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Country report

Gender equality

How are EU rules transposed into
national law?

Slovenia

Tanja Koderman Sever

Reporting period 1 January 2019 – 31 December 2019

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1 Introduction

1.1 Basic structure of the national legal system

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

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

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

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

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

1.2 List of main legislation transposing and implementing the directives

- Employment Relationship Act, Official Gazette of the Republic of Slovenia, No. 22/2013;
- Protection Against Discrimination Act, Official Gazette of the Republic of Slovenia, No. 33/2016;
- Act on Equal Opportunities for Women and Men, Official Gazette of the Republic of Slovenia Nos 59/2002 and 61/2007;
- Act on the System of Salaries in the Public Sector, Official Gazette of the Republic of Slovenia, Nos 95/2007, 69/2008 and 107/2009;
- Pension and Invalidity Insurance Act, Official Gazette of the Republic of Slovenia, 96/2012 and 39/2013;
- Act on Volunteering, Official Gazette of the Republic of Slovenia, No. 10/2011;
- Parental Protection and Family Benefits Act, Official Gazette of the Republic of Slovenia, No. 26/2014 and 14/2018;
- Health Care and Health Insurance Act, Official Gazette of the Republic of Slovenia, Nos 9/92, 13/93, 9/96, 29/98, 77/98, 6/99, 56/99, 99/2001, 42/2002 and 60/2002;
- Labour Market Regulation Act, Official Gazette of the Republic of Slovenia, No. 80/2010, 55/17;
- Prevention of Undeclared Work and Employment Act, Official Gazette of the Republic of Slovenia Nos 36/2000, 118/2006, 12/2007, 29/2010, 57/2012, 32/2014;
- Social Security Act, Official Gazette of the Republic of Slovenia, No. 3/2007;
- Companies Act, Official Gazette of the Republic of Slovenia, No. 65/2009;
- Consumer Protection Act, Official Gazette of the Republic of Slovenia, No. 98/2004;
- Institutes Act, Official Gazette of the Republic of Slovenia, Nos 12/1991, 17/91, 5/92, 13/93, 66/93, 45/94, 8/96, 31/00 and 36/00;
- Insurance Act, Official Gazette of the Republic of Slovenia, Nos 109/2006, 90/2012;
- Collective Agreements Act, Official Gazette of the Republic of Slovenia, Nos 43/2006 and 45/2008;
- Labour and Social Courts Act, Official Gazette of the Republic of Slovenia, No. 2/04;
- Administrative Dispute Act, Official Gazette of the Republic of Slovenia, Nos 105/06, 107/09, 62/10, 98/11 and 109/12;
- Civil Procedure Act, Official Gazette of the Republic of Slovenia, Nos 73/07, 45/08, 45/08, 111/08, 57/09, 12/10, 50/10, 107/10, 75/12, 40/13, 92/13, 10/14 and 48/15);
- Legal Aid Act, Official Gazette of the Republic of Slovenia, Nos 96/04, 23/08, 15/14, 19/15;
- Criminal Code, Official Gazette of the Republic of Slovenia, No. 50/2012;
- Regulation on the protection of health in the workplace of pregnant workers and workers who have recently given birth or are breastfeeding, Official Gazette of the Republic of Slovenia, No. 82/2003;
- Regulation on measures to protect the dignity of employees in public administration, Official Gazette of the Republic of Slovenia, No. 36/2009;
- Regulation on internal organisation, post classification, posts and titles within the bodies of the public administration and justice, Official Gazette of the Republic of Slovenia, No. 58/2003;
- Regulation on criteria for respecting the principle of gender-balanced representation, Official Gazette of the Republic of Slovenia, No. 103/04.

1.3 Sources of law

The main source of gender equality law is national legislation and case law. The opinions of equality bodies or quasi-judicial bodies do not play an important role.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

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

2.1.2 Other constitutional protection of equality between men and women

The Constitution contains other articles pertaining to equality between men and women. According to Article 22 of the Constitution everyone is guaranteed an equal protection of rights in any proceeding before a court and before other state authorities, local community authorities, and bearers of public authority that decide on his or her rights, duties, or legal interests. According to Article 49, everyone has access under equal conditions to any position of employment.

2.2 Equal treatment legislation

Slovenia has specific equal treatment legislation.

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

3 Implementation of central concepts

3.1 General (legal) context

3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

No relevant surveys and/or reports have been published in Slovenia over the last five years that would provide insights into the legal definition, implementation and limits of central concepts of gender equality law.

3.1.2 Other issues

There are no other issues in relation to the central concepts of gender equality law that the author considers relevant for this country report.

3.1.3 General overview of national acts

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

3.1.4 Political and societal debate and pending legislative proposals

There has been no political and/or societal debate and there are no pending legislative proposals on the central concepts of gender equality.

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

The terms 'gender' and 'sex' are not defined in Slovene legislation or case law.

3.2.2 Protection of transgender, intersex and non-binary persons

Discrimination due to gender identity and gender expression is now explicitly covered by the PADA. In addition, transgender, intersex and non-binary persons can be covered under 'other personal circumstances' in accordance with Article 1 of the PADA.

3.2.3 Specific requirements

No specific requirements have to be fulfilled in order to benefit from legal non-discrimination protection in Slovenia.

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

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

This definition complies with the EU definition of direct discrimination.

3.3.2 Prohibition of pregnancy and maternity discrimination

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

This provision complies with Article 2(2)(c) of Directive 2006/54.

3.3.3 Specific difficulties

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

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition

Indirect sex discrimination is explicitly prohibited in national legislation. Indirect discrimination is defined in national legislation by the AEOWM, PADA and the ERA-1. According to Article 5(3) of the AEOWM, Article 6(2) of the PADA and Article 6(3) of the ERA-1, indirect discrimination occurs when an apparently neutral provision, criterion or practice in equal or comparable situations and under similar conditions has put, puts or might put a person with certain personal circumstances in a less favourable position compared to other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. This definition complies with the EU definition of indirect discrimination.

