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Country report

Gender equality

How are EU rules transposed into
national law?

Liechtenstein

Nicole Mathé

Reporting period 1 January 2019 – 31 December 2019

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1 Introduction

1.1 Basic structure of the national legal system

The national legal system in Liechtenstein is – corresponding to its Constitution – a constitutional hereditary monarchy based on democracy and parliamentary government. Parliament (*Landtag*) is the representative body of the nation. Its main task is to pass legislation. For a law to enter into force, Parliament has to approve it, the sovereign has to give his consent and the Prime Minister has to countersign it. Finally, it has to be published in the State Gazette (*Landesgesetzblatt, LGBl*). Characteristic of direct democracy in Liechtenstein is the fact that each law that has not been declared as urgent by Parliament and every treaty according to international law are subject to a facultative referendum.

The main concepts of EU gender equality law have been implemented in Liechtenstein by the Gender Equality Act (*Gleichstellungsgesetz, GLG*).

The court system in Liechtenstein is rather simple and small. Jurisdiction in civil and criminal matters is in the first instance with the County Court (*Landgericht*), in the second instance with the Appellate Court (*Obergericht*) and the court of last resort is called the Supreme Court (*Oberster Gerichtshof*). Courts of public law are the Higher Administrative Court (*Verwaltungsgerichtshof*) and the Constitutional Court (*Staatsgerichtshof*). All courts are based in Vaduz, the capital of Liechtenstein.

1.2 List of main legislation transposing and implementing the directives

The following legislation is also available on the Internet:¹

- Constitution of Liechtenstein (*Verfassung des Fürstentums Liechtenstein, LV*), LGBl. 1921/15 as amended by LGBl. 2018/470;
- Act on Gender Equality Law (*Gleichstellungsgesetz, GLG*), LGBl. 1999/96, as amended by LGBl. 2011/212 and LGBl. 2015/33; amended by LGBl. 2016/505;
- Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*), LGBl. 1967/34 (see the currently relevant version);
- Penal Code (*Strafgesetzbuch, StGB*), LGBl. 1988/37 (see current version);
- Labour Code (*Arbeitsgesetz*), LGBl. 1967/6;
- Sickness Insurance Act (*Krankenversicherungsgesetz, KVG*), LGBl. 1993/95 as amended by LGBl. 2013/6, LGBl. 2018/342;
- Occupational Schemes Act (*Gesetz über die betriebliche Personalvorsorge, BPVG*), LGBl. 2018/296;
- Invalidity Insurance Act (*Invalidenversicherung, IVG*), LGBl. 2006/244;
- Old-Age Insurance Act (*Alters- und Hinterlassenenversicherung, AHVG*), LGBl. 2006/24 as amended by LGBl. 2011/388 and LGBl. 2011/541 and LGBl. 2011/388, updated by LGBl. 2018/344;
- Accident Insurance Act (*Unfallversicherung, UVersG*), LGBl. 2006/89;
- Unemployment Insurance Act (*Arbeitslosenversicherung, ALVG*), LGBl. 2006/155;
- Marriage Act (*Ehegesetz*), LGBl. 1993/53;
- Registered Partnership Act (*Partnerschaftsgesetz*), LGBl. 2011/350
- Commercial Code (*Gewerbegesetz*), LGBl. 2006/184;
- Law on the Association for Human Rights (*Gesetz über den Verein für Menschenrechte, VMRG*), LGBl. 2016/504.

1.3 Sources of law

Implemented by national legislation in Liechtenstein are the following sources:

¹ <https://www.gesetze.li/>.

CEDAW, New York 18 December 1979, entered into force for Liechtenstein on 21 January 1996, LGBl. 1996 /164.

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ 1979, L 6/24.

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ 1992, L 348/1.

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ 2004, L 373/37.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ 2006, L 204/23.

Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/ EC, OJ 2010, L 68/13.

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ 2010, L 180/1.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

The Constitution of Liechtenstein does not include a specific norm prohibiting sex discrimination.

2.1.2 Other constitutional protection of equality between men and women

Article 31(2) of the Constitution addresses equality between men and women. The Article concerned was amended in 1992.² It briefly mentions that men and women have equal rights. According to this amendment, the adaptation of legislation in order for it to be in line with gender equality is regulated by the law.

In addition, Article 31(1) of the Constitution contains the norm that all nationals of Liechtenstein are equal before the law. By a correct interpretation of constitutional law LGBl. 1971 No. 22, the legislator states that the expression 'nationals' includes all persons with the Liechtensteinian nationality, with no discrimination between the sexes.

2.2 Equal treatment legislation

In Liechtenstein, specific equal treatment legislation exists: The Gender Equality Act (GLG) was created in 1999 and adapted several times according to the framework of EU legislation. The GLG covers gender equality and prohibits sex discrimination and promotes the *de facto* equality between women and men. The GLG does not address any other discrimination grounds.

² Amendment to the Constitution by the State Gazette (LGBl) 1992/81.

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

There have been no surveys or reports published over the last years that provide insight into legal definition, implementation and limits of central concepts of gender equality law.

3.1.2 Other issues

To the knowledge of the expert there are no other issues to mention in relation to the central concepts of gender equality law.

3.1.3 General overview of national acts

The main concepts of EU gender equality law have been implemented in Liechtenstein by the Gender Equality Act (*Gleichstellungsgesetz*, GLG).

3.1.4 Political and societal debate and pending legislative proposals

To the knowledge of the expert there has been no political or societal debate on central concepts of gender equality so far.

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

There are no definitions of these terms in legislation.

3.2.2 Protection of transgender, intersex and non-binary persons

Pursuant to Article 3 GLG, the definition of the prohibition of discrimination states that nobody shall be discriminated against directly or indirectly on the grounds of sex. This could allow the interpretation that the prohibition of sex discrimination also covers discrimination due to gender reassignment. Such an interpretation is mentioned in the preparatory notes to the amendment of the GLG implementing Recast Directive 2006/54.³ The principle of equality between men and women shall not only apply to sex but also includes discrimination on the ground of gender reassignment with reference to Recital 3 of Recast Directive 2006/54.

3.2.3 Specific requirements

As the legal norms are not mentioning any of the terms 'transgender, intersex and non-binary persons', it can be concluded that they are protected under the characteristic of sex if the materials to the specific laws broach the issue of sex. To the expert's knowledge, there has not yet been any case law applying and interpreting existing legislation on the topic of transgender persons. Thus, specific catalogues of criteria are not yet elaborated.

³ BuA No. 132/2010, LGBl. 2011/212.

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

Sex discrimination is prohibited by Article 3 GLG. The definition of direct discrimination is contained in Article 1(a)(a) GLG and exactly follows the wording of Directive 2006/54/EC. It therefore complies with the EU definition.

3.3.2 Prohibition of pregnancy and maternity discrimination

Pursuant to Article 3 GLG, pregnancy and maternity discrimination are explicitly prohibited as a form of direct sex discrimination according to Article 1(a)(a) GLG. Therefore, the provision complies with Article 2(2)(c) of Recast Directive 2006/54.

3.3.3 Specific difficulties

There is no case law on applying the concept of direct sex discrimination. A rather likely reason for this is the persistent lack of awareness of all stakeholders involved in qualifying certain circumstances correctly according to sex discrimination legislation.

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition

Sex discrimination is prohibited by Article 3 GLG. The definition of indirect discrimination is contained in Article 1(a)(b) GLG and exactly follows the wording of Recast Directive 2006/54/EC. It therefore complies with the EU definition.

3.4.2 Statistical evidence

To the knowledge of the expert, statistical evidence is not used in order to establish a presumption of indirect sex discrimination because cases are not available.

3.4.3 Application of the objective justification test

There is no case law.

