and 50 days of unpaid leave for which the Republic of Slovenia ensures fathers only the payment of social security contributions from the minimum salary. Paternity leave will slowly shorten to 30 days in the following years.

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)?

Protection against dismissal for workers who take paternity leave is not specifically provided. In my opinion there is a misunderstanding due to the use of the same terms with a different meaning in several laws. Namely, the old PPFBA used the term parental leave for maternity leave, parental leave on the ground of the birth of the child, adoption leave and paternity leave. Since the new PPFBA-1 uses the term parental leave according to the meaning in Directive 2010/18, which is much narrower than the term parental leave used in the PPFBA and in the ERA-1, the meaning of the term parental

leave from the ERA-1 should be wider. However, the definitions from the ERA-1 have not yet been revised in accordance with the new PPFBA-1 adopted in April 2014.

However, the dismissal of parents is absolutely prohibited during the period that they are on parental leave in the form of full absence from work and for one month after returning to work according to Article 115 of the ERA-1.

## **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 it does. According to Article 30 of the HCHIA workers are entitled to care leave in order to be able to care for a close family member up to a maximum of seven working days for children under seven years of age or up to 15 working days for older moderately or seriously mentally or physically handicapped children. The competent doctor may, in case of exceptional circumstances, extend the duration of the right to compensation, but by no more than 30 working days to care for children up to seven years of age or older moderately or seriously mentally or physically handicapped children, or up to 14 working days to care for other close family members. The care leave can be further extended in the case of a serious illness and hospitalization in exceptional cases. During care leave workers are entitled to a compensation of salary during a temporary absence from work that equals 80 % of the average salary in the past 12 months immediately prior to the date the compensation was claimed. The leave may be taken only on a full-time basis. The size of the employer does not play any role as a qualifying condition. Employers, regardless of their size, cannot refuse, postpone or modify requests for leave.

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

- 5.7.1 Is parental leave available in case of surrogacy?

No, parental leave is not available in the case of surrogacy because surrogacy is not authorised.

## **5.8 Leave sharing arrangements**

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

No, national law does not provide a legal right to share maternity leave. However, the father is entitled to maternity leave if the mother has died, has left the child, or is permanently or temporarily unable to live and work independently on the basis of the opinion of a competent doctor. The father is also entitled to maternity leave with the mother's consent in cases where the mother who gives birth to the child is younger than 18 years and has the status of an apprentice, a schoolgirl, a pupil or a student. In the latter case one of the grandparents is also entitled to maternity leave with the mother's consent.

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

Yes it is. According to Article 29 of the PPFBA-1 the duration of parental leave is 260 days, which are distributed between the parents. This means that each of the parents has an individual right to a parental leave of 130 days, where the mother may transfer 100 days to the father and 30 days are non-transferable; but the father may transfer all 130 days to the mother.

## **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, national law provides workers with a temporary legal right to reduce working time on request.

The right to part-time work is provided in the ERA-1 and the PPFBA-1. Article 67 of the ERA-1 provides a legal basis for part-time work in special cases. Besides, it gives the same rights arising from social insurance to workers working part time pursuant to regulations on parental leave as if they worked full time. That means that the employer ensures the worker the right to his/her salary on the basis of actual working hours, while the Republic of Slovenia ensures the payment of social security contributions for a difference with full-time work, on the basis of a proportional share of the minimum salary. Furthermore, according to Article 50 of the PPFBA-1, one of the parents who nurses and cares for the child until its third birthday has the right to part-time work. A parent who nurses and cares for two children may extend this right until the younger child finishes the first year of primary school. However, one year of exercising the right to part-time work is granted to each of the parents on a non-transferable basis. One of the parents who nurses and cares for a child with a moderate or severe disability in movement or with a moderate or severe disturbance in mental development shall have the right to part-time work also after the child's third year but not after the child reaches 18 years of age.

One of the parents who nurses and cares for the child is entitled to this right. Besides, according to Article 55 of the PPFBA-1, other persons who are not parents are entitled to this right as well. These are persons who nurse and care for a child in accordance with the rules regulating family relations or guardians who actually nurse and care of their wards.

Besides the above-mentioned conditions no other eligibility criteria or specific conditions apply.

Such a right can be exercised only for a purpose of caring for and the nursing of children.