3.4.2 Statistical evidence

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

3.4.3 Application of the objective justification test

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

3.4.4 Specific difficulties

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

3.5 Multiple discrimination and intersectional discrimination¹

3.5.1 Definition and explicit prohibition

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

3.5.2 Case law and judicial recognition

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

3.6 Positive action

3.6.1 Definition and explicit prohibition

Positive action measures are explicitly allowed in national legislation.

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

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

¹ See for more information Fredman, S. (2016), *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

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

3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

Special measures are temporary measures with the objective of ensuring the realisation of the right to equal treatment, equal opportunity or actual equality and participation in social life of people who are in a less favourable position due to certain personal circumstances.

3.6.3 Specific difficulties

There are no specific difficulties in relation to positive action.

3.6.4 Measures to improve the gender balance on company boards

Slovenia adopted measures that aim to improve the gender balance on company boards with the Regulation on criteria for respecting the principle of gender-balanced representation (RCRPGBR)² in 2004. However, those measures are only in force for state-owned companies.

As regards private companies, there are some non-binding recommendations for gender balance. The Ljubljana Stock Exchange, the Association of Supervisors of Slovenia and the Managers Association of Slovenia created the Code of Corporate Governance (CCG) in 2009. The CCG states that in the composition of the supervisory board 'the participation of both genders, age diversity and diversity in general must be respected.'

This document provides for voluntary compliance with the provisions and is based on the principle of 'consent or explain'. This means that companies must either adjust their recruitment procedures according to the CCG or explain their non-compliance with the recommendations.

In addition, there are two other documents that promote gender equality in decision-making positions in companies. The commitment for a successful future 15/2020 is a document which was prepared in 2011 by the Managers Association. It contains plans proposed by managers in order to increase the competitiveness of the Slovene economy. The goal is to become one of the 15 most developed European countries in 2020. Another document by the Managers Association is *Include All* from 2012, which sets out detailed guidelines for promoting gender equality.³ It presents the state of the (in)equality and measures to enable companies to promote equality (in the field of education, plans for and processes of recruitment and promotion etc).

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

This is considered to be a soft target. There is no timeline within which this figure is to be attained. There is no talk of either women in particular or an underrepresented sex. The law merely says that the representation of one sex must be at least 40 %. There is no specific procedure for the selection of candidates, recruitment or election prescribed. There are no other criteria or requirements. There are neither priority rules nor any other obligations.

² <http://www.pisrs.si/Pis.web/pregledPredpisa?id=SKLE4452>.

³ <http://www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/EkonomskoOdlocanje/Smernice.pdf>.

3.6.5 Positive action measures to improve the gender balance in other areas

Due to very low representation of women in politics, the General Assembly decided to adopt positive action measures in the political field in order to promote gender-balanced representation in decision-making processes. To this end, the European Parliament Elections Act was adopted in 2002, the Act amending the Local Elections Act in 2005 and the Act amending the General Assembly Elections Act in 2006. Those acts introduced 40 % women quotas on candidate lists that need to be respected for elections to the European Parliament and local elections, and 35 % women quotas on candidate lists for parliamentary elections. In addition, there is a requirement that every second candidate in the first half of the candidate list has to be a woman. For elections to the European Parliament, there is a rule that in the first half of the candidate list both genders must be represented by at least one candidate. No similar rule exists for parliamentary elections.

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

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

Harassment is explicitly prohibited in national legislation.

It is prohibited under Article 8(1) of the PADA, Article 7 of the ERA-1 and Article 2 of the Regulation on measures to protect the dignity of employees in public administration (RMPDEPA). According to the above-mentioned legislation, harassment is unwanted conduct, based on any kind of personal circumstance, with the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment is deemed to be discrimination.

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

3.7.2 Scope of the prohibition of harassment

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

3.7.3 Definition and explicit prohibition of sexual harassment

Sexual harassment is explicitly prohibited in national legislation.

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

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

3.7.4 Scope of the prohibition of sexual harassment

Sexual harassment covers not only employment, self-employment and occupation, but also membership and participation in an organisation of workers or employers or any other organisation whose members carry out a particular profession, social protection, including social security and health care, education and access to goods and services.

3.7.5 Understanding of (sexual) harassment as discrimination

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

3.7.6 Specific difficulties

There are no specific difficulties in Slovenia in applying the prohibition of (sexual) harassment.

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

Instruction to discriminate is explicitly prohibited in Slovene legislation. According to Article 9 of the PADA, instructions to discriminate are deemed to constitute direct or indirect discrimination. In addition, they are recognised as direct or indirect discrimination in accordance with Article 6(3) of the ERA-1.

3.8.2 Specific difficulties

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

3.9 Other forms of discrimination

There are no other forms of discrimination prohibited in Slovene legislation.

3.10 Evaluation of implementation

In the view of the author of this report, the national law implementing the EU law concepts discussed in this chapter is satisfactory.

3.11 Remaining issues

There are no remaining issues regarding the central concepts of gender equality law that have not been discussed so far.

4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)

4.1 General (legal) context

4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay

No surveys and/or reports have been published in Slovenia over the last five years that would provide insights into specific factors that explain the gender pay gap in Slovenia and/or difficulties that hamper the realisation of equal pay for women and men.

4.1.2 Surveys on the difficulties of realising equal treatment at work

No surveys and/or reports have been published in Slovenia over the last five years that would provide insights into specific factors that prevent the realisation of equal treatment at work.

4.1.3 Other issues

There are no other issues or specific difficulties in Slovenia relating to the application of the principle of equal pay for equal work and work of equal value in practice and/or to equal treatment at work.

4.1.4 Political and societal debate and pending legislative proposals

There has not been any political and/or societal debate or any pending legislative proposals on the principles of equal pay and equal treatment at work.

4.2 Equal pay

4.2.1 Implementation in national law

The principle of equal pay for equal work or work of equal value is implemented in national legislation. According to Article 133 of the ERA-1, workers must be paid equally for equal work and for work of equal value regardless of their sex, and any provisions in individual employment contracts or collective agreements or any acts by the employer that breach this principle are void. Moreover, Article 1 of the Act on the system of salaries in the public sector (ASSPS) lays down the principle of equal pay for male and female workers for work in comparable posts, titles and functions in the public sector.