3.4.4 Specific difficulties

The specific difficulty is in fact that there is no case law on the gender equality topic.

3.5 Multiple discrimination and intersectional discrimination⁴

3.5.1 Definition and explicit prohibition

There are no specific norms addressing these topics. To the expert's knowledge there are no proposals pending which aim to incorporate the concept of multiple discrimination and/or the concept of intersectional discrimination into national legislation.

3.5.2 Case law and judicial recognition

There is no case law.

⁴ For more information, see 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>.

3.6 Positive action

3.6.1 Definition and explicit prohibition

Positive action is allowed insofar as there is no discrimination if adequate measures are taken to achieve factual equality. This is laid down in Article 3(4)(a) GLG as an exception to the prohibition of sex discrimination. Its definition complies with the EU definition of Article 157(4) TFEU.

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

The national law does not consider 'equal opportunities' to be a separate concept from 'positive action'.

3.6.3 Specific difficulties

To the expert's knowledge there are no specific difficulties.

3.6.4 Measures to improve the gender balance on company boards

To the expert's knowledge there are neither measures nor proposals pending nor are there any policy measures that address gender balance on company boards.

The only source that could be found which partly dealt with this matter was the international and interregional project entitled 'Concern: women decide' between Vorarlberg in Austria, Graubünden in Switzerland, and Liechtenstein.⁵ In this study the authors mentioned the results of very difficult research work over several months between November 2015 and March 2016 in Liechtenstein. As there are no gender-specific statistics for women in decision-making positions, a single research study in print and on the internet was undertaken for each of the 36 companies in Liechtenstein, to disclose the number of women in decision-making positions. In these companies with line functions and supervisory boards, as well as in industrial regulatory bodies, not a single woman in a line function has been identified. Also, on the management boards and foundation boards there are rarely women. Nevertheless, 25-40 % of the members of the management boards of the National Bank, the Liechtenstein Broadcasting Company, Telecom Liechtenstein and the Public Transport Company are women.

The expert is not aware of any specific plans in Liechtenstein to establish any approach addressing the gender balance issue on company boards in the near future.

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

Since 2004, more than 200 women have successfully completed the training course in politics for women. The participants took the opportunity to empower themselves to actively communicate, decide and get involved in politics. The course emphasised the imparting of specific knowledge and practical experience. It covered the following topics in a total of six modules: political engagement – a challenge for me?; positioning; the political systems of Liechtenstein and Vorarlberg; rhetoric and reasoning; political structures; conflict management; public relations and media training. Since 2008, three modules take place in Liechtenstein and three take place in Austria. As part of the course, a network has been developed which functions as an information pool, a contact network

⁵ Interreg Report on Liechtenstein 2016, p. 38, see <http://www.llv.li/files/scg/final-liechtenstein-v-3docx.pdf>. See further details on the internet on the following websites: <http://www.interreg.org/projekte/P1/SZ3/ABH017> and for the individual report on Liechtenstein see <http://www.llv.li/files/scg/final-liechtenstein-v-3docx.pdf>.

and support for each participant. This course is designed to encourage women to have a positive view on political careers.⁶

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

Pursuant to Article 4(1) GLG, harassment is explicitly prohibited. The definition is contained in Article 1(a)(c) GLG and follows that in Recast Directive 2006/54.

3.7.2 Scope of the prohibition of harassment

According to Articles 4, 4(a) and (b) GLG, the definition of harassment covers employment and also covers the scope of the access to and the supply of goods and services as required by Directive 2004/113/EC.

3.7.3 Definition and explicit prohibition of sexual harassment

Pursuant to Article 4(1) GLG, sexual harassment is explicitly prohibited. The definition is contained in Article 1(a)(d) GLG and follows that in Recast Directive 2006/54.

3.7.4 Scope of the prohibition of sexual harassment

According to Articles 4, 4(a) and (b) GLG, the definition of sexual harassment covers employment as well as the scope of the access to and supply of goods and services.

3.7.5 Understanding of (sexual) harassment as discrimination

Article 4(2) GLG also specifies that harassment and sexual harassment, as well as any less favourable treatment based on the person's rejection of or submission to such conduct, amounts to discrimination according to Article 2(2)(a) of Directive 2006/54.

3.7.6 Specific difficulties

The specific difficulty is in fact that there is no case law on the topics 'harassment' and 'sexual harassment'.

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

According to Article 3(3) and Article 4(1) GLG, the instruction to discriminate is explicitly prohibited and considered as discrimination on the grounds of sex.

3.8.2 Specific difficulties

There are no specific difficulties.

3.9 Other forms of discrimination

There are no other forms of discrimination prohibited in national law.

⁶ For more information see: <http://www.llv.li/#/117780/politiklehrgang>.

3.10 Evaluation of implementation

The national law has to be considered as implementing EU law concepts rather satisfactorily. The main point is the lack of case law, giving no insight of real application of the norms in practice.

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 linked to equal pay

To the expert's knowledge there are no reports that have been published that provide insights into specific factors that explain the gender pay gap and difficulties that hamper the realisation of equal pay for women and men.

4.1.2 Surveys on the difficulties in realising equal treatment at work

There are no surveys that provide insights into specific factors that prevent the realisation of equal treatment at work.

4.1.3 Other issues

There is a survey⁷ dated from 2017 with references to data from 2014 concerning statistics about wages of women and men in different sectors. It is only a collection of data of how much men and women earn according to their profession, nationality and age. One cannot find any further explication about difficulties that hamper the realisation of equal pay for women and men.

4.1.4 Political and societal debate and pending legislative proposals

Political and societal debates take place very rarely and pending legislative proposals on the principles of equal pay and equal treatment at work are non-existent.

4.2 Equal pay

4.2.1 Implementation in national law

Article 3(2)(c) GLG implements the principle of equal pay and the definition corresponds to the wording of Recast Directive 2006/54.

4.2.2 Definition in national law

Article 1(a)(e) of the GLG in conjunction with Paragraph 1173(a) Article 9(3) of the Civil Code implement the concept of pay and the definition corresponds to the wording of Recast Directive 2006/54. This definition also complies with the definition of Article 157(2) TFEU.

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

Article 3(1) and Article 3(2)(c) of the GLG in conjunction with Paragraph 1173(a) Article 9(3) of the Civil Code implement Article 4 of the Recast Directive. The norm in the Civil Code was first introduced in 1993 and contains the prohibition of unequal pay for equal and equivalent work for men and women. Then Article 3(1) of the GLG implemented the prohibition of direct and indirect discrimination including the same criteria for both men and women in job classifications (Article 3(2)(c) GLG).

4.2.4 Related case law

There is no case law related to the topics in 4.2.3.

⁷ Menschenrechte in Liechtenstein, Zahlen und Fakten (Human Rights in Liechtenstein, facts and figures), published by the Government of Liechtenstein, authored by Wilfried Marxer, Patricia Hornich and Sarah Nigg, 2017, pp. 42-45, <https://www.llv.li/files/asd/2017-mr-bericht-def.pdf>.

4.2.5 Permissibility of pay differences

As there is no case law on the topic, justifications to allow for pay differences have not yet been elaborated in Liechtenstein's legislation.

4.2.6 Requirement for comparators

A comparator is not required.

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

Information campaigns in Liechtenstein on equal pay to raise awareness of all stakeholders involved are a certain indicator that instruments are needed in relation to the application of the principle of equal pay for equal work and work of equal value in practice. There is no case law on the topic, therefore specific difficulties have not yet been documented in judgments by the courts.

4.2.8 Other relevant rules or policies

There are no other rules and parameters.

4.2.9 Job evaluation and classification systems

To the expert's knowledge there are no examples of good practice or guidance on job evaluation and classification systems.

4.2.10 Wage transparency

There is no case law dealing with wage transparency.

