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Country report

Gender equality

How are EU rules transposed into
national law?

Croatia

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Reporting period 1 January 2017 – 31 December 2017

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1. Introduction

1.1 Basic structure of the national legal system

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

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

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

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

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

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

1.2 List of main legislation transposing and implementing Directives

- The Constitution of the Republic of Croatia (Official Gazette *Narodne novine* Nos. 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14);
- Anti-Discrimination Act (Official Gazette *Narodne novine* Nos. 85/08 and 112/12);
- Gender Equality Act (Official Gazette *Narodne novine* Nos. 82/08, 125/11, 20/12, 138/12 and 69/17);
- Same-Sex Life Partnership Act (Official Gazette *Narodne novine* No. 92/14);
- Labour Act (Official Gazette *Narodne novine* Nos. 93/14 and 127/17);
- Act on Maternity and Parental Benefits (Official Gazette *Narodne novine* Nos. 85/08, 110/08, 34/11, 54/13, 152/14 and 59/17);
- Safety-at-Work Act (Official Gazette *Narodne novine* Nos. 71/14, 118/14 and 154/14).

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

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

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

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

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

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

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

Yes.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

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

3. Implementation of central concepts

3.1 Sex/gender/transgender

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

No.

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

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

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

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

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

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

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

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

Yes. Article 6(2) of the Gender Equality Act prescribes that any less favourable treatment of a woman related to pregnancy or maternity is discrimination. This definition is not confined to maternity leave, but to maternity as such, and is therefore even wider in scope than Article 2(2)(c) of Directive 2006/54.

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

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

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

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

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

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

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

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

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

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

⁵ VSRH Rev-300/13. See also the Decision of the Constitutional Court of 22 March 2017, U-III-872/2016, where the Court held that the constitutionally guaranteed freedom of expression also entail duties and responsibilities and could not 'exonerate' the claimant from his directly discriminatory statement.

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

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

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

Yes. The courts rarely issue decisions on the concept of indirect discrimination, partly due to the fact that legal claims involving indirect discrimination are almost non-existent.⁶ Less than 1 % of sex discrimination complaints to the Ombudsperson for Gender Equality concern indirect discrimination.⁷ Despite the regular public awareness campaigns (mostly by the Ombudsperson for Gender Equality), the concept of indirect discrimination is still not widely recognised in Croatian society.

3.4 Multiple discrimination and intersectional discrimination

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

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

No mention is made of intersectional discrimination.

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

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

In 2017, there was one reported case of multiple discrimination, involving gender and nationality.⁸ It involved a woman of Serbian nationality, who was sexually abused in 1993 while being detained in a military facility during the Croatian War of Independence.⁹ A special committee set up under the Act on the Rights of Victims of Sexual Violence during Armed Aggression against the Republic of Croatia in the Homeland War¹⁰ denied her the

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

⁷ In 2017, no indirect discrimination complaints were recorded. See Ombudsperson for Gender Equality (2018), Annual Report for 2017, http://www.prs.hr/attachments/article/2404/IZVJE%C5%A0%C4%86E_O_RADU_ZA_2017.pdf, accessed 2 April 2018.

⁸ Ombudsperson for Gender Equality (2018), Annual Report for 2017, http://www.prs.hr/attachments/article/2404/IZVJE%C5%A0%C4%86E_O_RADU_ZA_2017.pdf, accessed 2 April 2018.

⁹ In Croatia this is referred to as the Homeland War.

¹⁰ *Zakon o pravima žrtava seksualnog nasilja za vrijeme oružane agresije na Republiku Hrvatsku u Domovinskom ratu*, Official Gazette Narodne novine No. 64/15.

status of a victim of sexual violence during the Homeland War. However, neither the Ombudsperson for Gender Equality, nor the Public Ombudsman are currently able to investigate the case further, because appellate proceedings against the committee's decision are pending before the administrative court.¹¹ The gender equality bodies (the Ombudsperson for Gender Equality and the Office for Gender Equality) are active in promoting awareness about the categories of women who are especially at risk of multiple discrimination. These categories include women with a disability, women in rural areas, women of Roma ethnic origin, female victims of sexual violence during the Croatian War of Independence, and women in prostitution or victims of sex trafficking.¹² There is no case law on multiple discrimination involving sex as one of the grounds of discrimination.¹³

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

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

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

¹¹ The Ombudsperson may investigate discrimination complaints *prior* to court proceedings, see Article 19(2)(3) GEA.

¹² Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016; Office for Gender Equality (2015), *Report on the Activities of the Office in 2015*, <https://ravnopravnost.gov.hr/UserDocsImages//dokumenti/Izvje%C5%A1%C4%87a%20URS//Izvje%C5%A1%C4%87e%20o%20radu%20Ureda%20za%20ravnopravnost%20spolova%20Vlade%20RH%20u%202015.%20godini.pdf>, accessed 6 June 2016.

¹³ There is one case involving discrimination on multiple grounds (age and union membership), where the court used actual comparators (workers working for the same employer) to assess the situation of the claimant (Bjelovar County Court, G-458/2012).

The main problem may lie in the fact that formally adopted plans rarely have any practical importance. There are no sanctions for non-implementation. However, if a public administration office, or a legal person that is majority-owned by the state do not adopt action plans at all, monetary sanctions for a misdemeanour offence are prescribed. Regarding the obligation for public administration bodies and legal persons that are majority-owned by the State to adopt action plans for the promotion and establishment of gender equality, there was a case in which a male applicant for the job of kindergarten teacher complained that he was discriminated against on the ground of sex, because a female applicant was employed, even though male teachers were underrepresented at the establishment.¹⁴ The court found that this circumstance by itself is not sufficient to conclude that the male applicant was discriminated against on the ground of sex. The claimant also argued that he should have had an advantage in applying for the job because the respondent's establishment had adopted a plan for the promotion of gender equality. However, the court concluded that the plan was invalid, because, at the time of the application, it had not been confirmed by the Office for Gender Equality, which was a prerequisite for such a plan's validity according to the Gender Equality Act that was in force at that time (the same obligation exists in the current Gender Equality Act (Article 11(4))).

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

No. A project conducted by the Ombudsperson for Gender Equality in the period between 2013 – 2015 focused on equal access opportunities to the positions of economic decision-making, and it included a public awareness-raising campaign and a research component.¹⁵ The research and the resulting publications represent the most valuable contribution and a starting point for informed discussions and decisions about the possibility of improving the gender balance on Croatian company boards. During 2015, the Ombudsperson for Gender Equality conducted four studies within this project, investigating the participation of men and women in managerial positions, employers' perception of the importance of gender-balanced business decisions and women's perception of the barriers that they encounter in their business surroundings. The research included both joint stock companies and limited liability companies with public authority and without public authority, but the segregated data is not based on the public/private divide, but rather the structure of the company's management (i.e. a limited liability company with a management board and a supervisory board or without a supervisory board; joint stock companies with one or more members of the management board/supervisory board).¹⁶ The majority of women on company boards and in managerial positions stated that women are exposed to discriminatory barriers in business surroundings, but are not in favour of binding legal instruments enacting a certain gender quota on company boards. Instead, they believe that such acts should be adopted at company level to reflect the commitment and will of employers.¹⁷ The public campaign also included the launching of a special website¹⁸ and media advertising, as well as various educational seminars and the public promotion of gender equality on company boards.

¹⁴ Bjelovar County Court, GŽ-493/07.

¹⁵ PROGRESS project 'Removing the glass labyrinth – equal access opportunities to the positions of economic decision-making', <http://staklenilabirint.prs.hr/>, accessed 15 September 2015.