4.2.2 Definition in national law

The concept of pay is defined in national legislation.

According to Article 126 of the ERA-1, the concept of pay covers a salary, composed of a basic salary (which must always be paid as a sum of money), a salary on the basis of work efficiency and benefits, and any other types of remuneration if so stipulated in collective agreements. In the opinion of the author, this definition complies with the definition in the TFEU.

4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Slovene law does not explicitly implement Article 4 of Recast Directive 2006/54. It merely provides that workers must be paid equally for equal work and for work of equal value regardless of their sex.

4.2.4 Related case law

There is no leading national case law on the topic.

4.2.5 Permissibility of pay differences

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

4.2.6 Requirement for comparators

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

4.2.7 Existence of parameters for establishing the equal value of the work performed

The national law does not lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions. The concept of work of equal value is not defined.

4.2.8 Other relevant rules or policies

There are no other relevant rules or policies.

4.2.9 Job evaluation and classification systems

There are no examples of good practice or guidance on job evaluation and classification systems.

4.2.10 Wage transparency

National (case) law does not address wage transparency in any way. Data on the salaries of workers in the private sector are considered to be personal data and are therefore not available to co-workers. Due to the lack of information on comparable jobs and the salaries of comparators it is therefore extremely difficult for a potential victim of discrimination to start judicial proceedings in relation to unequal pay before the competent court.

4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not been applied in Slovenia.

4.2.12 Other measures, tools or procedures

There are no other relevant measures, tools or procedures.

4.3 Access to work, working conditions and dismissal

4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

The personal scope in relation to access to employment, vocational training, working conditions etc. is defined in various provisions of the PADA, ERA-1 and the Public Servants Act (PSA).

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

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

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

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

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

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

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

4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

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

According to Article 2 of the PADA, equal treatment must be ensured irrespective of sex, nationality, racial or ethnic origin, religious or other belief, disability, age, sexual orientation, gender identity, gender expression, social standing, education or other personal circumstance, in relation to: conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions irrespective of the type of activity and at all levels of the occupational hierarchy, including

promotion; access to all forms and levels of career orientation and counselling, vocational and professional education and training, further vocational training and retraining, including practical work experience; employment conditions and working conditions, including the termination of the employment contract and salaries; and membership of and participation in an organisation of workers or employers or any other organisation, whose members carry on a particular profession, including the benefits that such organisations provide.

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

4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

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

In addition, there are two provisions in the ERA-1 allowing for exceptions to equal treatment. Article 6(5) of the ERA-1 provides the legal grounds for such exceptions and Article 27(1) of the ERA-1 allows for an exception when advertising a vacancy only for men or only for women if the recruitment of one particular sex constitutes a genuine and determining working requirement, provided that the objective is legitimate and the requirement is proportionate. According to Article 6(5) of the ERA-1, exceptions are allowed if, owing to the nature of the work or circumstances in which the work is performed, a certain personal circumstance might represent a significant and decisive condition in respect of the work, and such a requirement is in proportion to and justified by a legitimate objective.

The author of this report is not aware of any available information on an assessment by Slovenia of the occupational activities referred to in Article 14(2).

4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

Apart from the general provision of the ERA-1 (Article 53) regarding restrictions on concluding fixed-term employment contracts, there is no other special provision protecting women in relation to their state of pregnancy and/or maternity as regards non-renewal of a fixed-term contract and non-continuation of a contract.

As regards protection against non-hiring of pregnant women and mothers they are protected with the general prohibition of discrimination (Article 6 of the ERA-1).

However, they are specifically protected against dismissal under Article 115(1) of the ERA-1.

4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

The exception on the protection for women, in particular as regards pregnancy and maternity has been implemented under the ERA-1.

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

4.3.6 Particular difficulties

There are no particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.

4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

Slovenia did adopt positive action measures within the meaning of Article 157(4) of TFEU with a view to ensuring full equality in practice between men and women in working life (Article 3 of the Recast Directive).

According to Article 157 of the Pension and Invalidity Insurance Act (PIIA), employers may claim for the reimbursement of the contributions of employment for mothers who care for the children up to the age of three, when they are employed for an indefinite period of time and stay with the same employer for a continuous period of at least two years. The reimbursement amounts to 50 % for the first year and 30 % for the second year.

4.4 Evaluation of implementation

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

4.5 Remaining issues

There are no other remaining issues regarding Slovene law on equal pay and/or equal treatment at work that have not been discussed so far.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)⁴

5.1 General (legal) context

5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

There have been no relevant surveys and/or reports published in Slovenia over the last five years that provide insights into difficulties that workers face in practice in relation to work-life balance issues.

5.1.2 Other issues

There are no other issues in relation to work-life balance that the author considers relevant for this country report in order to sketch the general context.

5.1.3 Overview of national acts on work-life balance issues

The Regulation on the protection of health in the workplace of pregnant workers and workers who have recently given birth or are breastfeeding defines a pregnant worker, a worker who has recently given birth and a worker who is breastfeeding and their obligation to inform the employer about their condition.

The Parental Care and Family Benefits Act-1 (PPFBA-1) contain provisions on parental leave, maternity leave, paternity leave and the right to part-time work.

Sick leave and care leave are defined in the Health Care and Health Insurance Act (HCHIA) and in the ERA-1.

The dismissal of pregnant women and parents, and night work by workers during their pregnancy and for a period following childbirth is prohibited by the ERA-1. Furthermore the ERA-1 defines a legal right to work from home or remotely on request, provides the right to part-time work, obliges the employer to enable the worker to start performing work consistent with his/her employment contract after the end of the parental leave and defines protective measures.

5.1.4 Political and societal debate and pending legislative proposals

There has not been any political and/or societal debate on work-life balance and there are no pending legislative proposals.

