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# Country report

Gender equality



Sweden  
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# **Country report**

## **Gender equality**

How are EU rules transposed into  
national law?

## **Sweden**

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Reporting period 1 April 2016 – 31 December 2016

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## 1. Introduction

### 1.1 Basic structure of the national legal system

The authority to enact laws is vested in the Swedish Parliament (the *Riksdag*). The Government, however, has the power to issue decrees concerning less important matters. To some extent this power stems directly from the Instrument of Government. But the Government can also be granted authority to issue decrees by means of acts of law passed by Parliament. Legal instruments relating to the personal status of private subjects or the personal and economic relations between private subjects – that is, matters of civil law – fall under the exclusive competence of Parliament and must thus be regulated by law.<sup>1</sup> Employment legislation falls under this category. Neither local nor regional authorities have any legislative powers in this field.

As regards the law-making process, in Sweden the groundwork in the preparation of bills is laid by commissions of inquiry, legal experts in the ministries, and Parliamentary standing committees. Legislative initiative lies predominantly with the Government. Its right to make legislative proposals to Parliament is guaranteed by the Constitution.<sup>2</sup> Another alternative is that Parliament, on the basis of bills introduced by individual members, requests that an inquiry should take place concerning legislation on a certain issue. Swedish legislative commissions, likely to prepare any bill of importance, are noted for carrying out detailed inquiries published in a special series known as Swedish Government Reports (*Statens offentliga utredningar*, SOU). To a certain extent, inquiries into matters of legislation are carried out at the ministry principally concerned, with the assistance of the ministry's own officials.

The most important part of Parliament's legislative work is performed within standing committees. The committees deal with the Government's bills and with members' bills containing various amendments. This results in a committee report. The bill and the report are subsequently dealt with at a plenary session of Parliament which, after a debate, votes on the bill.

The Swedish law-making process thus generates a voluminous body of printed material which is important in applying the legislation. Given the care taken in these materials to formulate the reasons and intent of the law, it becomes natural for the courts, the authorities and individual lawyers to rely on them as important sources of interpretation.

Primary responsibility for the enforcement of legal rules devolves upon the courts and the various administrative authorities. As in other European countries, the court system occupies a special position. The difference between adjudicatory and administrative authorities is less pronounced in Sweden than in most European countries, although there is a clear borderline between the courts and the administrative agencies.

As for the *general courts*, Sweden has a three-tier hierarchy: the district courts (*tingsrätt*), the courts of appeal (*hovrätt*), and the Supreme Court (*Högsta domstolen*). As a general principle it may be said that the general courts enforce civil law and criminal law legislation. *The Labour Court* is a special court with the task of trying labour disputes.

The national administration is conducted by the Government and the various ministries and is organized in a well-developed network of administrative authorities. The central administrative agencies have a relatively independent position regulated in general by instructions handed down by the Government. In the area of discrimination there is now

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<sup>1</sup> Art. 2 of Ch. 8, Instrument of Government.

<sup>2</sup> Art. 3 in Ch. 4 of the Instrument of Government.



a 'single' Equality Ombudsman (*Diskrimineringsombudsmannen*, DO) covering not only gender discrimination but also other protected grounds such as ethnicity, religion, sexual orientation, disability and age.

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

Föräldraledighetslagen (1995:584) (The Parental Leave Act).

Diskrimineringslagen (2008:567) (The Discrimination Act).

Socialförsäkringsbalken (2010:110) (The Social Security Code).

## **2. General legal framework**

### **2.1 Constitution**

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

Yes. The Instrument of Government (1974:152) Chapter 1 Sec. 2 Par. 5 and Chapter 2 Sec. 13 addresses sex discrimination.

Chapter 1 Sec. 2 states that it is an obligation for public entities to counteract, at all times, all discrimination on – among other grounds - the ground of sex/gender. This is more of a policy statement than a rule and cannot be adhered to in legal proceedings other than as a supporting argument in a legal complaint.

Chapter 2 Sec. 13 states that a 'law or other regulation may not imply negative differential treatment on the grounds of gender.' There is, however, also an exception for positive action: '... unless this differential treatment is part of efforts to promote equality between men and women or regards military or similar services'. This rule, too, is addressing the legislator as such and cannot be a ground for an individual complaint resulting in damages.

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

No.

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

No they cannot – they thus cannot even be invoked against the state in an individual complaint.

### **2.2 Equal treatment legislation**

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

As of 1 January 2009 there is a 'single non-discrimination act' in place – the Discrimination Act (DA) (*Diskrimineringslagen* (2008:567)). It covers not only sex/gender but also transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation and age (Ch. 1 Sec. 1). Both with regard to the grounds and the areas of society covered, the DA clearly exceeds the requirements of EU law.

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

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

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

Yes, Chapter 1 Sec. 5.1 of the DA defines sex as the fact 'that someone is a woman or a man.' In addition, it is stated – in Sec. 5 par. 2 – that 'a person who intends to change or has changed the sex they belong to is also covered by sex as a ground of discrimination.'

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

Yes, though indirectly, in that Chapter 1 Sec. 5 par. 2 states that 'a person who intends to change or has changed the sex they belong to is also covered by sex as a ground of discrimination.'

Moreover, transgender identity or expression is thus a special ground covered by the DA. This ground is defined as 'that someone does not identify herself or himself as a woman or a man or expresses by their manner of dressing or in some other way that they belong to another sex' (Ch. 1 Sec. 5.2).

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

##### **3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?**

Yes. Chapter 1 Sec. 4 of the DA contains a set of definitions, among them on direct discrimination, meaning: 'That someone is disadvantaged by being treated less favourably than someone else is treated, has been treated or would have been treated in a comparable situation, if this disadvantaging is associated with sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.'

This definition is designed in close parallel with that of the Recast Directive itself and I consider it to comply with EU law.

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

No. Pregnancy and maternity discrimination is only indirectly – and tacitly – covered by the DA ban on direct sex discrimination as interpreted in line with the CJEU case law on these matters. The Swedish implementation can – and has been<sup>3</sup> – criticised on this point as being far from transparent!

##### **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**

No, not to the knowledge of this author.

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<sup>3</sup> Compare Julén Votinius, J., 'Troublesome Transformation. EU Law on Pregnancy and Maternity Turned into Swedish Law on Parental Leave', in: Rönnmar, M. (ed.), *Fundamental Rights and Social Europe*, Hart Publishing, Oxford 2011.

### **3.3 Indirect sex discrimination**

#### **3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?**

Yes, Chapter 1 Sec. 4 of the DA contains a set of definitions, among them on indirect discrimination which is defined as follows: 'that someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people of a certain sex, .... at a particular disadvantage, unless the provision, criterion or procedure has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.'

This definition is designed in close parallel with that of the Recast Directive itself and I consider it to comply with EU law.

#### **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.**

According to the definition, people of a certain sex must be placed at a particular disadvantage by the provision, criterion, or procedure in order for it to be indirectly discriminatory, meaning that there should be a considerable difference. This can, but must not necessarily, be proven by statistical evidence. One example when such statistical evidence was used is the case Labour Court 2005 No. 87. In this case the employer, Volvo, required applicants for certain positions to be 163 centimetres or taller. This was found to amount to indirect discrimination against women since 28.2 % of all women were excluded as compared to only 1 % of all men.

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

In my view, the justification test is correctly applied in national case law. One example is the case Labour Court 2005 No. 87 only just referred to in the above section 3.3.2. In this case the height requirement for applicants for certain positions at a car-producing company, 163 centimetres, was found to be to the detriment of women as a group based on statistical evidence. Since the employer could not prove in a satisfactory way that the height requirement was really justified by health and safety reasons – less risk of injury when operating certain machinery – the requirement was deemed to be not objectively justified and thus indirectly discriminatory.

#### **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.**

To the knowledge of this author, there are no such special difficulties.

### **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?**

No. Neither the concept of multiple discrimination nor that of intersectional discrimination is expressly addressed by Swedish law. The fact that the DA is a 'single non-discriminatory act' and that discrimination – for instance direct discrimination according to its definition – only requires that disadvantageous treatment is 'associated'

with a covered ground may facilitate multiple discrimination claims. There may well be multiple reasons for specific treatment although none of them alone is enough to actually 'cause' this treatment! However, the current case law does not really confirm such a positive effect, – compare the next section.

#### 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)?

There are but a few cases on multiple discrimination in Swedish case law, none in terms of intersectionality. The two cases Labour Court 2009 No. 11 and 2006 No. 96 both concerned discrimination on the grounds of gender and ethnicity. Both cases were lost since the claimant could not prove that she was in a similar position to that of the male comparator. The case Labour Court 2010 No. 91 concerned the grounds of age and gender. A 62 year-old woman applying for a job as a job coach at a public employment office was not called for an interview, and neither was she eventually employed. The Labour Court found discrimination on both grounds to have taken place in relation to the interview and age discrimination in relation to the employment. Discrimination compensation was set fairly high --at SEK 75 000 (approx. EUR 7 000 EUR), a sum not expressly argued in terms of multiple discrimination, however. The case provides certain room for a discussion on an element of intersectionality – among those interviewed were not only men with fewer merits and younger women with fewer merits, but also a man of equal age.

### 3.5 Positive action

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

Positive action in relation to sex/gender is thus already provided for at the constitutional level through Chapter 2 Sec. 13 of the Instrument of Government. There is no other definition than that the differential treatment at stake is 'part of efforts to promote equality between men and women.'

In the DA the scope for positive action is provided for, on area by area basis, in a number of special provisions in its Chapter 2. All these separate rules cannot be listed here but will be described in the different sections below whenever relevant. Normally these rules, too, are formulated as 'measures that contribute to efforts to promote equality between women and men' – compare Chapter 2 Sec. 2.2 with regard to working life. Also to be mentioned here are however the special Swedish concept of 'active measures' regulated in Chapter 3 of the DA. Such measures concern working life and education, respectively. In working life we here deal with the rules on working plans for workplace-based gender equality work and action plans for equal pay but also on other goal-oriented work concerning issues such as working conditions and recruitment. Planning requirements in working life concern only the ground of sex/gender whereas the requirement of goal-oriented work more generally applies to all covered grounds. So do plan requirements in the educational system. From 1 January 2017, the planning requirements will also apply for all covered grounds, both in employment and in education.

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.

The rules on positive action proper (not the rules on 'active measures' in Chapter 3 the DA) are voluntary in character – they allow both public and private employers to apply such measures within the scope of the law.

