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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Latvia

Kristīne Dupate

Reporting period 1 April 2016 – 31 December 2016

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1. Introduction

1.1 Basic structure of the national legal system

Latvia is a parliamentary State, where Parliament is the only legislator. This legislator, however, has the right to delegate legislative functions to the Cabinet of Ministers and to municipalities. Delegated legislative powers always have to be made explicit in the laws adopted by Parliament. In case of delegated legislative competence, the Cabinet of Ministers adopts the regulations for the Cabinet of Ministers, and municipalities adopt binding regulations for the municipalities. All documents mentioned have their own place in the hierarchy: the laws adopted by Parliament are followed by the regulations of the Cabinet of Ministers and the latter are of a higher level than the binding regulations adopted by the municipalities.¹ All issues concerning EU gender equality law are regulated predominantly by legislation, and in exceptional situations by the regulations of the Cabinet of Ministers, and never by the regulations adopted by the municipalities.

The court system in Latvia is as follows:

There are three courts levels: city (district) courts (first instance), regional courts (second instance for appeal) and the Supreme Court (the third instance for cassation). There are two types of courts: administrative (dealing with relations between private persons and the state executive power) and regular (dealing with criminal or civil cases). There is a Constitutional Court (*Satversmes tiesa*) which supervises if the legal norms correspond to the Constitution. Private parties have the right to lodge a constitutional complaint if they believe that the legal norms do not correspond to the human rights as provided by the Constitution.

1.2 List of main legislation transposing and implementing Directives

- the Labour Law;²
- the Law on the State Civil Service;³
- the Law on Service in the System of the Interior and Imprisonment System;⁴
- the Military Service Law;⁵
- the Home Guards of the Republic of Latvia Law;⁶
- the Law on Orphan's Courts;⁷
- the Unemployed and Job-seekers Support Law;⁸
- the Education Law;⁹
- the Labour Protection Law;¹⁰
- Regulation of the Cabinet of Ministers No. 458 'Procedures for Licensing and Supervision of Merchants – Providers of Work Placement Services';¹¹
- the Law on Social Security;¹²
- the Law on Maternity and Sickness Insurance;¹³
- the Law on Statutory Social Insurance;¹⁴

¹ The Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), Official Gazette No. 43, 1 July 1993.

² Darba likums, Official Gazette No. 105, 6 July 2001.

³ *Valsts civildienesta likums*, Official Gazette No. 331/333, 22 September 2000, with respective amendments on equal treatment, Official Gazette No. 180, 9 November 2006.

⁴ *Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums*, Official Gazette No. 101, 30 June 2006.

⁵ *Militārā dienesta likums*, Official Gazette No. 91, 18 June 2002.

⁶ *Latvijas Republikas Zemessardzes likums*, Official Gazette No. 82, 26 May 2010.

⁷ *Bāriņtiesu likums*, Official Gazette No. 107, 7 July 2006.

⁸ *Bezdarbnieku un darba meklētāju atbalsta likums*, Official Gazette No. 80, 29 May 2002.

⁹ *Izglītības likums*, Official Gazette No. 343/344, 17 November 1998.

¹⁰ *Darba aizsardzības likums*, Official Gazette No. 105, 6 July 2001.

¹¹ *Ministru Kabineta Noteikumi Nr.458 'Komersantu - darbiekārtošanas pakalpojumu sniedzēju - licencēšanas un uzraudzības kārtība'*, Official Gazette No. 108, 6 July 2007.

¹² *Likums 'Par sociālo drošību'*, Official Gazette No. 144, 21 September 1995.

¹³ *Likums 'Par maternitātes un slimības apdrošināšanu'*, Official Gazette No. 182, 23 November 1995.

- the Law on Private Pension Funds;¹⁵
- the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity;¹⁶
- the Law on the Protection of Consumer Rights;¹⁷
- the Insurance and Reinsurance Law.¹⁸

¹⁴ *Likums par valsts sociālo apdrošināšanu*, No. 274/276, 21 October 1997.

¹⁵ *Likums par privātajiem pensiju fondiem*, Official Gazette No. 150/151, 20 June 1997.

¹⁶ *Fizisko personu – saimnieciskās darbības veicēju – diskriminācijas aizlieguma likums*, Official Gazette No. 199, 19 December 2012.

¹⁷ *Patērētāju tiesību aizsardzības likums*, Official Gazette No. 104/105, 1 April 1999.

¹⁸ *Apdrošināšanas un pārpapdrošināšanas likums*, Official Gazette No. 124, 30 June 2015.

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Not explicitly. Article 91 of the Constitution addresses equal treatment and prohibition of discrimination in general. This article does not list any discrimination grounds. It is interpreted by the authorities (regarding content of the principle of equal treatment and non-discrimination, types and grounds) according to the international human rights agreements on the basis of Article 89 of the Constitution, which makes it mandatory to interpret fundamental rights provisions of the Constitution in conformity with binding international agreements.

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.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

No. Latvia has chosen to follow the EU's gender equality and non-discrimination law implementation structure. It was decided to implement respective EU law in special laws regulating the particular field of life rather than having one special law devoted to such implementation, for example, gender equality in the field of employment was implemented by amendments to the Labour Law while in the field of social insurance it was done by respective amendments to the Law on Social Security, and non-discrimination on the grounds of sex with regard to the access to and supply of goods and services was implemented by the Law on the Protection of Consumer Rights and by the Law on Insurance Companies and their Supervision. As a result Latvia has faced some problems.

Firstly, problems arise because the structure of Latvian special laws does not always coincide with the material and personal scope of the EU gender equality and non-discrimination law, which led to the situation that implementing measures do not completely cover the scope required under relevant EU directives and sometimes the legislator 'has forgotten' some laws where implementation is necessary.

In particular, relating to employment, the prohibition of discrimination with regard to employment (service) conditions has not been implemented with regard to judges and public prosecutors. As a consequence, judges¹⁹ and public prosecutors²⁰ are still only protected against discrimination with regard to access to a post.

Implementation is incomplete for the prohibition of discrimination with regard to the access to occupational social security schemes in the public sector. The laws on public-sector long-term service pensions²¹ do not explicitly stipulate this principle.²²

¹⁹ Article 51(2) of the Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993.

²⁰ Article 33¹(1) of the Prosecutors' Office Law (*Prokuratūras likums*), Official Gazette No. 65, 2 June 1994.

²¹ Law on Pensions for the Military (*Militārpersonu izdienas pensiju likums*) Official Gazette No. 86, 1 April 1998; Law on Pensions for Employees of the System of the Ministry of Interior Affairs with Special Ranks (*Par izdienas pensijām Iekšlietu ministrijas sistēmas darbiniekiem ar speciālajām dienesta pakāpēm*), Official Gazette No. 100/101, 16 April 1998; Law on Pensions for Prosecutors (*Prokuroru izdienas pensiju likums*) Official Gazette No. 181, 3 June 1999; Law on Long-Term Service Pensions for Judges (*Tiesnešu*

Further, there is no special law regulating activities of the self-employed, because self-employment under Latvian commercial law may take many different forms of entrepreneurship. For this reason, one special law implementing the principle of discrimination on self-employment was adopted: the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.²³

Directive 2004/113/EC has been implemented by the Law on the Protection of Consumer Rights²⁴ and the Law on Insurance Companies and their Supervision.²⁵ However, implementation is incomplete because the Law on the Protection of Consumer Rights only concerns those goods and services providers who act within their professional capacity. They do not cover the sale of goods or the provision of services between private parties acting outside their professional activities. For example, the law does not cover the situation where a person selling his/her own apartment offers it to the general public by public offer.

Secondly, special laws usually regulate legal relationships between private parties while EU gender equality and non-discrimination law entails horizontal and mainstreaming obligations for state powers. There is only one formal national legal provision obliging the legislator to assess all draft legal proposals from the perspective of equal opportunities, but in practice this requirement does not work effectively.²⁶ Moreover there was a provision obliging to provide such evaluation to the drafters of legislative documents and the delegated legislator – the Cabinet of Minister and subordinated executive institutions – but these explicit norms were abolished.²⁷ The State Chancellery has explained this amendment by the need to assess all legislative proposals from the perspective of all general principles of law,²⁸ but it is doubtful if such an approach would make the assessment process more effective, because even the existence of an explicit obligation did not ensure it.

izdienas pensiju likums) Official Gazette No. 7 July 2006; Law on Pensions for Artists of State and Municipal Orchestras, Choirs, Concert Organisations, Theatres, and Circuses (*Valsts un pašvaldību profesionālo orķestru, koru, koncertorganizāciju, teātru un cirka mākslinieku izdienas pensiju likums*), Official Gazette No. 106, 7 July 2004.

²² Although this kind of pension is fully paid from the state budget, it still complies with all three criteria established by the CJEU in *Niemi* (Case C-351/00 *Pirkko Niemi* [2002] ECR I-07007) thus falling within the scope of Article 157 TFEU.

²³ *Fizisko personu – saimnieciskās darbības veicēju – diskriminācijas aizlieguma likums*, Official Gazette No. 199, 19 December 2012.

²⁴ *Patērētāju tiesību aizsardzības likums*, Official Gazette No. 104/105, 1 April 1999.

²⁵ *Apdrošināšanas sabiedrību un to uzraudzības likums*, Official Gazette No. 188/189, 30 June 1998, respective amendments in Official Gazette No. 35, 4 March 2009.

²⁶ The Parliament's Procedure Order (*Saeimas kārtības rullis*), Official Gazette No. 96, 18 August 1994; Dupate, K., *The Quality of Implementation of the EU Non-Discrimination and Gender Equality Law in Latvia*, University of Latvia, International Scientific Conference *The Quality of Legal Acts and its Importance in Contemporary Legal Space*, 2012, pp.174-189.

²⁷ The Instruction of the Cabinet of Ministers No. 19 'The procedure on the initial assessment of legislative proposals' (*Tiesību akta projekta sākotnējās ietekmes izvērtēšanas kārtība*), Official Gazette No. 205, 30 December 2009, respective amendments Official Gazette No. 91, 14 May 2013.

²⁸ Telephone interview with the head of Department of Development of State Administration of the State Chancellery on 31 August 2015.

3. Implementation of central concepts

3.1 Sex/gender/transgender

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

No.

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

No. There is no relevant case law of national courts in this regard. However, the Ministry of Welfare which is in charge of implementation of EU gender equality law has always stressed that the substance of non-discrimination grounds is subject to interpretation by the national courts in accordance with the binding international agreements including case law of the international courts, like the CJEU and the ECtHR.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. The prohibition of direct discrimination and the definition is provided by the following articles of law:

- Article 29(5) of the Labour Law (applicable by reference to the specific public service laws);
- Article 3¹(6) of the Law on the Protection of Consumer Rights (applicable by reference to the Education Law);
- Article 2¹(4) of the Unemployed and Job-seekers Support Law;
- Article 2¹(2) of the Law on Social Security (definition is provided by Article 2¹(3));
- Article 4(2) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.

A situation constitutes direct discrimination if in a comparable situation an attitude towards a person in connection with the sex (also race or ethnic origin, disability, religion or belief, sexual orientation) of a person is, was or may be less favourable than towards another person.

The only field, which is not explicitly covered by explicit definitions of direct discrimination is insurance. Article 9 of the Insurance and Reinsurance Law only prohibits the setting of different premiums and benefits according to the sex of an individual or on the basis of pregnancy and maternity (lasting for one year after giving birth or for the entire breastfeeding period) without an explicit definition of direct discrimination or a reference to the other laws stipulating the definitions of types of discrimination.

The definition complies with the EU definition. The words 'may be less favourable' allows the use of a hypothetical comparator. The only problematic norm is Article 2¹(6) of the Law on Social Security.

This stipulates:

'Differential treatment (excluding harassment) associated with any of the circumstances specified in Paragraph one of this Article shall only be acceptable in such cases if such treatment is objectively justified with a legal purpose, for the achievement of which the selected means are commensurate.'

In a formal interpretation, this provision indicates that direct discrimination might be justified, which is contrary to the requirements of EU law.

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

Yes:

- Article 29(5) of the Labour Law (applicable by reference to the specific public service laws);
- Article 2¹(7) of the Unemployed and Job-seekers Support Law;
- Article 4(5) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity;
- Article 3¹(9) of the Law on the Protection of Consumer Rights (applicable by reference to the Education Law);
- Article 5¹ of the Law on Insurance Companies and their Supervision.