¹⁶ The results are available in the publication on the following link: http://staklenilabirint.prs.hr/wp-content/uploads/2014/08/PRSRH_Izvjescje_muskarci-zene500_web.pdf, accessed 6 July 2018.

¹⁷ Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016. All publications are available in the Croatian language at <http://staklenilabirint.prs.hr/publikacije/>, accessed 2 April 2018.

¹⁸ <http://staklenilabirint.prs.hr/>, accessed 2 April 2018.

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

Yes. The Gender Equality Act prescribes that political parties and other candidates in elections for the European Parliament, the Croatian Parliament, as well as local and regional elections must gradually be obliged to establish gender-balanced election lists where candidates of one sex are underrepresented (less than 40 % of candidates) (Articles 12(3), 15(1) and (2) Gender Equality Act) until the third elections after the Act's entry into force at the latest (counting the elections regardless of their level, this would have meant the local elections in 2013). However, the prevailing opinion was that an election at each level should be considered separately, so this obligation started with the local elections in May 2017. Monetary fines for a misdemeanour (a minor offence) of up to HRK 50 000 (EUR 6 730) (Article 35 Gender Equality Act) apply for violations of this obligation, but sanctioning will heavily rely on the readiness of the State Attorney's Office to prosecute political parties. Data provided by the State Election Committee shows a 41.67 % share of women in the total number of candidates in local elections in May 2017, which is a significant improvement compared to the local elections held in 2013, when the share of women candidates was 28.24 %. There was an attempt in 2015 to change the parliamentary electoral law to secure a more balanced gender representation, but it was struck down by the Constitutional Court. On 13 February 2015, the Croatian Parliament adopted amendments to the Act on Parliamentary Elections,¹⁹ which, inter alia, included the obligation to comply with the gender quota, with the objective of achieving a balanced participation of women and men in political and public life. Article 21a of the amended Act on Parliamentary Elections²⁰ stipulated that political parties and independent candidates in parliamentary elections are obliged to comply with the principle of gender equality and to ensure a balanced representation of male and female candidates on their election lists. Independent candidates are also obliged to have election lists. In this case, the independent list has the same number of candidates as any party list, so the same percentage as a guarantee of a balanced representation of male and female candidates applies. According to the said provision, the election list would have been deemed to comply with these principles if it contained at least 40 % of candidates of both sexes. The implementation of this provision was guaranteed by clear sanctions for its violation: any election list not complying with the required 40 % gender quota would be deemed invalid and would not be accepted by the State Election Committee. However, in its Decision U-I-1397/2015 of 24 September 2015, the Constitutional Court of the Republic of Croatia annulled this provision of the Act on Parliamentary Elections, holding that the sanction of automatic invalidity is unacceptable and not proportionate in a democratic society. According to the Constitutional Court, there should not be two types of sanctions for lists which do not comply with the gender quotas (i.e. automatic invalidity, which is unconstitutional *per se*, **and** the monetary fines prescribed in the Gender Equality Act).

The current gender composition of the Croatian Parliament is not satisfactory, because women are underrepresented, with a share of only 18.66 %, compared to 81.34 % of male Members of Parliament.²¹

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. The Gender Equality Act prescribes that harassment and sexual harassment shall be considered as discrimination within the meaning of that Act (Article 8(1) Gender Equality

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

²⁰ Croatia, *Zakon o izmjenama i dopunama Zakona o izborima zastupnika u Hrvatski sabor*, Official Gazette *Narodne novine* No. 19/15.

²¹ Data from 1 March 2017, <http://www.sabor.hr/zastupljenost-spolova-9-saziv>, accessed 10 March 2017.

Act). Harassment is any unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and which creates an unpleasant, hostile, degrading or offensive environment (Article 8(2) Gender Equality Act).

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

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

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

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

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

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

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

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

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

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

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

3.7 Instruction to discriminate

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

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

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

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

3.8 Other forms of discrimination

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

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

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

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

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

4.1 Equal pay

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

Yes. Pursuant to Article 91(1) of the Labour Act,²² an employer shall pay equal remuneration to women and men for equal work and work of equal value. Paragraph 2 of the same Article clarifies and describes what is understood by the concepts of equal work and work of equal value.

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

4.1.2 Is the concept of pay defined in national legislation?

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

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

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

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

It seems that the Croatian judiciary takes a predominantly formalistic approach in equal pay cases and overemphasises the importance of a comparator. Under Article 20(1) of the Anti-Discrimination Act, a party claiming a violation of his/her right to equal treatment shall make it plausible that discrimination has taken place. In this case, it shall be for the respondent to prove that there has been no discrimination. However, a claimant will be required to refer to a comparator if he/she is to succeed in an equal pay case. According to the current Croatian case law, a party will have to refer to an actual comparator. For example, the claimant will be required to prove that the respondent should have treated him/her equally in comparison with another person in a comparable situation, whereby any difference in formal requirements overturns comparability (e.g. where a job classification system exists, any formal difference might exclude comparability).²³ The performance of actual tasks by the claimant will be relevant only where there is no legally prescribed salary classification system. Otherwise, employers will be found in breach of a

²² Croatia, *Zakon o radu*, Official Gazette *Narodne Novine* Nos. 93/14 and 127/17.

²³ See, for example, Supreme Court cases VS RH Revr-1676/09 (salary in public services; the determination of salary prescribed by law) and VS RH Revr-135/09 (even where a job classification system exists, the pay should be based on actual work and tasks performed by a particular worker, not the job title and description).

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

The comparator should be a person employed by the same employer (currently or in the past).

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

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

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

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

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

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

There are still no legislative acts or proposals to address wage transparency, in either the public or private sectors. The initiative launched in July 2015 and the adoption of the Action Plan for the determination and regulation of the salary system in the Republic of Croatia 2015-2016,²⁴ which included the adoption of the new Act on Salaries in the Public Sector, came to an end with the entry into office of the new Government in January 2016. There has been no further legislative activity in this area. Meanwhile, according to the available data, the unadjusted gender pay gap remains at around 10 % (10.2 % in 2015, 10.4 % in 2014, 9 % in 2013).²⁵

²⁴ Government of the Republic of Croatia, <https://vlada.gov.hr/UserDocsImages//Sjednice/2015/241%20sjednica%20Vlade//241%20-%208.pdf>, accessed 15 September 2015.

²⁵ Provisional data for 2016 shows that the unadjusted pay gap for Croatia is just below 10 %. See Eurostat, <http://ec.europa.eu/eurostat/statistics->

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

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

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

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

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

Examples of case law in the field of equal pay for men and women are the following. In a Supreme Court case²⁶ the female claimant asserted that she had been paid less for work of equal value, when she actually performed tasks of a higher skilled worker. The Court concluded that since the determination of salaries in the public services is prescribed by law (categories and coefficients), the respondent could only pay the claimant in accordance with her qualifications, because it would otherwise contravene the explicit and legally binding rule (in the end, her claim failed). In a case with a similar factual background, the Constitutional Court in decision U-III/579/2008 of 15 April 2010 confirmed that it involved neither discrimination nor a breach of the constitutional guarantee of equality before the law. In one judgment of the Supreme Court, the formal job classification was deemed to be crucial for denying comparability.²⁷ In another ruling in an equal pay case, the Supreme Court adopted a contradictory approach, concluding that the title of the job and its classification do not automatically give the right to be paid equally compared to another worker with the same job title, but that the pay depends on the actual work and tasks performed by a particular worker.²⁸ However, a difference in formal qualifications will overturn comparability and justify a difference in pay.