There is a time limit for requesting such a right. It can only be exercised until the child reaches a certain age (until its third birthday or in the case of two children until the younger child finishes the first year of primary school or until 18 years of age in exceptional cases of the child's mental and movement disability).

This right is not tied to any other specific condition.

The size of an employer is not a qualifying condition.

Employers are obliged to consider and comply with requests to work reduced hours according to Article 67 of the ERA-1. Employers cannot refuse, postpone or modify requests to reduce working time unless workers agree thereto.

A worker has a right to return to prior working arrangements after the period of reduced working time which was agreed in the employment contract or in the annex to the employment contract.

There are no measures in place specifically to encourage men to make use of such a legal right.

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

No, Slovene legislation does not provide workers with a legal right to adjust working time patterns on request.

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

Yes, Slovene legislation provides workers with a legal right to work from home or remotely on request in Articles 68, 69, 70 and 71 of the ERA-1.

According to the law, not only certain groups, but all workers are entitled to such a right if it is thereby agreed between a worker and an employer.

There are no eligibility criteria or purposes for which a right can be exercised.

There is no time limit for requesting such a right.

This right is not tied to a specific trigger.

The size of the employer is not a qualifying condition.

Employers are not obliged to comply with requests to work remotely.

The right can be exercised when a worker and an employer agree in the employment contract that a worker will perform work at home or remotely. Therefore employers can refuse to comply with requests to work remotely and are not obliged to postpone the granting of such requests.

There is no special right to return to prior working arrangements. Everything is to be agreed in the employment contract.

There are no measures in place specifically to encourage men to make use of such a legal right.

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?

There are no other legal rights to flexible working arrangements.

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

The implementation of Directive 2006/54 is considered to be satisfactory.

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

Yes it is. According to Article 2 of the PADA equal treatment is ensured irrespective of sex in relation to social protection, including social security and healthcare. Furthermore, Article 5 defines equal treatment and Article 6 direct and indirect discrimination. According to the above-mentioned legislation equal treatment means the absence of direct or indirect discrimination on the grounds of any of the personal circumstances referred to in Article 2 of the PADA. Direct discrimination occurs when a person has been, is or could be treated less favourably than another person in an equal or comparable situation on the ground of his/her personal circumstances. Indirect discrimination occurs when an apparently neutral provision, criterion or practice in equal or comparable situations and under similar conditions has put, puts or might put a person with certain personal circumstances in a less favourable position compared to other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

### **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.**

The personal scope of national law relating to occupational social security schemes is more restricted than specified in Article 6 of Directive 2006/54. In Slovenia the only existing occupational social security scheme is an occupational insurance scheme, which provides protection against a loss of income in the case of old age. According to Article 199 of the Pension and Invalidity Insurance Act (hereinafter the PIIA-2) in occupational insurance only insured workers who are engaged in work which is particularly physically demanding and work which is harmful to health or work which cannot be performed successfully after a certain age can be included.

There is no relevant case law on this subject.

### **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.**

The material scope of national law relating to occupational social security schemes is more restricted than specified in Article 7 of Directive 2006/54. In Slovenia the only existing occupational social security scheme is an occupational insurance scheme, which provides protection against old age for insured workers who are engaged in work which is particularly physically demanding and work which is harmful to health or work which cannot be performed successfully after a certain age (Article 199 of the PIIA-2). The list of those jobs is determined by the Minister for Labour, Family, Social Affairs and Equal Opportunities.

There is no relevant case law on this subject.

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

No it has not. There are no exclusions from the material scope defined in the PIIA-2.

**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, there are no laws or case law that would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54.

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

No, sex is not used as an actuarial factor in occupational social security schemes.

**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.**

The PIIA-2 has already been amended on several occasions concerning this subject, the last time being in 2012. However, despite several different systems that were used, there are no specific difficulties in Slovenia in relation to occupational social security schemes.



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

The implementation of Directive 79/7 is considered to be satisfactory.

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

Yes it is. According to Article 2 of the PADA equal treatment is ensured irrespective of sex in relation to social protection, including social security and healthcare.

