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Country report

Gender equality

How are EU rules transposed into national law?

Latvia

Kristīne Dupate

Reporting period 1 January 2019 – 31 December 2019

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1 Introduction

1.1 Basic structure of the national legal system

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

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

1.2 List of main legislation transposing and implementing the directives

The main legislation transposing and implementing the EU gender equality law (Directive 2006/54/EC and Article 157 of the TFEU, Directive 92/85/EEC and 2010/18/EU) in the field of employment is:

- the Labour Law;²
- the Law on the State Civil Service;³
- the Law on Service in the System of the Interior and Imprisonment System;⁴
- the Military Service Law;⁵
- the Home Guards of the Republic of Latvia Law;⁶
- the Law on Orphan's Courts;⁷
- the Law on Judicial Authority;⁸
- the Law on the Prosecutor's Office;⁹
- The Military Service Law;¹⁰
- the Law on the Prevention of Corruption and the Bureau for Combating Corruption;¹¹
- the Unemployed and Job-seekers Support Law;¹²

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

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

³ *Valsts civildienesta likums*, Official Gazette No. 331/333, 22 September 2000.

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

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

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

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

⁸ *Likums "Par tiesu varu"*, Official Gazette No. 1/2, 14 January 1993.

⁹ *Prokuratūras likums*, Official Gazette No. 65, 2 June 1994.

¹⁰ *Militārā dienesta likums*, Official Gazette No. 91, 18 June 2002.

¹¹ *Korupcijas novēršanas un apkarošanas biroja likums*, Official Gazette No. 65, 30 April 2002.

¹² *Bezdarbnieku un darba meklētāju atbalsta likums*, Official Gazette No. 80, 29 May 2002.

- Regulation of the Cabinet of Ministers No. 458 'Procedures for Licensing and Supervision of Merchants – Providers of Work Placement Services';¹³
- the Law on Private Pension Funds;¹⁴
- the Education Law.¹⁵

The Labour Protection Law¹⁶ is one of the implementing measures for the purpose of the protection of pregnant workers and workers during the maternity period (Directive 92/85/EEC). The following laws are relevant to Directive 79/7/EEC, as well as Directives 92/85/EEC; 2010/18/EU and 2010/41/EU, because they regulate rights to statutory social insurance including rights to maternity, paternity, adoptive and parental allowances and apply to both employed and self-employed persons:

- the Law on Social Security;¹⁷
- the Law on Maternity and Sickness Insurance;¹⁸
- the Law on Statutory Social Insurance.¹⁹

Directive 2004/113/EC is implemented by following laws:

- the Law on the Protection of Consumer Rights;²⁰
- the Insurance and Reinsurance Law.²¹

The Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity²² implements Directive 2010/41/EU.

The Association and Foundation Law²³ and Ombudsperson's Law²⁴ implement some of enforcement measures as provided by all EU gender equality law.

1.3 Sources of law

The main sources of gender equality law in practice are national measures implementing EU law, such as the Labour Law implementing almost all substantial rights under the EU gender equality and non-discrimination directives in the field of employment. At the same time, according to the national legal doctrine, international agreements are higher than national laws. It is supported by the provision of Article 89 of the Constitution of the Republic of Latvia²⁵ which states that the state protects human rights according to the Constitution, national laws and binding international agreements. Also taking into account the primacy of EU law in the application of gender equality norms, the EU gender equality directives and their interpretation provided in the case law of the CJEU are taken into account. The decisions of the Supreme Court most frequently refer to the case law of the CJEU.²⁶

¹³ *Ministru Kabineta Noteikumi Nr.458 'Komersantu – darbiekārtošanas pakalpojumu sniedzēju – licencēšanas un uzraudzības kārtība'*, Official Gazette No. 108, 6 July 2007.

¹⁴ *Likums par privātajiem pensiju fondiem*, Official Gazette No. 150/151, 20 June 1997.

¹⁵ *Izglītības likums*, Official Gazette No. 343/344, 17 November 1998.

¹⁶ *Darba aizsardzības likums*, Official Gazette No. 105, 6 July 2001.

¹⁷ *Likums 'Par sociālo drošību'*, Official Gazette No. 144, 21 September 1995.

¹⁸ *Likums 'Par maternitātes un slimības apdrošināšanu'*, Official Gazette No. 182, 23 November 1995.

¹⁹ *Likums par valsts sociālo apdrošināšanu*, No. 274/276, 21 October 1997.

²⁰ *Patērētāju tiesību aizsardzības likums*, Official Gazette No. 104/105, 1 April 1999.

²¹ *Apdrošināšanas un pārpadrošināšanas likums*, Official Gazette No. 124, 30 June 2015.

²² *Fizisko personu – saimnieciskās darbības veicēju – diskriminācijas aizlieguma likums*, Official Gazette No. 199, 19 December 2012.

²³ *Biedrību un nodibinājumu likums*, Official Gazette No. 161, 14 November 2003.

²⁴ *Tiesībsarga likums*, Official Gazette No. 65, 25 April 2006.

²⁵ The Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), Official Gazette No. 43, 1 July 1993.

²⁶ The Supreme Court, The summary of the case law in employment disputes, 2018, available in Latvian at: <http://at.gov.lv/lv/jaunumi/par-notikumiem/apkopota-tiesu-prakses-darba-lietas-8591>.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

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

2.1.2 Other constitutional protection of equality between men and women

The Constitution does not explicitly provide any specific or additional protection of equality between men and women.

2.2 Equal treatment legislation

Latvian law does not have specific equal treatment legislation. Latvia has chosen to implement EU gender equality law in special laws regulating each particular field of life rather than having one special law devoted to such implementation. For example, gender equality in the field of employment was implemented by amendments to the Labour Law, while in the field of social insurance it was done by respective amendments to the Law on Social Security. Non-discrimination on the grounds of sex, with regard to the access to and supply of goods and services, was implemented by the Law on the Protection of Consumer Rights and by the Law on Insurance Companies and their Supervision. As a result of such approach, Latvia has faced some problems.

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

In particular, relating to employment, the prohibition of discrimination with regard to employment (service) conditions has not been implemented with regard to judges and public prosecutors. As a consequence, judges²⁷ and public prosecutors²⁸ are still only protected against discrimination with regard to access to a post.

Implementation is incomplete for the prohibition of discrimination principle with regard to the access to occupational social security schemes in the public sector. The laws on public-sector long-term service pensions²⁹ do not explicitly stipulate this principle.³⁰

²⁷ Article 51(2) of the Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993.

²⁸ Article 33¹(1) of the Prosecutors' Office Law (*Prokuratūras likums*), Official Gazette No. 65, 2 June 1994.

²⁹ Law on Pensions for the Military (*Militārpersonu izdienas pensiju likums*) Official Gazette No. 86, 1 April 1998; Law on Pensions for Employees of the System of the Ministry of Interior Affairs with Special Ranks (*Par izdienas pensijām Iekšlietu ministrijas sistēmas darbiniekiem ar speciālajām dienesta pakāpēm*), Official Gazette No. 100/101, 16 April 1998; Law on Pensions for Prosecutors (*Prokuroru izdienas pensiju likums*) Official Gazette No. 181, 3 June 1999; Law on Long-Term Service Pensions for Judges (*Tiesnešu izdienas pensiju likums*) Official Gazette No. 7 July 2006; Law on Pensions for Artists of State and Municipal Orchestras, Choirs, Concert Organisations, Theatres, and Circuses (*Valsts un pašvaldību profesionālo orķestru, koru, koncertorganizāciju, teātru un cirka mākslinieku izdienas pensiju likums*), Official Gazette No. 106, 7 July 2004.

³⁰ Although this kind of pension is fully paid from the state budget, it still complies with all three criteria established by the CJEU in *Niemi* (Case C-351/00 *Pirkko Niemi* [2002] ECR I-07007) thus falling within the scope of Article 157 TFEU.

Further, there is no special law regulating activities of the self-employed, because self-employment under Latvian commercial law may take many different forms of entrepreneurship. For this reason, one special law implementing the principle of discrimination on self-employment was adopted: the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.³¹

Directive 2004/113/EC has been implemented by the Law on the Protection of Consumer Rights³² and the Insurance and Reinsurance Law.³³ However, implementation is incomplete because the Law on the Protection of Consumer Rights only concerns those goods and services providers who act within their professional capacity. They do not cover the sale of goods or the provision of services between private parties acting outside their professional activities. For example, the law does not cover the situation where a person selling his/her own apartment offers it to the general public by public offer.

Secondly, special laws usually regulate legal relationships between private parties, while EU gender equality and non-discrimination law entails horizontal and mainstreaming obligations for state powers. There was a provision obliging the drafters of legislative documents and the delegated legislator – the Cabinet of Minister and subordinated executive institutions to carry out impact assessment – but these explicit norms were abolished.³⁴ The State Chancellery has explained this amendment by the need to assess all legislative proposals from the perspective of all general principles of law.³⁵ However, as expected by the author of this report, this has led to a lack of appropriate assessment of draft legislation.

³¹ *Fizisko personu – saimnieciskās darbības veicēju – diskriminācijas aizlieguma likums*, Official Gazette No. 199, 19 December 2012.

³² *Patērētāju tiesību aizsardzības likums*, Official Gazette No. 104/105, 1 April 1999.

³³ *Apdrošināšanas un pārpadrošināšanas likums*, Official Gazette No. 124, 30 June 2015.

³⁴ The Instruction of the Cabinet of Ministers No. 19 'The procedure on the initial assessment of legislative proposals' (*Tiesību akta projekta sākotnējās ietekmes izvērtēšanas kārtība*), Official Gazette No. 205, 30 December 2009, respective amendments Official Gazette No. 91, 14 May 2013.

³⁵ Telephone interview with the Head of Department of Development of State Administration of the State Chancellery on 31 August 2015.

3 Implementation of central concepts

3.1 General (legal) context

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

No surveys or reports have been carried out and published on the implementation of gender equality law, including concepts, definitions, etc.

3.1.2 Other issues

It might be claimed that the very central concept – the principle of non-discrimination – has not been implemented correctly in the majority of Latvian implementing legal documents. The problem lies in the fact that the term 'prohibition of differential treatment' is used instead of the term 'principle of non-discrimination'. The term 'prohibition of differential treatment' is an attempt to 'Latvianise' the term 'non-discrimination', however, it is not completely correct. The term 'prohibition of differential treatment' in its substance refers to only one prohibited situation under the principle of non-discrimination – different treatment of persons in similar situations, thus omitting the prohibition of equal treatment of persons in different situations. Therefore the term 'prohibition of differential treatment' reflects only one half of the principle of non-discrimination. In addition, the use of this term might even lead to an incorrect application of the principle of non-discrimination. The term 'prohibition of differential treatment' could be grammatically interpreted in a nonsensical way, namely, as prohibiting differential treatment of persons in different situations. Such construction has actually been applied by a national court. It found that a claim for equal pay was not well-founded because persons performed different work; however, instead of holding that there was no different treatment, because works were different, the national court held that differential treatment was justified by an objective reason – the persons performed different work.³⁶

3.1.3 General overview of national acts

The main legal act implementing gender equality rights is the Labour Law.³⁷ This legal document is applicable to all employees in both the public and the private sector. In addition, gender equality and non-discrimination norms provided by the Labour Law are applicable to civil servants³⁸ and officials, for example, persons serving in the System of the Interior;³⁹ militaries;⁴⁰ and home guards.⁴¹ Equal access to employment, apart from the Labour Law, is guaranteed by the Unemployed and Job-seekers Support Law⁴² and the Regulation of the Cabinet of Ministers No. 458 'Procedures for Licensing and Supervision of Merchants – Providers of Work Placement Services'.⁴³

³⁶ Kristīne Dupate, 'Latvijas tiesu prakse diskriminācijas pārkāpuma lietās darba tiesiskajās attiecībās' (Latvian court practice in discrimination cases in the employment relationships), *Latvijas Republikas Tiesībsargs*, 2007, Rīga; Kristīne Dupate 'Par atsevišķiem jēdziena "diskriminācija" nozīmes un satura aspektiem un līdztiesības nodrošināšanu' (On several aspects regarding the meaning and substance of the concept of discrimination), *Likums un Tiesības*, 2006.gada decembris, Nr.12 (88), 2007.gada janvāris, Nr.1(89).

³⁷ *Darba likums*, Official Gazette No. 105, 6 July 2001.

³⁸ The Law on the State Civil Service (*Valsts civildienesta likums*), Official Gazette No. 331/333, 22 September 2000.

³⁹ The Law on Service in the System of the Interior and Imprisonment System (*Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums*), Official Gazette No. 101, 30 June 2006.

⁴⁰ The Military Service Law *Militārā dienesta likums*, Official Gazette No. 91, 18 June 2002.

⁴¹ The Home Guards of the Republic of Latvia Law (*Latvijas Republikas Zemessardzes likums*), Official Gazette No. 82, 26 May 2010.

⁴² *Bezdarbnieku un darba meklētāju atbalsta likums*, Official Gazette No. 80, 29 May 2002.

⁴³ *Ministru Kabineta Noteikumi Nr.458 'Komersantu – darbiekārtošanas pakalpojumu sniedzēju – licencēšanas un uzraudzības kārtība'*, Official Gazette No. 108, 6 July 2007.

The main implementing legal act in the field of social security is the Law on Social Security⁴⁴ – the umbrella law of the entire social security system – as well as the Law on Statutory Social Insurance,⁴⁵ regulating all statutory social insurance systems. A specific social security system law – the Law on Maternity and Sickness Insurance⁴⁶ – addresses issues of pregnancy/maternity, paternity and parental, adoptive leave allowances. Equality in occupational social security is regulated by the Law on Private Pension Funds⁴⁷ and the Insurance and Reinsurance Law.⁴⁸

Self-employed persons are protected against discrimination by the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.⁴⁹

The main law protecting against discrimination with regard to access to and supply of goods and services is the Law on the Protection of Consumer Rights.⁵⁰

The specific enforcement mechanisms such as the shift of burden of proof, and the right to compensation for moral damage, are implemented by the Labour Law. Furthermore, non-governmental organisations are granted the right to represent victims before a court, according to the Association and Foundation Law.⁵¹

The competences and obligations of the national equality body are regulated by the Ombudsperson's Law.⁵² The opinions of the Ombudsperson are not legally binding.

3.1.4 Political and societal debate and pending legislative proposals

Currently there are no pending legislative proposals or political or societal debate on the need to improve or amend present gender equality legal regulation.

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

There is no distinction in the Latvian legal system between the concepts of 'gender' and 'sex'. From a linguistic perspective, Latvian legal acts refer to 'sex' (*dzimums*), while 'gender' (*dzimte*) is not used in a legal context. It means that 'sex' in Latvian legal acts protects against both discrimination on the grounds of biological differences (sex) and discrimination on the grounds of stereotypes (gender).

A certain part of society is unwilling to recognise the existence of 'gender' or socially defined sex/gender. The attempt to define 'gender', as in the Istanbul Convention, in Latvia led to big discussions and the refusal by the majority of the Latvian Parliament to ratify it. Some organisations, including the Catholic and Protestant Church in Latvia, are of the opinion that the Istanbul Convention, by defining 'gender', may require changing the concept of traditional family anchored in the Latvian legal system, that is married opposite sex couple and their biological children, recognising the rights of homosexual couples and the rights of transgender persons. Such a position is reflected in the opinion/research presented by the Ministry of Justice in 2016.⁵³

⁴⁴ *Likums 'Par sociālo drošību'*, Official Gazette No. 144, 21 September 1995.

⁴⁵ *Likums par valsts sociālo apdrošināšanu*, No. 274/276, 21 October 1997.

⁴⁶ *Likums 'Par maternitātes un slimības apdrošināšanu'*, Official Gazette No. 182, 23 November 1995.

⁴⁷ *Likums par privātajiem pensiju fondiem*, Official Gazette No. 150/151, 20 June 1997.

⁴⁸ *Apdrošināšanas un pārpadrošināšanas likums*, Official Gazette No. 124, 30 June 2015.

⁴⁹ *Fizisko personu – saimnieciskās darbības veicēju – diskriminācijas aizlieguma likums*, Official Gazette No. 199, 19 December 2012.

⁵⁰ *Patērētāju tiesību aizsardzības likums*, Official Gazette No. 104/105, 1 April 1999.

⁵¹ *Biedrību un nodibinājumu likums*, Official Gazette No. 161, 14 November 2003.

⁵² *Tiesībsarga likums*, Official Gazette No. 65, 25 April 2006.

⁵³ Legal analysis on the impact of The Council of Europe Convention on preventing and combating violence against women and domestic violence, 25 April 2016, available in Latvian at:

3.2.2 Protection of transgender, intersex and non-binary persons

There are no explicit norms protecting transgender, intersex or non-binary persons in the Latvian legal system. To the author's knowledge, it is considered that it is the competence of authorities and national courts to interpret the concept 'discrimination on the grounds of sex' according to the EU law requirements, and under this concept, to provide the protection against discrimination also to transgender persons. Since relevant case law of the CJEU speaks only about protection of transgender persons in cases of gender reassignment, it is difficult to deduce whether intersex and non-binary persons would also enjoy protection against discrimination, although an issue of protection of an intersex person most likely could be dealt with under the concept of 'dignity'. Consequently, an intersex person should have protected under Latvian law.