4.2 Access to work and working conditions

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

Yes. Article 13(1)(1) to (7) of the Gender Equality Act prohibits any discrimination in the field of employment and occupation in the public or private sector, including public bodies,

[explained/index.php/Gender_pay_gap_statistics#Further_Eurostat_information](#); accessed 5 April 2018. See also Eurostat, http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics; accessed 2 November 2016; Croatian Bureau of Statistics, Average monthly gross and net earnings of persons in employment by sex, www.dzs.hr; accessed 2 November 2016; Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvj%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

²⁶ VS RH Revr-1676/09.

²⁷ VS RH Revr-246/10.

²⁸ VS RH Revr-135/09.

in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity, and at all levels of the professional hierarchy, promotion, access to all types and to all levels of education, professional guidance, vocational training, advanced vocational training and retraining, employment and working conditions, all occupational benefits and benefits resulting from occupation, including equal pay for equal work and work of equal value, membership of, and involvement in, organisations of workers or employers, or any professional organisation, including the benefits provided for by such organisations, the balance between professional and private life, and pregnancy, giving birth, parenting and any form of custody.

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

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

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

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

Yes. Article 13(1)(1) to (7) of the Gender Equality Act prohibits any discrimination in the field of employment and occupation in the public or private sector, including public bodies, in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity, and at all levels of the professional hierarchy, promotion, access to all types and to all levels of education, professional guidance, vocational training, advanced vocational training and retraining, employment and working conditions, all occupational benefits and benefits resulting from occupation, including equal pay for equal work and work of equal value, membership of, and involvement in, organisations of workers or employers, or any professional organisation, including the benefits provided for by such organisations, the balance between professional and private life, and pregnancy, giving birth, parenting and any form of custody. The scope is broader than the scope of Article 14(1) of Recast Directive 2006/54, because it includes discrimination in relation to the work-life balance, as well as pregnancy, giving birth, parenting and any form of custody.

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

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

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

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

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

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

Legal provisions regarding the protection for women, especially the right to return to the previous or an equivalent job after making use of some of the rights and benefits associated with pregnancy and maternity (Articles 30-36 Labour Act) are quite clear. However, in practice it is not always easy to realise this guarantee, especially if a reorganisation of work has led to a change in or the termination of the job previously performed by a woman returning from maternity leave. For example, one employer (a government agency) offered a female worker who wanted to work half-time after returning from parental leave the option to stay at home (i.e. not to come to work, but still receive the stipulated salary), because a work reorganisation had led to the abolition of her job while she was on parental leave, and there was no other equivalent job that she could perform.²⁹ In other words, the employer wanted to comply with its legal obligations, but failing to find any adequate job, offered the worker the option to stay at home, while still receiving her salary. The female worker found this option offensive because she wanted to return to work. This is of course an extreme example, which received a lot of media attention, but the reality of unfavourable economic trends in Croatia could lead to a worsening of the work position of people returning from maternity or parental leave, despite the clear legislative provisions.

²⁹ This story was reported in the media in 2015, and the employer even explicitly confirmed its accuracy; see e.g. <http://www.jutarnji.hr/vijesti/hrvatska/druga-strana-price-o-zeni-koja-je-odbila-placu-za-neradprocitajte-hakom-ovu-istinu/373726/>, accessed 6 June 2016. However, the employer (a state agency) subsequently sued the employee for slander and damage to reputation, and the case was closed when the employee publicly apologised to the employer in court, see <http://net.hr/danas/hrvatska/samo-u-hrvatskoj-drzavna-agencija-zeni-daje-placu-da-ne-dolazi-na-posao-pa-zavrsili-na-sudu/>, accessed 10 March 2017. There is no further follow-up to this unusual saga.

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

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes. The definition of a pregnant worker is provided in Article 6(1)(10) of the Act on Maternity and Parental Benefits³⁰ and Article 3(1)(30) of the Safety-at-Work Act.³¹ Both Acts define a pregnant worker as a worker who has informed the employer of her condition in writing. Both definitions comply with Directive 92/85.

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

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

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

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

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

³⁰ Croatia, *Zakon o roditeljnim i roditeljskim potporama*, Official Gazette *Narodne novine* Nos. 85/08, 110/08, 34/11, 54/13, 152/14 and 59/17.

³¹ Croatia, *Zakon o zaštiti na radu*, Official Gazette *Narodne novine* Nos. 71/2014, 118/2014 and 154/2014.

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

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

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

5.2 Maternity leave

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

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

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

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

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

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

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

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

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

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

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

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

No.

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

Yes. A minimum period of insurance is required: 12 months of consecutive insurance or 18 months with interruptions in the last two years. The prescribed insurance period is the period that the person has accumulated on the basis of his/her employed or self-employed activity or on the basis of salary compensation after the termination of employment. If this condition is not fulfilled, the insured person is entitled to salary compensation amounting to 70 %³² of the budget calculation base (currently EUR 312 (HRK 2 328.20) per month) (Article 24(7) Act on Maternity and Parental Benefits).

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

Yes. Article 36(1) and (2) of the Labour Act guarantee the right of workers returning from maternity, parental, adoption leave or other types of leave associated with childcare responsibilities to return to the same job as that performed before exercising one of these

³² The percentage of compensation was increased from 50 % to 70 % of the budget calculation base since 1 July 2017 in accordance with the Act on Amendments to the Act on Maternity and Parental Benefits, Official Gazette *Narodne novine* No. 59/17.

rights, and if the need for this job no longer exists, the employer shall offer the worker an employment contract for another appropriate job, whose conditions shall not be less favourable than the conditions of the previous job. Article 36(3) of the Labour Act stipulates that a worker who has used some of the maternity and parental rights is entitled to additional professional training if there has been a change in working techniques or methods during the use of one of those rights, and is entitled to any other benefit arising from improved working conditions.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

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

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

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

5.4 Parental leave

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

Yes, by the Labour Act (Official Gazette *Narodne novine* Nos. 93/14 and 127/17) and the Act on Maternity and Parental Benefits (Official Gazette *Narodne novine* Nos. 85/08, 110/08, 34/11, 54/13, 152/14 and 59/17).

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

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

- 5.4.3 Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

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

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

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

If only one parent uses parental leave, its duration is six months (for the first and the second child). The same applies for single parents. If both parents take the leave, its duration is eight months combined (i.e. usually four months for one parent, and four months for the other parent, out of which two months are supposed to be non-transferable).³³

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

- 5.4.5 Is the right of parental leave individual for each of the parents, a family entitlement or a combination of the two? How many months are reserved for each parent on a take-it or leave it basis?

Article 13(3) of the Act on Maternity and Parental Benefits states that the right to parental leave is an individual (personal) right of both employed or self-employed parents. Thus, parental leave is considered a personal right of each parent, even though the total duration of the leave is understood as combining each parent's leave. Two months are reserved for each parent on a 'take it or leave it' basis.

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

Employed or self-employed parents are entitled to use parental leave in its entirety or in parts. In the latter case it can be used in up to two periods per year, each time for at least 30 days. Parental leave may be used until the child turns 8. Parental leave may be used as a right to work half of the full working time (Article 15(4) Act on Maternity and Parental Benefits), which is basically a form of part-time parental leave. However, there is no other

³³ These non-transferrable two months are non-transferrable because they practically do not exist if only one parent uses the leave. So the other parent has to take at least 2 months of parental leave.

flexibility in deciding how to use part-time parental leave (e.g. to work only some days a week).