Over the years, however, there have been some uncertainties about what positive action really means. For a long time, it was considered that there was specific scope for positive action also in cases where there was a clear difference in merits between two applicants of the opposite sex as long as both were sufficiently competent for the position at stake and the preferred sex was underrepresented. This was the background to the famous Abrahamsson case – case C-407/98 – before the CJEU. In its judgment the CJEU rejected the Swedish regulation at stake to the extent that it was compulsory to appoint a person of the underrepresented sex ‘who, although sufficiently qualified, does not possess qualifications equal to those of other candidates of the opposite sex’ as being disproportionate. In the same case, however, the CJEU also held that the Swedish administrative practice applied in the public sector – according to which the rule of preference for the underrepresented sex is applied when candidates possess ‘equivalent or substantially equivalent merits’ – was in accordance with Community law. The current rule in Chapter 2 Sec. 2.2 of the DA is now interpreted – should it be applied – in line with the case law of the CJEU.

Another famous set of cases concerned the area of higher education. There is now a rule permitting positive action in order to promote gender equality in Chapter 2 Sec. 6.1. It only applies to education other than that referred to in the Education Act – i.e. it applies to pre-schooling, higher education, etc., but not to basic schooling – and in relation to access to the education at issue. In the area of higher education, there was previously specific legal scope for local selection rules with regard to the admission of new students in the Ordinance of Higher Education. Some universities applied selection criteria which gave preference to the underrepresented sex (normally men) when the merits were equal. The selection criteria concerning admission to the veterinary programme worked to exclude women with merits which were equal to the male applicants admitted due to an intrinsic mathematical formula. 44 complaining women were considered to have been discriminated against by a local court, a decision which was later confirmed by the Appeal Court of Svea Hovrätt (T 3552-09). The outcome of the selection criteria applied – no women admitted in this group – was regarded to be disproportionate to the nevertheless reduced equality effect achieved in relation to the education programme as such.

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

No. There is no quota legislation regarding women’s representation on company boards. In September 2016, a government ministry report (Ds 2016:32) suggested an amendment to the Companies Act to increase the share of women on company boards. Following the report, the Government declared as its intention to present a legislative proposal, requiring at least a 40 % representation of each sex on boards of companies listed on the stock exchange. Due to lack of support in Parliament, the Government later changed its plans and decided not to present any proposal on the matter.

As for now, there is the ‘Swedish Code on Corporate Governance’ which is valid for listed private and public limited-liability companies listed at the OMX Nordic Exchange in Stockholm and NGM Equity and it is monitored by the Swedish Corporate Governance Board.<sup>4</sup> The Code includes a rule (4.11) stating that ‘an equal distribution among the sexes shall be the goal.’ This is a voluntary rule, but according to another rule (2.6) there is also an obligation to provide sufficient reasoning for the final proposal regarding the composition of a board. Certain progress can be noted during the last few years – but the share of women on company boards is still far from the required 40 %.

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<sup>4</sup> Svensk kod för bolagsstyrning, available at: <http://www.corporategovernanceboard.se>, accessed 25 November 2015.

- 3.5.3 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.

There are no such legal rules in place. Nevertheless, the representation of women in the Swedish Parliament as well as the Swedish Government is close to 50%. This relative gender balance was achieved voluntarily and without the need to resort to gender quotas. During recent decades, a general practice among political parties has emerged whereby every second candidate for election is a woman (the main motive being public opinion or general expectations among voters).

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

- 3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. Both the concept of harassment and the one of sexual harassment are defined as discrimination in the DA, Chapter 1 Sec. 4. Sec. 4.3 thus defines harassment as discriminatory 'conduct that violates a person's dignity and that is associated with one of the grounds of discrimination: sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.' In the opinion of this author, this definition meets the requirements of EU law despite the fact that it does not explicitly mention the behaviour to be unwanted – this is rather a restricting criterion and so is the Directive's precision that harassment shall have the purpose or effect of creating a hostile environment.

- 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?).

Yes. Harassment is thus considered to be discrimination as such and is therefore covered by all the prohibitions on discrimination in the DA, covering not only six grounds in addition to sex/gender (transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age) but also a number of areas other than working life, i.e. education, labour market policy activities and employment services, starting or running a business and professional recognition, membership of certain organisations, goods, services and housing, health and medical care and social services, social insurance systems, national military and civilian service and public employment (performance).

- 3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. Sexual harassment is also regarded as discrimination and is defined in Chapter 1 Sec. 4.4 of the DA as 'conduct of a sexual nature that violates someone's dignity.' In my view this definition meets the requirements of EU law. The definition of sexual harassment goes even further and thus covers not only sex/gender but all the regulated grounds.

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

Yes. Sexual harassment is thus considered to be discrimination as such and is therefore covered by all the prohibitions on discrimination in the DA, covering not only six grounds in addition to sex/gender (transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age) but also a number of areas other than working life, i.e. education, labour market policy activities and employment services, starting or running a business and professional recognition, membership of certain organisations, goods, services and housing, health and medical care and social services,

social insurance systems, national military and civilian service and public employment (performance).

- 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)?

Yes. Both harassment and sexual harassment amount to discrimination according to Chapter 2 Sec. 4 of the DA. As such, harassment/sexual harassment is also covered by the prohibition of reprisals regulated in Chapter 2 Secs. 18 and 19 of the DA. Reprisals are here not by definition regarded as discrimination. In many situations, though, reprisals can be regarded as part of the harassing act itself and thus discrimination.

### **3.7 Instruction to discriminate**

- 3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?<sup>5</sup>

Yes. Instructions to discriminate are listed as discrimination in Chapter 1 Sec. 4 of the DA and defined as follows: orders or instructions to discriminate against someone in a manner referred to in points 1-4 (of that same section, i.e. direct discrimination and so forth) that are given to someone who is in a subordinate or dependent position relative to the person who gives the orders or instructions or to someone who has committed herself or himself to performing an assignment for that person.

- 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

Not to the knowledge of this author.

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

Are any other forms of discrimination prohibited in national law, such as discrimination by association<sup>6</sup> or assumed<sup>7</sup> discrimination?

There is no explicit regulation of these forms of discrimination but the bans on direct, indirect, and so on, discrimination are interpreted in accordance with the CJEU case law such as the *Coleman* case.

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<sup>5</sup> See Article 2(2) (b) of Directive 2006/54.

<sup>6</sup> See the *Coleman* case in relation to disability discrimination: ECJ 17 July 2008. Case C-303/06, *S. Coleman v Attridge Law and Steve Law*, ECR [2008] I-05603.

<sup>7</sup> A person assumes, for example, that a woman wearing a headscarf is a Muslim, even though that turns out to be an incorrect perception or assumption.



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

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

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

Yes. The principle of equal pay is inherent in Chapter 3 Sec. 2 of the DA stating that 'employers and employees are in particular to endeavour to equalise and prevent differences in pay and other terms of employment between women and men who perform work which is to be regarded as equal or of equal value. They are also to promote equal pay growth opportunities for women and men.' In its second paragraph there is a definition of work of equal value (see the response to question 4.1.5.).

4.1.2 Is the concept of pay defined in national legislation?

No, it is not. However, the Swedish Labour Court's interpretation of the concept follows the interpretation of the CJEU – compare case C-236/98 *Jämställldhetsombudsmannen*. This case was about how pay is to be compared – as a lump sum or each element separately. According to the CJEU every share of wages – i.e. basic pay, an inconvenient-hours supplement, etc. – must be compared separately.

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. The Swedish regulation on this point in the DA is very subtle in its design: pay discrimination is covered by the general prohibition on discrimination (on any ground covered by the DA, among them sex) in working life in its Chapter 2 Sec. 1.

This 'tacit' way of regulating pay discrimination can be criticised as being far from transparent.

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

In principle a comparator is required, since the definition of (direct) discrimination refers to a 'comparable situation.' According to the same definition a hypothetical comparator is enough. To the knowledge of this author there is no relevant case law to refer to, however.

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

Yes. Chapter 3 Sec. 2 par. 2 contains a definition of work of equal value:

'Work is to be regarded as of equal value to other work if, on an overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.'

Swedish case law contains a few really instructive cases as regards the comparison of work claimed to be of equal value or, to be more precise, Labour Court Case 1996 No. 41 as compared to Labour Court Case 2001 No. 13. Both concerned the Örebro County

and the health sector. The issue at stake was whether the pay of a midwife was discriminatory as compared to that of a hospital technician. The Labour Court did not exclude the possibility that the work of a midwife and a hospital technician could be compared and found this to be of equal value, but in the case at stake it did not find the method used by the Equality Ombudsman (DO) to be sufficient to prove this. No discrimination was thus found to be at hand. The second case, too, concerned the alleged pay discrimination of a midwife as compared to a hospital technician. In this case the midwife and the technician were indeed found to perform work of equal value following an assessment in terms of knowledge and skills, responsibility, effort and working conditions (now part of the definition of work of equal value according to the 2008 Discrimination Act). A prima facie case of pay discrimination was thus found to be at hand. The Labour Court, however, accepted the employer's 'excuse' that the higher wages of the technician were due to market arguments – there was an alternative labour market for technicians with significantly higher wages, an acceptable motive to adjust the wages of technicians at a somewhat higher level. There was thus no discrimination. Compare also the 'parallel' Labour Court Case 2001 No. 76 (a nurse and a hospital technician were compared and their work was found to be of equal value – it was finally found that in this case there was also no pay discrimination).

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

No.

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?

To some extent this can be said to be done through the rules on active measures in Chapter 3 of the DA and its requirement of an Equal Pay Action Plan including a survey of provisions and practices regarding pay and other terms of employment that are used at the employer's establishment, and pay differences between women and men performing work that is to be regarded as equal or of equal value (Ch. 3 Sec. 10 of the DA). (This obligation can be regarded as a pre-requisite for an Equal Pay Action Plan). This can also be said to be done through the requirement for the Swedish Mediation Office – a public/state authority – to monitor wage developments on the Swedish labour market including equal pay developments. It must be stressed here that in Sweden pay – and pay structures – is for the social partners to decide through collective bargaining. There is, for instance, no such thing as a minimum wage in Sweden or any other proper pay regulation.

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

There are no express rules on employer justifications in Swedish law – these are finally assessed by the Labour Court. The rather poor share of successful pay discrimination claims in Swedish case law is, however, often understood in terms of too broad a scope for such justifications. Among the justifications found to legitimize pay differentials in the case law of the Swedish Labour Court are thus age (AD 2001 No. 13), capabilities (AD 2013 No. 64), collective bargaining outcomes (AD 2001 No. 13), and the market argument (AD 1995 No. 158, AD 201 No. 13, 2001 No. 51, and, 2001 No. 76).

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?