### **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.**

The personal scope of the Slovene legislation relating to statutory social security schemes is broader than specified in Article 2 of Directive 79/7. Social insurance schemes consist of a mandatory pension and invalidity insurance scheme, a mandatory health insurance scheme, an unemployment insurance scheme and a social assistance insurance scheme. Pension and invalidity insurance is mandatory for employed persons, self-employed persons, farmers and certain other categories of persons engaged in specific activities under the conditions defined in the PIIA-2. According to the HCHIA the system of the mandatory health insurance scheme covers employed persons, self-employed persons, farmers, social security benefit recipients (including pensioners) and other persons residing in the Republic of Slovenia, as well as their family members. According to Article 1/2 of the Labour Market Regulation Act (hereinafter the LMRA) measures from the LMRA apply to the unemployed and employed persons, employers and other persons seeking information and advice on the conditions and possibilities to work in the Republic of Slovenia or the European Union. And the social assistance insurance scheme covers individuals, families and groups according to Article 1 of the Social Security Act (hereinafter the SSA).

### **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.**

The material scope of Slovene legislation is the same as specified in Article 3 of Directive 79/7. According to Article 2 of the PIIA-2 the mandatory pension and invalidity insurance covers the risks of old age, invalidity and death. According to Article 13 of the HCHIA the mandatory health insurance scheme covers the risk of sickness, accidents, accidents at work and occupational diseases. Furthermore, the unemployment insurance scheme covers the risk of unemployment according to Article 1/1 of the LMRA and the social assistance insurance scheme covers the risk of social assistance.

### **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.**

Yes, national law has applied an exclusion regarding the lowering of the retirement age limit for the retiring person to a certain defined age for each child born or adopted with the citizenship of the Republic of Slovenia for whom an insured person has cared in the first year after the birth. According to Article 28 of the PIIA-2 an insured woman is entitled to the lowering of the retirement age limit unless the child's father was entitled to parental benefits.

The new PIIA-2 no longer excludes gender equality in relation to the determination of different conditions for the acquisition of the old-age and invalidity pension as regards

the pensionable age and the completion of the pension-qualifying period. The pensionable age has been increased to 65 and the pension-qualifying period to 40 years. Both conditions will be equal for both genders after the transitional period, in 2019.

There is no relevant case law on this subject.

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

No, sex is not used as an actuarial factor in statutory social security schemes.

**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 in Slovenia in relation to implementing Directive 79/7.

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

The implementation of directives regarding self-employed workers is considered to be satisfactory.

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

Directive 2010/41 has been transposed with the PADA, the Companies Act (hereinafter the CA), the Institutes Act (hereinafter the IA), the PIIA-2, the HCHIA, the Prevention of Undeclared Work and Employment Act (hereinafter the PUWEA), the PPFBA-1, the Law on Health and Safety at Work (hereinafter the LHSW), the Labour and Social Courts Act (hereinafter the LSCA) and the Administrative Dispute Act (hereinafter the ADA). The self-employed are directly protected by Article 2 of the PADA as regards access to self-employment. Besides, there are general provisions in the PADA prohibiting discrimination in any area of social life, provisions on ensuring legal protection in cases of violations of the ban on discrimination and compensation for loss or damages suffered. The CA and the IA are neutral as regards gender and therefore provide equal opportunities for women and men in relation to the establishment, equipping or extension of a business or the launching or extension of any other form of self-employed activity. In the social security area, the self-employed are covered by mandatory social security schemes (the health insurance scheme, the pension and invalidity insurance scheme, the parental protection insurance scheme and the employment insurance scheme). The PUWEA prohibits undeclared employment.

### **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)**

Definitions of 'self-employed workers' according to Article 2 of Directive are found in different laws. Each law defines a notion for its own purpose. The definitions are similar, but not uniform. According to Article 15 of the PIIA-2 'self-employed workers' are those persons who are independently pursuing a gainful or any other permitted activity. Furthermore, Article 55 of the LHSW defines 'self-employed workers' as persons performing a gainful or other activity as their only or main occupation and who do not employ other workers or involve other persons in the work process; and persons insured as farmers in accordance with the pension and disability insurance regulations who do not employ workers or involve other persons in the work process other than family members on farms in accordance with regulations governing agriculture. Article 2 of the PUWEA defines a self-employed person as a natural person who is performing a gainful or any other permitted activity.

There is no relevant case law on this subject.