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

To the expert's knowledge no measures have been implemented.

4.2.12 Other measures, tools or procedures

No other measures can be mentioned.

4.3 Access to work, working conditions and dismissal

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

Pursuant to Article 2 GLG, gender equality applies to all private and public employment contracts as well as other working environments, like self-employment. Article 3(1) GLG stipulates the prohibition of direct and indirect discrimination based on gender. According to Paragraph 1173(a) Article 1(1) of the Civil Code (ABGB), an employee is obliged to work for the employer for a limited or unlimited period of time for a salary based on time or task, including part-time work.

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

National implementing legislation has transposed the material scope of application of Article 14(1)(a)-(d) of Directive 2006/54 by norms of the Civil Code (ABGB) and the GLG. In Article 3(2)(a)-(d) GLG the wording has even literally copied the wording of the Directive. Regarding atypical employment contracts, Paragraph 1173(a) Article 8(b) ABGB

regulates equal treatment of full-time and part-time workers as well as workers with temporary contracts and unlimited contracts. Case law is lacking in this field.

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

Article 3(4)(b) of the GLG contains the exception regarding discrimination if a difference of treatment is made based on a characteristic related to sex, by reason of the nature of the particular occupational activity concerned or of the context in which it is carried out, if such a characteristic constitutes a genuine and determining occupational requirement. To the expert's knowledge there is no information available on the assessment of the occupational activities referred to in Article 14(2) of Recast Directive 2006/54. There have been no legislative changes in this regard in the GLG.

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

From the point of legislation, protection is sufficient in cases of pregnancy and maternity, but the lack of case law still shows an uncertainty so that one cannot refer to jurisprudence to confirm the sufficient protection. According to Paragraph 1173(a) Article 49(1)(b) ABGB, the employer is not allowed to dismiss an employee during her pregnancy and up to 16 weeks after childbirth. There is no specific protection against dismissal for workers who take maternity leave but if the employer gives notice only to avoid the exercise of the rights of the employee based on the employment contract (in this case the right to maternity leave), the notice is considered discriminatory according to Paragraph 1173(a) Article 46(a)(1)(c) or (d) ABGB. Such a notice can be formally objected to in writing by the employee.

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)

Article 3(1) of the GLG contains the exception on protection for women, in particular as regards pregnancy and maternity.

4.3.6 Particular difficulties

To the expert's knowledge there are no particular difficulties documented.

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

Positive action is allowed insofar as there is no discrimination if adequate measures are taken to achieve factual equality. This is laid down in Article 3(4)(a) GLG as an exception to the prohibition of the sex discrimination. Its definition complies with the EU definition of Article 157(4) TFEU. To the expert's knowledge Liechtenstein has not made use of the adoption of specific positive measures to ensure full equality.

4.4 Evaluation of implementation

In principle, national law seems to be satisfactory, but because of the lack of case law, this is not yet proved in judicial practice.

4.5 Remaining issues

There are no other issues to be mentioned.

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)⁸

5.1 General (legal) context

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

In Liechtenstein, a report has recently been published that provides some insights into difficulties that workers face in practice in relation to work-life balance issues.⁹ For the first time, a family survey of 2018 provides information about all families with children under 12 years of age concerning the distribution of unpaid care work between women and men, including differentiation between paid and unpaid care work. The survey showed that care work is still a part of the gender identity of women in Liechtenstein and that families still adhere to the mainly gender-based distribution of care work, in spite of women's increased chances for employment and training.

5.1.2 Other issues

In Liechtenstein many more women than men work part-time if they have family responsibilities. Family structures are still following gender stereotypical behavioural patterns. If leave is used, it is taken mainly by women to look after children or elderly family members in need of care. Often women do not even take family leave but interrupt their professional careers to dedicate several years to unpaid family work and restart again in part-time jobs on lower levels than they left before.

5.1.3 Overview of national acts on work-life balance issues

There are national acts that contain provisions on work-life balance issues, in the amendment of the Civil Code in Paragraph 1173(a) Article 34(a) to 34(c) ABGB concerning parental leave.

5.1.4 Political and societal debate and pending legislative proposals

There has been very little political and societal debate and there are no pending legislative proposals on work-life balance.

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

The law does not include a definition of a pregnant worker.

5.2.2 Obligation to inform employer

There is no specific obligation in law to inform the employer at a specific moment about the pregnancy. According to Paragraph 1173(a) Article 49(1)(b) ABGB, the employer is not allowed to dismiss an employee during her pregnancy and up to 16 weeks after

⁸ 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>.

⁹ See Märk-Rohrer, L. (2020), *Sorge tragen Care-Arbeit, Wohlfahrtsstaat und Geschlechterverhältnisse in Liechtenstein*, Arbeitspapiere Liechtenstein-Institut No. 64 (2020), available at <http://dx.doi.org/10.13091/li-ap-64>.

childbirth. Pursuant to Article 35(a) of the Labour Code, pregnant women and breastfeeding mothers can only be employed with their consent. They are allowed to leave work by simple notification.

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 the topic.

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

Articles 35, 35(a) and 35(b) of the Labour Code regulate health protection, occupational activities, alternative work (equivalent work which replaces the actual work of a pregnant worker because it is too dangerous to her health) and the continued payment of wages during maternity, in particular during employment whilst pregnant. According to these provisions, working conditions for pregnant workers and women who are breastfeeding have to be adapted so that their health and that of their children are not affected. Pregnant women and breastfeeding mothers can only be employed with their consent. They are allowed to leave work by simple notification. Breastfeeding mothers are entitled to time off which is necessary for breastfeeding. Women are not allowed to work for eight weeks after childbirth. In the case of a medical indication at any other moment during the pregnancy and for the period between 8 and 26 weeks after childbirth, the employer is obliged to offer them equal work between 6 a.m. and 8 p.m.. Women are entitled to the continued payment of 80 % of their salary plus adequate compensation for the rest if their employer is not able to offer them equal work between 6 a.m. and 8 p.m.. During the entire period described, the woman must not be deprived of any advantage with respect to her professional position in the company, her seniority or any promotion linked to her regular work.

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

There is no case law on the topic.

5.2.6 Prohibition of night work

According to Article 35(a) of the Labour Code, pregnant workers are not allowed to work between 8 p.m. and 6 a.m. during the eight weeks preceding the expected childbirth. The employer is obliged to offer them equal work between 6 a.m. and 8 p.m.. Women are entitled to the continued payment of 80 % of their salary plus adequate compensation for the rest if their employer is not able to offer them equal work between 6 a.m. and 8 p.m.. During the entire period described, the woman must not be deprived of any advantage with respect to her professional position in the company, her seniority or any promotion linked to her regular work. In the expert's view, this implementation is correct, since all the points in Article 7 mentioned in Directive 92/85 are covered by national legislation.

5.2.7 Case law on the prohibition of night work

There is no case law on the topic.

5.2.8 Prohibition of dismissal

According to Paragraph 1173(a) Article 49(1)(b) ABGB, the employer is not allowed to dismiss an employee during her pregnancy and up to 16 weeks after childbirth. Dismissal in exceptional cases is permitted in Paragraph 1173(a) Article 53(1) ABGB. Pursuant to Paragraph 1173(a) Article 18(3) ABGB, the employer has to pay the same salary during pregnancy and confinement. Maternity leave follows childbirth for 16 to 20 weeks, during

which period 80 % of the insured salary (basis for the calculation of social security benefits) is paid to the employee.

5.2.9 Redundancy and payment during maternity leave

According to Paragraph 1173(a) Article 49(1)(b) ABGB, the employer is not allowed to dismiss an employee during her pregnancy and up to 16 weeks after childbirth. Maternity leave follows childbirth for 16 to 20 weeks, during which period 80 % of the insured salary is paid to the employee.