Over the years there have proved to be considerable difficulties with pay-discrimination cases. The problem has not been the qualification of jobs being of equal value – there we

have had some successful case law, see above. The difficulties have rather been to prove that discrimination did take place in these cases once work has been found to be of equal value, the Labour Court being only too ready to accept employers' justifications for pay differentials – see above sec. 4.1.8.

Two landmark cases were already mentioned under sec. 4.1.7 above. This concerns Labour Court Case 1996 No. 41 regarding Örebro County and the health sector or, to be more exact, whether the pay of a midwife was discriminatory as compared to that of the hospital technician. In this case the Labour Court did not exclude the possibility that the work of a midwife and a hospital technician could be compared and found to be of equal value, but in the case in question it did not find the method used by the DO to be sufficient to prove this. No discrimination was thus found to be proven.

The other case is Labour Court Case 2001 No. 13. Also this case concerned Örebro County and the health sector. It, too, concerned the alleged pay discrimination of a midwife as compared to a hospital technician. In this case the midwife and the technician were found to perform work of equal value following an assessment in terms of knowledge and skills, responsibility, effort and working conditions (now part of the definition of work of equal value according to the 2008 Discrimination Act). A prima facie case of pay discrimination was thus found to be at hand. The Labour Court, however, accepted the employer's 'excuse' that the higher wages of the technician were due to market arguments – there was an alternative labour market for technicians with significantly higher wages, an acceptable motive to adjust the wages of technicians at a somewhat higher level. There was thus no discrimination.

## **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. Chapter 2 Sec. 1 in the DA states that the personal scope of the prohibition on discrimination extends to anyone who, with respect to the employer, '1. is an employee, 2. is enquiring about or applying for work, 3. is applying for or carrying out a traineeship, or 4. is available to perform work or is performing work as temporary or borrowed labour.'

Swedish law does not however contain a definition of the concept of an employee – this is decided by the Labour Court's case law on the matter applying a fairly 'holistic' view, taking into consideration all relevant characteristics of the situation in question. The Swedish concept of an employee is known to be relatively broad in an international perspective.

### **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)?**

No it is not. The ban on (any form of) discrimination covers any decision-making by the employer in working life with no specification whatsoever (Ch. 2 Sec. 1 DA).

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

Yes. According to Chapter 2 Sec. 2.1 of the DA the prohibition on discrimination does not prevent 'differential treatment based on a characteristic associated with one of the grounds of discrimination if, when a decision is made on employment, promotion or education or training for promotion, this is by reason of the nature of the work or the context in which the work is carried out.'

The exception as such is thus generally formulated – in close parallel to that of Article 14.2 of the Recast Directive itself. There has been no case law whatsoever with regard to this exception and this has not been changed since its introduction in 2009.

- 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)?

Pregnancy and maternity discrimination is – in parallel with the case law of the CJEU – covered by the general ban on discrimination in Chapter 2 Sec. 1 of the DA – however, without expressly stating this, as indicated above. In addition, there is a prohibition on unfavourable treatment related to parental leave in any form (pregnancy, maternity, paternity or parental) in Sec. 16 of the (1995:584) Parental Leave Act.

- 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.?

Not to the knowledge of this author.

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

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

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

No, there is no definition of a pregnant worker in Swedish law.

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

Yes. This regulation is implemented through a combination of the (1977:1160) Working Environment Act (*Arbetsmiljölagen, AML*), the (1995:584) Parental Leave Act (PLA) and the (2010:110) Social Security Code (SSC) and its scheme on pregnancy benefits in Chapter 10.

According to the AML an employer has a general duty to provide a good working environment adapted to the individual employee and her (in this case) individual needs – Chapter 2 Sec. 1 and Chapter 3 Sec. 3 the AML. There is also a special duty for the Government – or an appointed public agency – to provide for a special regulation of categories of workers with special needs – Chapter 4 Sec. 6 of the AML. The Swedish Work Environment Authority (*Arbetsmiljöverket*) has against this background adopted special more detailed requirements in relation to pregnant and breastfeeding workers – see AFS 2007:5, *Gravida och ammande arbetstagare* (Pregnant and Breastfeeding Workers), with later amendments.

The PLA thus provides a right to a transfer and/or leave in relation to the employer in case a pregnant or breastfeeding woman has been prohibited from continuing her regular work under a regulation issued under Chapter 4, Sec. 6 of the AML (Sec. 18 in the PLA), or otherwise cannot carry out physically demanding work duties (Sec. 19 in the PLA).

The SSC thus includes a special benefit scheme - *Graviditetsspenning* (Pregnancy benefits) – for pregnant workers not being able to carry out their regular job and not being transferred to other suitable work according to the PLA. This scheme applies from day 60 of the pregnancy until ten days before the expected date of confinement.

#### **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)?**

No, not explicitly. Any dismissal under Swedish law requires objective grounds/just cause according to Sec. 7 in the (1982:80) Employment Protection Act (EPA) (*Anställningsskyddslagen*). Since dismissal related to pregnancy/maternity imply direct discrimination, such dismissals are obviously not justified. They also amount to direct discrimination in accordance with the DA (Ch. 2 Sec. 1) and unfavourable treatment in relation to Sec. 16 of the Parental Leave Act. Moreover, Sec. 17 of the PLA states that if an employee is given notice of termination or is summarily dismissed solely for reasons related to parental leave under the Act, the notice of termination or summarily dismissal shall be declared invalid if the employee so requests. Should the worker be dismissed on other grounds – such as redundancy – Sec. 11 the EPA states that the dismissal must not be made effective until the worker has returned from full-time maternity/parental leave according to Secs. 4-5 of the Parental Leave Act. The employment cannot thus cease during maternity leave, nor can maternity leave remuneration.

- 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)?

Any dismissal shall always be in writing and different formal rules apply depending on the grounds for dismissal, whether on personal grounds or for redundancy. At the request of the employee, the reasons for dismissal must be substantiated in writing by the employer (Sec. 9 of the EPA).

## **5.2 Maternity leave**

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

The right to maternity leave in relation to the employer is regulated in Sec. 4 of the PLA. It amounts to seven weeks prior to the estimated time for delivery and seven weeks after the delivery (of which two weeks are compulsory). Maternity leave is also provided during breastfeeding. The law does not stipulate a time limit on this, nor is anything stated about payment. It is likely that this depends on the employer.

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

The right to maternity leave in relation to the employer is regulated in Sec. 4 the PLA. It amounts to seven weeks prior to the estimated time for delivery and seven weeks after the delivery. Two of these weeks are compulsory; these two weeks can be chosen by the mother.

- 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. According to Secs. 18 and 19 in the PLA a pregnant, breastfeeding, etc., woman being transferred from her regular work has a right to maintain her employment benefits as usual.

- 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 and no. According to Sec. 16.5 of the PLA an employer may not disfavour an employee for reasons related to parental (including maternity) leave with regard to pay or other terms of employment. However, there is no right to pay during the pregnancy and maternity leave if this is not specifically provided by the applicable collective agreement – which is often the case. Pregnancy and maternity benefits are regulated in the (2010:110) Social Security Code.

- 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?

Income-related pregnancy and maternity benefits correspond to sick leave benefits according to Chapter 12 Secs. 18 and 19 of the (2010:110) Social Security Code (SSC). (For mothers who are not employed/have no income there is instead a benefit at the lower guarantee level). Sickness benefits amounts to 80 % of incomes up to ten 'basic amounts' or approximately EUR 49 000 per annum (Chapter 28 Sec. 7.1 compared to Chapter 12 Secs. 22 and 26 of the SSC).

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

It is usual for collective agreements to top up the parental (including maternity) leave benefits if the employee has an income above the 'ceiling' in the social security parental leave scheme described in Sec. 5.2.5 above. Such collective agreements differ considerably between sectors. Basically the extra protection is known to be better in sectors of the labour market dominated by women (such as the municipality sector) since trade unions tend to try to meet the special needs of their members. However, in this way the social partners through their collective agreements can be said to further a tradition where mainly women take parental leave (and are attracted to jobs in sectors already dominated by women) – this is what is the most convenient for the family as a whole since working conditions related to parenting therefore tend to be better in sectors/branches dominated by women.<sup>8</sup>

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

The rules on maternity leave benefits are fully integrated into the general parental benefit system. There are no qualifying requirements in relation to the parental leave system, thus regulating the right to leave in relation to the employer. In relation to the Parental *Benefit* system in the SSC there are certain requirements, though. Out of the 480 benefits in total in relation to a child only 390 days are at income-replacement level. These days require that one is insured for sickness benefits in cash through employment. Otherwise one will only have a right to parental benefits at the lower, guarantee, level. For the first 180 days at income-replacement level there is an additional requirement of having been insured for sickness benefits in cash through employment continuously for 240 days immediately prior to the birth of the child. The right to sickness benefits in cash is based on presumed employment for the forthcoming year.

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. According to Sec. 15 of the PLA an employee may discontinue her or his leave and resume work to the same extent as before the leave. Also, Sec. 16 prohibiting any unfavourable treatment for reasons related to parental leave will apply.

### 5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes. According to Chapter 11 Sec. 4.4 of the SSC the concept of a parent covers adoptive parents equally. The same rules thus apply as those described in earlier sections. However, in this case the 'starting point' is the date when the child came into the adoptive parents' care – not the date of birth (Ch. 11 Sec. 7). This does not influence the length of maternity leave, which is 'included' in the maximum benefit of 480 days. Although an adoptive mother cannot take time off before the arrival of the adoptive child, the total number of days remains the same.

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<sup>8</sup> See further: Carlson, L. (2007), *Searching for Equality, Sex Discrimination, Parental Leave and the Swedish Model with Comparisons to EU, UK and US Law*, Uppsala, Iustus Förlag.

- 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)?

The rules in Sec. 16 of the PLA prohibiting the unfavourable treatment of parents are related to the parental benefit system and this system thus applies equally to adoptive parents as to other parents – compare Chapter 11 Sec. 4 of the SSC.

## 5.4 Parental leave

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

No. Swedish law was considered to be already implementing the requirements of Directive 2010/18.<sup>9</sup> This is done by the (1995:584) Parental Leave Act (PLA) concerning the right to leave and employment rights and by the (2010:110) Social Security Code (SSC) concerning the right to maternal/paternal/parental benefits. Also the (1982:80) Employment Protection Act (EPA) can be mentioned here.

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

The right to leave according to the PLA applies to all employers, whether private or public and regardless of the size of their activities. So does the public Parental Benefit system.

- 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?

The PLA covers all forms of contracts of employment – permanent, fixed-term, part-time, and so forth – and the Swedish concept of an employee is known to be very broad. The interpretation of the concept of an employee is ultimately made by the Swedish Labour Court (*Arbetsdomstolen, AD*) and is done in a 'holistic' way taking into account all important conditions of the actual working relationship.