### **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.**

All self-employed workers are considered to be part of the same category and are covered.

However, the agricultural sector is treated differently. According to Article 17 of the PIIA-2 farmers shall be insured under compulsory insurance, provided that upon the entry of the application for insurance they are in a general state of health which allows them to pursue the agricultural activity, are not attending regular schooling, are not entitled to an old-age pension, a widow's or widower's pension or an invalidity pension and have a

minimum income from a farm holding per each insured member of such holding equal to the amount of the 60 % of the average monthly salary in the Republic of Slovenia. Furthermore, Article 6 of the PPFBA-1 provides for mandatory parental care insurance for persons engaged in an independent agricultural activity in the Republic of Slovenia as their sole or principal occupation and are already included in the mandatory pension and disability insurance scheme. And according to Article 15 of the HCHIA farmers and members of their households who are engaged in an independent agricultural activity in the Republic of Slovenia as their sole or principal occupation are insured under compulsory health insurance.

Regarding help provided by spouses or life partners of self-employed workers the PUWEA is relevant. According to the PUWEA help provided by spouses or life partners is recognized as undeclared work if their partner or spouse fails to conclude an employment contract or a civil law contract with them and fails to register them for health, pension and disability insurance.

**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?**

According to Article 2 of the PADA equal treatment shall be ensured irrespective of sex in relation to self-employment. Furthermore, according to Article 5 of the PADA equal treatment means the absence of direct or indirect discrimination or any other act which constitutes discrimination in accordance with the PADA. Instructions to discriminate against persons on grounds of sex are deemed to constitute discrimination according to Article 7 of the PADA.

The material scope of national law relating to equal treatment in self-employment is more restricted. The definition in the PADA ensures equal treatment 'in relation to the self-employed.' No examples are provided (for instance in relation to the establishment, equipping or extension of a business etc.) as they are given in Article 4 Directive 2010/41/EU.

**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?**

Slovenia has not taken advantage of the authority to take positive action.

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

Slovenia does not have a special system for social protection for self-employed workers. There is only one system of social protection for all workers. The self-employed are covered by mandatory social security schemes (the health insurance scheme, the pension and invalidity insurance scheme, the parental protection insurance scheme, the unemployment insurance scheme and the social assistance insurance scheme). The self-employed are granted the rights under compulsory insurances on the basis of the payment of contributions.

Spouses and life partners can be covered by mandatory social security schemes if they are employed by their spouses or partners and if they are paying contributions to mandatory insurances. If this is not the case and if they are not already included in the mandatory pension and invalidity insurance scheme and health insurance scheme, they can only voluntarily join the mandatory pension and invalidity insurance scheme and the health insurance scheme.

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

Yes it has been. According to Article 8 of the PPFBA-1 pregnancy and maternity rights apply equally to all, employees and the self-employed alike, if they are insured according to the PPFBA-1. In order to be entitled to those rights the relevant persons need to be insured before the day of the commencement of the individual type of parental leave. If they are no longer insured but were previously insured for at least twelve months in the past three years prior to exercising the right to parental benefits, they are entitled to maternity and other parental benefits as well according to Article 41 of the PPFBA-1. Insured self-employed persons on maternity leave are entitled to the maternity benefit which is equal to 100 % of their average salary over the twelve months immediately prior to the date on which the benefit was claimed. There is no ceiling for the maternity benefit. Maternity benefit is granted on a mandatory basis.

The spouses or life partners of self-employed workers who are not employees but participate in the activities of self-employed workers can only benefit from those rights if they are employed by their spouses or partners and are paying contributions to the mandatory insurance for parental protection. However, if this is not the case, the spouses or life partners can benefit from parental allowance. According to Articles 63 and 64 of the PPFBA-1 the parental allowance is a financial aid to parents who are not entitled to parental benefits after the birth of a child. The right to a parental allowance is granted to a mother for 77 days after the birth of a child if a mother and a child have a permanent residence in the Republic of Slovenia and actually live in Slovenia. After 77 days a parental allowance is granted *mutatis mutandis* and under the same conditions, according to their written agreement, to one of the parents. According to Article 66 of the PPFBA-1 the right to parental allowance shall last for 365 days after the birth of a child. It amounts to EUR 252,04 per month.