The Law on Social Security does not explicitly stipulate the prohibition of discrimination on the grounds of pregnancy, but the series of special norms on access to and the calculation of statutory social insurance benefits try to accommodate all forms of leave – maternity, paternity and parental leave – and the related disadvantages.

Latvian law provides slightly different definitions on the concept of pregnancy and maternity discrimination.

Article 29(5) of the Labour Law prohibits discrimination by reason of pregnancy or the use of the right to maternity or paternity leave. Special articles further specify that the maternity protection period lasts for one year after childbirth or for the entire breastfeeding period or during the breastfeeding period until the child reaches the age of 2 (for example, employment in overtime work with written consent only).

Article 2¹(7) of the Unemployed and Job-seekers Support Law, Article 4(5) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity, Article 3¹(9) of the Law on the Protection of Consumer Rights and Article 5¹ of the Law on Insurance Companies and their Supervision stipulate that discrimination occurs where the ground for less favourable treatment is pregnancy or maternity where maternity protection lasts for one year after childbirth or for the entire breastfeeding period.

It follows that under the Labour Law pregnancy and maternity protection is extended to fathers making use of paternity leave and the maternity protection period is very long, i.e. considerably exceeding the time of pregnancy and maternity leave (a total of 18 weeks).

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

Some decisions of the national courts demonstrate that the courts still do not see illegal actions taken by employers against pregnant workers or workers during the maternity period as a breach of the principle of discrimination but rather as a breach of the particular legal norms of the Labour Law. For example, they consider allowing dismissal of a pregnant worker only on the few strictly defined grounds, like performance of work under the influence of alcohol. Such an approach frequently restricts the victims' right to

special remedies – such as the reversed burden of proof and the right to claim compensation for moral damage.²⁹

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes:

- Article 29(6) of the Labour Law (applicable by reference to the specific public service laws);
- Article 3¹(9) of the Law on the Protection of Consumer Rights (applicable by reference to the Education Law);
- Article 2¹(4) of the Unemployed and Job-seekers Support Law;
- Article 4(2) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity;
- Article 2¹(2) of the Law on Social Security (definition is provided by Article 2¹(4)).

Indirect discrimination occurs where an apparently neutral condition, criterion or practice creates or might create unfavourable consequences for persons of one sex, except where such condition, criterion or practice is objectively substantiated by a legitimate aim and proportionate means are used for its attainment.

The definition complies with the EU definition. The Latvian definition even omits the phrase 'compared with persons of the other sex'.

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.

There are decisions dealing with indirect discrimination only implicitly. For example, the court in a case on the less favourable conditions regarding the calculation of the dismissal allowance, due to childcare leave, 'omitted' the argument of indirect discrimination on the grounds of sex (because female workers make predominant use of childcare leave), instead it simply decided this situation as unjust and illegal by reference to the CJEU case law on Directive 2003/88/EC and the CJEU decision in *Seymour-Smith*.³⁰

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

There is no relevant case law.

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

There are still only few cases brought before national courts on indirect discrimination, which indicates that the knowledge on this concept is insufficient.

²⁹ For example, the decision of the Senate of the Supreme Court of 8 December 2010 in case No. SKC-1336/2010, not published.

³⁰ Decision of the Supreme Court (15 December 2010) in case No. SKC-694/2010, available in Latvian on <http://www.at.gov.lv/files/uploads/files/archive/departments1/2010/694-10.pdf>, accessed 12 June 2017. The CJEU decision in case No. C-167/97 *Regina v. Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez*, ECR 1998 Page I-05199.

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. There has never been any debate on it, neither in executive power institutions nor in legislative institutions.

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

No.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

No. Latvian law neither allows nor provides for any kind of positive action.³¹ There is only one particular positive action measure (norm) stipulated by Latvian law (see the answer to the following question).

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

There is one 'soft quota' provision requiring to aim for gender balance when electing judges for self-governing bodies of the Supreme Court.³² Ironically, such provision was inserted to favour male judges, because since the re-establishment of the Supreme Court after Soviet occupation there has always been more female than male judges.³³

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

No. And there are no debates, policy measures or proposals pending. Latvia is among the countries of the EU with the highest representation of women in company boards (second after Finland).³⁴ Consequently, politicians believe that there are no problems with gender equality in that regard. However, that is not true. The author of this report explains the comparably high representation of women in company boards by the fact that they on average have a higher level of education and they are used to working more than men. This comes from the times of Soviet occupation when women had a double burden – obligation to work full-time paid work and deal with all family care obligations.

³¹ The author leaves undiscussed any provisions of secondary national law in the field of vocational training for unemployed persons, allowing them to participate in special training programmes for special groups (e.g. parents after long childcare leave, disabled persons) organised by the State Employment Agency and funded by the European Social Fund, because they have an *ad hoc* nature.

³² The Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993, respective amendments Official Gazette No. 160, 7 October 2005.

³³ The composition of the Supreme Court on January 2015: 27 females and 16 males, available on <http://at.gov.lv/iv/par-augstako-tiesu/tiesnesi/>, accessed 1 September 2015.

³⁴ European Commission (2012), Women in economic decision-making in the EU: Progress report, available at http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf, accessed on 13 June 2017.

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

No.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes:

- Article 29(4) of the Labour Law (the definitions of types of discrimination provided therein are applicable by reference to the specific public service laws) (the definition is provided by Article 29(7));
- Article 2¹(5) of the Unemployed and Job-seekers Support Law (the definition is provided by Article 2¹(6));
- Article 3¹(7) of the Law on the Protection of Consumer Rights (the definitions of types of discrimination provided therein are applicable by reference to the Education Law) (the definition is provided by Article 3¹(8));
- Article 2¹(2) of the Law on Social Security (definition is provided by Article 2¹(5));
- Article 4(3) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity (the definition is provided by Article 4(4)).

Article 29(7) of the Labour Law provides:

‘Harassment of a person within the meaning of this Law is the subjection of a person to such actions which are unwanted from the point of view of this person, which are associated with his or her belonging to a specific gender, including actions of a sexual nature if the purpose or result of such actions is the violation of the person’s dignity and the creation of an intimidating, hostile, humiliating, degrading or offensive environment.’

Article 2¹(6) of the Unemployed and Job-seekers Support Law, Article 3¹(8) of the Law on the Protection of Consumer Rights (applicable by reference to the Education Law) and Article 4(4) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity state:

‘Harassment is the subjection of a person due to their sex, race or ethnic origin to a conduct which is unwanted in the opinion of this person (including a conduct of a sexual nature), with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.’

Article 2¹(5) of the Law on Social Security states:

‘Harassment of a person within the meaning of this Law is the exposure of a person to such undesirable actions from the point of view of such person, that are associated with any of the circumstances specified in Paragraph one of this Section, if the aim of such an action or the result is a violation of the person’s dignity and the creation of an intimidating, hostile, derogatory, degrading or violating environment.’

The definition of harassment complies with the definition provided by EU law. In addition it explicitly states that the unwanted conduct should be ‘unwanted in the opinion of the person harassed’, which leaves an open question if ‘unwanted conduct’ under the EU

definition should be understood as socially unacceptable conduct in general (non-compliant with norms of social behaviour in society in general) or it refers to the perception of each particular individual, which might differ considerably.

3.6.2 Does the definition of harassment cover a broader scope than employment in your country? If so, please specify the scope.

Harassment is also prohibited with regard to access to and the supply of goods and services as required by Directive 2004/113/EC.³⁵

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes, however implicitly, as a type of harassment:

- Article 29(7) of the Labour Law (the definitions of types of discrimination provided therein are applicable by reference to the specific public service laws);
- Article 2¹(6) of the Unemployed and Job-seekers Support Law;
- Article 4(4) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity;
- Article 3¹(8) of the Law on the Protection of Consumer Rights (the definitions of types of discrimination provided therein are applicable by reference to the Education Law).

The legislator decided to 'merge' the definition of harassment and sexual harassment (see the definitions provided above, in 6.3.1.).

The result of the merger of the definitions of harassment and sexual harassment is that sexual harassment is defined as 'unwanted conduct of a sexual nature' and it is unclear if indicators like 'verbal, non-verbal and physical conduct' are meant to be applicable. This leads to the conclusion that the definition of sexual harassment might have been implemented incompletely.

However, the application of the concept of sexual harassment by the national court complies with the EU definition and goes even further. This is illustrated by the decision of the Senate of the Supreme Court in case No. SKC-2504/2013.³⁶ The claimant was recruited by the respondent (an undertaking) on 28 August 2012 with a probation period until 27 November 2012. On 22 September 2012 the respondent organised sports games in a guest house in the country side for all employees. All employees received an invitation to the games by e-mail. As stated by the claimant the event started with the game 'who gets drunk first' and was followed by collective use of the sauna and swimming pool. At the sauna, the director of the undertaking told the claimant that the sauna may be attended without any clothes (naked). The claimant refused to do that. On 24 September 2012, the first working day after the weekend, the director refused to speak with the claimant and on 27 September 2012 the claimant was given notice of dismissal stating that the employment relationship was to be terminated as from 2 October 2012. The claimant submitted a claim on unlawful dismissal on the ground of discrimination (harassment on the basis of sex/sexual harassment). The Senate held that in case of harassment the main indicator is how the situation is perceived by a person – the addressee of the harassing actions/treatment. The latter finding by the Senate is very important in harassment cases, otherwise in such cases a claimant would have to prove that actions are not acceptable to society in general to enforce his/her rights, which might be difficult taking into account the strong patriarchal stereotypes and sexist culture governing Latvian society.

³⁵ Article 3¹(8) of the Law on the Protection of Consumer Rights.

³⁶ Decision (6 December 2013) of Civil Cases Department of the Senate of the Supreme Court in case SKC-2504/2013, not published.

3.6.4 Does the definition of sexual harassment cover a broader scope than employment in your country? If so, please specify the scope.

Sexual harassment is also prohibited with regard to access to and the supply of goods and services as required by Directive 2004/113/EC.³⁷

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)?

Latvian law provides protection against victimisation in case of discrimination or in general (in case of a breach of the provisions of the Labour Law).³⁸ There is no provision explicitly stipulating that harassment, sexual harassment and victimisation amount to discrimination; however, it follows from the general structure of the provisions, i.e., the prohibition of harassment, sexual harassment and in some laws – that victimisation is placed among and below general norms stipulating what discrimination amounts to.

3.7 Instruction to discriminate

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

Yes:

- Article 29(4) of the Labour Law (the definitions of types of discrimination provided therein are applicable by reference to the specific public service laws);
- Article 2¹(5) of the Unemployed and Job-seekers Support Law;
- Article 3¹(7) of the Law on the Protection of Consumer Rights (the definitions of types of discrimination provided therein are applicable by reference to the Education Law);
- Article 2¹(2) of the Law on Social Security;
- Article 4(3) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.

All relevant norms state that any instruction to discriminate against a person shall also be deemed to be discrimination.

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.

To the knowledge of the author of this report there is no case law on instruction to discriminate. This may be explained by the fact that it is difficult to prove such situation since instructions are usually given in the absence of the victim.

3.7.3 Is incitement to discrimination explicitly prohibited in your country?

No, incitement to discriminate is not explicitly prohibited.

³⁷ Article 3¹(8) of the Law on the Protection of Consumer Rights.

³⁸ Article 9) of the Labour Law; Article 6 of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity; Article 2¹(8) of Unemployed and Job-seekers Support Law; Article 3¹(10) of the Law on the Protection of Consumer Rights.

3.8 Other forms of discrimination

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

No.

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, by Article 60 of the Labour Law. Article 60(1) lays down the general obligation of an employer 'to define equal pay for men and women for the same work or work of equal value'. This is the only legal norm stating the equal pay obligation.

4.1.2 Is the concept of pay defined in national legislation?

No. There is no explicit notion of 'equal pay' provided by law. However, Article 59 of the Labour Law does define the notion of 'pay' in its general meaning, not in the meaning of equal pay. It states that pay is regularly paid remuneration for work, which also includes bonuses and other kinds of remuneration in connection with employment as provided by normative acts, collective agreements or employment agreements. A decision adopted by the Supreme Court in 2010 demonstrates awareness of a distinction between the concept of 'pay' under EU and national law.³⁹ In particular, the Supreme Court recognised that compensation for unfair dismissal is to be considered as a component of 'pay' in the meaning of equal pay on the basis of the decision of the CJEU in *Seymour-Smith*.⁴⁰ In addition, in 2014 the Senate adopted a decision on the interpretation of the concept of pay under Article 59, in a case that was not connected with discrimination.⁴¹ The Senate extended the concept of pay defined by Article 59 by referring to the CJEU decision in *Barber*.⁴² Recently the Senate has again interpreted the concept of pay within the meaning of national law by referring to the Barber judgement.⁴³ It may therefore be concluded that the Senate tends to interpret the concept of pay under national law similarly as the CJEU does under EU law.