- 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.

There is a right to a total of 480 full days of benefit per child, including maternal/paternal and parental benefits (Ch. 12 Sec. 12 of the SSC) to be taken out until the child is 12 years of age (Ch. 12 Sec. 13 of the SSC). Only 96 of these days can be taken out after the child is four years of age, though. Benefit days can be taken out as a whole, three quarters, half, one quarter or one eighth of a day. In this way one full benefit day may equal a number of part-time working days!

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

The right to leave is individual for each of the parents. Some forms of leave require a right to parental benefit according to the SSC, though. Generally speaking, parental benefit days can be transferred between the parents. However, there is a limitation – 90 days must be taken by of each one of the parents and are thus untransferable.

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<sup>9</sup> Compare Ds 2010:44, *Genomförandet av det nya föräldraledighetsdirektivet* (the implementation of the new Parental Leave Directive).



- 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)?

Parental benefit days – a total of 480 per child – can be taken as whole, three quarters, half, one quarter or one eighth of a day. Generally speaking, this is done in accordance with the wishes of the employee. The distribution of leave shall be discussed with the employer, though. And, where this is not inconvenient for the employee, the employee shall take leave in such a manner that the employer's activity may continue without substantial disturbance (Sec. 14 of the PLA).

- 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)?

According to Sec. 13 of the PLA, an employee shall give notice to her or his employer not later than two months prior to the commencement of the leave or, if this is impracticable, as quickly as practicable.

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

Yes, to some extent there are special rules for adoptive parents. One such rule is found in Ch. 11 Sec. 8 of the SSC, stating that the parental benefit scheme in general applies to children resident in Sweden. In the case of adoption it is enough that the future adoptive parent is a Swedish resident – then the child is considered to be resident in Sweden. This rule is thus favourable to adoptive parents since it is not required that the child is already a resident in Sweden when they start using their benefit days. Generally speaking, the special rules concerning adoptive parents are of a 'technical' nature in order to make the situation 'equal' to that of biological parents.

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

There are no qualification requirements for the right to parental leave according to the PLA.

- 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?

As regards full-time leave there are no such rules. With regard to reduced hours (part-time leave), when an agreement cannot be reached, the employer decides. It shall then distribute the leave according to the wishes of the employee, 'if such distribution does not cause substantial disturbance to the employer's activity, and the employer may never, without the employee's consent, distribute the leave in any manner other than spreading it over all days of the working week, dividing the leave during the working day or distributing it to any other time other than the beginning or end of the working day' (Sec. 14 of the PLA). Whenever such a decision is made in any manner other than according to the wishes of the employee he or she shall be informed as shall the employee's local trade union – if practicable no later than two weeks prior to the commencement of the leave. This issue can then be the subject of collective negotiations and is – ultimately – for the Labour Court to decide.

- 5.4.11 Are there special arrangements for small firms?

The described rules apply to all firms/employers, regardless of their size.

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?

No. There are no special rules on the care of disabled children integrated into the Parental Benefit Scheme of the SSC with the exception that 'temporary parental benefit' when caring for a sick child – 60 days a year per child – is also available for children who are 12-16 years of age when the child is disabled. Moreover, there is always a right to such benefits concerning a severely ill child not yet 18 years of age. Otherwise, there is a special benefit scheme that applies in the case of disabled children. According to Chapter 22 of the SSC there is special 'care support' (*vårdbidrag*) if a child is ill or has a disability requiring care during at least six months, or, in the case the disability, implies extra costs. This care support, too, is listed under 'family benefits.' Such care support can amount to a maximum of 250 % of the 'basic amount' (in total approximately EUR 12 250) a year, depending on the need for care. Also other disability schemes may apply such as the right to assistance according to Chapter 51 of the SSC.

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

Yes. Article 16 in the PLA contains a prohibition on unfavourable treatment in any form related to parental leave. This ban implies a right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with the employee's employment contract. It also implies that acquired rights continue to apply during the parental leave and the employee's rights, for instance to an increase in wages, must also be taken into account during leave. During leave the employment relationship continues and there are no changes in social security coverage. Moreover, Sec. 17 contains a special rule that if an employee is given notice of termination or is summarily dismissed solely for reasons related to parental leave the notice of termination or summary dismissal shall be declared invalid if the employee so requests. It is also not regarded as a justified dismissal under the (1982:80) EPA.

5.4.14 Do workers benefiting 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?

Yes. According to Sec. 15 of the PLA an employee has the right to resume her or his work to the same extent as before the leave. Any unfavourable treatment related to parental leave is banned under Sec. 16. However, there is also an exception: 'this prohibition does not apply if the different terms and conditions or different treatment are a necessary consequence of the leave' (Sec. 16 par. 2). This exception is to be interpreted strictly – it refers only to 'necessary' consequences. One example is when an employee on part-time leave must be temporarily transferred due to such leave not being compatible with the organisation of the specific work at issue.<sup>10</sup>

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?

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<sup>10</sup> Compare further Prop. 2005/06:185 p 79 ff and Julén Votinius, J. (2007), *Föräldrar i arbete*, Makadam Förlag, pp. 271-278.

There is no express rule on this. However, according to Sec. 15 of the PLA an employee has the right to resume her or his work to the same extent as before the leave. Any unfavourable treatment related to parental leave is banned under Sec. 16.

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

If it is permanent employment, it is maintained – one is on leave. If one has reduced hours one maintains one's original – maybe full-time – employment as a 'basis'. If one has a temporary position, on the other hand, this will expire as originally agreed upon. The statutory parental benefit system is not dependent on employment but rather on previous employment. Additional parental wages according to a collective agreement may well depend on being in employment with an employer bound by the agreement, though.

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

Yes. Healthcare benefits in cash are income-related in Sweden and require a previous income (but not necessarily ongoing employment) and are paid out whenever sickness is a hindrance for work. Parental benefits require that one is actually taking care of the child in question, something that cannot be done if sickness is a hindrance.

Healthcare benefits in kind are based on residence in Sweden.

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

Parental leave is not necessarily remunerated by the employer in Sweden. On the contrary, the basic parental leave scheme is a public social security benefit regulated in the SSC and financed by taxes. Employers finance it on a collective level as a payroll tax. Since there is 'a ceiling' on the social security parental benefit, extra parental wages are important in many sectors of the labour market, though. Such wages are a part of collective bargaining and the conditions differ a great deal between different sectors. Basically the extra protection is known to be better in sectors of the labour market dominated by women (such as the municipality sector) since trade unions tend to try to meet the special needs of their members. However, in this way the social partners through their collective agreements can be said to further a tradition where mainly women take parental leave (and are attracted to jobs in sectors already dominated by women) – this is what is most convenient for the family as a whole since working conditions related to parenting therefore tend to be better in sectors/branches dominated by women.<sup>11</sup>

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?

There is a public parental leave scheme regulated in the Swedish SSC. Benefits are paid at two levels: an income-related benefit at sickness benefit level (80 % of incomes up to 10 basic amounts, a total of about EUR 49 000 per annum) or at guarantee level (SEK 180 or approx. EUR 20) per day.

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)?

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<sup>11</sup> See further: Carlson, L. (2007), *Searching for Equality, Sex Discrimination, Parental Leave and the Swedish Model with Comparisons to EU, UK and US Law* Uppsala, Iustus Förlag.

Generally speaking, it is this author's opinion that the Swedish Parental Benefit scheme and the related rights to parental leave are quite generous and way beyond the requirements of EU law. The strength of Swedish legislation is no doubt the right to shorter working hours when there are children. At the same time this may provide 'a trap' for women traditionally taking on the larger part of family responsibilities. One can discuss – and this is done in Sweden – the basic design of the public parental benefits scheme, as it is based not on individual rights but on a family basis, the latter being rather uncharacteristic of Swedish welfare rights, generally speaking. Reforms have successively been made introducing the now non-transferable 'daddy months'. The current government has declared its intention to shortly add another month of non-transferable days to the scheme and these days will then amount to 90 days. According to a 2013 report, men's share of parental benefit days still (2012) only amounts to 24.4 % whereas women use 75.5 %.<sup>12</sup> Nevertheless, men's share has been steadily increasing since the scheme's introduction back in 1974. What is slightly more positive is that the share of 'equal parenting' has tripled and now amounts to 12.7 % in 2012 as compared to 4 % in 2000. The report stresses a young age, higher education and higher earnings – especially for mothers – as important for 'equal parenting.' Public-sector parents are more equal than those in the private sector as are those living in a metropolitan area. The report emphasises the importance of enhancing the position of the mother.<sup>13</sup> Until now, the unequal figures have normally been attributed to persistent pay discrimination and labour-market segregation between the sexes.

An important factor is also day-care facilities for children, in Sweden provided from the age of one until well beyond the initial school age as a guarantee for working parents, and provided at a subsidised maximum cost. There is a regulation on special state funding for municipalities, applying a maximum fee (*maxtaxa*) for public childcare facilities.<sup>14</sup> Such facilities are also guaranteed within three months after the child reaches the age of one. Day-care facilities for children are therefore to a considerable extent subsidised by public means. These rights are provided at municipality level.

## 5.5 Paternity leave

### 5.5.1 Does national legislation provide for paternity leave?

Yes. In connection with the birth of a child there is a special right to ten days off for the father of the child, no special conditions are attached – Chapter 13 Secs. 10 and 14 of the SSC. Benefits are paid out under the parental benefits scheme regulated in the SSC. Out of the 480 days of parental leave related to each child there are also 90 days of benefits at income-replacement level that are not transferable between the parents – generally called the three 'daddy months,' since mothers, generally speaking, still take out most of the benefit days or about 75 % thereof.

### 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)?

Yes. Paternity leave is thus part of the general parental leave scheme regulated in the SSC and protected in the PLA and its Sec. 16, prohibiting any unfavourable treatment in relation to parental leave. Moreover, Sec. 17 contains a special rule that if an employee is given notice of termination or is summarily dismissed solely for reasons related to parental leave the notice of termination or summary dismissal shall be declared invalid if

<sup>12</sup> *De jämställda föräldrarna* (2013:8).

<sup>13</sup> See also Report 2012:9, Parental Benefits 1974-2011.

<sup>14</sup> The (2001:160) Ordinance on state financing for municipalities applying a maximum fee for childcare facilities.

the employee so requests. Such dismissals are also protected under the Employment Protection Act which requires just cause for any dismissal.