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

Both the Labour Act and the Act on Maternity and Parental Benefits are silent on the question of a notice period in relation to the employer when a worker takes parental leave for the first time. The only prescribed notice period is the one in relation to the Croatian Health Insurance Institute (15 days before the starting date of the leave, Article 44(4) Act on Maternity and Parental Benefits). Employed parents who intend to change the modality of their use of parental leave or to take up the unused part of parental leave are obliged to notify their employer at least 30 days in advance and obtain the employer's written consent. The employer is entitled to deny or postpone the employee's intended change for up to a maximum of 30 days (Article 47(1) and (2) Act on Maternity and Parental Benefits), in accordance with the provisions on labour relations. This is a rather vague provision, because the only situation in which the employer will be required to provide an alternative is in connection with the protection of health and safety at work in relation to a woman who has recently given birth or is breastfeeding. In other cases, a worker who is not satisfied with the employer's decision and believes that his or her labour rights have been violated has no other option but to request the protection of his or her rights and initiate legal proceedings in a labour dispute before the competent court.

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

No. Other than the right to adoption leave and other general forms of temporal support and/or a cash allowance, there are no other specific measures designed for adoptive parents. Adoptive parents are entitled to parental leave in equal duration and under the same conditions as biological parents.

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

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

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

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

- 5.4.11 Are there special arrangements for small firms?

No.

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

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

1. part-time work (half of the full working time) due to increased care for a child under three years of age: after parental leave, one of the employed or self-employed parents is granted this right if a child needs increased care for health and developmental reasons, according to the professional opinion of and an assessment by the family physician and the competent committee of physicians designated by the Croatian Health Insurance Institute (Article 16 Act on Maternity and Parental Benefits);
2. leave of absence due to care for a child with severe developmental disabilities until the child turns eight: after maternity or after/during parental leave, one employed or self-employed parent of a child with a severe physical or mental impairment or severe mental illness is granted this right based on the findings and professional opinion of the competent body for medical expertise in accordance with the rules of the mandatory health insurance system. Both parents have to be employed or self-employed before taking up this right and for its entire duration (Article 23(1) Act on Maternity and Parental Benefits);
3. part-time work (half of the full working time) due to care for a child with severe developmental disabilities until the child turns eight, and after that time for as long as the need exists: after maternity or after/during parental leave, one of the employed or self-employed parents of a child with a severe physical or mental impairment or severe mental illness is granted this right based on the findings and professional opinion of the competent body for medical expertise in accordance with the rules of the mandatory health insurance system. Both parents have to be employed or self-employed before taking up this right and for its entire duration. This right may be granted for a certain period of time, depending on the findings of the competent body for medical expertise (Article 23(2) Act on Maternity and Parental Benefits).

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

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

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

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

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

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

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

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

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

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

Yes.

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

No. Parental benefits are paid from the state budget.

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

Parental benefits (allowance or salary compensation) for employed and self-employed parents are paid at the expense of the state budget. Parental benefits (paid during parental leave) for employed or self-employed persons is 100 % of the monthly earnings, but cannot exceed a maximum of 120 % of the budget calculation base (currently EUR 536 (HRK 3 991.20) per month) (Article 24(2) Act on Maternity and Parental Benefits). It cannot be lower than 70 % of the budget calculation base (currently EUR 312 (HRK 2 328.20) per month) (Article 24(3) Act on Maternity and Parental Benefits).³⁴ The sector of employment or self-employment is irrelevant.

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

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

³⁴ The percentage of compensation was increased from 1 July 2017 onwards in accordance with the Act on Amendments to the Act on Maternity and Parental Benefits, Official Gazette *Narodne novine* No. 59/17.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

No.

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

Not applicable.

5.6 Time off/care leave

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

Yes. Under Article 39(1)(5) of the Compulsory Health Insurance Act,³⁵ a worker is entitled to paid leave to take care of a close family member (a child or spouse). The beneficiary is entitled to salary compensation for the duration of 60 days per illness for a child younger than 7, 40 days per illness for a child from 7-18 and 20 days per illness for a child older than 18 years and for a spouse. Leave is taken on a full-time basis, and the salary compensation is paid by the employer, at the expense of the Croatian Health Insurance Fund (i.e. the employer is reimbursed for the full amount by the Croatian Health Insurance Fund). The amount of compensation is 100 % of the calculation base (the average salary in the six months preceding the care leave) if a child is younger than 3, and 70 % of the calculation base in all other cases. Salary compensation may not exceed EUR 561 (HRK 4 257.28). The size of the employer is irrelevant.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

Surrogacy is not legally regulated in Croatia.

5.8 Leave sharing arrangements

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

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

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

Yes. Parental leave is transferable, in its entirety or in parts (Article 14(4) Act on Maternity and Parental Benefits). If only one parent uses parental leave, its duration is 6 months for

³⁵ Croatia, *Zakon o obveznom zdravstvenom osiguranju*, Official Gazette *Narodne novine* Nos. 80/13 and 137/13.

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

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

5.9 Flexible working time arrangements

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

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

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

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

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

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

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

or set in advance or that workers determine working hours independently. Consequently, the part-time/full-time work distinction is not directly relevant for its application.

Another option, which in practice allows for more flexibility in working time arrangements, is the breastfeeding break, pursuant to Article 19 of the Act on Maternity and Parental Benefits. A female worker who is breastfeeding her child is allowed a two-hour break per working day, regardless of whether the child's father is using any of the rights guaranteed under the same act. However, this right only applies to female workers on full-time contracts, until the child reaches the age of one year. It can be used on a one-time basis or two times per day (in the latter case, the duration of the break is one hour per break). The break is remunerated by the Croatian Health Insurance Fund (at 100 % of the budget calculation base, recalculated on an hourly rate) and is included in the duration of the working time. Recent analysis shows that only a marginal number of women use this option and it is usually used at the end of the working time, so in effect it shortens the full working time by two hours.³⁶ However, this right (or its equivalent) is not recognised for adoptive mothers or male workers in general.

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

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

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

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

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

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

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

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

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

Article 8(1)(3) of the Anti-Discrimination Act includes in its field of application the area of social security, including social welfare, pension, health and unemployment insurance. It does not differentiate between statutory and occupational social security schemes. Occupational social security schemes in Croatia are rare. The legal possibility of establishing occupational pension schemes exists within the framework of the Act on Voluntary Pension Funds. This Act regulates both open-ended and closed voluntary pension funds. Voluntary closed pension funds (part of the third or voluntary pension pillar) are financed by employers, unions or associations of independent or occupational activities.³⁷ The Act specifically refers to the transposition of Recast Directive 2006/54 and Directive 2010/41 (Article 2). Article 183 of this Act requires that the application of the statutes of the closed voluntary pension funds shall not directly or indirectly cause any differential treatment of men and women or allow inequalities in rights from the voluntary pension insurance based on gender. Examples of prohibited differential treatment are listed in a non-exhaustive manner and include access to membership; the compulsory or optional nature of participation; laying down different rules regarding access to membership or the minimum period of membership required to obtain the benefits; setting different conditions in the event of the suspension of rights during maternity leave or taking care of children; different conditions applicable only to members of one sex upon the termination of membership; etc.