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.

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

No, not explicitly.

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

No.

³⁹ Decision of the Supreme Court (15 December 2010) in Case No. SKC-694/2010, available in Latvian on <http://www.at.gov.lv/files/uploads/files/archive/departments1/2010/694-10.pdf>, accessed 13 June 2017.

⁴⁰ Case C-167/97 *Regina v. Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez* [1999] ECR I-00623.

⁴¹ Decision of the Senate of the Supreme Court in case No. SKC-1683/2014, not published.

⁴² Case C-262/88, *Douglas Harvey Barber v. Guardian Royal Exchange Assurance Group*, European Court reports 1990 Page I-018899.

⁴³ Decision of the Senate of the Supreme Court in case No. SKC-2274/2016, available in Latvian on the database <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi>

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?

No.

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

There are no justifications provided by legal norms. However, a justification is allowed if the case concerns indirect pay discrimination, since the equal pay provision (Article 60) must be read in conjunction with other non-discrimination provisions, in particular Article 29 of the Labour Law which provides definitions of the types of discrimination. There have been only a few cases and there, national courts were more concerned with the establishment of the similarity of the situations than with the justification of the difference.

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

There have been no landmark cases on this topic. There have been no cases regarding work of equal value, only regarding pay for the same work. The court in the related case was preoccupied with the comparison of the tasks performed and the different periods of time when such tasks were performed. The case was about a female worker and the higher pay of a male predecessor. Finally, the Supreme Court ruled on the basis of the CJEU's decision in *Macarthys*⁴⁴ that the claimant's pay must be compared to the predecessor's pay.⁴⁵

In the view of the author the problem of effective implementation of the equal pay principle in Latvia is, first, a lack of definition of the equal pay for equal value and criteria for assessing if work is of equal value, and second, that the legislator itself fails to take into account not only secondary but also primary EU gender equality law (like Articles 8 and 10 of the TFEU). In particular, in 2009 Parliament adopted the Law on Remuneration of State Officials and Employees of the State and Municipal Institutions⁴⁶ with a view to establish a uniform remuneration system in the public sector. The law not only provides a system on the definition of pay according to objective criteria but also provides for various social benefits. At the same time the law in substance excludes from such favourable system all school teachers.⁴⁷ Since the absolute majority of school teachers are female this leads to indirect discrimination on the grounds of sex with regard to equal pay. According to unofficial information the reason of this exclusion was a lack of budget resources for the provision of the equally favourable remuneration system and social guarantees, because there is a considerable number of school teachers in Latvia. Although indirect discrimination under EU law may be justified if there is a legitimate aim and the means are proportionate, according to the CJEU this particular legitimate aim - budgetary considerations - is not acceptable in cases of gender discrimination.⁴⁸

⁴⁴ Case 129/79, *Macarthys Ltd v. Wendy Smith*, European Court Reports 1980 Page 01275.

⁴⁵ The decision of 14 February 2007 of the Senate of the Supreme Court in case No. SKC-67.

⁴⁶ *Valsts un pašvaldību institūciju amatpersonu un darbinieku atlīdzības likums*, Official Gazette No. 199, 18 December 2009.

⁴⁷ Article 2(3).

⁴⁸ Joined cases C-4/02 and C-5/02 *Hilde Schönheit v. Stadt Frankfurt am Main* (C-4/02) and *Silvia Becker v. Land Hessen* (C-5/02), ECR 2003 Page 00000.

In addition, Latvian law does not explicitly require the establishment of any pay system in an undertaking. Since there are many very small companies in Latvia, many of them do not have a pay system as such. In the situation where the salaries are defined without any system of objective criteria being in place there is higher risk of unequal pay and in such a case it is much more difficult to identify pay 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)?

Not explicitly, because there is no single gender equality or non-discrimination law, which means that the personal scope depends on the personal scope of the particular law which stipulates the right to access to employment, vocational training and working conditions without discrimination.

However, the national laws stipulating the prohibition of discrimination in employment in general cover almost all persons falling within the scope of EU gender equality law.

In particular, the Labour Law is applicable to all employees employed in the private and the public sector. There are special laws regulating the public service. All such laws, except with regard to judges⁴⁹ and public prosecutors,⁵⁰ refer to the non-discrimination norms provided by the Labour Law. The judges⁵¹ and prosecutors⁵² are protected against discrimination only with regard to access to their post. This means that almost all persons in the public service are covered.⁵³ There is no reasonable explanation for the different approach to judges and prosecutors other than that it is a mistake of the Ministry of Welfare which is in charge of the implementation of the EU gender equality acquis and the elaboration of the respective amendments to the national laws.

In addition, the prohibition of discrimination with regard to the access to employment is stipulated by the Unemployed and Job-seekers Support Law covering all job-seekers and unemployed persons officially registered at the State Employment Agency. Discriminatory recruitment is prohibited by the Cabinet of Ministers Regulation laying down the procedure for the licensing of private employment recruitment service providers.⁵⁴ Finally, the prohibition of discrimination with regard to the access to education and provision of educational services is stipulated by the Education Law.⁵⁵

Further, Article 1 of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity covers all natural persons who perform commercial activities individually irrespective of the form of the entrepreneurship under commercial law.

With regard to the concept of ‘worker’, there only is a definition for the purposes of national law.

Article 3 of the Labour Law provides:

⁴⁹ The Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993.

⁵⁰ The Prosecutors' Office Law (*Prokuratūras likums*), Official Gazette No. 65, 2 June 1994.

⁵¹ Article 51(2) of the Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993.

⁵² Article 33¹(1) of the Prosecutors' Office Law (*Prokuratūras likums*), Official Gazette No. 65, 2 June 1994.

⁵³ The Law on the State Civil Service, the Law on Service in the System of the Interior and Imprisonment System, the Military Service Law, the Home Guards of the Republic of Latvia Law, The Law on Orphan's Courts.

⁵⁴ The Cabinet of Ministers Regulation No. 458 'Procedure on licensing and supervision of the merchants – recruitment service providers' (*Komersantu - darbiekārtošanas pakalpojumu sniedzēju - licencēšanas un uzraudzības kārtība*), OG No. 108, 6 July 2007, Point 24.2.

⁵⁵ *Izglītības likums*, Official Gazette No. 343/344, 17 November 1998.

'An employee is a natural person who, on the basis of an employment contract for an agreed work remuneration, performs specific work under the guidance of an employer.'

In general, the national definition of a worker coincides with the definition provided by the CJEU. However there is one group of workers which is not properly protected. Those are the members of the boards of directors of capital companies. This problem is well-known, since the CJEU ruling in *Danosa* originated from Latvia.⁵⁶ Despite this ruling, the problem remains unresolved and there is no national law provision explicitly protecting board members of capital companies from discrimination.

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)?

Partially, first, because the material scope is defined only by the Labour Law, which is limited with regard to the personal application, and second because Article 14(1)(d) of Directive 2006/54 has been implemented partially. There is no complete protection against discrimination with regard to the access to membership to workers, employers or professional organisation. The foundation and functioning of associations (non-governmental organisations) and foundations is regulated by the Association and Foundation Law.⁵⁷ This law is silent with regard to the non-discriminatory selection of founders, members or executives. At the same time, if membership is a precondition for the access to self-employment, the non-discrimination obligation deriving from the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity is applicable. However, employees are not protected. Articles 10 and 11 of the Labour Law implementing Directive 2002/14⁵⁸ also do not explicitly provide the right to equal access or treatment with regard to right to workers' representation (as an employee represented or an employee representing others). Although it may be claimed that the respective provisions must be interpreted in conjunction with other norms of the Labour Law, in particular Article 29, it may well fail to work, because the obligations of Article 29 are directed at the employer while workers' representation is carried out via self-organisation of the employees themselves. However, Article 4(1) of the new Trade Unions' Law⁵⁹ explicitly provides that the right to have access to or to participate in an existing trade union or to establish a trade union should be provided without any kind of discrimination (without listing any particular non-discrimination grounds).

Article 29(1) of the Labour Law tries to define the material scope.

Article 29(1) of the Labour Law stipulates:

'Differential treatment based on the gender of an employee is prohibited when establishing employment legal relationships, as well as during the period of existence of employment legal relationships, in particular when promoting an employee, determining working conditions, work remuneration or occupational training or raising of qualifications, as well as when giving notice of termination of an employment contract.'

Apart from the limitations to the material scope under Latvian law described above, there is one more aspect of non-compliance, relating to judges, since they are not covered by the non-discrimination provisions of the Labour Law. Article 60 of the Law on Judicial Power stipulates that a judge of the first instance court for the first time may be elected

⁵⁶ The decision of the CJEU in case C-232/09 *Dita Danosa v. LKB Līzings SIA*.

⁵⁷ *Biedrību un nodibinājumu likums*, Official Gazette No. 161, 14 November 2003.

⁵⁸ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation, *Official Journal L 080, 23/03/2002 P. 0029 – 0034*.

⁵⁹ *Arodbiedrību likums*, Official Gazette No.60, 25 March 2014.

for 3 years. After this term, he/she may be re-elected for an indefinite term on the condition that during the previous 3 years of office he/she has not been absent for more than six continuous months. This provision may lead to indirect discrimination against women, since they still predominantly make use of parental leave, which may last longer – until the child reaching the age of 18 months.⁶⁰

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

Yes, in Article 29(2) of the Labour Law

Article 29(2) of the Labour Law also stipulates:

‘Differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition, which is adequate for the legal purpose reached as a result, for the performance of the relevant work or for the relevant employment.’

The provisions referred to in Article 14(2) (see Article 31(3) of Recast Directive 2006/54) are not relevant to Latvia, since no legal act provides any particular restriction to the post or occupation on account of sex.

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)?

No such provision has been implemented explicitly. In this regard there still is confusion regarding the link of non-discrimination provisions with special protection measures under Directive 92/85/EC, i.e. it is not clearly stated in Latvian law that non-compliance with special protection measures results in discrimination based on sex.

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

There is one major problem which relates to the definition and understanding of the concept of non-discrimination. The principle of non-discrimination in the majority of Latvian normative acts is formulated as ‘prohibition of differential treatment’ instead of ‘prohibition of discrimination’. This may result in inadequate application of EU law, for example by excluding discrimination which arises due to the equal treatment of persons in different situations, by excluding exceptions provided in the framework of the principle of non-discrimination or in the form of formally incorrect findings by national courts such as finding that discrimination is justified because the relevant persons were not in similar situations.⁶¹

⁶⁰ The Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), OG No. 182, 23 November 1995.

⁶¹ Decision of Riga City Vidzemes District Court of 17 July 2006 in Case No. C 30-1667/9-2006.g. (not published).

5. Pregnancy and maternity protection; maternity, paternity, parental leave and adoption leave (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes, in Article 37(7) of the Labour Law. For the purposes of Directive 92/85, Article 37(7) of the Labour Law defines what a pregnant worker has to do in order to obtain protection under the Directive, and what period shall be considered as the maternity protection:

'An employer, after receipt of a doctor's opinion, is prohibited from employing pregnant women and women for a period following childbirth not exceeding one year, but if the woman is breastfeeding during the whole period of breastfeeding if it is considered that performance of the relevant work poses a threat to the safety and health of the woman or her child.'

In principle the Latvian definition complies with the definition provided by Directive 92/85/EEC. However, the problem may 'cause' a structural lack of clarity, i.e. the definition provided by Article 37(7) does not demonstrate an explicit link with other provisions of the Labour Law stipulating other obligations with regard to protection of workers during pregnancy and maternity.

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

Yes:

- Article 4 of Directive 92/85/EEC in the Labour Protection Law, which is an umbrella law for all health and safety measures implementing Directive 89/391/EEC;
- Article 5 of Directive 92/85/EEC in Article 99 of the Labour Law;
- Article 6 of Directive 92/85/EEC in the Labour Protection Law, which is an umbrella law for all health and safety measures implementing Directive 89/391/EEC;
- Article 7 of Directive 92/85/EEC in Article 138(7) and Article 99 of the Labour Law.