3.2.3 Specific requirements

Gender reassignment and change of sex is not legally regulated in Latvia. It does not correspond to the obligations under the Council of Europe legal documents. Currently the law acknowledges the right to change one's sex in the state registers, however, conditions under which a person may require legal gender recognition are not provided by the law. In practice, it is an administrative decision by the Ministry of Justice. Such a decision forms the basis for the change of gender in the state registers. According to leading LGBTI NGO 'Mozaika', the Ministry of Justice base their decision on the conclusion of the consilium of medical doctors, which means that some medical treatment is a precondition for legal gender recognition.

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

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

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

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

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

The definition complies with the EU definition. The words 'may be less favourable' allows for the use of a hypothetical comparator.

https://www.tm.gov.lv/files/11_MjAxNi9UTWluZl8yNTA0MTZfU3RhbWJ1bGtvbnZfZG9rLnBkZg/2016/TMinf_250416_Stambulkonv_dok.pdf.

Article 2¹(6) of the Law on Social Security is, however, problematic. It stipulates that:

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

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

3.3.2 Prohibition of pregnancy and maternity discrimination

The legal norms defining less favourable treatment due to pregnancy and maternity as direct discrimination based on sex are:

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

Latvian law provides slightly different definitions on the concept of pregnancy and maternity discrimination (see the explanation in the paragraph at the end of Section 3.3.2).

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

Article 2¹(7) of the Unemployed and Job-seekers Support Law; Article 4(5) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity; Article 2¹(5¹) of the Law on Social Security and Article 3¹(9) of the Law on the Protection of Consumer Rights that discrimination occurs where the grounds for less favourable treatment is pregnancy or maternity, where maternity protection lasts for one year after childbirth or for the entire breastfeeding period, however, these laws fails stipulating that such treatment is direct discrimination based on sex.

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

At the same time, not all laws provide complete definitions. Firstly, the set of laws provide incomplete definitions by not stipulating that less favourable treatment on the grounds of pregnancy and maternity is not only discrimination, but direct discrimination, and, secondly, none of the laws provide explicitly that pregnancy and maternity discrimination may occur in two cases: one is unfavourable treatment due to pregnancy and maternity (Directive 2006/54/EC) and the second is unfavourable treatment due to request or non-provision of the specific rights due to pregnancy and maternity (Directive 92/85/EEC in conjunction with Directive 2006/54/EC).

3.3.3 Specific difficulties

Some decisions of the national courts demonstrate that the courts still do not see illegal actions taken by employers against pregnant workers, or workers during the maternity leave and breastfeeding periods, as a breach of the principle of discrimination but rather as a breach of the particular legal norms of the Labour Law. Such an approach frequently restricts the victims' right to special remedies – such as the reversed burden of proof and the right to claim compensation for moral damage.⁵⁴

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition

The legal norms prohibiting indirect discrimination and providing a definition of this concept are:

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

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

The definition complies with the EU definition. The Latvian definition even omits the phrase 'compared with persons of the other sex'.⁵⁵ In the view of the author, omission of the phrase 'compared with persons of the other sex' is important, since according to Tobler, indirect discrimination may occur where there are no explicit possibilities of comparison with the other sex.⁵⁶

3.4.2 Statistical evidence

There have been cases in which national courts dealt with indirect discrimination. Most indirect discrimination cases relate to statutory social insurance and the cause is use of the right to parental leave. The cases relate to the issue of time spent on parental leave not being taken into account as employment periods for the purposes of calculation of disability pension,⁵⁷ long-service pension⁵⁸ and other statutory social insurance allowances.⁵⁹ In all these cases, the national courts found indirect discrimination on the basis of the well-known fact that the right to parental leave is used predominantly by

⁵⁴ For example, the decision of the Senate of the Supreme Court of 8 December 2010 in case No. SKC-1336/2010, not published.

⁵⁵ Except for the definition provided by Article 2¹(4) of the Law on Social Security.

⁵⁶ Tobler C., Limits and potential of the concept of indirect discrimination, European network of legal experts in the non-discrimination field, European Commission, 20085, available at: <https://publications.europa.eu/en/publication-detail/-/publication/aa081c13-197b-41c5-a93a-a1638e886e61/language-en>.

⁵⁷ Decision of 2 December 2014 of Administrative District Court in case No. A420303917, available in Latvian at <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/194331.pdf>.

⁵⁸ Decision of 9 February 2015 of the Senate of the Supreme Court in case No. SKA-286/2005, available in Latvian at <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/235739.pdf>.

⁵⁹ See, for example, decision of 28 November 2017 of the Administrative District Court in case No. A420187916, ECLI:LV:ADAT:2017:1128.A420187916.1.S, available in Latvian at <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/336195.pdf>.

women, without even recalling particular statistics or the source, most likely because such fact is generally known and undisputable.

3.4.3 Application of the objective justification test

In none of the five national courts' decisions dealing with indirect discrimination based on sex did the courts analyse if such situation is justified. The courts simply established indirect discrimination and found a breach of the principle of non-discrimination. The only national court decision where the national court provided an analysis of a possible justification concerned indirect discrimination on the grounds of religion with regard to access to the state-paid health care services.⁶⁰ That case was referred to the CJEU for a preliminary ruling.⁶¹

3.4.4 Specific difficulties

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

3.5 Multiple discrimination and intersectional discrimination⁶²

3.5.1 Definition and explicit prohibition

Multiple or intersectional discrimination is not explicitly prohibited by Latvian law. There is also no national case law on this matter.

3.5.2 Case law and judicial recognition

There is no case law dealing with the existence of multiple or intersectional discrimination. There is no case law of national courts or opinions of the Ombudsperson in relevant cases.

3.6 Positive action

3.6.1 Definition and explicit prohibition

Latvian law neither allows nor provides for any kind of positive action.⁶³ There is only one particular positive action measure (norm) stipulated by Latvian law. It is a 'soft quota' provision requiring an aim for gender balance when electing judges for self-governing bodies of the Supreme Court.⁶⁴ Ironically, this provision was inserted to favour male judges, because since the re-establishment of the Supreme Court after Soviet occupation, there have always been more female than male judges.⁶⁵

Article 3(1)(4) of the Unemployed and Job-seekers Support Law also stipulates that certain activities may be addressed to specific groups, such as young persons, persons after

⁶⁰ Decision in case No. SKA-143/2019, ECLI:LV:AT:2019:0308.A420281216.3.L available in Latvian at <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/378215.pdf>.

⁶¹ Request for a preliminary ruling from the *Augstākā tiesa (Senāts)* (Latvia) lodged on 20 March 2019 – *A v Veselības ministrija*, case C-243/19.

⁶² See for more information, Fredman, S., *Intersectional discrimination in EU gender equality and non-discrimination law* (2016) 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>.

⁶³ The author leaves undiscussed any provisions of secondary national law in the field of vocational training for unemployed persons, allowing them to participate in special training programmes for special groups (e.g. parents after long childcare leave, disabled persons) organised by the State Employment Agency and funded by the European Social Fund, because they have an *ad hoc* nature.

⁶⁴ The Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993, respective amendments Official Gazette No. 160, 7 October 2005.

⁶⁵ The composition of the Supreme Court in April 2019: 23 females and 13 males, available at: <http://www.at.gov.lv/lv/par-augstako-tiesu/senatori>.

childcare leave, and persons in the pre-retirement age group. Women are not explicitly targeted; however, the specific treatment of parents after childcare leave allows for the tackling of indirect discrimination against women.

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

There are no legal provisions or doctrines dealing with the distinction between 'equal opportunities' and 'positive action'.

3.6.3 Specific difficulties

According to unofficial information, some transnational (mainly Scandinavian) enterprises operating in Latvia have internal diversity policies; namely, such companies aim at gender, ethnic, age, etc. balance and diversification. Since there are no legal provisions allowing for positive action measures to be taken, such employers possibly risk violating legal regulation, instead of getting appreciation from state bodies on successful integration of different groups of society in the labour market. It is because, under Latvian law, in the absence of the right to undertake positive measures, favouring a specific group would be considered as discrimination against other groups.

3.6.4 Measures to improve the gender balance on company boards

There are no legal or policy measures to improve the gender balance on company boards. There are no debates, policy measures or proposals pending. Latvia is among the countries of the EU with the highest representation of women on company boards (average EU April 2019 – 26.3 %; Latvia – 33.3 %).⁶⁶ Consequently, politicians believe that there are no problems with gender equality in that regard. However, that is not true. The author of this report explains the comparably high representation of women on company boards by the fact that they, on average, have a higher level of education and they are used to working more than men.⁶⁷ This comes from the times of Soviet occupation when women had a double burden – obligation to work full-time paid work and deal with all family care obligations.

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

There are no legal or policy measures to improve gender balance in any field of life.

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

The prohibition of harassment and its definition is provided by the following legal provisions:

- Article 29(4) of the Labour Law (the definitions of types of discrimination provided therein are applicable by reference to the specific public service laws) (the definition is provided by Article 29(7));
- Article 2¹(5) of the Unemployed and Job-seekers Support Law (the definition is provided by Article 2¹(6));

⁶⁶ EIGE, Achieving gender equality on corporate boardrooms, available at https://eurogender.eige.europa.eu/system/files/events-files/women_on_boards_eige.pdf.

⁶⁷ Central Statistic Bureau of Latvia, Men and Women in Latvia, 2016. Available at: <https://www.csb.gov.lv/lv/statistika/statistikas-temas/iedzivotaji/iedzivotaju-raditaji/meklet-tema/205-sievietes-un-viriesi-latvija-2016>.

- Article 3¹(7) of the Law on the Protection of Consumer Rights (the definitions of types of discrimination provided therein are applicable by reference to the Education Law) (the definition is provided by Article 3¹(8));
- Article 2¹(2) of the Law on Social Security (definition is provided by Article 2¹(5));
- Article 4(3) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity (the definition is provided by Article 4(4)).

Article 29(7) of the Labour Law provides:

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

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

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

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

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

The definition of harassment complies with the definition provided by EU law. In addition, it explicitly states that the unwanted conduct should be 'unwanted in the opinion of the person harassed', which leaves an open question if 'unwanted conduct' under the EU definition should be understood as socially unacceptable conduct in general (non-compliant with norms of social behaviour in society in general) or if it refers to the perception of each particular individual, which might differ considerably.

3.7.2 Scope of the prohibition of harassment

The prohibition of harassment is applicable in the field of employment, in the social security system, with regard to access to and supply of goods and services and with regard to self-employed persons. The prohibition of harassment is also prohibited in education. It follows that the prohibition of harassment under Latvian law has a wider scope, especially in the entire field of social security and education.

3.7.3 Definition and explicit prohibition of sexual harassment

Definition of 'sexual harassment' is provided implicitly, as a type of harassment in the following provisions:

- Article 29(7) of the Labour Law (the definitions of types of discrimination provided therein are applicable by reference to the specific public service laws);
- Article 2¹(6) of the Unemployed and Job-seekers Support Law;

- Article 4(4) of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity;
- Article 3¹(8) of the Law on the Protection of Consumer Rights (the definitions of types of discrimination provided therein are applicable by reference to the Education Law).

The legislator decided to ‘merge’ the definition of harassment and sexual harassment.

The result of the merger of the definitions of harassment and sexual harassment is that sexual harassment is defined as ‘unwanted conduct of a sexual nature’ and it is unclear if indicators like ‘verbal, non-verbal and physical conduct’ are meant to be applicable. This leads to the conclusion that the definition of sexual harassment might have been implemented incompletely. The case law does not provide any analysis on how the concept ‘sexual’ is understood.

However, the application of the concept of sexual harassment by the national court complies with the EU definition and goes even further. This is illustrated by the decision of the Senate of the Supreme Court in case No. SKC-2504/2013.⁶⁸ In this case, the claimant was recruited by the respondent (an undertaking) on 28 August 2012, with a probation period until 27 November 2012. On 22 September 2012, the respondent organised sports games in a guest house in the countryside for all employees. All employees received an invitation to the games by e-mail. As stated by the claimant, the event started with the game ‘who gets drunk first’ and was followed by collective use of the sauna and swimming pool. At the sauna, the director of the undertaking told the claimant that the sauna may be attended without any clothes (naked). The claimant refused to do that. On 24 September 2012, the first working day after the weekend, the director refused to speak with the claimant and on 27 September 2012, the claimant was given notice of dismissal, stating that the employment relationship was to be terminated as from 2 October 2012. The claimant submitted a claim on unlawful dismissal on the grounds of discrimination (harassment on the basis of sex/sexual harassment). The Senate held that in the case of harassment, the main indicator is how the situation is perceived by a person – the addressee of the harassing actions/treatment. The latter finding by the Senate is very important in harassment cases, otherwise in such cases, a claimant would have to prove that certain actions are not acceptable to society in general, to enforce his/her rights, which might be difficult, taking into account the strong patriarchal stereotypes and sexist culture governing Latvian society.

3.7.4 Scope of the prohibition of sexual harassment

Apart from employment, self-employment and access to and supply of goods and services, sexual harassment is also prohibited in the whole educational system, thus going beyond the scope of the EU law.

3.7.5 Understanding of (sexual) harassment as discrimination

Latvian law provides protection against victimisation in the case of discrimination or in general (in the case of a breach of the provisions of the Labour Law).⁶⁹ There is no provision explicitly stipulating that harassment, sexual harassment and victimisation amount to discrimination. However, it follows from the general structure of the provisions, i.e. the prohibition of harassment, sexual harassment and, in some laws, victimisation, is placed among and below general norms stipulating what discrimination amounts to. Such

⁶⁸ Decision (6 December 2013) of Civil Cases Department of the Senate of the Supreme Court in case SKC-2504/2013, not published.

⁶⁹ Article 9 of the Labour Law; Article 6 of the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity; Article 2¹(8) of Unemployed and Job-seekers Support Law; Article 3¹(10) of the Law on the Protection of Consumer Rights.

an approach, namely that victimisation is part of the principle of equal treatment, is also supported by the case law of the Supreme Court.⁷⁰

3.7.6 Specific difficulties

The major problem relates to the fact that sexual harassment cases are very rare, which testifies that this is still a latent problem. The victims of sexual harassment are unable or unwilling to bring their case before the justice system.

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

Prohibition of instruction to discriminate is provided by following legal provisions:

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

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

3.8.2 Specific difficulties

There is no case law on instruction to discriminate. This may be explained by the fact that it is difficult to prove such situations, since instructions are usually given in the absence of the victim.

3.9 Other forms of discrimination

Latvian law does not provide explicitly for prohibition of other forms of discrimination; however, national authorities and courts are under an obligation to apply existing national non-discrimination provisions according to the interpretation given by the CJEU. It follows that, for example, such discrimination as discrimination by association is also prohibited, although there is as yet no relevant national case law.

3.10 Evaluation of implementation

Latvian law in general implements the prohibition of the various types of discrimination satisfactorily. The definitions themselves are most frequently implemented word-for-word from EU directives, with the exception of the definition of 'sexual harassment', which is 'merged' with the definition of 'harassment', as well as the definition of less favourable treatment on the grounds of pregnancy and maternity as direct sex discrimination, which is not explicitly provided by all implementing laws.

The scope of prohibition of different types of discrimination exceeds the scope of the EU law. Under Latvian law, discrimination is prohibited also in the entire field of social security and education, as well as in advertising.⁷¹

⁷⁰ The decision of the Supreme Court of 14 November 2017 in case No. SKC-762/2017, point 9.3.

⁷¹ The Advertising Law (*Reklāmas likums*), OG No. 7, 10 January 2000, available in Latvian at: <https://likumi.lv/doc.php?id=163>.

3.11 Remaining issues

There are no other issues to report on regarding the types of discrimination.

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

There are no national level surveys or reports regarding gender pay gap problems.

4.1.2 Surveys on the difficulties of realising equal treatment at work

There is one national level survey on the compliance with the principle of non-discrimination with regard to employed parents with young children in employment carried out by the Ombudsperson in 2017.⁷² The main conclusions are the following:

- 1) the employers do not generally choose the employees according to their sex; the situation where an employer employs more women than men has more to do with a lower level of pay in the sector, thus men less frequently apply for those positions (i.e. job applicants in lower-pay sectors are more often female than male);
- 2) although the employers stressed that they do not ask questions regarding family status or pregnancy during a job interview, the employees – both men and women – provided the opposite opinion;
- 3) the majority of respondents (employees) have indicated a positive attitude from the employer during period of pregnancy; this also applies to the provision of the rights after return from parental leave;
- 4) the majority of respondents indicated that in the case where the employer provides additional health insurance (additional to that provided by the state), pregnancy and health-care services related to giving birth are not included; in addition, the employers do not provide health insurance during parental leave;
- 5) the employers are not satisfied if an employee too frequently uses the right to leave to care for a sick child-care;
- 6) it follows from the responses that the majority of employers provide specific rights connected with pregnancy/maternity and parenting, however, there is some part of employer which does not provide any such rights.

