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COMPARATIVE NOTE ON GENDER EQUALITY LAWS ACROSS THE OSCE REGION

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EXECUTIVE SUMMARY

The right to equality and to be free from discrimination is a fundamental element of international human rights law and is enshrined in a number of international human rights instruments and OSCE human dimension commitments. It guarantees women and men the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms and equal opportunities in the political, economic, social, cultural, civil, domestic or any other fields. This should go beyond formal equality to also improve the *de facto* position of women (substantive equality) but also to address prevailing gender relations and the persistence of gender-based stereotypes (transformative equality). National legislation should be coherent and provide for effective legal means for protecting and respecting the right to equality and to be free from discrimination and promoting gender equality in accordance with the rights and principles enshrined in international conventions.

Gender equality laws are enacted to “give teeth” to international obligations and commitments on gender equality but also to constitutional provisions on gender equality and to operationalize them in national legal orders. They should aim to ensure equal opportunities and equal treatment for women and men in all their diversity, and to combat all forms of discrimination on the grounds of gender in all areas of life. While the practice of adopting gender equality laws is quite common across the OSCE region, it is crucial to ensure that the provisions of these laws are clear enough, efficient and capable of achieving the desired results.

The Comparative Note provides an overview of relevant international and regional standards and OSCE commitments, as well as examples of good legislative solutions and practices to inform legislative choices of OSCE Participating States (pSs) when reforming their gender equality legislation in relation to the aspects reviewed, with particular focus on mainstreaming gender in policy- and lawmaking.

To ensure that the *national legal framework provides conditions for practical realization of the principle of the equality of women and men in all their diversity*, gender equality laws should have a clearly stated purpose and content, while avoiding legal loopholes, vague, contradictory or ambiguous wording and definitions which can undermine legal certainty and public ownership of, and trust in gender equality legislation. Furthermore, gender equality laws should include appropriate and realistic implementation and compliance mechanisms and should communicate the rules clearly to all those affected by, or in charge of implementing them.

While states do not need to adopt exactly the same definition of discrimination as the one provided by international treaties, it should be broad enough to encompass all the components as envisaged by various instruments, including direct and indirect discrimination on the basis of sex, gender, gender identity and sexual orientation in all areas of life. A complementary aspect of the prohibition of discriminatory treatment is an explicit indication of behaviours that do not constitute sex and gender-based discrimination, in cases where the difference of treatment pursues a legitimate aim and is objectively and reasonably justifiable.

To ensure that the laws apply to all persons equally, and do not disadvantage certain persons due to their characteristics, the *policy- and lawmaking processes* should integrate gender perspective, with a view to promoting equality between women and men, and combating discrimination. In this respect, the concept of *gender mainstreaming* should be appropriately reflected in gender equality laws by elaborating relevant tools and mechanisms, specifically those related to the impact assessment of draft legislation, inclusiveness of public consultation and gender-sensitive legal drafting

throughout the process of preparing, drafting, adopting, implementing, monitoring and evaluating legislation.

An effective implementation of gender equality laws leading to substantive equality between women and men would not be possible without relevant bodies and institutions, referred as institutional mechanisms for gender equality ("IMGE"), which need to be effective, operational, equipped with adequate financial and human resources and capacities, and not overlapping and conflicting between each other in their respective spheres of intervention and mandates. In this respect, it is important that gender equality laws provide a precise demarcation and identification of the responsible bodies, their respective roles and responsibilities, composition, election, as well as modalities of co-operation and co-ordination. To ensure the effectiveness of IMGE, the following requirements should be followed: establishment at the highest possible level in the government; a clearly defined mandate and the authority to execute it; the opportunity to influence the development of all government policies and draft legislation via a mechanism clearly established in the legislation, while also allocating adequate financial and human resources for this purpose.

Gender equality laws should be able to offer realistic prospects of achieving their aims by ensuring, inter alia, effective means for pursuing anti-discrimination claims, including by setting up effective and user-friendly procedures, which should be easily accessible to the victims, decreasing or abolishing the financial burden for conducting proceedings, ensuring access to legal aid (i.e., legal advice, assistance and representation at no cost or subject to marginal contribution), appropriately regulating the burden of proof.

Depending on their nature, the respective provisions imposing prohibitions and obligations related to gender equality can incur different consequences in case of non-compliance. With the above in mind, OSCE pSs need to elaborate, establish in the law and ensure the practical enforcement of the system of effective, proportionate and dissuasive sanctions applicable in case of infringements of the provisions on combating discrimination. While the choice of particular modalities lies with pSs, the respective legislative provisions should be clear and specific and should explicitly state which type of behaviour leads to which types and levels of sanctions.

Finally, to make sure that gender equality legislation is working and producing the desired results, it needs to be consistently applied and reviewed. In this respect gender equality laws should prescribe specific mechanisms to monitor, evaluate and oversee progress on their implementation and gender equality in a broader sense. While regular reporting is a good way to ensure publicity and awareness around the achievement of gender equality goals and to monitor progress, it is advisable to clearly establish in the law concrete reporting obligations of various branches of government and to identify to which body such reports ought to be sent. Furthermore, the IMGE should have the possibility to ensure that those bodies who are not meeting reporting requirements or employ discriminatory measures are held accountable.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

TABLE OF CONTENTS

I. INTRODUCTION	6
II. SCOPE OF THE COMPARATIVE NOTE.....	6
III. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS.....	7
1. AT THE GLOBAL LEVEL.....	7
2. AT THE COUNCIL OF EUROPE LEVEL.....	9
3. AT THE EUROPEAN UNION LEVEL	11
4. AT THE OSCE LEVEL	12
IV. GENERAL COMMENTS ON PURPOSE, SCOPE AND LEGISLATIVE MECHANISMS OF GENDER EQUALITY LAWS	13
1. SCOPE AND PURPOSE OF GENDER EQUALITY LAWS	13
2. LEGISLATIVE MECHANISMS USED IN GENDER EQUALITY LAWS	15
2.1. <i>Prohibition of Discrimination</i>	15
2.1.1. <i>Protected Grounds</i>	16
2.1.2. <i>Prohibited Discriminatory Treatment/Behaviours</i>	19
2.1.3. <i>Clear Indication of Behaviours not Constituting Discrimination</i>	20
2.1.4. <i>Sanctions in Case of Non-compliance</i>	21
2.2. <i>Specific Obligations/Duties related to Gender Equality</i>	21
2.3. <i>Temporary Special Measures</i>	22
2.4. <i>Incentives</i>	23
2.5. <i>Legislative Experimentation</i>	24
2.6. <i>Procedural Support and Protection Measures</i>	24
2.7. <i>Gender Mainstreaming</i>	26
2.7.1. <i>Gender Impact Assessments</i>	27
2.7.2. <i>Gender Audits</i>	28
2.7.3. <i>Gender-Sensitive Language</i>	28
2.7.4. <i>Gender-Responsive Budgeting</i>	29
2.7.5. <i>Disaggregated Data Collection</i>	29
2.7.6. <i>Inclusive Public Consultations</i>	30
V. INSTITUTIONAL FRAMEWORK AND MECHANISMS FOR MEASURING PROGRESS IN GENDER EQUALITY AND ENSURING OVERSIGHT AND ACCOUNTABILITY	30
1. INSTITUTIONAL FRAMEWORK.....	31
1.1. <i>Institutional Mechanisms for Gender Equality</i>	31
1.2. <i>Parliamentary Bodies</i>	33
1.3. <i>Independent Equality Bodies</i>	34
1.4. <i>Research Bodies</i>	35
1.5. <i>Regional and Local Structures</i>	36

1.6.	<i>Gender-Balanced Representation in Public Decision-Making</i>	36
2.	MECHANISMS FOR MEASURING PROGRESS IN GENDER EQUALITY AND ENSURING OVERSIGHT AND ACCOUNTABILITY	38
2.1.	<i>Review and Evaluation Clauses and Frameworks</i>	38
2.2.	<i>Monitoring and Reporting</i>	39
VI.	LEGAL CONSEQUENCES IN CASE OF NON-COMPLIANCE	40
VII.	THE PROCESS OF REFORMING GENDER EQUALITY LEGISLATION	43

I. INTRODUCTION

1. In line with the 2004 OSCE Action Plan for the Promotion of Gender Equality,¹ ODIHR has a unique mandate to promote women’s political participation, gender equality in political life, and gender-responsive governance in general, as well as assist OSCE pSs in reviewing legislation to ensure appropriate legal guarantees for the promotion of gender equality in accordance with OSCE and other commitments.² On 10 May 2023, ODIHR’s Democratic Governance and Gender Unit (DGGU) requested ODIHR’s Legislative Support Unit (LSU) to assist with the preparation of a comparative overview of certain aspects of gender equality laws (hereinafter “GELs”) across the OSCE region, with specific focus on gender mainstreaming in policy- and lawmaking.
2. This Comparative Note was prepared in response to the above request. The Comparative Note outlines relevant applicable international and regional standards and recommendations and, if and as relevant, provides a comparative overview of selected examples from OSCE pSs. It aims at informing the legislative choices at the disposal of the policy- and lawmakers wishing to reform their gender equality legislation in relation to the aspects reviewed. Furthermore, the Comparative Note informed the ODIHR 5th co-ordination workshop with OSCE field operations and institutions on Gender Equality in Politics & Democratic Institutions organized in Warsaw on 21-22 November 2023.
3. ODIHR conducted this assessment within its general mandate to assist the OSCE pSs in the implementation of their OSCE human dimension commitments pertaining to the promotion of gender equality and women’s rights.³

II. SCOPE OF THE COMPARATIVE NOTE

4. The Comparative Note presents an overview of relevant international and regional standards and OSCE human dimension commitments and examples of good legislative solutions and practices to inform legislative choices. The Comparative Note primarily addresses, but is not limited to, the following issues: i) purpose, scope and legal concepts/legislative mechanisms used in GELs; ii) mechanisms and tools in GELs for gender mainstreaming in policy- and lawmaking, iii) institutional framework and mechanisms in GELs for measuring progress in gender equality and ensuring oversight and accountability; iv) legal consequences in case of non-compliance. These issues are fundamental not only in terms of informing the reform of gender equality legislation to enhance its quality, promoting gender sensitive policy- and lawmaking and establishing the relevant institutional frameworks and mechanisms in OSCE pSs, but also for strengthening women’s political participation, gender equality in political and public life, and gender-responsive governance in general. Thus limited, the Comparative Note does not constitute an exhaustive review of all issues covered by GELs adopted by OSCE pSs nor of the entire legal and institutional framework regulating gender equality issues in OSCE pSs.
5. This Comparative Note seeks to provide general guiding principles and concrete examples to inform possible reforms of GELs. When referring to good legislative

¹ OSCE, [Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04 of 7 December 2004, MC.DEC/14/04 (2004).

² *Ibid.*, para. 44 (b).

³ *Ibid.*, para. 44 (b), which states that “ODIHR, in co-operation with other international organizations and relevant national bodies and institutions, will assist OSCE participating States in complying with international instruments for the promotion of gender equality and women’s rights, and in reviewing legislation to ensure appropriate legal guarantees for the promotion of gender equality in accordance with OSCE and other commitments”.

practices, ODIHR does not advocate for any specific model. Also, any country example should be assessed with caution since it cannot necessarily be replicated in another country. Country examples should always be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

6. In view of the above, this Comparative Note does not prevent ODIHR from formulating additional written or oral recommendations or comments on the issues addressed in the present Comparative Note or on gender equality laws of OSCE pSs in the future. In this regard, ODIHR stands ready to review the respective existing legislation and draft laws/amendments, which would provide more detailed analysis of compliance with international human rights standards and OSCE commitments of the legal provisions related to gender equality in a particular pS.

III. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

7. Gender equality and the prohibition of discrimination on grounds of sex and/or gender is part of international human rights standards, including those of relevance for the OSCE pSs. In addition to the standards set in United Nations (hereinafter “UN”) sources, this prohibition is also part of the relevant regional human rights instruments, which include the Council of Europe (hereinafter “CoE”) standards (mandatory for the OSCE pSs which are also Member States of the CoE), the European Union (hereinafter “EU”) standards (for the OSCE pSs which are also Member States of the EU or the candidate countries), as well as OSCE human dimension commitment, which are politically binding, and are relevant for all OSCE pSs.
8. These standards and commitments are supplemented by various guidance and recommendations, including of the UN, the CoE, the EU and the OSCE. International law is widely read to include the prohibition of discrimination as a peremptory norm. At the same time, it largely leaves to the countries to decide how they will go about tackling sex- and gender-based discrimination in their particular legal orders and national contexts, although key human rights monitoring bodies and regional courts do lay out certain guidance as to what is expected of the States Parties to the respective treaties/conventions.

1. AT THE GLOBAL LEVEL

9. The right to be free from discrimination is a fundamental element of international human rights law. As a leading principle, Article 7 of the 1948 Universal Declaration of Human Rights (hereinafter “UDHR”) provides that “*all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*”⁴ Basic international equality standards can be also found in generic human rights instruments such as the International Covenant on Economic, Social and Cultural Rights⁵ (hereinafter “ICESCR”), the International

⁴ [Universal Declaration of Human Rights](#) (UDHR), proclaimed by the UN General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A).

⁵ [UN International Covenant on Economic, Social and Cultural Rights](#) (ICESCR), adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966.

Covenant on Civil and Political Rights⁶ (hereinafter “ICCPR”) and the Convention on the Rights of the Child⁷ (hereinafter “CRC”) that echo the non-discrimination principles as enshrined in the UDHR.⁸ In particular, Article 26 of the ICCPR states that all persons are equal before the law and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection from discrimination on any ground, including one’s sex. The UN Human Rights Committee (hereinafter “CCPR”) states that differentiation in treatment will not constitute discrimination under Article 26 of the ICCPR “*if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*”⁹ The key instrument setting international standards regarding a legislative framework to tackle sex- and gender-based discrimination is the UN Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter “CEDAW”).¹⁰ It guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms and promotes equal opportunities in the political, economic, social, cultural, civil, domestic or any other field. Although the Convention only refers to sex¹¹-based discrimination, Article 1 read together with Articles 2 (f) and 5 (a) indicates that the Convention also covers gender¹²-based discrimination against women. CEDAW is also innovative compared to previous international conventions as it pursues “substantive equality” or “equality of results”, and aims to address the underlying social power structures that perpetuate inequality among women and men.¹³

10. The CEDAW sets minimal standards on how laws in States Parties should conceptualise the prohibition of all forms of discrimination on grounds of sex and gender, which should apply to all fields of political, economic, social, cultural, civil or any other areas of life. This means that a country’s respective legal framework should set a wide material scope of application and prohibit all forms of discrimination – including those known and relevant to the national context, but also any new forms which might arise.
11. The definition of discrimination provided in Article 1 of the CEDAW lists types of actions which can lead to discrimination (“*any distinction, exclusion or restriction*”) and makes it clear that neither intent nor the direct/indirect nature (“*has the effect or purpose*”) of the action are relevant; it is the result which is important (“*impairing or nullifying recognition, enjoyment or exercise by women [of their human rights]*”). This also means that legal provisions providing for apparent identical or neutral treatment of women and men might constitute discrimination against women “*if such treatment*

⁶ [UN International Covenant on Civil and Political Rights](#) (ICCPR), adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966.

⁷ [UN Convention on the Rights of the Child](#) (CRC), adopted by UN General Assembly Resolution 44/25 of 20 November 1989.

⁸ These treaties include specific provisions referring to, or that are relevant to the equal rights of women and men, and girls and boys, see e.g., with respect to the enjoyment of all civil and political rights set forth in the ICCPR (Article 3 of the ICCPR); equality of rights and responsibilities of spouses (Article 23 (4) of the ICCPR); access to public service on general terms of equality (Article 25 (1)(c)); equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the ICESCR (Article 3 of the ICESCR); equal remuneration for work of equal value without distinction of any kind (Article 7 (a)(i) of the ICESCR); equal opportunity for promotion in employment (Article 7 par (c) of the ICESCR); equal access to higher education (Article 13 (2)(c) of the ICESCR); and in the CRC: equal opportunity of children in education (Article 28 (1)); equal opportunities of children for opportunities for cultural, artistic, recreational and leisure activity (Article 31 (2)).

⁹ UN Human Rights Committee (HRC), CCPR [General Comment No. 18](#): Non-discrimination, 10 November 1989, para. 13.

¹⁰ [UN Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW), adopted by General Assembly resolution 34/180 on 18 December 1979. With the exception of the United States of America (signed on 17 July 1980) and the Holy See (neither signed nor ratified), all OSCE pSs are States Parties to this Convention.

¹¹ The term “sex” refers to biological differences between men and women. See CEDAW Committee, [General Recommendation No. 28](#) on the Core Obligations of States Parties under Article 2 of the CEDAW, 16 December 2010, para. 5.

¹² *Ibid.*, para. 5, which states: “*The term ‘gender’ refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.*”

¹³ Notably, CEDAW adopted a new approach to the issue of non-discrimination and equality by suggesting a “substantive equality” or “equality of results”. See “[The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol - Handbook for Parliamentarians No. 36](#)” (2023), page 31.

*resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face”.*¹⁴

12. In its General Recommendation No. 28, the CEDAW Committee makes it clear that the States Parties to the Convention must prohibit intersectional discrimination.¹⁵ For an intersectional perspective, the International Convention on the Elimination of Racial Discrimination (hereinafter “CERD”)¹⁶ and the Convention on the Rights of Persons with Disabilities (hereinafter “CRPD”)¹⁷ are also of particular relevance.
13. According to the CEDAW, it is up to the States Parties to choose whether they will embody the principle of the equality of men and women in their constitutions or other appropriate legislation and to ensure, through law and other appropriate means, the practical realization of this principle (Article 2 (a)), while also adopting appropriate legislative and other measures prohibiting all discrimination against women (Article 2 (b)). States Parties also have an obligation to modify, abolish or repeal legislation, customs and practices which constitute discrimination against women (Article 2 (f) and (g)). Further, the CEDAW requires that States Parties undertake all appropriate measures, including legislation, and in all fields in order to ensure “*the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men*” (Article 3).
14. In addition to the CEDAW, the Beijing Declaration and Platform for Action¹⁸ (hereafter “BPfA”) sets out strategic objectives and actions for the advancement of women and the achievement of gender equality in 12 critical areas, including with respect to the institutional mechanisms for the advancement of women by prescribing mandate of these institutions to “*design, promote the implementation of, execute, monitor, evaluate, advocate and mobilize support for policies that promote the advancement of women*”.¹⁹ The BPfA further states that “*governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes, so that, before decisions are taken, an analysis is made of the effects on women and men, respectively*”.²⁰

2. AT THE COUNCIL OF EUROPE LEVEL

15. Article 14 of the European Convention on Human Rights (hereinafter “ECHR”) and Article 1 of Protocol 12 to the ECHR prohibit discrimination in relation to the exercise of the ECHR rights and in relation to any right set forth by law, respectively.²¹ The text

¹⁴ See [General Recommendation No. 28](#) on the Core Obligations of States Parties under Article 2 of the CEDAW, para. 5.

¹⁵ *Ibid.*, para. 18.

¹⁶ [International Convention on the Elimination of Racial Discrimination](#) (CERD), adopted by UN General Assembly resolution 2106 (XX) of 21 December 1965.

¹⁷ [Convention on the Rights of Persons with Disabilities](#) (CRPD), adopted by the UN General Assembly resolution A/RES/61/106 of 12 December 2006. In particular, CRPD clearly recognises the intersectional nature of the experiences of persons with disabilities. This is clearly expressed in its Articles 5 and 6, on equality and non-discrimination and on women with disabilities respectively, and in Article 3 (general principles of the Convention which explicitly include the principle of equality between men and women (sub-para. g)).

¹⁸ [Beijing Declaration and Platform for Action](#), adopted by the Fourth World Conference on Women on 15 September 1995.

¹⁹ See BPfA, in Chapter IV, Section H, para. 202. The BPfA underlines the fundamental role of a national machinery for the advancement of women as the central policy-coordinating unit inside government, underlining that its main task is to support government-wide mainstreaming of a gender-equality perspective in all policy areas and noted the necessary conditions for it to be effective: (i) it should be located at the “*highest possible level in the Government, falling under the responsibility of a Cabinet minister*”, (ii) there should be “*institutional mechanisms or processes that facilitate, as appropriate, decentralized planning, implementation and monitoring with a view to involving non-governmental organizations and community organizations from the grass-roots upwards*”, (iii) sufficient human and financial resources and professional, (vi) it should have the opportunity to “*influence development of all government policies*”. See BPfA, in Chapter IV, Section H.

²⁰ [Beijing Declaration and Platform for Action](#), adopted at the 16th plenary meeting, on 15 September 1995, para. 164.

²¹ The CoE Convention for the Protection of Human Rights and Fundamental Freedoms ([European Convention on Human Rights](#), (ECHR)), signed on 4 November 1950, entered into force on 3 September 1953. Article 14 of the ECHR stipulates that the “*enjoyment of the rights and freedoms set forth in this Convention should be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*”. [Protocol No. 12 to the ECHR](#) contains general prohibition of discrimination in enjoyment of any rights.

of these articles explicitly lists only “sex” as a discriminatory ground and not “gender”, “gender identity” nor “sexual orientation”.²² However, the case law of the European Court of Human Rights (hereinafter “ECtHR”) has clarified that the prohibition of discrimination also extends to “sexual orientation” and “gender identity”.²³ According to the ECtHR case law, a distinction of treatment in the enjoyment of a right does not violate Article 14 ECHR if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realized.²⁴ Moreover, the States Parties to the ECHR enjoy a margin of appreciation²⁵ in assessing whether and to what extent differences in otherwise similar situations justify a differential treatment.²⁶ However, where certain discrimination grounds are at stake, in particular “race” or ethnicity, gender, sexual orientation and disability, the ECtHR has held that the state’s margin of appreciation is restricted and “very weighty reasons” would have to be put forward to justify a difference of treatment based on such grounds.²⁷

16. The Council of Europe Convention on preventing and combating violence against women and domestic violence,²⁸ also known as “the Istanbul Convention”, is also of relevance since violence against women is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men and specifies several forms of gender-based violence against women that are to be criminalized (or, where applicable, otherwise sanctioned).
17. The European Social Charter (revised) (ESC(R))²⁹ prescribes workers’ “*right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex*” and contains a general anti-discrimination clause ending with the phrase “other status” (Part V, Article E), similar to the clause of Article 14 of the ECHR.