The Act on Pension Insurance Companies³⁸ also transposes Directive 2006/54 and Directive 2010/41 in its field of application (the establishment and operation of statutory and voluntary pension insurance companies and the regulation of statutory and voluntary pension schemes). It contains a specific clause on gender equality (Article 105), which specifies that the calculation of the pension paid under that Act must not, directly or indirectly, result in inequality or a denial of rights based on gender. It further states, in a non-exhaustive manner, what is understood under 'inequality or a denial of rights' (different conditions for calculating qualifying periods, different ages as a condition for the recognition of rights, unless otherwise prescribed, and different amounts of pension due to diverging conditions which are applicable solely to persons of one sex).

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

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

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

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

³⁷ Croatia, *Zakon o dobrovoljnim mirovinskim fondovima*, Official Gazette *Narodne novine* Nos. 19/14 and 29/18.

³⁸ Croatia, *Zakon o mirovinskim osiguravajućim društvima*, Official Gazette *Narodne novine* Nos. 22/14 and 29/18.

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

No.

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

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

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

No.

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

There are no specific difficulties.

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

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

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

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

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

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

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

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

Between 2010 and 2030, the different pensionable ages for male and female workers and self-employed persons (currently the only exclusion from Directive 79/7 in Croatian legislation) will be gradually equalised and the retirement age increased from 65 to 67 (for both sexes) by 2038. The right of women to continue working even after reaching the currently prescribed retirement age for women (until reaching the retirement age currently prescribed for men) has been confirmed in a judgment of the County Court in Varaždin.³⁹ An example of the less favourable position of women in statutory sickness insurance in practice includes lower salary compensation for sickness when a woman takes sick leave (e.g. to take care of a sick child) in the six months after her return from parental leave. This is because sickness benefits are calculated in the range of 100 % to 70 % of a calculation base, which is the average salary paid in the six months prior to the month in which sick leave is taken, depending on the reason for sick leave. However, the calculation base for the sickness benefits of a woman who returns from parental leave and who takes sick leave to take care of a sick child under the age of three will include the average amount of cash allowances received during parental leave (which cannot be more than 120 % of the calculation base, i.e. currently around EUR 536 (HRK 3 991.20), resulting in much lower sickness benefits than those calculated from the average salary. Since only around 3 % of fathers take parental leave, female workers are usually more strongly affected by this provision.

³⁹ Varaždin County Court, GŽ-473/03 of 20 December 2002. A female worker reaching the statutory prescribed retirement age for women (which is gradually to be equalised with that of men) is entitled to retire when she reaches the currently applicable retirement age for women, but may not be forced to do so by the employer (as is often the case in practice).

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

No.

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

There are no specific difficulties.

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

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

Yes, by the Act on Maternity and Parental Benefits (Official Gazette *Narodne novine* Nos. 85/08, 110/08, 34/11, 54/13, 152/14 and 59/17), the Act on Pension Insurance Companies (Official Gazette *Narodne novine* Nos. 22/14 and 29/18), and the Act on Voluntary Pension Funds (Official Gazette *Narodne novine* Nos. 19/14 and 29/18).

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

The Income Tax Act⁴⁰ provides the most detailed description of self-employed activities for the purposes of the taxation of income from those activities. Article 29 specifies that self-employed activities are the activities of craftsmen, four categories of independent activities performed by 1. health workers, veterinarians, lawyers, notaries, auditors, engineers, architects, tax advisers, insolvency managers, court interpreters, translators, tourist guides, and similar; 2. freelance scientists, writers, innovators, and similar; 3. freelance teachers and similar; 4. freelance journalists, artists and sportsmen; and persons employed in agriculture and forestry.

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

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

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

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

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

⁴⁰ Croatia, *Zakon o porezu na dohodak*, Official Gazette *Narodne novine* No. 115/16.

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

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

The Government's 'Guidelines for the development and implementation of active employment policy measures in the period 2015 to 2017'⁴¹ is a national strategic document that sets priorities and goals in the overall employment policy. It contains three types of activities (services, measures and subsidies) aimed at labour market intervention and the majority of those activities are implemented by the Croatian Employment Service. The promotion of gender equality in employment and self-employment is one of the underlying elements of all activities.

According to the data gathered by the Ombudsperson for Gender Equality, labour market interventions in 2015 included more women (60.1 %). However, the share of male beneficiaries is larger for the interventions that include subsidies (55.9 %).⁴² The Ministry of Entrepreneurship and Crafts has also approved more subsidies to male applicants (69.3 %).

The new National Policy for Gender Equality, which was supposed to cover the period 2016 – 2020 has still not been adopted.⁴³ The work on the drafting of the Fifth National Policy for the Promotion of Gender Equality started with the formation of the Working Group in 2015. However, due to the political and governmental crisis throughout 2016 and the first half of 2017, the composition of the Working Group changed several times and the work is still in progress. It was decided that the Policy will cover the period from 2017 to 2022, but even well into 2018 there is still no Policy in sight. It is expected that the new policy will include the same or similar areas as the previous one, meaning that the strengthening of female entrepreneurship will be included as one of the policy priorities.

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

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

No. There is no special system of social protection for self-employed persons (i.e. they are covered by the same legislation which is applicable to workers). The social protection system in the Republic of Croatia is available to all workers, including self-employed workers. It covers mandatory pension, social and health insurance. Self-employed workers are entitled to the following benefits: disability, survivor's, sickness, work injury, occupational disease, unemployment, maternity and parental benefits, new-born child assistance, income-based child allowance and social welfare. Currently, there is only a

⁴¹ 'Guidelines for the development and implementation of active employment policy measures in the Republic of Croatia in the period from 2015 to 2017', <http://www.mrms.hr/wp-content/uploads/2015/02/smiernica-apz.pdf>, accessed on 6 June 2016.

⁴² Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

⁴³ The previous policy expired in 2015. The Office for Gender Equality is in charge of preparing the new policy.

public social protection system, but self-employed workers can benefit from voluntary pension insurance through the payment of contributions. Spouses and life partners are eligible to benefit from social protection in accordance with relevant national law. This is a mandatory requirement: for example, the health or pension insurance of the main beneficiary covers spouses, minor children and life partners. There are no mandatory schemes for the self-employed worker that are voluntary for his/her spouse or life partner, or vice versa.

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

Yes. The status of self-employed parents regarding maternity/parental rights is equal to that of parents who are employees (Article 9(1) of the Act on Maternity and Parental Benefits), provided that they have the status of an insured person in the compulsory health and pension insurance. Self-employed parents within the meaning of the Act on Maternity and Parental Benefits include persons who themselves perform certain activities. Consequently, the position of the female spouses of self-employed workers (including non-marital spouses) is determined according to their own employment, self-employment, unemployment or other status within the meaning of the Act on Maternity and Parental Benefits. Under the Crafts Act⁴⁴ (Article 30) members of the craftsman's family (spouse, children, parents, adoptive parents, adopted children, children of a spouse and other dependent family members) are entitled to assist the craftsman in the performance of his activities (without having to be employed by him). However, there is no provision granting the spouses of self-employed workers social protection or maternity benefits based exclusively on this family relationship. These entitlements are provided in accordance with their personal status in the statutory insurance (i.e. pension, sickness, unemployment).

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

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

Yes. The principle of the equal treatment of self-employed persons in occupational pension schemes is implemented through the gender equality clause in the Act on Pension Insurance Companies (Article 105), which specifies that the calculation of a pension paid under that Act shall not, directly or indirectly, result in inequality or a denial of rights based on gender. It further states, in a non-exhaustive manner, what is understood under 'inequality or a denial of rights' (different conditions for calculating qualifying periods, different ages as a condition for the recognition of rights, unless otherwise prescribed, and different amounts of pension due to diverging conditions applicable solely to persons of one sex). Closed pension funds financed by associations of independent or occupational activities are obliged to accept all members of the association and self-employed persons as their members (Article 120 Act on Voluntary Pension Funds).