4.1.3 Other issues

The major problem in Latvia is that neither political, nor executive power recognises gender equality as a problem. It is due to the fact that indicators on women's participation in the labour market (Latvia – 72.7 %; EU-28 – 66.5 %);⁷³ gender pay gap (Latvia – 15.7 %; EU-28 – 16 %);⁷⁴ and women in decision-making bodies are relatively high in the average EU-28 context. However, such favourable statistics cannot be explained by factual gender equality but rather by a considerably higher level of education of women and the fact that women in Latvia are used to bearing a double obligation burden – the majority still work on a full-time basis, while spending considerably more hours on family and household work. Latvia is also an EU country with the highest disproportion between women and men (54 % women; 46 % men) in the general population.⁷⁵

⁷² LR Tiesībsargs, *pētījums 'Diskriminācijas aizlieguma ievērošana pret mazu bērnu vecākiem'*, 2017 available in Latvian at: http://www.tiesibsargs.lv/uploads/content/legacy/diskriminacijas_aizlieguma_principa_ieverosana_darba_tiesiskajās_attiecībās_pret_mazu_bernu_vecakiem_1507559839.pdf.

⁷³ Eurostat 2018, available at: <https://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tesem010&language=en>.

⁷⁴ Eurostat statistics Gender Pay Gap 2017, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics.

⁷⁵ Eurostat statistics February 2019, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_statistics.

4.1.4 Political and societal debate and pending legislative proposals

There are no pending legislative proposals or political or societal debate regarding equal pay or equal treatment at work.

4.2 Equal pay

4.2.1 Implementation in national law

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

4.2.2 Definition in national law

Article 59 of the Labour Law does define the notion of 'pay' in its general meaning, not in the meaning of equal pay. It states that pay is regularly paid remuneration for work, which also includes bonuses and other kinds of remuneration in connection with employment as provided by normative acts, collective agreements or employment agreements. A decision adopted by the Supreme Court in 2010 demonstrates awareness of a distinction between the concept of 'pay' under EU and national law.⁷⁶ In particular, the Supreme Court recognised that compensation for unfair dismissal is to be considered as a component of 'pay' in the meaning of equal pay on the basis of the decision of the CJEU in *Seymour-Smith*.⁷⁷ In addition, in 2014 the Senate adopted a decision on the interpretation of the concept of pay under Article 59, in a case that was not connected with discrimination.⁷⁸ The Senate extended the concept of pay defined by Article 59 by referring to the CJEU decision in *Barber*.⁷⁹ Recently the Senate has again interpreted the concept of pay within the meaning of national law by referring to the Barber judgement.⁸⁰ It may therefore be concluded that the Senate tends to interpret the concept of pay under national law similarly to the CJEU under EU law.

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

Latvian law does not explicitly implement Article 4 of Recast Directive 2006/54/EC stipulating that 'For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated'. However, prohibition of direct and indirect discrimination as provided by Article 29(5) and (6) of the Labour Law is applicable also with regard to pay (Article 29(1)).

4.2.4 Related case law

There is no case law or opinions of the Ombudsperson related to the issues of direct or indirect gender pay discrimination.

4.2.5 Permissibility of pay differences

There are neither legal provisions nor case law or opinions of the Ombudsperson on permissibility of pay differences.

⁷⁶ Decision of the Supreme Court (15 December 2010) in Case No. SKC-694/2010, available in Latvian at: <http://www.at.gov.lv/files/uploads/files/archive/departament1/2010/694-10.pdf>.

⁷⁷ Case C-167/97 *Regina v. Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez* [1999] ECR I-00623.

⁷⁸ Decision of the Senate of the Supreme Court in case No. SKC-1683/2014, not published.

⁷⁹ Case C-262/88, *Douglas Harvey Barber v. Guardian Royal Exchange Assurance Group*, European Court reports 1990 Page I-018899.

⁸⁰ Decision of the Senate of the Supreme Court in case No. SKC-2274/2016, available in Latvian on the database: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi>.

4.2.6 Requirement for comparators

There is no explicit provision requiring comparators. The case law demonstrates that a comparator is required in direct discrimination cases. For example, the Supreme Court has held that in solving an unequal pay case, a court must assess the real level of the professional qualifications of an employee (for example, their education or skills for the performance of a job, etc.) and in order to assess this, the character of the work in question and the employment conditions have to be taken into account. These indicators must then be compared with those of other workers in order to establish if the claimant has performed equal work or work of equal value and if they have been paid according to their qualifications and the character of the job in question.⁸¹

There is also the Supreme Court's decision in an equal pay case where the same work was performed during different periods of time. The case concerned a female worker and the higher pay of a male predecessor. The Supreme Court ruled on the basis of the CJEU's decision in *Macarthys*⁸² that the claimant's pay had to be compared to that of her predecessor.⁸³

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

Neither normative acts nor national case law provide criteria for establishing the equal value of the work performed.

4.2.8 Other relevant rules or policies

There are no other relevant rules or policies for the purposes of establishing the equal value of different works.

4.2.9 Job evaluation and classification systems

There are no company-level job evaluation and classification systems, except for the state officials and employees employed in state and municipal institutions. The State and Municipal Institutions' Remuneration Law⁸⁴ provides a table qualifying the posts according to grades and defining salary groups according to the grades.

4.2.10 Wage transparency

There are no specific rules or procedures to provide wage transparency. Formally, workers' representatives or trade unions have the right to require information on pay levels according to Article 11(1) of the Labour Law, however, there is no information on any case where such a right would have been used for the purpose of ensuring the equal pay principle.

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

Latvia has not taken any measure provided by the Recommendation on pay transparency measures.

⁸¹ Decision of the Supreme Court on 27 April 2017 in case No. SKC-792/2017, point 10.3.

⁸² Case 129/79, *Macarthys Ltd v. Wendy Smith*, European Court Reports 1980 p. 01275.

⁸³ Decision of the Supreme Court on 14 February 2007 in case No. SKC-67/2007.

⁸⁴ *Valsts un pašvaldību institūciju amatpersonu un darbinieku atlīdzības likums*, Official Gazette No. 199, 18 December 2009, available in Latvian at: <https://likumi.lv/ta/id/202273-valsts-un-pasvaldibu-instituciju-amatpersonu-un-darbinieku-atlīdzibas-likums>.

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 of Directive 2006/54/EC is not implemented explicitly. It is because there is no single gender equality or non-discrimination law, which means that the personal scope depends on the personal scope of the particular law which stipulates the right to access to employment, vocational training and working conditions without discrimination.

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

In particular, the Labour Law is applicable to all employees employed in the private and the public sector. There are special laws regulating the public service. All such laws, except with regard to judges⁸⁵ and public prosecutors,⁸⁶ refer to the non-discrimination norms provided by the Labour Law. The judges⁸⁷ and prosecutors⁸⁸ are protected against discrimination only with regard to access to their post. This means that almost all persons in the public service are covered.⁸⁹ There is no reasonable explanation for the different approach to judges and prosecutors other than the fact that competences are divided among several ministries – the Ministry of Welfare is responsible for the rights of employees (classic employment relationships); the Ministry of Justice for the laws concerning the court system; and the State Chancery for civil servants.

In addition, the prohibition of discrimination with regard to the access to employment is stipulated by the Unemployed and Job-seekers Support Law covering all job-seekers and unemployed persons officially registered at the State Employment Agency. Discriminatory recruitment is prohibited by the Cabinet of Ministers Regulation laying down the procedure for the licensing of private employment recruitment service providers.⁹⁰ Finally, the prohibition of discrimination with regard to the access to education and provision of educational services is stipulated by the Education Law.⁹¹

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

With regard to the concept of 'worker', there is only a definition for the purposes of national law. Article 3 of the Labour Law provides:

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

⁸⁵ The Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993.

⁸⁶ The Prosecutors' Office Law (*Prokuratūras likums*), Official Gazette No. 65, 2 June 1994.

⁸⁷ Article 51(2) of the Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993.

⁸⁸ Article 33¹(1) of the Prosecutors' Office Law (*Prokuratūras likums*), Official Gazette No. 65, 2 June 1994.

⁸⁹ The Law on the State Civil Service, the Law on Service in the System of the Interior and Imprisonment System, the Military Service Law, the Home Guards of the Republic of Latvia Law, The Law on Orphan's Courts.

⁹⁰ The Cabinet of Ministers Regulation No. 458 'Procedure on licensing and supervision of the merchants – recruitment service providers' (*Komersantu – darbiekārtošanas pakalpojumu sniedzēju – licencēšanas un uzraudzības kārtība*), OG No. 108, 6 July 2007, point 24.2.

⁹¹ *Izglītības likums*, Official Gazette No. 343/344, 17 November 1998.

In general, the national definition of a worker coincides with the definition provided by the CJEU. However, there is one group of workers which is not properly protected. Those are the members of the boards of directors of capital companies. This problem is well-known, since the CJEU ruling in *Danosa* originated in Latvia.⁹² Despite this ruling, the problem remains unresolved and there is no national law provision explicitly protecting board members of capital companies (limited liability companies like joint stock companies, Ltd., etc.) who are in factual employment relationships, from discrimination.

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

There is no complete implementation of the right provided by Article 14(1)(d), in particular, protection against discrimination with regard to the membership of, and involvement in, workers', employers' or professional organisations. The foundation and functioning of associations (non-governmental organisations) and foundations is regulated by the Association and Foundation Law.⁹³ This law is silent with regard to the non-discriminatory selection of founders, members or executives. At the same time, if membership is a precondition for access to self-employment, the non-discrimination obligation deriving from the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity is applicable. However, although employees are protected against discrimination, they are not explicitly protected against discrimination with regard to the membership of, and involvement in, workers', employers' or professional organisations. Articles 10 and 11 of the Labour Law implementing Directive 2002/14⁹⁴ also do not explicitly provide the right to equal access or treatment with regard to the right to workers' representation (as an employee represented or an employee representing others). Although it may be claimed that the respective provisions must be interpreted in conjunction with other norms of the Labour Law, in particular Article 29, it may well fail to work, because the obligations of Article 29 are directed at the employer, while workers' representation is carried out via self-organisation of the employees themselves. However, Article 4(1) of the new Trade Unions' Law⁹⁵ explicitly provides that the right to have access to or to participate in an existing trade union or to establish a trade union should be provided without any kind of discrimination (without listing any particular non-discrimination grounds).

With regard to other rights provided by Article 14(1) of Directive 2006/54/EC, the following Article 29(1) of the Labour Law defines the material scope of the aspect covered by non-discrimination provisions:

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

Thus it implements Article 14(1)(a)(b) and (c).

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

⁹² The decision of the CJEU in case C-232/09 *Dita Danosa v. LKB Līzings SIA*.

⁹³ *Biedrību un nodibinājumu likums*, Official Gazette No. 161, 14 November 2003.

⁹⁴ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation, *Official Journal L 080, 23/03/2002 p. 0029 – 0034*.

⁹⁵ *Arodbiedrību likums*, Official Gazette No. 60, 25 March 2014.

that during the previous three years of office they have not been absent for more than six continuous months. This provision may lead to indirect discrimination against women, since they still predominantly make use of parental leave, which may last longer – until the child reaches the age of 18 months.⁹⁶

Then there is the problematic issue giving rise to indirect discrimination defined by the law for militaries. On the one hand, Article 12(2) of the Military Service Law stipulates that with regard to non-discrimination and family-related leave, including parental leave, the norms of Labour Law are applicable, while on the other hand, Article 40(4) of the State and Municipal Institutions' Remuneration Law provides that time spent on parental leave is to be taken into account for the purposes of the calculation of the length of service of a soldier, but this period is not to be taken into account for the purposes of promotion.

Protection against discrimination with regard to access to self-employment or profession is provided by The Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity. Right to equal access to vocational guidance and training provided by the state is guaranteed by the Unemployed and Job-seekers Support Law.

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

Article 29(2) of the Labour Law implements requirements of Article 14(2) of Recast Directive 2006/54/EC. It stipulates:

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

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

There is no right to exception provided by the Education Law,⁹⁷ thus it follows that there is no right to apply such exception with regard to access to education, including professional training.

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

Pregnant women and women during the maternity period are protected against non-hiring, non-renewal of a fixed-term contract under general provisions, i.e. under provisions protecting all persons against discrimination. Article 29(1) of the Labour Law stipulates that:

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

⁹⁶ The Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), OG No. 182, 23 November 1995.

⁹⁷ *Izglītības likums*, Official Gazette No. 343/344, 17 November 1998.

Meanwhile, the second sentence of Article 29(5) of the Labour Law stipulates that any less favourable treatment due to pregnancy, maternity or paternity leave has to be considered as direct discrimination based on sex. Therefore, it follows that pregnant persons and persons during the maternity period are protected against non-hiring and dismissal under Article 29(1) of the Labour Law. However, since no respective protection is implemented explicitly, there might still be confusion regarding the link of non-discrimination provisions with special protection measures under Directive 92/85/EC. In addition, it is not clearly stated in Latvian law that non-compliance with special protection measures results in discrimination based on sex.

Furthermore, under the Labour Law, the maternity period lasts not only during pregnancy and maternity leave but until one year after childbirth or during the period of breastfeeding up to the child's age of 24 months. This means that the protection period is limited to 24 months breastfeeding. Even if a mother continues to breastfeed her child after the age of two years, she is no longer protected under the law, because the maternity protection period is over.

It follows that Article 29(5) does not protect against less favourable treatment during the entire period of maternity but only in connection with pregnancy/maternity leave.

Then Article 29(1) of the Labour Law prohibits discrimination with regard to '*giving notice of termination of employment contract*'. This protection applies either to termination of an indefinite term contract or termination of a fixed-term contract before the end of such a contract. Consequently, there is no explicit protection against non-renewal or non-continuation of a fixed-term contract.

It follows that the protection of women in connection with their state of pregnancy and/or maternity, under Latvian law is incomplete.

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 provision implementing an exception to the protection for women in relation to pregnancy and maternity, or obligations arising under Directive 92/85/EEC, is Article 37(7) of the Labour Law. It stipulates:

'After receiving a doctor's opinion, it is prohibited to employ a pregnant worker, a worker one year after giving birth, or a breastfeeding worker during the entire breastfeeding period, if such opinion provides that performance of particular work poses a threat to the woman's or her child's health or safety. In any case it is prohibited to employ women two weeks before the expected time of giving birth and two weeks after giving birth. The expected time of giving birth is approved by a doctor's opinion.'

In addition, it is not clearly stated in Latvian law that non-compliance with special protection measures, as provided by Directive 92/85/EEC and national law, results in discrimination based on sex.

4.3.6 Particular difficulties

As stated earlier, there is one major problem which relates to the definition and understanding of the concept of non-discrimination. The principle of non-discrimination in the majority of Latvian normative acts is formulated as 'prohibition of differential treatment' instead of 'prohibition of discrimination'. This may result in inadequate application of EU law, for example, by excluding discrimination which arises due to the equal treatment of persons in different situations, like not taking into account the specific needs of single parents or parents who have a disabled child, and by excluding exceptions,

such as the reasonable accommodation obligation, provided in the framework of the principle of non-discrimination or in the form of formally incorrect findings by national courts, such as finding that discrimination is justified because the relevant persons were not in similar [or comparable?] situations.⁹⁸

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

Latvia has not made use of the rights under Article 3 of Recast Directive 2006/54/EC and Article 157(4) of the TFEU and there are no positive action measures allowed under Latvian labour law. Therefore, the employers who wish to implement employment diversity policies in their undertakings, run a risk of being sued for breaching the principle of non-discrimination rights.

There are some fragmentary legal provisions which might be considered as positive action measures. For example, the Law on Support of Unemployed and Jobseekers⁹⁹ provides for the right of specific groups to special active employment measures, i.e., vocational training, etc. One of the groups listed are parents after childcare leave. In the event that those were only mothers, it would have been considered as discrimination against fathers (direct discrimination on the grounds of sex). Also, there is one 'soft quota' provision requiring an aim for gender balance when electing judges for self-governing bodies of the Supreme Court.¹⁰⁰ Ironically, this provision was inserted to favour male judges, because since the re-establishment of the Supreme Court after Soviet occupation, there have always been more female than male judges.¹⁰¹

4.4 Evaluation of implementation

There are some deficiencies, for example, there is no complete protection against discrimination with regard to the involvement in, or membership of, workers', employers' or professional organisations. There are also some aspects of the protection of women during pregnancy and maternity which are either not covered, or the protection during this period is not sufficiently clear and explicit. However, overall the EU law requirements are implemented satisfactorily.

Latvian law exceeds the material scope of the EU law regarding special protection measures during maternity, in particular, because the maternity period is very long – one year after giving birth, or for a breastfeeding worker, during the entire breastfeeding period (in some provisions, until a child attains 24 months of age).

Unfortunately, Latvian law does not allow any positive action measures, although in practice, some undertakings – mainly Scandinavian transnational corporations – try implementing diversity policies, since they understand the well-proven fact of the positive impact of diversity policies on business results.

4.5 Remaining issues

There are no other issues.

⁹⁸ Decision of Riga City Vidzemes District Court of 17 July 2006 in Case No. C 30-1667/9-2006.g. (not published).

⁹⁹ Article 3(1)(4) (*Bezdarbnieku un darba meklētāju atbalsta likums*), Official Gazette No. 80, 29 May 2002, available in Latvian at: <https://likumi.lv/doc.php?id=62539>.

¹⁰⁰ The Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993, respective amendments Official Gazette No. 160, 7 October 2005.