²² This is a direct consequence of the fact that the ECHR dates back from 1950 when “gender” was still not a legal concept, whereas Protocol 12 opted for replicating the ECHR list of discriminatory grounds because “*such an inclusion was considered unnecessary from a legal point of view since the list of non-discrimination grounds is not exhaustive, and because inclusion of any particular additional ground might give rise to unwarranted a contrario interpretations as regards discrimination based on grounds not so included*”. See Explanatory Report of Protocol 12, ECHR, para. 20 available at: <<https://rm.coe.int/09000016800cce48>>.

²³ As underlined by the ECtHR in *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, 24 January 2017, para. 61, “*Article 14 prohibits differences based on an identifiable, objective or personal characteristic, or “status” by which individuals or groups are distinguishable from one another*” (discrimination grounds), underlying that the list of discrimination grounds is “an illustrative and not exhaustive” (thus open) list and noting that the words “other status” have generally been given a wide meaning and their “*interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent*”. When it comes to discrimination on grounds of sex, the Court has repeatedly stated that the advancement of gender equality is today a major goal in the Member States of the Council of Europe (*Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012, para. 127) and that, in principle, “very weighty reasons” had to be put forward before such a difference in treatment could be regarded compatible with the Convention (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, nos. 9214/80; 9473/81; 9474/81, 28 May 1985, para. 27; *Schuler-Zraggen v. Switzerland*, no. 14518/89, 24 June 1993, para. 67, etc.). The ECtHR has held that “*references to traditions, general assumptions or prevailing social attitudes in a particular country [were] insufficient justification for a difference in treatment on grounds of sex*” (*Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012, para. 127). For example, States were prevented from imposing traditions that derive from the man’s primordial role and the woman’s secondary role in the family (*Ünal Tekeli v. Turkey*, no. 29865/96, 16 November 2004, para. 63). The ECtHR also held that “*[t]he reference to the traditional distribution of gender roles in society cannot justify the exclusion of men [...] from the entitlement to parental leave*” and that “*gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation*” (*Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012, para. 143).

²⁴ See e.g., ECtHR, *Vallianatos v. Greece* [GC], nos. 29381/09 and 32684/09, 7 November 2013, para. 76; and *Burden v. the United Kingdom* [GC], no. 13378/05, 29 April 2008, para. 60.

²⁵ Margin of appreciation doctrine as developed by the ECtHR, see cases of the ECtHR, *Paksas v. Lithuania* [GC], no. 34932/04, 6 January 2011, concerning the right to vote and stand for elections, para. 96; *Vallianatos v. Greece* [GC], nos. 29381/09 and 32684/09, 7 November 2013, concerning discriminatory regulation of the partnership agreements for the same-sex and different-sex couples, para. 76, etc.

²⁶ See cases of ECtHR, *Burden v. the United Kingdom* [GC], no. 13378/05, 29 April 2008, para. 60; *Schalk and Kopf v. Austria*, no. 30141/04, 24 June 2010, para. 96; and *X and Others v. Austria* [GC], no. 19010/07, 19 February 2013, para. 98, etc.

²⁷ In this regard, the Court has stated that “very weighty reasons” would have to be put forward before a difference of treatment based on sex could be regarded as compatible with the Convention ECtHR (*Emel Boyraz v. Turkey*, no. 61960/08, 2 December 2014, para. 51). Similarly, the ECtHR has established that “very weighty reasons” would have to be put forward to justify a difference of treatment based exclusively on sexual orientation (see e.g., ECtHR, *E.B. v. France* [GC], no. 43546/02, 22 January 2008, para. 91).

²⁸ See Council of Europe, *Convention on preventing and combating violence against women and domestic violence* (CETS No. 210), which entered into force on 1 August 2014.

²⁹ CoE, *European Social Charter (revised)*, CETS no. 163, adopted on 3 May 1996, Part I, point 20 and Part II, Article 20. The State’s compliance with the revised ESC is monitored by the European Committee of Social Rights.

18. Various recommendations and resolutions on topics related to gender equality have been adopted by the CoE Committee of Ministers and the CoE Parliamentary Assembly (hereinafter “PACE”).³⁰ In particular, following the BPfA, the CoE developed specific guidelines on gender mainstreaming provided in the Recommendation No. R (98) 14 of the Committee of Ministers of the CoE. The Recommendation CM/Rec(2007)17 of the Committee of Ministers of the CoE to Member States on gender equality standards and mechanisms is also an important instrument when it comes to specifying the standards for IMGES (see Sub-Section V *infra*).

3. AT THE EUROPEAN UNION LEVEL

19. The principle of non-discrimination is a fundamental principle of the EU, enshrined in the Treaty of the EU (TEU),³¹ the Treaty on the Functioning of the EU (hereinafter “TFEU”),³² and the Charter of Fundamental Rights of the EU (EU Charter).³³ The EU most important sources which provide specific guidance on how to develop national gender equality legislation are the gender equality directives, especially the Council Directive 2004/113/EC on the principle of equal treatment between men and women in the access to and supply of goods and services (hereinafter “2004 Goods and Services EU Directive”) and Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (hereinafter “2006 Recast Directive”).³⁴ Both EU Directives include definitions of discrimination (direct and indirect), including sexual harassment, and stipulate the equality of treatment in the above areas (goods and services, and employment), while also focusing on remedies and enforcement. The 2006 Recast Directive also establishes a gender mainstreaming

³⁰ Including [Resolution 855\(1986\) of the PACE on equality between men and women](#), adopted on 27 January 1986; [Recommendation 1229 \(1994\) of the PACE on equality of rights between men and women](#), adopted on 24 January 1994; [Recommendation 1269 \(1995\) of the PACE on achieving real progress in women's rights](#), adopted on 27 April 1995; [Recommendation No. R \(98\) 14 of the Committee of Ministers of the CoE on gender mainstreaming](#); [Recommendation CM/Rec\(2003\)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making](#), adopted by the Committee of Ministers on 12 March 2003; [Resolution 1489 \(2006\) of the PACE on mechanisms to ensure women's participation in decision-making](#), adopted on 17 March 2006; [Recommendation CM/Rec\(2007\)17 of the Committee of Ministers to member states on gender equality standards and mechanisms](#), adopted on 21 November 2007; [Recommendation 1899 \(2010\) of the PACE on increasing women's representation in politics through the electoral system](#), adopted on 27 January 2010; [Recommendation CM/Rec\(2010\)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity](#), adopted on 31 March 2010; [Recommendation CM/Rec\(2012\)6 of the Committee of Ministers to member states on measures to combat discrimination on the protection and promotion of the rights of women and girls with disabilities](#), adopted on 13 June; [Recommendation CM/Rec\(2013\)1 of the Committee of Ministers to member states on gender equality and media](#), adopted on 10 July 2013.

³¹ [Treaty of the European Union](#), consolidated version, published in *OJ* [abbreviation from the *Official Journal of the EC* (now of *EU*)] C 326, 26 October 2012, pp. 1–390.

³² [Treaty on the Functioning of the European Union](#), consolidated version, *OJ* C 202, 7.6.2016, pp. 1–388. Most notably, Article 8 of the TFEU states: “In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.”

³³ [Charter of Fundamental Rights of the European Union](#), initially published in *OJ* C 364, 18.12.2000, pp. 1–22; binding after entry in force of the 2009 Lisbon Treaty in December 2009, especially Article 20 on Equality before the law and Article 21 (1) on Non-discrimination, which provides that “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.

³⁴ The gender equality directives in force are: [Council Directive 2000/78/EC of 27 November 2000](#) establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive (2000/78/EC), which lays down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation). See also [Directive \(EU\) 2022/2381](#) of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures; [Directive 2019/1158](#) of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU; [Directive 2010/41/EU](#) of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC; [Directive \(EU\) 2019/1158](#) of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU; [Directive 2006/54/EC](#) of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); [Council Directive 2004/113/EC](#) of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; [Directive 92/85/EEC](#) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

obligation.³⁵ While the EU Member States need to align with these standards as a minimum, they are generally not prohibited to go beyond the directives, but will need to make sure that this is not contrary to what is established in the EU *acquis*.

20. The European Institute for Gender Equality (hereinafter “EIGE”) – the EU agency focused on gender equality – has worked extensively on mapping gender mainstreaming practices throughout the EU and on developing a number of tools and possible methods for undertaking gender mainstreaming.³⁶

4. AT THE OSCE LEVEL

21. Of the various OSCE commitments focusing on equal treatment,³⁷ the Vienna Document³⁸ is perhaps one of the most specific in stressing that all OSCE pSs commit to ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind based on such characteristics as, *inter alia*, a person’s sex. This principle is reiterated in a more detailed manner in para. 40.4 of the Moscow Concluding Document,³⁹ where OSCE pSs affirmed their goal to achieve not only *de jure*, but also *de facto* equality of opportunities between men and women, as well as the promotion of effective measures to that end. In the same Document, OSCE pSs recognized that “*true and full equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law*”. The OSCE Action Plan for the Promotion of Gender Equality of 2004 also calls on OSCE pSs to develop policies and establish mechanisms to promote and strengthen gender equality and ensure non-discriminatory legal and policy frameworks, and appropriate legal guarantees for the promotion of gender equality.⁴⁰ In 2009, in Athens, the OSCE Ministerial Council called upon OSCE pSs to, *inter alia*, consider specific measures to achieve gender balance in all public institutions and consider possible legislative measures to facilitate a more balanced participation of women and men in public life and in decision-making.⁴¹ ODIHR also developed several tools and publications to support OSCE pSs in the implementation of their commitments to promote gender equality.⁴²

³⁵ Article 29 states that EU Member States “shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.”

³⁶ See EIGE, Gender Mainstreaming, <<https://eige.europa.eu/gender-mainstreaming>>. The tools developed by EIGE include “gender analysis, gender audit, gender awareness-raising, gender budgeting, gender equality training, gender evaluation, gender impact assessment, gender indicators, gender monitoring, gender planning, gender procurement, gender statistics, gender-sensitive stakeholder consultations, institutional transformation, and sex-disaggregated data.”

³⁷ For an overview of OSCE human dimension commitments, see *OSCE Human Dimension Commitments: Thematic Compilation* (fourth edition), OSCE, 27 April 2023.

³⁸ *CSCE Concluding Document of Vienna* – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, para. 13.8.

³⁹ *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE*, Moscow, 3 October 1991, para. 40.

⁴⁰ OSCE, *Action Plan for the Promotion of Gender Equality* (2004), Chapter IV, para. 42; and Chapter V, para. 44. It also recommended to pSs to: “Draw on the experience of the OSCE to develop cross-dimensional gender equality policies and strategies, and include in the follow-up to such policies, *inter alia*, the utilization of gender analysis and monitoring mechanisms to assess the impact of gender policies and strategies, so that constraints on their full implementation may be identified and addressed” (para. 42).

⁴¹ *OSCE Ministerial Council Decision No. 7/09 on Women’s Political Participation in Political and Public Life*, adopted on 2 December 2009.

⁴² Including a *Guide on Institutional Mechanisms as Critical Actors for Gender Equality: A Review from the OSCE Region* (2023), a *Toolkit on Addressing Violence against Women in Politics* (2022), the *Guidelines on Participatory Gender Audits of Parliaments* (2022), which complements the ODIHR practical guide “*Realizing Gender Equality in Parliament: A Guide for Parliaments in the OSCE Region*” (2021), a *Practical Guide to Gender-Sensitive Legislation* (2017). See <[Gender equality | OSCE](#)>.

IV. GENERAL COMMENTS ON PURPOSE, SCOPE AND LEGISLATIVE MECHANISMS OF GENDER EQUALITY LAWS

1. SCOPE AND PURPOSE OF GENDER EQUALITY LAWS

22. The right to be free from discrimination, principles of equality before the law and equal protection of the law are fundamental elements of international human rights law and are enshrined in a number of international human rights instruments. National legislation should be coherent and provide for effective legal means for protecting and respecting the right to equality and non-discrimination and promoting gender equality in accordance with the rights and principles enshrined in international conventions.
23. GELs are enacted to “give teeth” to international commitments on gender equality but also to constitutional provisions on gender equality and to operationalize them in national legal orders. They should aim **to ensure equal opportunities and equal treatment for women and men in all their diversity, and to combat all forms of discrimination on the grounds of gender in all areas of life.**
24. OSCE pSs tackle gender- and sex-based discrimination and seek to promote gender equality in the following ways or combinations thereof: (i) GELs, (ii) comprehensive anti-discrimination legislation, (iii) in both GELs and comprehensive anti-discrimination legislation, (iv) as scattered provisions throughout different pieces of legislation, and (v) in both GELs and comprehensive non-discrimination laws, as well as scattered provisions throughout different pieces of legislation. In addition to this, most OSCE pSs include explicit sex-based discrimination prohibition, gender-based discrimination prohibition, or both in their constitutions in a manner that is (i) declarative, (ii) actionable, or (iii) both.
25. Specific gender equality laws exist in most OSCE pSs.⁴³ In some countries, the equal treatment between women and men is part of broader equality or anti-discrimination legal frameworks, which also relate to other grounds.⁴⁴ Certain countries have both a specific gender equality law and a general anti-discrimination law, which sometimes also includes a prohibition of sex- and gender-based discrimination.⁴⁵ Very often, the focus of a GEL would be discrimination protection and/or gender mainstreaming. It is also sometimes the case that gender equality laws focus only on gender mainstreaming, and the protection against discrimination is left to another law/act.
26. In such legislation, sex and gender-based discrimination is dealt with as (i) a general provision banning discrimination solely on grounds of sex and gender, (ii) a general provision proclaiming the equality of women and men, (iii) part of general discrimination prohibition provisions by way of listing sex and/or gender as prohibited grounds, (iv) read into a general provision proclaiming equality of all persons (before the law), (v) specific provisions dealing with various aspects and ways in which sex and gender-based discrimination occurs in practice (such as, prohibition of salary differences based on sex

⁴³ The terminology used in the title of such laws varies from gender equality laws/acts or laws on equal rights and opportunities for women and men or equal treatment between women and men or on the promotion and protection of women's rights, including in Albania, Andorra, Austria, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Italy, Kyrgyz Republic, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Mongolia, Montenegro, the Netherlands, North Macedonia, Norway, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Ukraine, the United States of America, the Republic of Uzbekistan (not including Belarus, the Holy See, the Russian Federation, San Marino, Türkiye).

⁴⁴ See e.g., Czech Republic, Hungary, Ireland, Poland, Slovak Republic and the United Kingdom.

⁴⁵ For instance, Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, Greece, Lithuania, Montenegro, the Netherlands, North Macedonia, Romania, Serbia, Tajikistan and Ukraine; see [Directorate-General for Justice and Consumers \(European Commission\), *A Comparative Analysis of Gender Equality Law in Europe*, EU 2018.](#)

- or gender), and (vi) specialized provisions indirectly targeting sex and gender-based discrimination by prescribing measures for reaching gender equality as a goal.
27. At the same time, explicit prohibition of discrimination on the basis of sex and gender does not automatically ensure equal opportunities for women and men to participate in all areas of life on an equal footing.⁴⁶ Gender equality laws do not have the same purpose nor the same structure as anti-discrimination legislation.⁴⁷ Unlike anti-discrimination laws, GELs usually specifically seek to foster equal opportunities in certain fields or in all areas, combat stereotypes, prejudices and violence based on sex, gender, gender identity, sexual orientation, promote equal access to resources and equal participation in decision-making in all spheres of life, include provisions on balanced gender representation in public, economic and social decision-making at all levels, as well as on empowerment of women. In brief, they generally aim at going beyond formal equality and beyond the mere protection against discrimination, to also improve the *de facto* position of women (substantive equality) but also to address prevailing gender relations and the persistence of gender-based stereotypes (transformative equality). Therefore, **the adoption of gender equality laws or specific provisions in another (general) act/law that aim to promote substantive and transformative equality, is a good practice to be observed.**
 28. It is a common practice in OSCE pSs to include statements of purpose in GELs to indicate what the aim of the law is.⁴⁸ While such statements should definitely indicate the final result to be achieved, it should go beyond a formal interpretation of the right to equality to ensure that substantive and transformative equality is a key goal. In particular, they should emphasize the objectives to redress disadvantages; to address stigma, stereotyping, prejudice and violence; to ensure equal participation in decision-making in all spheres of life; and to accommodate difference, taking due account of intersectional identities.⁴⁹
 29. Adopting anti-discrimination and/or gender equality legislation is a first step in the effort to comply with international commitments and constitutional obligations. But action to promote gender equality requires not just legislation, but legislation that is effective, meaning that it is implementable and capable of achieving the desired results. To ensure this, gender equality laws should have a clearly stated purpose that individuals and implementing bodies know and understand. Well-drafted and clear legislation clarifies the aims and overall contents of a law, while avoiding legal loopholes, or vague,

⁴⁶ OSCE, [Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation](#), 4 July 2017.

⁴⁷ Anti-discrimination laws would usually follow the following structure: aim/s of the law/act; scope of protection (protected grounds (such as sex, “race”, religion or belief, disability, etc.) and protected fields (such as labour, education, etc.); forms of discrimination (such as direct, indirect discrimination, harassment, etc.); measures/actions not considered as discrimination (such as temporary special measures); procedural arrangements (such as shifting of the burden of proof, etc.); bodies tasked with protection (such as equality bodies, courts, etc.); procedures through which such protection can be sought (such as civil claim, misdemeanour, inspections, a lawsuit for discrimination, etc.); and sanctions.

⁴⁸ The purpose of the [Albanian Law on Gender Equality](#) of 2008 is: “a) To ensure effective protection from gender discrimination as well as any other form of behaviour that encourages gender discrimination; b) To define measures guaranteeing equal opportunities among men and women to eliminate gender based discrimination in any of its forms; c) To define the responsibilities of central and local state authorities for developing and enforcing laws and policies in support of encouraging gender equality in the society”. The [Employment Equality Act in Canada](#) aims to: achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences. In [Finland](#), the [Act on Equality between Women and Men \(609/1986\)](#) aims to prevent discrimination based on gender, to promote equality between women and men, and thus to improve the status of women, particularly in working life. Furthermore, it is the objective of this Act to prevent discrimination based on gender identity or gender expression. [Act on Equal Status and Equal Rights Irrespective of Gender of Iceland](#): “The objective of this Act is to prevent discrimination on the basis of gender and to maintain gender equality and equal opportunities for the genders in all spheres of society. All people shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender”.

⁴⁹ See e.g., UN Women discussion paper, Sandra Fredman, [Discussion Paper on Gender Equality and Human Rights](#) (2015); Committee on the Rights of Persons with Disabilities, [General comment No. 6 \(2018\) on equality and non-discrimination](#), para. 11, referring to the concept of “inclusive equality”; UNRPD-UN Women, [Intersectionality Resource Guide and Toolkit - An Intersectional Approach to Leave No One Behind](#) (2022), p. 49.

contradictory or ambiguous wording, which can undermine legal certainty and public ownership of, and trust in legislation. Furthermore, gender equality laws should include appropriate and realistic implementation and compliance mechanisms and should communicate the rules clearly to all those affected by, or who are in charge of implementing them⁵⁰. Also, the mere adoption of gender equality legislation is unlikely to lead to the anticipated results in practice if not accompanied by overarching strategies and action plans going beyond legislation, the adequate allocation of financial and human resources, education and capacity development initiatives, communication/advocacy and political will to promote a change of behaviours and culture.

2. LEGISLATIVE MECHANISMS USED IN GENDER EQUALITY LAWS

30. Laws shape societies by introducing rights, obligations and/or prohibitions, standards, incentives, by conferring benefits, powers or by a combination of these mechanisms or techniques. Each legislative technique used in drafting works differently and the choice of the technique determines how behaviours will be guided towards the desired aims, how the target audiences are expected to comply with the requirements of the law and how rules will be enforced.
31. An overview of gender equality laws across the OSCE region shows that a number of legislative mechanisms are used to operationalize equality between women and men and non-discrimination in national legislation and these should be kept in mind when initiating reforms in this field:
 - The prohibition of discrimination and discriminatory treatment;
 - Obligations or duties to promote gender equality;
 - Temporary special measures;
 - Incentives;
 - Experimentation with new initiatives;
 - Legal protection and/or support to victims of discrimination; and/or
 - Gender mainstreaming tools.
32. These mechanisms can be used on their own or in combination.⁵¹

2.1. Prohibition of Discrimination

33. The prohibition of discrimination or discriminatory behaviour is the cornerstone of international conventions and national legislative provisions on gender equality. They constitute the most common mechanism or legislative technique to oblige individuals or legal entities to abstain from discriminating individuals on the grounds of their sex, gender, gender identity, sexual orientation or other features.
34. CCPR General Comment No. 18 defines discrimination as “any distinction, exclusion, restriction or preference” based on the list of protected grounds cited in Article 26 of the ICCPR, which has the purpose or effect of nullifying, or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. International treaties, such as CERD, CEDAW and CRPD, contain similar definitions. While pSs do not need to adopt exactly the same definition as the one provided by

⁵⁰ ODIHR, *Brief: Guiding Principles of Democratic Lawmaking and Better Laws* (9 October 2023), Principle 15. Clarity and Intelligibility.