5.2.10 Employer's obligation to substantiate a dismissal

Dismissal in ordinary cases is prohibited, but dismissal in *exceptional cases* is permitted; here the employer must cite important grounds in writing (Paragraph 1173(a) Article 53(1) ABGB). Such an important ground is any fact that makes it unacceptable, in the *bona fide* sense, for the employer to continue the employment contract.¹⁰ The court has to decide if such a ground is duly substantiated. In any case, the fact that the pregnant worker is incapacitated must not be considered as an important ground (Paragraph 1173(a) Article 53(2) and (3)).

5.2.11 Case law on the protection against dismissal

There is no case law on the topic.

5.3 Maternity leave

5.3.1 Length

According to Article 15 of the Sickness Insurance Act (KVG), maternity leave is 20 weeks.

5.3.2 Obligatory maternity leave

Pursuant to Article 15 KVG, at least 16 of the 20 weeks of maternity leave have to be taken after childbirth. Four weeks can be taken before childbirth. It is also possible to take all 20 weeks after childbirth. Women having given birth are not allowed to work for eight weeks after childbirth (Article 35(a)(3) Labour Code).

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

Articles 35, 35(a) and 35(b) of the Labour Code regulate health protection, occupational activities, alternative work (equivalent work which replaces the actual work of a pregnant worker because it is too dangerous to her health) and the continued payment of wages during maternity, in particular during employment whilst pregnant. During the entire period described, the woman must not be deprived of any advantage with respect to her professional position in the company, her seniority or any promotion linked to her regular work (Article 35(b) Labour Code).

5.3.4 Legal protection of rights ensuing from the employment contract

Pursuant to Article 35(b) of the Labour Code, the woman must not be deprived of any advantage with respect to her professional position in the company, her seniority or any promotion linked to her regular work, including 80 % of the regular salary if she cannot continue working (Paragraph 1173(a) Article 18(3) ABGB). This applies during the entire

¹⁰ For instance, this *could* include the situation of an employee stealing from the employer. However, the law does not define such cases, and as every case is exceptional, it is too difficult to generalise the grounds in such delicate situations.

period of pregnancy and maternity. According to Article 14 and 15 KVG, the employee has the right to receive 80 % of her insured salary during maternity leave.

5.3.5 Level of pay or allowance

As referred to in Paragraph 1173(a) Article 18(3) ABGB and Article 35(b) of the Labour Code and Articles 14 and 15 KVG, pay or the allowance is at the same level as sick leave, i.e. 80 % of the insured salary of the employee, paid by the sickness insurance company. In principle, there is no ceiling in absolute numbers stipulated in national law because it will result from the individual situation of the employee in the three-pillar social security system of Liechtenstein. Therefore, the law refers to amounts in percentages of the insured income.

5.3.6 Additional statutory maternity benefits

To the expert's knowledge this is uncertain, but it is quite conceivable that employers also negotiate individual solutions with their employees because this is an important part of the working culture in Liechtenstein.

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

Paragraph 1173(a) Article 18(3) ABGB stipulates that the employer has to continue to pay salary to the employee during absence due to pregnancy and childbirth, provided that the employment contract was concluded for a period of at least three months, or that the employment relationship has already lasted for more than three months. Article 15 KVG provides that benefits shall be paid to women for 20 weeks, at least 16 of which after childbirth, provided that the woman in question was insured before childbirth for a period of at least 270 days, of which three months must have been consecutive.

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

Under Paragraph 1173(a) Article 36(b) ABGB, after maternity leave, women return to their jobs or to equivalent jobs on terms and conditions that are no less favourable to them, and they benefit from any improvement in working conditions to which they would have been entitled during their absence.

5.3.9 Legal right to share maternity leave

There is no right to share maternity leave.

5.3.10 Case law

There is no case law on the topic.

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

Paragraph 1173(a) Article 34(a)(1)(b) ABGB provides for an adoption leave of four months which is not paid. The age limit for adopted children is five. If the employee has been employed for more than a year, or if the contract is concluded for more than one year, the employee is entitled to four months' adoption leave. In the case of successive fixed-term contracts with the same employer, the sum of these contracts is taken into account for the purpose of calculating the qualifying period. The employee as parent shall live together in the same household with the child and care for the child mainly him- or herself.

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

There is no specific protection against dismissal for workers who take adoption leave but if the employer gives notice only to avoid the exercise of the rights of the employee based on the employment contract (in this case, the right to adoption leave), the notice is considered discriminatory according to Paragraph 1173(a) Article 45(c) ABGB. Such a notice can be formally objected to in writing by the employee. After the end of the adoption leave – pursuant to Paragraph 1173(a) Article 34(c) ABGB – the employee has the right to return to his or her former job or, if this is not possible, to equivalent or similar work on terms and conditions which are no less favourable to him or her.

5.4.3 Case law

There is no case law on the topic.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

By amendment of the Civil Code¹¹ – Paragraph 1173(a) Article 34(a) to 34(c) ABGB – Directive 2010/18 has been explicitly implemented in Liechtenstein.

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

National legislation is applicable to both public and private employment contracts.

5.5.3 Scope of the transposing legislation

National legislation also covers contracts of employment related to part-time work, fixed-term work or contracts with a temporary agency.

5.5.4 Length of parental leave

The total duration of parental leave is four months.

5.5.5 Age limits

Pursuant to Paragraph 1173(a) Article 34(a)(a)(1)(a) ABGB, workers are entitled to take parental leave until the child is three years old.

5.5.6 Individual nature of the right to parental leave

The right to parental leave is individual.

5.5.7 Transferability of the right to parental leave

The right to parental leave is not transferable from one parent to the other. For each parent four months are reserved. No extension of this period is provided for by law.

5.5.8 Form of parental leave

The employee is entitled to take parental leave on a full-time, part-time or hourly basis, taking into account the justified interests of the employer and the employee.

¹¹ State Gazette, LGBI. 2012/402.

5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

Paragraph 1173(a) Article 34(a)(1) and (2) ABGB provides that if the employee has been employed for more than a year or if the contract is concluded for more than one year, the employee is entitled to four months of parental leave. In the case of successive fixed-term contracts with the same employer, the sum of these contracts is taken into account for the purpose of calculating the qualifying period.

5.5.10 Notice period

The notice period is three months, and the employee has to notify the start and the end of the parental leave.

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

The employer may request that the employee selects a different period if there are reasonable work-related grounds, such as the fact that the work in question is seasonal work, that no replacement can be found in time, that a certain number of employees are all asking for parental leave at the same time, or because the employee's position in the company is of strategic importance.

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

According to Paragraph 1173(a) Article 34(b)(3) ABGB, in companies with fewer than 30 employees the employer has the right to defer the period of parental leave in all cases where the planned leave would interfere with the operations of the company.

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)

To the expert's knowledge there are no such special rules.

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

There are no further measures to address specific needs of adoptive children except for the higher maximum age of five years of the adopted child compared to the biological child.

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

There is no specific protection against dismissal for workers who take parental leave but if the employer gives notice only to avoid the exercise of the rights of the employee based on the employment contract (in this case the right to parental leave), the notice is considered discriminatory according to Paragraph 1173(a) Article 46(a)(1)(c) or (d) ABGB. Such a notice can be formally objected to in writing by the employee.

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

After the end of parental leave – pursuant to Paragraph 1173(a) Article 34(c) ABGB – the employee has the right to return to his or her former job or, if this is not possible, to equivalent or similar work on terms and conditions which are no less favourable to him or her.

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 Paragraph 1173(a) Article 34(c)(1) ABGB, all 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 the parental leave.

5.5.18 Status of the employment contract or relationship during parental leave

The employment contract is suspended during the period of parental leave.