¹⁰¹ The composition of the Supreme Court in 2019: 23 females and 13 males, available at: <http://www.at.gov.lv/lv/par-augstako-tiesu/tiesnesi>.

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)¹⁰²

5.1 General (legal) context

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

There are no specific surveys and reports carried out in recent years about general difficulties linked with work-life balance. However, the main issues are under discussion and there are several projects in place trying to eliminate obstacles. In 2018, the Ministry of Welfare carried out a project on the provision of flexible childcare facilities for parents employed under non-standard working time conditions. Specific research was carried out to identify problems of parents in non-standard working time employment and the need for specific childcare arrangements, as well as proposals for legislative amendments and policy measures to be undertaken.¹⁰³ The main finding is that access to such childcare facilities allows better organisation of family life and in the long term, higher satisfaction with life. At the same time, it was identified that private employers are very willing to implement and support such childcare services.

As already mentioned (Section 4.1.2), there is also a national level survey on the compliance with the principle of non-discrimination with regard to employed parents of young children, carried out by the Ombudsperson in 2017.¹⁰⁴ The main conclusions are that the employers in general do not choose the employees according to their sex and they tend to provide all the rights connected with pregnancy/maternity and parenthood. However, the employees still point out the fact that they are asked in job interviews about family status, and that employers are not satisfied with too frequent a use of sick leave due to the illness of a child.

5.1.2 Other issues

In general, in comparison to other EU Member States, Latvia provides longer parental leave and allowance in the amount of average pay. The access to kindergartens is also considered to be good. The only problem which requires solutions is the relatively low involvement of men in childcare and household work – for example, the right to parental leave is still predominantly used by women.

5.1.3 Overview of national acts on work-life balance issues

The main legal act in the field of employment implementing rights relating to work-life balance is the Labour Law. It provides specific protection during pregnancy/maternity and with regard to the right to paternity leave, as well as with regard to parental leave. Guarantees of safe and healthy working conditions during pregnancy and maternity are

¹⁰² 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>.

¹⁰³ *Projektu un kvalitātes vadība, gala ziņojums 'Elastīga bērnu uzraudzības pakalpojuma nodrošināšana darbiniekiem, kas strādā nestandarta darba laiku'*, 2018, available in Latvian at: http://petijumi.mk.gov.lv/sites/default/files/title_file/LM_2018_Petijuma_gala_zin_Projekta_Elastiga_bernu_uzraudz_pakalp_nodrosinasana.pdf.

¹⁰⁴ *LR Tiesībsargs, pētījums 'Diskriminācijas aizlieguma ievērošana pret mazu bērnu vecākiem'*, 2017 available in Latvian at: http://www.tiesibsargs.lv/uploads/content/legacy/diskriminacijas_aizlieguma_principa_iverosana_darba_ti_esiskajas_attiecibas_pret_mazu_bernu_vecakiem_1507559839.pdf.

provided also by the Labour Protection Law.¹⁰⁵ The right to statutory social insurance allowances during pregnancy/maternity, paternity and parental leave is regulated by the Law on Maternity and Sickness Insurance.¹⁰⁶ The guarantees of retention of statutory social insurance status and acquisition of rights (particularly to the old-age pension) during such periods of leave are regulated by the Law on Statutory Social Insurance.¹⁰⁷

5.1.4 Political and societal debate and pending legislative proposals

Currently there are no pending political, societal debates or pending legislative proposals on the work-life balance issues, although politicians keep talking on an almost daily basis about the urgent need to increase the birth rate. It seems that politicians refuse to see the direct link between improvement of work-life balance and an increase in the birth rate.

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

There is a formal definition in national law on the conditions under which a pregnant worker, or a worker during the maternity period, is entitled to specific rights. For the purposes of Directive 92/85, Article 37(7) of the Labour Law defines what a pregnant worker has to do in order to obtain protection under the Directive, and what period shall be considered for the maternity protection:

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

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

5.2.2 Obligation to inform employer

The law does not formally oblige a pregnant worker, or a worker during the maternity period, to inform the employer about her condition. However, if she wants to enjoy specific rights, then the obligation to inform an employer follows from Article 37(7) of the Labour Law.

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 dealing with the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding.

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

Articles 4-6 of Directive 92/85/EEC are implemented by the following provisions:

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

¹⁰⁶ The Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995.

¹⁰⁷ *Likums par valsts sociālo apdrošināšanu*, No. 274/276, 21 October 1997.

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

Article 22 of the Labour Protection Law provides:

'Those employees for whom in accordance with regulatory enactments special protection has been determined (persons up to 18 years of age, pregnant women, women in the post-natal period, disabled persons, and employees included in the lists referred to in Section 7, Paragraph 2 of this Law), in compliance with the evaluation of the working environment risks, as well as a physician's opinion, have the right to supplementary reliefs determined by an employer.'

Article 99 of the Labour Law provides:

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

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

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

Article 138(6) of the Labour Law provides:

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

It is complicated to draw conclusions on the correctness of the implementation measures regarding particular health and safety risks provided by Articles 4 and 6, and specified in Annexes I and II of Directive 92/85/EEC, because this requires further specific investigation.

Article 5 of Directive 92/85/EEC has been implemented correctly – word for word – by Article 99 of the Labour Law.

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

There is no case law on issues under Articles 4 and 5 of Directive 92/85/EEC.

5.2.6 Prohibition of night work

Article 138(6) of the Labour Law provides:

'Night work is prohibited for persons younger than 18 years of age, pregnant workers, and women in the period of up to 1 year after giving birth, but if a woman is breastfeeding, for the entire breastfeeding period, if a doctor concludes that performance of particular work poses health and safety risks for a woman and her child'

It follows that Article 7(1) of Directive 92/85/EEC has formally been implemented correctly. Although it may be argued that the choice to work or not to work during the night must be the free choice of a woman, on the other hand, it is up to a woman to submit a doctor's opinion in order to be employed or not for night work. The wording of Article 138(6) is unclear; however, equality law would require the interpretation of this provision as not banning employment of pregnant workers during the night time – otherwise, it would be contrary to the EU law.

5.2.7 Case law on the prohibition of night work

There is no case law on night work under Article 7 of Directive 92/85/EEC.

5.2.8 Prohibition of dismissal

Article 109(1) of the Labour Law provides:

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

Article 109(1) of the Labour Law allows dismissal only in exceptional cases (Article 101, Paragraph One, Clauses 1, 2, 3, 4, 5 and 10; i.e. if:

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

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

'the employee does not perform work due to temporary incapacity for more than six months, if the incapacity is uninterrupted, or for one year within three years, if the incapacity repeats with interruptions, excluding prenatal and maternity leave in such period, as well as a period of incapacity, if the reason of incapacity is an accident at work or occupational disease.'

Such provision does not specify that it is also not applicable in the event of absence on the grounds of pregnancy-related incapacity for work, according to the CJEU decision in the case *Brown*.¹⁰⁸

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

An employee on maternity leave may only be dismissed in the case of the liquidation of the employer's company. In all other cases, Article 109(3) provides that an employer is precluded from issuing a notice of dismissal while a worker is on sick leave (during maternity, a worker is considered under the law to be incapacitated for work, on the basis of the same documents issued by a medical doctor as in the case of illness).

In the case of a dismissal during maternity leave or shortly before this, an employee is still entitled to a maternity leave allowance, because such an allowance is not provided by the employer, but the statutory social insurance scheme and the Law on Maternity and Sickness Insurance guarantee that if a woman on maternity leave is made redundant on account of the liquidation of the employer, she remains entitled to maternity leave allowance.

There is no explicit norm protecting a pregnant worker, or a worker during maternity leave, against discriminatory non-renewal of a fixed-term contract; however, protection in such cases may be deduced from other non-discrimination provisions under the Labour Law.

5.2.9 Redundancy and payment during maternity leave

Maternity leave allowance is provided by the statutory social insurance system, not an employer. In the case of redundancy, Article 8 of the Law on Maternity and Sickness Insurance provides that women who have been made redundant due to liquidation of an employer and who have the right to pregnancy leave no later than within 210 days after such liquidation are entitled to pregnancy/maternity leave allowance according to the general rules.

The only case where a woman which is not employed retains the right to pregnancy/maternity benefit is liquidation of an employer.

5.2.10 Employer's obligation to substantiate a dismissal

Firstly, under Latvian law (Articles 100-102 of the Labour Law), dismissal without written notice of dismissal is generally not possible. Secondly, according to Article 102 of the Labour Law, in all cases of dismissal, an employer must indicate in a written notice of dismissal the grounds for dismissal (the legal basis and the factual circumstances proving that the dismissal is justified).

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

¹⁰⁸ Case C-394/96, *Mary Brown and Rentokil Limited*, European Court reports 1998 Page I-04185.

¹⁰⁹ The decision in case No. SKC – 1170/2010, available in Latvian at: http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/hronologiska-seciba_1/2010/.

applicable, which lays down that even during the probation period, if a worker is pregnant or on maternity leave, dismissal is possible only under the generally applicable terms of dismissal.¹¹⁰ However, one group is not entitled to the right to receive substantiated notice of dismissal and those are board members of capital companies (limited liability companies such as joint stock companies, Ltd., etc.) who qualify as 'employees' under EU law, as was established in the CJEU ruling in *Danosa*, which originated in Latvia.¹¹¹ This group is not covered by any legal non-discrimination regulation.

5.2.11 Case law on the protection against dismissal

There is no relevant case law apart from that mentioned in the previous Section 5.2.10.

5.3 Maternity leave

5.3.1 Length

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

5.3.2 Obligatory maternity leave

Article 37(7) of the Labour Law provides that the employer must not employ a pregnant worker two weeks before and after giving birth.¹¹² Such provision in practice, however, is formal, with regard to the prohibition of employment for two weeks before the expected birth, since on account of the right of a pregnant person not to disclose the relevant information, an employer may not be aware of the pregnancy. At the same time, the author of this report is not aware of situations where the woman would not use the rights to pregnancy leave.

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

Article 99 of the Labour Law implements provisions of Article 5, 6, 7 of Directive 92/85/EEC. It provides:

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

¹¹⁰ Decision of 8 December 2010, available in Latvian at: <http://www.at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/civillietu-departaments/hronologiska-seciba?year=2010>.

¹¹¹ The decision of the CJEU in case C-232/09 *Dita Danosa v. LKB Lizings SIA*.

¹¹² This provision is in contrast with Article 8 of Directive 92/85/EC and the CJEU ruling in *Boyle*, which provides for a mandatory maternity leave of two weeks in total. Case C-411/96 *Margaret Boyle and Others v Equal Opportunities Commission* [1998] ECR I-06401, Paragraph 49.

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

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

5.3.4 Legal protection of rights ensuing from the employment contract

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

5.3.5 Level of pay or allowance

Pregnancy/maternity leave allowance is provided by statutory social insurance. The amount of maternity allowance is equal to the sickness allowance. Both allowances are paid under the statutory social insurance scheme. The amount of maternity and sickness allowances is 80 % of the gross salary and there is no ceiling.¹¹³

The fact is that, in reality, maternity allowance exceeds the normal salary, because persons in active employment after deduction of taxes are entitled to approximately 68 % of their gross salary.¹¹⁴

5.3.6 Additional statutory maternity benefits

There is no information as to whether any employer provides additional benefits.

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

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

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

Article 149(6) of the Labour Law stipulates that a worker after any kind of leave (including pregnancy and maternity leave) as provided by the Labour Law, has the right to such

¹¹³ The Law on Maternity and Sickness Insurance (*Likums Par maternitates un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995.

¹¹⁴ The income tax for employee salaries is 20 %-23 % (the Law on Residents' Income Tax; *likums 'Par iedzīvotāju ienākuma nodokli'*, Official Gazette No. 32, 1 June 1993); statutory social security contributions constitute 34.09 %, but employees only have to pay 11 %, and 24.09 % must be contributed by the employer (the Law on Statutory Social Security; *likums 'Par valsts sociālo apdrošināšanu'*, Official Gazette No. 274/276, 21 October 1997). After taxes and social security contributions, employees are therefore entitled to approximately 68 %.

improvements to working conditions and employment provisions to which they would have been entitled if they had not been on leave.

In addition, Article 154(5) of the Labour Law explicitly protects women after pregnancy/maternity leave. It states:

'A woman who makes use of pregnancy or maternity leave shall have her previous work ensured. If this is not possible, the employer shall ensure the woman has similar or equivalent work without less favourable conditions and employment provisions.'

5.3.9 Legal right to share maternity leave

There is no legal right to share maternity leave. It is envisaged as sex-specific leave.

The maternity leave could be provided to a person other than the mother only in cases where the mother has serious health problems so that she is not able to provide childcare, or dies, or waives her parental rights. In such situations, the right to maternity leave may be provided to another person – a father or other person who factually provides childcare (Article 155(2)).

5.3.10 Case law

There is no specific case law on the issues concerning maternity leave.

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

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

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

There is the adoptive leave allowance provided by the statutory social security system which is equal to the paternity allowance (80 % of average pay, which is higher than the net salary). In addition, adoptive parents, future adoptive parents (awaiting the final court decision on adoption) and foster parents have a right to parental allowance on the same conditions as biological parents (60 % of average salary).¹¹⁵ It follows that, in principle, adoptive parents are given the same rights as biological parents. Furthermore, Articles 6¹ and 8¹ of the Statutory Allowance Law provide for the right to remuneration for the care of a child during the adoption procedure and remuneration for the adoption.

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

There is no protection against dismissal provided under Latvian law.

Taking into account the fact that less favourable treatment due to the use of the right to paternity leave is considered as direct discrimination on the grounds of sex, while adoptive parents do not enjoy explicit protection against less favourable treatment due to the use of the right to adoption leave, it could be concluded that persons using their right to adoption leave are not equally protected and this might be considered as incompatible with obligations under Article 16 of Recast Directive 2006/54/EC.

¹¹⁵ Article 10⁴ of the Law on Maternity and Sickness Insurance (*Likums Par maternitates un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995.

However, according to Article 149(6) of the Labour Law, an adoptive parent is entitled to return after the leave to the same job and benefit from all improvements in working conditions during his/her absence. In addition, Article 155(6) of the Labour Law stipulates that a person after adoptive leave must be provided the same or equivalent work. According to Article 156(4), the same right applies after parental leave.

5.4.3 Case law

There is no specific case law in the field of employment on the issues concerning adoption leave.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

No specific implementation measures were taken for the implementation of Directive 2010/18/EU, because the rights under the Directive already existed under national law. No particular measures have yet been taken for the implementation of Directive 2019/1158.

Article 156 of the Labour Law covers the rights ensured in the Directive. In addition, the right to parental leave allowance is provided by the Law on Maternity and Sickness Insurance.

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

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

5.5.3 Scope of the transposing legislation

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

5.5.4 Length of parental leave

In both sectors – private and public – the right to parental leave is one and a half years until the child reaches the age of eight.

5.5.5 Age limits

Workers are entitled to use their one-and-a-half-year-long parental leave until the child reaches the age of eight.

5.5.6 Individual nature of the right to parental leave

The right to parental leave under the Labour Law is an individual right. However, only one of the parents has the right to parental allowances. Since incomes in Latvia are low, a great majority of parents only use their right to parental leave under the Labour Law if social (social security) allowances are available during this period. Consequently, in practice, only one of the parents makes use of the right to parental leave.

5.5.7 Transferability of the right to parental leave

The right to parental leave under employment law is individual thus not transferable.

5.5.8 Form of parental leave

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

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

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

Firstly, taking into account the low salaries in Latvia, the effectiveness of the use of the right to leave is very much dependent on statutory social insurance rights granted during such periods. The problem is that the statutory social security system grants parental allowance to only one parent at any given period of time.¹¹⁶ In addition, a father is not entitled to parental allowance during the period that a mother receives maternity leave allowance. Consequently, a father may participate in the care of a new-born child for only 10 days of paternity leave. Then a family must wait until the end of the mother's maternity leave, which normally lasts nine weeks after birth, and then decide which of the parents will make use of parental leave, from the perspective of social security law. The social security law, however, allows sharing the right to parental (leave) allowance between parents if used at different periods of time, i.e. not simultaneously. Consequently, the parents may use the right to parental (leave) allowance in turn.

Secondly, the right to remain in employment and receive parental allowance in practice is 'abused'. The statistics indicate a considerable increase in the use of parental leave (recipients of parental leave allowance) by fathers in 2015. The number of fathers making use of the parental leave allowance in January 2015 was 13 %, in comparison to January 2014, when the number was 7 %. It further increased to 19 % in 2016 and 2017. At the same time, the difference between the amounts of parental allowance has significantly changed. In January 2015, the amount was almost the same or even fathers were entitled to smaller amount allowance in comparison to the period 2012-2014. The statistics now indicate that in 2015, the average amount of the mothers' parental allowance per month was EUR 395, the fathers', EUR 316; in 2016 – the mothers', EUR 361, the fathers', EUR 291; and in 2017 – the mothers', EUR 377, the fathers', EUR 298.¹¹⁷ Consequently, mothers receive a higher amount of allowance than fathers, however, the reason behind this considerable difference is clear and does not indicate the better position of mothers in general. In particular, as described above, since 1 October 2014, parents who remain in active employment have a right to parental allowance, but in a considerably lower amount – 30 % of the allowance which they would normally be awarded, i.e. in the case of full-time childcare. Mothers more frequently take full-time parental leave, therefore they are entitled to receive the full amount of parental allowance, while fathers most frequently apply for parental allowance while remaining in active employment and are therefore entitled to only 30 % of the parental allowance they could have received if they had taken full-time parental leave. Obviously, in families where the income of the father is considerably higher than that of the mother, the mother remains at home and performs childcare while the father applies for parental allowance and continues working full time, because his 30 % allowance is higher than the mother's full parental allowance would be. For example, if a mother earns the minimum salary of EUR 430 and applies for parental allowance while being on full-time parental leave, the amount of parenting allowance

¹¹⁶ Article 10⁴(2) of the Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995, respective amendments Official Gazette No. 228, 22 November 2013.