⁵¹ For example, the [Act on Equality between Women and Men \(609/1986\)](#) of Finland contains three types of provisions: prohibitions on discrimination, provisions promoting equality, and provisions on legal protection and monitoring of the Act.

international treaties, **it should be broad enough to encompass all the components as envisaged by various international instruments.**

35. A differential treatment is discriminatory if it has no objective nor reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the intended aim. Both direct and indirect discrimination are prohibited. “Direct discrimination” refers to regulations, decisions or treatment that provide for a differential treatment based on certain characteristics with no objective nor reasonable justification, whereas indirect discrimination includes acts, regulations or decisions that, although *prima facie* neutral, result in unequal treatment when put into practice or implemented. In this respect, a decision, policy or practice does not need to be intentionally discriminatory to constitute discrimination: a measure may amount to discrimination if it has the effect of generating discrimination, regardless of the intention of the body or person who adopted this measure. **GELs should make it clear that both “direct discrimination” and “indirect discrimination” are prohibited⁵² and a clear definition of these terms should be provided.⁵³** This is particularly important when the law prohibiting gender discrimination attracts liability for acts of direct and indirect discrimination (see Sub-Section VI *infra*). This would also assist in the process of shaping the interpretation of the concept and adopting decisions pertaining to discrimination by the responsible bodies in the field of gender equality and/or courts. The definitions in **GELs should also outline clearly what falls under discrimination and what does not, while ensuring that the scope is wide enough to cover all potential forms of gender inequalities and inequities in all areas of life.**
36. The CEDAW also requires State Parties to take all appropriate measures to deal with cultural patterns “*of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women*” (Article 5, sub-para. a). As a result, provisions which work to directly or indirectly create or support conditions for sustaining such cultural practices should be removed from the legal framework.

2.1.1. Protected Grounds

37. A general prohibition of discrimination is linked to specific prohibited grounds of discrimination listed in legislation. It can be a closed or open-ended list.⁵⁴
38. The ground of “sex” features in most of the anti-discrimination provisions of general human rights instruments or in specific anti-discrimination instruments, including those from the UN system, CoE instruments and EU law. Discrimination on the ground of gender identity is explicitly prohibited in Article 4(3) of the CoE Istanbul Convention

⁵² See, for example, [ODIHR Comments on the Draft Law on Prohibition of Discrimination in Montenegro \(2013\)](#), paras. 16-18. See also [ODIHR Note on the Anti-discrimination Legislation and Good Practices in the OSCE Region \(2019\)](#), para. 59.

⁵³ One of the requirements for clear and unambiguous legislation is consistent drafting and structure, with terminology always used in the same way, clear definitions added where necessary and relevant cross-references provided to other provisions or laws; see ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (2024), para. 34.

⁵⁴ Depending on the manner of establishing the discrimination grounds in the respective legal systems, there are three models of determination of discrimination grounds: the closed model, in which discrimination is prohibited on precisely prescribed grounds, the list of which can be extended only by further statutory changes (Austria, Belgium, Czech Republic, Denmark, France, Germany, Estonia, Ireland, Italy, Liechtenstein, Luxembourg, Norway, Poland, Portugal, United Kingdom etc.); the open model, in which the list of discrimination grounds is supplemented by a formulation “and other ground or status” or “status such as” etc., and this list can possibly and exceptionally be extended by courts (Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Hungary, Iceland, Latvia, Lithuania, Malta, Montenegro, Netherlands, Romania, Serbia, Slovakia, Slovenia, Spain, North Macedonia, Turkey etc.); and a general prohibition model based on a general protection of equality, in which courts have a substantial authority to establish the discrimination grounds (USA, Canada). See Biljana Kotevska, [Guide on Discrimination Grounds](#), OSCE Mission to Skopje, 2013, p. 8. For comparison, on an international level, the open model is applied in the UDHR and the general human rights treaties (such as ICCPR, ICESCR, CRC, ECHR, ESC (revised) and EU Charter), while the closed model is applied in the anti-discrimination treaties (ICERD, CEDAW and CRPD) and the EU directives.

but gender identity is otherwise not explicitly mentioned as a prohibited ground for discrimination in international instruments. The UN Committee on Economic, Social and Cultural Rights has explicitly recognized gender identity as among the prohibited grounds of discrimination.⁵⁵ The ECtHR has acknowledged in its case law that the protection against discrimination afforded by Article 14 ECHR extends to the ground of gender identity, although not expressly mentioned in this provision.⁵⁶ The UN High Commissioner for Human Rights,⁵⁷ the PACE,⁵⁸ the CoE Commissioner for Human Rights⁵⁹ have called upon states to ensure that anti-discrimination legislation includes gender identity among the prohibited grounds and to ensure legal protection against discrimination on the grounds of gender identity/expression.⁶⁰ Discrimination on the ground of “sexual orientation” is explicitly prohibited in some regional legally binding instruments.⁶¹ In spite of the absence of explicit prohibition of discrimination on the ground of “sexual orientation” in some prominent international instruments, “sexual orientation” is considered in the international and regional case law to be a protected characteristic.⁶²

39. Most GELs in OSCE pSs provide for an exhaustive list of protected grounds based on which discrimination is prohibited, explicitly including the ground of “sex” in their respective legislation.⁶³ which is generally understood as including “gender” and sometimes even “gender identity”, although very few legislation provide clear definitions of such terms.⁶⁴ At the same time, some laws also explicitly mention “gender”,⁶⁵ “gender identity” and, although more rarely, “gender expression”.⁶⁶ When the concept of “gender” is not understood or interpreted as including “gender identity”, the protected ground of “gender identity” should be listed explicitly, in addition to “gender”.

⁵⁵ See Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, par 2)*, UN Doc E/C.12/GC/20, 2009, para. 32.

⁵⁶ See e.g., ECtHR, *A.M. and Others v. Russia*, no. 47220/19, 6 July 2021, para. 73, which states that “the prohibition of discrimination under Article 14 of the Convention duly covers questions related to gender identity”.

⁵⁷ United Nations High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity* (4 May 2015) UN Doc No. A/HRC/29/23, para. 79(c).

⁵⁸ PACE, *Promoting the human rights of and eliminating discrimination against intersex people*, Resolution 2191 (2017).

⁵⁹ Commissioner for Human Rights of the CoE, *Human Rights and Gender Identity* (29 July 2009) CommDH/IssuePaper (2009), p. 18.

⁶⁰ See also European Commission, *Union of Equality: LGBTIQ Equality Strategy 2020-2025*, Key Actions. On this issue, see also more generally, M. Van den Brink and P. Dunne, *Trans and intersex equality rights in Europe. A Comparative Analysis*, European network of legal experts in gender equality and non-discrimination, European Commission, DG Justice and Consumers, Nov. 2018.

⁶¹ See e.g., Article 4(3) of the CoE *Istanbul Convention*, Article 10 of the *Treaty on the Functioning of the European Union*, Article 21 of the *Charter of Fundamental Rights of the European Union*, Employment Equality Directive and Directive concerning the status of long term residents.

⁶² See e.g., with respect to the prohibition of discrimination under the ICCPR, UN Human Rights Committee, *Toonen v. Australia*, CCPR/C/50/D/488/1992, para. 8.7; and UN HRC, *Young v Australia*, CCPR/C/78/D/941/2000, para. 10.4; and under the ICESCR, see Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, par 2)*, UN Doc E/C.12/GC/20, 2009, para. 32. With respect to the prohibition of discrimination under the ECHR, see ECtHR, *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, 21 December 1999, para. 28; and *Identoba and Others v. Georgia*, no. 73235/12, 12 May 2015, para. 96.

⁶³ *ODIHR Note on the Anti-discrimination Legislation and Good Practices in the OSCE Region (2019)*, para. 110.

⁶⁴ See e.g., European Commission - European network of legal experts in gender equality and non-discrimination, *A comparative analysis of gender equality law in Europe 2022* (27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Türkiye and the United Kingdom compared), Section 2.1.

⁶⁵ See, for example, Article 3 of the *Law of the Republic of Uzbekistan on “Guarantees of Equal Rights and Opportunities for Women and Men”* (2019), which defines “gender” as “the social aspect of relations between women and men, which manifests itself in all spheres of society’s life, which include politics, economics, law, ideology and culture, education and science”; in *Finland*, Section 3 of the *Act on Equality between Women and Men* defines “gender identity” as “a person’s experience of their own gender”; Article 3(3) of the *Law of North Macedonia on Equal Opportunities for Women and Men* which states that “[d]iscrimination, harassment and sexual harassment on the grounds of gender shall be prohibited”.

⁶⁶ For example, in *Denmark*, amendments to the *Act on Gender Equality* that entered into force on 1 January 2022 explicitly prohibit discrimination on grounds of gender identity, gender expression and gender characteristics; in *Malta*, Article 2 (1) of the *Equality for Men and Women Act* (2003, amended 2015), refers to discrimination based on sex, sexual orientation, age, religion or belief, racial or ethnic origin, or gender identity, gender expression or sex characteristics. See also e.g., European Commission - European network of legal experts in gender equality and non-discrimination, *A comparative analysis of gender equality law in Europe 2022* (27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Türkiye and the United Kingdom compared), Section 2.1.2.

40. In light of the above international standards and recommendations, good practices, and relevant case law,⁶⁷ **it is advisable to cover the groups presenting certain common characteristics, that are the most at risk of discrimination, by explicitly referring to “sexual orientation” and “gender identity” in the list of prohibited grounds.**⁶⁸ An explicit mention of the above features as protected grounds in the definitions of discrimination will help send out the message that discrimination on the basis of such characteristics is unacceptable and that these types of discrimination will be sanctioned.⁶⁹ It is also generally acknowledged that explicitly sanctioning such forms of discrimination has had positive effects in practice.⁷⁰
41. GELs and anti-discrimination legislation still do not systematically include explicit legal provisions on multiple and/or intersectional discrimination,⁷¹ where several discriminatory grounds come into play simultaneously and produce distinct and specific forms of discrimination.⁷² As underlined above⁷³ (see para. 12 *supra*), States Parties to the CEDAW should also **ensure that intersectional discrimination is prohibited in law and this should be reflected in GELs by clearly defining it and acknowledging that different women might be affected differently and experience discrimination due to other factors** such as a “race”,⁷⁴ national or ethnic origin, colour, language, religion or belief, disability, age, immigration or refugee status, health status, etc, that are inextricably linked to sex and gender. At the same time, it must be acknowledged that practices of multiple discrimination are not always fully visible because of the lack of disaggregated data on multiple discrimination and procedural requirements in terms of evidence of such discrimination.⁷⁵ These shortcomings should be addressed if preventing and combating intersectional forms of discrimination is to be effective.

⁶⁷ See the cases of the ECtHR, *Schalk and Kopf v. Austria*, *Vallianatos v. Greece* [GC]; *Taddeucci v. Italy*, *Pajić v. Croatia*, *Orlandi v. Italy* and many others.

⁶⁸ See similar recommendations in *ODIHR Final Opinion on the Draft Law of the Republic of Armenia on Ensuring Equality before the Law (2019)*, para. 55

⁶⁹ See also the *Yogyakarta Principles plus 10 (YP plus 10)*, *Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (10 November 2017).

⁷⁰ See e.g., in the context of the European Union, the *Report on Harassment* related to Sex and Sexual Harassment Law in 33 European Countries, prepared by the Members of the European Network of Legal Experts in the Field of Gender Equality (2012).

⁷¹ “Multiple discrimination” refers to discrimination based on two or more grounds simultaneously, while the concept of “intersectional discrimination” refers to discrimination resulting from an interaction of discriminatory grounds which produces a new and different type of discrimination.

⁷² Multiple discrimination and/or intersectional discrimination is explicitly covered in the antidiscrimination laws and/or GELs of Albania (since 2020), Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Germany, Greece (Act 4604/2019), Iceland, Ireland, Italy, Malta (currently still in Bill format), Montenegro, Norway, Poland, Romania, Slovenia and Türkiye, as well as North Macedonia and Serbia (see European Commission - European network of legal experts in gender equality and non-discrimination. *A comparative analysis of gender equality law in Europe 2022*). See also EU FRA, Fundamental Rights Report 2017 (covering 2016), EU FRA Opinion no. 2.4 at p. 70, where EU FRA invited the Member States to “acknowledge multiple and intersectional discrimination when developing and implementing legal and policy instruments to combat discrimination, foster equal treatment and promote inclusion”. This concept also features in legislation of other OSCE pSs (e.g., USA, Canada). For example, intersectional discrimination is outlawed as a separate form of discrimination in the Law on Prevention and Protection against Discrimination of **North Macedonia** and is considered a graver form of discrimination leading to higher misdemeanour fines.

⁷³ While the CEDAW itself is textually silent as to intersectionality, through its general recommendations, decisions, and inquiries, the CEDAW Committee has furthered the narrative and understanding of intersectional discrimination; see in particular CEDAW Committee, *General Recommendation No. 28* on the Core Obligations of States Parties under Article 2 of the CEDAW, para. 18.

⁷⁴ The use of the term “race” or “racial” in this Note shall not imply endorsement by ODIHR of any theory based on the existence of different “races”. While recognizing that the term “race” is a purely social construct that has no basis as a scientific concept, for the purpose of the Comparative Note, the term “race” or “racial” may be used in reference to international instruments applying such a term to ensure that all discriminatory actions based on a person’s (perceived or actual) alleged “race”, ancestry, ethnicity, colour or nationality are covered - while generally preferring the use of alternative terms such as “ancestry” or “national or ethnic origin”; the Comparative Note uses the term to ensure that people who are misperceived as belonging to another “race” are effectively protected against direct or indirect “racial” discrimination (see e.g., *ODIHR Practical Guide on Hate Crime Laws (2022)*, footnote 14 and pages 50-51). Except when part of a citation from a legal instrument or case law, the words “race” or “racial” are thus placed in quotation marks in this Comparative Note to indicate that underlying theories based on the alleged existence of different “races” are not accepted. See also ECRI, *General Policy Recommendation No. 7 on National Legislation To Combat Racism And Racial Discrimination*, adopted on 13 December 2002 and revised on 7 December 2017, CRI(2003)8.

⁷⁵ For example, see: CEDAW, *Concluding Observations on the Czech Republic*, 2016, *CEDAW/C/CZE/CO/6*, para. 37. It should also be mentioned that the processing of cases of multiple and intersectional discrimination has proven to be a difficult task in practice, especially with respect to the application of the shifting the burden of proof and requirement to use a comparator. See, for example, Biljana Kotevska,

2.1.2. Prohibited Discriminatory Treatment/Behaviours

42. The prohibition of discrimination should cover different types of discriminatory behaviours, including direct and indirect discrimination, harassment, victimization, discrimination by association or affiliation, instructions to discriminate, etc.⁷⁶ Gender-based violence is also considered as a form of discrimination against women.⁷⁷ In its legal reviews on gender equality and anti-discrimination legislation, **ODIHR regularly emphasizes the need to ensure the clarity of definitions of the aforementioned concepts in line with international standards.**⁷⁸
43. In national legislation, the prohibition of discrimination can take the form of generic horizontal statements⁷⁹ or indicate the specific forms of prohibited discriminatory treatment/behaviours.⁸⁰ Prohibitions can also refer to discriminatory treatment in general or be only applicable in specific areas such as employment, education, housing etc.
44. In any case, it is advisable to **lay out prohibited behaviours in a precise manner to make it clear and easier for everyone to understand what they can and cannot do.**⁸¹ As recommended above (see para. 35 *supra*), **GELs (as well as anti-discrimination laws pertaining to sex, gender and gender identity discrimination) should clearly stipulate the difference between direct⁸² and indirect discrimination.**⁸³ They should also include clear definitions of all prohibited discriminatory treatment/behaviours, specifying the concrete acts falling under each of the forms of the prohibited discriminatory treatment/behaviours (by way of a non-exhaustive list).
45. Sexual harassment is a very particular type of gender discrimination, which can be of a civil or criminal nature, depending on the outlawed actions or omissions. It is defined and prohibited by various international and regional instruments and recommendations,

Processing discrimination cases in post-socialist countries: Multiple and intersectional discrimination through the eyes of legal practitioners in Croatia, Macedonia and Slovenia (2022), [International Journal of Discrimination and the Law](#); and Directorate-General for Justice and Consumers (European Commission), European network of legal experts in gender equality and non-discrimination, [Intersectional discrimination in EU gender equality and non-discrimination law](#) (2016).

⁷⁶ For example, the [Act on Equality between Women and Men \(609/1986\)](#) of Finland, prohibits discrimination on the basis of a number of grounds including gender identity and gender expression, pregnancy, childbirth, parenthood or family obligations. Other forms of prohibited discrimination include sexual harassment, gender-based harassment, any order or instruction to engage in discrimination or countermeasures, or treating someone less favourably because they have made appeal to their rights.

⁷⁷ See e.g., UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee), [General Recommendation No. 19: Violence against women](#) (1992); and [General Recommendation No. 35](#) (2017), updating General Recommendation No. 19.

⁷⁸ [ODIHR Note on the Anti-discrimination Legislation and Good Practices in the OSCE Region](#), para. 58.

⁷⁹ For example, “Discrimination on grounds of gender shall be prohibited”, see [Law of Ukraine on Ensuring Equal Rights and Opportunities for women and men](#), Article 6.

⁸⁰ For example, A formulation including specific discriminatory behaviours would be: “All forms of discrimination, direct or indirect, on grounds of gender, are prohibited. Multiple discrimination is also prohibited. Giving instructions to discriminate on grounds of gender also constitutes discrimination under this Act. Furthermore, gender-based harassment or sexual harassment constitute discrimination under this Act, as does all unfavourable treatment of an individual that may be attributed to the fact that the individual has rejected gender-based harassment or sexual harassment, or has submitted to it”, [Act on Equal Status and Equal Rights Irrespective of Gender of Iceland](#), Article 16 (1).

⁸¹ For example, with respect to discrimination in the workplace, specific prohibitions of discrimination can relate to unequal pay for equal work or work of equal value, termination of employment, harassment, sexual harassment and blackmail, gender inequality during pregnancy leave, parental leave, childcare leave and special childcare leave, other discrimination in terms of employment, professional opportunities, promotion, change of position, retraining, continuing education, vocational training, study leave, notice of termination, the working environment and employees’ working conditions, etc..

⁸² For example, the definition should mention that direct gender discrimination occurs when there is a causal connection between the sex (gender) or a characteristic which pertains or is imputed to persons of a certain gender, of the aggrieved person and any less favourable treatment imposed on them, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the intended aim. Such provision should specify that the intention or motive on the part of the person discriminating is irrelevant to determine whether a prohibited act has occurred. See e.g., Article 3 of the [Law of the Republic of Uzbekistan on Guarantees with Respect to Equal Rights and Opportunities for Women and Men](#) (2019), which provides that “direct discrimination on the basis of gender means any distinction, exclusion or limitation which aims at denying women and men their rights and freedoms in all spheres of society’s life, including discrimination on the basis of marital status, pregnancy, family responsibilities, as well as sexual harassment, different labor payment for equal work and qualifications”.

⁸³ For example, the provision may provide that indirect discrimination occurs when the discriminator imposes or proposes to impose a condition, requirement or practice that, although *prima facie* neutral and applicable to everyone, has, or is likely to have, the effect of disadvantaging persons of one sex (gender) when put into practice. See e.g., Article 3 of the [Law on Gender Equality in Bosnia and Herzegovina](#), which provides: “Indirect discrimination on the grounds of gender occurs when apparently neutral legal standards, criteria or practices that are equal for all have the effect of leaving a person of one sex disadvantaged by comparison with a person of the other sex.”

with the 2006 Recast EU Directive 2006/54/EC clearly prohibiting both harassment on the basis of sex as well as sexual harassment.⁸⁴ In relation to such offences, practice varies across the OSCE area; sexual harassment is generally considered to be a form of discrimination and is often accompanied by provisions on harassment as criminal offences or subject to civil or administrative penalties,⁸⁵ although the respective legal framework does not always provide a clear definition of the prohibited behaviour.⁸⁶ Hence, it is fundamental to ensure that the legal framework prohibits harassment on the basis of sex and sexual harassment ensuring that this is applicable in all areas of life, including education, health, provision of goods and services, economic, social, cultural, civil and political life. It is considered a good practice **to include separate provisions clearly defining and prohibiting harassment on the basis of sex or gender as well as sexual harassment.**⁸⁷ This should allow any act falling outside the scope of sexual harassment to still be considered as discrimination based on sex or gender.

46. More generally, it is good practice for GELs **to specify the manner of recourse for victims, prescribe specific responsibilities in terms of prevention, protection and redress for victims of discrimination with clear reference to the duty-bearers, as well as sanctions and punishment for the perpetrators of this form of discrimination** (see also Sub-Section VI *infra*). For instance, this means that rather than a general prohibition of discrimination in the workplace, or in addition to it, legislation can identify the particular actions that employers need to abstain from and the specific duties.

2.1.3. Clear Indication of Behaviours not Constituting Discrimination

47. A complementary aspect of the prohibition of discriminatory treatment is **an explicit indication of behaviours that do not constitute sex- and gender-based discrimination.**⁸⁸ This approach is also in line with the case-law of the ECtHR, which

⁸⁴ See e.g., CEDAW Committee, [General Recommendation No. 19: Violence against women](#) (1992), para. 18, which defines sexual harassment as “such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions”, which may be humiliating and may constitute a health and safety problem. Article 40 of the Istanbul Convention requires States Parties to “take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.” In addition to “sexual harassment” in the context of employment, including access to employment, vocational training and promotion, the 2006 Recast EU Directive 2006/54/EC prohibits harassment on the ground of a person’s sex and sexual harassment (see Article 2(1)(c), which defines harassment as “unwanted conduct related to the sex of a person [which] occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment”; and Article 1(d) defines ‘sexual harassment’ as “where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”). Similar obligations and definitions apply to the access to and supply of goods and services according to the 2004 Goods and Services EU Directive.