## **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. The regular parental benefit scheme in Chapter 13 of the SSC contains rules on a right to temporary parental benefit when caring for a sick child under the age of 12 – amounting to 60 days of benefit during a year. In addition, there are special rules on leave to take care of sick relatives. There is a special Act: the Act on the right to leave for urgent family reasons (1998:209). There are no explicit time limits to this right but its nature – related to serious illness or accidents making the employee's presence absolutely necessary – indicates that it is not for a long time. There is no case law to interpret this concept. There is also a right to leave/reduced hours when caring for severely sick relatives according to the Act on leave for the care of relatives (1988:1465). This right to leave is related to special care benefits regulated in Chapter 47 SSC. The right to leave is for a maximum of 100 full benefit days – 240 days in the case of caring for a relative who has Aids caused within the healthcare system (for example, in a hospital).

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

- 5.7.1 Is parental leave available in case of surrogacy?

No, surrogacy is not recognised in Sweden.

## **5.8 Leave sharing arrangements**

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

The right to maternity/paternity/parental leave is regulated in the PLA. These rights are individual and regulate the relation to the employer. Generally speaking, the right to leave is conditioned upon one actually taking care of the child. Typically, taking maternity/paternity/parental leave depends on one being compensated during the leave. Compensation is first and foremost regulated by the parental *benefit* scheme in the SSC. Here there are special rules on maternity and paternity benefits within the parental benefit scheme as described in earlier sections of this report. In most cases only the person actually taking care of the child is entitled to benefits (with the exception of maternity benefits and the 10 days of paternity benefits in connection with the birth of the child, then both parents can take care of the child simultaneously). The number of benefit days – 480 in total – are connected to the child. The general rule is that they can be used by both the father and the mother (though not at the same time). However, 90 days at income-replacement level are non-transferable – three so-called 'daddy months.' Parental benefit days can be taken on a very flexible basis – as a whole, three quarters, half, one quarter or one eighth of a benefit day.

The right to the leave as such is thus regulated in the PLA. The size of the employer is of no importance to this right. Generally speaking, as regards full-time leave such leave shall in principle be granted in accordance with the employee's wishes. With regard to reduced hours (part-time leave), and when agreement cannot be reached, the employer decides. He shall then distribute the leave according to the wishes of the employee, 'if such distribution does not cause substantial disturbance to the employer's activity, and the employer may never, without the employee's consent, distribute the leave in any manner other than spreading it over all days of the working week, dividing the leave

during the working day or distributing it to any other time other than the beginning or end of the working day' (Sec. 14 of the PLA). Whenever such a decision is made in any manner other than according to the wishes of the employee, he or she shall be informed as shall the employee's local trade union – if practicable no later than two weeks prior to the commencement of the leave. This issue can then be the subject of collective negotiations and is – ultimately – for the Labour Court to decide.

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

The number of benefit days – 480 in total – are connected to the child. The general rule is that they can be used by both the father and the mother (though not at the same time except for maternity leave and the 10 days for fathers in connection with the birth of the child). However, 90 days at income-replacement level are non-transferable – three so-called 'daddy months' (Chapter 12 Sec. 17.1 of the SSC).

## **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. According to the PLA there is always a right for employees, who are parents of a child up to a maximum 8 years of age, to make use of reduced working hours by up to one quarter (i.e. working 75 %) until the child reaches eight years of age (Sec. 7 PLA). This right thus applies also when no compensation/benefit is paid out – i.e. the employee chooses to take this leave at his/her own expense. There are no qualifying conditions related to this right. Additionally, there is always a right to leave when one has maternity/paternity/parental benefits paid out and these – as stated above – can be taken out on a very flexible, also part-time basis or as full, three quarters, half, one quarter or one eighth of a day.

These rights apply to all employers regardless of their size.

There are no special measures to encourage men to make use of reduced working hours apart from those that apply to the parental leave/benefit scheme as such, i.e. a number of non-transferable days, and so forth. To make parental leave less inconvenient for the parent earning more than the other (whether this is the father or the mother!) the 'ceiling' on the public parental benefits scheme was increased a few years ago from 7.5 basic amounts to 10 basic amounts. There was also a gender-neutral reform concerning the so-called 'Equality Bonus' (*Jämställdhetsbonus*) – see the (2008:313) Act. This is to encourage parents to share the parental benefits more equally regardless of their earnings. Concerning income-replacement benefits, after 90 such benefit days the parent having taken out such benefits for the smallest amounts of days receive an extra SEK 50 (about EUR 5) per day for him/herself and another SEK 50 for the other parent up to a maximum of SEK 13 500 (approx. EUR 1 421).

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

No. There are no such rules apart from the ones related to the parental leave scheme described above and the regulations concerning sick relatives.

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

No. There is no special regulation in Sweden on a right to work from home.

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?

No. There is no legislation whatsoever concerning flexible working time arrangements – this is regarded as an issue for the social partners and collective bargaining. Collective agreements may provide such working time arrangements as indicated in the question. There is an abundance of collective agreements at all levels in Sweden - frequently regulating working time - and there is no possibility for this author to assess the contents of such agreements here. ‘Flexi-time’ providing a certain ‘time-span’ for starting and ending the working day and with certain room for adjustments over the working week or month more or less generally prevails on the Swedish labour market, though, and especially so in white-collar work.

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

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

Yes. Occupational social security schemes are – in parallel with the case law of the CJEU – regarded as pay and are thus covered by the ban on (among other grounds) gender discrimination in the (2008:587) Discrimination Act (DA). This follows from Chapter 2 Sec. 1 of the DA, i.e. the general prohibition on all forms of discrimination in working life. This ban covers all types of employer decisions, among them on pay without pay discrimination (or occupational social security schemes) being especially mentioned. A ‘tacit’ and thus not very transparent way of regulating!

### **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.**

As indicated above, there is no express regulation concerning occupational social security schemes – these are covered by the general ban on sex discrimination in working life in accordance with the case law of the CJEU. Typically speaking, this should cover the personal scope required by Article 6 in the Recast Directive. There is no case law.

### **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.**

As indicated above, there is no express regulation concerning occupational social security schemes – these are covered by the general ban on sex discrimination in working life in accordance with the case law of the CJEU. Typically speaking, this should cover the personal scope required by Article 7 of the Recast Directive. There is no case law.

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

As indicated above, there is no express regulation concerning occupational social security schemes – these are covered by the general ban on sex discrimination in working life in accordance with the case law of the CJEU. The indirect effect of this is that situations such as the ones mentioned in Article 8.1.a and b are not covered despite there being an express exception.

### **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?**

As indicated above there is no specific regulation or any case law concerning occupational social security schemes. Such collectively agreed schemes are, however, known to be gender-neutral in Sweden.

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

No. Occupational pension schemes in Sweden are known to be gender neutral.



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

There are, to my knowledge, no such difficulties.

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

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

Yes. The (2008:567) Discrimination Act (DA) covers, according to its Chapter 2 Sec. 14 – among other areas of society – the Swedish social insurance system, regulated in the SSC, and unemployment insurance. The regulation in Sec. 14 par. 2 states that the prohibition of discrimination associated with sex does not prevent the application of provisions concerning a widow's pension, a wife's supplement or the payment of child allowance. There are no longer any widow's pensions in Sweden, though, apart from an old scheme covering a very reduced group due to transitional rules.

### **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.**

Generally speaking, the Swedish social security system is individual and based on either residence or gainful activities, including both employment and self-employment. Many schemes – such as that on parental leave and pensions – include a guaranteed level covering all Swedish residents and thus makes the coverage broader than required by Article 2.

### **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.**

Generally speaking, the Swedish social security system is individual and based on either residence or gainful activities, including both employment and self-employment. There are no derived rights for spouses. There is no relevant case law.

### **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.**

No. There are no exceptions according to Article 7 of Directive 79/7.

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

No. Sex is not used as an actuarial factor in Swedish 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.**

To the knowledge of this author, there are no such difficulties. Nor is there any relevant case law.

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

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

The Swedish implementation is made in a complex way – often by regulations already in place – as reported by the Government in accordance with Art. 16(3) of the Directive in Momerandum 2012-04-24 by the Labour-market Department. The main instruments mentioned in the momerandum are the (2008:567) Discrimination Act, the (2010:110) Social Security Code, the (1980:1102) Act on trading partnerships and the (2005:551) Joint-stock Company Act. The implementation by the 2008 Discrimination Act is rather subtle. The Act is a 'Single' Non-Discrimination Act covering seven grounds of discrimination – among them sex – and ten areas of society. It is truly horizontal in character – definitions are found in Chapter 1 whereas the prohibitions 'tacitly' covering all grounds as well as types of discrimination are found in Chapter 2. On the Swedish labour market there is a binary system as far as personalised work is concerned – one is either an employee or is self-employed. The concept of an employee is broad in range and covers all dependent work/workers. (As far as the concept of employee is concerned, Swedish labour law does not contain any statutory definition – instead the concept has developed through a combination of judicial interpretation and indications by the legislators in preparatory works. The courts apply a multi-factor test applied in a 'holistic' and also rather flexible manner.) However, if not covered by the ban on discrimination in working life (of employed persons) the protection of the self-employed proper is 'divided' between the bans on discrimination in labour market policy activities (Ch. 2 Sec. 9), when starting or running a business and professional recognition (Ch. 2 Sec. 10), membership of certain organisations (Ch. 2 Sec. 11), providing goods and services (Ch. 2 Sec. 12), health (Ch.2 Sec. 13) and in social security matters (Ch. 2 Sec. 14). This is done in a far from transparent way and without ever mentioning the concept of self-employed. According to the main Swedish commentary on the Discrimination Act<sup>15</sup> there is a reason to doubt whether this implementation of EU Law is satisfactory. As I understand it, though, this remark would rather refer to the implementation of the Recast Directive than to that of Directive 2010/41.

### **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).**

On the Swedish labour market there is a binary system as far as personalised work is concerned – one is either an employee or a self-employed person. The concept of an employee is broad in range and covers all dependent work/workers. (As far as the concept of employee is concerned, Swedish labour law does not contain any statutory definition – instead the concept has developed through a combination of judicial interpretation and indications by the legislators in preparatory works. The courts apply a multi-factor test applied in a 'holistic' and also rather flexible manner). However, if not covered by the ban on discrimination in working life (of employed persons) the protection of the self-employed proper is 'divided' between the bans on discrimination in labour market policy activities (Ch. 2 Sec. 9), when starting or running a business and professional recognition (Ch. 2 Sec. 10), membership of certain organisations (Ch. 2 Sec. 11), providing goods and services (Ch. 2 Sec. 12), health (Ch.2 Sec. 13) and in social security matters (Ch. 2 Sec. 14). This is done in a far from transparent way and without ever mentioning the concept of self-employed. According to the main Swedish commentary on the Discrimination Act<sup>16</sup> there is reason to doubt whether this

<sup>15</sup> Fransson, S. and Stuber, E. (2015), *Diskrimineringslagen, En Kommentar*, 2nd ed., Norstedts, Stockholm p. 296.