⁴⁴ Croatia, *Zakon o obrtu*, Official Gazette *Narodne novine* No. 143/2013.

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

No.

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

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

9. Goods and services (Directive 2004/113)

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

Yes. Both the Anti-Discrimination Act and the Gender Equality Act implement Directive 2004/113 in their respective fields of application. Both Acts also go beyond the scope of application of this Directive. Article 6(4) of the Gender Equality Act explicitly prohibits any discrimination in relation to access to and the supply of goods and services. Article 8(1)(8) of the Anti-Discrimination Act specifies its field of application in the area of access to and the supply of goods and services. Both Acts explicitly mention that they are aligned with Directive 2004/113 (Article 1.a ADA; Article 1.a GEA).⁴⁵

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

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

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

No.

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

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

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

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

Yes. Exceptions to the general prohibition of discrimination on particular discriminatory grounds (Article 9 Anti-Discrimination Act) were amended and redefined in 2012. A provision which stipulated that the differences in premiums and benefits where the use of

⁴⁵ Article 1.a was inserted in the GEA with the Act on Amendments to the Gender Equality Act (Official Gazette *Narodne novine* No. 69/17. It contains the list of all EU directives in the field of gender equality with the statement that the provisions of GEA are aligned therewith.

sex was a factor of calculation was not deemed to be discrimination was removed with effect from 30 June 2013, in view of the decision of the Court of Justice of the EU in the *Test-Achats* case. Age as a factor in calculation still remains an acceptable exception (Article 9(2)(6) Anti-Discrimination Act).

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

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

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

No.

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

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

In the field of reproductive health, problems reported in the previous reporting period continue. The issues primarily concern access to a legally induced termination of pregnancy, the accessibility of modern forms of contraception and different standards for the care and protection of women during delivery (giving birth). Regarding the first issue, health workers in many health institutions in Croatia refuse to perform abortions, based on a so-called 'appeal to conscience' or a 'conscientious objection'. This is a personal right of health workers, but health institutions are nevertheless obliged to engage a qualified person to perform this procedure. However, a study conducted by the Ombudsperson showed that abortions could not be performed in 20 % of health institutions because all the health workers at those institutions had a conscientious objection to abortion. Many of these hospitals are in rather remote areas, meaning that women in need of such a service have to travel to another facility far from their place of residence.⁴⁶ In addition, the Croatian Health Insurance Fund does not cover the cost of performing such procedures, unless an abortion is necessary due to medical reasons. The Ombudsperson for Gender Equality reported several complaints during 2017 concerning the denial by certain health institutions to perform abortions, and the difficulties experienced by women in such cases.⁴⁷ In February 2017, the Constitutional Court of the Republic of Croatia adopted a Decision in the matter of reviewing the constitutionality of an act regulating the right to freedom of choice regarding childbirth.⁴⁸ The court rejected the request for a review of the constitutionality of this act, which was adopted in 1988, confirming that the right of a woman to mental and physical integrity, including the choice of whether or not to conceive a child and how to develop the pregnancy, is inherent in the constitutionally guaranteed

⁴⁶ Ombudsperson for Gender Equality (2014), *Annual Report for 2014*, http://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf, accessed 6 June 2016. See also Ombudsperson for Gender Equality (2015), *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016. Ombudsperson for Gender Equality (2018), *Annual Report for 2017*, <http://www.prs.hr/index.php/izvjesca/2017>, accessed 4 April 2018.

⁴⁸ Constitutional Court of the Republic of Croatia, Decision of 21 February 2017, U-I-60/1991.

right to privacy. The right to privacy includes self-determination, freedom of choice and dignity. It has therefore confirmed the existing freedom of women to decide on the termination of their pregnancy (within the legally prescribed limits), but has instructed the Croatian legislator to adopt the new act regulating the freedom of choice, because the old 1988 act had been adopted before Croatian independence and contains some formal inconsistencies with the Croatian Constitution. However, any new legislative instrument could not prohibit the termination of pregnancy, as it would be contrary to the Constitution. The new legislation is still in its early preparatory phase (at the beginning of 2018, the working group for drafting the new act was formed). In parallel, the activities of civil society organisations and other interest and religious groups (both for and against the freedom of choice) are intensifying. The second issue regarding access to healthcare concerns the accessibility of modern forms of contraception, in particular the EllaOne emergency contraceptive or the 'morning after' pill. Even though this pill has been made available in pharmacies without a prescription (following a decision taken by the European Commission), the pharmacies in Croatia have to follow the guidelines issued by the Croatian Ministry of Health, which require that anyone buying this contraceptive must fill in a form and provide certain information about their sexual behaviour and reproductive health. Pharmacies are instructed not to issue the contraceptive if certain answers are given. The third issue concerns unequal standards for the care and protection of women giving birth, depending on the hospital in question.⁴⁹ For example, maternity units in several clinical hospitals do not comply with the required quality standards, the practice of organising and charging maternity courses differs, the possibility of a partner being present during childbirth is limited in some hospitals, the fees for voluntary abortions may vary significantly from hospital to hospital, etc. These standards and prices should be equalised to ensure equal quality and standards of care.

In the field of banking and financial services, there are reports of discriminatory treatment in relation to the granting of loans to pregnant women, or to persons (of both sex) who take maternity and parental leave. Some banks tend to unjustifiably categorise such clients as an excessive risk and assess their lending capacity according to their income during parental leave, which is lower than their usual salary. The situation of pregnant women asking for loans was analysed in a study conducted by the Ombudsperson for Gender Equality in 2013,⁵⁰ and following recommendations issued by the Ombudsperson for Gender Equality, many banks changed their practices. However, there were still reports throughout 2015 that male clients have been treated less favourably by the banks because they were on parental leave or were not recognised by insurance companies as eligible for certain compensation in life insurance policies for newborn children, with the explanation that such compensation is only for mothers who have such policies.⁵¹

⁴⁹ See also United Nations Committee on the Elimination of Discrimination against Women (2015), *Concluding observations on the combined fourth and fifth periodic reports of Croatia*, 28 July 2015, CEDAW/C/HRV/CO/4-5.

⁵⁰ Ombudsperson for Gender Equality (2013), *Annual Report for 2013*, <http://www.prs.hr/index.php/izvjesca/izvjesce-o-radu-za-2013>, accessed 15 September 2015.

⁵¹ Ombudsperson for Gender Equality (2015) *Annual Report for 2015*, <http://www.prs.hr/attachments/article/1923/Izvje%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20ravnopravnost%20spolova%20za%202015.pdf>; accessed 6 June 2016.

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

10.1 Has your country ratified the Istanbul Convention?

No. The Convention was signed on 22 January 2013 and the process of ratification has started on 22 March 2018, with the decision of the Government to submit the Act on the ratification of the Istanbul Convention to the Croatian Parliament.⁵² The vote in Parliament is expected in the upcoming period (April 2018).⁵³

Ratification of the Istanbul Convention was a matter of fierce political debate and civil activism in the reporting period. The conservative interest groups have organised numerous rallies against the ratification, culminating in a massive rally in the capital of Croatia on 24 March 2018. The majority party in the governing coalition is split over the issue, but it seems that, with the support of the Prime Minister who also heads the majority party, the forces for ratification have prevailed, and the vote in Parliament will run smoothly.⁵⁴ In addition, other political parties in Parliament have announced their support for the ratification. The major concern of the forces against ratification is that the Convention introduces 'gender ideology' in the Croatian legal and educational system. The Government has therefore decided to attach the following 'interpretative statement' with the ratification instrument:

'The Republic of Croatia considers that the aim of the Convention is to protect women against any form of violence and to prevent, prosecute and eliminate any form of violence against women and domestic violence.