⁸⁵ See e.g., Directorate-General for Justice and Consumers, European network of legal experts in gender equality and non-discrimination, [A comparative analysis of gender equality law in Europe](#) (2019), Section 2.6.

⁸⁶ See e.g., [ODIHR Opinion on the Draft Law on Gender Equality of North Macedonia \(2021\)](#), para. 24.

⁸⁷ See e.g., [ODIHR Comments on the Draft Law on Prohibition of Discrimination in Montenegro \(2013\)](#), paras. 20 and 32. See also [ODIHR Opinion on the Draft Law on Introducing Changes and Amendments to the Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality \(2006\)](#), paras. 22 and 62. See also e.g., Article 1 of the Law [on State Guarantees of Equal Rights and Equal Opportunities for Men and Women](#) of the **Kyrgyz Republic** of 2008, defining sexual harassment as actions of a sexual nature, expressed verbally or physically, humiliating and insulting a person who is in labor, service, financial, family or other dependence. In **Bosnia and Herzegovina**, Article 5 of the [Law on Gender Equality](#) (consolidated version) defines “harassment” as any unwanted behaviour based on gender that aims to harm dignity of a person, group of persons and create intimidating, hostile, degrading, humiliating or insulting environment or achieves such effect, which is differentiated from “sexual harassment” that is unwanted form of verbal, non-verbal or physical behaviour of sexual nature that aims to harm dignity of a person or group of persons, or has such effect, especially when this behaviour creates intimidating, hostile, degrading, humiliating or offensive environment.

⁸⁸ See e.g., [Law of Ukraine on Ensuring Equal Rights and Opportunities for n Women and Men](#), Article 6: “The following shall not be deemed as discrimination on grounds of gender: special protection of women at the time of pregnancy, delivery and breast feeding of child; compulsory military service for men, provided for by the law; difference in retirement age for women and men, provided for by the law; special requirements in respect of labour protection of women and men, related to their protection of their reproductive health; positive actions”. See also e.g., in **Iceland**, the [Act on Equal Status and Equal Rights Irrespective of Gender](#) Article 16 (2), which states that “... affirmative action shall not be regarded as being contrary to this Act. The same shall apply if there are valid reasons to support employing an individual of a particular gender in view of objective factors relating to the job. Special consideration to women in connection with pregnancy and childbirth shall not be regarded as discrimination. The same applies to other persons who go through pregnancy and give birth...” In **Uzbekistan**, the [Law on Guarantees of Equal Rights and Opportunities for Women and Men](#) (Article 5) clearly establishes what does not constitute discrimination on the basis of gender: establishing differences in the regulation of relationships

states that differences in treatment do not constitute discrimination when such differential treatment pursues a legitimate aim and is objectively and reasonably justifiable (see para. 35 *supra*). In this respect, **temporary special measures (or positive or affirmative actions) do not constitute discrimination and the GELs should make this clear**. The enumeration of instances which may not be considered as gender discrimination could also include, for example, the situation where it is an occupational qualification to be of a certain gender or where duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons of the opposite sex.⁸⁹

2.1.4. Sanctions in Case of Non-compliance

48. In order for anti-discrimination and gender equality legislation to be effective, infringements of anti-discrimination and gender equality provisions should be met with effective, proportionate and dissuasive sanctions to have a real deterrent effect.⁹⁰ It is also essential that an independent body monitors compliance, to ensure effective implementation⁹¹ (see also Sub-Section VI *infra*).

2.2. Specific Obligations/Duties related to Gender Equality

49. Specific obligations or duties of different public bodies or institutions, legal entities or individuals in relation to gender equality are another mechanism used in gender equality legislation, which is often complementary to prohibitions of discrimination. These provisions introduce obligations to undertake specific actions or abstain from specific action.⁹²

related to the functions of childbirth and breastfeeding; conscription for compulsory military service in the manner prescribed by law; adoption of temporary special measures on the basis of this Law to ensure the implementation of gender policy; features of labor protection for women and men related to the protection of their reproductive health; providing recommendations for professional qualifications based on the ability to perform duties only by persons of a certain gender; establishing differences in the regulation of the order and conditions of detention in places of detention, execution of punishment and other legal measures; positive measures aimed at strengthening the social status of women in society, ensuring equal rights and opportunities for women and men.

⁸⁹ For instance, the job of a model for men's clothing, or an actor's part in a movie, advertisement, theatre production, etc. See also [ODIHR Opinion on the Draft Law on Introducing Changes and Amendments to the Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality \(2006\)](#), para. 21.

⁹⁰ See e.g., UN Working Group on the issue of discrimination against women in law and in practice, [2013 Report](#), A/HRC/23/50, adopted on 19 April 2013, para. 39; [OSCE Gender Equality in Elected Office: A Six-Step Action Plan](#) (2011), pp. 33-34; and Parliamentary Assembly of the Council of Europe (PACE), [Resolution 2111 \(2016\)](#), especially para. 15.2.2. In the context of activities of political parties, see e.g., 2020 OSCE/ODIHR-Venice Commission [Guidelines on Political Party Regulation](#) (2nd edition), which refer to a variety of sanctions for political parties not complying with legal measures aimed at ensuring gender equality, ranging from the denial or reduction of public funding, to stronger, legal measures, such as the removal of the party's electoral list from the ballot.

⁹¹ See e.g., UN Working Group on the issue of discrimination against women in law and in practice, [2013 Report](#), A/HRC/23/50, adopted on 19 April 2013, para. 39. See also e.g., ODIHR, [Opinion on Draft Amendments to Ensure Equal Rights and Opportunities for Women and Men in Political Appointments in Ukraine](#) (2013), para. 36.

⁹² In the **United Kingdom**, the [2010 Equality Act](#) introduced an equality duty which replaced the previously existing gender, "race" and disability duties. This step was made in order to unify the standards for each of the grounds, but also to allow for action across grounds. The requirements for this duty are elaborated in secondary legislation, which is either special for England, for Wales and for Scotland, or in case of so-called "non-devolved bodies", a joint duty across the United Kingdom. Section 149 of the 2010 Equality Act defines "**public sector equality duty**" in the UK as meaning that "a public authority or persons exercising public function in the exercise of their functions" "(1) ... must ... have due regard to the need to— (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it"; "[h]aving due regard to the need to advance equality of opportunity" as meaning to "(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low"; and "[h]aving due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it" as having "due regard to the need to: (a) tackle prejudice, and (b) promote understanding."

50. These duties or obligations can be generic and horizontal⁹³ or can relate to specific areas, for example, employment or social security, entrepreneurship, etc.⁹⁴ It is important that **the duty-bearers and their respective obligations are indicated in a clear and unambiguous manner using consistent drafting.**

2.3. Temporary Special Measures

51. Certain measures in GELs aim to prevent discrimination and promote equal rights and opportunities by correcting situations of *de facto* inequality. This is in line with Article 4 (1) of the CEDAW, which provides that States Parties can adopt temporary special measures aimed at accelerating *de facto* (or substantive) equality between women and men; the CEDAW Committee emphasizes that such measures are not an exception to the principle of non-discrimination but rather are part of a necessary strategy by States Parties to achieve substantive equality.⁹⁵ Different wording is used in national legislation or policies to designate these types of measures, such as “positive measures” or “action”, “positive” or “reverse” discrimination, “preferential treatment”, “temporary special measures” or “affirmative action”.⁹⁶ Such measures are temporary in nature, although they may apply for a long period of time, and must be discontinued when their desired results have been achieved and sustained for a period of time.⁹⁷ They have to be distinguished from general social policies or other measures adopted in order to guarantee the civil, political, economic, social and cultural rights of women and girls, designed to ensure for them a life of dignity and non-discrimination, which would not be limited in time.⁹⁸

⁹³ In **Finland**, the duty of authorities to promote gender equality means that “*In all their activities, authorities must promote equality between women and men purposefully and systematically, and must create and consolidate administrative and operating practices that ensure the advancement of equality between women and men in the preparatory work undertaken on different matters and in decision-making. In particular, circumstances which prevent the attainment of gender equality must be changed. In the availability and supply of services, the promotion of equality between women and men must be taken into account in the manner referred to in subsections 1 and 2 Finland*”, see [Act on Equality between Women and Men \(609/1986\)](#), Section 4 (232/2005). Article 24 of the [Law on Gender Equality in Bosnia and Herzegovina](#) obliges authorities at the state and entity level, cantonal bodies, local self-governance units, legal persons with public authorities, to take all appropriate and needed measures in order to implement provisions prescribed by this Law including by: a) Introducing programs of measures for achieving gender equality in all spheres and at all levels of authorities; b) Adopting new or changing and amending existing laws and other regulations in order to harmonize them with provisions of this Law and international standards for gender equality; c) Implementing activities and measures from the Gender Action Plan of Bosnia and Herzegovina through regular programs of work and ensuring budget resources; d) Collecting data, keeping records, analyzing and presenting statistical data classified according to gender.

⁹⁴ In **Ukraine**, pursuant to Articles 19-20 of the [Law on Ensuring Equal Rights and Opportunities for Women and Men](#), the State is under the obligation to provide women and men with equal rights and opportunities in carrying out entrepreneurial activity and in the sphere of social protection. In **Canada**, Section 5, [Employment Equity Act](#), the obligation of employers to implement employment equity translates into specific obligations: identifying and eliminating employment barriers against persons in designated groups that result from the employer’s employment systems, policies and practices and instituting positive policies and practices and making reasonable accommodations to ensure that these persons will achieve a degree of representation in each occupational group in the employer’s workforce that reflects their representation in the Canadian workforce, or the segments of the workforce that are identifiable by qualification, eligibility or geography. In **France**, the [Law no. 2014-873 of 4 August 2014 on Real Equality Between Women and Men](#), Article 61, has introduced, among others, the obligations for mayors of municipalities of more than 20,000 inhabitants, and presidents of general and regional councils, prior to the debates on the draft budget, to present a report on the situation in terms of equality between women and men affecting the functioning of the respective municipality, department or region, the policies that are carried out on the respective territories and the strategies and programs likely to improve the situation.

⁹⁵ While the application of temporary special measures often remedies the effects of past discrimination against women, the CEDAW Committee has underlined that “*the obligation of States Parties under the Convention to improve the position of women to one of de facto or substantive equality with men exists irrespective of any proof of past discrimination*” underlining that “*States Parties that adopt and implement such measures under the Convention do not discriminate against men*”, see UN CEDAW Committee, [General recommendation No. 25 on Article 4 \(1\) of the CEDAW \(2004\)](#), para. 18.

⁹⁶ The *travaux préparatoires* of the CEDAW use different terms to describe the “temporary special measures” included in Article 4 (1) of the CEDAW. The CEDAW Committee itself uses various terms in its General Recommendations. States Parties often equate “special measures” in its corrective, compensatory and promotional sense with the terms “affirmative action”, “positive action”, “positive measures”, “reverse discrimination”, and “positive discrimination”. These terms emerge from the discussions and varied practices found in different national contexts.

⁹⁷ Article 4 of the CEDAW. See also UN CEDAW Committee, [General recommendation No 25 \(2004\)](#), para. 20.

⁹⁸ UN CEDAW Committee, [General recommendation No 25 \(2004\)](#), para. 19.

52. Many GELs include some forms of active measures or positive action,⁹⁹ that are general or specific¹⁰⁰ and are not always exhaustively enumerated in a closed list.¹⁰¹ Such measures should be appropriate to the situation to be remedied, proportionate and temporary, and should be discontinued after the objectives for which they have been taken have been achieved.¹⁰²

2.4. Incentives

53. To prevent discrimination by private actors and other organizations and promote equality, as required by Article 2 (e) of the CEDAW,¹⁰³ a novel way for states is to offer legislative incentives to them, to adopt forward-looking measures in the field of gender equality that go beyond what is legally required. For example, gender equality certification or marks, when publicly named in official websites, offer a competitive advantage to the companies that have them.¹⁰⁴ Some OSCE pSs have already embodied some forms of incentives in their respective national legal framework.¹⁰⁵

⁹⁹ 27 EU Member States (except Latvia), Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Türkiye and the United Kingdom; see European Commission - European network of legal experts in gender equality and non-discrimination, [A comparative analysis of gender equality law in Europe 2022](#), Section 2.5.1.

¹⁰⁰ They may consist of “preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems”, see UN CEDAW Committee, [General recommendation No. 25 on Article 4 \(1\) of the CEDAW \(2004\)](#), para. 22.

¹⁰¹ In **Sweden**, work on active measures means pursuing prevention and promotion work by: investigating the existence of risks of discrimination or reprisals or other obstacles to equal rights and opportunities in an establishment; analyzing the causes of any risks and obstacles discovered; taking the prevention and promotion measures that can reasonably be demanded, and monitoring and evaluating measures (see [Sweden](#), Chapter 3. Section 2, Active measures). In **Finland**, pre-emptive action is an obligation for authorities, education providers, bodies providing education and training and employers. They need to pursue such actions in a purposeful and systematic manner against discrimination based on gender identity or gender expression and this must be taken into account in the preparation of the gender equality plans and in decisions regarding measures to promote gender equality; see [Act on Equality between Women and Men \(609/1986\)](#) of Finland, Section 6c (1329/2014) “Pre-emptive action against discrimination based on gender identity or gender expression”.

¹⁰² For example, in **Spain**, public authorities can adopt specific measures favouring women to correct situations of obvious *de facto* inequality with respect to men and it is specified that such measures are applicable while the situation subsists and they must be reasonable and proportional to the objective pursued. Private natural and corporate persons are also encouraged to adopt positive measures. Furthermore, in Spain, for one year after returning to active service from maternity or paternity leave or from leave of absence for reasons of legal guardianship or care for dependent members, employees will be given preference in the participation in training courses designed to update public employees’ skills. A quota is introduced according to which, at least 40% of the places for training courses will be reserved to women employees qualifying for them to facilitate female public employee promotion and access to management positions in the Central Government and other public bodies; see [Organic Act for Effective Equality between Women and Men](#), Article 60. See also UN CEDAW Committee, [General recommendation No. 25 on Article 4 \(1\) of the CEDAW \(2004\)](#), paras. 20-24.

¹⁰³ See e.g., UN CEDAW Committee, UN Committee on the Elimination of Discrimination Against Women (CEDAW), [General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#), 16 December 2010, CEDAW/C/GC/28, para. 13: “Article 2 of the CEDAW is not limited to the prohibition of discrimination against women caused directly or indirectly by States Parties. It also imposes a due diligence obligation on States Parties to prevent discrimination by private actors. In some cases, a private actor’s acts or omission of acts may be attributed to the State under international law. States Parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States Parties are obliged to take include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work standards, and other areas in which private actors provide services or facilities, such as banking and housing”.

¹⁰⁴ See e.g., the examples of **Iceland**, **Portugal** and **Italy** in OECD, [Reporting Gender Pay Gaps in OECD Countries - Guidance for Pay Transparency Implementation, Monitoring and Reform](#) (2023), Section 6.5.

¹⁰⁵ In **Spain**, the Ministry of Labour and Social Affairs is also enabled to create a mark to distinguish employers for outstanding achievement in the implementation of equal treatment and opportunities policies for their workers, which may be used in the company’s commercial dealings and for advertising purposes. Any State-owned or private company can submit to the Ministry of Labour and Social Affairs a balance sheet of equality parameters in place in its labour relations and in the advertising of its goods and services to obtain this mark. The criteria to be taken into account include, among others, the balanced presence of women and men in the company’s management bodies and occupational groups and categories, the adoption of equality plans or other innovative measures to further equality, and non-sexist advertising of company goods and services. (see Spain, [Organic Act for Effective Equality between Women and Men](#), CHAPTER IV Corporate equality mark, Article 50). In **Iceland**, the Minister for equality is authorized to give an annual gender equality award to individuals, companies, institutions or organizations that have excelled or had a permanent effect in the field of gender equality. The ministry can call for nominations and can appoint a special selection committee to select awardees from the submitted nominations; see [the Act on Equal Status and Equal Rights Irrespective of Gender](#), Article 24. In **Greece**, the [Law on Substantive Gender Equality, Preventing and Combating Gender-Based Violence](#) enables the Ministry of Labour and Social Affairs to award an “Equality mark” to enterprises in the public and private sectors that excel in implementing equal treatment and equal opportunities policies for women and men and policies to prevent and combat violence and harassment. The mark is awarded by the Ministry of Labour and Social Affairs after considering initiatives in areas such as equal pay, balanced participation in managerial positions or in professional and scientific groups, equality in professional development, compliance with legislation on the protection of maternity and parental leave and measures to prevent and combat violence and harassment, the implementation of equality plans or other measures. Enterprises awarded the “Equality Label” are obliged to submit an annual report on actions related to substantive gender equality. The Directorate-General for Equal Opportunities monitors whether the enterprises continue to comply with the criteria and, if not, can withdraw the Equality mark. Each year, the Directorate-General for Gender Equality publishes a list of companies holding the label and posts the list on its website.

2.5. Legislative Experimentation

54. Some countries have also used legislative experimentation to promote gender equality goals, although this is not common practice.¹⁰⁶ Experimentation is a legislative technique that involves implementing new or innovative measures on a small-scale basis before generalizing their application to the entire state following a positive assessment of their impact.¹⁰⁷ This is generally considered as a good practice when an intervention needs to be tested with regard to its effectiveness and potential impact and helps mitigating potential adverse effects or unintended consequences of contemplated measures. While such experimental legislation will imply that a certain group of people within a state will temporarily be treated in a more or less favourable manner compared to others, this may be justifiable if this is in pursuit of a legitimate social or other public interest goal such as promoting *de facto* equality and necessary and proportionate.
55. There are a number of requirements and good practices to ensure a successful setting up of legislative experimentation projects, in compliance with the rule of law, namely: the identification of a legitimate objective; the provisions deviating from other legislation that are to be applied during the experimentation project should be clearly laid down by law; the legislation enabling the experimentation project should be proportionate; the participants in the experimentation project and/or the area to which the experimentation applies should be specified in the law; the legislation enabling the experimentation project should not be discriminatory, i.e., the envisaged difference in treatment should be objectively and reasonably justifiable; the experimentation legislation should be in force only for the short time that is necessary for this, and assessment of the results of the experimentation project should be appropriately organized.¹⁰⁸

2.6. Procedural Support and Protection Measures

56. It is important that GELs and anti-discrimination laws offer realistic prospects of achieving their aims by ensuring, *inter alia*, effective means for pursuing anti-discrimination claims. Access to an effective remedy and swift justice is of fundamental importance for victims of sex- and gender-based discrimination. The most common barriers for access to justice include the psychological and financial barrier of reporting, the difficulty in proving or substantiating discriminatory behaviour, short time limits for initiating a discrimination claim, the length and costs of proceedings, including the potentially discouraging effect on victims of the “loser pays” principle,¹⁰⁹ and limited availability of legal aid.¹¹⁰ It is thus important for GELs to provide a legal basis for effective and user-friendly procedures, which should be easily accessible to the victims, including by decreasing or abolishing the financial burden for conducting proceedings, ensuring access to legal aid¹¹¹ (i.e., the provision of legal advice, assistance and/or representation at either no cost or subject to a financial contribution), appropriately regulating the burden of proof. The procedure should aim at discontinuing

¹⁰⁶ For example, in **France**, Article 37-1 of the Constitution of the Republic of France, allows laws or regulations to contain provisions of an experimental nature, for limited purposes and duration; Article 14 of the [Law no. 2014-873 of 4 August 2014 on Real Equality between Women and Men](#), provides: “I. In order to facilitate the return to work of parents who went on parental leave, the state can authorize the experimental payment to parents of two children of the increased amount of the shared child-rearing benefit provided. This experiment applies to parents of two children residing or having elected domicile in the departments or territories whose list is set by joint order of the ministers responsible for women’s rights and social security. II. The experiment will be conducted for a period of twenty-four months. Not later than six months before the end of the experiment, an evaluation report should be submitted to Parliament, notably on the effects of the experiment on employment.”

¹⁰⁷ See ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (2024), para. 142.

¹⁰⁸ See e.g., Finnish Ministry of Justice, [Guide for drafters of legislation enabling experimentation projects in society](#).

¹⁰⁹ A loser- pays rule allows the winning party to shift at least a portion of his legal expenditures to the losing side.

¹¹⁰ European Commission, [Report on Directives 2000/43/EC and 2000/78/EC, 2014](#), p. 7.