Article 22 of the Labour Protection Law provides:

'Those employees for whom in accordance with regulatory enactments special protection has been determined (persons up to 18 years of age, pregnant women, women in the post-natal period, disabled persons, and employees included in the lists referred to in Section 7, Paragraph two of this Law), in compliance with the evaluation of the working environment risks, as well as a physician's opinion, have the right to supplementary reliefs determined by an employer.'

Article 99 of the Labour Law provides:

'(1) In order to prevent any risk, which may negatively affect the safety and health of a pregnant woman, an employer, after receipt of a doctor's opinion, has a duty to ensure such working conditions and working time for the pregnant woman as would prevent her exposure to the risk referred to. If it is not possible to ensure such working conditions or working time for a pregnant woman, the employer has a duty to temporarily transfer the pregnant woman to a different, more appropriate job. The amount of work remuneration after making amendments to the employment contract may not be less than the previous average earnings of the woman.'

(2) If such transfer to another job is not possible, the employer has a duty to grant the pregnant woman leave. During the period of such granted leave the previous average earnings of the pregnant woman shall be maintained.

(3) The provisions of this Section shall also apply to a woman in the period after birth up to one year, but if a woman is breastfeeding, during the whole period of breastfeeding.'

Article 138(7) of the Labour Law provides:

'It is prohibited to employ at night persons who are under 18 years of age, pregnant women and women for a period of up to one year following childbirth, but if a woman is breastfeeding then during the whole period of breastfeeding if there is a doctor's opinion that the performance of the relevant work causes a threat to the safety and health of the woman or her child.'

It is complicated to draw conclusions on the correctness of the implementation measures regarding particular health and safety risks provided by Articles 4 and 6 and specified in Annexes I and II of Directive 92/85/EEC, because this would need special knowledge which the author does not possess.

Article 5 and Article 7(2) of Directive 92/85/EEC have been implemented correctly – word by word – by Article 99 of the Labour Law.

Article 7(1) of Directive 92/85/EEC has also formally been implemented correctly, although it may be argued that the choice to work or not to work during the night must be the free choice of a woman. However, on the other hand it is up to a woman to submit a doctor's opinion in order to be or not be employed during night work.

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

Yes, in Article 109(1) of the Labour Law.

Article 109(1) of the Labour Law provides:

'An employer is prohibited from giving notice of termination of an employment contract to a pregnant woman, as well as to a woman following the period after birth up to one year but, if a woman is breastfeeding, during the whole period of breastfeeding except in cases set out in Article 101, Paragraph one, Clauses 1, 2, 3, 4, 5 and 10 of this Law.'

Article 109(1) of the Labour Law allows dismissal only in exceptional cases (Article 101, Paragraph One, Clauses 1, 2, 3, 4, 5 and 10; 1 - the employee without justified cause has significantly violated the employment contract or the specified working procedures; 2 - the employee, when performing work, has acted illegally and therefore has lost the trust of the employer; 3 - the employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of employment legal relationships; 4 - the employee, when performing work, is under the influence of alcohol, narcotic or toxic substances; 5 - the employee has grossly violated labour protection regulations and has jeopardised the safety and health of other persons; 10 - the employer – legal person or partnership – is being liquidated.

However, Article 101, Paragraph 1, Clause 11 might be problematic, regulating the right to dismiss a worker on account of absence due to incapacity for work. It stipulates that an employer has the right to give a written notice of dismissal if:

'the employee does not perform work due to temporary incapacity for more than six months, if the incapacity is uninterrupted, or for one year within three years, if the

incapacity repeats with interruptions, excluding a prenatal and maternity leave in such period, as well as a period of incapacity, if the reason of incapacity is an accident at work or occupational disease.'

Such provision does not specify that it is also not applicable in case of the absence on the grounds of pregnancy-related incapacity for work according to the CJEU decision in case *Brown*.⁶²

In addition, Article 46 of the Labour Law allows a probation period of up to 3 months. In case of notice of dismissal during the probation period an employer is not under the obligation to state the grounds of dismissal, however, as stated by the Senate of the Supreme Court.⁶³ Article 109(1) is a special norm in relation to Article 46. Therefore even during the probation period, if a worker is pregnant or on maternity leave, dismissal is possible only under generally applicable terms of dismissal of a pregnant worker or a worker during maternity protection period, i.e. according to Article 109(1) of the Labour Law.

When an employee is made redundant during her maternity leave the following applies:

First, according to Article 109(3) an employer is precluded from issuing a notice of dismissal while a worker is on sick leave (during maternity a worker under the law is considered as incapacitated for work on the basis of the same documents issued by a medical doctor as in case of illness), except in the case of the liquidation of an employer (legal person).

Second, maternity allowance is not provided by the employer, but under the statutory social insurance scheme. The Law on Maternity and Sickness Insurance guarantees that if a woman on maternity leave is made redundant on account of the liquidation of the employer, she remains entitled to maternity leave allowance.

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

Yes. First, under Latvian law (Articles 100-102 of the Labour Law) dismissal without written notice is not possible in general. Second, according to Article 102 of the Labour Law in all cases of dismissal an employer must indicate in a written notice of dismissal the grounds for dismissal.

According to the decision of the Senate of the Supreme Court in case No. SKC-1170/2010, dismissal of a worker during pregnancy and maternity is prohibited without explicitly stated grounds, since even in the probation period a special norm – Article 109(1) – is applicable.

The only problem which still remains is the proper protection of the members of the board of directors of capital companies. This problem is well-known since the CJEU ruling in *Danosa* originated from Latvia.⁶⁴ Despite this ruling the problem remains unresolved and there is no national law provision explicitly protecting board members of capital companies from discrimination, including all protection measures related to pregnancy and maternity.

In *Danosa* the Latvian legal regulation was contested with respect to the status of a member of a board of directors of capital companies and their right to enjoy protection

⁶² Case C-394/96, *Mary Brown and Rentokil Limited*, European Court reports 1998 Page I-04185

⁶³ The decision in case No. SKC – 1170/2010, available in Latvian http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/hronologiska-seciba_1/2010/ accessed 13 June 2017.

⁶⁴ The decision of the CJEU in case C-232/09 *Dita Danosa v. LKB Līzings SIA*.

under EU law. The problem lies in the fact that Latvian law does not explicitly require the conclusion of an employment contract with members of the board of directors of capital companies. This means that they could be contracted on the basis of any type of civil-law contract. In addition, even if a board member was contracted as an employee according to the Commercial Law the members of boards of directors may be dismissed from their post without providing the reason and without giving notice.⁶⁵ The claimant in *Danosa* was a member of a board of directors whose factual relationship corresponded to an employment relationship in all its characteristics. However, she did not have a written employment contract. She was dismissed while pregnant without application of any special measures under the Labour Law aimed at protection of pregnant workers.

The CJEU in *Danosa* repeated that the autonomous concept of 'employee' as defined by EU law is applicable in all situations covered by relevant EU law. The CJEU recognised that the relationship in *Danosa* corresponded to an employment relationship according to EU law, and consequently she was entitled to the special protection provided by Directives 92/85/EEC and 76/207/EEC.

Until 1 January 2015, Article 44(3) of the Labour Law explicitly allowed the employment of a member of a board of directors of a capital company on the basis of any type of civil-law contract, like a proxy agreement or service agreement, irrespective of whether the factual relationship corresponded to the criteria of an employment relationship. This interpretation was in principle accepted by the Supreme Court, on the condition that in case of a dispute regarding the type of a contract there must be a presumption that an employment contract was concluded.⁶⁶ By amendments to the Labour Law adopted on 24 October 2014⁶⁷ this provision was repealed. The explanatory note of the respective amendments simply states that in the future the relationship between a capital company and the members of a board of directors will be regulated by the Commercial Law only.⁶⁸ However, the Commercial Law⁶⁹ still does not regulate anything with regard to the status and type of such relationships. As described above (Section 2.3) such a situation regarding certain employment aspects may lead to a breach of EU law. Consequently the findings of the CJEU in *Danosa* are not reflected in Latvian law, rather the opposite: the connection between the Labour Law and the Commercial Law is repealed completely by the recent amendments.

5.2 Maternity leave

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

Under Article 154 of the Labour Law, pregnancy/maternity leave may commence from 56 days before and last until 56 days after the expected date of confinement. In addition, if a woman has visited a doctor and has registered as a person under medical supervision due to pregnancy by the 12th week of pregnancy she is entitled to an extra leave period of 14 days. It follows that normally a woman has the right to 126 days or 18 weeks of pregnancy/maternity leave. Even if a woman gives birth before the expected date (sooner than on the 56th day, i.e. during pregnancy leave) she still remains entitled to all 126 days of pregnancy/maternity leave in total.

⁶⁵ *Komerclikums*, Official Gazette No. 158/160, 4 May 2000.

⁶⁶ *Tiesu prakse lietās par individuālajiem darba strīdiem* (The court practice in cases on individual employment disputes), the Supreme Court of Latvia, 2010/2011, available in Latvian at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/civiltiesibas/>, accessed 13 June 2017.

⁶⁷ Amendments to the Labour Law (*Grozījumi Darba likumā*), Official Gazette No. 225, 12 November 2014.

⁶⁸ The explanatory note to legislative proposal No. 756/Lp.11, available in Latvian at <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/1016FA82F40AC4EFC2257BC50037F713?OpenDocument#b>, accessed on 13 June 2017.

⁶⁹ *Komerclikums*, Official Gazette No. 158/160, 4 May 2000.

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

Yes, in Article 37(7) of the Labour Law

Article 37(7) of the Labour Law provides that the employer must not employ a pregnant worker two weeks before and after giving birth.⁷⁰ Such provision in practice however is formal with regard to the prohibition of employment for two weeks before the expected birth, since on account of the right of a pregnant person not to disclose the relevant information an employer may not be aware of the pregnancy. At the same time the author of this report is not aware of situations where the woman would not use the rights to pregnancy leave.

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

Yes, Article 99 of the Labour Law.

Article 99 of the Labour Law provides:

'(1) In order to prevent any risk, which may negatively affect the safety and health of a pregnant woman, an employer, after receipt of a doctor's opinion, has a duty to ensure such working conditions and working time for the pregnant woman as would prevent her exposure to the risk referred to. If it is not possible to ensure such working conditions or working time for a pregnant woman, the employer has a duty to temporarily transfer the pregnant woman to a different, more appropriate job. The amount of work remuneration after making amendments to the employment contract may not be less than the previous average earnings of the woman.

(2) If such transfer to another job is not possible, the employer has a duty to grant the pregnant woman leave. During the period of such granted leave the previous average earnings of the pregnant woman shall be maintained.

(3) The provisions of this Section shall also apply to a woman following the period after birth up to one year, but if a woman is breastfeeding, during the whole period of breastfeeding.'

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

Yes - with regard to rights. No - with regard to pay, because it is covered by the statutory social insurance system; see Article 149(6) of the Labour Law.

Article 149(6) of the Labour Law stipulates that a worker after pregnancy and maternity leave has the right to such improvements to working conditions and employment provisions to which he or she would have been entitled if he or she had not be on leave.

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

⁷⁰ This provision is in contrast with Article 8 of Directive 92/85/EC and the CJEU ruling in *Boyle*, which provides for a mandatory maternity leave of two weeks in total. Case C-411/96 *Margaret Boyle and Others v Equal Opportunities Commission* [1998] ECR I-06401, Paragraph 49.

The amount of maternity allowance is equal to the sickness allowance. Both allowances are paid under the statutory social insurance scheme. The amount of maternity and sickness allowances is 80 % of the gross salary.⁷¹

The fact is that in reality maternity allowance exceeds the normal salary, because persons in active employment after deduction of taxes are entitled to approximately 69 % of their gross salary.⁷²

Latvian law has stipulated a ceiling. Due to the economic crisis, the amount of the allowances was restricted for the period from 1 July 2009 until 31 December 2014. Beneficiaries were entitled to a full daily allowance of up to EUR 16.37, but for earnings exceeding such amount only 50 %.⁷³ Since 2013 the minimum full amount has been doubled. Now an individual is entitled to a full daily allowance of up to EUR 32.75.⁷⁴ Consequently those who earn salaries which are above the average may be entitled to a maternity allowance which is lower than their normal salary. On 1 January 2015 all restrictions ceased to exist.⁷⁵ Currently there are no restrictions.

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

No.

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

Yes, in Article 31 of the Law on Maternity and Sickness Insurance.