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

Slovene law defines a pregnant worker, a worker who has recently given birth and a worker who is breastfeeding. They are defined in the Regulation on the protection of health in the workplace of pregnant workers and workers who have recently given birth or are breastfeeding (hereinafter the Regulation protecting workers due to pregnancy and maternity), but only for the purpose of the specific regulation.

⁴ See Masselot, A., (2018) *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A., (2015) *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

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

A worker who has recently given birth is defined as a woman who gave birth less than 12 months ago and who informs her employer about her condition with a medical certificate. A worker who is breastfeeding is defined as a worker who breastfeeds their child and informs the employer about her condition with a medical certificate.

5.2.2 Obligation to inform employer

According to Article 4 of the Regulation protecting workers due to pregnancy and maternity, a pregnant worker has to inform her employer about her condition with a medical certificate in order to benefit from protective measures.

5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no case law on this subject.

5.2.4 Implementation of protective measures (Article 4-6 of Directive 92/85)

Protective measures mentioned in Articles 4-6 of Directive 92/85 are implemented in national law. They are correctly implemented in the ERA-1 and the Regulation protecting workers due to pregnancy and maternity.

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

5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

There is no relevant case law on this subject.

5.2.6 Prohibition of night work

Night work by a female worker during pregnancy and for another year after she has given birth or throughout the time she is breastfeeding if the risk assessment of such work indicates a risk to her or her child's health is prohibited under Article 185(2) of the ERA-1.

5.2.7 Prohibition of dismissal

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

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

5.2.8 Redundancy and payment during maternity leave

If an employee is made redundant during her maternity leave, the payment for maternity leave does not cease, because it is not the employer who pays the maternity benefit.

5.2.9 Employer's obligation to substantiate a dismissal

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

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

5.2.10 Case law on the protection against dismissal

There is no relevant case law on this subject.

5.3 Maternity leave

5.3.1 Length

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

5.3.2 Obligatory maternity leave

There is an obligatory period of maternity leave. According to Article 19/2 of the PPFBA-1, 15 days of the maternity leave are compulsory. A mother can commence maternity leave 28 days prior to the expected date of childbirth determined by a gynaecologist. If the mother does not commence maternity leave within this time limit, she may not take the

remainder of maternity leave after the birth of the child, unless the birth occurred before the expected date.

5.3.3 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)

According to Article 186(3) of the ERA-1, the employer must enable the worker to start performing work consistent with that worker's employment contract after the end of maternity leave.

5.3.4 Legal protection of rights ensuing from the employment contract

There is legal protection of rights ensuing from the employment contract. In accordance with Article 186(4) of the ERA-1, rights acquired or in the process of being acquired by the worker on the date on which maternity leave starts are maintained as they stand until the end of maternity leave. Immediately after the worker returns to work, she may exercise acquired rights or rights that have improved during her absence from work, if she could not exercise them during her absence.

5.3.5 Level of pay or allowance

Maternity benefit is higher than sick leave. The amount is set out under Articles 42 to 47 of the PPFBA-1. In the event of the worker's absence from work, salary compensation amounts from 70 % to 100 % of the worker's salary in the preceding month for full-time work depending on the reason for taking sick leave (illness or an injury at work, illness or an injury not related to work, taking care of a close family member). Sick leave is defined in Article 31 of the Health Care and Health Insurance Act (HCHIA), Article 6 of the Public Finance Balance Act (PFBA) and Article 137 of the ERA-1.

According to Article 47 of the PPFBA-1, insured persons on maternity leave are entitled to maternity benefit, which is equal to 100 % of their average salary over the 12 months immediately prior to the date on which the benefit was claimed. There is no ceiling for maternity benefit.

5.3.6 Additional statutory maternity benefits

Statutory maternity benefits are not supplemented by employers.

5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

There are conditions for eligibility for benefits. In order to be entitled to maternity benefit, the worker needs to be insured pursuant to Article 41 before the day of the commencement of the maternity leave. If they are no longer insured but were previously insured for at least 12 months in the past 3 years prior to exercising the right to maternity benefit, they are also entitled to maternity benefit.

5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

There is 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. According to Article 186(3) of the ERA-1, the employer must enable the worker to start performing work consistent with her employment contract after the end of the maternity leave.

5.3.9 Legal right to share maternity leave

National law does not provide a legal right to share maternity leave. However, according to Articles 22 and 23 of the PPFBA-1, the father is entitled to maternity leave if the mother died, left the child, or is permanently or temporarily unable to live and work independently on the basis of the opinion of a competent doctor. The father is also entitled to maternity leave with the mother's consent in cases where the mother who gives birth to the child is younger than 18 years and has the status of an apprentice, a schoolgirl, a pupil or a student. In the latter case, one of the grandparents is also entitled to maternity leave with the mother's consent.

5.3.10 Case law

There is no relevant case law on this subject.

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

Adoption leave is no longer a separate category of leave but is counted as parental leave.

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

In addition, according to Article 39(2) of the PPFBA-1, 30 days of parental leave have been introduced for adoptive parents or the person to whom the child has been entrusted, for the purpose of raising and nursing that child, for each child who has already completed the first year of primary school education and is not yet 15 years of age. It must be taken within 15 days after the child was placed in the family for the purpose of adoption or after adoption.

5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

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

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

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

5.4.3 Case law

There is no relevant case law on this subject.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

Directive 2010/18 has been explicitly implemented in Slovenia. It was implemented with the adoption of the PPFBA-1 in April 2014.

5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

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

5.5.3 Scope of the transposing legislation

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

5.5.4 Length of parental leave

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

5.5.5 Age limits

Use of one part of parental leave to a maximum length of 75 days can be transferred and used until the child finishes the first year of primary school.

5.5.6 Individual nature of the right to parental leave

The right to parental leave is an individual right for each of the parents. Each of the parents has the right to parental leave of 130 days. The mother may transfer 100 days to the father and 30 days are non-transferable. The father may transfer all of the 130 days to the mother.