¹¹¹ For example, according to the [Law on Guarantees of Equal Rights and Opportunities for Women and Men of the Republic of Uzbekistan](#) (Article 28), a person who has been subjected to direct or indirect discrimination based on gender is not charged a state fee when lodging a complaint with the competent courts. When the courts consider cases of violation of the equality of women and men, the payment for legal services provided by lawyers is covered at their request at the expense of the state in the manner prescribed by law.

discrimination, obtaining adequate compensation for damages and providing guarantees against further discrimination or even against retaliation (victimization). The provision of legal aid is especially important to ensure that rural, low-income or other disadvantaged persons have access to the proper judicial remedies.¹¹² It is also good practice to allow non-governmental and public interest organizations to join the proceedings on their own or at least as third parties.¹¹³ The legal framework should reflect these prerequisites and recommendations to ensure effective redress. National human rights institutions (hereinafter “NHRIs”) or independent equality bodies¹¹⁴ may also play a fundamental role either as complaints-handling mechanisms or in support of such claims, or by bringing claims *ex officio*.¹¹⁵

57. GELs and non-discrimination laws in the OSCE region often introduce some of the above procedural and support measures to address specific barriers faced by victims of discrimination in their access to justice. These measures include procedures that are adapted to be accessible to the victims, decreased financial burden for proceedings, reversal of the burden of proof,¹¹⁶ protection against retaliation and/or the possibility for non-governmental organizations (hereinafter “NGOs”) to take cases to court and represent victims or join the proceedings on their own or at least as third parties.¹¹⁷ In some countries, the gender equality body may also provide support and guidance to the victims of discrimination.¹¹⁸ Some OSCE pSs have also established a Special Commissioner on Gender Equality, or a Gender Ombudsperson dealing solely with

¹¹² *Ibid.*, para. 63

¹¹³ See also Article 7 par 2 of the Racial Equality Directive and Article 9 par 2 of the Employment Equality Directive. For instance, Article 2-6 of the Code of Penal Procedure of **France**, whereby “Any association regularly declared for at least five years on the date of the facts, proposing through its statutes to combat discrimination based on sex, morals, sexual orientation or gender identity, may exercise the rights recognized to the civil party with regard to discrimination punished by Articles 225-2 and 432-7 of the Penal Code and Articles L. 1146-1 and L. 1155-2 of the Labor Code, when they are committed due to the victim's sex, family status, morals, sexual orientation or gender identity of the victim or as a result of sexual harassment. However, with regard to discrimination committed following sexual harassment, the association is only admissible in its action if it justifies having received the written agreement of the person concerned, or, if the latter is a minor and after the opinion of the latter, that of the holder of parental authority or the legal representative.”

¹¹⁴ The EU Directives require to establish or designate bodies for the promotion of equal treatment on the grounds of gender (Article 12 of the Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; and Article 20 of the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)).

¹¹⁵ According to the [Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men](#) (Article 22), a person who has been subjected to discrimination on the basis of sex and has become a victim of sexual harassment or has suffered from violence on the basis of sex, has the right to bring a complaint to the responsible authorities, including the Ukrainian Parliament Commissioner for Human Rights, in the manner prescribed by law. Article 30 of the Law of the **Kyrgyz Republic** on [State Guarantees of Equal Rights and Equal Opportunities for Men and Women](#) establishes that persons subjected to gender discrimination have the right to simultaneously contact the Ombudsperson, and other bodies who should review facts of gender discrimination in the manner and within the time limits established by the legislation of the Kyrgyz Republic.

¹¹⁶ This is required by EU Directives, particularly the [Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation \(recast\)](#), Article 19 (1), which states that “when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment”. According to the European Equality Law Network (EELN), this reversal has been introduced in all EU member states, as well as in Albania, Montenegro, North Macedonia and Serbia (see European Commission, [A comparative analysis of gender equality law in Europe 2022 - The 27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Türkiye and the United Kingdom compared](#) (2023), Birte Bök et al, 188), although the correct application of the reversed burden of proof appears to remain a challenge and not be sufficiently well-known by national courts (see [European Commission, Report on Directives 2000/43/EC and 2000/78/EC](#), 2014, p. 9).

¹¹⁷ For example, in **Finland** if a person considers that they have been a victim of discrimination and presents a case and the facts give cause to believe that the matter is one of gender discrimination, the defendant must prove that there has been no violation of gender equality but that the action was for an acceptable reason and not due to gender, while also specifying that retaliation by the employer or good/service provide following participation in an investigation also constitutes discrimination; see [Act on Equality between Women and Men \(609/1986\)](#) of Finland, as amended 2022, Sections 9a (232/2005) (“Burden of proof”) and 8a (“Prohibition of Retaliation”). In **Spain**, in proceedings in which the plaintiff alleges discriminatory conduct on the grounds of sex, the defendant will have to prove the absence of discrimination in the measures adopted and their proportionality. For the intents and purposes, judicial bodies may request a report or opinion from the competent public bodies, ex parte ([Organic Act for Effective Equality between Women and Men](#) Article 13). In **Sweden**, the Ombudsperson or a social partner can take a case of gender discrimination to the Non-Discrimination and Equality Tribunal under the [Act on Equality \(609/1986\)](#), Section 20.

¹¹⁸ In **Finland**, victims of discrimination can request guidance and advice from the Ombudsman for Equality. The Ombudsman for Equality may take measures to reconcile a discrimination matter. See [Act on Equality between Women and Men \(609/1986\)](#) of Finland.

gender discrimination claims,¹¹⁹ or have given clear jurisdiction to NHRIs in this field.¹²⁰ In any case, it is essential that NHRIs have a clear mandate concerning the protection of women's rights and gender equality, as regularly recommended by the CEDAW Committee.¹²¹

58. It is also beneficial **to outline in the GEL the required procedure for filing a claim before an independent commissioner, or other independent institution, the investigative powers, their ability to protect complainants and witnesses from retaliation, the weight and enforcement value of decisions taken, and their enforcement¹²² and the possibilities for appeal, redress and compensation for damages resulting from the gender discrimination.**

2.7. Gender Mainstreaming

59. Gender mainstreaming¹²³ implies ensuring that a gender equality perspective is incorporated into policy- and lawmaking, as well as programmes and other strategic documents, so that women's as well as men's respective experiences, needs and concerns - recognizing the diversity of different groups of women and men, are built into the design, discussion, implementation, monitoring and evaluation of policy, legislation and programmes, and that both individual rights and structural inequalities are addressed.¹²⁴
60. Gender mainstreaming implies actively supporting the inclusion of a gender perspective, gender balanced representation in public decision-making at all levels, and the promotion of equal opportunities in activities and procedures of government, parliament, judiciary and other public institutions, and underlying legal frameworks. In line with international obligations and commitments regarding gender balanced representation in public decision-making at all levels,¹²⁵ it is important to ensure that women are sufficiently represented in parliaments and governments and their respective bodies, including those involved in the policy- and lawmaking process. Balanced representation is also fundamental in order to enhance the perception of the legitimacy of the policy- and lawmaking processes and outcomes, i.e., adopted legislation. The Comparative Note seeks to provide an overview of whether and to what extent gender equality laws across the OSCE region include an obligation to mainstream gender in policy- and lawmaking,

¹¹⁹ See [ODIHR Comments on the Draft Law on Prohibition of Discrimination in Montenegro \(2010\)](#), paras. 20 and 32. See also [ODIHR Opinion on the Draft Law on Introducing Changes and Amendments to the Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality](#), para. 60.

¹²⁰ See [ODIHR Opinion on the Law on Prohibition of Discrimination of Montenegro \(2013\)](#), para. 43.

¹²¹ See e.g., UN CEDAW Committee, [Concluding Observations on the Fifth Periodic Report of Kyrgyzstan](#), November 2021, paras 15-16. [ODIHR Opinion on the Draft Law on Gender Equality of North Macedonia \(2021\)](#), para. 52.

¹²² See e.g., Global Alliance of National Human Rights Institutions (GANHRI), GANHRI [Sub-Committee on Accreditation \(SCA\)](#) | OHCHR, General Observation 2.9 on the quasi-judicial competency of NHRIs.

¹²³ Gender mainstreaming is an approach to policymaking and lawmaking that takes into account both women's and men's interests, experiences and concerns, and ensuring equal rights and opportunities for women and men in laws and policies, in all spheres of life, and equal access to resources and services within families, communities and in society. See e.g., UN, [Report of the Economic and Social Council](#), 1997, which refers to "the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated"; CoE, [What is gender mainstreaming? - Gender Equality \(coe.int\), where the CoE defines gender mainstreaming as "the \(re\)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policymaking"](#). At present, the concept of gender mainstreaming is also firmly embedded in the EU Treaties and the EU Charter of Fundamental Rights.

¹²⁴ The BPfA further states that "governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes, so that, before decisions are taken, an analysis is made of the effects on women and men, respectively".¹²⁴

¹²⁵ See e.g., Article 7 of the [UN Convention on the Elimination of Discrimination against Women](#), which deals with women's equal and inclusive representation in decision-making systems in political and public life, and Article 8, which calls on all States Parties to take appropriate measures to ensure such access; Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), Strategic Objective G.1. "Take measures to ensure women's equal access to and full participation in power structures and decision-making"; Council of Europe Recommendation Rec (2003)3 of the Committee of Ministers to CoE Member States on the balanced participation of women and men in political and public decision-making adopted on 30 April 2002; OSCE Ministerial Council Decision MC DEC/7/09 on Women's Participation in Political and Public Life, 2 December 2009.

including through the application of gender mainstreaming tools, like gender impact assessments, gender audits, disaggregated data collection and inclusive public consultations.

61. A number of OSCE pSs explicitly regulate gender mainstreaming in in their GELs¹²⁶ or foresee it in policy or strategic documents,¹²⁷ and some have established a clear legal obligation for public authorities to conduct gender mainstreaming in all their activities and/or when preparing policies or legislation.¹²⁸ Yet, some OSCE pSs do not provide for an obligation or do not foresee a process of gender mainstreaming.¹²⁹
62. When it is provided in relevant law, the obligation for gender mainstreaming may take different forms. It can include an obligation on all or specific authorities or bodies (for example public bodies) to take into consideration gender or other factors in their decision-making process, when planning, designing and implementing (draft) policies, laws or programmes,¹³⁰ or to require the use of specific decision-making tools like gender or equality impact assessment or gender analysis in the preparation of policies and legislation,¹³¹ gender responsive budgeting and/or inclusive public consultations.

2.7.1. Gender Impact Assessments

63. Gender and diversity impact assessment analyses, based on disaggregated data collection, help define how contemplated policy and legislative solutions are likely to impact women and men, taking into account their diversity, and other groups, based on their personal characteristics.¹³² They also generally include an analysis of gender roles, but also of possible structural and historical discrimination and of the potential discriminatory impact of the existing legal framework and proposals in this field on different groups. Relevant groups may include persons with disabilities, national, ethnic, religious or other minorities, young people, etc. Overall, gender and diversity assessments estimate the

¹²⁶ For example, Albania, Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, North Macedonia, Slovenia, Spain, United Kingdom; see European Commission, [A comparative analysis of gender equality law in Europe 2022 \(27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Türkiye and the United Kingdom compared\)](#) (2023), Birte Böök et al, pp. 189-193.

¹²⁷ For example, Croatia, Estonia, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Serbia and Sweden; see *ibid.*

¹²⁸ For example, Denmark, Finland, France, Ireland, Lithuania, North Macedonia, Slovenia and the United Kingdom; see *ibid.* See also e.g., in **Uzbekistan**, Article 7 of the [Law on Guarantees of Equal Rights and Opportunities for Women and Men](#) (2 September 2019) prescribes a “gender-legal expertise of normative legal acts and their drafts to be carried out by state bodies and other organizations in the relevant areas of activity”. In the **Kyrgyz Republic**, gender expertise is to be carried out by state bodies, local governments and civil society organizations (Article 29 of the [Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women](#)).

¹²⁹ For example, Cyprus, Czechia, Hungary, Italy, Latvia, Montenegro, Poland, Portugal, Romania, Slovakia and Turkey; see *ibid.*

¹³⁰ For example, in **Iceland**, ministries and public institutions have a legislative obligation to observe gender mainstreaming in all policymaking and planning, see the [Act on Equal Status and Equal Rights Irrespective of Gender](#) of Iceland, Article 30. In **Serbia**, the Law on Gender Equality states that the different interests, needs and priorities of women and men need to be taken into account when adopting public and other policies and making decisions on rights, obligations and interests (Article 7). This Law goes into detail in specifying measures to mainstream equality in different policy areas, such as labour, employment and self-employment, equal pay for equal work or work of equal value, social dialogue, social and health care, education, science and technological development, information and communication technologies and information society, defence and security, transport, energy, environmental protection, culture, public information, sports, management and supervisory organs and their bodies, political activity and public affairs including the exercise of electoral rights and political activity, political parties, trade unions and associations, sexual and reproductive health and rights, access to goods and services (see Serbia, the Law on Gender Equality, Articles 27, 34-50).

¹³¹ In **Greece**, the obligation to mainstream gender equality in public policies is broken down into specific actions required at ministerial level, namely an annual plan of action and progress report, quantitative and qualitative indicators on gender issues, and a gender impact assessment report in the impact analysis of draft legislation or regulations (see the [Law on Substantive Gender Equality, Preventing and Combating Gender-Based Violence](#) (Chapter B Integrating the Principle of Gender Equality and the Dimension of Rave into Public Policies, Article 10). In **Ukraine**, there is an obligation that legislation is subject to gender legal expert examination with regard to compliance with the principle of equal rights and opportunities of women and men. The findings of the expert examination are sent to the body which adopted the instrument. The detailed procedure for carrying out a gender expert examination will be established by the Cabinet of Ministers of Ukraine; see [Law of Ukraine on ensuring equal rights and opportunities between women and men](#), Article 4 on gender legal expert examination. In the **United Kingdom**, gender mainstreaming takes the form of a public sector equality duty. This means that a public authority must, in the exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited; (b) advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it; see UK, Section 149 of [2010 Equality Act](#). In **Sweden** undertaking an *ex ante* gender impact assessment is a legal obligation. It applies in processes of drafting laws and policies, and for all government initiatives. In addition to a strong obligation and a serious consideration of these impact assessments, there is also an obligation for including findings from a gender impact assessment in the budget circular by all entities that make proposals to the ministry in charge of finances.

¹³² See ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (2024), para. 156.

(positive, negative or neutral) effects of a policy, law, programme or activity in terms of gender and specific characteristics of certain groups.

64. Gender impact assessments, depending on the institutional settings and actors involved in different countries, may be conducted by the governmental body/unit proposing a law, as part of a comprehensive RIA,¹³³ by governmental institutional mechanisms for gender equality¹³⁴ or as a combination thereof.¹³⁵ Each approach has its advantages and disadvantages: while a centralized government-led approach may enhance capacities, awareness and ownership in this field in the government, and introducing gender impact assessments into comprehensive RIA may raise it higher on the political agenda, this may not lead to in-depth assessments.¹³⁶ This will be different where such assessments are conducted by institutional mechanisms for gender equality, which may, however, struggle to convey key concepts to the rest of the government. Similar issues may arise for other forms of assessments focusing on the concerns of specific groups, such as national, ethnic or religious communities, or persons with disabilities. Public consultations, that are inclusive and accessible, should be systematically incorporated as part of the RIA process and provide meaningful opportunities for input to all interested stakeholders.¹³⁷

2.7.2. Gender Audits

65. Some countries also conduct gender audits that are a useful tool for the purposes of planning, evaluating or advancing gender mainstreaming on the level of individual institutions or organizations. Gender audit findings can be used to propose and introduce a number of measures to promote gender equality and to transform individual institutions from inside.¹³⁸ Especially, a number of national parliaments in the OSCE region use gender audits to develop parliamentary gender action plans or roadmaps.

2.7.3. Gender-Sensitive Language

66. **Gender aspects should also be considered in the language used in laws,¹³⁹ policies, public/administrative documents and/or the media.¹⁴⁰** Certain GELs specifically address the use of gender-sensitive language by public authorities and/or by the media.¹⁴¹

¹³³ In **Austria**, since 1 January 2013, as a part of a regulatory impact assessment, the dimension of gender equality has to be addressed with respect to benefits, employment, income, education, unpaid work, decision-making and health. In **Belgium**, the RIA integrates, among other, the gender test, which assesses the impact of regulation proposals on women and men.

¹³⁴ **Spain**: Catalonia has developed a fully externalized and centralized model for carrying out gender impact assessment, in which the Catalan Women's Institute, as the central gender equality body at the regional level, is the sole institution in charge of performing the impact assessment.

¹³⁵ In **Denmark**, Gender impact assessment has to be performed by respective ministries, whereas the Division for Gender Equality is usually consulted throughout the process and provides tools on the intranet website to all ministries.

¹³⁶ See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 156.

¹³⁷ See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 149.

¹³⁸ For example, the [Law on Guarantees of Equal Rights and Opportunities for Women and Men](#) of the **Republic of Uzbekistan** (Articles 8² and 8¹) contains provisions on gender audit.

¹³⁹ See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 223, meaning that the language of the law should explicitly consider its audiences and make specific linguistic choices; it is further noted that regardless of the language in which laws are drafted, legislation should avoid the use of language that refers explicitly or implicitly to only one gender (gender specific language) or group or that they do so only when it serves the effectiveness of the law or a specific reason (for example, the law addresses a specific gender).

¹⁴⁰ See Council of Europe, [Recommendation CM/Rec\(2007\)17 of the Committee of Ministers to member states on gender equality standards and mechanisms](#), para. 18, recommends the “*adoption/existence and implementation of norms imposing an obligation on the public sector to use non-sexist language in official documents, particularly in legal texts, policy papers, programmes, forms and questionnaires*” and “*a clear mandate of gender equality institutions and other relevant institutions to monitor the implementation of the principle of the use of non-sexist language*”. See also *UN Guidelines for Gender-Inclusive Language* in Arabic, Chinese, English, French, Russian or Spanish English, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context, available at: <[UNITED NATIONS Gender-inclusive language](#)>. European Institute for Gender Equality, [Toolkit on Gender-sensitive Communication - A resource for policymakers, legislators, media and anyone else with an interest in making their communication more inclusive](#) (2019); Council of the European Union, [Inclusive communication in the General Secretariat of the Council of the European Union](#) (2018).

¹⁴¹ In **Greece**, the [Law on Substantive Gender Equality, Preventing and Combating Gender-Based Violence](#) adopted in 2019 provides: “*The use of expressions that include or imply gender discrimination in the drafting of administrative documents is prohibited*”. In **Serbia**, the

2.7.4. Gender-Responsive Budgeting

67. Gender-responsive budgeting¹⁴² is also an important part of gender-responsive policy- and lawmaking and helps, among others, ensure that budgets contribute to the mitigation of inequalities and do not deepen them, while actively addressing specific gender related considerations.¹⁴³
68. GELs of certain pSs introduce obligations for gender-responsive budgeting.¹⁴⁴ It is good practice to ensure that these provisions are specific and are complemented with special scrutiny, reporting and publicity responsibilities.

2.7.5. Disaggregated Data Collection

69. General Recommendation No. 9 of the CEDAW Committee¹⁴⁵ highlights that statistical information is absolutely necessary in order to understand the real situation of women and help policymakers to formulate policies and plans, monitor changes and inform the public. Several GELs specifically provide for the collection of sex or gender disaggregated data, at times further disaggregated taking into consideration other characteristics, such as age.¹⁴⁶ It is a good practice to designate specific entities with specific obligations to collect and keep sex and gender disaggregated data for their respective areas of responsibility.

new [Law on Gender Equality](#) adopted in 2021 defines “gender-sensitive language” as “a language that promotes the equality of women and men and a tool that influences the awareness of those who use that language in the direction of achieving equality, including changes in opinions, attitudes and behavior within the language they use in their personal and professional lives” and provides an obligation to use gender-sensitive language for public authorities with respect to the names of workplaces, positions, titles and occupations, as well as within the framework of their competences (Article 25), as well as for public authorities and employers performing tasks in the field of education and upbringing, science and technological development (Article 37) and public information media (Article 44).

¹⁴² Gender- and diversity-responsive budgets are not separate budgets for men and women, and other groups, but rather budgets that ensure that the needs and interests of individuals from different social groups (gender, age, ethnic origin, disability, location, etc.) are addressed in expenditure and revenue policies.

¹⁴³ See ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (2024), para. 225.

¹⁴⁴ See e.g., in **Serbia**, gender responsive budgeting is a general obligation of the public authorities and entails a gender-based analysis of the budget and to plan revenues and expenditures in a way that improves gender equality (see the Law on Gender Equality, Article 5 Gender responsive budgeting). In **Greece**, the budgets of the Ministries and legal entities under public law are expected to reflect the gender dimension in their preparation and in the accompanying actions (see Article 11 Gender mainstreaming in budgets). In **Canada**, the [Canadian Gender Budgeting Act 2018](#) introduces specific obligations to mainstream gender equality and diversity in the budget process: a) an obligation on the Minister of Finance to table before each House of Parliament a report on the impacts in terms of gender and diversity of all new budget measures, if an assessment of impacts is not included in the budget plan made public; b) an obligation of the Minister of Finance once a year to make available to the public analysis of impacts in terms of gender and diversity of tax expenditures; and c) an obligation of the President of the Treasury Board once a year to make available to the public analysis of impacts in terms of gender and diversity of the existing Government of Canada expenditure programs. A Statement and Impacts Report on gender, diversity and quality of life and the Budget 2023 Impacts Report are published on an annual basis.

¹⁴⁵ [CEDAW General Recommendation No. 9](#): Statistical data concerning the situation of women.