<sup>16</sup> Fransson, S. and Stuber, E. (2010), *Diskrimineringslagen, En Kommentar*, Norstedts, Stockholm p. 298.

implementation of EU Law is satisfactory. As I understand it, though, this remark would rather refer to the implementation of the Recast Directive than to that of Directive 2010/41.

Swedish law does not provide a specific definition of a self-employed person – they may be individual entrepreneurs or partners in a trading partnership or even the owner of a small joint-stock company. The character of self-employed is important mainly for taxation purposes but also concerning social security – and in contrast with employees (the binary divide). There are not necessarily any formalities with being an individual entrepreneur – anyone having a revenue as a result of an economic activity and not being employed is treated as being self-employed. For taxation purposes there is a definition of individual entrepreneur (*enskild näringsidkare*) implying 'economic activities carried out in a professional and independent way' (*Förvärvsverksamhet som bedrivs yrkesmässigt och självständigt*) (Ch. 13 Sec. 1 (1) of the (1999:1229) Income Taxation Act). This is interpreted as requiring activities of some importance carried out on a continuous basis and in relation to several customers/clients. There are no regulations other than the ones described – thus no different categories, etc. The concept used is very broad and I see no problems with exclusion!

### **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.**

There are no special rules on different categories. Life partners or co-habitees, *sambor*, are recognised by Swedish law in much the same way as a marital spouse and without any formalities. This also applies to same-sex partners. Swedish social security, for instance the parental leave benefit scheme (but also the pension scheme), is individually based and there is often a guarantee level which applies to anyone who is legally resident regardless of their family status.

Summing up, in the Swedish system people are either self-employed or employees (compare above), and this also holds true for spouses and cohabitees, i.e. helping spouses are – if not a business partner proper or running a business of their own – considered an employee in the business. (There is thus no exception or special treatment for family members in this regard. Taxation in Sweden is individual and any person has his/her individual rights to social security, etc.).

### **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?**

In this author's opinion Art. 4(1) has been correctly transposed by Ch. 2 Sec. 9 (labour market policy activities and employment services), 10 (starting or running a business and professional recognition) and 12 (the provision of goods and services) of the Discrimination Act. The same holds true for Art. 4(2) and (3). No modifications were made as a result of the new Directive. There is a lack of transparency regarding the self-employed in Swedish law, though, and this author would certainly not say that its scope is broader than EU law requires.

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

The 2008 Discrimination Act provides for positive action in that it 'does not prevent measures that contribute to efforts to promote equality between women and men' with regard to labour market policy activities and employment services (Ch. 2 Sec. 9 (2(1))).

Nor does it 'prevent measures concerning support that contributes to efforts to promote equality between women and men' with regard to starting or running a business (Ch. 2 Sec. 10 (3)). This author has no specific information, though, about such measures being put into practice. Special labour-market projects to promote the under-represented sex in certain areas are known to exist, though, and so are special projects on financing for women setting up a business as part of promoting more women entrepreneurs (compare the Governmental programme 'Promoting Women Entrepreneurs'). I would imagine that such special initiatives are positive in increasing self-employment among women!

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

First, there is a general ban on (sex) discrimination concerning social security matters including unemployment insurance in the 2008 Discrimination Act Ch. 2 Sec. 14 and another one concerning health and medical services (Chapter 2 Sec. 13). These prohibitions also cover (tacitly) the self-employed.

The Swedish social security system as such is mainly regulated by the (2010:110) Social Security Code. It is mandatory and individual in character. Basically, there are residence-based and income-based benefits. The residence-based benefits apply to all residents whether self-employed or not and concern among others child benefits, child-support, parental leave benefits at the guarantee level, invalidity benefits at the guarantee level, guarantee pensions and elderly support. Income-based benefits include, among others, pregnancy benefits, parental leave benefits, sickness benefits in cash, invalidity benefits, and pensions. All these schemes provide protection for the self-employed.

It is thus mandatory for the self-employed to be part of the sickness benefits in cash system. During the initial 24 months of running a business there is 'a guaranteed sickness benefit' amounting to what an employed person would receive for equal work – afterwards it is based on the actual income as a self-employed person. The general rule is that the first seven days of every sickness period one pays oneself (for employees there are 'sickness wages' paid by the employer during the first two weeks of sickness). Here, there is an element of choice in the scheme, however – the self-employed can choose to have a longer initial period without pay (14, 30, 60 or 70 days) resulting in somewhat lower contributions. (There is special protection for those who are often sick, reducing the days without pay in certain ways).

Unemployment benefits are regulated in a special act – the (1997:238) Unemployment insurance Act. This, too, provides for protection for the self-employed. The insurance is divided into one, mandatory, basic insurance at guarantee level and another, voluntary, income-replacement insurance requiring membership. The latter is thus voluntary for both employees and self-employed persons. (In this Act there is a definition of a self-employed person parallel to that in the Income Taxation Act). During the first 24 months of running a business it is possible to retain the level of unemployment benefits from an earlier employment. Thereafter benefits are based on the income taxed in the business during the previous year. To have unemployment benefits it is no longer necessary to actually close down the business (or sell it) – it is enough that it is 'passive' in that no activities are being carried out.

As regards sickness benefits in kind – i.e. health – Sweden has a universal system that applies to all residents regardless of their economic activity.

As far as spouses/life partners are concerned, they are, of course, individually covered by all residence-based schemes (including benefits at the guarantee level). Income-based schemes require a formal revenue/income. There are no schemes which are

mandatory for the self-employed worker but voluntary for his/her spouse or life partner, or vice versa.

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

Yes. The (2010:110) Social Security Code provide benefits at the basic/guarantee and income-replacement level, in all covering 480 days, in the form of maternity/paternity/parental leave. All residents are entitled to basic/guarantee benefits. Income-replacement benefits equal sickness benefits in cash (Art. 8.3(a)) and require a formal revenue/income in relation to the taxation system, covering employees and the self-employed alike. The system as such is mandatory. Like all social security (but unemployment benefits at income-replacement level) parental leave benefits are paid for by taxation - by employers' contributions on a payroll basis for employees and by self-contributions (*egenavgifter*) concerning the self-employed.

Since 1998 replacement services in the agricultural sector is a business activity on the market like any other and there are no public systems, subsidies and so forth.

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

There is no such express regulation regarding the self-employed. In fact, there is no legislation regarding occupational social security schemes at all. This is regarded as something for the social partners and sex discrimination is prohibited through the general ban on such discrimination in working life since it is regarded as indirect pay/wages.

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

No.

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

This is a question which is not easy to answer. As regards employment it is implemented through Chapter 2 Sec. 1 of the 2008 DA. As regards the self-employed these issues are partly covered by the prohibitions in Chapter 2 on discrimination in labour market policy activities (Ch. 2 Sec. 9), when starting or running a business and professional recognition (Ch. 2 Sec. 10), and membership of certain organisations (Ch. 2 Sec. 11). The 'real problem', however, is the impossibility under the Swedish system to provide protection against discrimination for independent 'work' providers in relation to clients/customers due to respecting the principle of the freedom of contract. There is no such thing, as a general rule, as forced contracts! The Swedish ban in Ch. 2 Sec. 10 covers the conditions for having access to self-employment as such rather than covering the actual choice of an entrepreneur; compare the UK case of *Jivraj v Hashwani*.<sup>17</sup> If we are dealing with a self-employed person there is no applicable discriminatory prohibition as regards the choice of a business partner. Nor does legislation cover the termination of contractual relationships with a self-employed person. These realities are, however, contravened by the very broad concept of employee that apply and that make the group

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<sup>17</sup> *Jivraj v Hashwani* [2011] UKSC 40, [2011] 1 W.L.R. 1872.

of more 'dependant' self-employed rather small to non-existent. The generally speaking broad scope of the social security and health systems is also of importance here.

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

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

The Goods and Services Directive is implemented by the (2008:567) Discrimination Act (DA) and its Chapter 2 Sec. 12.

### **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.**

Chapter 2 Sec. 12 of the DA states that 'discrimination is prohibited on the part of a natural or legal person who 1. supplies goods, services or housing to the general public, outside the private and family sphere', a definition which is in line with Article 3 of the Goods and Services Directive, certainly in this author's opinion. There is no relevant case law.

### **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?**

Yes and no. The content of media and advertising is simply not covered by any of the prohibitions on (sex) discrimination in the DA. The area of education is however covered by the DA and its regulation in Chapter 2 Secs. 5-8. Sec. 5 states that 'a natural or legal person conducting activities referred to in the Education Act (2010:800) or other educational activities (and educational providers) may not discriminate against any child, pupil or student participating in or applying for the activities'. The ban thus covers the whole Swedish education system including pre-schooling activities. Sec. 6.1 contains an exemption concerning 'measures that contribute to efforts to promote equality between women and men in admissions to education other than that referred to in the Education Act (2010:800)'. The Education Act contains rules for basic schooling.

### **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.**

There are very few court cases concerning the Goods and Services Directive and to my knowledge none of these are related to the grounds of sex. Among the claims settled by the Equality Ombudsman ([www.do.se](http://www.do.se)) we find two relevant applications. One concerned a taxi company where the driver had harassed a woman, the assistant of a disabled client. Compensation was set at SEK 60 000 (approx. EUR 6 300). Another case concerned a bus driver in public service harassing a woman complaining about him talking on his mobile phone when driving. Compensation was set at SEK 30 000 (approx. EUR 3 150).

### **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. Following the Test-Achats case a new rule was inserted in the 2008 Discrimination Act Ch. 2 Sec. 12 a stating that there must not be a difference between women and men in insurance premiums or insurance compensation for the individual on the ground of gender-related factors.



The amendment to the 2008 Discrimination Act will put an end to existing and hitherto accepted sex discrimination as regards insurance services, especially frequent in private pension schemes and motor vehicle insurance.

**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.**

As a consequence of the Test-Achats case, the hitherto rule on explicit exceptions from the ban on sex discrimination regarding access to and the supply of goods and services in Ch. 2 Sec. 12 Par. 3 the 2008 Discrimination Act was amended and transferred to a new par. 12 a. An exception is still made concerning the differential treatment of men and women with regard to services and housing, when this is for a legitimate aim and the means of achieving this aim are appropriate and necessary. This exception does not however apply with regard to insurance: 'As far as insurance services are concerned there must not be a difference between women and men in insurance premiums or insurance compensation for the individual on the ground of gender-related factors.' Despite this, and provided there is a legitimate aim and the means used are appropriate and necessary to reach this aim, a person's sex may still influence the assessment of other factors on which insurance premiums are based. This rule is intended to be within the Commission's guidelines concerning the scope which is still left for gender-related assessments (COM (2011) 9497 final).