5.5.7 Transferability of the right to parental leave

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

5.5.8 Form of parental leave

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

5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/10)

In order to be entitled to parental benefits the relevant persons need to be insured pursuant to Article 41 of the PPFBA-1 before the day of the commencement of the individual type of parental leave. If they are no longer insured but were previously insured for at least 12 months in the 3 years prior to exercising the right to parental benefits, they are also entitled to parental benefits. This rule also applies to successive fixed-term contracts with the same employer regarding the sum taken into account for the purpose of calculating the qualifying period.

5.5.10 Notice period

The time schedule for a partial absence from work will be agreed by the parents between themselves and their employer according to Article 34 of the PPFBA-1. Therefore the national legislation takes sufficient account of the interests of workers and of employers in specifying the length of such periods of notice. If an agreement cannot be reached, the right to the use of the leave will be decided by the Centre for Social Work, which must consider the child's interests. An employee is obliged to inform the employer of his or her intention to use parental leave 30 days prior to the envisaged commencement of the leave in accordance with Article 186(2) of the ERA-1 and Article 18(1) of the PPFBA-1. Parents who have transferred part of their parental leave according to Article 36 of the PPFBA-1 may use it in a continuous series in the form of full or partial absence from work, not more than twice a year for a period of at least 15 calendar days, until a child finishes the first year of primary school. Parents do not have to inform their employers prior to the commencement of the transferred leave because the written agreement, concluded 30 days prior to the expiry of maternity leave according to Article 33 of the PPFBA-1, has already been submitted to them. However, they have to inform their employer of any change in the use of parental leave within three days after the emergence of the reason for changing the written agreement according to Article 37 of the PPFBA-1.

5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

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

5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

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

5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

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

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

5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

The Slovenian Government did not take any other measures to address the specific needs of adoptive parents in addition to the measures described in section 5.4 above on adoption leave.

5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) Directive 2010/18)

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

5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

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

There is legal protection of rights ensuing from the employment contract.

5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

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

5.5.18 Status of the employment contract or relationship during parental leave

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

5.5.19 Continuity of entitlement to social security benefits

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

5.5.20 Remuneration

According to Articles 46 and 47 parental benefit is equal to 100 % of the average salary over the twelve months prior to the date on which the benefits were claimed. In addition, there is a ceiling for parental benefits. The amount of parental benefits may not be higher than twice and a half the average monthly salary in the Republic of Slovenia and not lower than 55 % of the minimum salary.

Parental leave is not remunerated by the employer.

5.5.21 Social security allowance

All workers on parental leave, irrespective of the sector in which they work, are entitled to parental benefits during parental leave. Parental benefits are paid by the Ministry of Labour, Family, Social Affairs and Equal Opportunities according to Article 98 of the PPFBA-1. According to Articles 42 to 47 of the PPFBA-1, which define the amount of parental benefits, parental benefits are equal to 100 % of the average salary over the 12 months prior to the date on which the benefits were claimed. In addition, there is a ceiling for parental benefits. The amount of parental benefits may not be higher than two and a half times the average monthly salary in the Republic of Slovenia.

5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

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

5.5.23 Case law

There is no relevant case law.

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

National legislation provides for paternity leave.

According to Articles 25-28 of the PPFBA, which had been in force since 18 April 2014, paternity leave of 30 days is granted to the father on a non-transferable basis. The PPFBA-1, which entered into force from 17 March 2018, introduced a new way of using paternity leave for fathers of children born after 1 May 2018. The new way is simpler, more transparent and flexible. Fathers will be able to use all 30 days of paternity leave together, out of which 15 days have to be used at any time from the birth of the child until at least one month after the end of parental leave in a continuous series of days on a full-time or a part-time basis. Another 15 days must be used before the child finishes the first year of primary school in a continuous series of days on a full-time or a part-time basis. The duration of paternity leave and the amount of compensation remain unchanged.

During the period of paternity leave, insured persons are entitled to paternity benefit which is equal to 100 % of their average salary over the 12 months immediately prior to the date on which the benefit was claimed.

5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

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

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

5.6.3 Case law

There is no relevant case law.

5.7 Time off for *force majeure*

5.7.1 Time off for *force majeure*

National law entitles workers to time off from work on grounds of *force majeure* for urgent family reasons in the event of sickness or accident.

Under Article 165 of the ERA-1, a worker has the right to paid absence from work of up to a maximum of seven working days in a calendar year due to personal circumstances (for example a serious accident suffered by the worker, the death of his spouse or cohabitant or the death of a child, an adopted child or a child of the spouse or the cohabitant, accompanying a child to school on the first day of school etc.)

Criteria of eligibility and other more detailed rules are further specified in collective agreements.

Case law

There is no national case law in relation to unfavourable treatment (including pay and working conditions) and/or dismissal related to (the taking up of) time off for *force majeure*.

5.8 Care leave

5.8.1 Existence of care (or carers') leave in national law

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

5.8.2 Case law

There is no relevant case law.

5.9 Leave in relation to surrogacy

Parental leave or other leave is not available in the case of surrogacy because surrogacy is not authorised.

5.10 Flexible working time arrangements

5.10.1 Right to reduce or extend working time

National law provides workers with a temporary legal right to reduce working time on request.

The right to part-time work is provided in the ERA-1 and the PPFBA-1. Article 67 of the ERA-1 provides a legal basis for part-time work in special cases. In addition, it gives the same rights arising from social insurance to workers working part time pursuant to regulations on parental leave as if they worked full time. According to Article 50 of the PPFBA-1, the employer ensures the worker the right to his/her salary on the basis of actual working hours, while the Republic of Slovenia ensures the payment of social security contributions for a difference with full-time work, on the basis of a proportional share of the minimum salary. The Republic of Slovenia will pay the insured person's and employer's contributions for compulsory pension and disability insurance, unemployment insurance, and parental protection insurance, and for health care insurance, the contributions for illness and non-occupational injury, the right to health care services and reimbursement of travel expenses. The Republic of Slovenia will pay the contributions at rates laid down by the Act regulating social security contribution rates. Furthermore, according to Article 50 of the PPFBA-1, one of the parents who nurses and cares for the child until its third birthday has the right to part-time work. A parent who nurses and cares for two children may extend this right until the younger child finishes the first year of primary school. However, one year of exercising the right to part-time work is granted to each of the parents on a non-transferable basis. One of the parents who nurses and cares for a child with a moderate or severe disability in movement or with a moderate or severe disturbance in mental development also has the right to part-time work after the child's third year but not after the child reaches 18 years of age.