¹⁴⁶ In **Greece**, public services, legal persons under public law and legal persons under private law are obliged to collect and keep gender-based statistics for their areas of responsibility and send this data to the Documentation, Research and Digital Support Department (Observatory) of the former General Secretariat of Gender Equality (see the [Law on Substantive Gender Equality, Preventing and Combating Gender-Based Violence](#), Article 13 Keeping of statistics). In **Spain**, public authorities, in the elaboration of their studies and statistics are obliged to a) Systematically include the sex variable in any statistics, surveys or data gathering in which they engage b) Establish and include new statistical indicators that provide for a fuller understanding of the differences in values, roles, situations, conditions, aspirations and needs of women and men, and their expression and interaction in the reality analysed; c) Design and introduce the indicators and mechanisms required to ascertain the effect of other variables whose concurrence generates multiple discrimination in the different domains where action is taken; d) Take sufficiently large samples for the variables studied to be exploited and analysed in terms of the sex variable; e) Mine the data available to acquire an understanding of the different situations, conditions, aspirations and needs of women and men in the various areas where action is taken; f) Review and revise existing statistical definitions to contribute to the recognition and revaluation of women’s work and avoid the adverse stereotyping of certain communities of women. Failure to comply with any of the above obligations may be justified, only exceptionally, via a reasoned report to the competent body. The National Statistical Institute and other public bodies are under an obligation under the Equality Act to collect sex-disaggregated data. The state statistical authority has a special website section on gender statistics in a number of areas in public life, including employment, health, education, and so on. It also publishes a special annual report on women and men in Spain. According to Article 8 of the the [Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women](#), the collection of information on gender statistics in the **Kyrgyz Republic** is managed by the National Statistical Committee. State bodies, local government bodies and heads of legal entities, regardless of their form of ownership, are required to submit relevant information on gender issues to the National Statistical Committee. In **Uzbekistan**, Article 8 of the [Law on Guarantees of Equal Rights and Opportunities for Women and Men](#) provides that “state statistics bodies collect, process, accumulate, store, analyze and publish statistical information reflecting the situation of women and men in all spheres of society based on gender indicators. The formation of gender indicators is based on: state statistical observations carried out by state statistics bodies; administrative data of government bodies; statistical observations systematically carried out by government and economic management bodies, local executive authorities. Gender indicators can also be formed on the basis of statistical data from citizens’ self-government bodies, non-governmental non-profit organizations and other civil society institutions.”

2.7.6. Inclusive Public Consultations

70. GELs do not generally include specific provisions on public consultations, including with gender equality experts and civil society organizations, including those promoting gender equality, ensuring a systematic engagement of a wide array of stakeholders at an early stage and throughout the process of policy- and lawmaking to promote gender equality but also in policy- and lawmaking processes that may unduly impact women.
71. Consultations should already be part of the initial policy discussions on how to resolve an identified problem or challenge or on potential legislative intent, as at this stage it will still be possible to make significant changes to a concept; at the same time, they should also take place at various stages throughout the legislative process, as a draft policy evolves into a draft law, and as this draft law undergoes various amendments and additions.¹⁴⁷
72. It is to be noted that effective **gender mainstreaming is proven most effective if preceded by a strategic approach**¹⁴⁸ to be introduced by the states to ensure its coherent application throughout the whole process of policy- and lawmaking, including through regular monitoring and evaluation of possible negative contents and impacts of legislation which should then lead to further policy discussions on how to amend legislation in a manner that is compliant with the principles of equality and non-discrimination.

V. INSTITUTIONAL FRAMEWORK AND MECHANISMS FOR MEASURING PROGRESS IN GENDER EQUALITY AND ENSURING OVERSIGHT AND ACCOUNTABILITY

73. In accordance with the CEDAW and General Recommendation No. 28, a state must establish an institutional framework and mechanisms to pursue the realization of all the CEDAW obligations, and sufficient resources should be allocated for that purpose. This includes the setting up of an IMGE within the executive branch of the government, independent monitoring bodies tasked with a gender equality mandate,¹⁴⁹ and courts and tribunals to adjudicate in individual cases. When it comes to the IMGE, it should be tasked with taking initiatives, co-ordinating and overseeing the preparation and implementation of legislation, policies and programmes necessary to fulfil the obligations of the State Party under the CEDAW.¹⁵⁰ These institutions should be empowered to provide advice and analysis directly to the highest levels of government.
74. In addition to the CEDAW, the BPfA underlines the fundamental role of a national machinery for the advancement of women as the central policy-coordinating unit inside government, underlining that its main task is to support government-wide mainstreaming of a gender equality perspective in all policy areas. The BPfA also provides concrete

¹⁴⁷ See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 226. See also OECD, *Policy Framework for Gender-Sensitive Public Governance* (2021), Box 5.4, which recommends using consultative mechanisms that invite both gender equality experts and civil society organisations to participate early and often throughout the policy cycle.

¹⁴⁸ For example, **Portugal** does extensive planning and conducts training activities which include different aspects of gender mainstreaming, such as gender-responsive budgeting and gender-sensitive language. Such strategic approach and devotion of resources make for important investments in human resources as a key segment of gender mainstreaming. Another example of strategic approach to gender mainstreaming is **Belgium** experience of adopting a Federal Plan on Gender Mainstreaming (since 2012) on the basis of the Gender Mainstreaming Act.

¹⁴⁹ Such as by establishing independent equality bodies or women's commissions, or ensuring that existing bodies such as NHRIs receive a mandate to promote and protect the rights guaranteed under the CEDAW; see CEDAW Committee, *General Recommendation No. 28* on the Core Obligations of States Parties under Article 2 of the CEDAW, para. 28.

¹⁵⁰ CEDAW Committee, *General Recommendation No. 28* on the Core Obligations of States Parties under Article 2 of the CEDAW, para. 28.

recommendations for such mechanism to be effective.¹⁵¹ Building on the BPfA, the Recommendation CM/Rec(2007)17 of the Committee of Ministers of the CoE to Member States on gender equality standards and mechanisms provides further guidance regarding IMGEs.¹⁵² In addition, some standards focus on mandating an equality body with prevention and protection against sex- and gender-based discrimination.¹⁵³

1. INSTITUTIONAL FRAMEWORK

75. The institutional framework on gender equality comprises different levels of bodies, including governmental institutions, focal points, parliamentary bodies, independent bodies, consultative, regional, local or others bodies. To ensure an effective and efficient implementation of gender equality laws leading to substantive equality between women and men, the relevant institutional mechanisms need to be effective, operational and not overlapping and conflicting between one another in their respective spheres of intervention and mandates.¹⁵⁴ At the same time different institutions and bodies should be able to establish an efficient co-operation between each other for the joint goal of achieving equality.

1.1. Institutional Mechanisms for Gender Equality

76. GELs generally elaborate on the respective roles and responsibilities of various public authorities and bodies, and on institutional mechanisms within the executive branch for the advancement of women. While the institutional architecture of women's machineries in the region differs from country to country, their mandates generally consist of: co-ordinating, facilitating and monitoring policy formulation to ensure the incorporation of women's empowerment perspectives; facilitating the exchange and sharing of experiences, information and good practices on promoting substantive equality; developing the gender competency of stakeholders to influence engendering of policies,

¹⁵¹ See BPfA, in Chapter IV, Section H, para. 201, which provides that (i) it should be located at the “highest possible level in the Government, falling under the responsibility of a Cabinet minister”, (ii) it should be able to establish “institutional mechanisms or processes that facilitate, as appropriate, decentralized planning, implementation and monitoring with a view to involving non-governmental organizations and community organizations from the grass-roots upwards”, (iii) it should be allocated sufficient human and financial resources, (iv) it should have the opportunity to “influence development of all government policies”.

¹⁵² See Council of Europe, [Recommendation CM/Rec\(2007\)17 of the Committee of Ministers to member states on gender equality standards and mechanisms](#), para. 72, which points to some basic requirements for the creation, reinforcement or effective functioning of these mechanisms building upon those requested by the Beijing Platform for Action as follows: “(ii) that gender equality mechanisms be at the highest political level; more specifically, that the national co-ordinating unit be at the highest level of government, under the direct responsibility of the president, prime minister or cabinet minister, and that units or focal points be set up within ministries or other government departments or within regional and local power structures, at the highest level of those departments and structures; (iii) that institutional mechanisms have the necessary authority, visibility, political recognition, necessary funding and human resources, and that their action is fully supported by political power at the different levels of its exercise; (iv) that the overall structure of gender equality machinery includes an interdepartmental/inter-ministerial structure with high level representatives with decision-making powers from all relevant policy areas in order to ensure the effective functioning of the process of gender mainstreaming; (v) that the mandate of institutional mechanisms has a clear legal basis with well-defined functions and responsibilities; and that these necessarily include the dual-track approach to gender equality work: 1. specific policies and actions, including positive action when appropriate, in critical areas for the advancement of women and for gender equality; 2. promotion, monitoring, co-ordination and evaluation of the process of gender mainstreaming in all policies and programmes; (vi) that institutional mechanisms develop gender expertise both within themselves and as capacity builders for gender equality at different levels of government and administration and for that purpose develop methods, instruments and tools for gender analysis/gender impact assessment and gender budgeting, as well as training on gender equality and the use of these methods, instruments and tools; (vii) that resources for the core operational costs of institutional mechanisms – staff, facilities, regular functioning of the institution – are the sole responsibility of the state, even if funding for specific actions and projects can also be found from various sources; (viii) that institutional mechanisms establish formal and informal links of co-operation with other public institutions and administrations in general; (ix) that institutional mechanisms establish formal and informal links of co-operation with a wide range of civil society organisations, namely women’s and human rights NGOs, the media, the research and academic community, social partners and other relevant social actors, as well as with international and European organisations pursuing gender equality objectives; (x) that mechanisms for gender equality are established at parliamentary level, as well as independent agencies and other bodies, such as ombudspersons that may receive complaints for discrimination on the basis of sex”. The Recommendation also underline that elements indicating states’ political will and commitment to gender equality in this regard include the existence of a clear mandate of gender equality institutions and other relevant institutions to monitor the implementation of the principle of the use of non-sexist language (para. 18).

¹⁵³ For instance, the [2004 Goods and Services EU Directive](#) prescribes that equality bodies shall ensure “promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex” and provide independent assistance to victims of discrimination in pursuing their complaints about discrimination, conduct independent surveys concerning discrimination, and publish independent reports and making recommendations on any issue relating to such discrimination (Article 12).

¹⁵⁴ [ODIHR Opinion on the Draft Law on Gender Equality of North Macedonia](#), para. 42.

laws, programmes and projects; and lobbying for increased measures and resources to address gender inequality. However, there is a large variation in the OSCE region with respect to IMGEs' composition and structure,¹⁵⁵ which range from administrative agencies attached to a specific ministry or Prime Minister's Office to departments under specific ministries to fully-fledged ministries with dedicated resources, which are in charge of conducting the government gender equality policy. Where falling under the responsibility of line Ministries, for example Labour, Social Affairs, Health etc., **the mandate of the respective governmental institution should explicitly mention gender equality and offers a clear framework for intervention.**¹⁵⁶ It is also common to establish administrative units specializing on gender equality. Their role is to ensure effective mainstreaming and to monitor the application of equality legislation.¹⁵⁷

77. Irrespective of the particular form of the national machinery, **it is important to ensure in the law a precise demarcation and identification of the responsible bodies, their respective roles and responsibilities, election, and responsibilities, as well as modalities of co-operation and co-ordination.**¹⁵⁸
78. The necessary conditions for an effective functioning of IMGEs include: establishment at the highest possible level in the government falling under the responsibility of a

¹⁵⁵ The most common type of IMGEs within the OSCE region is the administrative agency or commissions/councils (the latter mostly in post-Soviet countries), attached to a specific ministry, or to the Office of the Prime Minister, but the majority are established as a result of a government decision, although for about 1/4th of OSCE pSs, IMGEs were established by law; see ODIHR, *Guide on Institutional Mechanisms as Critical Actors for Gender Equality: A Review from the OSCE Region* (2023), Section 2.1. In **Iceland**, the implementation of equality legislation and its supervision is entrusted to the Directorate of Equality and the Equality Complaints Committee (see the [Act on Equal Status and Equal Rights Irrespective of Gender](#) of Iceland). In **France**, there is a Deputy-Minister responsible for gender equality matters attached to the Prime Minister's Office. At national level, the Service for Women's Rights and Gender Equality (SDFE) is the governmental body responsible for gender equality and gender mainstreaming and it falls under the responsibility of the General Directorate for Social Cohesion (*Direction générale de la cohésion sociale*, DGCS), located within the Ministry of Solidarity and Health (see <https://eige.europa.eu/gender-mainstreaming/countries/france>). In **Bosnia and Herzegovina** (Articles 25-26 of the [Law on Gender Equality](#)), the Agency for Gender Equality under the Ministry for Human Rights and Refugees is empowered to keep under review the implementation of the Law. In **Albania**, the state authority responsible for the implementation of the [Law on Gender Equality](#) and of the state programs on gender equality is the Ministry in charge of gender equality issues (Article 13 of the [Law on Gender Equality in Society of Albania](#)). In **North Macedonia**, gender equality mechanisms have been established in accordance with the [Law on Equal Opportunities for Women and Men](#); the Commission for Equal Opportunities for Women and Men of the Parliament plays a significant role in the structure of national mechanisms for gender equality. Along with the Women Parliamentarians' Club, these bodies contribute to the promotion of equal opportunities for women and men in the decision-making processes. In addition, coordinators and deputy coordinators for equal opportunities for women and men are assigned in all ministries, coming from the lines of civil servants. Commissions for equal opportunities for women and men (as part of the local self-government councils, comprised of councillors with a mandate of 4 years) and coordinators for equal opportunities for women and men (civil servants, local self-government units' staff) have been established on a local level. They all have the legal obligations to implement the Law of Equal Opportunities of Women and Men, the strategic documents from the field of gender equality and to incorporate the gender perspective in strategic documents, plans and budgets, on a national and local level.

¹⁵⁶ In **North Macedonia** (Article 12 of the [Law on Equal Opportunities for Women and Men](#)), the Ministry of Labour and Social shall carry out the following activities: exercise care for the promotion of the equal opportunities for women and men in all areas of the social life; exercise care for the introduction of the principle of equal opportunities in the mainstream of reorganization, promotion, development and evaluation of the political processes at all levels and in all stages, at national and local level; give an opinion on the proposals for adoption of the general and special measures for establishment of the equal opportunities for women and men and monitor their application; cooperate with the Commission for Equal Opportunities for Women and Men in the Assembly in the preparation of laws, strategic documents and reports; submit to the Government or the competent ministries proposals for adoption of amendments to laws and other regulations significant for establishment of equal opportunities, as well as for adoption of general and special measures; prepare the draft strategy for gender equality and the plans for its implementation, monitor the implementation and publish annual reports about the activities and results of its implementation; coordinate and support the operation of the inter-ministerial group for promotion of equal opportunities for women and men in the policies and programs in all spheres of the social life; in cooperation with the Ministry of Foreign Affairs, monitor the implementation of the international agreements referring to equal opportunities and the promotion of the status of women, etc.,

¹⁵⁷ For example, in **Greece**, Article 10 of the [Law on Substantive Gender Equality, Preventing and Combating Gender-Based Violence](#) introduced the establishment of an Autonomous Gender Equality Office in each Ministry. The functions of the Autonomous Gender Equality Offices include: collecting and processing data on the incorporation of gender equality into the Ministry's policies, and formulating gender indicators; drawing up a gender impact assessment report of each bill; providing an overview of activities for the annual report of the government to parliament. In **Spain** (Article 77 of the [Organic Act for Effective Equality between Women and Men](#)), all ministries, in the scope of their areas of competence, will entrust one of its management bodies with the duties relating to the principle of equality between women and men, and in particular with the following: a) Securing the statistical information formulated by the ministry bodies and advising them accordingly; b) Conducting surveys to further equality between women and men in the respective areas of activity; c) Advising the ministry's competent bodies on the formulation of the gender impact report; d) Furthering ministry personnel's understanding of the scope and significance of the principle of equality, putting forward training proposals; e) Overseeing compliance of this Act and the effective implementation of the principle of equality.

¹⁵⁸ [ODIHR Opinion on the Draft Law on Introducing Changes and Amendments to the Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality](#), para. 47

Cabinet minister; a clearly defined mandate and the authority to execute it; opportunity to influence the development of all government policies and draft legislation,¹⁵⁹ including through involvement in *ex ante* and *ex post* impact assessments, while also allocating adequate resources for this purpose;¹⁶⁰ the allocation of adequate financial and human resources, including in terms of professional competence of staff on gender equality but also skills in policy analysis, advocacy, communication and monitoring.¹⁶¹

79. Intergovernmental bodies are also common in institutional frameworks on gender equality. Their main role is to ensure co-ordination and alignment of sectoral gender policies.¹⁶² In this respect, it is essential to specify the different roles played by the intergovernmental body and the central government body with the mandate on gender equality, and how these two bodies shall co-operate and co-ordinate their work.¹⁶³ The work of governmental and intergovernmental institutions is often supported by advisory bodies whose main function is to provide support and advise in the design and implementation of gender equality policies.¹⁶⁴

1.2. Parliamentary Bodies

80. Parliamentary bodies/committees play a key role in the policy- and lawmaking process to ensure the proper implementation of gender-based analysis. In some countries, GELs provide a clear mandate for the parliaments in the area of gender equality.¹⁶⁵ At times,

¹⁵⁹ *Ibid.*

¹⁶⁰ See e.g., ODIHR, [Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro](#) (2023), para. 150.

¹⁶¹ See BPfA, in Chapter IV, Section H, para. 201; and Council of Europe, [Recommendation CM/Rec\(2007\)17 of the Committee of Ministers to member states on gender equality standards and mechanisms](#), para. 72.

¹⁶² For example, in **Spain** an Inter-Ministerial Commission for Equality between Women and Men is responsible for the co-ordination and mainstreaming of the principle of equal treatment and opportunities across government departments. All ministries participate in the Commission and meet at least twice a year. The functions of the Inter-Ministerial Commission include: monitoring and co-ordinating the implementation of the principle of equal treatment and opportunities between women and men in the General Administration of the State and its active integration in the adoption and implementation of its regulatory provisions, in the definition and budgetary allocation of their public policies and the development of all their activities; analysis, discussion, and follow-up of the 'Strategic Plan for the Effective Equality of Women and Men'; co-ordinating and supervising the elaboration of the Government's periodic report, as established in Article 18 of the [Organic Act for Effective Equality between Women and Men](#), on the effectiveness of the principle of equality between women and men in all its actions; monitoring and coordinating the development and implementation of the gender impact reports and the actions of the Equality Units set up in each ministerial department, as well as the participation of women in the posts of representation and management of the General Administration of the State; monitoring of the agreements adopted, and the development of the actions undertaken within the European Union and international bodies, relating to the achievement of equality between women and men and the elimination of all discrimination on the grounds of sex, without prejudice to the powers conferred on other bodies in the field (see Article 5 of Royal Decree 1370/2007). In **Finland**, an inter-departmental structure co-ordinates gender-mainstreaming activities. There are gender mainstreaming working groups in every ministry, which plan and implement gender mainstreaming in their policy sector. The inter-ministerial network of these working groups holds meetings every second month to discuss and develop gender mainstreaming (<<https://eige.europa.eu/gender-mainstreaming/countries/finland>>). In **France**, the Inter-ministerial Committee of Women's Rights and Gender Equality has the responsibility for the enforcement of women's rights, the fight against gender stereotypes and discrimination, combating gender-based violence and the promotion of gender equality in all fields of government action. The Committee meets at least twice a year, with all Government Ministers in attendance. It is presided over by the Prime Minister or the Deputy-Minister responsible for Equality between Women and Men. The Committee adopts the Inter-ministerial Action Plan for professional equality between women and men, as well as an Inter-ministerial Plan to combat violence against women. See France, Decree No. 2012-1097 of 28 September 2012. See also <https://eige.europa.eu/gender-mainstreaming/countries/france>. In **Sweden** gender mainstreaming is supported by an inter-ministerial working group on gender mainstreaming that meets quarterly. All 11 ministries have a gender equality coordinator in the working group, as does the Office of the Prime Minister (see <<https://eige.europa.eu/gender-mainstreaming/countries/sweden>>).

¹⁶³ [OSCE/ODIHR Opinion on the Draft Law on Gender Equality of North Macedonia \(2021\)](#), para. 150.

¹⁶⁴ In **Greece**, the National Council for Gender Equality (Εθνικό Συμβούλιο Ισότητας των Φύλων, established by the [Law on Substantive Gender Equality, Preventing and Combating Gender-Based Violence](#), is an advisory body composed of 11 representatives from ministries, academia, and NGOs that discusses and evaluates existing gender equality policy and proposes policies and actions.. In **Albania**, under the [Law on Gender Equality in Society](#) (Article 11), the National Council on Gender Equality is an advisory body which is chaired by the minister in charge of gender equality matters and is composed of ten representatives appointed by the government and three by civil society. The mandate of the members of the National Council for Gender Equality is 4 years, with the right to re-appointment, with the exception of members elected *ex officio*. Renewal of all the council members at the same time shall be prohibited, in every case

¹⁶⁵ For example, in **Ukraine**, according to Article 9 of the [Law on Ensuring Equal Rights and Opportunities for Women and Men](#), the Parliament of Ukraine (*Verkhovna Rada*) is mandated to define the basic principles of the state's gender policy; apply the principle of ensuring equal rights and opportunities of women and men in legislative activities; within the limits stipulated by the Constitution of Ukraine, carry out parliamentary control over the implementation of legislative acts on ensuring equal rights and opportunities for men and women and. In the **Kyrgyz Republic**, according to the [Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women](#), the Parliament (*Jogorku Kenesh*), through the adoption of laws, forms the legal basis for the state policy of gender equality in all spheres of state and public life. The *Jogorku Kenesh*, within its competence, taking into account the representation of no more than seventy percent of persons of the same sex: on the proposal of the President, elects judges of the Supreme Court (including judges of the Constitutional Chamber of the Supreme Court); approves the composition of the Council for the Selection of Judges; elects members of the Central Commission for Elections and Referendums; elects members of the Accounts Chamber; elects deputy *Akykatchy* (Ombudsman) on the recommendation of the *Akykatchy* (Ombudsperson).

they also foresee the existence of a gender equality committee (hereinafter "GEC")¹⁶⁶ and its competencies.