Female spouses or life partners of self-employed workers who are not employees but participate in the activities self-employed workers have no access to any other existing services supplying temporary replacements or to any other existing national services.

The above-mentioned maternity benefit meets the sufficiency requirement for the self-employed. Criterion (a) from Article 8(3) has been used. However, the situation is slightly different for female spouses and life partners of self-employed workers who are not employees but participate in the activities self-employed workers. Their allowance might not meet the requirement of sufficiency due to its amount which is quite low. In this case criterion (c) from Article 8(3) has been used.

In relation to Article 8(4) female self-employed workers, female spouses or life partners have no access to any other existing services supplying temporary replacements or to any other existing national services.

### **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, Slovenia has implemented the provisions regarding occupational social security for self-employed persons.

There is no special occupational social security scheme for the self-employed in Slovenia. In fact in Slovenia the only existing occupational social security scheme is the occupational insurance scheme, which provides protection against old age. According to Article 199 of the PIIA-2 in occupational insurance only insured persons who are engaged in work which is particularly physically demanding and work which is harmful to

health or work which cannot be performed successfully after a certain age can be included.

According to Article 2 of the PADA equal treatment is ensured irrespective of sex in relation to social protection, including social security and healthcare.

**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.**

There are no exceptions for self-employed persons regarding matters of occupational social security.

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

Yes it is. According to Article 2 of the PADA, equal treatment shall be ensured irrespective of sex in relation to self-employment.

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

The implementation of Directive 2004/113 is considered to be satisfactory. However, the provision in the PADA is too general since it does not define the term goods and services.

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

Yes it does. According to Article 2 of the PADA equal treatment shall be ensured irrespective of sex in relation to access to and the supply of goods and services, which are available to the public, including housing. Furthermore, according to Article 5 of the PADA equal treatment means the absence of direct or indirect discrimination or any other acts which constitute discrimination in accordance with the PADA and it provides definitions thereof.

### **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 relating to access to goods and services is more restricted than specified in Article 3 of Directive 2004/113. Article 2 of the PADA ensures equal treatment irrespective of sex in relation to access to and the supply of goods and services, but it does not define the term goods and services. According to Article 2 of the PADA they must be available to the public and they include housing.

### **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 national law has not applied the exceptions.

### **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.**

Yes, differences in treatment in the provision of goods and services have been justified in national law. According to Article 13/6 of the PADA differentiated treatment on the grounds of sex, nationality, racial or ethnic is prohibited, except in cases concerning the provision of goods and services exclusively or primarily to members of one sex, if such differentiated treatment is justified by a legitimate aim and the means of achieving this aim are appropriate and necessary.

### **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 it does. The IA provides for the equal treatment of all insured persons in Article 83/6 of the Insurance Act (hereinafter the IA) and prohibits differences in insurance premiums and benefits on the grounds of sex, maternity and pregnancy in general.

**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.**

The PADA provides a legal basis for allowing different treatment based on gender regarding insurances and related financial services. Furthermore, the amendments to the IA were adopted in 2012. The main change is embedded in Article 83, paragraph 7. According to this Article, insurance undertakings may in relation to life assurances, accident and health insurances take into consideration the personal circumstance of gender in the determination of premiums and benefits in general if this does not lead to a differentiation at the individual level.

Insurance companies have adapted their practices. Concerning ordinary and investment insurances the consequences of the unification of premiums are very small. In contrast, differences are greater in insurances without investment components, such as life insurances.

**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, Slovenia has not adopted positive action measures in relation to access to and the supply of goods and services.

**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.**

There are no specific problems with regard to discrimination on the grounds of pregnancy, maternity or parenthood in Slovenia in relation to access to and the supply of goods and services.



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

The implementation of the Istanbul Convention is considered to be satisfactory.

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

Yes, Slovenia ratified the IC in December 2014. The pre-existing legal framework in Slovenia is considered to be in compliance with the obligations under the Convention. However, the ratification of the Istanbul Convention will require some minor modifications to the existing legislation (Family Violence Prevention Act). Modifications are especially needed in the Criminal Code, which would consider forced marriage, forced sterilization, stalking and female genital mutilation as criminal offences. No legal provision has been introduced following the ratification of the IC and there is no plan to introduce legal provision.

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

The implementation of horizontal provisions is considered to be satisfactory.