5.5.19 Continuity of entitlement to social security benefits

The employee has to pay the contributions for social benefits during parental leave. Healthcare is always a private duty for people living in Liechtenstein.

5.5.20 Remuneration

Parental leave is not remunerated by the employer because it is unpaid leave.

5.5.21 Social security allowance

The social security system in Liechtenstein does not provide for an allowance during parental leave.

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

Liechtenstein only aimed at the implementation of the minimum requirements of Directive 2010/18.

5.5.23 Case law

There is no case law on the topic.

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

Liechtenstein legislation does not provide for paternity leave.

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

Liechtenstein legislation does not provide for paternity leave.

5.6.3 Case law

There is no case law on the topic.

5.7 Time off for *force majeure*

5.7.1 Time off for *force majeure*

Paragraph 1173(a) Article 29(5) ABGB governs the absence of employees in the event of *force majeure* for urgent family reasons. Employees are entitled to time off from work for one to three days per incidence in the case of sickness or accident of family members living in the same household, evidenced by medical certificate. This applies only until other

care is organised and is not applicable if a child is e.g. in hospital and the care is provided for there. It is paid leave pursuant to Paragraph 1173(a) Article 18(3) ABGB, provided that the employment contract was concluded for a period of at least three months, or that the employment relationship has already lasted for more than three months. The employer has to continue to pay 80 % of the salary to the employee during the absence, as is also true in cases of absence due to illness. Generally, employees are also entitled to take such a period of time off from work several times per year.

5.7.2 Case law

There is no case law on the topic.

5.8 Care leave

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

There is no specific care leave in national law apart from the time off for *force majeure* as described above in point 5.7.

5.8.2 Case law

There is no case law on the topic.

5.9 Leave in relation to surrogacy

Surrogacy is not allowed in Liechtenstein (Article 138(c) ABGB).

5.10 Flexible working time arrangements

5.10.1 Right to reduce or extend working time

National law does not grant workers the legal right to reduce working time on request. Pursuant to Paragraph 1173(a) Article 36(a) of the Civil Code, the employer has to inform employees regarding part-time and fixed-term employment contracts. The employer shall consider requests from full-time workers who want to change to a part-time position, as far as possible. Moreover, the employer shall inform employees in a timely manner about available jobs in order to facilitate the change from part-time to full-time or the other way round. The employer also has to inform the trade union about the availability of such part-time work. Working part time is not restricted to certain groups or based on specific conditions or eligibility criteria.

Paragraph 1173(a) Article 36(a)(d) ABGB stipulates that the employer shall as far as possible facilitate the access of part-time workers to managerial positions and to vocational training and shall promote professional advancement and mobility. According to Paragraph 1173(a) Article 36(a)(2) ABGB, the employer has to inform fixed-term workers about permanent posts that become vacant. In addition, the employer has to facilitate the access to vocational training for them as far as possible. The employer also informs the trade union about vacant fixed-term posts in the company.

Pursuant to Paragraph 1173(a) Article 34(b)(4) ABGB, there is a possibility to take parental leave in the form of part-time work, which is by its nature intended for parents and is limited in time to the date that the child reaches three years old, or five years old in the case of adoption. Legitimate interests of both employer and employee are to be considered here. There is no allowance or payment to cover the shortfall in salary resulting from the reduced hours.

5.10.2 Right to adjust working time patterns

National law does not grant workers the legal right to adjust working time patterns on request. Pursuant to Paragraph 1173(a) Article 36(a) of the Civil Code, the employer has to inform employees regarding part-time and fixed-term employment contracts.

5.10.3 Right to work from home or remotely

To the expert's knowledge there is no legal right to work from home or remotely, temporarily or otherwise, on request. It is an agreement between the employer and the employee if the interests of both parties are respected.

5.10.4 Other legal rights to flexible working arrangements

According to Article 36 of the Labour Code, protection is foreseen for employees with family obligations, if they have to raise children aged up to 15 years or need to take care of relatives or persons closely connected with the family. This has to be taken into account when fixing their working hours. Such an employee can choose whether they agree to work overtime, and he or she can ask for a lunch break of at least an hour and a half.

5.10.5 Case law

There is no case law on the topic.

5.11 Evaluation of implementation

In principle, national law has formally correctly implemented the EU law topics discussed in this chapter. The main problem for completely satisfactory implementation is still the lack of case law on the topics.

5.12 Remaining issues

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

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

In Liechtenstein no reports have been published that provide insights into 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 relevant issues in relation to the social security system.

6.1.3 Political and societal debate and pending legislative proposals

There are very few societal debates and no legislative proposals pending on this topic.

6.2 Direct and indirect discrimination

Article 3(1) and (2)(e) and (f) GLG prohibit direct and indirect discrimination on grounds of sex in occupational social security schemes.

There is no case law on the topic.

6.3 Personal scope

The personal scope of national law relating to occupational social security systems corresponds to that specified in Article 6 of Directive 2006/54. According to Article 2 GLG, all private and public employment contracts, as well as self-employed persons, are included. Article 1(a)(f) GLG provides for application to persons whose activity is interrupted by illness, maternity, invalidity, old age, occupational and non-occupational accident, occupational disease and unemployment. There is no case law on the topic.

6.4 Material scope

The material scope of national law relating to occupational social security systems corresponds to that specified in Article 7 of Directive 2006/54. Article 2 GLG applies to all private and public employment contracts including public servants. Article 1(a)(f) GLG provides for application to persons whose activity is interrupted by illness, maternity, invalidity, old age, occupational and non-occupational accident, occupational disease and unemployment. Article 3(2)(f) GLG also stipulates the prohibition of discrimination for social security systems which provide for other social benefits, in particular survivors' benefits and family allowances. There is no case law on the topic.

6.5 Exclusions

Article 3(4)(d) GLG provides for an exclusion in voluntary occupational social security systems. For employers, different contributions can be determined in order to achieve the same or similar level of benefits for men and women or to complete the necessary funds covering the expenses of the insured benefits.

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

Article 3(1) and (2)(e) and (f) GLG prohibit direct and indirect discrimination on grounds of sex in occupational social security schemes. These provisions prohibit sex discrimination as mentioned in Article 9 of Directive 2006/54. There is no case law on this topic.

6.7 Actuarial factors

Article 3(4)(c) GLG grants an exception to the prohibition of discrimination if sex is used as an actuarial factor for the benefits or contributions in voluntary occupational social security systems. There is no case law on this topic.

6.8 Difficulties

To the expert's knowledge there are no specific difficulties in Liechtenstein in relation to occupational social security systems.

6.9 Evaluation of implementation

In principle, national law has formally correctly implemented the EU law topics discussed in this chapter. The main problem for completely satisfactory implementation is still the lack of case law on the topics.

6.10 Remaining issues

There are no remaining issues regarding occupational security systems.

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)

In Liechtenstein no reports have been published that provide insights into 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 in relation to statutory social security schemes.

7.1.3 Overview of national acts

The main relevant act is the Old-Age Insurance Act (AHVG) that provides for legislation on statutory schemes of social security.

7.1.4 Political and societal debate and pending legislative proposals

There are very few societal debates and no legislative proposals pending on this topic.

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

Article 3(1) and (2)(e) and (f) GLG have implemented the principle of equal treatment for men and women in matters of social security. Direct and indirect discrimination on grounds of sex in statutory social security schemes is therefore prohibited, as regards the scope of such schemes and the conditions of access to them. Moreover, the obligation to contribute and the calculation of contributions shall occur without sex discrimination. Furthermore, the law provides for non-discrimination of the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

7.3 Personal scope

The personal scope of national law relating to statutory social security systems corresponds to that specified in Article 2 of Directive 79/7. According to Article 2 GLG, all private and public employment contracts, as well as self-employed persons, are included. Article 1(a)(f) GLG provides for application to persons whose activity is interrupted by illness, maternity, invalidity, old age, occupational and non-occupational accident, occupational disease and unemployment. There is no case law on this topic.