81. In this respect, to ensure a proper parliamentary gender sensitive scrutiny, it is generally recommended to provide that all draft laws submitted to the Parliament should include a gender impact assessment and the absence of one should justify the draft's return to the initiator.¹⁶⁷ In addition, the **GECs should be mandated to consider all draft laws' compliance with national and international gender equality commitments prior to their consideration in the sitting of the Parliament, and not just those draft laws that directly relate to gender equality.** The respective opinions of the GECs should be submitted to the lead committee for consideration.¹⁶⁸
82. Furthermore, it is important that parliaments in OSCE pSs have all necessary mandate and capacities to assess retrospectively the outcomes of existing legislation so as to determine whether it should be maintained, amended or repealed. In this respect, consideration should be given to **increasing the parliamentary oversight over the implementation of laws, by establishing a system of reporting on major legislation in force,** including in terms of gender equality, to determine whether such legislation has achieved its goals.¹⁶⁹

1.3. Independent Equality Bodies

83. Independent equality bodies play an important role in gender equality legislation as institutions which monitor the law, mediate between individuals and the state, resolve complaints, impose fines or sanctions etc. They promote equal treatment by providing independent assistance to victims of discrimination, conducting independent surveys, publishing independent reports and making recommendations on matters relating to discrimination. They may be stand-alone bodies with a single mandate focusing on gender equality or NHRIs with a wider mandate which would also include (gender) equality¹⁷⁰.
84. In the 2004 OSCE Action Plan for the Promotion of Gender Equality, OSCE pSs committed to "*establish or strengthen existing mechanisms for ensuring gender equality, inter alia by making available the services of an impartial and independent person or body, such as an Ombudsman/Human Rights Commissioner, to address gender related discrimination against individual citizens*". The European Commission against Racism and Intolerance (ECRI) of the Council of Europe, General Policy Recommendation no.

¹⁶⁶ In **North Macedonia**, Article 9(4) of the [Law on Equal Opportunities for Women and Men](#) mandates the Parliament of North Macedonia (the Assembly) to form and define the composition and the competences of the Commission for Equal Opportunities for Women and Men as a standing working body. The Commission for Equal Opportunities for Women and Men shall undertake the following activities: review the draft laws and other regulations adopted by the Assembly in the spheres referred to in Article 1 paragraph (2) of this Law, the Budget of the Republic of North Macedonia, as well as other draft laws and regulations with regard to the inclusion of the gender concept therein, review of the draft strategy for gender equality, monitor the adoption and application of the basic and special measures for establishment of equal opportunities for women and men in all the spheres of the public and private sector, monitor the system of measures for elimination of the unequal treatment for women and men, adopt amendments to laws and other regulations in the field of equal opportunities for women and men, exercise care for consistent implementation of the provisions of this Law and other laws in the field of equal opportunities for women and men and non-discrimination, promote cooperation among competent bodies on issues related to equal opportunities for women and men, raise initiatives and take actions against application of gender stereotypes and prejudices in the public life, provide information on regular basis to the Assembly with regard to all matters related to equal opportunities for women and men.

¹⁶⁷ See e.g., ODIHR, [Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro](#) (2023), para. 151. See also ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (2024), para. 159.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*, para. 131

¹⁷⁰ According to the [Law of Ukraine on Ensuring Equal Rights and Opportunities for women and men](#) (Article 9), the Ukrainian Parliament Commissioner on Human Rights oversees the preservation of the equal rights and opportunities of women and men as part of its broader mandate to oversee the preservation of the rights and freedoms of people; examines applications about gender based discrimination and gender based violence; prepare annual reports on equal rights and opportunities of women and men and gender based violence. In **North Macedonia** the Ombudsperson shall, within its legally determined competence, be responsible for the exercise of the equal opportunities through legal protection of the equal opportunities for women and men in the cases of violation or limitation of someone's rights by a state administrative body or by other bodies or legal entities and natural persons that have been vested with public authorizations (see Article 13 of the Law on Equal Opportunities for Women and Men).

2 on Equality Bodies (revised in 2017) may serve as useful reference.¹⁷¹ In the EU, EU Directives 2004/113/EC2 and 2006/54/EC3 require Member States to establish or designate bodies for the promotion of equal treatment on the grounds of gender.¹⁷² Furthermore, the Paris Principles set out the minimum standards that NHRIs must meet in order to be considered credible and to operate effectively.¹⁷³

85. Over the last years, many OSCE pSs have established independent equality bodies although their functions and remit differ significantly.¹⁷⁴
86. At the same time, many equality bodies experience certain shortcomings, in particular with regard to their independence and insufficient guarantees against external influence and availability of human, technical and financial resources to fight discrimination.¹⁷⁵
87. **In this respect, it is important to provide in law strong guarantees for equality bodies to be free from external influence. The composition of the equality body and the manner in which persons are elected or chosen to be members of the body should be precisely defined in the law,¹⁷⁶ and should be designed to guarantee the independence of such a body while ensuring the openness, transparency, inclusiveness of the procedure of selection and appointment.** It should also be equipped with prevention and promotion competences, support and litigation competences, as well as powers to obtain evidence and information.¹⁷⁷

1.4. Research Bodies

88. Research bodies can play an important role in the implementation of gender equality policies and legislation and are often encountered within the institutional framework for gender equality set in place in a particular country.¹⁷⁸
89. **It is important to clearly define the roles and competences of the research bodies to avoid overlap and conflicting mandates with the central government body**

¹⁷¹ See <16808b5a23 (coe.int)>.

¹⁷² EU Directives 2000/43 and 2006/54 require EU member states to designate a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds, respectively, of racial or ethnic origin and of sex. See Article 13 of [EU Directives 2000/43](#); Article 20 of EU Directive [2006/54](#).

¹⁷³ See the [Paris Principles](#) ('Principles Relating to the Status of National Human Rights Institutions'), adopted by General Assembly resolution 48/134 of 20 December 1993.

¹⁷⁴ In **Finland**, the Ombudsperson for Gender Equality (*tasa-arvovaltuutettu*) is an independent authority with its own separate budget, role, and mandate, which focuses exclusively on gender equality. The tasks of the Ombudsperson include monitoring the prohibition of discrimination, giving advice and guidelines for promoting equality, giving information on the Act on Equality and its implementation, monitoring equality issues in society, and starting conciliation efforts in cases of discrimination. The Ombudsperson may assist a victim in cases that are of considerable importance for the implementation of the Act. In 2008, the **Croatian** Parliament adopted a new [Gender Equality Act \(Official Gazette 82/08\)](#) according to which the Gender Equality Ombudsperson performs the tasks of an independent body in charge of combating discrimination in the field of gender equality. The responsibilities of the ombudsperson for gender equality include: receiving complaints from any natural persons or legal entities regarding discrimination in the area of gender equality; providing assistance to natural and legal persons who filed a complaint of sexual discrimination when instituting legal proceedings; taking steps to investigate individual complaints prior to the legal proceedings; conducting, with the consent of the parties involved, a mediation process with a possibility to reach an out of court settlement; collecting and analysing statistical data on cases of sexual discrimination; conducting independent surveys concerning discrimination, publishing independent reports and exchanging available information with corresponding European bodies. The Gender Equality Ombudswoman acts in an independent manner, monitors the enforcement of the Gender Equality Law and other regulations on gender equality and reports to the Croatian Parliament at least once a year.

¹⁷⁵ For instance, within the EU, in 2018, the European Commission recommended a set of measures for Member States to improve equality bodies' independence and effectiveness, in particular as regards their capacity, the need to provide the necessary human, technical and financial resources to fight discrimination, among other, on the grounds of sex/gender and sexual orientation. The recommendation also underlines the importance to provide in law guarantees for equality bodies to be free from external influence, and to raise awareness on the role of equality bodies and on how individuals can access them to exercise their rights if they experience discrimination; see European Commission: [Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies](#), 3.2 and 2.2.2.4. See also <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/tackling-discrimination/equality-bodies_en#>.

¹⁷⁶ [ODIHR Opinion on the Draft Law on Introducing Changes and Amendments to the Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality](#), para. 52.

¹⁷⁷ See ECRI [General Policy Recommendation No. 2 on Equality Bodies](#).

¹⁷⁸ For example, in **Greece**, the Research Centre for Gender Equality (Κέντρο Ερευνών για Θέματα Ισότητας) (KETHI) aims to eliminate gender-based discrimination and inequality and to promote and conduct research on gender equality topics through: conducting gender-sensitive analysis of policies and legislation, as well as research on gender equality issues; coordinating and/or implementing government decisions on gender equality; publishing and disseminating gender equality related information and training; providing legal support for victims of discrimination on the grounds of sex or gender.

responsible for the gender equality policy. For example, it should be clarified which body is responsible for raising awareness and building capacities within the civil service, which are essential elements for advancing gender equality. Moreover, it may be helpful to specify in the law where within the state administration this body will be located, in particular, whether it shall be part of the IMGE or a stand-alone body, and how it will co-operate with the key governmental body responsible for gender equality and with ministries and other bodies of public administration to ensure that it has enough practical information for its further research.¹⁷⁹

1.5. Regional and Local Structures

90. The regional level is relevant to gender equality and gender mainstreaming since in many countries, it has been devolved with competences on these issues. Local structures are also envisaged as part of the IMGE in GELs, although their competence and available resources vary considerably depending on the country.¹⁸⁰
91. Their role depends on the territorial organization and the allocation of gender equality competencies.¹⁸¹ It should be mentioned, however, that the CEDAW Committee has previously raised concerns regarding the limited effectiveness of the anti-discrimination/equality laws, in particular at the municipal level. **One of the solutions to improve this situation would consist of placing gender equality advisors/coordinators within local self-government administration and providing them with a regular training on gender equality issues.**

1.6. Gender-Balanced Representation in Public Decision-Making

92. In line with international obligations and commitments regarding gender-balanced representation in public decision-making at all levels, it is important to ensure that women are sufficiently represented in parliaments and governments and their respective bodies, including those involved in the policy- and lawmaking process. Balanced representation is also fundamental in order to enhance the perception of the legitimacy of the policy- and lawmaking processes and outcomes, i.e., adopted legislation.¹⁸² GELs across the OSCE region introduce certain provisions aimed at ensuring gender balanced representation in public decision-making through a variety of ways. For example, some

¹⁷⁹ [ODIHR Opinion on the Draft Law on Gender Equality of North Macedonia \(2021\)](#), para. 43.

¹⁸⁰ In **Greece**, there is an Equality Office of the Association of Greek Regions and all 13 Regions will have a Regional Committee for Gender Equality. Their functions include: Ensuring and supporting the integration of gender equality in the development of regional policies concerning the Gender Secretariat for Gender Equality's policies; Making proposals and suggestions to the competent bodies of the region regarding necessary measures to promote gender equality in all areas of economic, political, and social life; Suggesting the inclusion of relevant projects to the regional council; Cooperating with the Counselling Centre of the Gender Secretariat for gender equality in the region, as well as with civil society actors (the [Law on Substantive Gender Equality, Preventing and Combating Gender-Based Violence](#)). In **Albania** (Article 14 of the [Law on Gender Equality in Society](#)) local government bodies shall collaborate with central state institutions for implementing the legislation in force and state policies on gender equality. They shall collaborate closely with non-profit organizations for achieving gender equality in various fields in the territories they cover. Local government bodies carry out the gathering and processing of local gender disaggregated statistics. Local government bodies shall appoint one or several local gender equality employees in their structures. According to the Law "On state guarantees of equal rights and equal opportunities for men and women" of the **Kyrgyz Republic**, local government bodies carry out activities to develop and implement gender policy, coordinate their actions with the actions of executive bodies of state power in terms of supporting relevant state, regional and local programs (Article 27 of the [on State Guarantees of Equal Rights and Equal Opportunities for Men and Women](#)).

¹⁸¹ In **Spain**, local authorities are expected cooperate with other public administrations to achieve effective gender equality and Councils of Equality (*Consejos de Igualdad*) are in place in municipalities to assume responsibility for gender equality policy and, in some cases, gender mainstreaming (see Spain, Article 21 of the [Organic Act for Effective Equality between Women and Men](#) and <https://eige.europa.eu/gender-mainstreaming/countries/spain>). In **Greece**, at local level, a Committee for the Promotion and Monitoring of Gender Equality Policies in Local Government was established in March 2017 to formulate proposals and legislative interventions for gender equality in local government and to monitor local action plans. Independent offices for gender equality are to be established in the Central Union of Municipalities of Greece (KEDE, Κεντρική Ένωση Δήμων Ελλάδας) and the Association of Regions (EN.ΠΕ. Ένωση Περιφερειών Ελλάδας). Their functions include: Informing the municipal and regional councils on the establishment of the regional and municipal committees for gender equality, respectively; Cooperating with municipalities and regions to formulate and implement local and regional projects and activities on gender equality; Cooperating with elected and candidate women in local authorities to develop networks of partnerships with local bodies to increase the active participation of women in decision-making in local government; Informing women about the activities of the independent offices for gender equality, the General Secretariat for Family Policy and Gender Equality and other bodies active in the field of gender equality.

¹⁸² See ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (2024), para. 220.

of the pSs introduce in their GELs provisions on equal guarantees in the area of civil service,¹⁸³ public appointments,¹⁸⁴ equal representation and participation in the state and local self-government bodies by using certain quotas,¹⁸⁵ electoral rights' guarantees¹⁸⁶, requirements to political parties,¹⁸⁷ etc.

93. As far as appointment to public offices are concerned, it is good practice to specify in GELs **gender balance requirements in both the nomination process to identify candidates, as well as in the respective rules and procedures governing the appointment.**¹⁸⁸ To ensure the effectiveness of gender and diversity requirements in nomination and appointment procedures, it is also necessary to provide for the consequences of non-compliance.¹⁸⁹

¹⁸³ For example, Article 16 of the [Law of Ukraine on Ensuring Equal Rights and Opportunities for women and men](#) requires ensuring representation of candidates of each gender in the field of public service and service in local self-government bodies. Discrimination on the basis of gender when hiring for public service and service in local self-government bodies and during the service itself is prohibited. Heads of state authorities and local self-government bodies are obliged to ensure equal access of citizens to public service and service in local self-government bodies in accordance with qualifications and professional training, regardless of the applicant's gender. The same provisions are also contained in the Law of [Uzbekistan on Guarantees of Equal Rights and Opportunities for Women and Men](#) (Articles 16-17) and in the Law of the [Kyrgyz Republic on State Guarantees of Equal Rights and Equal Opportunities for Men and Women](#) (Articles 9-11). Article 10 of the [Law of Mongolia on Achieving Gender Equality](#) (2011, amended 2023) provides: "10.1.3. the representation of one gender among special government officials of organizations other than the armed forces, border and internal troops, intelligence, police, court decision enforcement, anti-corruption and emergency organizations must be at least 40 percent; 10.1.4. In the event that one gender clearly predominates among public service executives, policies and measures to ensure the ratio of 40:60 will be implemented in accordance with special programs and plans, and this provision shall not apply in cases specified in Article 6.5.6 of this law."

¹⁸⁴ See e.g., in [France](#), the [Law n° 2014-873 of 4 August 2014 for real equality between women and men](#), Article 66, which provides: "The gap between the number of women and the number of men members of the board of directors or supervisory board appointed by decree in application of 1° and 2° of article 5 cannot be greater than one." In [Norway](#), Section 28 of the [Equality and Prohibition of Discrimination Act](#) (2017, amended 2022) on "Gender balance in public committees" provides: "[w]hen a public body appoints or elects committees, boards, councils, committees, delegations, etc., both genders shall be represented as follows: a. If the committee has two or three members, both genders must be represented. b. If the committee has four or five members, each gender must be represented by at least two. c. If the committee has six to eight members, each gender must be represented by at least three. d. If the committee has nine members, each gender must be represented by at least four. e. If the committee has several members, each gender must be represented by at least 40 percent. The first paragraph also applies to the appointment and election of deputies. The Ministry may grant exemption from the requirement for gender balance if it has not been possible to find a sufficient number of qualified members of both genders. The first paragraph does not apply to committees, etc., which by law shall only have members from directly elected assemblies."

¹⁸⁵ In [Bosnia and Herzegovina](#), the [Law on Gender Equality](#) (Article 20) requires state bodies at all levels of organizations of authorities, and local self-government bodies, including legislative, executive and judicial authorities, political parties, legal persons with public authorities, legal persons that are in the state's property to promote equal gender representation in the process of managing, decision making and representation. This obligation shall exist for all authorized proponents during elections of representatives and delegations to international organizations and bodies. Equal representation of women and men shall exist in case when one of sexes is represented with at least 40% in the aforementioned bodies. In order to achieve equal gender representation, the above bodies are obliged to adopt temporary special measures.

¹⁸⁶ [Law of Ukraine on Ensuring Equal Rights and Opportunities for women and men](#) (Article 15) specifically requires that equal voting rights and opportunities for women and men should be ensured by the legislation of Ukraine. Political parties and electoral blocs, when nominating candidates for Members of Parliament of Ukraine in a multi-mandate nationwide electoral district, should ensure the representation of women and men in the respective electoral lists. Control over this requirement is to be carried out by election commissions.

¹⁸⁷ Article 16 of the [Law of North Macedonia on Equal Opportunities for Women and Men](#) requires the political parties in their acts to regulate the manner and measures for promotion of the equal participation of women and men in the bodies and organs of the parties.

¹⁸⁸ See e.g., in [Denmark](#), [Act on Equality between Women and Men](#) (2000, as amended 2022) provides: "§ 8. Public committees, commissions and the like set up by a minister to prepare the establishment of rules or planning of social significance should have a balanced composition of women and men. § 9. Authorities or organizations that are to propose a member of committees, etc. as mentioned in section 8 must propose both a woman and a man. If more Members are to be proposed, equal numbers of women and men must be proposed. The same applies where the authority or organisation is required by law to appoint members. The Minister decides who is to be appointed as a member and in this connection must strive for a balanced gender composition. Paragraph 2. The authority or organisation may derogate from paragraph 1 for special reasons. In such cases, the authority or organisation shall at the same time state the reasons for its decision." See also e.g., CoE [Recommendation CM/Rec\(2003\)3 of the Committee of Ministers to CoE Member States on the balanced participation of women and men in political and public decision-making](#) adopted on 30 April 2002. In cases where public bodies or organizations nominate candidates for appointment, certain countries have introduced an obligation to always propose two nominees, a woman and a man, see e.g., the example in Denmark, Appendix IV, Recommendation CM/Rec(2003)3.

¹⁸⁹ See e.g., ODIHR, [Opinion on Draft Amendments to Ensure Equal Rights and Opportunities for Women and Men in Political Appointments in Ukraine](#) (2013), paras. 32-35. See also e.g., in [France](#), the [Law n° 2014-873 of 4 August 2014 for real equality between women and men](#), Articles 66 and 75, which provide that said appointments shall be annulled if gender balance is not respected (except for appointments of members from the under-represented gender), though this will not render null and void the decisions that may have already been adopted by said body in the meantime. In [Denmark](#), [Act on Equality between Women and Men](#) (2000, as amended 2022) provides: "If authorities and organizations, etc. do not appoint or nominate members in accordance with paragraph 1, the Minister for Responsibility shall decide that the committee, commission, etc. shall function without the members concerned. The same shall apply if the Minister does not accept a justification under paragraph 2 for derogating from the provision of paragraph 1" (§ 9.3).

2. MECHANISMS FOR MEASURING PROGRESS IN GENDER EQUALITY AND ENSURING OVERSIGHT AND ACCOUNTABILITY

94. To make sure that gender equality and non-discrimination legislation is working and producing the desired results, its implementation needs to be consistently monitored, reviewed and evaluated. In this respect, gender equality laws should prescribe specific mechanisms to monitor and evaluate progress on the implementation of legislation and gender equality in a broader sense.¹⁹⁰
95. One of the most important roles that the IMGE plays is monitoring the implementation of national equality laws and international commitments under CEDAW and BPfA. Effective monitoring requires the regular collection and analysis of sex- and gender-disaggregated data, and potentially disaggregation taking into account other characteristics, from relevant government sectors such as the National Statistics Office, ministries on education and health, etc. in order to determine the effect that national policies are having on the day-to-day lives of women and girls, in all their diversity. IMGEs are then responsible for reporting this information to the CEDAW Committee (every four years) and to the UN Commission on the Status of Women (CSW) (every five years).
96. States should also establish or strengthen capacity of independent institutions (such as Independent Commissions, Supreme Audit Institutions, Ombuds Offices), parliament and advisory bodies (e.g., government councils) to monitor the implementation of gender equality strategies, integrate gender issues in policy- and lawmaking, and facilitate regular reporting, audits and measurement. Oversight institutions and advisory bodies should be mandated and given sufficient authority to monitor, oversee and promote the implementation of GELs by all the relevant bodies. In addition, independent oversight institutions and/or parliamentary bodies should be provided with adequate financial and human resources, and expertise to monitor, oversee and promote the implementation of gender equality over all of government.¹⁹¹

2.1. Review and Evaluation Clauses and Frameworks

97. Three distinct processes are relevant for assessing the impact of GELs: monitoring, review and evaluation. Monitoring compliance is the process of overseeing whether the respective actors (state and private bodies, entities, individuals, etc.) are complying with the obligations and duties in the area of gender equality that have been put on them. It aims at overseeing the implementation of legislation through the systematic collection of data. Review is an interim assessment of the “working” of the law and evaluation takes a broader perspective and appraises the law comprehensively in relation to its objectives. It is good practice for GELs **to include specific monitoring, review and evaluation clauses to ensure that sufficient, disaggregated data will be collected, that the implementation of a law will be reviewed at regular intervals and that an overall assessment of whether the law is effective will take place,**¹⁹² in order to inform

¹⁹⁰ See e.g., OSCE, [Action Plan for the Promotion of Gender Equality](#), adopted by the Decision No. 14/04 of 7 December 2004, which recommends OSCE pSs to utilize gender analysis and monitoring mechanisms to assess the impact of gender policies and strategies, so that constraints on their full implementation may be identified and addressed.