¹¹⁷ Data provided by the Ministry of Welfare on 22 March 2018.

would be EUR 258 (100 % of 60 % of previous earnings), while if a father who has a monthly salary of EUR 2 500 applies for parental allowance while remaining in active employment, the allowance would be EUR 450 (30 % of 60 % of previous earnings). The creation of such a situation was not the aim of the legislator – namely, that parental allowance is received by a parent in full-time employment, while the other is on full-time parental leave. It is especially important taking into account the fact that the parent who does not receive parental allowance and stays at home with childcare obligations loses all social insurance rights during such a period. Therefore, it is questionable if a particular measure taken by the legislator with the aim of providing more flexible arrangements for parental leave (entitlement to parental allowance) in practice results in the combination of childcare with active employment.

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

There is no length of service or seniority requirement in order to benefit from parental leave.

5.5.10 Notice period

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

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

The law does not allow postponing parental leave on the employer's request.

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

There are no special arrangements applicable depending on the size of business.

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)

The parents of disabled children are not entitled to any special paid periods of leave in addition to those available to all parents. The parents of disabled children are entitled to several types of special flat-rate allowances, like disabled childcare allowance.¹¹⁸ According to Article 151(1)(1) of the Labour Law, the parents of a disabled child are entitled to three days extra paid annual leave until the child reaches the age of 18.

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

There are no other measures addressing specific needs of adoptive parents apart from the right to parental leave and parental allowance, equal to the rights of biological parents.

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

There is no specific norm protecting parents from less favourable treatment due to the use of their right to parental leave. They can claim protection under generally applicable norms on protection against less favourable treatment: Article 9(1) of the Labour Law.

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

¹¹⁸ The State Social Allowances Law (*Valsts sociālo pabalstu likums*), Official Gazette No. 168, 19 November 2002.

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

Article 156(4) of the Labour Law expressly stipulates the right to return to the same or equivalent job. In addition, the Senate of the Supreme Court of Latvia decided that the norm which requires provision of the same or equivalent work after the return from parental leave, is a mandatory legal norm. This norm is not subject to any exceptions provided by the Labour Law, i.e. an employer is under the obligation to provide the same or equivalent work.¹¹⁹

The applicant's permanent employment contract as a senior officer at the Ministry of Education and Science was terminated immediately after her return from parental leave, because the employer had abolished her post. The employer abolished the post on account of structural reforms. The post occupied by the applicant was unique, i.e. there were no other posts involving the same work duties and qualifications. Consequently, there was no obligation to assess and compare the applicant's skills and work results with other colleagues performing the same work, in order to decide which employee was to be given preference to continue the employment, as would be required by the previous interpretation of the obligations under Latvian labour law and the EU law according to the findings of the CJEU in *Riežniece*.¹²⁰

The CJEU in *Riežniece* confirmed that an employer under the Framework Agreement (Directive 2010/18/EU, ex 96/34/EC) is not prohibited from dismissing a worker who has taken parental leave, provided that the worker is not dismissed on the grounds of the application for, or the taking of, parental leave. It follows that, in substance, EU law does not prohibit the dismissal of a worker upon return from parental leave on the grounds of other reasons than the application for, or the taking of, parental leave. Until now, the Latvian courts had interpreted the law in accordance with the rulings of the CJEU. However, in the decision at issue here, the Senate of the Supreme Court of Latvia decided to set stricter obligations under Latvian law than under the Framework Agreement. In particular, the Senate interpreted the obligation to provide the same or equivalent work upon return from parental leave as an absolute obligation which has no exceptions, for example, even if the post is abolished on account of structural, organisational or other objective reasons.

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

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

5.5.18 Status of the employment contract or relationship during parental leave

The status of the employment relationship is unclear under Latvian legal doctrine. On the one hand, the employment agreement remains in force but a person is on the leave as prescribed by the law. It could be said that the contract is in 'dormant' mode during this period.

5.5.19 Continuity of entitlement to social security benefits

The coverage of all social security rights continues. Insurance against social risks such as old age, disability and unemployment is provided according to the Law on Statutory Social

¹¹⁹ The decision of 12 November 2014 of the Senate of the Supreme Court of Latvia in case No. SKC-2608/2014, available in Latvian on the database: <http://www.tiesas.lv/nolemumi>.

¹²⁰ The CJEU decision in case C-7/12 *Nadežda Riežniece v. Zemkopības ministrija, Lauku atbalsta dienests*.

Insurance and health-care insurance is provided according to Article 11(2)(13) of the Law on Financing the Health Care System.¹²¹

During childcare leave, parents are insured by the State, instead of insuring themselves, but in a minimal amount.¹²² Although the amount of insurance provided by the State is increasing (until 2017 it was EUR 142.29, now it is EUR 171), being on childcare leave negatively affects the amount of the old-age pension. Since the number of women using the right to childcare leave is still considerably larger than that of men, this situation constitutes indirect discrimination against women.

5.5.20 Remuneration

There is an allowance under the statutory social insurance scheme during parental leave. However, according to Article 104(3) of the Law on Maternity and Sickness Insurance, employers are not precluded from granting any type of pay (for example, a bonus payment or additional payment), i.e. in such a case, a person does not lose the right to the parental leave allowance under the statutory social insurance scheme.

5.5.21 Social security allowance

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

As a result, the amount of parental allowance constitutes 60 % of the gross salary (social insurance contribution salary) for parents who stop working until the child is 12 months old.¹²³ Alternatively, if a parent would like to receive parental allowance until a child is 18 months old, then the amount of allowance will be 43.75 % of the gross salary.

Parents who decide to stay in full-time or part-time employment during the period when parents are entitled to parental allowance, he/she will be entitled to 30 % of the parental allowance (30 % of the full allowance; 60 % until the child is 12 months old; or 43.75 % until the child is 18 months old).¹²⁴

In addition, one of the parents is entitled to another type of allowance: a flat-rate state social allowance, which is a childcare allowance until the child is 18 months old, in the sum of EUR 171 per month (for multiple births, EUR 171 per month for each child). The latter allowance is also provided to parents who are not employed.¹²⁵

¹²¹ *Veselības aprūpes finansēšanas likums*, OG No. 259, 31 December 2017.

¹²² Until 2013, the monthly amount, starting at which parents on childcare leave were insured, was EUR 71. On 1 January 2013, this amount was doubled and it is now EUR 171, which, however, is less than half of the statutory minimum salary (EUR 360); the Law on Statutory Social Insurance (*Likums 'Par socialo apdrošināšanu'*), Official Gazette No. 274/276, 21 October 1997; the Cabinet of Ministers Regulation No. 230 'Regulation on mandatory state social insurance contributions from the state budget and statutory social insurance budget' (*Noteikumi par valsts sociālās apdrošināšanas obligātajām iemaksām no valsts pamatbudžeta un valsts sociālās apdrošināšanas speciālajiem budžetiem*), Official Gazette No. 91, 30 June 2001, respective amendments Official Gazette No. 26, 2 February 2017, with retroactive effect as from 1 January 2017.

¹²³ The income tax for employee salaries is 24 % (the Law on Residents' Income Tax; *likums 'Par iedzīvotāju ienākuma nodokli'*, Official Gazette No. 32, 1 June 1993); statutory social security contributions constitute 34.09 %, but employees only have to pay 10.5 %, and 23.59 % must be contributed by the employer (the Law on Statutory Social Security; *likums 'Par valsts sociālo apdrošināšanu'*, Official Gazette No. 274/276, 21 October 1997). After taxes and social security contributions, employees are therefore entitled to approximately 69 %.

¹²⁴ For example, if a parent's gross salary were EUR 1 000, then the amount of parental allowance would be EUR 600 or 60 % of the social insurance contribution salary. This applies to employed parents who are on full-time parental leave. If, however, a parent decides to stay in active employment, he/she would be entitled to 30 % of the parental allowance, i.e. 30 % of EUR 600 (or normal parental allowance, which would constitute EUR 180).

¹²⁵ The Law on State Social Allowances (*Valsts sociālo pabalstu likums*), Official Gazette No. 168, 19 November 2002; the Cabinet of Ministers Regulation No. 1609 'Regulations on amount of childcare allowance and

In December 2019, some amendments to the Law on Maternity and Sickness Insurance were adopted.¹²⁶ Among them, one provision in particular, Article 10⁶(4), stipulates that if a woman gives birth to another child within a period of three years while still caring for a previously born child, she is entitled to parental allowance for the second child, which is not lower than that for the previous child. Such provision is obviously directly discriminatory against fathers, since they might well be in a similar situation.

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

Several rights provided by Latvian law are more favourable.

Firstly, the duration of the parental leave is much longer than that required by the Directive: instead of four months, it is one and a half years. In addition, it is granted on an individual basis.

Secondly, there is a parental allowance which constitutes an amount almost corresponding to the average salary; plus there is a flat-rate allowance which amounts to EUR 171 until a child reaches 18 months of age.

Thirdly, in the context of equal treatment of parents with twins or more children born in the same birth, there is a flat-rate state social allowance of EUR 171 for each additional child, in addition to parental allowance.¹²⁷ This is a measure trying to accommodate the specific needs of parents in the case of a multiple-birth pregnancy, as acknowledged by the CJEU in *Zoi Chatzi*.¹²⁸

5.5.23 Case law

As mentioned above the Senate of the Supreme Court of Latvia decided that the norm which requires provision of the same or equivalent work after the return from parental leave, is a mandatory legal norm. This norm is not subject to any exceptions provided by the Labour Law, i.e. an employer is under the obligation to provide the same or equivalent work.¹²⁹ It was decided in the case *Riežniece*, after the CJEU gave the preliminary ruling on the issue, on evaluation of a group of employees with a view of dismissal of some, while one of them is on the parental leave.¹³⁰

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

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

supplement to childcare allowance and parental allowance for twins or more children born in the same birth and procedure on its review and award and pay-out' (*Noteikumi par bērna kopšanas pabalsta un piemaksas pie bērna kopšanas pabalsta un vecāku pabalsta par diviņiem vai vairākiem vienās dzemdībās dzimušiem bērniem apmēru, tā pārskatīšanas kārtību un pabalsta un piemaksas piešķiršanas un izmaksas kārtību*), Official Gazette No. 204, 29 December 2009.

¹²⁶ *Grozījumi likumā 'Par materniātes un slimības apdrošināšanu'*, Official Gazette No. 255A, 19 December 2019, enters into force from 1 January 2020.

¹²⁷ The Law on State Social Allowances (*Valsts sociālo pabalstu likums*), Official Gazette No. 168, 19 November 2002; the Cabinet of Ministers Regulation No. 1609 'Regulations on amount of childcare allowance and supplement to childcare allowance and parental allowance for twins or more children born in the same birth and procedure on its review and award and pay-out' (*Noteikumi par bērna kopšanas pabalsta un piemaksas pie bērna kopšanas pabalsta un vecāku pabalsta par diviņiem vai vairākiem vienās dzemdībās dzimušiem bērniem apmēru, tā pārskatīšanas kārtību un pabalsta un piemaksas piešķiršanas un izmaksas kārtību*), Official Gazette No. 204, 29 December 2009.

¹²⁸ Decision in case C-149/10 *Zoi Chatzi v. Ipourgos Ikonomikon*, OJ C301/3, 6 November 2010.

¹²⁹ The decision of 12 November 2014 of the Senate of the Supreme Court of Latvia in case No. SKC-2608/2014, available in Latvian at <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/191439.pdf>.

¹³⁰ The CJEU decision in case C-7/12 *Nadežda Riežniece v. Zemkopības ministrija, Lauku atbalsta dienests*.

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

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

Article 29(5) of the Labour Law stipulates that less favourable treatment due to the use of the right to paternity leave is direct discrimination on the grounds of sex. Thus all legal norms prohibiting discrimination under the Labour Law are applicable also in the case where a worker is treated less favourably due to the use of the right to paternity leave.

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

5.6.3 Case law

There is no relevant case law.

5.7 Time off for *force majeure*

5.7.1 Time off for *force majeure*

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

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

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

5.7.2 Case law

There is no relevant national case law.

5.8 Care leave

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

5.8.2 Case law

There is no relevant case law.

5.9 Leave in relation to surrogacy

There is no right to leave in relation to surrogacy. Legally, surrogacy is not possible under the Latvian legal system.

5.10 Flexible working time arrangements

5.10.1 Right to reduce or extend working time

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

This legal regulation, however, is incomplete. Firstly, the law does not regulate the length of part-time employment, namely, whether a worker is still entitled to part-time employment if the conditions which give the right to request part-time employment cease to exist, for example, when the child of a worker reaches the age of 14. Secondly, the law does not regulate the procedure on return to normal working time. Thirdly, it does not identify recent amendments to statutory social security laws. In particular, since 1 October 2014, a statutory social insurance allowance (parental allowance) is available to parents who remain in employment.¹³¹ Consequently, from the point of view of social security law, a parent is on childcare leave, while the Labour Law does not recognise such a situation, i.e. that a parent is on partial childcare leave. It might be important that a worker is considered as making use of part-time childcare leave, from the perspective of the Labour law, in order to enjoy the full legal protection and rights provided for parents who return from childcare leave. For example, recently the Senate of the Supreme Court held that the right to return to the same or equivalent workplace after childcare leave is an absolute right and the employer has no right, for example, to dismiss a worker right after their return on the grounds that a post has been abolished on account of economic, structural or organisational considerations, or dismiss them on the grounds that there is no equivalent post to offer in the organisation.¹³² It might be important also from the perspective of EU law, for example, that the Labour Law does not reflect the recent findings of the CJEU in *Rogier*¹³³ that protective measures in a case of dismissal, like compensation, must reflect the salary of full-time employment, if a worker is in part-time employment due to part-time childcare leave.

5.10.2 Right to adjust working time patterns

There is no explicit legal regulation, thus the possibility to adjust working time patterns depends on mutual agreement between an employee and an employer.

5.10.3 Right to work from home or remotely

The right to work from home or remotely is not regulated by the law; however, more and more employers provide such an option in practice, even public sector institutions.

5.10.4 Other legal rights to flexible working arrangements

There are no other legal rights to flexible working arrangements apart from the right to claim part-time employment under Article 134 of the Labour Law.

¹³¹ The Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995, respective amendments Official Gazette No. 228, 22 November 2013.

¹³² The decision of 12 November 2014 of the Senate of the Supreme Court of Latvia in case No. SKC-2608/2014, available in Latvian at database: <http://www.tiesas.lv/nolemumi>.

¹³³ Case C-588/12, *Lyreco Belgium NV v. Sophie Rogiers*, 27 February 2014.

5.10.5 Case law

There is no relevant case law.

5.11 Evaluation of implementation

Latvian law in general provides more favourable rights to pregnancy/maternity, paternity, adoption and parental leave. Such legal regulation helps parents to balance their family duties. At the same time, it would be better for equal opportunities of women if the fathers were obliged to take a certain part of parental leave.

Firstly, maternity protection under the Labour Law is very long – up to one year after giving birth, or during the entire period of breastfeeding. It means that all protective measures under Directive 92/85/EEC and protection against discrimination under Directive 2006/54/EC during this whole period are in place.

Secondly, during all types of leave, the statutory social insurance system provides allowances which are higher than normal pay during pregnancy/maternity and paternity leave, and slightly lower than normal pay during parental leave.

Thirdly, parental leave is one and a half years long, as well as statutory social insurance allowance, and a flat-rate social allowance is provided until a child attains 12 or 18 months of age (the length of time depends on the choice of a parent).

Latvian labour law, however, does not address new forms of working time arrangements, although such forms are frequently applied in practice.

5.12 Remaining issues

There are no other relevant 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 are no relevant surveys and reports. Occupational social security schemes in Latvia are still very rare. The social security is based on the statutory social insurance system.

6.1.2 Other issues related to gender equality and social security

There are no other related issues.

6.1.3 Political and societal debate and pending legislative proposals

Taking into account the fact that occupational social security schemes are still very rare in Latvia, there is no political or societal debate or pending legislative proposals.

6.2 Direct and indirect discrimination

Formally, equal treatment in occupational social security schemes in general is covered by the same Articles 29 and 60 of the Labour Law and they cover all employees, including state officials and civil servants (except judges and prosecutors).