7.4 Material scope

The material scope of national law relating to statutory social security systems is broader than specified in Article 3 Paragraphs 1 and 2 of Directive 79/7. Article 2 GLG applies to all private and public employment contracts including public servants. Article 1(a)(f) GLG provides for application to persons whose activity is interrupted by illness, maternity, invalidity, old age, occupational and non-occupational accident, occupational disease and unemployment. Article 3(2)(f) GLG also prohibits discrimination in social security systems which provide other social benefits, in particular survivors' benefits and family allowances. There is no case law on this topic.

7.5 Exclusions

Since 2010, the pensionable age is equal for men and women, at 65 for both. Pursuant to Article 55 of the Old-Age Insurance Act (AHVG), an exclusion for the determination of the pensionable age under Directive 79/7 is no longer maintained. The same applies to advantages for parents who dedicate time to the upbringing of their children, which are equally divided between them (unpaid parental leave). They benefit from so-called '*Erziehungsgutschriften*', a fictitious income, which is added to the calculation of the pension for the period dedicated to family work. In any case, caring periods for children and other relatives in the same household count for less than the full crediting of work periods for pension purposes (Article 63 *sexies* (c) AHVG).

7.6 Actuarial factors

Since Article 3(1) and (2)(e) and (f) GLG implemented the principle of equal treatment for men and women in matters of social security, direct and indirect discrimination on grounds of sex in statutory social security schemes is prohibited, including the calculation of contributions and benefits. The exception to the prohibition of discrimination if sex is used as an actuarial factor for the benefits or contributions granted in Article 3(4)(c) GLG is not applicable to statutory social security systems. There is no case law on the topic.

7.7 Difficulties

To the expert's knowledge there are no relevant difficulties in relation to implementing Directive 79/9.

7.8 Evaluation of implementation

In principle, national law has formally correctly implemented the EU law topics discussed in this chapter. The main problem for completely satisfactory implementation is still the lack of case law on the topics.

7.9 Remaining issues

There are no remaining issues regarding occupational security systems.

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

In Liechtenstein no reports have been published that provide insights into difficulties that self-employed workers face.

8.1.2 Other issues

There are no other relevant issues in relation to self-employed workers.

8.1.3 Overview of national acts

The main legislation transposing Directive 2010/41/EU is the GLG, the Sickness Insurance Act (KVG) and the Act providing for occupational pension schemes (BPVG).

8.1.4 Political and societal debate and pending legislative proposals

There is very little societal debate and no legislative proposals pending on this topic.

8.2 Implementation of Directive 2010/41/EU

The main legislation transposing Directive 2010/41/EU is the GLG, the Sickness Insurance Act (KVG) and the Act providing for occupational pension schemes (BPVG). The transposition of Directive 2010/41 was carried out simultaneously with that of Directives 2006/54 and 2004/113. Liechtenstein did not take additional measures to transpose Directive 2010/41 because it considered transposition into national legislation as unnecessary, since the issues were already covered by existing law.

8.3 Personal scope

8.3.1 Scope

Article 2(a) of Directive 2010/41 has not been transposed specifically to create new definitions of self-employed workers or self-employment.

8.3.2 Definitions

The Commercial Code (CC) contains a definition of self-employment according to which it is a gainful activity at one's own account and risk (Article 2(3) CC). This means that the already existing conditions, e.g. in the Old-age Insurance Act¹² (AHVG), are relevant when defining the income of self-employed persons for insurance purposes (Article 42 AHVG).

8.3.3 Categorisation and coverage

In general, all self-employed workers are covered when applying the prohibition of discrimination on the grounds of sex (Article 3(2) GLG). The agricultural sector is therefore also included (Article 15 AHVV – Regulation to the AHVG.).¹³

¹² State Gazette, LGBI. 1952/29 as amended by 2018/344.

¹³ State Gazette, LGBI. 1982/35 as amended by 2011/419.

8.3.4 Recognition of life partners

National legislation also recognises life partners (Article 54*bis* AHVG)¹⁴ by equal treatment of spouses and life partners, marriages and registered life partnerships, and judicial dissolutions of life partnerships and divorces. Furthermore, the Act on Registered Partnerships¹⁵ (Part G) provides for the compensation for partners of self-employed persons participating in the enterprise. The amount of the compensation is calculated on the basis of the nature of the work and the period during which it was performed. The standard of living of the spouses as a whole and the maintenance allowance are also taken into consideration in this calculation.

8.4 Material scope

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

Article 3(2)(a) GLG transposes Article 4 of Directive 2010/41 in part into national law. According to Article 3(2)(a) GLG, the prohibition of direct and indirect discrimination applies to the access to self-employment irrespective of the field of activity and professional position, including career advancement.

8.4.2 Material scope

Article 3 GLG was amended in the framework of the transposition of Directive 2006/54 and has not added to the protection for self-employed persons by the implementation of Directive 2010/41.

8.5 Positive action

To the knowledge of the expert no specific positive action has been taken by Liechtenstein regarding gender equality in the area of self-employment.

8.6 Social protection

The system for social protection in Liechtenstein covers sickness, accident, maternity, pensions and invalidity of self-employed workers. The mandatory system for sickness, accident and maternity insurance is laid down in the Sickness Insurance Act¹⁶ (KVG). Pursuant to Article 7 KVG, persons domiciled in Liechtenstein or working in Liechtenstein are insured for the costs of nursing, and this is mandatory for the self-employed and their spouses. Furthermore, self-employed persons can be insured for sickness benefits on a voluntary basis (Article 8 KVG). According to Article 34 of the Old-Age Insurance Act, AHVG, self-employed persons are insured for pensions if they are domiciled in Liechtenstein. It is mandatory for self-employed persons and their spouses. Spouses and life partners are equally treated (Article 54*bis* AHVG). Under the Occupational Schemes Act¹⁷ (BPVG), self-employed persons can be insured for old age, invalidity and death. It is voluntary for both the self-employed (Article 5 BPVG) and their spouses (Article 3(1)(e) BPVG). For all these insurances, self-employed persons have to pay contributions to the insurance companies periodically, based on their regular income.

8.7 Maternity benefits

Maternity benefits are governed by Articles 12-15 KVG and are only granted in cases where self-employed women or helping spouses have been insured on a voluntary basis according to Article 8(2) KVG. Insured women will receive a maternity allowance equivalent to 80 %

¹⁴ State Gazette, LGBI. 1952/29 as amended by 2011/388.

¹⁵ State Gazette, LGBI. 2011/350.

¹⁶ State Gazette, LGBI. 1971/50 as amended by 2018/342.

¹⁷ State Gazette, LGBI. 1988/12 as amended by 2018/296.

of the insured income during a period of 20 weeks, of which at least 16 weeks have to be after childbirth, provided that the woman was insured before childbirth for a period of at least 270 days, of which 3 months must have been consecutive (Article 15(2) and 14(3) KVG). The maternity allowance therefore meets the requirement of sufficiency in Article 8(3) subparagraph (a) of Directive 2010/41.

To the knowledge of the expert no specific implementation measures have been taken in relation to Article 8(4) of this Directive.

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

As already mentioned above under point 8.2, Liechtenstein did not explicitly transpose Directive 2010/41 into national legislation. Please see 8.6 regarding the implementation of Article 10 of Recast Directive 2006/54.

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

To the expert's knowledge Liechtenstein legislation has not made use of the exceptions for self-employed persons.

8.9 Prohibition of discrimination

Article 3(2)(a) GLG transposes the scope of application of Article 14(1)(a) of Directive 2006/54. The wording in the GLG is taken literally from Directive 2006/54.