Article 31 of the Law on Maternity and Sickness Insurance provides that in principle any person who is officially employed is entitled to maternity allowance. Normally, maternity and other allowances are calculated on the basis of average earnings (the amount of statutory social insurance contributions) of a 12-month period which starts 2 months before the social risk (pregnancy/maternity leave) arises. If however, a person was not insured (was on unpaid leave or was not employed and therefore did not pay social security contributions) during the period taken into account for the purposes of the calculation of maternity allowance, such allowance must be calculated on the basis of a presumed income – for the purposes of the maternity and paternity allowance – of 70 % of the national average social insurance contributions. Consequently, even if a person was not employed during the period taken into account for the purposes of the calculation of maternity allowance, he/she nevertheless is entitled to the allowance in the amount which corresponds to the national average salary.

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

⁷¹ The Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995.

⁷² The income tax for employee salaries is 24 % (the Law on Residents' Income Tax; *likums 'Par iedzīvotāju ienākuma nodokli'*, Official Gazette No. 32, 1 June 1993); statutory social security contributions constitute 34.09 %, but employees only have to pay 10.5 % and 23.59 % must be contributed by the employer (the Law on Statutory Social Security; *likums 'Par valsts sociālo apdrošināšanu'*, Official Gazette No. 274/276, 21 October 1997). After taxes and social security contributions, employees are therefore entitled to approximately 69 %.

⁷³ The Law on the Payment of State Allowances for the Period from 2009 until 2012 (*Likums Par valsts pabalstu izmaksu laika periodā no 2009. līdz 2012.gadam*), OG No. 100, 30 June 2009. Initially special measures on account of the economic crisis were taken until 31 December 2012, but on 14 April 2011 Parliament adopted amendments envisaging the extension of this 'crisis period' until 31 December 2014 (OG No. 99, 29 June 2011).

⁷⁴ Amendments to the Law on the Payment of State Allowances for the Period from 2009 until 2014 (*Likums Par valsts pabalstu izmaksu laika periodā no 2009. līdz 2014.gadam*), OG No. 192, 6 December 2012.

⁷⁵ Ibid.

improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

Yes, in Article 149(6) and Article 154(5) of the Labour Law.

Article 149(6) of the Labour Law stipulates that a worker after any kind of leave (including pregnancy and maternity leave) as provided by the Labour Law has the right to such improvements to working conditions and employment provisions to which he or she would have been entitled if he or she had not been on leave.

Article 154(5) of the Labour Law states:

'A woman who makes use of pregnancy or maternity leave shall have ensured her previous work. If this is not possible, the employer shall ensure the woman similar or equivalent work with not less favourable conditions and employment provisions.'

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes, in Article 155(5) and Article 156(1) of the Labour Law.

Article 155(5) of the Labour Law provides for the right to 10 calendar days of adoption leave to one of the adoptive parents for a child under the age of 3.

Article 156(1) of the Labour Law provides for the right to parental leave for adoptive parents on the same conditions as for biological parents.

There is the adoptive leave allowance provided by the statutory social security system which is equal to the paternal allowance. In addition, adoptive parents, future adoptive parents (awaiting the final court decision on adoption) and foster parents have a right to parental allowance on the same conditions as biological parents.⁷⁶ It follows that in principle adoptive parents are given the same rights as biological parents.

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

Yes. See the answers to the questions under 5.3.1. and 5.3.3. In addition, Articles 6¹ and 8¹ of the Statutory Allowance Law apply.⁷⁷

Articles 6¹ and 8¹ of the Statutory Allowance Law provides for the right to remuneration for the care of a child during the adoption procedure and remuneration for the adoption.

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

Yes, in Article 149(6) of the Labour Law.

Article 149(6) of the Labour Law stipulates that a worker after any kind of leave (including adoptive or parental leave) as provided by the Labour Law has the right to such improvements to working conditions and employment provisions to which he or she would have been entitled if he or she had not been on leave. In addition, Article 155(6) of the Labour Law stipulates that a person after adoptive leave must be provided the

⁷⁶ Article 10⁴ of the Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995.

⁷⁷ *Valsts sociālo pabalstu likums*, Official Gazette No. 168, 19 November 2002.

same or equivalent work. According to Article 156(4) the same right applies after parental leave.

5.4 Parental leave

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

No, because the rights under the Directive already existed under national law.

Article 156 of the Labour Law covers the rights ensured in the Directive.

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

Yes. It is the Labour Law which provides the right to parental leave and the respective provisions of the Labour Law are applicable to all persons employed in the public service by the reference provided by special laws on the public service.

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?

National legal regulations (the Labour Law) apply to all categories of employees including those with atypical work contracts.

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.

In both sectors the right to parental leave is 1.5 years until the child reaches the age of 8.

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

The right to parental leave under the Labour Law is an individual right.

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 leave from the perspective of the Labour Law may only be full-time.

Part-time parental leave is not regulated neither by labour law nor by statutory social security law, i.e. part-time leave is not legally possible. At the same time since 1 October 2014, statutory social insurance law provides parental allowance for those parents who remain in employment (in a lesser amount than for those taking full-time leave). There is no requirement that parents using the right to remain in employment and receive parental allowance can only work part-time.

The problem is that such system does not work and is not used in a proper way.

First, taking into account the low salaries in Latvia, the effectiveness of the use of the right to leave is very much dependent on statutory social insurance rights granted during such periods. The problem is that the statutory social security system grants parental

allowance to only one parent at any given period of time.⁷⁸ In addition, a father is not entitled to parental allowance during the period that a mother receives maternity leave allowance. Consequently, a father may participate in the care of a new-born child for only 10 days of paternity leave. Then a family must wait until the end of the mother's maternity leave, which normally lasts 9 weeks after birth and then decide which of the parents will make a use of parental leave from the perspective of social security law. The social security law, however, allows sharing the right parental (leave) allowance between parents if used in different periods of time, i.e. not simultaneously. Consequently, the parents may use the right to parental (leave) allowance in turn.

Second, the right to remain in employment and receive parental allowance in practice is 'abused'. Recently the statistics indicate considerable increase of the use of parental leave (recipients of parental leave allowance) by fathers in 2015. The number of fathers making use of parental leave allowance on January 2015 was 13 % in comparison to January 2014 when the number was 7 %. At the same time the difference between the amounts of parental allowance has significantly changed. In January 2015 the amount was almost the same or even opposite in comparison to the period 2012 - 2014: mothers on average received parental allowance in the amount of EUR 449 while fathers received EUR 419. The reason behind this considerable change is clear. In particular, as described above in Section 1.1, since 1 October 2014 parents who remain in active employment have a right to parental allowance, but in a considerably lower amount – 30 % of the allowance which they would normally be awarded, i.e. in case of full-time childcare. Obviously, in families where the income of the father is considerably higher than that of the mother, the mother remains at home and performs childcare while the father applies for parental allowance and continues working full-time, because his 30 % allowance is higher than the mother's full parental allowance would be. Such situation was not the aim of the legislator, especially taking into account the fact that the parent who does not receive parental allowance and stays at home with childcare obligations loses all social insurance rights during such period. Therefore it is questionable if a particular measure taken by the legislator with the aim to provide more flexible arrangements for parental leave (entitlement to parental allowance) in practice results in the combination of childcare with active employment.⁷⁹

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)?

Article 156(2) of the Labour Law requires giving notice on the use of parental leave one month in advance, also informing the employer on the length of the leave.

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

No.

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

No. The law does not allow postponing parental leave on the employer's request.

⁷⁸ Article 10⁴(2) of the Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995, respective amendments Official Gazette No. 228, 22 November 2013.

⁷⁹ Telephone interview with a senior expert of the Department of Social Policy Planning and Development, Ministry of Welfare, 23 April 2015.

5.4.10 Are there special arrangements for small firms?

No.

5.4.11 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, except rights to special allowances for the care of a disabled child. The parents of disabled children are not entitled to any special paid leaves in addition to those available to all parents. The parents of disabled children are entitled to several types of special flat-rate allowances, like disabled childcare allowance.⁸⁰ According to Article 151(1)(1) of the Labour Law the parents of a disabled child are entitled to three days extra paid annual leave until the child reaches the age of 18.

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

Yes. There are generally applicable norms on protection against less favourable treatment: Article 9(1) of the Labour Law.

Article 9(1) of the Labour Law protects employees against any kind of adverse treatment because of the use of the rights provided by the legal norms.

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

Yes, Article 156(4) of the Labour Law expressly stipulates such right. In addition, the Senate of the Supreme Court of Latvia decided that the norm requiring provision of the same or equivalent work after the return from parental leave is a mandatory legal norm. This norm is not subject to any exceptions provided by the Labour Law, i.e. an employer is under the obligation to provide the same or equivalent work.⁸¹

The applicant's permanent employment contract of a senior officer at the Ministry of Education and Science was terminated immediately after her return from parental leave, because the employer had abolished her post. The employer abolished the post on account of structural reforms. The post occupied by the applicant was unique, i.e. there were no other posts involving the same work duties and qualifications. Consequently, there was no obligation to assess and compare the applicant's skills and work results with other colleagues performing the same work in order to decide which employee was to be given preference to continue the employment, as would be required by the previous interpretation of the obligations under Latvian labour law and the EU law according to the findings of the CJEU in *Riežniece*.⁸²

The CJEU in *Riežniece* confirmed that an employer under the Framework Agreement (Directive 2010/18/EU, ex 96/34/EC) is not prohibited from dismissing a worker who has taken parental leave provided that the worker is not dismissed on the grounds of the application for, or the taking of, parental leave. It follows that, in substance, EU law does not prohibit the dismissal of a worker upon return from parental leave on the grounds of other reasons than the application for, or the taking of, parental leave. So far, the

⁸⁰ The State Social Allowances Law (*Valsts sociālo pabalstu likums*), Official Gazette No. 168, 19 November 2002.

⁸¹ The decision of 12 November 2014 of the Senate of the Supreme Court of Latvia in case No. SKC-2608/2014, available in Latvian on the database <http://www.tiesas.lv/nolemumi>, accessed on 13 June 2017.

⁸² The CJEU decision in case C-7/12 *Nadežda Riežniece v. Zemkopības ministrija, Lauku atbalsta dienests*.

Latvian courts had interpreted the law in accordance with the rulings of the CJEU. However, in the decision at issue here, the Senate of the Supreme Court of Latvia decided to set stricter obligations under Latvian law than under the Framework Agreement. In particular, the Senate interpreted the obligation to provide the same or equivalent work upon return from parental leave as an absolute obligation which has no exceptions, for example, even if the post is abolished on account of structural, organisational or other objective reasons.

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

Article 149(6) of the Labour Law stipulates that a worker after any kind of leave (including parental leave) as provided by the Labour Law has the right to such improvements to working conditions and employment provisions to which he or she would have been entitled if he or she had not been on leave.

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

The status of the employment contract is unclear. Such issue is not explicitly regulated. The employment agreement remains in force and a person is on the leave as prescribed by the law.

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

Yes, because a person (a citizen or permanent resident) has the right to state-paid healthcare irrespective of their employment status.⁸³

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

No, there is an allowance under the statutory social insurance scheme. However, according to Article 10⁴(3) of the Law on Maternity and Sickness Insurance, employers are not precluded from granting any type of pay (for example, a bonus payment or additional payment), i.e. in such a case a person does not lose the right to the parental leave allowance under the statutory social insurance scheme.

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

Yes. Statutory social insurance is provided to all employed persons irrespective of sector, size of employer and seniority. The amount of the allowance is dependent on the salary of a worker and consequent level of the mandatory social insurance contributions.

As a result, the amount of parental allowance constitutes 60 % of the gross salary (social insurance contribution salary) for parents who stop working until the child is 12 months old.⁸⁴ Alternatively, if a parent would like to receive parental allowance until a child is 18 months old, then the amount of allowance will be 43.75 % of the gross salary.

⁸³ Article 17 of the Medical Treatment Law (*Ārstniecības likums*), Official Gazette No. 167/168, 1 July 1997.

⁸⁴ The income tax for employee salaries is 24 % (the Law on Residents' Income Tax; *likums 'Par iedzīvotāju ienākuma nodokli'*, Official Gazette No. 32, 1 June 1993); statutory social security contributions constitute 34.09 %, but employees only have to pay 10.5 % and 23.59 % must be contributed by the employer (the Law on Statutory Social Security; *likums 'Par valsts sociālo apdrošināšanu'*, Official Gazette No. 274/276, 21 October 1997). After taxes and social security contributions, employees are therefore entitled to approximately 69 %.