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

Apart from the above-mentioned conditions, no other eligibility criteria or specific conditions apply.

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

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

This right is not tied to any other specific condition.

The size of an employer is not a qualifying condition.

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

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

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

5.10.2 Right to adjust working time patterns

Slovenian legislation does not provide workers with a legal right to adjust working time patterns on request.

5.10.3 Right to work from home or remotely

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

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

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

There is no time limit for requesting such a right.

This right is not tied to a specific trigger.

The size of the employer is not a qualifying condition.

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

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

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

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

5.10.4 Other legal rights to flexible working arrangements

There are no other legal rights to flexible working arrangements.

5.10.5 Case law

There is no relevant case law.

5.11 Evaluation of implementation

The implementation of EU directives regarding pregnancy and maternity is considered to be satisfactory. Slovenian law even goes further than the requirements of EU law, for example in providing for longer maternity and parental leave and, higher benefits during leave, prohibiting an employer from requiring certain information from the applicant and a temporary legal right to reduce working time on request.

5.12 Remaining issues

There are no other remaining issues regarding Slovenian law on work-life balance issues.

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

6.1 General (legal) context

6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

There have been no relevant surveys and/or reports published in Slovenia over the last five years that would provide insights into the difficulties workers face in practice in relation to social security issues.

6.1.2 Other issues related to gender equality and social security

There are no other issues in relation to the social security system of Slovenia that the author considers relevant for this country report in order to sketch the general context that may have an impact on gender equality in social security.

6.1.3 Political and societal debate and pending legislative proposals

There has not been any political and/or societal debate or pending legislative proposals on this topic.

6.2 Direct and indirect discrimination

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

6.3 Personal scope

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

There is no relevant case law on this subject.

6.4 Material scope

The material scope of national law relating to occupational social security schemes is more restricted than specified in Article 7 of Directive 2006/54. In Slovenia, the only existing occupational social security scheme is an occupational insurance scheme, which provides

protection against old age for insured workers who are engaged in work that is particularly physically demanding, work that is harmful to health or work that cannot be performed successfully after a certain age (Article 199 of the PIIA-2). The list of those jobs is determined by the Minister for Labour, Family, Social Affairs and Equal Opportunities.

There is no relevant case law on this subject.

6.5 Exclusions

There are no exclusions from the material scope defined in the PIIA-2.

6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54

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

6.7 Actuarial factors

Sex is not used as an actuarial factor in occupational social security schemes.

6.8 Difficulties

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

6.9 Evaluation of implementation

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

6.10 Remaining issues

There are no other remaining issues.

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

7.1 General (legal) context

7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

There have been no relevant surveys and/or reports published in Slovenia over the last five years that would provide insights into the difficulties that workers face in practice in relation to statutory social security schemes.

7.1.2 Other relevant issues

There are no other relevant issues.

7.1.3 Overview of national acts

The principle of equal treatment for men and women in matters of social security is set out in the PADA. Furthermore, the mandatory health insurance scheme is regulated by the HCHIA, the social assistance insurance scheme by the Social Security Act (SSA) and the unemployment insurance scheme by the Labour Market Regulation Act (LMRA).

7.1.4 Political and societal debate and pending legislative proposals

There has not been any political and/or societal debate or pending legislative proposals on this topic.

7.2 Implementation of the principle of equal treatment for men and women in matters of social security

The principle of equal treatment for men and women in matters of social security is implemented in national legislation. According to Article 2 of the PADA, equal treatment is ensured irrespective of sex in relation to social protection, including social security and healthcare.

7.3 Personal scope

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

7.4 Material scope

The material scope of Slovenian legislation is the same as specified in Article 3 of Directive 79/7. According to Article 2 of the PIIA-2, the mandatory pension and invalidity insurance

cover the risks of old age, invalidity and death. According to Article 13 of the HCHIA, the mandatory health insurance scheme covers the risk of sickness, accidents, accidents at work and occupational diseases. Furthermore, the unemployment insurance scheme covers the risk of unemployment according to Article 1(1) of the LMRA and the social assistance insurance scheme covers the risk of the need for social assistance.

7.5 Exclusions

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

The new PIIA-2 no longer excludes gender equality in relation to the determination of different conditions for the acquisition of the old-age and invalidity pension as regards the pensionable age and the completion of the pension-qualifying period. The pensionable age has been increased to 65 and the pension-qualifying period to 40 years. Both conditions will be equal for both genders after the transitional period, in 2019.

There is no relevant case law on this subject.

7.6 Actuarial factors

Sex is not used as an actuarial factor in statutory social security schemes.

7.7 Difficulties

There are no specific difficulties in Slovenia in relation to implementing Directive 79/7.

7.8 Evaluation of implementation

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

7.9 Remaining issues

There are no other remaining issues.

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

8.1 General (legal) context

8.1.1 Surveys and reports on the specific difficulties of self-employed workers

There have been no special surveys and/or reports published in Slovenia over the last five years that provide insights into the specific difficulties that self-employed workers face.

8.1.2 Other issues

There are no other issues in relation to self-employed workers that the author considers relevant for this country report in order to sketch the general context.

8.1.3 Overview of national acts

Self-employed workers are protected by the PADA, the Companies Act (CA), the Institutes Act (IA), the PIIA-2, the HCHIA, the Prevention of Undeclared Work and Employment Act (PUWEA), the PPFBA-1, the Law on Health and Safety at Work (LHSW), the Labour and Social Courts Act (LSCA) and the Administrative Dispute Act (ADA).

8.1.4 Political and societal debate and pending legislative proposals

There has been no political and/or societal debate and there are no pending legislative proposals on this topic.