8.10 Evaluation of implementation

In principle, national law has formally correctly implemented the EU law topics discussed in this chapter. The main problem for completely satisfactory implementation is still the lack of case law on the topics.

8.11 Remaining issues

There are no remaining issues regarding self-employed persons.

9 Goods and services (Directive 2004/113)¹⁸

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

In Liechtenstein no reports have been published that provide insights into difficulties that 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

To the expert's knowledge no specific problems have emerged concerning the topic.

9.1.3 Political and societal debate

There is very little debate on this topic.

9.2 Prohibition of direct and indirect discrimination

Directive 2004/113 has been transposed into national legislation by amendment of the GLG which entered into force on 8 June 2011. According to Article 4(a)(1) GLG, direct and indirect discrimination on grounds of sex in the access to goods and services is prohibited, as well as harassment and sexual harassment and the instruction to do this (Article 4(b) GLG).

9.3 Material scope

The material scope of Article 4(a) GLG corresponds to the scope of Article 3 of Directive 2004/113. The wording is copied literally from Directive 2004/113 into national law. There is no case law on the topic.

9.4 Exceptions

Article 4(a)(4)(b) and (c) GLG provides for the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113. The contents of media and advertising and the field of education are therefore excluded from the prohibition of discrimination.

9.5 Justification of differences in treatment

Article 4(a)(5)(b) GLG stipulates that no discrimination exists if the provision of goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. There is no case law on this topic.

9.6 Actuarial factors

National law does not ensure the content of Article 5(1) of Directive 2004/113 explicitly but recognises it implicitly by regulating the specific exceptions of Article 5(2) and (3) of Directive 2004/113 in the GLG. Differences are still allowed except when costs are related to pregnancy and maternity.

¹⁸ 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>.

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

Article 4(a)(5)(c)(1)–(3) GLG implements Article 5(2) of Directive 2004/113 and is still in force because the *Test-Achats* ruling of the CJEU does not automatically affect EEA law. The EEA Committee is competent there. In principle the CJEU ruling is applicable to exchanges of services between EU residents. Therefore, differences in premiums and benefits are still provided for.

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

Positive action measures in relation to the access to and the supply of goods and services are regulated in Article 4(a)(5)(a) GLG. To the knowledge of the expert there are no specific examples to report in this regard. There is no case law on the topic.

9.9 Specific problems related to pregnancy, maternity or parenthood

The prohibition of discrimination on the grounds of pregnancy, maternity or parenthood in relation to the access to and the supply of goods and services is regulated in Article 4(a)(1) GLG. There is no case law on this topic.

9.10 Evaluation of implementation

In principle, national law has formally correctly implemented the EU law topics discussed in this chapter. The main problem for completely satisfactory implementation is still the lack of case law on the topics.

9.11 Remaining issues

There are no remaining issues regarding goods and services.

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 are no specific surveys or reports on issues of violence against women and domestic violence, but the fifth country report of Liechtenstein to the CEDAW¹⁹ shall be mentioned. Some information about interventions of the police in cases of domestic violence from 2001 to 2016 are listed; the numbers and the kind of intervention made by the police is briefly shown in two charts.

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

The main legislation is laid down in the Penal Code (StGB) and the Penal Procedure Code (StPO)²⁰ as well as in the Act on Aid for victims (OHG).²¹

10.1.3 National provisions on online violence and online harassment

National provisions on the topic were amended in the Penal Code in 2019.²² According to Article 107(c) StGB, continued harassment via electronic communication or computer systems is punished by up to one year imprisonment or a fine. Pursuant to Article 203 StGB, someone who sexually harasses a person grossly and verbally by means of information or communication technologies is punished by imprisonment of up to six months or a fine. Furthermore, anyone who incites hate speech or discrimination, publicly disseminates ideologies of systematic defamation of persons or violates human dignity by discriminating against a person is punished by up to two years of imprisonment for discrimination on the grounds of gender, and the same punishment applies to anyone who does this via electronic media (Article 283 StGB).

10.1.4 Political and societal debate

There is some political and societal debate on the topic. In cooperation with various NGOs, the Government participates in the yearly campaign '16 days against violence to women' from 25 November to 10 December. This campaign aims at raising the awareness of the public on the topic of violence against women, making people more familiar with the helplines and offering ways for non-violent solutions.

10.2 Ratification of the Istanbul Convention

Liechtenstein signed the Council of Europe Convention on preventing and combating violence against women and domestic violence, called the Istanbul Convention, on 10 November 2016 in Strasbourg. The Istanbul Convention is the first legally binding pan-European instrument aiming to protect women and girls in particular from any form of violence and particularly from domestic violence. By signing the Convention, after a formal decision by the Government on 5 October 2016, Liechtenstein sent a clear sign of supporting the aim of the Convention.

The main points of the Istanbul Convention are the prevention of violence against women, the protection of victims and the consequent pursuit of the crimes under this Convention. A working group nominated by the Government in March 2016 has examined the prevailing

¹⁹ See <https://www.llv.li/files/aaa/5-landerbericht-cedaw-de.pdf>, pp. 14-16.

²⁰ State Gazette, LGBl. 2012/26.

²¹ State Gazette, LGBl. 2007/228.

²² State Gazette, LGBl. 2016/14 and 2019/124.

legal norms regarding the requirements of the Convention. In its final report, the working group concluded that Liechtenstein already largely fulfils the standards of the Istanbul Convention.

According to national practice in Liechtenstein, international agreements are only ratified when the national norms fully correspond with the requirements of the convention. For a possible ratification of the Istanbul Convention, Liechtenstein would have to make a reservation regarding the provisions concerning the residence permit status of victims. Additionally, there are some marginal gaps in the fields of jurisdiction, grounds for increase in penalties, and criminal law regarding norms against forced marriages. These gaps are likely to be closed by the autonomous adaptation of parts of the revised Austrian Criminal Code because large parts of the legislation in Liechtenstein mainly derive from the reception of Austrian and Swiss law. These amendments were planned for 2018 but will probably only be realised in the near future.

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

In Liechtenstein no reports have been published that provide insights into 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

To the expert's knowledge there are no other issues in relation to the topic.

11.1.3 Political and societal debate and pending legislative proposals

There is very little debate on the topic.

11.2 Victimisation

Article 7(a) GLG has implemented the provisions on victimisation in national legislation. The GLG includes a provision concerning the prohibition of any reprisals for the employee him/herself and any other employees involved in the case, as a reaction to a complaint within the business or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment. Furthermore, specific protection in the case of so-called revenge dismissals is foreseen where persons are dismissed as a reaction to a complaint within the business or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Article 10 GLG). In the expert's opinion, the protection against victimisation complies with the Directives.

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

From a legal point of view, Article 5 GLG safeguards for everyone who is discriminated against on the grounds of sex the access to courts or administrative boards in order to use the proper remedy. In Liechtenstein there is still no case law concerning anti-discrimination law and it is not easy to identify the reasons for this. Combined with other factors such as fear of victimisation, it is imaginable that people are deterred from filing a complaint by the specific situation in Liechtenstein. After all, it is a very small country where nearly everybody knows everyone else, and anti-discrimination lawsuits are still considered as very delicate issues in spite of all the useful awareness-raising campaigns initiated by the former Office of Equal Opportunities, now the Office for Social Services.

11.3.2 Availability of legal aid

As referred to in Article 19(2)(a) GLG, since January 2017, the Office of Social Services supports alleged victims of gender discrimination in pursuing their complaints. Furthermore, the section with regard to women's issues in the LANV (employee association) is available to address problems concerning gender discrimination. A new independent institution called Association for Human Rights (*Verein für Menschenrechte, VMR*) in Liechtenstein was created by law.²³ Its main task is to protect and promote human rights in Liechtenstein according to Article 4(1) of the Law on the VMR (VMRG). Pursuant

²³ Law on the VMR, LGBl. 2016/504.

to Article 1(2) VMRG, the VMR also has the function of an independent ombudsperson for children and young people.