The reform entered into force on 21 December 2012 and the requirement on gender-neutral calculations only applies to insurance contracts entered into after that date. (The new rules do not apply to an inherent prolongation of an insurance contract which was entered into before 21 December 2012).

There was, to this author's knowledge, no further intense – or even any – debate on this change to the rules in Sweden. This is already reflected already in the *travaux préparatoires* where also insurance-related instances of opinions in the process of legislation have been characterised as mainly in favour of the proposition (Gov. Bill 2011/12:122 p. 16). When the governmental proposal was dealt with in the Swedish Parliament there was a broad consensus between the political parties.<sup>18</sup> An issue that was discussed to some extent was, however, whether or not the amendment in accordance with the Commission's opinion and the 2004/113/EC Directive reason 15 and art. 3.4 affects occupational or work-related pension schemes. The academics' trade union SACO had suggested that Sweden should prohibit gender-related premiums/pensions also in this regard. The Government rejected this on the ground that the new legislation should be equal to EU Law requirements generally (Gov. Bill 2011/12:122 p. 20).<sup>19</sup> (Notwithstanding this, *collectively* agreed occupational pension schemes have for a long time been known to be gender-neutral in Sweden).

**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)?**

Yes. As a consequence of the Test-Achats case, the hitherto rule on explicit exceptions to the ban on sex discrimination regarding access to and the supply of goods and services in Ch. 2 Sec. 12 Par. 3 of the 2008 Discrimination Act was amended and transferred to a new par. 12 a. An exception is still made concerning the differential treatment of men

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<sup>18</sup> Compare 2011/12: AU 11.

<sup>19</sup> Also compare the article 'Tjänstepensionen blir inte jämställd' (Work-related pensions will not be equal) by Eva Adolphson from the insurance company Alecta, in the Swedish daily newspaper Dagens Nyheter 2012-03-05.

and women with regard to services and housing, when this is for a legitimate aim and the means of achieving this aim are appropriate and necessary.

**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.**

To this author's knowledge, there are no such specific problems.

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

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

Yes. Sweden has ratified the Istanbul Convention. In general, the pre-existing legal framework was considered to be in compliance with the obligations under the Convention (see further Government Bill 2013/14:208 and Governmental Stencil Ds 2012:52). Generally speaking, gender-based violence occupies a central position in Swedish gender policies, as expressed in the 2007 'Action plan against prostitution and human trafficking for sexual purposes'.<sup>20</sup> There is also the 'International Policy on Sexual and Reproductive Health Rights'.<sup>21</sup>

Some legal provisions were however introduced following accession. One such regulation concerned forced marriage. Forced marriage has been a specific stand-alone crime in Sweden since 1 July 2014, as has 'misleading a person to travel to undergo a forced marriage'.<sup>22</sup> An attempt and preparation for a forced marriage are also criminalised. At the same time, the possibility to marry before the age of 18 was prohibited in Sweden, and the possibility to recognise such marriages entered into abroad was further restricted.<sup>23</sup> Working against forced marriages is also an important part of the governmental 2014-2017 Youth Policy.<sup>24</sup>

A minor amendment was also made to the existing regulation of stalking (unlawful persecution) in order to decrease the requirements for issuing a domestic exclusion order – see the Restraining Order Act (1988:688) and also Government Bill 2012/13:186.

Special rules on a residence permit – implementing EU Directive 2004/81/EC – issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities, are found in the Foreigners Act<sup>25</sup> allowing for the provision of a temporary residence permit.

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<sup>20</sup> Available at <http://www.regeringen.se/sokresultat/?query=Action+plan+against+prostitution>, accessed 19 November 2015.

<sup>21</sup> Available at <http://www.regeringen.se/sb/d/108/a/61468> - accessed 16 January 2015.

<sup>22</sup> See Chapter 4 Sections 4c and 4d of the Criminal Code, respectively.

<sup>23</sup> Ch. 2 Sec. 1 the Marriage Code and the (1904:26) Act on certain international issues concerning marriage and guardianship Ch. 1 Sec.8a.

<sup>24</sup> Forced marriage was also criminalised before 2014 as a crime of 'undue force.' In relation to Youth Policy, see also Ungdomspolitiskt handlingsprogram 2014-2017 at <http://www.regeringen.se/informationsmaterial/2009/09/the-swedish-governments-youth-policy/>, accessed 19 November 2015.

<sup>25</sup> Act (2005:716).

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

### **11.1 Victimisation**

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

Yes. According to the (2008:567) Discrimination Act (DA) Chapter 2 Secs. 18-19 contains a prohibition on reprisals applicable to working life, i.e. employers. An employer may thus not subject an employee to reprisals because the employee has '1. Reported or called attention to the fact that the employer has acted contrary to this Act, 2. Participated in an investigation under this Act, or 3. Rejected or given in to harassment or sexual harassment on the part of the employer.' Case law is scarce. One such case, however, is Labour Law 2013 No. 71 concerning a woman who was dismissed on the very day she made a complaint about sexual harassment. Discrimination compensation was set at SEK 75 000 (approx. EUR 7 900).

The prohibition as such seems to meet the requirements of the Recast Directive. What can be called into question is the fact that the ban on reprisals does not meet the requirement in Article 2.2.a of the Directive that it should be included in the very concept of 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. According to the (2008:567) Discrimination Act (DA) Chapter 6 Sec. 3 'if a person who considers that he or she has been discriminated against or subjected to reprisals demonstrates circumstances that give reason to presume that he or she has been discriminated against or subjected to reprisals, the defendant is required to show that discrimination or reprisals have not occurred.'

### **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.**

The rules on compensation and invalidity in cases of discrimination are found in Chapter 5 of the 2008 DA implementing all relevant EU law on non-discrimination. According to its Sec. 1 there is a special type of compensation – discrimination compensation (*diskrimineringersättning*) – for the offence resulting from the infringement. When such compensation is decided, particular attention shall be given to the purpose of discouraging such infringements of the Act and the compensation is paid to the person offended. In relation to employers there is also the possibility of economic compensation for the economic loss that arises from the infringement. Such an indemnity is not possible, though, in relation to decisions on appointments or promotions. Here, respect for the 'hiring at will' doctrine in Swedish law impedes the payment of an economic indemnity, as the employer, according to this doctrine, is not really obliged to employ anybody. There is, according to this view, no certain economic loss to compensate. Section 3 provides for the invalidity of discriminatory provisions and legal acts.

The described remedies thus apply in relation to the application of the DA. Occasionally also other legislation applies, such as the Employment Protection Act (EPA) or the Parental Leave Act (PLA). Here the general system of sanctions within Swedish labour

law applies – i.e. economic as well as punitive damages. A dismissal can be declared null and void – both applying the PLA and the Employment Protection Act.

The monitoring of the DA is thus done by the Equality Ombudsman. In this process a financial penalty may be imposed, i.e. fines (Chapter 4 Sec. 4). Such fines are examined and made effective by a special board – the Board against Discrimination – regulated in Chapter 4 of the DA.

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.

In the main, it is this author's opinion that the remedies meet the requirements of EU law. Swedish penalties are known to be generally fairly low, however. This was also to background for introducing the special 'discrimination compensation' in the DA in 2009. In cases NJA 2014 p. 499 I and II the Supreme Court stated that discrimination compensation can be divided into two parts: dignity compensation and preventive compensation, respectively. The Labour Court bases its decision on a more overall/holistic assessment, however – see Labour Court 2015 No. 51 with further references. Case law developments since the entry into force of the 2008 DA do not give cause for the conclusion that compensation has considerably increased, though. In the case law of the Labour Court discrimination compensation generally amounts to SEK 25 000 – 125 000 (approx. EUR 2 600 – 13 150) depending on the circumstances.

There is also a special restriction with regard to economic compensation. Such an indemnity is not possible in relation to decisions on appointments or promotions according Chapter 5 Sec. 1 par. 2. Here, respect for the 'hiring at will' doctrine in Swedish law impedes the payment of an economic indemnity! In this author's opinion, this practice can be questioned in relation to the principle of equal access to employment and its effective implementation.

## **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.

All parts of the Swedish court system are relevant for the 2008 DA with its broad coverage of different areas of society.

As for the *general courts*, Sweden has a three-tier hierarchy: the district courts (*tingsrätt*), the courts of appeal (*hovrätt*), and the Supreme Court (*Högsta domstolen*). As a general principle it may be said that the general courts enforce civil law and criminal law legislation.

The task of *the administrative courts* may be described as one of maintaining due observance of the law within the public administration—at the central, regional and local levels. They deal with decisions by public authorities such as, for instance, tax regulations and the social security system. The proceedings are very similar to the proceedings at the courts of general jurisdiction. However, in contrast to the general courts, proceedings in writing are predominant. Thus appeals concerning tax assessments as well as appeals against certain decisions of administrative authorities and against decisions of local authorities are dealt with by county administrative courts (*Förvaltningsdomstolar*). Appeals against the judgements of these county courts are made to the administrative courts of appeal (*kammarrätter*). The highest administrative tribunal is the Supreme Administrative Court (*Högsta Förvaltningsdomstolen*).

*The Labour Court* is a special court with the task of trying labour disputes. Certain cases can be brought directly before the Labour Court, while other cases (presented by individuals *not* supported by their professional organisation or – in matters of discrimination – by the Equality Ombudsman) are to be first brought before a district court. Thereafter they can be appealed to the Labour Court. The decisions of the Labour Court are final and cannot be appealed. Workplace discrimination cases are thus ultimately to be tried before the Labour Court, either as the court of first instance or as an appeals court.

In the area of discrimination there is now a 'single' Equality Ombudsman (*Diskrimineringsombudsmannen*, DO) covering not only gender discrimination but also other protected grounds such as ethnicity, religion, sexual orientation, disability and age. The DO has competence to bring a case before the relevant court in any area covered by the 2008 DA.

In order to understand the functioning of Swedish labour law, and thus important parts of the non-discrimination legislation, it is crucial to bear in mind the special role designated to the social partners. The Swedish labour market is characterised by a high degree of organisation density; this is true of employees and employers alike. It is difficult to obtain exact figures on the degree of affiliation, but it is roughly 75 % among workers as well as among salaried employees. According to Swedish labour law a trade union has a priority right to bring an action on behalf of its members under Chapter 4, Section 5 of the Labour Disputes (Judicial Procedure) Act (1974:371) – a rule which also applies to complaints regarding discrimination (compare Chapter 6 Sec. 2 of the DA).