8.2 Implementation of Directive 2010/41/EU

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

8.3 Personal scope

8.3.1 Scope

Definitions of 'self-employed workers' according to Article 2 of directive are found in different laws. Each law defines the concept for its own purpose.

8.3.2 Definitions

The definitions are similar, but not uniform. According to Article 15 of the PIIA-2 'self-employed workers' are those persons who are independently pursuing a gainful or any other permitted activity. However, Article 55 of the LHSW defines 'self-employed workers' as persons performing a gainful or other activity as their only or main occupation and who do not employ other workers or involve other persons in the work process, and persons

insured as farmers in accordance with the pension and disability insurance regulations who do not employ workers or involve other persons in the work process other than family members on farms in accordance with regulations governing agriculture. Article 2 of the PUWEA defines a self-employed person as a natural person who is performing a gainful or any other permitted activity.

8.3.3 Categorisation and coverage

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

However, the agricultural sector is treated differently. According to Article 17 of the PIIA-2, farmers must be insured under compulsory insurance, provided that upon the entry of the application for insurance they are in a general state of health that allows them to pursue the agricultural activity, are not attending regular schooling, are not entitled to an old-age pension, a widow's or widower's pension or an invalidity pension and have a minimum income from a farm holding per each insured member of such holding equal to the amount of the 60 % of the average monthly salary in the Republic of Slovenia. Furthermore, Article 8 of the PPFBA-1 provides for mandatory parental care insurance for persons engaged in an independent agricultural activity in the Republic of Slovenia as their sole or principal occupation and who are already included in the mandatory pension and disability insurance scheme. According to Article 15 of the HCHIA, farmers and members of their households who are engaged in an independent agricultural activity in the Republic of Slovenia as their sole or principal occupation are insured under compulsory health insurance.

8.3.4 Recognition of life partners

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

8.4 Material scope

8.4.1 Implementation of Article 4 of Directive 2010/41/EU

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

8.4.2 Material scope

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

8.5 Positive action

Slovenia has not taken advantage of the possibility of taking positive action.

8.6 Social protection

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

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

8.7 Maternity benefits

Article 8 of Directive 2010/41/EU regarding maternity benefits for self-employed workers has been implemented in national law. According to Article 8 of the PPFBA-1, pregnancy and maternity rights apply equally to all – employees and the self-employed alike – if they are insured according to the PPFBA-1. In order to be entitled to those rights, the relevant persons need to be insured before the day of the commencement of the individual type of parental leave. If they are no longer insured but were previously insured for at least 12 months in the 3 years prior to exercising the right to parental benefits, they are also entitled to maternity and other parental benefits, according to Article 41 of the PPFBA-1. Insured self-employed persons on maternity leave are entitled to maternity benefit, which is equal to 100 % of their average salary over the 12 months immediately prior to the date on which the benefit was claimed. There is no ceiling for the maternity benefit. Maternity benefit is granted on a mandatory basis.

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

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

The above-mentioned maternity benefit meets the sufficiency requirement for the self-employed using Article 8(3)(a) of Directive 2010/41. However, the situation is slightly different for female spouses and life partners of self-employed workers who are not employees but participate in the activities of self-employed workers. Their parental allowance might not meet the requirement of sufficiency as the amount is quite low, following the provision in Article 8(3)(c) of the directive.

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

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

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

There is no special occupational social security scheme for the self-employed in Slovenia. In fact, in Slovenia the only existing occupational social security scheme is the occupational insurance scheme, which provides protection against old age. According to Article 199 of the PIIA-2 only insured persons who are engaged in work which is particularly physically demanding and work which is harmful to health or work which cannot be performed successfully after a certain age can be included in an occupational insurance scheme.

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

8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)

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

8.9 Prohibition of discrimination

Article 14(1)(a) of Recast Directive 2006/54 has been implemented in national law as regards self-employment. According to Article 2 of the PADA, equal treatment is ensured irrespective of sex in relation to self-employment.

8.10 Evaluation of implementation

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

8.11 Remaining issues

There are no other remaining issues regarding self-employed persons that have not been discussed so far.

9 Goods and services (Directive 2004/113)⁵

9.1 General (legal) context

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

There have been no surveys and/or reports been published in Slovenia over the last five years that provide insights into the difficulties men and women may face in terms of equal access to and supply of goods and services.

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

The author of this report is not aware of the emergence of any specific problems of discrimination concerning the access to and supply of goods and services in the online environment/digital market/collaborative economy.

9.1.3 Political and societal debate

There has been no political or societal debate on this topic.

9.2 Prohibition of direct and indirect discrimination

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

9.3 Material scope

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

9.4 Exceptions

National law has not applied any exceptions.

9.5 Justification of differences in treatment

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

⁵ See e.g. Caracciolo di Torella, E. and McLellan, B. (2018) *Gender equality and the collaborative economy*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

9.6 Actuarial factors

National law ensures that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services does not result in differences in the premiums and benefits of individuals (see Article 5(1) of Directive 2004/113). The IA provides for the equal treatment of all insured persons in Article 83(6) and prohibits differences in insurance premiums and benefits on the grounds of sex, maternity and pregnancy in general.

9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

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

Insurance companies have adapted their practices as a result of the CJEU *Test-Achats* case. Actuarial factors based on sex are no longer used in respect of individual contributions. Concerning ordinary and investment insurance, the consequences of the unification of premiums are very small. In contrast, differences are greater in insurance policies without investment components, such as life insurance.

9.8 Positive action measures (Article 6 of Directive 2004/113)

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

9.9 Specific problems related to pregnancy, maternity or parenthood

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

9.10 Evaluation of implementation

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

9.11 Remaining issues

There are no other remaining issues regarding goods and services that have not been discussed so far.

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

10.1 General (legal) context

10.1.1 Surveys and reports on issues of violence against women and domestic violence

There have been no surveys or reports published in Slovenia over the last five years that provide insights into issues of violence against women and domestic violence.