The Republic of Croatia considers that the provisions of the Convention do not contain the obligation to introduce gender ideology in the Croatian legal and educational system, nor the obligation to change the constitutional definition of a marriage.

The Republic of Croatia considers that the Convention is in line with the provisions of the Constitution of the Republic of Croatia, especially with the provisions on the protection of human rights and fundamental freedoms, and that the Convention shall be applied in accordance with the said provisions, principles and values of the constitutional order of the Republic of Croatia.'

In view of these political controversies, nobody seems to pay attention to the financial implications of the Convention's implementation. The statement containing the reasons accompanying the draft Act on Ratification states that in addition to the existing annual financial resources from the state budget which have been earmarked for combating domestic violence (around HRK 70 million (EUR 950 000) annually), an additional HRK 1 490 000 (EUR 200 000) will be designated in 2018 for the implementation of the Convention. However, no financial analyses have confirmed whether this amount is appropriate.

⁵² Draft Act on the Ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, <https://vlada.gov.hr/UserDocsImages//Sjednice/2018/03%20o%C5%BEujak/86%20%20sjednica%20VRH/86%20-%201%20IK.pdf>, accessed 9 April 2018.

⁵³ The Act promulgating the Convention was adopted in Parliament on 13 April 2018. The Act was published in the Official Gazette Narodne novine – International Agreements No. 3/2018 and entered into force on 24 May 2018. In accordance with Article 76(2) of the Convention, it has entered into force, as regards Croatia, on 1 October 2018.

⁵⁴ The vote took place on 13 April 2018 (110 votes for, 30 against with 2 abstentions). See <http://www.sabor.hr/prijedlog-zakona-o-potvrdivanju-konvencije-vij0001>, accessed 6 July 2018.

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

11.1 Victimisation

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

Yes. Victimisation in relation to sex discrimination and other discriminatory grounds is prohibited within the material scope of application of the Gender Equality Act and the Anti-Discrimination Act, respectively. Article 2 of the Gender Equality Act was amended in 2017 to include a more detailed legal description of victimisation.⁵⁵ Whereas the previous provision provided that no one shall suffer adverse consequences for providing a statement before competent bodies as a witness or a victim of sexual discrimination or for alerting the public to sexual discrimination, the new provision includes all persons, not just victims or witnesses of discrimination, and all complaint procedures, formal or informal, in which such persons participated. The new provision of Article 2 now contains two paragraphs with the broad description of actions that should not serve as a basis for victimisation. It states that no one shall be put at a disadvantage or suffer adverse consequences, including being prosecuted or exposed to other legal proceedings, as a result of reporting discrimination either officially or unofficially in good faith, witnessing discrimination, refusing an instruction to discriminate, testifying in any way in a procedure for protection against sex discrimination, or in any other manner participating in any proceedings conducted because of sex discrimination. No one shall be put at a disadvantage or suffer adverse consequences, including being prosecuted or exposed to other legal proceedings for having alerted the public about sex discrimination in good faith.

The new provision on victimisation in the Gender Equality Act is now even wider in scope than Article 7 of the Anti-Discrimination Act, because it also includes protection against victimisation for alerting the public about sex discrimination. However, there is still no domestic case law on victimisation.

11.2 Burden of proof

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

Yes. The wording of the two main anti-discrimination laws in Croatia, the Anti-Discrimination Act and the Gender Equality Act, on the burden of proof slightly differs, which may lead to an inconsistent interpretation. Under Article 20 of the Anti-Discrimination Act, a party claiming discrimination does not have to prove it with any degree of certainty – it suffices to establish a probability (Croatian: *učiniti vjerojatnim*) that the discrimination occurred ('shall make it plausible that discrimination has taken place'), while the respondent has to prove the opposite with a sufficient degree of certainty. Failing this, it is considered that the right to equal treatment has been violated.⁵⁶ In two Supreme Court cases, GŽ-25/11 and GŽ-41/11 (involving discrimination based on sexual orientation), the rules on the burden of proof from the Anti-Discrimination Act were interpreted so as to shift the burden of proof to prove that there had been no discrimination to the respondent, when the meaning of the statements made was obvious in itself

⁵⁵ Act on Amendments to the Gender Equality Act, Official Gazette *Narodne novine* No. 69/17. The amendments entered into force on 22 July 2017.

⁵⁶ Whereas the first-instance court in this case found that the probability of discrimination requirement had not been satisfied, the appellate court was of the opinion that it was enough for the claimant in a representative action to present the respondent's statement to the court and concluded that the 'purposive meaning of that statement was evident in itself: humiliation and degradation of that category of persons'. The claimant showed with probability that discrimination against the target group had occurred as a result of that statement, which was enough for the burden of proof to shift to the respondent.

(degradation and humiliation).⁵⁷ In another case dealing with the burden of proof from the Anti-Discrimination Act, the court interpreted the 'standard of probability' to mean that a party claiming discrimination has to prove that 'he/she was placed in a less favourable position which might be a consequence of direct or indirect discrimination' on any of the grounds listed in this Act.⁵⁸ This interpretation seems to come close to the burden of proof provision in the Gender Equality Act, although the wording is formulated much more broadly. According to Article 30(4) of the Gender Equality Act, a party claiming that his/her right has been violated has to present facts that raise the suspicion that discriminatory behaviour has occurred; the burden of proof then shifts to the opposing party who has to prove that there has been no discrimination. Theoretically, this is an even lighter burden than proving a probability under the Anti-Discrimination Act. The application of the rules on the reversal of the burden of proof is a challenging task for the Croatian judiciary.

Case law involving sex discrimination dealing with the interpretation of the burden of proof from the Gender Equality Act is still non-existent. Several discrimination cases interpreting the burden of proof rules deal with factual situations which occurred prior to the coming into force of the Gender Equality Act, and apply the burden of proof rules that were at that time contained in the old Labour Act (2004).⁵⁹ These rules were worded similarly to Article 30(4) of the Gender Equality Act ('raise a suspicion').⁶⁰

11.3 Remedies and Sanctions

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

A victim of discrimination is entitled to seek damages in accordance with the general provisions for the compensation of damages. The Gender Equality Act and the Anti-Discrimination Act prescribe sanctions for violations of its provisions (punishable as a misdemeanour) in the form of monetary fines. Sexual harassment is also punishable under the Criminal Act (Article 156).⁶¹

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

⁵⁷ In both cases, which share the same factual background, the first-instance courts concluded that the claimants had not made discrimination plausible, i.e. they did not show a probability that the respondent's statement had caused direct discrimination. See the judgments of the Zagreb County Court Pnz-8/10 and Pnz-7/10. There are no similar reported cases on the burden of proof involving gender discrimination.

⁵⁸ Bjelovar County Court, GŽ-458/2012.

⁵⁹ The anti-discrimination case law in general is still rather confusing, partially because the claimants themselves claim that discrimination has occurred, without specifically stating on which grounds; or even change the grounds of discrimination during court proceedings. See, e.g. cases VSRH Revr-856/2012; VSRH Revr-650/2008.