Parents who decide to stay in full-time or part-time employment during the period when parents are entitled to parental allowance, he/she will be entitled to 30 % of the parental allowance (30 % of the full allowance; 60 % until the child is 12 months old; or 43.75 % until child is 18 months old).⁸⁵

In addition, one of the parents is entitled to another type of allowance: a flat-rate state social allowance, which is a childcare allowance until the child is eighteen months old, in the amount of EUR 171 per month (for multiple births EUR 171 per month for each child). The latter allowance is also provided to parents who are not employed.⁸⁶

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

Several rights provided by Latvian law are more favourable.

First, the duration of the parental leave is much longer than that required by the Directive: instead of 4 months it is 1.5 years. In addition, it is granted on an individual basis.

Second, there is a parental allowance which constitutes an amount which is even higher than the average salary plus there is a flat-rate allowance which amounts to EUR 171 until a child reaches 18 months of age.

Third, in the context of equal treatment of parents with twins or more children born in the same birth there is a flat-rate state social allowance of EUR 171 for each additional child in addition to parental allowance.⁸⁷ This is a measure trying to accommodate the specific situation of parents with twins or more children born in the same birth as acknowledged by the CJEU in *Zoi Chatzi*.⁸⁸

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes:

- Article 155(1) of the Labour Law;
- Article 10¹ of the Law on Maternity and Sickness Insurance;
- Article 10³ of the Law on Maternity and Sickness Insurance.

⁸⁵ Example, if a parent's gross salary were EUR 1 000, then the amount of parental allowance would be EUR 600 or 60 % of the social insurance contribution salary. This applies to employed parents who are on full-time parental leave. If however a parent decides to stay in active employment he/she would be entitled to 30 % of the parental allowance, i.e. 30 % of EUR 600 (or normal parental allowance, which would constitute EUR 180).

⁸⁶ The Law on State Social Allowances (*Valsts sociālo pabalstu likums*), Official Gazette No. 168, 19 November 2002; the Cabinet of Ministers Regulation No. 1609 'Regulations on amount of childcare allowance and supplement to childcare allowance and parental allowance for twins or more children born in the same birth and procedure on its review and award and pay-out' (*Noteikumi par bērna kopšanas pabalsta un piemaksas pie bērna kopšanas pabalsta un vecāku pabalsta par diviņiem vai vairākiem vienās dzemdībās dzimušiem bērniem apmēru, tā pārskatīšanas kārtību un pabalsta un piemaksas piešķiršanas un izmaksas kārtību*), Official Gazette No. 204, 29 December 2009.

⁸⁷ The Law on State Social Allowances (*Valsts sociālo pabalstu likums*), Official Gazette No. 168, 19 November 2002; the Cabinet of Ministers Regulation No. 1609 'Regulations on amount of childcare allowance and supplement to childcare allowance and parental allowance for twins or more children born in the same birth and procedure on its review and award and pay-out' (*Noteikumi par bērna kopšanas pabalsta un piemaksas pie bērna kopšanas pabalsta un vecāku pabalsta par diviņiem vai vairākiem vienās dzemdībās dzimušiem bērniem apmēru, tā pārskatīšanas kārtību un pabalsta un piemaksas piešķiršanas un izmaksas kārtību*), Official Gazette No. 204, 29 December 2009.

⁸⁸ Decision in case C-149/10 *Zoi Chatzi v. Ipourgios Ikonomikon*, OJ C301/3, 6 November 2010.

Article 155(1) of the Labour Law provides the right to paternity leave of 10 calendar days. Paternity leave may be taken right after the birth of a child, but not later than when the child is 2 months old.

Article 10¹ and 10³ of the Law on Maternity and Sickness Insurance entitles fathers to a statutory social insurance allowance during paternity leave. It is of the same amount as that which applies during pregnancy/maternity leave, i.e. 80 % of the average statutory insurance salary.

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, in Articles 155(6) and 149(6) of the Labour Law.

Article 155(6) of the Labour Law stipulates that a person after paternity leave must be provided the same or equivalent work. In addition, Article 149(6) of the Labour Law stipulates that a worker after any kind of leave (including paternity leave) as provided by the Labour Law has the right to such improvements to working conditions and employment provisions to which he or she would have been entitled if he or she had not been on leave.

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, in Article 147(2) and (3) of the Labour Law.

Article 147(2) of the Labour Law provides for a right to time off in case of *force majeure*, an unexpected event or other exceptional circumstances. Article 147(3) stipulates that an employee who is in charge of caring for a child under the age of 18 has a right to temporary absence on account of the child's sickness or accident, also for visiting a doctor if such visit is impossible outside working hours.

Article 147(2) of the Labour Law provides the only condition that the employee shall inform the employer without delay of such temporary absence. Temporary absence shall not serve as a basis for the right of an employer to give notice of termination of an employment contract.

The entitlement to time off from work is not limited to a certain amount of time per year and/or per case.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

No.

5.8 Leave sharing arrangements

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

No. There are distinct rights for maternity, paternity and parental leave: maternity leave is available to women only, paternity leave to fathers only,⁸⁹ and parental leave for both parents.

Persons other than the mother of the child have the right to maternity leave only in exceptional circumstances, i.e. if the mother is not able to perform care herself. Article 155(2) of the Labour Law stipulates:

'If a mother has died in childbirth or within a period up to the 42nd day of the postnatal period, or in accordance with the procedures prescribed by law up to the 42nd day of the postnatal period has refused to take care and bring up the child, the father of the child shall be granted leave for the period up to the 70th day of the child's life. The leave referred to shall be granted also to another person who actually takes care of the child.'

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

No. From the perspective of the Labour Law, both parents have an independent right to parental leave, but from the perspective of statutory social insurance rights, only one parent at a time has the right to receive parental allowance.

- Article 156(1) of the Labour Law;
- Article 10⁴(1) of the Law on Maternity and Sickness Insurance.

Article 156(1) provides:

'Every employee has the right to parental leave in connection with the birth or adoption of a child. Such leave shall be granted for a period not exceeding one and a half years up to the day the child reaches the age of eight years.'

Article 10⁴(1) of the Law on Maternity and Sickness Insurance stipulates that only one parent at a time has the right to receive parental allowance.

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. Article 134(2) of the Labour Law provides that an employer has the obligation to provide part-time employment if a request is made by a pregnant worker, a worker during her maternity period (one year after childbirth and/or the entire period of breastfeeding), a worker who has a child under the age of 14, or a worker who has a disabled child under the age of 18.

This legal regulation, however, is incomplete. First, the law does not regulate the length of part-time employment, namely, if a worker is still entitled to part-time employment if the conditions which give the right to request part-time employment cease to exist, for example, when the child of a worker reaches the age of 14. Second, the law does not regulate the procedure on return to normal working time. Third, it does not identify recent amendments to statutory social security laws. In particular, since 1 October 2014

⁸⁹ With some exceptions, like the waiving of parental rights by a mother, the mother dying in childbirth, or serious sickness of a mother. In such a case maternity leave is to be granted to the father or other person who actually takes care of the child (Article 155(2) of the Labour Law).

a statutory social insurance allowance (parental allowance) is available to parents who remain in employment.⁹⁰ Consequently from the point of view of social security law a parent is on childcare leave, while the Labour Law does not recognise such a situation, i.e. that a parent is on partial childcare leave. It might be important that a worker is considered as making use of a part-time childcare leave from the perspective of the Labour law in order to enjoy the full legal protection and rights provided for parents who return from childcare leave. For example, recently the Senate of the Supreme Court held that the right to return to the same or equivalent workplace after childcare leave is an absolute right and the employer has no right, for example, to dismiss a worker right after their return on the grounds that a post has been abolished on account of economic, structural or organisational considerations, or dismiss them on the grounds that there is no equivalent post to offer in the organisation.⁹¹ It might be important also from the perspective of EU law, for example, that the Labour Law does not reflect the recent findings of the CJEU in *Rogier*⁹² that protective measures in case of dismissal, like compensation, must reflect the salary of full-time employment if a worker is on part-time employment due to part-time childcare leave.

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

No, except for part-time employment as described above.

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

No.

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.

⁹⁰ The Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995, respective amendments Official Gazette No. 228, 22 November 2013.

⁹¹ The decision of 12 November 2014 of the Senate of the Supreme Court of Latvia in case No. SKC-2608/2014, available in Latvian at database <http://www.tiesas.lv/nolemumi>, accessed 13 June 2017.

⁹² Case C-588/12, *Lyreco Belgium NV v. Sophie Rogiers*, 27 February 2014.

6. Occupational pension 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?

Not explicitly. Formally equal treatment in occupational social security schemes in general is covered by the same Articles 29 and 60 of the Labour Law and they cover all employees, including state officials and civil servants (except judges).

At the same time, the specific regulations and their effect in practice are more complicated. First, this is because occupational social security schemes in Latvia in the classical sense only exist with regard to old-age pensions (insurance) and they scarcely exist. Social security in Latvia is predominantly based on statutory social security schemes, which cover traditional social risks. Second, this is due to the lack of awareness and uncertainty regarding what constitutes social security schemes, taking into account the absence of classical ones (as found in Western Europe). Third, there is uncertainty regarding the relationship between measures implementing provisions on occupational social security schemes under Directive 2006/54/EC and insurance products provided by insurance companies within the scope of Directive 2004/113/EC.

Regarding the first point: the provisions of Directive 2006/54/EC covering occupational pension funds have been implemented by the Law on Private Pension Funds.⁹³ In particular, Article 11(2) provides that if an employer decides to provide participation in a private pension plan in favour of the employees, he/she must apply such benefit to all employees according to profession, length of service, post and other objective criteria. Further, Article 11(3) stipulates that participation of persons in a private pension plan must be provided on equal terms taking into account objective criteria irrespective of sex. It is the only piece of legislation explicitly implementing matters of equal treatment in occupational social security schemes in Latvia.

The second problem relates to the fact that Article 60 of the Labour Law only refers to *equal pay* without any further explanation on what elements *pay* within the meaning of *equal pay* includes, which means that both employers and employees are not aware of the fact that all benefits connected with employment are included. In practice, some employers provide health, travel and life insurance to their employees, but they are not aware of the fact that all such benefits fall under the equal pay obligation. Nor are employers aware of the obligation to retain rights under occupational social security schemes during family-related leaves such as pregnancy, maternity and paternity leave.

The third problem is the most complicated: how to distinguish between occupational social security schemes and related obligations of equal pay and insurance products offered by insurance companies within the framework of Directive 2004/113/EC? In reality in Latvia there is a considerable problem with health insurance provided by employers. This is because in general, health services are provided to all residents of Latvia by the State under the statutory health service scheme which is fully financed by the State and no contribution of any natural person (resident of Latvia) is required (except co-payment for a visit to a doctor). State-paid medical services are not always accessible on account of insufficient state funding and state-paid medical services do not include all types of medical treatment necessary. Also, they may be provided at a much lower level of quality than private medical services, and therefore it is considered to be a good benefit for an employee if an employer provides private health insurance giving the employee the right to access private medical services. The range of medical services included in private health insurance and financial coverage of such services is defined by each separate private health insurance plan offered by an insurance company and depends on the financial means that an employer is able to allocate for the purpose of

⁹³ *Likums par privātajiem pensiju fondiem*, Official Gazette No. 150/151, 20 June 1997.

private health insurance to the employees. This leads to the situation where medical services included in private health insurance plans do not provide equal treatment with regard to sex. This especially concerns medical services relating to pregnancy and maternity. Usually such services are excluded. The same applies to travel insurance. To justify such situation, insurance companies rely on the provision of the Law on Insurance Companies and their Supervision⁹⁴ stipulating that insurance premiums and benefits may not differ on account of pregnancy and maternity. Namely, they insist on the fact that particular private health or travel insurance plans do not include pregnancy and maternity risks and therefore the aforementioned norm is not infringed, because since such risk is not included there are no unequal premiums and benefits on account of pregnancy and maternity.

There may also be problems with life insurance, which is frequently used instead of a private pension plan. There are no effective mechanisms for employers to ensure that contributions required by an insurance company in order to get equally defined benefits for employees are based on objective criteria not taking into account sex. The same problem applies to private health insurance. Since each plan is exclusively prepared by the insurance company for each separate employer, the employer cannot be sure that the price proposed is not calculated on the basis of the composition of its employees by sex.

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

See the description of problems above (point 6.1.). There have been no relevant cases decided by the courts.

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

See the description of problems above (point 6.1.) There have been no relevant cases decided by the courts.

6.4 Have the exclusions from the material scope as specified in Article 8 of Directive 2006/54 been implemented in national law?

No.