According to the 2008 Discrimination Act there is also a right to bring an action for non-profit organisations other than employees' organisations if, according to their statutes, they are tasked with looking after the interests of their members and the association can be considered 'suitable to represent the individual in the case, taking account of its activities and its interest in the matter, its financial ability to bring an action and other circumstances' (Chapter 6 Sec. 2 the DA).

Access to justice for the victims of sex discrimination thus varies somewhat depending on the area at issue. In all contexts they can be represented by the Equality Ombudsman with no costs being attached. The Ombudsman has no obligation to represent an alleged victim, however, but may choose to bring an action or not with reference to its relative importance from a more general perspective. The number of claims actually brought to court by the Equality Ombudsman are really quite limited, for instance only 25 in 2014 as compared to 1 949 new complaints, whereby 224 thereof were more closely scrutinized.<sup>26</sup>

All in all, in this author's opinion, this amounts to a reasonably good level of access to justice.

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.

According to the 2008 Discrimination Act there is now a right to bring an action for non-profit organisations other than employees' organisations if, according to their statutes, they are tasked with looking after the interests of their members and the association can be considered 'suitable to represent the individual in the case, taking account of its activities and its interest in the matter, its financial ability to bring an action and other circumstances' (Chapter 6 Sec. 2 the DA). The case law so far is limited, but among the

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<sup>26</sup> The DO's 2014 Activity Report, <http://www.do.se>.

few cases brought before the courts are a few important cases concerning discrimination in the field of education such as the case before the Supreme Court NJA 2006 p. 683 (positive action on the grounds of ethnicity).

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

Legal assistance free of charge is thus provided by trade unions for their members and, more generally, by the Equality Ombudsman (DO) - see further above. There is no obligation for the trade unions or for the DO to bring a case of alleged discrimination to the courts. The alleged victim of discrimination then has the possibility to address a relevant NGO if there is one. Ultimately, they may bring the case on their own. Then there is the possibility of legal aid according to the (1996:1619) Legal Aid Act. This right only applies to those earning less than SEK 260 000 (approx. EUR 27 300) a year and is second to eventual rights to financial assistance in accordance with private insurance (quite normal with regard to 'home insurance').

### 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. In order to monitor the 2008 DA there is an Equality Ombudsman ([www.do.se](http://www.do.se)) covering all protected grounds (among them sex) and areas of society. The duties of the Equality Ombudsman are regulated in Chapter 4 of the DA and according to its sec. 1 its duty is to supervise compliance with the Act. 'The ombudsman is to try in the first instance to induce those to whom the Act applies to comply with it voluntarily.' The Ombudsman may bring a court action on behalf of an alleged victim who consents to this (sec. 2) but does not have the competence to decide on complaints him/herself – settling out of court is a frequent occurrence, though. More thorough provisions on the duties of the Ombudsman are given in the special Act concerning the Equality Ombudsman (2008:568).

In December 2016, the Government appointed a Committee to prepare and form a new public authority tasked with ensuring monitoring, analysis, coordination and necessary support in the area of gender equality. The authority shall be ready to start work on 1 January 2018.

### 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?

Non-discrimination legislation is always mandatory. Nevertheless, the industrial relations structure and the role played by the social partners are also crucial to non-discrimination law as regards employment. The Swedish labour market is characterised by a high degree of organisation density; this is true of employees and employers alike. It is difficult to obtain exact figures on the degree of affiliation, but it is roughly 75 % among workers as well as among salaried employees. Furthermore, the organisation pattern is firmly established, and there is relatively little inter-trade union rivalry. This organisational structure is reflected in collective bargaining. There are collective agreements at three levels: national, industry-wide and local. In most instances, the relationship between an employer/employers' organisation and the union is firm and long-standing. Orderly and peaceful ways for the parties to meet, to bargain and to settle disputes can still be said to characterise 'the Swedish model' of industrial relations. Labour law generally gives established unions – i.e. unions that uphold a collective agreement with the employer in question – a privileged position. Although

Swedish law does not provide for exclusive representation, established unions de facto often speak for the entire employee community. The role of the social partners is also reflected in the fact that important issues are still outside the scope of the law, for instance wages.<sup>27</sup> Another important feature, due to the crucial role played by the social partners and collective bargaining, is the frequent use of what is generally referred to as 'semi-mandatory rules'. Even important rules may be overridden by collective agreements. Moreover, at the Labour Court there is a strong representation of the social partners.

According to Chapter 3 of the DA so-called active measures are important to sex equality in working life and according to its Sec. 1 'employers and employees (through their trade unions, my remark) are to cooperate on active measures to bring about equal rights and opportunities in working life ... and in particular to combat discrimination in working life.' Chapter 3 on active measures also contains special rules on pay involving the social partners. According to Chapter 3 Section 2 'employers and employees are in particular to endeavour to equalise and prevent differences in pay and other terms of employment between women and men who perform work which is to be regarded as equal or of equal value. They are also to promote equal pay growth opportunities for women and men'. Chapter 3 Sections 10-12 contain further rules monitoring equal pay practices. Every three years (from 1 January 2017, every year) employers who employ 25 employees or more are to draw up an action plan for equal pay. Such an action plan shall report the results of the employer's obligations to survey and analyse pay practices, also concerning work of equal value, from a gender perspective, to indicate 'the pay adjustments and other measures that need to be taken to bring about equal pay for work that is to be regarded as equal or of equal value' including a cost estimate and a time plan not exceeding three years, and, successively, to report on the implementation and its results. There is a right for employee representatives of organisations bound by a collective agreement towards the employer in question to have access to 'the information needed' to be able to cooperate in the survey, analysis and drawing up of an action plan for equal pay.

According to Swedish labour law the trade union has a priority right to bring an action on behalf of its members under Chapter 4, Section 5 of the Labour Disputes (Judicial Procedure) Act (1974:371) – a rule which also applies to complaints regarding discrimination (compare Chapter 6 Sec. 2 of the DA). In these cases the role of the trade union may be a delicate one, though. Thus, both the individual claiming to have been discriminated against and the one who received the job, the comparator as regards equal pay, etc., are all likely to be members of the same union. Different wage levels as regards work of equal value are regularly the outcome of collective bargaining, etc.

## **11.7 Collective agreements**

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

Collective agreements are really important in Sweden as a way to decide working conditions in general and especially so pay. The organisation pattern is thus firmly established, and there is relatively little inter-trade union rivalry. This organisational structure is reflected in collective bargaining. There are collective agreements at three levels: national, industry-wide and local. In most instances, the relationship between an employer/employers' organisation and the union is firm and long-standing. Collective agreements are legally binding for employers and members of the signing trade union

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<sup>27</sup> There is thus no legislation on minimum wages, for instance.



but the signing employer also has a duty to apply the collective agreements to all employees alike. Moreover, a collective agreement at the lower level may not contravene the collective agreement at the higher level – it is then null and void.

Pay regulation as such is thus an issue that rests entirely with the social partners and collective bargaining in the Swedish system. Since it must not be discriminatory there is an implicit duty on the social partners to consider equal pay practices when bargaining, etc. There are no explicit rules on this except for the general ban on discrimination, however. Historically speaking, there have been particular policies among trade unions in order to come to terms with the gender pay gap throughout the years, varying among the specific trade unions and branches.

It is really difficult to assess the Swedish wage-setting system, based on the social partners' autonomy as it stands. No doubt, collective bargaining and its results are of major importance as regards the gender pay gap in Sweden. The Swedish labour market is highly organised and collective agreements cover most of the labour market. The labour market is also highly gender segregated. As we have seen, the profession in question is the single most important explanatory factor for the gender pay gap. The general pay level nationwide for a profession/branch of industry is by and large set by the collective agreement of that profession/branch at industrial level. At the same time trade unions are gathered in a few trade union confederations with, at least in theory, the possibility to coordinate pay policies. Segments of the labour market dominated by women are often paid at lower levels than other male-dominated sections. Despite the, in principle, 'individualised' wage-setting practices in all areas of the labour market the function of collective bargaining and 'level-setting' by nationwide general agreements for the area at issue cannot be overestimated. Coordinated equality strategies at central organisation level are necessary to come to terms with such differences among branches of industry and sectors. To some extent such initiatives on the employee side have, historically speaking, proved to have some efficiency in bridging the gender pay gap. This is especially evident if we look into pay developments within the municipality sector (compare under heading 1 above). However, pay levels between sectors have, generally speaking, proven to be quite stable.

## 12. Overall assessment

Generally speaking, the 2008 Discrimination Act implements most of the directives covered by this report, including the Recast Directive. Directives 92/85/EC and 2010/18/EU are mainly implemented through the Parental Leave Act. The Swedish legislator has taken a rather keen interest in the implementation of Community discrimination regulation in recent years and has even preceded EU law on occasion, such as introducing prohibitions on discrimination in areas and on grounds not yet covered by EU law. The implementation of gender law in general sufficiently meets the requirements of Community law. This also holds true for the implementation of central concepts.

However, Swedish law has been criticised by the Commission as not having included an express rule indicating that discrimination related to pregnancy and maternity leave proper is regarded as sex discrimination. Other gaps in the Swedish implementation of Community gender regulations have been identified by the Commission as regards the implementation of Directive 76/207/EEC as amended by Directive 2002/73/EC in respect of limited rights to compensation as well as a lack of rights for NGOs to represent alleged victims. The Government – not necessarily in agreement with the Commission – has remedied these allegations through the 2008 Discrimination Act. Moreover, the introduction of the special ‘discrimination compensation’ can possibly result in a welcome increase in the levels of indemnities, certainly in the long term. However, a question mark can be posed as regards the situation of discrimination in hiring and promotion. Even if discrimination is proven, there is no right to the position/promotion as such or to compensation for economic loss. Arguably, with regard to transparency, etc., one can also question the technique of the 2008 Act to prohibit any discriminatory decision in working life without expressly mentioning access to employment, pay, pregnancy, etc. This makes the prohibitions on discriminatory pay and occupational pension schemes far from transparent.

Swedish legislation goes beyond the requirements of Community law with its prohibition on discrimination regarding basic schooling and higher education. The rules on rights to parental leave are quite extensive and to a great extent related to social security benefits and are protected by a general prohibition on unfair treatment for reasons connected with *parental* leave. It is also worth mentioning that according to Chapter 2 Section 13 of the 2008 Discrimination Act, gender discrimination concerning healthcare and social services is outlawed, which goes beyond the requirements of Community law.

## **Annexes**

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