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

As member of the EEA, Liechtenstein is not affected by this question.

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

As member of the EEA, Liechtenstein is not affected by this question.

11.5 Burden of proof

According to Article 6 GLG, discrimination covered by Articles 3 to 4(b) GLG is assumed if the person concerned is able to furnish *prima facie* evidence. Liechtenstein has practically no case law concerning anti-discrimination law. Therefore, it is not clear how the shift of burden of proof will be applied in practice in sex discrimination cases.

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

Pursuant to Article 5 and Article 7(b) GLG, a person who is discriminated against by receiving unequal pay has the right to compensation for the difference in salary from the date of initiating proceedings to five years earlier, and after that date until the termination of the employment contract.

According to Article 5(1)(a-c) GLG, a person discriminated against has the right to demand before the court or the administrative authority that any imminent discrimination is forbidden or abolished, existing discrimination is removed, or a discrimination is stated in a declaratory judgment, if it is still disruptive.

If any discrimination is found in refusing an appointment or in the termination of a private employment contract, the person in question is entitled to compensation on the basis of the determined salary (Article 7(c) GLG). In the first case, the prescription period is three months from the moment of the employee being informed of the refusal by the employer. In the second case, the person has to appeal to the employer in writing within the notice period (normally a three-month notice period) and if the contract is not continued, the prescription period is six months from the end of the contract (Paragraph 1173(a) Article 48 ABGB). The compensation for discrimination by refusing an appointment corresponds to a maximum amount of three monthly salaries. This amount is the same even if there are more persons demanding compensation. The compensation for discrimination in the termination of a private employment contract also corresponds to the amount of three monthly salaries in total, or at least EUR 4 600 respectively (CHF 5 000), when it concerns (sexual) harassment (Article 7(c)(3) GLG).

Regarding private employment contracts, appealing to an arbitration board is obligatory under Article 11 GLG before bringing the claim to court. In fact, the arbitration board is actually situated at the court itself; in practice, the 'proceedings' shall start with the competent judge who has the function of an arbitration board ('*Schlichtungsstelle*'). The same applies to cases in the area of goods and services.

11.6.2 Effectiveness, proportionality and dissuasiveness

From a theoretical legal view, it can be stated that the remedies and sanctions as described above under point 11.6.1 meet the standards of being effective, proportionate and dissuasive. As there is no case law in gender equality matters, it is not possible to evaluate the application of these instruments in practice.

11.7 Equality body

Articles 18 and 19 GLG provided for the Gender Equality Commission and the Office for Equal Opportunities, but Article 18 GLG was abolished and Article 19 GLG was amended by a new GLG on 23 December 2016.²⁴ By abolishing Article 18 GLG, the institution of the Gender Equality Commission was also officially abolished. Since March 2005 the Office for Equal Opportunities has dealt with equal opportunities, but on 1 January 2017 a new law entered into force and changed its name to Office for Social Services.²⁵ Pursuant to Article 19(1) and (2)(d) GLG, it is committed to doing work for legal and *de facto* gender equality. The Office for Social Services is to prepare opinions and participate in the process of the creation of law proposals insofar as it is relevant for gender issues. The competences for the Office for Social Services did not change compared to those of the former Office for Equal Opportunities.

Formerly, Article 19(3) GLG explicitly stated that the Office for Equal Opportunities shall be independent with respect to its tasks of counselling public authorities and the private sector, executing public relations as well as studies and recommendations on the appropriate measures to public authorities and the private sector. This Article 19(3) no longer exists regarding the Office for Social Services. The social dialogue is guaranteed in Article 19(2)(e) GLG, by which the Office for Social Services is to cooperate with public or private institutions; the government report explains that the term 'institutions' shall also include the social partners. According to Article 19(2)(h) GLG, the Office for Social Services exchanges information with the competent European institutions which are active with regard to the protection against gender discrimination.

In addition to this, a new independent institution called Association for Human Rights (*Verein für Menschenrechte, VMR*) in Liechtenstein was created by law.²⁶ Its main task is to protect and promote human rights in Liechtenstein according to Article 4(1) of the Law on the VMR (VMRG). Pursuant to Article 1(2) VMRG, the VMR also has the function of an independent ombudsperson for children and young people.

11.8 Social partners

The social dialogue is guaranteed in Article 19(2)(e) GLG, by which the Office for Equal Opportunities – since January 2017, the Office for Social Services – is to cooperate with public or private institutions; the government report explains that the term 'institutions' shall also include the social partners.

Collective bargaining (especially the so-called *Gesamtarbeitsvertrag, GAV*, Paragraph 1173(a) Article 101 *et seq.* ABGB) is an instrument used in Liechtenstein's private law, whose function is rather similar to the law itself. This particular collective bargaining agreement (GAV) puts into force clauses between the parties which override individual employment contracts and partly override the legal regulations and can also apply to third parties. The GAV is mutually agreed and signed by the employees' representatives (the trade union *LANV*) and by the representatives of the employers (the *GWK*). The contracting parties wish to achieve several goals by signing the GAV, such as

²⁴ For more details see the website of the Office for Social Services with the new chapter 'equal opportunities' since January 2017 <http://www.llv.li/#/117687/chancengleichheit>.

²⁵ Article 19 GLG, as amended by LGBl. 2016/505.

²⁶ Law on the VMR, LGBl. 2016/504.

preserving the industrial peace; settling disputes by mutual consent; enhancing the social, economic and environmental development of each branch of trade; and keeping Liechtenstein's marketplace competitive in a social market economy by encouraging innovations and a modern labour organisation. This also includes equal opportunities for men and women with regard to equal pay. A third of all GAVs explicitly contain a clause concerning equal opportunities between men and women.²⁷ It is worth mentioning that the GAVs that mention equal opportunities between men and women apply to the largest number of employees (such as in the metal industry, the non-metal industry and the building trades). Finally, it should be mentioned that under Article 6(a) GLG, all contractual clauses, employment rules, statutes of associations, collective agreements and all other agreements and rules which contravene gender equality are null and void.

11.9 Other relevant bodies

All relevant bodies have been mentioned throughout the report.

11.10 Evaluation of implementation

In principle, national law has formally correctly implemented the EU law topics discussed in this chapter. The main problem for completely satisfactory implementation is still the lack of case law on the topics.

11.11 Remaining issues

There are no other remaining issues regarding enforcement and compliance.

²⁷ For more details see GAVs on the website of the trade union LANV <https://www.lanv.li/GAV/GAVinLiechtenstein.aspx>.

12 Overall assessment

The following transposition problems were mentioned in this report:

1. Lack of case law on the topics,
2. Istanbul Convention not yet ratified,
3. *Test-Achats* ruling of the CJEU not yet fully implemented.

From a purely theoretical legal view it can be confirmed that the implementation of the EU gender equality *acquis* in Liechtenstein is satisfactory. However, because of the lack of case law concerning gender equality, it is difficult to assess whether enforcement is satisfactory as well. Since 1999, namely for more than 20 years, the Law on Gender Equality has been in existence but the various topics on gender equality are still rarely debated in public with a marginal status. Nevertheless, active awareness-raising campaigns²⁸ concerning gender equality are conducted on a regular basis. Moreover, Liechtenstein wanted to send out a signal with the creation of the new Association for Human Rights, which has the clear mission to progress all matters concerning human rights, including gender equality, in an independent and objective manner.

²⁸ See since January 2017 on the website of the Office for Social Services <http://www.llv.li/#/117761/veranstaltungen-und-projekte>.

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