### **11.1 Victimisation**

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

Yes, the provisions on victimisation are implemented in national legislation. However, there is no interpretation in the case law since there is no case law.

Victimisation is defined in the ERA-1 and in the PADA. According to Article 6/7 of the ERA-1 a victim of discrimination and a person assisting a victim of discrimination must not be subjected to unfavourable consequences as a result of actions aimed at enforcing compliance with the prohibition of discrimination. And according to Article 11 of the PADA discriminated persons and persons who assist a victim of discrimination must not be subjected to adverse consequences due to their actions which aim to implement the ban on discrimination.

### **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, Slovene legislation provides for the shifting of the burden of proof in sex discrimination cases.

As regards the burden of proof the ERA-1 in Article 6/6 and the PADA in Article 40 state that if an applicant or a worker in a dispute alleges facts from which it may be presumed that there has been discrimination, it is up to the respondent to prove that there has been no breach of the principle of equal treatment.

Rules on the burden of proof comply with EU law and in light of case C-415/10 *Kelly and Meister* as well.

### **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.

According to Article 39 of PADA all alleged victims of discrimination have the right to request judicial protection before the competent court. They may request the termination of discrimination, compensation for damages and publication of the judgment in the media. Discriminated persons may be awarded damages in the amount from EUR 500 to EUR 5 000. At the determination of the amount of the compensation duration of discrimination, exposure to severe forms of discrimination and other circumstances of the case shall be taken into account. Besides, according to paragraph 3 of the Article 39 the request to publish the judgment in the media shall be granted to the discriminated person if the court, according to the circumstances of the case, considers that the publication of the judgment is necessary to overcome the consequences of discrimination or to prevent discrimination in other similar cases. Judgment shall be published in anonymous form.

Furthermore, according to Article 200 of the ERA-1 a worker may request judicial protection before the competent labour and social court if he or she thinks that the employer has failed to fulfil its obligations arising from the employment relationship or that it has violated any of his or her rights arising from the employment relationship. A worker or a rejected applicant may therefore claim a continuation of his/her employment including all rights deriving from the employment contract, reinstatement to a former position, the payment of social security contributions and the salary with statutory interest, the reimbursement of legal costs etc. In addition, according to Article 8 of the ERA-1, a worker may claim damages for material losses and damages for immaterial losses arising from unlawful acts, actions or omissions pursuant to the general rules of civil law. Damages are not limited as to their amount in the private sector, but are limited in the determination of the compensation for non-pecuniary damage: it must be taken into account that the compensation is effective and proportional to the damage suffered by the worker and that it discourages the employer from repeating the violation. The competent labour and social court shall also decide on disputes between the Ministry of Labour, Family, Social Affairs and Equal Opportunities and parents or other persons who claim to have the right to parental leave, parental benefit and other rights deriving from the PPFBA-1. Furthermore, in case of a breach of the prohibition of discrimination an administrative fine may be imposed on an employer and some criminal sanctions may also be imposed.

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.

Remedies and sanctions in Slovenia are effective, proportionate and dissuasive since they adequately compensate victims of discrimination on grounds of sex for the loss and damage suffered. Sanctions depend on the reasons for bringing the law suit to the court; damages are not limited as to their amount in the private sector (with the exception of job applicants in the public sector who have not been chosen, and who prove in court that their claim is justified, according to Article 65 of the PSA). According to Article 8 of the ERA-1, in the determination of the compensation for non-pecuniary damage, it must be taken into account that the compensation is effective and proportional to the damage suffered by the worker and that it discourages the employer from repeating the violation.

However, all alleged victims of discrimination face difficulties when enforcing their rights due to a judicial backlog.

#### **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.

According to Article 39 of PADA all alleged victims of discrimination have the right to request judicial protection before the competent court. Access to the courts is furthermore concretized in other laws. According to Article 200 of the ERA-1 a worker or a rejected applicant may request judicial protection before the labour court.

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.