¹⁹¹ See OECD, [<Oversight and advisory bodies - Organisation for Economic Co-operation and Development \(oecd.org\)>](#), see e.g., in Sweden, the National Audit Office, or in Austria, the Parliamentary Budget Office (PBO).

¹⁹² For example, in accordance with Article 37 of the [Law of North Macedonia on Equal Opportunities for Women and Men](#) the supervision of the enforcement of the provisions of this Law and the regulations adopted thereon shall be conducted by the Ministry of Labour and Social Policy. Inspection supervision of the enforcement of the provisions of the Law and the regulations adopted thereon shall be conducted by the State Labor Inspectorate in accordance with the Law. The competent court shall conduct the misdemeanor procedure and shall impose the misdemeanor sanction for the misdemeanors determined by this Law. . In **Bosnia and Herzegovina**, the Gender Centre of the Federation of Bosnia and Herzegovina and the Gender Centre of the Republika Srpska shall monitor application of the Law at entities' level and perform following tasks for that purpose: a) Monitor compliance of laws and other acts, policies, strategies, plans and programs adopted at entity level, with domestic and international standards for gender equality; b) Provide opinion on compliance of

potential further reform. The respective bodies which have the relevant competencies should be identified while the law should include specific mechanisms that can be used to monitor compliance with legislation.

98. Many OSCE pSs establish in their GELs inspections and audits aim to ascertain whether and to what extent the defined actors are complying with their obligations.¹⁹³

2.2. Monitoring and Reporting

99. Regular reporting is a way to ensure publicity and awareness around the achievement of gender equality goals and monitor progress. It is good practice **to require public bodies to report at regular intervals on important aspects of gender equality, that these reports are available in the public domain and that parliaments are informed so as to ensure sufficient scrutiny of the process.**¹⁹⁴
100. To ensure that the respective legislative provisions on reporting are more conducive to practical implementation and not simply declaratory in nature, **it is advisable to establish in the law concrete reporting obligations of various branches of government, for instance, quarterly, annual etc., and to identify to which body such reports ought to be sent.**¹⁹⁵ The respective provisions of the law could also be supplemented by secondary legislation at a later stage, which would set out the exact criteria for reports and deadlines for submission.¹⁹⁶ Furthermore, **the IMGE should have**

laws and other acts, policies, strategies, plans and programs that are adopted at entity level with provisions of this Law and other domestic and international standards for gender equality and initiate harmonization; c) Monitor and analyse status of gender equality in entities; d) Prepare and develop regular and special reports on gender equality, prepare and develop information, opinions and recommendations to be delivered to entities' governments and other competent bodies, etc. (Article 27 of the [Law on Gender Equality](#) (consolidated version)).

¹⁹³ In **Finland**, the Ombudsman for Equality has the right to carry out inspections at a workplace, educational institution, organization representing labour market interests, or the business facilities of a provider of goods or services, if there is reason to suspect that actions have been taken that are contrary to equality legislation or that the obligations have not been complied with. In carrying out an inspection, the Ombudsman for Equality is entitled to receive executive assistance from other authorities. Inspections shall be carried out without causing unnecessary inconvenience or costs (see [Act on Equality between Women and Men](#) of Finland, Section 18 (1023/2008, "Inspections and executive assistance"). In **Sweden**, the Equality Ombudsman can supervise compliance with the equality Act ([Sweden](#), Chapter 4. Supervision). The Ombudsman aims to induce those to whom the Act applies to comply with it voluntarily. Supervision is an independent review aimed at verifying that the activities reviewed fulfil the requirements ensuing from this Act. In **Canada**, compliance with the Pay Equity Act 2021 Act is monitored by the Canadian Human Rights Commission (CHRC) which is responsible for investigating and managing cases and complaints under the CHRA, Charter and Employment Equity Act. The commission submits cases to the Canadian Human Rights Tribunal to hold hearings and make decisions on the cases. [The Pay Equity Act](#) has established a Pay Equity Commissioner within the CHRC, whose role is to ensure the implementation and compliance of the Act, assist persons in understanding the Act and facilitate the resolution of disputes relating to pay equity. The Commission can conduct compliance audits to ensure the enforcement of the obligations imposed on employers. Wherever possible, cases of non-compliance be resolved through persuasion and the negotiation of written undertakings. If that is not possible the Commission can designate employment equity compliance review officers for the purposes of conducting compliance audits of employers. A compliance officer can enter any place in which the officer believes on reasonable grounds there is anything relevant to the enforcement of any of those provisions; and require any person to produce for examination or copying any record, book of account or other document that the officer believes on reasonable grounds contains information that is relevant to the enforcement of any of those provisions (see <https://laws-lois.justice.gc.ca/eng/acts/E-5.401/page-2.html#h-215366>).

¹⁹⁴ See e.g., In **Denmark**, [Act on Equality between Women and Men](#) (2000, as amended 2022) provides: "The institutions and undertakings etc. referred to in paragraphs 1 and 2 which have set target figures, [target set by certain public institutions and enterprises for the share, including the number, of the under-represented sex on the boards and other collective management bodies] shall report to the Minister for Responsibility, the municipal council, the regional council or the collective management body of a municipal community" (§ 11.5).

¹⁹⁵ In **Spain**, the Ministry responsible for Equality between Women and Men and Equal Opportunities publishes an annual report entitled 'Key Figures: Towards Real Gender Equality' which aims to raise awareness on the state of equality between women and men. It presents key figures, sex-disaggregated statistics available in the fields of employment, education, health, culture, and violence against women, in France and worldwide. In **Sweden**, the Division for Gender Equality and the Swedish Gender Equality Agency report regularly to the Swedish parliament for the promotion of gender equality. In addition, the Minister for Gender Equality and Housing regularly informs and consults with the parliament. An official report is sent to the parliament through the Budget Bill wherein the government reports on how its efforts have led to results related to the overall target for Swedish gender equality policies, including the sub-targets on power, influence, finances, education, work, men's violence against women and physical integrity. Results on gender mainstreaming are also included in the Budget Bill. In **France**, the National Institute of Statistics and Economic Studies (*Institut national des statistiques et des études économiques, Insee*) presents an annual report on equality between women and men broken down by themes. Other publications focusing on women and men in the workplace are published on the Ministry of Labour's DARES website, while the Ministry of Education's DEPP regularly issues publications about equality between girls and boys from school to higher education. On its website, the Deputy Minister of Gender Equality also publishes a report on key figures related to gender equality.

¹⁹⁶ [ODIHR Opinion on the Draft Law on Introducing Changes and Amendments to the Law of the Kyrgyz Republic on State Guarantees for Ensuring Gender Equality \(2006\)](#), para. 25. The Ministry of Labour and Social Policy of **North Macedonia** is obliged to prepare national reports about the fulfillment of the international obligations in the field of equal opportunities and submit an annual report on its activities and the progress made with regard to the establishment of equal opportunities for women and men to the Government, by the end of June

the possibility to ensure that those bodies who are not meeting reporting requirements or employ discriminatory measures are held accountable.

101. The monitoring carried out by the CEDAW Committee on the status of implementation of the CEDAW and related recommendations in the form of Concluding Observations (hereinafter “COBs”), serve as a useful benchmark and reference to monitor and evaluate progress in the field of gender equality.¹⁹⁷ At the same time, pSs do not always make full use of them. In attempts to avoid this situation, it is generally recommended to establish **intersectoral working groups to study the COBs closely, group them by area and priority, and assign responsibility for them to relevant actors who should create a road-map and action plan to track implementation, which could become part of the broader National Gender Equality Strategy and Action Plan.** Another suggestion is to create manuals, customized for different government agencies, with indicators and targets that are tied to the COBs. For these ideas to be successful, however, it is critical that an adequate budget be allocated to effectively carry out this work.

VI. LEGAL CONSEQUENCES IN CASE OF NON-COMPLIANCE

102. States Parties to the CEDAW are required to provide appropriate remedies, including sanctions, where appropriate, for women who are subjected to discrimination.¹⁹⁸ In particular, Article 2 of the CEDAW foresees as one of the appropriate means for pursuing a policy of eliminating discrimination against women the adoption of sanctions (sub-para. b) and ensuring under the law and in practice the possibility to seek protection in front of national tribunals and other public institutions (sub-para. c).¹⁹⁹ Part of this

for the previous year at the latest (Article 12 of the Law on Equal Opportunities for Women and Men of North Macedonia). In **Bosnia and Herzegovina (BiH)**, the Agency for Gender Equality shall present and analyse status of gender equality in BiH on basis of reports developed by the Agency and reports from entities’ gender centres and produces annual report for the Council of Ministers of BiH. Based on the results from analysis and monitoring, the Agency shall produce special reports, opinions, suggestions and recommendations to be delivered to competent bodies at the state level. The Agency also determines the methodology for developing report on gender equality in BiH (Article 26 of the [Law on Gender Equality](#) (consolidated version)). In **Albania**, the State Authority responsible for the implementation of the law and state programs on Gender Equality within the first quarter of each year presents to the National Council on Gender Equality the previous year’s report on the activity of the office, the progress made to attain gender equality, problems encountered and the means for overcoming them (Article 26 of the [Law on Gender Equality in Society](#)). In the **Kyrgyz Republic**, state bodies and local self-government bodies submit annual reports on the implementation of gender policy to the authorized state body responsible for the implementation of gender policy, in the manner and on the basis of special forms approved by the Government, and publish them in the media (Article 7(3) of the [Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women](#)).

¹⁹⁷ The CEDAW Committee consists of experts in gender equality who are nominated by governments and elected every four years. The Committee’s task is to monitor how governments put CEDAW into practice by regularly reviewing States Parties’ reports as well as reports from civil society, and questioning governments that have ratified or acceded to the treaty on their progress in guaranteeing substantive equality. The Committee then issues a series of recommendations/COBs that assist the State under review in the further implementation of the CEDAW. These COBs outline positive aspects, principal subjects of concern and the Committee’s recommendations on critical measures that need to be taken to address challenges faced by the State Party and to successfully implement the Convention. COBs will have different implications for different sectors of government, depending on the sector’s responsibility (e.g. lawmakers, Ministries of Health and Education, justice mechanisms, etc.). The Committee’s recommendations are generally categorized by themes such as obligations for parliaments, reservations, legal status of CEDAW, BPfA, Millennium Development Goals, access to justice, violence against women, trafficking and exploitation, property rights, education, employment, health, power and decision-making, women’s participation in the political process and temporary special measures for advancing substantive equality for women and girls. COBs are very important resources for gender equality work. Not only do they provide authoritative guidance about what CEDAW requires in individual country contexts, but they are also valuable tools to advocate for necessary changes in a country. For example, COBs can be used: as a basis for measuring progress, by comparing the most recent observations with those from the previous reporting cycle to see if advances has been made in critical areas; to develop a framework for government policies and national strategies and action plans to advance gender equality (e.g. action plans to address violence against women); as a tool to advocate for larger budget allocations to promote equality; as a guideline for awareness raising and debate in the legislative process; as a monitoring and advocacy tool by NGOs to hold government, as well as the private sector, accountable for ensuring respect for women’s human rights; as a way to put gender equality at the centre of international negotiations.

¹⁹⁸ See Article 2 of the CEDAW and CEDAW Committee, [General Recommendation No. 28](#) on the Core Obligations of States Parties under Article 2 of the CEDAW, paras. 17, 32 and 34.

¹⁹⁹ In para. 17 of the [General Recommendation No. 28](#), it is stated that “States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals, in the public and private spheres. This protection shall be provided by competent tribunals and other public institutions and enforced by sanctions and remedies, where appropriate”.

obligation is to ensure, through adequate training and awareness raising, that all governmental bodies and organs are aware of the obligations regarding the principles of equality and non-discrimination on the basis of sex and gender.

103. CEDAW Committee General Recommendation No. 19 specifies that effective legal measures against gender-based violence can include penal sanctions, civil remedies, compensatory provisions to protect women against all kinds of violence, including, *inter alia*, violence and abuse in the family, sexual assault and sexual harassment in the workplace.²⁰⁰ In its General Recommendation No. 28, the CEDAW Committee sets a clear standard according to which the State Parties are expected to introduce remedies that are affordable, accessible and timely, and that they will ensure that women have access to these remedies, including via legal aid and assistance, and in front of a competent court or tribunal.²⁰¹ This includes reparations for violations of the rights of women under the CEDAW.²⁰² Another obligation is to provide financial support to actors providing legal resources for women by educating them or by supporting them when they pursue a remedy for discrimination. Indeed, making sure that women are able to make complaints about violations of their rights under the Convention and have access to effective remedies is crucial for a State Party's compliance with the criterion of effectiveness of the gender equality measures.²⁰³
104. Article 4 (2) of the Istanbul Convention requires its States Parties to prohibit discrimination against women, including through the use of sanctions, where appropriate. The CoE Recommendation CM/Rec(2007)17²⁰⁴ emphasizes the importance for CoE Member States to provide effective sanctions in their national legislation in cases of violation of the law (para. 15) . ECRI General Policy Recommendation No. 7 indicates that the law “*should provide for effective, proportionate and dissuasive sanctions for discrimination cases*” and that such sanctions “*should include the payment of compensation for both material and moral damages to the victim.*”²⁰⁵ Similarly, EU directives require Member States to ensure that the sanctions applicable in case of infringements of the provisions on combating discrimination are “*effective, proportionate and dissuasive*”²⁰⁶ and to introduce measures for securing real and effective compensation or reparation in a way that is dissuasive and proportionate to the damage suffered.²⁰⁷
105. Prohibitions, obligations or other legislative techniques are associated to sanctions and punishment in case of non-compliance or breach. Depending on their nature, the respective provisions imposing prohibitions and obligations related to gender equality can incur different consequences for non-compliers, for example compensation for damages, nullity of discriminatory provisions or annulment of unlawful act,

²⁰⁰ It should be noted, however, that gender-based violence is usually not directly the subject of gender equality laws (although measures for fighting it can be). At the same time, GELs can list gender-based violence as a form of discrimination and thus, the respective sanctions for gender-based violence in GELs should have a civil form, not the criminal one.

²⁰¹ CEDAW Committee, [General Recommendation No. 28](#) on the Core Obligations of States Parties under Article 2 of the CEDAW, para. 34.

²⁰² CEDAW Committee General Recommendation No. 28 specifies that “*such remedies should include different forms of reparation such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women*”, *ibid.*, para. 32.

²⁰³ *Ibid.*, para. 36.

²⁰⁴ Council of Europe, [Recommendation CM/Rec\(2007\)17 of the Committee of Ministers to member states on gender equality standards and mechanisms](#), para. 15, which refers to “*adoption/existence of legislation prohibiting sex-based discrimination in all aspects of life and all areas of society, and ensuring de jure gender equality, including effective sanctions in cases of violation of the law*”.

²⁰⁵ [ECRI General Policy Recommendation No. 7](#), par 12.

²⁰⁶ See Article 15 of the [Directive 2000/43](#).

²⁰⁷ See Article 17 of the 2006 Recast Directive. This Directive also requires that EU Member States ensure that if a conciliation procedure is made available, it should come with an option to pursue judicial protection (Article 17, para. 1). Further, it foresees the possibility for third party interventions by “*associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with*” (Article 17, para. 2).

administrative or criminal sanctions etc.²⁰⁸ **These provisions should be clear and specific and should explicitly state which type of behaviour leads to which types and levels of sanctions, as well as ensure the availability and accessibility of judicial procedures for protection of persons claiming to have been discriminated** (see Sub-Section IV.2.6. *supra*).

106. One of the consequences of discriminatory behaviour can be the nullity of specific actions. This mechanism can help resolve ex-post issues of discriminatory action especially in relation to contracts or agreements, terms of employment etc.²⁰⁹ (see also Sub-Section V.1.6 regarding non-compliance with gender balance requirements in nominations and appointments to public office).
107. Compensation is another consequence of discriminatory behaviour. The perpetrator of discrimination is obliged to compensate the victim or harmed party for the damage they suffered. It is good practice to ensure that compensation levels are sufficient to act as deterrents for perpetrators of discrimination and cover material and non-material or moral damage.²¹⁰
108. Fines and monetary penalties are another option with regard to consequences of discriminatory acts. Monetary penalties are common in legislation – at least in quantitative terms.²¹¹ Their advantages are that they are not desocializing, are relatively easy to administer and can be adjusted to reflect the extent and severity of the punishable behaviour. One of their weaknesses is that they are not a “personal” punishment and that others might bear the cost which limits the deterrent effect of fines.
109. Existing comparative overview of sanctions at the level of the EU and EU candidate countries shows that the majority of countries have opted for **right to reinstatement** (Austria, Cyprus, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, North Macedonia, Portugal, Romania, Slovenia, Spain, Turkey), **compensation** (Austria, Bulgaria, Croatia, Czechia, Denmark, Finland, France, Germany, Hungary, Italy, Liechtenstein, Malta, Netherlands, North Macedonia, Portugal, Romania, Serbia, Spain, Sweden, Turkey, the United Kingdom), **compensation for non-material or moral damages** (Bulgaria, Croatia, Cyprus, Denmark, Estonia, Greece, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Norway, Poland (in practice), Romania, Serbia, Slovakia, Slovenia), **penalty payments and administrative fines** (Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, Greece, Hungary, Iceland (including per diem fines), Latvia, Luxembourg, North Macedonia,

²⁰⁸ For example, in **Finland**, discrimination in working life is punished in accordance to the Criminal Code of Finland, Section 14a (691/1995) Penal provisions. In the **United Kingdom**, contravention of equality legislation can lead to (a) a declaration by the court as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; (b) an order towards the respondent to pay compensation to the complainant; (c) appropriate recommendations (see UK, [2010 Equality Act](#), section 24 (“Remedies”)). See also European Commission, [A comparative analysis of gender equality law in Europe 2022 \(27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Türkiye and the United Kingdom compared\)](#) (2023), Section 10.4.

²⁰⁹ For example, in **Spain**, any act or clause in legal transactions constituting or causing discrimination on the grounds of sex is considered to be null and void and can give rise to liability both through a system of redress or indemnity that will be real, effective and proportional to the injury suffered and, as appropriate, through an effective system of deterrents consisting in penalties to prevent discriminatory conduct.

²¹⁰ In **Finland**, anyone who has violated the discrimination prohibition is liable to pay compensation to the affected person. The compensation payable shall amount to no less than EUR 3,240. In cases concerning employee recruitment, the compensation payable shall not exceed EUR 16,210 for an employee in regard to whom the employer is able to show that she/he would not have been chosen for the job even if the choice would have been made on non-discriminatory grounds. When the amount of compensation is being determined, the nature and the extent and duration of the discrimination is to be taken into account, as well as any financial penalty imposed or ordered for payment based on an offence against the person arising from the same action by virtue of other legislation. Payment of compensation does not prevent the injured party from further claiming compensation for financial loss under the Tort Liability Act (412/1974) or any other legislation. See [Act on Equality between Women and Men](#) of Finland, Section 11 (369/2009 “Compensation”). In **Iceland**, any party who, criminally and unlawfully, violates the equality Act is liable to pay compensation for financial and non-financial loss. See [Act on Equal Status and Equal Rights Irrespective of Gender](#) of Iceland, Article 31 (“Compensation for financial and non-financial loss”).

²¹¹ In **Canada**, a violation of the [Employment Equity Act](#) is not considered a criminal offence but can lead to a monetary penalty that is notified by the Minister. The monetary penalty can raise to \$10,000 for a single violation; and \$50,000 for repeated or continued violations. An employer has the choice to comply with the notice or contest the assessment of the monetary penalty by making a written application to the Minister for a review, by a Tribunal, in which case a Tribunal is set up. See PART III Assessment of Monetary Penalties.

Norway, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Turkey)²¹² and **criminal sanctions** (including fines or imprisonment for the gravest forms of discrimination especially harassment based on sex or sexual harassment and other gender-based violence).²¹³ However, the overwhelming finding from these countries is that sanctions in place generally do not rise up to all three prescribed standards of effectiveness, dissuasiveness and proportionality. Moreover, in practice, their use is limited as procedural and socio-economic problems may deter recourse to legal proceedings (see Sub-Section IV.2.6) along with the low levels of compensation generally granted.

VII. THE PROCESS OF REFORMING GENDER EQUALITY LEGISLATION

110. OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 Copenhagen Document, para. 5.8).²¹⁴ Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).²¹⁵ The *ODIHR Guidelines on Democratic Lawmaking for Better Laws* specifically underline the importance of inclusive public consultations, throughout the policy and legislative cycle and offering meaningful opportunities to provide input.²¹⁶ The principles stated above regarding the development of any policy or legislation should similarly be applicable with respect to the development or amendment of GELs (see especially Sub-Section IV.2.7).
111. **When reforming GELs, the legal drafters should ensure inclusive, extensive and effective consultations with a wide and varied array of stakeholders from all spheres of public and private life, including gender equality experts, civil society (in particular organizations promoting gender equality and women’s rights), and also representatives of minority communities and disadvantaged groups, offering equal opportunities for women and men of different backgrounds to participate. Such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the GEL and its impact should also be put in place that would efficiently evaluate the implementation and effectiveness of the GEL, once adopted.**²¹⁷

[END OF TEXT]

²¹² See also European Commission, [A comparative analysis of gender equality law in Europe 2022 \(27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Türkiye and the United Kingdom compared\)](#) (2023), pp. 193-194.

²¹³ *Ibid.* pp. 195-196.

²¹⁴ Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

²¹⁵ Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

²¹⁶ See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), paras. 149, 226. See also See Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5; and OECD, *Policy Framework for Gender-Sensitive Public Governance* (2021), Box 5.4.

²¹⁷ See e.g., OECD, *International Practices on Ex Post Evaluation* (2010).