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

No.

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

Formally no, but in practice in certain situations. It may be so in cases where an employer provides an insurance product under an occupational social security scheme which does not fall under the Law on Private Pension Funds. See the description of the problems above under point 6.1.

⁹⁴ *Apdrošināšanas sabiedrību un to uzraudzības likums*, Official Gazette No. 188/189, 30 June 1998.

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.

See the description of problems above (point 6.1.).

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, in Article 2¹ of the Law on Social Security.

Article 2¹ of the Law on Social Security prohibits discrimination in statutory social security system on various grounds, explicitly including sex. It prohibits direct and indirect discrimination, harassment and the instruction to discriminate. As described in other sections of the current report, there is no protection against sexual harassment and the definition of indirect discrimination is incorrect because it requires being in a situation comparable with that of another person.

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

The Law on Social Security is an umbrella law regulating the whole social security system – including the right to healthcare, education, jobseekers' assistance, state social allowances, state social insurance allowances, and social assistance as provided by the State and municipalities. It applies to all persons legally residing in Latvia, with some exceptions for citizens of third countries having a temporary residence permit, and is consequently much broader in its personal scope.

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

The Law on Social Security is an umbrella law regulating the whole social security system – including the right to healthcare, education, jobseekers' assistance, state social allowances, state social insurance allowances, and social assistance as provided by the State and municipalities. It follows that the principle of non-discrimination provided by the Law on Social Security goes far beyond the requirements of EU law.

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

In principle no, because, first, Latvian statutory social security is based on the principle of individual social rights and, second, the pensionable age has been equalized (with a transitional period at the end of the 1990s) since the establishment of the statutory social insurance schemes in 1995. However, there are gaps stemming from special laws and regulations on the calculation of particular benefits, especially in relation to the accrual of benefit entitlements following periods of interruption due to childcare leave. Each employed person has a right to state social insurance protection in proportion to the contributions made by him/her and by the employer. During childcare leave, parents are insured by the State instead of insuring themselves, but in a minimum amount.⁹⁵

⁹⁵ Until 2013 the monthly amount starting at which parents on childcare leave were insured was EUR 71. On 1 January 2013 this amount was doubled and it is now EUR 171, which however is less than half of the statutory minimum salary (EUR 360); the Law on Statutory Social Insurance (*Likums 'Par socialo apdrošināšanu'*), Official Gazette No. 274/276, 21 October 1997; the Cabinet of Ministers Regulation No. 230 'Regulation on mandatory state social insurance contributions from the state budget and statutory social insurance budget' (*Noteikumi par valsts sociālās apdrošināšanas obligātajām iemaksām no valsts pamatbudžeta un valsts sociālās apdrošināšanas speciālajiem budžetiem*), Official Gazette No. 91, 30 June 2001, respective amendments Official Gazette No. 26, 2 February 2017, with retroactive effect as from 1 January 2017.

Although the amount of insurance provided by the state is increasing (until 2017 it was EUR 142.29, now it is EUR 171), being on childcare leave negatively affects the amount of the old-age pension. Since the number of women using the right to childcare leave is still considerably larger than that of men, this situation constitutes indirect discrimination against women. Such treatment does not correspond to the principle of non-discrimination provided by the Law on Social Security, although it complies with an exception allowed under Directive 79/7/EEC.

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

No. The expected period of pay-out of old-age pensions is calculated on the basis of the average life expectancy of persons of both sexes taken together.⁹⁶

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.

No.

⁹⁶ The Cabinet of Ministers Regulation No. 1445 'Regulation on calculation of the expected pay-out period of old-age pensions' (*Noteikumi par pensijas aprēķināšanai piemērojamo plānoto vecuma pensijas izmaksas laika periodu*), Official Gazette No. 250, 20 December 2013.

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

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

Yes:

- the Law on Non-Discrimination of Natural Persons – Performers of Economic Activities;
- the Law on Statutory Social Insurance.

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

The Law on Non-Discrimination of Natural Persons – Performers of Economic Activities covers all persons who in various forms of entrepreneurship perform economic activities individually.

The Law on Statutory Social Insurance covers issues on statutory social insurance of self-employed persons and helping spouses.

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

All self-employed persons are considered to belong to the same category.

Latvian law only recognizes a marriage between persons of opposite sexes, which means that same-sex couples and couples living together outside marriage are excluded.

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 more restricted or broader than specified in Article 4 Directive 2010/41/EU?

The current law protects persons in two aspects: (1) with regard to access to the goods and services necessary for the performance of the economic activities and (2) with regard to the access to self-employment in general, including extension of the business. In addition, the principle of non-discrimination protects against discrimination on all six grounds – sex, race/ethnic origin, disability, age, religion/belief and sexual orientation. Thus the implementing measures have a wider material scope with regard to other non-discrimination grounds, in particular disability, age, religion/belief and sexual orientation.

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?

No.

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

Yes. Self-employed persons have access to the statutory social security schemes. They are obliged to pay contributions to cover them against risks of old age, disability,

sickness, maternity and parenting once their annual income reaches a certain level.⁹⁷ Self-employed persons, unlike employed persons who have to contribute in proportion to their real earnings, are obliged to pay statutory social insurance contributions only in the amount corresponding to the minimum statutory salary, irrespective of their real income. Any higher contributions are voluntary for self-employed persons.⁹⁸

Statutory health insurance applies to all persons legally residing in Latvia without the condition of being economically active.

Under statutory schemes there is only one choice of social protection system. There are no special occupational social security schemes in Latvia for self-employed people. However, each person has the right to access private social insurance schemes.

The spouses of self-employed persons have a right to access statutory social insurance voluntarily. They may insure themselves against risks of old age, disability, maternity, paternity, sickness and parenting.⁹⁹

The author expressed doubts if such regulation ensures the effective protection of helping spouses in practice, since there is only a right to join the state social security system voluntarily. A telephone interview with the head of Department of Statistics of the State Statutory Insurance Agency showed that the presumption on the lack of effectiveness of the social protection of spouses is absolutely true. According to the data provided by the State Statutory Insurance Agency there was not a single spouse of a self-employed person who contributed for statutory social insurance in 2013! This whereas the data of the Central Statistical Bureau demonstrate that in 2013 around 7500 persons were helping family members in Family Enterprises, Individual Enterprises and Agricultural Farms.¹⁰⁰ This means that in practice there is a considerable group (for the size of the population of Latvia) which is totally unprotected.

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

Yes, in Article 5(5) of the Law on Statutory Social Insurance.

Formally self-employed persons have the right to maternity allowance on the basis of the same conditions as employed persons.¹⁰¹ The amount of maternity allowance is 80 % of the statutory social insurance contribution salary,¹⁰² i.e. of the total amount (gross salary) based on which the contributions have been made.

However, employed persons only have one option regarding the amount of income based on which to make the contributions: they have to make contributions based on their full income. The self-employed can choose: they are only obliged to contribute based on the minimum statutory salary. Taking into account the fact that there is doubt whether the

⁹⁷ The self-employed are subject to mandatory participation in statutory social insurance schemes if their annual monthly income on average reaches the amount of the statutory minimum salary, which is currently EUR 360. The Cabinet of Ministers Regulations No. 1478 'Regulations on minimum contribution object amount and procedure of definition of such amount for self-employed' (*Noteikumi par valsts sociālās apdrošināšanas obligāto iemaksu objekta minimālo apmēru un tā noteikšanas kārtību pašnodarbinātajam*) Official Gazette No. 250, 20 December 2013.

⁹⁸ Article 14(2) of the Law on Social Insurance (*Likums 'Par sociālo drošību*), Official Gazette No. 144, 2 November 1995.

⁹⁹ Article 5(3) of the Law on Social Insurance (*Likums "Par sociālo drošību*), OG No. 144, 2 November 1995.

¹⁰⁰ The Central Statistical Bureau of Latvia, available in Latvian at: http://data.csb.gov.lv/Selection.aspx?px_path=Sociala_Ikgad%C4%93jie%20statistikas%20dati_Nodarbi%C4%81t%C4%ABba&px_tableid=NB0220.px&px_language=lv&px_db=Sociala&rxid=cdbc978c-22b0-416a-aacc-aa650d3e2ce0, accessed 13 June 2017.

¹⁰¹ The Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995.

¹⁰² Article 10 of the Law on Maternity and Sickness Insurance.

majority of self-employed persons contribute at all and that if they contribute it is most likely that statutory social insurance contribution salary corresponds to the statutory minimum salary and not their real income, it is most likely that in practice self-employed persons are not entitled to the same level of income in case of maternity. It is, however, unlikely that such a situation does not comply with the obligations under Article 8(3) of the Directive 2010/41/EU, because, first, it is a voluntary choice of each self-employed person to contribute either the minimum amount in contributions or contributions corresponding to his/her real income and, second, statutory social insurances allowances in case of illness are also 80 % of the statutory social insurance contribution salary and the parental leave allowance is 60 %. Consequently, formally Latvia complies with the requirements of Article 8(3) of Directive 2010/41/EU.

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

No, because such schemes do not exist.

There is no possibility to choose systems. According to the law occupational social security is granted on a mandatory basis.

In relation to Article 8(4) there are no services supplying temporary replacements or national social services.

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, because such schemes do not exist.

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

Yes. Article 2 of the Law on Non-Discrimination of Natural Persons – Performers of Economic Activities.

The provision protects persons against discrimination with regard to the access to self-employment in general, including extension of the business.

9. Goods and services (Directive 2004/113)

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

Yes, in Article 3¹ of the Law on the Protection of Consumer Rights.

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.

Not all goods and services available publicly are covered by non-discrimination rights. Firstly, Latvian law does not cover goods and services which are publicly offered by natural persons outside commercial activities, for example, if a natural person publicly advertises the sale of his/her own apartment, because the Law on Protection of Consumer Rights only applies to transactions provided within the scope of commercial activities.¹⁰³ Secondly, contrary to Article 13(b) of Directive 2004/113, non-profit associations are not covered by the Law on Protection of Consumer Rights because they are precluded from providing any goods and services in return for pay, and consequently their activities are not considered as commercial. There are no legal acts covering this situation.

Under Latvian legal regulations, contractual freedom is not restricted at all if provision of services or goods takes place outside a public space, i.e. if they have not been offered publicly, in particular, without offer to an abstract group of persons. If however goods and services are offered publicly, a provider is free to choose a contractual partner so long as in doing so he or she does not discriminate on the basis of the sex of the person. Such explicit provision however 'appears' only in the Law on Protection of Consumer Rights and in the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.¹⁰⁴ The Civil Law,¹⁰⁵ which provides the basic regulations covering contract law, does not contain any provisions on the principle of non-discrimination.

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

No, on the contrary: the Education Law and Advertisement Law¹⁰⁶ prohibit discrimination explicitly. Article 4 of the Advertisement Law prohibits content which is contrary to human dignity on various grounds, including sex.

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.

Article 3¹(2) of the Law on the Protection of Consumer Rights provides:

'Differential treatment to a consumer shall be allowed, if offering of goods or a service, selling of goods or provision of a service only or mainly to persons of a particular sex, race or ethnic belonging or persons with disability is objectively substantiated with a legal purpose, for the achievement of which proportional means are chosen.'

There have been no cases decided by the courts on this provision so far.

¹⁰³ Article 1(4).

¹⁰⁴ Articles 3¹(3) and 3(2) respectively.

¹⁰⁵ *Civillikums. Ceturtā daļa. Saistību tiesības*, 28 January 1937.

¹⁰⁶ *Reklāmas likums*, Official Gazette No. 7, 10 January 2000.

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, in Article 5¹ of the Law on Insurance Companies and their Supervision.

Article 5¹ of this Law prohibits the use of sex as a factor in insurance. It also prohibits the definition of different premiums and benefits by reason of pregnancy and maternity.

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.

Initially, in 2009 the Law on Insurance Companies and their Supervision was amended with the aim to implement Directive 2004/113/EC.¹⁰⁷ Article 5¹ was inserted and it provided the general prohibition of differential treatment on the ground of sex and exceptions as defined by the same Article. The exception permitted the use of gender as a factor in cases where it was based on actuarial and statistical data. The types of insurance services where the use of gender as a factor was permitted were to be defined by the regulations of the Cabinet of Ministers. Also, an obligation was included to follow the developments and to publish and update statistics in order to assess whether there is still reason to use actuarial factors. On 8 September 2009 the Cabinet of Ministers issued Regulations No. 1002 'Regulations on the use of differential treatment in defining insurance premiums and benefits'¹⁰⁸ permitting the use of sex as a factor only in life insurance. Following the CJEU ruling in *Test-Achats*, the provisions of the Law on Insurance Companies and their Supervision permitting the use of gender as a factor in exceptional types of insurance were repealed.¹⁰⁹ Cabinet of Ministers Regulations No. 1002 consequently lost their legal basis.