⁶⁰ In one case involving a claim of sexual harassment at work (Bjelovar County Court, GŽ-2000/2012), the court found that the standard for shifting the burden of proof had been satisfied, because the claimant had substantiated her claim with written proof from a third party (a telecom operator), warning her employer that his company was not registered to provide telephone sex services. In one decision of the Croatian Constitutional Court (U-III-7490/2014), the Constitutional Court found that a 'subjective assessment' of the claimant that she deserved promotion does not suffice to prove that she had been placed in a less favourable position.

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

in proceedings deciding upon that right as the main issue (Article 16(1) Anti-Discrimination Act).

Pursuant to Article 24(1) of the Anti-Discrimination Act, associations, bodies, institutions or other organisations set up in accordance with the law and having a justified interest in protecting the collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment, may bring a legal action against a person that has violated the right to equal treatment. Representative action is a collective remedy available under the Gender Equality Act as well, but the general conditions are prescribed in the ADA. So far, it has predominantly been used by associations fighting against discrimination based on sexual orientation.⁶²

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

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

11.4 Access to courts

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

Pursuant to the Anti-Discrimination Act, municipal courts have subject-matter jurisdiction in litigation based on a special legal action for protection against discrimination (Articles 17(1) and 18(1) Anti-Discrimination Act). County courts adjudicate in the first instance in disputes prescribed by law and decide on appeal against the decisions of the municipal courts. In the field of equality law, county courts have subject-matter jurisdiction for joint legal actions (representative actions) regarding protection against discrimination. The Supreme Court is the highest judicial authority, whose task it is to ensure the uniform application of laws and the equality of all before the law (Article 116 of the Constitution of the Republic of Croatia). In civil proceedings, its competences include deciding on appeals against the first-instance decisions of county courts and revisions as extraordinary legal remedies against (final and binding) second-instance decisions, in cases prescribed by law.

Apart from the special legal action for protection against discrimination, the Anti-Discrimination Act authorises any person who claims that her/his rights have been violated as a result of discrimination to seek protection in proceedings deciding upon that right as the main issue (Article 16(1) Anti-Discrimination Act). The Gender Equality Act authorises any party who considers that her/his rights have been violated due to discrimination described in that Act to file a legal action at the regular court of general jurisdiction (Article 30(1) Gender Equality Act), in other words, to initiate litigation before a municipal court. Despite the relatively satisfactory normative basis, victims of discrimination are often reluctant to initiate court proceedings, given their expected length, cost and the 'stigma' associated with such cases.⁶³

⁶² See for example County Court in Zagreb Pnz-8/10 and Pnz-7/10.

⁶³ Almost 40 % of respondents in a survey on gender equality and discrimination in Croatia conducted in 2010 replied that they would not report gender discrimination by any of the institutional means (i.e. a complaint to the Ombudsperson for gender equality, a Court, etc.). See Kamenov, Ž., Galić, B. (2011), *Rodna ravnopravnost i diskriminacija u Hrvatskoj* (Gender equality and discrimination in Croatia), Ured za ravnopravnost spolova.

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

Pursuant to Article 24(1) of the Anti-Discrimination Act, associations, bodies, institutions or other organisations established in line with the law and having a justified interest in protecting the collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment, may bring a legal action against a person that has violated the right to equal treatment. Representative action is a form of collective redress available under the Gender Equality Act as well, but the general conditions are prescribed in the Anti-Discrimination Act. So far, civil society organisations have been active in seeking protection for the right to equal treatment. Various organisations have been involved in several court cases, either as sole claimants or as interveners, but predominantly in the field of discrimination based on sexual orientation.⁶⁴

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

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

11.5 Equality body

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

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

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

11.6 Social partners

⁶⁴ See, for example, cases before County Court in Rijeka P-15/10; County Court in Zagreb Pnz-8/10 and Pnz-7/10.

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

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

11.7 Collective agreements

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

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

The general conclusion from the analysis of the collective agreements in view of gender equality, equal opportunities and a work-life balance conducted by the Ombudsperson for Gender Equality in 2009 is that the social partners need further instructions regarding the legal framework for equal treatment and equal opportunities, given that many collective agreements themselves contain provisions that generate inequalities based on sex.⁶⁵ Out of 120 collective agreements analysed, only 7 contained provisions on equal pay and only in a general manner. There are no monitoring mechanisms for this obligation whatsoever. To date, this is the only comprehensive analysis of the gender equality provisions in Croatian collective agreements and it is high time for a novel empirical research of this subject.

⁶⁵ *Analiza kolektivnih ugovora*, <http://www.prs.hr/index.php/analize-i-istrazivanja/obrazovanje-3/180-analiza-kolektivnih-ugovora>, accessed 15 September 2015.

12. Overall assessment

The EU gender equality *acquis* in general has been properly transposed in the existing legislative instruments. However, the two horizontal Acts (the Gender Equality Act and the Anti-Discrimination Act) may cause confusion and include overlaps, since both of these normative instruments prohibit gender discrimination. Proper implementation in actual practice takes time. It is still hard to evaluate the capacity of the national judiciary to apply gender equality law. Case law in this field is still scarce, despite the fact that gender continuously ranks among the top three discriminatory grounds, according to various studies.⁶⁶

In the last decade, a significant normative expansion of anti-discrimination legislation has occurred, introducing new legal terminology and standards, which were more often than not left undefined, open to interpretation, indeterminate and sometimes inconsistent with other laws. The 'weakness' of the Croatian judicial system is poor accessibility and the non-publication of case law, which transfers into the field of application of anti-discrimination legislation and is the likely cause of inconsistent interpretation, inefficiency and the low visibility of decisions in this field. Specifically regarding gender equality, the public perception of inequality seems to exceed by far the actual case law on gender equality and related issues. For example, gender discrimination is considered the third most common ground of discrimination in the labour market by employed and unemployed persons.⁶⁷ However, case law specifically relating to gender discrimination is extremely scarce. The crucial reason for incoherent and sporadic case law in anti-discrimination cases is the fact that decisions are not published and updated regularly and they are very hard to come by. Media attention is reserved for high-profile cases (such as those in the field of discrimination based on sexual orientation, usually involving civil society organisations). Furthermore, media coverage of certain cases may not always be accurate. The examination of the case law of lower courts often boils down to personal contacts and collegial assistance by judges. The published case law (judgments of the Supreme Court, judgments of the Constitutional Court, selected judgments of the county courts) is classified in a non-transparent manner and case-law search engines are far from user-friendly. Perhaps these hurdles might not appear so difficult for a seasoned researcher or other persons skilled and trained to investigate different areas of anti-discrimination protection, but to an average user and to those who should benefit from it the most - the victims of discrimination - they might be insurmountable. It also has a negative impact on the uniformity and efficiency of judicial protection throughout Croatia, because until the Supreme Court takes a position on a certain issue (which may not necessarily happen), the courts are basically left without the possibility of knowing the positions and interpretations of other courts. Their only points of reference are internal interpretations by that particular court, provided that they exist. There is no legal obligation for courts to publish final and binding judgments, or judgments pending appeal. Although courts at all levels have their own websites where, applying the rules on anonymization, case law could be published, in most cases this is not done at all.

⁶⁶ For a study on the prevalence of gender discrimination in the Croatian labour market see Franc, R. (ed.) (2010), *Raširenost i obilježja diskriminacije na hrvatskom tržištu rada* (Prevalence and characteristics of discrimination in the Croatian Labour Market), Zagreb, Institut Ivo Pilar.

⁶⁷ Franc, R. (ed.) (2010), *Raširenost i obilježja diskriminacije na hrvatskom tržištu rada* (Prevalence and characteristics of discrimination in the Croatian Labour Market), Zagreb, Institut Ivo Pilar.

Annexes

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