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

Regarding the first point – the provisions of Directive 2006/54/EC covering occupational pension funds have been implemented by the Law on Private Pension Funds.¹³⁴ In particular, Article 11(2) provides that if an employer decides to provide participation in a private pension plan in favour of the employees, he/she must apply such benefit to all employees according to profession, length of service, post and other objective criteria. Furthermore, Article 11(3) stipulates that participation of persons in a private pension plan must be provided on equal terms, taking into account objective criteria irrespective of sex. It is the only piece of legislation explicitly implementing matters of equal treatment in occupational social security schemes in Latvia.

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

¹³⁴ *Likums par privātajiem pensiju fondiem*, Official Gazette No. 150/151, 20 June 1997.

The third problem is the most complicated: how to distinguish between occupational social security schemes and related obligations of equal pay and insurance products offered by insurance companies within the framework of Directive 2004/113/EC. In reality, in Latvia there is a considerable problem with health insurance provided by employers. This is because, in general, health services are provided to all residents of Latvia by the State under the statutory health service scheme which is fully financed by the State and no contribution of any natural person (resident of Latvia) is required (except co-payment for a visit to a doctor). State-paid medical services are not always accessible on account of insufficient state funding and state-paid medical services do not include all types of necessary medical treatment. Also, they may be provided at a much lower level of quality than private medical services, and therefore, it is considered to be a good benefit for an employee if an employer provides private health insurance, giving the employee the right to access private medical services. The range of medical services included in private health insurance and financial coverage of such services is defined by each separate private health insurance plan offered by an insurance company and depends on the financial means that an employer is able to allocate for the purpose of private health insurance to the employees. This leads to the situation where medical services included in private health insurance plans do not provide equal treatment with regard to sex. This especially concerns medical services relating to pregnancy and maternity, because usually such services are excluded. The lack of inclusion of medical services related to pregnancy and maternity in private insurance was re-approved in a survey carried out by the Ombudsperson in 2017.¹³⁵ The same applies to travel insurance. To justify such situations, insurance companies rely on the provision of the Law on Insurance Companies and their Supervision,¹³⁶ stipulating that insurance premiums and benefits may not differ on account of pregnancy and maternity. Namely, they insist that particular private health or travel insurance plans do not include pregnancy and maternity risks and therefore the aforementioned norm is not infringed, because since such risk is not included, there are no unequal premiums and benefits on account of pregnancy and maternity.

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

6.3 Personal scope

See the description of problems above (Section 6.2). There have been no relevant cases decided by the courts.

6.4 Material scope

See the description of problems above (Section 6.2). There have been no relevant cases decided by the courts.

6.5 Exclusions

No exclusions provided by Article 8 of Directive 2006/54/EC have been implemented in Latvian law.

¹³⁵ LR Tiesībsargs, pētījums 'Diskriminācijas aizlieguma ievērošana pret mazu bērnu vecākiem', 2017 available in Latvian at:

http://www.tiesibsargs.lv/uploads/content/legacy/diskriminācijas_aizlieguma_principa_ieverosana_darba_tiesiskajās_attiecības_pret_mazu_bernu_vecakiem_1507559839.pdf.

¹³⁶ *Apdrošināšanas sabiedrību un to uzraudzības likums*, Official Gazette No. 188/189, 30 June 1998.

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

There are no relevant laws or case law.

6.7 Actuarial factors

The Law on Private Pension funds does not explicitly prohibit the use of actuarial factors according to sex. However, as explained by the Financial and Capital Market Commission, which is the state supervisory institution over all financial service providers, in Latvia, there are still no defined benefit schemes based on biometric factors, i.e. there are no such pension plans providing a supplementary pension in a defined amount until a person's death. Currently, there are only defined contribution schemes (private pension plans), thus actuarial factors are not applicable to them, in any case. As regards occupational pensions in the form of insurance, for example, life insurance, Article 9 of the Law on Insurance and Reinsurance, prohibiting the use of sex as a factor in insurance, is applicable.

6.8 Difficulties

See the description of problems, especially relating to health, life, and travel insurance, above (Section 6.2).

6.9 Evaluation of implementation

Formally, Latvia has implemented the requirements regarding occupational social security schemes. Since they are rare, no problems have been identified so far. At the same time, there are benefits provided by the employer whose 'affiliation' is unclear; for example, whether health, travel or life insurance has to be considered as an occupational social security benefit, working condition, or pay.

6.10 Remaining issues

There are no additional 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 are no specific surveys and reports on the practical difficulties linked to statutory social security schemes.

7.1.2 Other relevant issues

No other relevant issues detected.

7.1.3 Overview of national acts

The Latvian social security system embracing social security, social insurance, social services and education, in general, is regulated by the umbrella law – the Law on Social Security.¹³⁷

The main legal act regulating matters under Directive 79/7/EEC is the Law on Statutory Social Insurance,¹³⁸ defining the material and personal scope of the statutory social insurance system in Latvia. It is then supplemented by more specific laws regulating the entitlement and calculation of specific social insurance allowances against particular risks – the Law on Maternity and Sickness Insurance regulates entitlement and calculation of pregnancy/maternity, paternity, parental and sickness allowances;¹³⁹ the Law on State Pensions¹⁴⁰ regulates the rights to old-age and disability pensions; the Law on Unemployment Insurance¹⁴¹ regulates the rights to unemployment allowance; and the Law on Mandatory Social Insurance Against Accidents at Work and Occupational Diseases,¹⁴² the right to respective allowances.

7.1.4 Political and societal debate and pending legislative proposals

There is no political or societal debate and there are no pending legislative proposals regarding the necessary improvement of the statutory social insurance system from the gender perspective. There is only a debate on the need to increase the contributions for the old-age pension, made by the state in favour of parents on parental leave, since their level does not even reflect statutory minimum pay.

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

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

¹³⁷ *Likums 'Par sociālo drošību'*, Official Gazette No. 144, 21 September 1995.

¹³⁸ *Likums par valsts sociālo apdrošināšanu*, No. 274/276, 21 October 1997.

¹³⁹ *Likums 'Par maternitātes un slimības apdrošināšanu'*, Official Gazette No. 182, 23 November 1995.

¹⁴⁰ *Likums 'Par valsts pensijām'*, Official Gazette No. 182, 23 November 1995.

¹⁴¹ *Likums 'Par apdrošināšanu bezdarba gadījumam'*, Official Gazette No. 416/419, 15 December 1999.

¹⁴² *Likums 'Par obligāto sociālo apdrošināšanu pret nelaiemes gadījumiem darbā un arodslimībām'*, Official Gazette No. 179, 17 November 1995.

7.3 Personal scope

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

7.4 Material scope

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

7.5 Exclusions

The exclusions, in principle, are not applicable. It is because, firstly, Latvian statutory social security is based on the principle of individual social rights and, secondly, the pensionable age has been equalised (with a transitional period at the end of the 1990s) since the establishment of the statutory social insurance schemes in 1995. However, there are gaps stemming from special laws and regulations on the calculation of particular benefits, especially in relation to the accrual of benefit entitlements following periods of interruption due to childcare leave. Each employed person has a right to state social insurance protection in proportion to the contributions made by him/her and by the employer. During childcare leave, parents are insured by the State instead of insuring themselves, but at a minimal amount.¹⁴³ Although the amount of benefit during childcare leave provided by the state is increasing (until 2017, it was EUR 142.29 per month, now it is EUR 171), being on childcare leave negatively affects the amount of the old-age pension. Since the number of women using the right to childcare leave is still considerably larger than that of men, this situation constitutes indirect discrimination against women. Such treatment does not correspond to the principle of non-discrimination provided by the Law on Social Security, although it complies with an exception allowed under Directive 79/7/EEC.

7.6 Actuarial factors

The expected period of pay-out of old-age pensions is calculated on the basis of the average life expectancy of persons of both sexes taken together.¹⁴⁴

7.7 Difficulties

No particular difficulties are identified with regard to implementation of Directive 79/7/EEC in Latvia.

¹⁴³ Until 2013, the monthly amount starting at which parents on childcare leave were insured, was EUR 71. On 1 January 2013, this amount was doubled and it is now EUR 171, which, however, is less than half of the statutory minimum salary (EUR 360); the Law on Statutory Social Insurance (*Likums 'Par sociālo apdrošināšanu'*), Official Gazette No. 274/276, 21 October 1997; the Cabinet of Ministers Regulation No. 230 'Regulation on mandatory state social insurance contributions from the state budget and statutory social insurance budget' (*Noteikumi par valsts sociālās apdrošināšanas obligātajām iemaksām no valsts pamatbudžeta un valsts sociālās apdrošināšanas speciālajiem budžetiem*), Official Gazette No. 91, 30 June 2001, respective amendments Official Gazette No. 26, 2 February 2017, with retroactive effect as from 1 January 2017.

¹⁴⁴ The Cabinet of Ministers Regulation No. 1445 'Regulation on calculation of the expected pay-out period of old-age pensions' (*Noteikumi par pensijas aprēķināšanai piemērojamo plānoto vecuma pensijas izmaksas laika periodu*), Official Gazette No. 250, 20 December 2013.

7.8 Evaluation of implementation

The principle of non-discrimination as provided by Directive 79/7/EEC is implemented in an umbrella social security system law in Latvia – The Law on Social Security. Therefore, the coverage of the principle of non-discrimination under Latvian law goes far beyond the requirements under Directive 79/7/EEC. The social insurance in Latvia is provided on an individual basis, thus there are no issues related, for example, to marital status. Also, pensionable ages of men and women have been equalised. There is, however, a problem with retention of pension rights during parental leave, since during this period the state provides contributions, instead of parents themselves, but in very small amounts so that it affects the amount of old-age pension.

7.9 Remaining issues

There are no other relevant 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 are no specific surveys and reports on the practical difficulties linked to self-employed workers from a gender perspective. In 2018, a research study¹⁴⁵ requested by the State Labour Inspectorate was carried out regarding the factual situation of the self-employed in Latvia, looking at various aspects. It was concluded that self-employed persons regularly work overtime thus endangering their health and safety. They are also insufficiently socially protected. Although statutory social insurance is mandatory for the self-employed, the obligation to provide contributions starts only if the annual income of the self-employed person attains 12 monthly statutory minimum salaries. Self-employed persons are obliged to contribute from an amount equal to the statutory minimum salary even if they earn more in reality. It leads to the situation that the majority of self-employed are contributing from this minimum amount, which means that in the case of social risk, they are only entitled to the allowance in a minimum amount, i.e., not reflecting their normal income. The self-employed person is entitled to statutory social insurance benefits only for which respective contributions have factually been made.¹⁴⁶

8.1.2 Other issues

There are no other issues to report.

8.1.3 Overview of national acts

National legal acts relevant to Directive 2010/41/EU are the Law on Non-Discrimination of Natural Persons – Performers of Economic Activities, prohibiting discrimination with regard to access to self-employment and access to and supply of goods and services necessary for the activities of self-employment, and the Law on Statutory Social Insurance, providing the right to social insurance allowances during pregnancy/maternity leave.

8.1.4 Political and societal debate and pending legislative proposals

There is no political or societal debate or pending legislative proposals relevant to gender equality in self-employment.

8.2 Implementation of Directive 2010/41/EU

National legal acts relevant to Directive 2010/41/EU include the Law on Non-Discrimination of Natural Persons – Performers of Economic Activities, prohibiting discrimination with regard to access to self-employment and access to and supply of goods and services necessary for the activities of self-employment. The entire law is dedicated to the protection of the self-employed against discrimination. The Law on Statutory Social Insurance provides the obligation of the self-employed to participate in the statutory social insurance system and consequently acquire protection in case of social risks. The self-employed are insured against risks of pregnancy/maternity, parenting, sickness, disability and old-age. Statutory social insurance regulation did not result from implementation of

¹⁴⁵ 'Self-employment in Latvia and improvement of legal regulation with a view to promoting better working conditions' (*Pašnodarbinātība Latvija un tiesiskā regulējuma pilnveide pašnodarbināto darba apstākļu uzlabošanai*), 2018, available in Latvian at: http://www.vdi.gov.lv/files/osha/5.nodevums_Galazinojums.pdf.

¹⁴⁶ The Law on Statutory Social Insurance (*Likums par valsts sociālo apdrošināšanu*), No. 274/276, 21 October 1997.

Directive 2010/41/EU. The obligation of the self-employed to be a part of the statutory social insurance system existed before relevant EU directives.

8.3 Personal scope

8.3.1 Scope

There is no separate legal act defining or regulating self-employment. In general, a self-employed person is a worker who does not qualify as an employee. There are no specific categories of self-employed – national legal regulation applies equally to all self-employed persons.

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

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

8.3.2 Definitions

There is no separate legal act defining or regulating self-employment.

8.3.3 Categorisation and coverage

There are no specific categories of self-employed – national legal regulation applies equally to all self-employed persons.

8.3.4 Recognition of life partners

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

8.4 Material scope

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

The Law on Non-Discrimination of Natural Persons – Performers of Economic Activities protects persons against discrimination in two aspects: (1) with regard to access to the goods and services necessary for the performance of the economic activities and (2) with regard to the access to self-employment in general, including extension of the business.

8.4.2 Material scope

The Law on Non-Discrimination of Natural Persons – Performers of Economic Activities provides the protection against discrimination on all six grounds – sex, race/ethnic origin, disability, age, religion/belief and sexual orientation. Thus, the implementing measures have a wider material scope with regard to other non-discrimination grounds, in particular, disability, age, religion/belief and sexual orientation.

8.5 Positive action

No positive action measures are taken in Latvia with regard to the self-employed.

8.6 Social protection

Self-employed persons in Latvia have access to the statutory social security schemes, however, they have an obligation to pay contributions to cover themselves against risks of old age, disability, sickness, maternity and parenting, once their annual income reaches a certain level.¹⁴⁷ Self-employed persons – unlike employed persons, who have to contribute in proportion to their real earnings – are obliged to pay statutory social insurance contributions only in the amount corresponding to the minimum statutory salary, irrespective of their real income. Any higher contributions are voluntary for self-employed persons.¹⁴⁸

There was an attempt to change the statutory health insurance system as from 1 January 2018.¹⁴⁹ It was intended that only economically active persons making social security contributions would be entitled to state-paid health services. There will be, however, some exceptions with regard to specific groups, like children, pensioners, the parents of severely disabled children, etc., namely regarding persons who are not economically active due to justified reasons. There will also be exceptions regarding certain illnesses, namely for certain diagnoses, state-paid medical services are available. Therefore, self-employed persons who will not contribute to statutory social insurance (because their income has not attained the level which obliges them to make such contributions) will not have the right to state-paid healthcare. However, due to technical shortcomings in the Latvian e-health IT system, the reform has been postponed and statutory health insurance still covers all persons legally residing in Latvia, without the condition of them being economically active.

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

The spouses of self-employed persons have a right to access statutory social insurance voluntarily. They may insure themselves against risks of old age, disability, maternity, paternity, sickness and parenting.¹⁵⁰

The author expressed doubts as to whether such regulation ensures the effective protection of helping spouses in practice, since there is only a right to join the state social security system voluntarily. A telephone interview with the Head of Department of Statistics of the State Statutory Insurance Agency showed that the presumption of the lack of effectiveness of the social protection of spouses is absolutely true. According to the data provided by the State Statutory Insurance Agency, not a single spouse of a self-employed person contributed for statutory social insurance in 2013! In 2016, there was 1 person and in 2017, 2 helping spouses registered.¹⁵¹ Compare this to the data of the Central Statistical Bureau, which demonstrate that in 2017, around 6 500 persons were helping family members in Family Enterprises, Individual Enterprises and Agricultural

¹⁴⁷ The self-employed are subject to mandatory participation in statutory social insurance schemes if their annual monthly income on average reaches the amount of the statutory minimum salary, which is currently EUR 360. The Cabinet of Ministers Regulations No. 1478 'Regulations on minimum contribution object amount and procedure of definition of such amount for self-employed' (*Noteikumi par valsts sociālās apdrošināšanas obligāto iemaksu objekta minimālo apmēru un tā noteikšanas kārtību pašnodarbinātajam*) Official Gazette No. 250, 20 December 2013.

¹⁴⁸ Article 14(2) of the Law on Social Insurance (*Likums 'Par sociālo drošību'*), Official Gazette No. 144, 2 November 1995.

¹⁴⁹ The Law on Financing the Health Care System (*Veselības aprūpes finansēšanas likums*), OG No. 259, 31 December 2017.

¹⁵⁰ Article 5(3) of the Law on Social Insurance (*Likums 'Par sociālo drošību'*), OG No. 144, 2 November 1995.

¹⁵¹ Telephone interview with the Head of the Statistics Unit at the State Social Security Agency, 27 March 2018.

Farms.¹⁵² It is interesting that only 1 900 are women and 4 600 are men. This may mean that in practice there is a considerable group (for the size of the population of Latvia) which is socially unprotected.

8.7 Maternity benefits

Self-employed persons formally have the right to maternity allowance on the basis of the same conditions as employed persons.¹⁵³ The amount of maternity allowance is 80 % of the statutory social insurance contribution salary,¹⁵⁴ i.e. 80 % of the total amount (gross salary) based on which the contributions have been made.