10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

Violence against women and domestic violence is regulated under the Family Violence Prevention Act (FVPA).

10.1.3 National provisions on online violence and online harassment

There are no specific provisions on online violence and online harassment of women and girls. However, general provisions regarding the abuse of personal data and assumption of identity of another person (Article 143 of the Criminal Code), unlawful visual recording (Article 138 of the Criminal Code), violation of secrecy of means of communication (Articles 139 and 140 of the Criminal Code) and criminal offences against honour and reputation (Chapter 18 of the Criminal Code) are being used to tackle online violence and online harassment of women and girls.

10.1.4 Political and societal debate

There has not been any political or societal debate on this topic and there are no pending legislative proposals.

10.2 Ratification of the Istanbul Convention

Slovenia ratified the Istanbul Convention in December 2014. The pre-existing legal framework in Slovenia is considered to be in compliance with the obligations under the Convention. As the ratification of the Istanbul Convention required some minor modifications to the existing legislation, the Family Violence Prevention Act was amended at the end of October 2016. The changes aim to better protect victims of domestic violence and improve the work of state institutions in such cases. The changes also redefine who counts as a family member, which now include cohabiting partners, former partners and children of partners. Furthermore, the definition of domestic violence has also expanded under the changes to include threats of violence, such as intimidation and stalking. Physical violence is now deemed to include forced labour, with the definition of sexual violence now extended to the publication of sexual content about victims. On the law enforcement side, the legislation gives courts broader powers to protect victims. However, modifications are still needed in the Criminal Code, which would consider forced marriage, forced sterilisation, stalking and female genital mutilation as criminal offences.

11 Compliance and enforcement aspects (horizontal provisions of all directives)

11.1 General (legal) context

11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

There have been no surveys or reports published in Slovenia over the last five years that would provide insights into the particular difficulties that victims of gender discrimination face in practice in obtaining legal redress.

11.1.2 Other issues related to the pursuit of a discrimination claim

There is no other issue in relation to pursuing a discrimination claim for victims that the author considers relevant for this country report in order to sketch the general context.

11.1.3 Political and societal debate and pending legislative proposals

There has been no political or societal debate or pending legislative proposals on this subject.

11.2 Victimisation

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

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

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

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

11.3.2 Availability of legal aid

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

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

There have been no cases so far where the question of horizontal effect would be raised.

11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

The recognition of horizontal direct effects of the charter provisions do not have any specific relevance for better enforcement of gender equality law in Slovenia. Such an impact is not expected.

11.5 Burden of proof

Slovenian legislation provides for the shifting of the burden of proof in sex discrimination cases.

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

Rules on the burden of proof comply with EU law.

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

According to Article 39 of the PADA, all alleged victims of discrimination have the right to request judicial protection before the relevant court. They may request the termination of discrimination, compensation for damages and publication of the judgment in the media. Victims of discrimination may be awarded damages of EUR 500 to EUR 5 000. In determining the amount of the discrimination compensation, exposure to severe forms of discrimination and other circumstances of the case shall be taken into account. In addition, according to Article 39(3) of the PADA, the request to publish the judgment in the media will be granted to the person discriminated against if the court, according to the circumstances of the case, considers that the publication of the judgment is necessary to overcome the consequences of discrimination or to prevent discrimination in other similar cases. Judgments are published in an anonymous form.

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

in case of a breach of the prohibition of discrimination an administrative fine may be imposed on an employer and some criminal sanctions may also be imposed.

11.6.2 Effectiveness, proportionality and dissuasiveness

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

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

11.7 Equality body

Slovenia has an equality body that seeks to implement the requirements of EU gender equality law.

The Slovenian equality body, the Advocate, covers all grounds of discrimination. According to Articles 19 and 20 of the PADA, adopted in April 2016, the Advocate is set up as an autonomous state body that may not receive binding instructions related to its work. In addition, the PADA regulates a new procedure on the nomination of the Advocate, as after the new act's entry into force he or she is nominated by the National Assembly upon the proposal of the President of the Republic (under the previous act he or she was nominated by the minister). Under the new act, the function of the Advocate is a public state function (while under the previous act the Advocate was a civil servant). The act also states that the Advocate has a team composed of civil servants who carry out professional and administrative tasks. The complaint procedure is also regulated in a different way and the Advocate has some new powers, such as the right to lodge a claim for the constitutional review of laws that are discriminatory and the ability to carry out an inspection role.

The new Advocate was nominated at the end of October 2016. The Advocate's report from 2018 mentioned one case where gender discrimination was found in the area of access to goods in services. A sports club organised an event where participation fees were lower for women than for men. In the 2019 report there were no cases of gender discrimination.

The website of the Advocate is <http://www.zagovornik.gov.si/>.

11.8 Social partners

Trade union federations and confederations play an important role in Slovenia in the process of negotiations with employers' organisations and the Government.

The organisation of the trade unions in specific sectors, their appointed representatives who are employed with a certain employer and their system of free legal aid (including representation before the courts) for their members are all positive aspects of their role in respect of discrimination.

11.9 Other relevant bodies

There are no other relevant bodies.

11.10 Evaluation of implementation

The author considers the national law that implements the EU law topics discussed in this chapter satisfactory.

11.11 Remaining issues

There are no other remaining issues.

12 Overall assessment

The following transposition problems were mentioned in this report:

1. The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not been applied.
2. The concept of work of equal value and the term 'comparator' are not defined, there is lack of information on comparable jobs and it is extremely difficult for a potential victim of discrimination to discover the salaries of comparators in order to start judicial proceedings in relation to pay discrimination before the competent court.
3. Protection against dismissal for workers who take paternity leave is not specifically provided.
4. Lack of the right to adjust working-time patterns.
5. The provision in Article 2 PADA on goods and services is too general as it does not define the term 'goods and services'.
6. Amendments to the Criminal Code are still needed in order to implement the Istanbul Convention by making forced marriage, forced sterilisation, stalking and female genital mutilation criminal offences.
7. Alleged victims of discrimination face difficulties when enforcing their rights due to a judicial backlog.

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

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