Access to the courts is only ensured for alleged victims of discrimination. However, according to Article 41 of the PADA, the Advocate and NGOs have the right to represent

the discriminated person in judicial proceedings without prejudice to the general rules on representation in judicial proceedings. The condition is that the person representing has passed a state legal exam (bar exam). If it is an NGO that is participating in the proceedings, the NGO has to have a status of an organization in public interest in the field of protection from discrimination or protection of human rights which is granted to the NGO by the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Furthermore, non-governmental organisations have the right to take part in judicial and administrative proceedings initiated by discriminated persons due to a violation of the ban on discrimination. They may act as an intervenient in the procedure according to Article 199 of the Civil Procedure Act. I don't see any other practical obstacles for victims. Victims may as well request for exemption from court fees and legal costs due to their financial situation.

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

For individuals seeking to enforce their rights and who, regardless of their financial situation and the financial situation of their families and without prejudice to their social status and the social status of their families, are unable to afford the costs of litigation, and the costs of providing legal assistance, free legal aid is available according to Articles 10, 11 and 13 of the Legal Aid Act (hereinafter the LAA). The financial position of an applicant is assessed on the basis of his or her monthly income and that of the applicant's family, and the property owned by the applicant and by his or her family according to Article 14 of the (LAA). An application for legal aid must be filed at the competent district court.

### 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, it does. The Slovene equality body, the Advocate, covers all grounds of discrimination. According to articles 19 and 20 of the newly adopted PADA, the Advocate is set up as an autonomous state body that may not receive binding instructions related to its work. In addition to, the PADA regulates a new procedure on the nomination of the Advocate, as after the new Act's entry into force he or she is nominated by the National Assembly upon the proposal of the President of the Republic (under the previous act he or she was nominated by the Minister). Under the new Act the function of the Advocate is a public state function (while under the previous act the Advocate was a civil servant). The Act also states that the Advocate has a team composed of civil servants who carry out professional and administrative tasks. The complaint procedure is also regulated in a different way and the Advocate has some new powers, such as the right to lodge a claim for constitutional review of laws that are discriminatory and inspection tasks.

The new Advocate has been nominated at the end of October 2016.

The website of the Advocate is <http://www.zagovornik.gov.si/> and [http://www.mddsz.gov.si/en/areas\\_of\\_work/equal\\_opportunities\\_department/advocate\\_of\\_the\\_principle\\_of\\_equality/](http://www.mddsz.gov.si/en/areas_of_work/equal_opportunities_department/advocate_of_the_principle_of_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?

Trade union federations and confederations play an important role in Slovenia in the process of negotiations between them, employers' organizations and the government on the bills from the area of employment, gender equality, social security etc.

Rather good is also the organization of the trade unions, their appointed representatives who are employed with a certain employer and their system of free legal aid (including representation before the courts) for their members.

## **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).

According to Articles 10 and 11 of the Collective Agreements Act (hereinafter the CAA) a collective agreement binds the parties to that collective agreement or its members and is therefore valid for all persons employed by an employer or employers to whom the collective agreement applies. Furthermore, according to Article 12 of the CAA, the validity of the collective agreement or a part thereof may be extended to all employers in an activity or activities regarding which the collective agreement has been concluded. Since collective bargaining is of great importance and collective agreements are generally applicable and have a legal status which is similar to legislation, they should deal with equality issues more often. So far, however, gender equality provisions in such collective agreements are rare and mostly reproduce some provisions of the ERA-1 dealing with the neutral use of expressions for a worker in the masculine grammatical gender, the prohibition of discrimination, damages, and the reconciliation of work and family life etc.

## **12. Overall assessment**

In order to become a member of the EU, Slovenia first made a detailed analysis of the national legislation in force in all areas of the law prior to accession. Consequently, a major part of the legislation was adjusted, revised or newly adopted in order to implement the EU gender equality *acquis*. As is now evident, the overall implementation seems to be satisfactory. In some aspects, Slovenian law even goes further than what the EU requires, for example in providing for longer maternity and parental leave and higher benefits during leave, or by prohibiting an employer from requiring certain information from the applicant. However, there are some gaps as well. For example, the concept of work of equal value and the term comparator are not defined. There is a lack of information on comparable jobs and the salaries of comparators, which makes it extremely difficult for a potential victim of discrimination to start judicial proceedings in relation to pay discrimination before the competent court. Furthermore, the provision on the implementation of the Goods and Services Directive in the PADA (Article 2) is too general and the amount of compensation for job applicants in the PSA is limited. In addition, there is almost no litigation on equality issues.

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