However, employed persons only have one option regarding the amount of income based on which to make the contributions: they have to make contributions based on their full income. The self-employed can choose: they are only obliged to contribute based on the minimum statutory salary. Taking into account the fact that there is doubt whether the majority of self-employed persons contribute at all, and that if they contribute, it is most likely that the statutory social insurance contribution salary corresponds to the statutory minimum salary and not to their real income, it is most likely that, in practice, self-employed persons are not entitled to the same level of income in cases of maternity. It is, however, unlikely that such a situation does not comply with the obligations under Article 8(3) of the Directive 2010/41/EU, because, firstly, it is a voluntary choice of each self-employed person to contribute either the minimum amount in contributions, or contributions corresponding to his/her real income; and secondly, statutory social insurances allowances in case of illness are also 80 % of the statutory social insurance contribution salary and the parental leave allowance is 60 %. Consequently, formally, Latvia complies with the requirements of Article 8(3) of Directive 2010/41/EU.

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

There are no specific implementation measures with regard to occupational social security for the self-employed because there are no relevant schemes in Latvia.

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

Exceptions are not applied, because such schemes do not exist.

8.9 Prohibition of discrimination

Article 2 of the Law on Non-Discrimination of Natural Persons – Performers of Economic Activities explicitly protects persons against discrimination with regard to the access to self-employment in general, including extension of the business.

8.10 Evaluation of implementation

In general, Directive 2010/41/EU is implemented completely. It may be questionable if, in practice, the social security rights are ensured in an effective manner.

¹⁵² The Central Statistical Bureau of Latvia, available in Latvian at: http://data1.csb.gov.lv/pxweb/lv/sociala/sociala_nodarb_nodarb_ikgad/NBG090.px/table/tableViewLayout1/.

¹⁵³ The Law on Maternity and Sickness Insurance (*Likums Par maternitates un slimības apdrošināšanu*), Official Gazette No. 182, 23 November 1995.

¹⁵⁴ Article 10 of the Law on Maternity and Sickness Insurance.

8.11 Remaining issues

There are no other relevant issues.

9 Goods and services (Directive 2004/113)¹⁵⁵

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 are no relevant surveys or reports on difficulties linked to equal access to and supply of goods and services.

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

There is no information regarding discrimination in the online environment/digital market/collaborative economy.

9.1.3 Political and societal debate

There is no relevant political or societal debate.

9.2 Prohibition of direct and indirect discrimination

Article 3¹ of the Law on the Protection of Consumer Rights provides for prohibition of discrimination, lists types of discrimination (direct, indirect, harassment, sexual harassment and instruction to discriminate) and definitions of direct, indirect discrimination, as well as harassment and sexual harassment.

9.3 Material scope

Not all goods and services available publicly are covered by non-discrimination rights. Latvian law does not cover goods and services which are publicly offered by natural persons outside commercial activities – for example, if a natural person publicly advertises the sale of his/her own apartment – because the Law on Protection of Consumer Rights only applies to transactions provided within the scope of commercial activities.¹⁵⁶

Under Latvian legal regulations, contractual freedom is not restricted at all if provision of services or goods takes place outside a public space, i.e. if they have not been offered publicly, in particular, without offer to an abstract group of persons. If, however, goods and services are offered publicly, a provider is free to choose a contractual partner, so long as in doing so, he or she does not discriminate on the basis of the sex of the person. Such explicit provision, however, 'appears' only in the Law on Protection of Consumer Rights and in the Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity.¹⁵⁷ The Civil Law,¹⁵⁸ which provides the basic regulations covering contract law, does not contain any provisions on the principle of non-discrimination.

9.4 Exceptions

Exceptions are not applied in Latvia; on the contrary, the Education Law and Advertisement Law¹⁵⁹ prohibit discrimination explicitly. Article 4 of the Advertisement Law prohibits content which is contrary to human dignity on various grounds, including sex.

¹⁵⁵ 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>.

¹⁵⁶ Law on Protection of Consumer Rights Article 1(4).

¹⁵⁷ Law on Prohibition of Discrimination of Natural Persons – Performers of Economic Activity Articles 3¹(3) and 3(2) respectively.

¹⁵⁸ *Civillikums. Ceturtā daļa. Saistību tiesības*, 28 January 1937.

¹⁵⁹ *Reklāmas likums*, Official Gazette No. 7, 10 January 2000.

9.5 Justification of differences in treatment

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

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

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

9.6 Actuarial factors

Article 9 of the Law on Insurance and Reinsurance prohibits the use of sex as a factor in insurance. It also prohibits the definition of different premiums and benefits by reason of pregnancy and maternity.

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

Initially, in 2009, the Law on Insurance Companies and their Supervision was amended with the aim of implementing Directive 2004/113/EC.¹⁶⁰ Article 5¹ was inserted and it provided the general prohibition of differential treatment on the grounds of sex and exceptions as defined by the same Article. The exception permitted the use of gender as a factor in cases where it was based on actuarial and statistical data. The types of insurance services where the use of gender as a factor was permitted were to be defined by the regulations of the Cabinet of Ministers. Also, an obligation was included to follow the developments and to publish and update statistics in order to assess whether there is still reason to use actuarial factors. On 8 September 2009, the Cabinet of Ministers issued Regulations No. 1002: 'Regulations on the use of differential treatment in defining insurance premiums and benefits',¹⁶¹ permitting the use of sex as a factor only in life insurance. Following the CJEU ruling in *Test-Achats*, the provisions of the Law on Insurance Companies and their Supervision, permitting the use of gender as a factor in exceptional types of insurance, were repealed.¹⁶² The Cabinet of Ministers Regulations No. 1002 consequently lost their legal basis.

In 2015, the new Law on Insurance and Reinsurance was adopted and it replaces the Law on Insurance Companies and their Supervision. The new law did not introduce any changes with regard to non-discrimination in insurance.

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

There are no positive action measures taken.

9.9 Specific problems related to pregnancy, maternity or parenthood

There is a problem with pregnancy- and maternity-based discrimination in insurance. The implementing provisions only require the definition of equal premiums and benefits irrespective of sex, pregnancy and maternity. Like Article 5 of Directive 2004/113/EC, they do not require the inclusion in insurance programmes of risks related to pregnancy and maternity. As a result, no insurance company in Latvia provides any standard travel and health insurance programme covering risks related to pregnancy and maternity. Consequently, the norms prohibiting pregnancy and maternity discrimination turn out to

¹⁶⁰ Amendments, Official Gazette No. 35, 4 March 2009.

¹⁶¹ 'Noteikumi par atšķirīgas attieksmes izmantošanu apdrošināšanas prēmijas un apdrošināšanas atlīdzības noteikšanā', Official Gazette No. 145, 11 September 2009.

¹⁶² Official Gazette No. 154, 28 September 2012.

be meaningless in practice. No legal act stipulates what kinds of risks have to be covered by private insurance programmes, so insurance companies simply do not include risks relating to pregnancy or maternity. There is no case law on this.

9.10 Evaluation of implementation

The implementation of Directive 2004/113/EC is not complete with regard to one aspect – there is no protection against discrimination with regard to the goods offered publicly by individuals outside their professional/commercial activities.

It is also questionable how non-discrimination related to pregnancy and maternity in insurance should be understood, in particular, if non-inclusion of the risks related to pregnancy/maternity should be considered as discrimination.

9.11 Remaining issues

There are no other issues.

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 is one relevant survey carried out regarding the perception of domestic violence. The survey carried out in 2018 demonstrates that the majority of the population finally considers that domestic violence against women is a crime and not a private matter.¹⁶³ More thorough information – including statistical data on police visits, claims lodged and cases decided – is provided by a relatively old report prepared by the Ministry of Welfare (responsible for implementation of the Istanbul Convention agenda) in 2016.¹⁶⁴ According to this report, the number of registered domestic violence cases is growing considerably year by year, which means that legal measures undertaken by the legislator in order to bring Latvian law in line with the requirements of the Istanbul Convention at the beginning of 2014, were urgently necessary for the effective protection of the victims of domestic violence.

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

The Civil Procedure Law¹⁶⁵ provides for the temporary protection order procedure, which is the measure banning a perpetrator from approaching or contacting a victim of violence. The Administrative Violations Code¹⁶⁶ and the Criminal Law¹⁶⁷ provide for sanctions in the case of non-compliance with the protection order or other obligations stemming from a court's decision, and criminal responsibility for stalking has been introduced. The general rights to state social services for victims and perpetrators are provided by Articles 3(1)(3¹) and 3(1)(11) of the Social Services and Social Assistance Law, and more detailed regulation is provided by the Cabinet of Ministers Regulation No. 790: 'The procedure on the provision of the social rehabilitation services for the victims of violence and for perpetrators'.¹⁶⁸ In addition, draft amendments to the Criminal Law have been recently submitted to Parliament by the Cabinet of Ministers relating to the more effective qualification and sanctioning of cases of domestic violence, including protection against stalking.¹⁶⁹

10.1.3 National provisions on online violence and online harassment

There are no specific provisions protecting against online violence and online harassment.

10.1.4 Political and societal debate

After heated political debates between the highest ranking politicians, scholars and officials during the spring of 2016, concerning the substance of the Istanbul Convention – mainly

¹⁶³ Survey company SKDS, available in Latvian at: <https://www.lsm.lv/raksts/dzive--stils/vecaki-un-berni/skds-petijums-sabiedriba-vardarbibu-pret-sievieti-gimene-uzskata-par-noziegumu.a288914/>.

¹⁶⁴ Available in Latvian at: http://www.lm.gov.lv/upload/publikacijas/lmzino_060516_stamb-vk.pdf.

¹⁶⁵ *Civilprocesa likums*, Official Gazette No. 326/330, 3 November 1998.

¹⁶⁶ *Latvijas Administratīvo pārkāpumu kodekss*, OG No. 51, 20 December 1984.

¹⁶⁷ *Krimināllikums*, Official Gazette No. 199/200, 8 July 1008.

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

¹⁶⁹ Draft amendments to the Criminal Law No. 794/Lp12, available in Latvian at: [http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webAll?SearchView&Query=\(Title\)=*kriminālliku*\)&SearchMax=0&SearchOrder=4](http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webAll?SearchView&Query=(Title)=*kriminālliku*)&SearchMax=0&SearchOrder=4).

instigated by the former Ministry of Justice, which opposes accession – the Minister of Welfare finally signed it in June 2016. Currently, the standard preparation process for its ratification is ongoing.¹⁷⁰ However, in February 2018, the Cabinet of Ministers decided to postpone the submission of a draft decision on ratification to Parliament. This decision was influenced by the open opinion expressed by the Latvian Catholic Church and the Latvian Evangelical Lutheran Church, warning against the serious consequences that the Istanbul Convention may have on the concept of family and gender in the Latvian legal system, and thus strongly advising that it should not be ratified. The majority of politicians decided to follow this opinion. There was a hope that the situation would change after new Parliament elections on October 2018, because liberal parties promised to ratify the Istanbul Convention. However, the result was that seven political parties were elected and in order to form the Government, liberal parties had to merge with conservative ones. Due to this, political debate on ratification of the Convention has 'disappeared' from the current agenda.

10.2 Ratification of the Istanbul Convention

Latvia is one of the very few EU Member States which has not yet ratified the Istanbul Convention. However, almost all requirements under the Convention have been implemented in Latvian law and can be enforced, except for data collection. Such a situation may be explained by the fact that, for the first time, a political decision was taken to ensure that its law complied with an international agreement first, and only then to ratify it.¹⁷¹

¹⁷⁰ Telephone interview with the senior expert of the Ministry of Welfare, 9 March 2017.

¹⁷¹ Telephone interview with a senior expert from the Ministry of Welfare, 5 June 2015.

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 are no surveys and reports about the particular difficulties related to obtaining legal redress.

11.1.2 Other issues related to the pursuit of a discrimination claim

Discrimination claims are still rare in Latvia. It might be explained by the fact that, in general, persons start claiming their employment rights when they are either in the process of termination of an employment relationship or they have already been dismissed. In equal pay cases, there are no effective means for access to information on pay. Also, litigation expenses, including legal aid, might be too expensive for the majority of the working population. Therefore, it is highly unlikely that the remedies are effective in practice.

11.1.3 Political and societal debate and pending legislative proposals

There is no political or societal debate or pending legislative proposals.

11.2 Victimisation

Protection against victimisation is provided by:

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

The Labour Law prohibits victimisation in a general provision prohibiting causing adverse consequences to any employee who makes use of their rights. According to the findings of the Supreme Court, such a general prohibition on causing adverse consequences is seen as a breach of the principle of non-discrimination.¹⁷² Provisions of the rest of the laws mentioned, expressly implement the protection against victimisation in cases of discrimination. All of them provide that it is prohibited to cause directly or indirectly negative consequences to a person who has used his/her right with a view to protecting his/her rights not to be discriminated against.

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

¹⁷² Decision of the Supreme Court of 14 November 2017 in case No. SKC-762/2017, point 9.3.

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

Formally, the national courts are accessible for victims of discrimination. However, victims of discrimination do not always take their case to court. One of the reasons for this is the cost of legal services, which is high, and another is the fear of victimisation. There are also problems with the enforcement of the principle of equal pay, because firstly, information on remuneration is usually confidential, and secondly, there is no effective control mechanism on payment systems in private businesses. Further, as pointed out by the Labour Inspectorate and as demonstrated by the decisions of the national courts, employees tend to decide to start litigation against their employer only at the end of their employment relationship, i.e. after reception of a notice of dismissal or after the employment relationship has ended. In light of this, a three-month limitation period for bringing a discrimination claim before a national court is too short because an employee in such cases must in principle decide to terminate his/her employment relationship.

11.3.2 Availability of legal aid

Victims are not entitled to any legal aid unless they are considered as poor and qualify for the state-paid legal aid under the general scheme.¹⁷³ Employed persons have difficulty in qualifying for state-paid legal aid, because the threshold is below the minimum statutory salary, i.e., a monthly income during the last 3 months below 50 % of statutory minimum pay.¹⁷⁴ The Ombudsperson does not have a legal obligation to provide legal aid, only legal consultation and opinion.

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

There have been no debates on the horizontal application of gender equality law in Latvia.

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

The CJEU decision in the *Bauer* case has not had any specific impact on the Latvian legal system. It is seen as one of many CJEU decisions and there is no relevant national case law yet.

11.5 Burden of proof

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

The obligation on reversal of the burden of proof is provided by:

- Article 29(3) of the Labour Law;
- Article 3¹(5) of the Law on the Protection of Consumer Rights;

¹⁷³ The State-Paid Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), Official Gazette No. 52, 1 April 2005.

¹⁷⁴ The Cabinet of Ministers Regulation No. 811 'Regulation on person's ownership situation and income level conformity for the entitlement to state-paid legal aid and on application form sample' (*Noteikumi par personas īpašuma stāvokļa un ienākumu līmeņa atbilstību valsts nodrošinātās juridiskās palīdzības piešķiršanai un pieprasījuma veidlapas paraugu*), Official Gazette No. 251, 21 December 2018.

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

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

The Supreme Court has also provided an interpretation of the reversal of the burden of proof in its case law. It has stated the following:

‘According to the principle of effectiveness under EU law there is an obligation for Member States to ensure that any individual may effectively implement his/her rights provided by EU law. In labour law there is a reversal of the burden of proof in the situation where the employee has demonstrated facts or circumstances which may indicate adverse treatment or possible discrimination (Articles 9, 29 and 125 of the Labour Law).

In such a situation the employer has to be able to prove that a notice of dismissal, a disciplinary sanction, or derogatory oral remarks are not connected with an unreasoned or discriminatory attitude.’¹⁷⁵

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

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

The enforcement measures in individual cases of breach of the non-discrimination principle are the following: Individuals may bring civil claims before regular courts dealing with civil and criminal cases in disputes regarding private-law transactions (employment and access to and supply of goods and services). In employment disputes, individuals may ask for non-discriminatory employment conditions, reinstatement (except in discriminatory recruitment cases) and compensation, including moral damages.

The Supreme Court has interpreted the right to compensation for moral damage as provided by Article 29(8) of the Labour Law by referring to the following CJEU case law. A person is entitled to compensation for moral damage when victimisation (the prohibition on causing adverse consequences) and/or discrimination have been established. When there is a dispute between the parties on the amount of compensation for moral damage, it is for a court to decide on this amount. This means that a court has to determine the amount of compensation according to its general experience, taking into account the facts of each particular case. According to the case law of the CJEU, no national law may release a person who has violated the principle of non-discrimination from his/her responsibility. Therefore, a victim of discrimination is entitled to compensation for moral damage. Discrimination is a serious breach of human rights, thus compensation for moral damage is intended to decrease or eliminate the negative consequences of discrimination.¹⁷⁶

Regarding disputes on the access to and supply of goods and services, individuals may claim the provision of goods and services in a non-discriminatory way and compensation. Individuals may request administrative authorities, such as the State Labour Inspectorate

¹⁷⁵ Decision of the Supreme Court of 8 May 2013 in case No. SKC-1482/2013, point 14.3.1.