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

No.

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

There is a problem with pregnancy and maternity discrimination in insurance. The implementing provisions only require the definition of equal premiums and benefits irrespective of sex, pregnancy and maternity. Like Article 5 of Directive 2004/113/EC, they do not require the inclusion in insurance programmes of risks related to pregnancy and maternity. As a result, no insurance company in Latvia provides any standard travel and health insurance programme covering risks related to pregnancy and maternity. Consequently, the norms prohibiting pregnancy and maternity discrimination turn out to be meaningless in practice. No legal act stipulates what kinds of risks have to be covered by private insurance programmes, so insurance companies simply do not include risks relating to pregnancy or maternity. There is no case law on this.

¹⁰⁷ Amendments Official Gazette No. 35, 4 March 2009.

¹⁰⁸ 'Noteikumi par atšķirīgas attieksmes izmantošanu apdrošināšanas prēmijas un apdrošināšanas atlīdzības noteikšanā', Official Gazette No. 145, 11 September 2009.

¹⁰⁹ Official Gazette No. 154, 28 September 2012.

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

10.1 Has your country ratified the Istanbul Convention?

No. Latvia is the only EU Member State which has not yet ratified the Istanbul Convention. However, almost all requirements under the IC have been implemented in Latvian law and can be enforced, except for data collection. Such a situation may be explained by the fact that for the first time a political decision was taken to ensure that its law complied with an international agreement first, and only then to ratify it.¹¹⁰

In particular, the following legislative measures were adopted to implement requirements of IC.

The Civil Procedure Law¹¹¹ provides for the temporary protection order procedure. The Administrative Violations Code¹¹² and the Criminal Law¹¹³ provide for sanctions in the case of non-compliance with the protection order or other obligations stemming from a court's decision. The general rights to state social services for victims and perpetrators are provided by Article 3(1)(3¹) and 3(1)(11) of the Social Services and Social Assistance Law and more detailed regulation is provided by the Cabinet of Ministers Regulation No. 790 'The procedure on the provision of the social rehabilitation services for the victims of violence and for perpetrators'.¹¹⁴ In addition, draft amendments to the Criminal Law have been recently submitted to Parliament by the Cabinet of Ministers relating to the more effective qualification and sanctioning of cases of domestic violence, including protection against stalking.¹¹⁵

After heated political debates between the highest ranking politicians, scholars and officials during the spring of 2016 concerning the substance of the Istanbul Convention, mainly instigated by the current Ministry of Justice which opposes accession, the Minister of Welfare finally signed it in June 2016. Currently, the standard preparation process for its ratification is ongoing.¹¹⁶

¹¹⁰ Telephone interview with a senior expert from the Ministry of Welfare, 5 June 2015.

¹¹¹ *Civilprocesa likums*, Official Gazette No.326/330, 3 November 1998.

¹¹² *Latvijas Administratīvo pārkāpumu kodekss*, OG No. 51, 20 December 1984.

¹¹³ *Krimināllikums*, Official Gazette No. 199/200, 8 July 1008.

¹¹⁴ The Social Services and Social Assistance Law (*Sociālo pakalpojumu un sociālās palīdzības likums*), Official Gazette No. 168, 19 November 2002, respective amendments Official Gazette No. 82, 27 May 2009; The Cabinet of Ministers Regulation No. 790 'The procedure on the provision of the social rehabilitation services for the victims of violence and for perpetrators' (*Sociālās rehabilitācijas pakalpojumu sniegšanas kārtība no vardarbības cietušām un vardarbību veikušām pilngadīgām personām*), Official Gazette No. 257, 30 December 2015.

¹¹⁵ Draft amendments to the Criminal Law No.794/Lp12, available in Latvian at [http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webAll?SearchView&Query=\(\[Title\]=*kriminālliku*\)&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webAll?SearchView&Query=([Title]=*kriminālliku*)&SearchMax=0&SearchOrder=4) accessed on 13 June 2017.

¹¹⁶ Telephone interview with the senior expert of the Ministry of Welfare, 9 March 2017.

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:

- Article 9(1) of the Labour Law;
- Article 3¹(10) of the Law on the Protection of Consumer Rights;
- Article 2¹(8) of the Unemployed and Job-seekers Support Law;
- Article 3¹(4) of the Education Law;
- Article 6 of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.

The Labour Law prohibits victimisation in a general provision prohibiting causing adverse consequences to any employee who makes use of his/her rights. Provisions of the rest of the laws mentioned expressly implement the protection against victimisation in case of discrimination. All of them provide that it is prohibited to cause directly or indirectly negative consequences to a person who has used his/her right with a view to protecting his/her rights not to be discriminated against.

The protection against victimisation complies with the Directives. However, it would be desirable to implement protection against victimisation also in the field of social security. There may be numerous situations where individuals suffer from victimisation within the scope of social security, for instance in the access to social services provided by the municipalities. Currently the Law on Social Security does not provide such protection.

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, national law provides for the concept of the burden of proof, but neither law nor court practice provides any methodology on how to apply such principle in practice. Such principle is 'clear' only as far as the first step is concerned, i.e. when the burden of proof has to be placed on the respondent. It is unclear to what extent the respondent has to prove that there has been no breach of the principle of non-discrimination and what happens if the applicant starts contesting the evidence presented by a respondent.

- Article 29(3) of the Labour Law;
- Article 3¹(5) of the Law on the Protection of Consumer Rights;
- Article 2¹(3) of the Unemployed and Job-seekers Support Law;
- Article 3¹(5) of the Education Law;
- Article 4(1) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.

All laws include a provision stipulating that in the event of a dispute a person must refer to conditions that may serve as the basis for his direct or indirect discrimination based on sex or other non-discrimination ground, and the employer or the trader or provider of a service has the duty to prove that the prohibition of differential treatment was not violated.

Access to information (evidence) regarding possible discrimination is not explicitly regulated by Latvian law. It is general court practice that evidence which a claimant may

not obtain, either because it is at the disposal of the respondent or because it contains confidential information, it is up to the court to decide if such evidence must be submitted by the respondent or any third person.¹¹⁷

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.

Gender equality norms are enforceable only on an individual basis. Also, Latvian law does not envisage any rights to collective claims or rights to claim protection of rights in the name of a person other than the claimant him/herself.

The enforcement measures in individual cases of breach of the non-discrimination principle are the following: Individuals may bring civil claims before regular courts dealing with civil and criminal cases in disputes regarding private-law transactions (employment and access to and supply of goods and services). In employment disputes, individuals may ask for non-discriminatory employment conditions, reinstatement (except in discriminatory recruitment cases) and compensation, including moral damages. Regarding disputes on the access to and supply of goods and services, individuals may claim the provision of goods and services in a non-discriminatory way and compensation. Individuals may request administrative authorities such as the State Labour Inspectorate and the courts to impose administrative sanctions. Currently, Article 204¹⁷ of the Administrative Violation Code provides for an administrative penalty of EUR 400 to EUR 700 if a person has breached the principle of non-discrimination as laid down in specific laws.¹¹⁸ Article 149¹ of the Criminal Law providing for criminal sanctions when a person has breached the principle of non-discrimination, as provided by legal acts, twice within a year (after the application of an administrative sanction) was repealed in 2012, because since its adoption in 2007 it had been never applied in practice.¹¹⁹ Thereafter Article 149¹ of the Criminal Law was one again adopted in an amended form – now it is directed explicitly against discrimination on the grounds of religious belief. It also prohibits ‘any other violation of the prohibition of discrimination’ if it has serious consequences. There is no more detailed information on what is meant by ‘any other violation of the prohibition of discrimination’, thus it may be presumed that the application of this provision in practice might be as problematic or ineffective as the previous one repealed in 2012.

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.

The remedies and sanctions may not be considered as effective. First, administrative sanctions in practice are applicable only in the field of employment, they do not apply with regard to the access to and supply of the goods and services. This means that the only possibility for a victim is to take the case to court. However, access to the courts is limited due to high litigation costs (in comparison to the average income of people in Latvia) and the difficulty to collect evidence.

In addition, the amount of the compensation for discrimination awarded by Latvian courts is insufficient to comply with the principle of effectiveness.

¹¹⁷ Articles 99 and 112 of the Civil Procedure Law (*Civilprocesa likums*), OG No.326/330, 3 November 1998.

¹¹⁸ *Latvijas Administratīvo pārkāpumu kodekss*, OG No.51, 20 December 1984.

¹¹⁹ OG. No.199/200, 8 July 1998, respective amendments OG No.107, 5 July 2007 and OG No.27 December 2012.

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.

Formally, the national courts are accessible for victims of discrimination. However, victims of discrimination do not always take their case to court. One of the reasons for this is the cost of legal services, which is high, and another is the fear of victimisation. There are also problems with the enforcement of the principle of equal pay, because firstly, information on remuneration is usually confidential and, secondly, there is no effective control mechanism on payment systems in private businesses.

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.

The Law on Associations and Foundations provides for the right of non-governmental organisations only to represent the interests of individuals before a national court. Consequently there is no possibility to bring a claim before a court as *actio popularis*, i.e. without an actual victim.

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

Victims are not entitled to any legal aid unless they are considered as poor persons and qualify for the state-paid legal aid under the general scheme.¹²⁰ The Ombudsman does not have a legal obligation to provide complete legal aid.

11.5 Equality body

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

Yes. The Ombudsman of the Republic of Latvia (*Latvijas Republikas Tiesībsargs*), website www.tiesibsargs.lv¹²¹

The equality body covers all possible non-discrimination grounds.

The competence of the Latvian Ombudsperson covers the supervision of all human rights either defined by Latvian law or by binding international agreements.¹²²

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?

The trade union movement is not very developed and existing coalitions do not have any considerable impact in general. Since the restoration of independence, trade unions have been preoccupied with the issues of pay and undeclared employment, so they have never been key actors in the implementation of the non-discrimination principle.

¹²⁰ The State Paid Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), Official Gazette No. 52, 1 April 2005.

¹²¹ It is ironic to discover that on the website's English version the name of the post is 'OmbudsMAN'. Obviously the current and previous Ombudsperson has not noticed that the position may be occupied by a woman.

¹²² The Ombudsperson Law (*Tiesībsarga likums*), OG No.65, 25 April 2006.

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 cannot be instruments for the implementation of mandatory EU law. In the Latvian legal system the task of collective agreements is primarily to grant employment conditions that are more favourable than mandatory ones.

12. Overall assessment

Overall, Latvia's implementation of the EU gender equality acquis is satisfactory. Legal regulations comply with EU law almost completely, with some minor deficiencies, such as the imprecise and misleading definition of indirect discrimination in the field of social security or the incomplete definition of the concept of sexual harassment.

The situation with enforcement is not so satisfactory. Although Latvian courts have demonstrated increasingly improved knowledge on the substance of EU gender equality law, not all victims of discrimination take their case to court, because it is costly and therefore not affordable for the majority of the population.

However, the biggest obstacle to the effective fight with inequality is unawareness of the legislator and the executive power regarding the mainstreaming obligation and the absence of any legal norms under Latvian law explicitly requiring it. Currently the legislator and the executive power are required to assess the possible impact of the draft normative acts with regard to equal opportunities in general.¹²³ This has led to a very formalistic approach, i.e. such evaluation in substance is not provided. In addition, such a situation demonstrates politicians' poor knowledge on the subject. Such a statement is evidenced by the fact that gender equality law in general does not considerably exceed the minimum requirements under EU law. No positive measures have been taken so far, for example.

¹²³ Parliament's Procedure Order (*Saeimas kārtības rullis*), Official Gazette No. 96, 18 August 1994; Dupate, K. (2012), 'The Quality of Implementation of the EU Non-Discrimination and Gender Equality Law in Latvia', University of Latvia, International Scientific Conference 'The Quality of Legal Acts and its Importance in Contemporary Legal Space', pp. 174-189; The Instruction of the Cabinet of Ministers No. 19 'The procedure on the initial assessment of legislative proposals' (*Tiesību akta projekta sākotnējās ietekmes izvērtēšanas kārtība*), Official Gazette No. 205, 30 December 2009, respective amendments Official Gazette No. 91, 14 May 2013.

Annexes

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