¹⁷⁶ Decision of the Supreme Court of 29 November 2013 in case No. SKC-1702/2013.

and the courts, to impose administrative sanctions. Currently, Article 204¹⁷⁷ of the Administrative Violation Code provides for an administrative penalty of EUR 400 to EUR 700 if a person has breached the principle of non-discrimination as laid down in specific laws.¹⁷⁷ Article 149¹ of the Criminal Law providing for criminal sanctions when a person has breached the principle of non-discrimination, as provided by legal acts, twice within a year (after the application of an administrative sanction), was repealed in 2012, because since its adoption in 2007, it had never been applied in practice.¹⁷⁸ Thereafter, Article 149¹ of the Criminal Law was once again adopted in an amended form – now it is directed explicitly against discrimination on the grounds of religious belief. It also prohibits ‘any other violation of the prohibition of discrimination’ if it has serious consequences. There is no more detailed information on what is meant by ‘any other violation of the prohibition of discrimination’, so it may be presumed that the application of this provision in practice might be as problematic or ineffective as the previous one repealed in 2012.

11.6.2 Effectiveness, proportionality and dissuasiveness

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

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

Then, in order to enforce the rights, a claimant needs to have certain information; however, access to information (evidence) regarding possible discrimination is not explicitly regulated by Latvian law. It is general court practice that when a claimant may not obtain evidence – either because it is at the disposal of the respondent or because it contains confidential information – it is up to the court to decide if such evidence must be submitted by the respondent or any third person.¹⁷⁹ In such a case, when a claimant has to bring a case before a court without proper information at his/her disposal, he/she runs a risk of being obliged to compensate the expenses of the respondent relating to judicial proceedings, including services of the lawyers. The upper limit of such litigation expenses is very high for the average Latvian worker.

There is also a problem with time limits for bringing a discrimination claim before a court in an employment dispute. In particular, Article 31(1) of the Labour Law stipulates a general time limit of two years for all employment-related claims, while specific norms in relation to unequal pay (Article 60(3)) and discriminatory employment conditions (Article 95(5)) provide only a three-month period for bringing a claim regarding discrimination. Such legal regulation does not correspond to the principle of equivalence of remedies for the protection of the rights under national and EU law.

This problem was strongly highlighted by the Supreme Court’s decision of 6 June 2018.¹⁸⁰ The Supreme Court upheld the decisions of the court of first instance and appeal court, which ruled that the claim for damages in an unequal pay case was not admissible to the Court because the claimant had missed the three months’ time limit applicable to discrimination claims. The court of appeals did, however, regard the applicant’s claim for non-pecuniary damages as admissible, arguing that this falls under a two-year time limit,

¹⁷⁷ *Latvijas Administratīvo pārkāpumu kodekss*, OG No. 51, 20 December 1984.

¹⁷⁸ OG No. 199/200, 8 July 1998, respective amendments OG No. 107, 5 July 2007 and OG No. 27 December 2012.

¹⁷⁹ Articles 99 and 112 of the Civil Procedure Law (*Civilprocesa likums*), OG No. 326/330, 3 November 1998.

¹⁸⁰ The decision of the Supreme Court in case No. 79/2018 (6 June 2018), [ECLI:LV:AT:2018:0606.C31247015.1.S](https://www.eclis.lv/AT:2018:0606.C31247015.1.S).

in accordance with other cases regarding labour law. The Supreme Court overruled this last part of the sentence and reasoned that the claim for compensation for non-pecuniary damage is also subject to a three months' time limit in cases of discrimination. The Court explained that the right to compensation for non-pecuniary damage is dependent on establishing discrimination in the first place, which is subject to a three-month time limit, hence the subsequent claim for non-pecuniary damages falls under the same time limit.

The Supreme Court referred only to the CJEU decision in *Bulicke C-246/09* where it was established that a two-month time limit for bringing discrimination claims to the court complies with the principle of effectiveness. The Supreme Court did not analyse the substance of the problem, namely, if different (shorter) time limits for discrimination claims comply with the principle of equivalence.

11.7 Equality body

The functions of a national equality body are entrusted to the Ombudsperson of the Republic of Latvia (*Latvijas Republikas Tiesībsargs*).¹⁸¹ The competence of the Latvian Ombudsperson covers the supervision of all human rights, defined either by Latvian law or by binding international agreements.¹⁸² Consequently, the Ombudsperson's competence covers all possible non-discrimination grounds.

According to the Ombudsperson's Law, the Ombudsperson has the right to initiate investigation cases either on the basis of a complaint submitted by any person, or on his/her own motion. The result of investigation into a case is a legally non-binding opinion. In discrimination cases, the Ombudsperson has the right to represent a possible victim before a national court, in a civil procedure. There have been no cases of representation since 2011.

The Ombudsperson is granted sufficient competence to deal with gender equality issues, however, since the foundation of this body/institution in 2006, gender equality has never been included among priority problematic issues, although the Ombudsperson's Law provides that this independent official is in charge of supervision of human rights and, explicitly, equality and non-discrimination.

11.8 Social partners

The trade union movement is not very developed and existing coalitions do not have any considerable impact, in general. Since the restoration of independence, and following the need to reorganise the entire structure of the economy, trade unions have been preoccupied with the 'fight' for basic needs of employees with the economy in transition, such as an increase in the level of pay and undeclared employment, so they have never been key actors in the implementation of the non-discrimination principle. Collective agreements are legally binding and they provide for a higher standard of employment rights than the minimum rights provided by normative acts; however, the coverage of collective agreements is comparably low and usually such agreements do not address gender equality issues.

11.9 Other relevant bodies

Formally, one more body in charge of supervision of employers' compliance with the gender equality law, is the State Labour Inspectorate.¹⁸³ However, this institution lacks capacity to proactively address violations of gender equality rights, since the priority issues are the fight against undeclared work and the violation of health and safety rules. At the

¹⁸¹ See www.tiesibsargs.lv. Ironically, the English translation of the name of the institution is 'OmbudsMAN', which disregards the possibility that the position may be occupied by a woman.

¹⁸² The Ombudsperson's Law (*Tiesībsarga likums*), OG No. 65, 25 April 2006.

¹⁸³ The State Labour Inspectorate Law (*Valsts darba inspekcijas likums*), OG No. 104, 9 July 2008.

same time, the State Labour Inspectorate has received and processed some complaints on discrimination in the workplace. The number of complaints should have been higher, however, according to the State Labour Inspectorate, the employees are not very keen to defend their rights – they complain to this institution mostly when they either have already been dismissed or have received a notice of dismissal. Such a situation testifies to the problematic relationships and culture in the field of employment, in general.

11.10 Evaluation of implementation

Formally, legal regulation with regard to enforcement aspects complies with EU requirements, the exception being the shorter time limits for bringing a discrimination claim in employment disputes.

However, in practice, there are problems with enforcement, starting from insufficient activity of supervisory bodies (Ombudsperson, the State Labour Inspectorate), high litigation costs and ending with the award of compensation by national courts in a disproportionately small amount.

11.11 Remaining issues

There are no remaining issues.

12 Overall assessment

The following transposition problems were mentioned in this report.

Definitions and concepts:

1. There is one major problem which relates to the definition and understanding of the concept of non-discrimination. The principle of non-discrimination in the majority of Latvian normative acts is formulated as 'prohibition of differential treatment' instead of 'prohibition of discrimination'. This may result in an inadequate application of EU law, for example, by excluding direct and indirect discrimination which arises due to the equal treatment of persons in different situations, by excluding exceptions provided in the framework of the principle of non-discrimination, for example, reasonable accommodation, or in the form of formally incorrect findings by national courts, such as finding that discrimination is justified because the relevant persons were not in comparable situations.¹⁸⁴
2. The set of laws provide incomplete definitions by not stipulating that less favourable treatment on the grounds of pregnancy and maternity is not only discrimination, but direct discrimination.
3. There is a lack of an explicit link between pregnancy/maternity protection and non-discrimination provisions in the Labour Law which may 'cause' a problem, in particular, for identifying that non-provision of specific rights during pregnancy and maternity leads to direct sex discrimination. None of the laws explicitly provide that pregnancy and maternity discrimination may occur in two cases: one is unfavourable treatment due to pregnancy and maternity (Directive 2006/54/EC) and the second is unfavourable treatment due to request or non-provision of the specific rights due to pregnancy and maternity (Directive 92/85/EEC in conjunction with Directive 2006/54/EC).
4. The definition of 'sexual harassment', which is 'merged' with the definition of 'harassment'.

Material scope:

1. Special laws usually regulate legal relationships between private parties, while EU gender equality and non-discrimination law entails horizontal and mainstreaming obligations for state powers. There was a provision obliging the drafters of legislative documents and the delegated legislator – the Cabinet of Ministers and subordinated executive institutions – to carry out impact assessment, but these explicit norms were abolished.¹⁸⁵ The State Chancellery has explained this amendment by the need to assess all legislative proposals from the perspective of all general principles of law.¹⁸⁶ However, as expected by the author of this report, this has led to a lack of appropriate assessment of draft legislation.
2. The prohibition of discrimination with regard to employment (service) conditions has not been implemented with regard to judges and public prosecutors. As a consequence, judges¹⁸⁷ and public prosecutors¹⁸⁸ are still only protected against discrimination with regard to access to a post.

¹⁸⁴ Decision of Riga City Vidzemes District Court of 17 July 2006 in Case No. C 30-1667/9-2006.g. (not published).

¹⁸⁵ The Instruction of the Cabinet of Ministers No. 19 'The procedure on the initial assessment of legislative proposals' (*Tiesību akta projekta sākotnējās ietekmes izvērtēšanas kārtība*), Official Gazette No. 205, 30 December 2009, respective amendments Official Gazette No. 91, 14 May 2013.

¹⁸⁶ Telephone interview with the Head of Department of Development of State Administration of the State Chancellery on 31 August 2015.

¹⁸⁷ Article 51(2) of the Law on Judicial Power (*Likums 'Par tiesu varu'*), Official Gazette No. 1, 14 January 1993.

¹⁸⁸ Article 33¹(1) of the Prosecutors' Office Law (*Prokuratūras likums*), Official Gazette No. 65, 2 June 1994.

3. Directive 2004/113/EC has been implemented by the Law on the Protection of Consumer Rights¹⁸⁹ and the Insurance and Reinsurance Law.¹⁹⁰ However, implementation is incomplete because the Law on the Protection of Consumer Rights only concerns those goods and services providers who act within their professional capacity. They do not cover the sale of goods or the provision of services between private parties acting outside their professional activities. For example, the law does not cover the situation where a person selling his/her own apartment offers it to the general public by public offer. Not all goods and services available publicly are covered by non-discrimination rights. Latvian law does not cover goods and services which are publicly offered by natural persons outside commercial activities – for example, if a natural person publicly advertises the sale of his/her own apartment – because the Law on Protection of Consumer Rights only applies to transactions provided within the scope of commercial activities.¹⁹¹

4. It is questionable how non-discrimination related to pregnancy and maternity in insurance should be understood, in particular, if non-inclusion of the risks related to pregnancy/maternity should be considered as discrimination. The implementing provisions only require the definition of equal premiums and benefits irrespective of sex, pregnancy and maternity. Like Article 5 of Directive 2004/113/EC, the Insurance and Reinsurance law does not require the inclusion in insurance schemes of risks related to pregnancy and maternity. As a result, no insurance company in Latvia provides any standard travel and health insurance programme covering risks related to pregnancy and maternity. Consequently, the norms prohibiting discrimination based on pregnancy and maternity turn out to be meaningless in practice. No legal act stipulates what kinds of risks have to be covered by private insurance programmes, so insurance companies simply do not include risks relating to pregnancy or maternity. There is no case law on this.

5. There is no complete implementation of the right provided by Article 14(1)(d), in particular, protection against discrimination with regard to the membership of, and involvement in, workers', employers' or professional organisations. The foundation and functioning of associations (non-governmental organisations) and foundations is regulated by the Association and Foundation Law.¹⁹² This law is silent with regard to the non-discriminatory selection of founders, members or executives.

6. Latvian law is not in the line with the findings of the CJEU in the case *Danosa*, which originated in Latvia.¹⁹³ The board members of capital companies (limited liability companies such as joint stock companies, Ltd., etc.) who do not always qualify as 'employees' under Latvian law but qualify as 'employees' under EU law, are not covered by any Latvian non-discrimination regulation.

7. The implementation of the principle of equal pay in legislation is incomplete. There are no criteria for establishing the equal value of different jobs, in the private sector there is no requirement to have a pay system within an undertaking and to have a job classification system. Furthermore, there are no specific rules or procedures to provide wage transparency. Formally, workers' representatives or trade unions have the right to require information on pay levels according to Article 11(1) of the Labour Law, however, there is no information on any case where such a right would have been used for the purpose of ensuring the equal pay principle.

Rules leading to indirect discrimination:

1. Article 60 of the Law on Judicial Power stipulates that a judge of the first instance court for the first occasion may be elected for three years. After this term, they may be re-

¹⁸⁹ *Patērētāju tiesību aizsardzības likums*, Official Gazette No. 104/105, 1 April 1999.

¹⁹⁰ *Apdrošināšanas un pārpadrošināšanas likums*, Official Gazette No. 124, 30 June 2015.

¹⁹¹ Law on Protection of Consumer Rights Article 1(4).

¹⁹² *Biedrību un nodibinājumu likums*, Official Gazette No. 161, 14 November 2003.

¹⁹³ The decision of the CJEU in case C-232/09 *Dita Danosa v. LKB Līzings SIA*.

elected for an indefinite term on the condition that during the previous three years of office they have not been absent for more than six continuous months. This provision may lead to indirect discrimination against women, since they still predominantly make use of parental leave, which may last longer – until the child reaches the age of 18 months.¹⁹⁴

2. Article 12(2) of the Military Service Law stipulates that with regard to non-discrimination and family-related leave, including parental leave, the norms of the Labour Law are applicable, while on the other hand, Article 40(4) of the State and Municipal Institutions' Remuneration Law provides that time spent on parental leave is to be taken into account for the purposes of the calculation of the length of service of a soldier, but this period is not to be taken into account for the purposes of promotion.

Protection of the rights:

1. Formally, the national courts are accessible for victims of discrimination. However, victims of discrimination do not always take their case to court. One of the reasons for this is the cost of legal services, which is high, and another is the fear of victimisation. As pointed out by the Labour Inspectorate and as demonstrated by the decisions of the national courts, employees tend to decide to start litigation against their employer only at the end of their employment relationship, i.e. after receiving a notice of dismissal or after the employment relationship has ended. In light of this, the three-month limitation period for bringing a discrimination claim before a national court is too short because an employee in such cases must in principle decide to terminate his/her employment relationship. There is a problem with time limits for bringing a discrimination claim before a court in an employment dispute. In particular, Article 31(1) of the Labour Law stipulates a general time limit of two years for all employment-related claims, while specific norms in relation to unequal pay (Article 60(3)) and discriminatory employment conditions (Article 95(5)) provide only a three-month period for bringing a claim regarding discrimination. Such legal regulation does not correspond to the principle of equivalence of remedies for the protection of the rights under national and EU law.

2. Victims are not entitled to any legal aid unless they are considered as poor and qualify for the state-paid legal aid under the general scheme.¹⁹⁵ Employed persons have difficulty in qualifying for state-paid legal aid, because the threshold is below the minimum statutory salary, i.e. a monthly income during the last 3 months below 50 % of statutory minimum pay.¹⁹⁶

3. The amount of the compensation for discrimination awarded by Latvian courts is insufficient to comply with the principle of effectiveness. The remedies and sanctions may not be considered as effective.

4. There is no administrative sanction mechanism in the case of discrimination with regard to supply of and access to goods and services. This means that the only option for a victim is to take the case to court.

5. In order to enforce the rights, a claimant needs to have certain information; however, access to information (evidence) regarding possible discrimination is not explicitly regulated by Latvian law. It is general court practice that when a claimant may not obtain evidence – either because it is at the disposal of the respondent or because it contains confidential information – it is up to the court to decide if such evidence must be submitted

¹⁹⁴ The Law on Maternity and Sickness Insurance (*Likums Par maternitātes un slimības apdrošināšanu*), OG No. 182, 23 November 1995.

¹⁹⁵ The State-Paid Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), Official Gazette No. 52, 1 April 2005.

¹⁹⁶ The Cabinet of Ministers Regulation No. 811 'Regulation on person's ownership situation and income level conformity for the entitlement to state-paid legal aid and on application form sample' (*Noteikumi par personas īpašuma stāvokļa un ienākumu līmeņa atbilstību valsts nodrošinātās juridiskās palīdzības piešķiršanai un pieprasījuma veidlapas paraugu*), Official Gazette No. 251, 21 December 2018.

by the respondent or any third person.¹⁹⁷ In such a case, when a claimant has to bring a case before a court without proper information at his/her disposal, he/she runs a risk of being obliged to compensate the expenses of the respondent relating to judicial proceedings, including services of the lawyers. The upper limit of such litigation expenses is very high for the average Latvian worker.

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

The situation with enforcement is not so satisfactory. Although Latvian courts have demonstrated increasingly improved knowledge on the substance of EU gender equality law, not all victims of discrimination take their case to court, because it is costly and therefore not affordable for the majority of the population. Also, the time frame within which a case must be brought to a court (three months) might play a role. This time frame is too short, especially taking into account the fact that, in practice, if a case is taken to court, the employment relationship is often discontinued. Although the present Ombudsperson is active in protecting society's human rights, it would be desirable to start paying attention to gender inequalities strategically.

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

¹⁹⁷ Articles 99 and 112 of the Civil Procedure Law (*Civilprocesa likums*), OG No. 326/330, 3 November 1998.

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