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Opinion on the draft Law on Gender Equality of Serbia

On the basis of comments by
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Council of Europe, Directorate General for Democracy, Human Dignity and Gender Equality Department

<https://www.coe.int/en/web/genderequality>

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INTRODUCTION

1. The Council of Europe is currently implementing the “Horizontal Facility for the Western Balkans and Turkey II”, a joint programme with the European Union aimed at supporting South East Europe and Turkey to comply with European standards. The Horizontal Facility II supports the provision of ad hoc advice and expertise in response to requests for legislative analysis and related assistance through the Expertise Coordination Mechanism (ECM), upon request, inter alia, by the governments of the Beneficiaries. On 24 February 2021, the Serbian Minister for Human and Minority Rights and Social Dialogue requested the Council of Europe expert support on a Draft Law on gender equality, on a Draft Law on changes and amendments to the Law on anti-discrimination, and on a Draft Law on same-sex partnership, currently in preparation.
2. The present opinion concerns the Draft Law on Gender Equality. It has been prepared on the basis of the analysis, comments and recommendations provided by the experts Claire Guiraud and Susana Pavlou. The opinion takes into consideration the relevant Council of Europe standards and monitoring reports in the field of gender equality and violence against women including, for instance, the Council of Europe Convention on preventing and combating violence against women and domestic violence, the baseline evaluation report on Serbia by the Group of Experts on action against violence against women and domestic violence (GREVIO), and the Committee of Ministers Recommendation CM/Rec(2019)1 on preventing and combating sexism. It also takes into consideration the EU acquis on gender equality, and other relevant international standards and reports such as the UN Convention on the Elimination of all forms of discrimination against women and the observations of the UN Committee on the Elimination of Discrimination against Women (CEDAW). This review was conducted on the English translation of the draft law provided by the Council of Europe. It is possible that certain terms and expressions are not an exact translation of the original Serbian text. Therefore, special attention should be provided to comments and recommendations in relation to language.

A. GENERAL OBSERVATIONS

I. A COMPREHENSIVE AND INTEGRATED APPROACH

3. The Serbian authorities have adopted a comprehensive and integrated approach in drafting the national legislation on gender equality, foreseeing state-wide effective, comprehensive and co-ordinated policies sustained by the necessary institutional, financial and organisational structures.
4. The draft legislation adopts a gender mainstreaming approach horizontally across all policy areas, while recognizing the importance of gender equality policies, including special measures in ensuring de facto equality between women and men, and the full realization of women's rights, corresponding to the double approach recommended by the Council of Europe and as foreseen by the CEDAW Convention.
5. The suggestions and proposals outlined in this report are thus intended to guide the Serbian authorities towards a more structured and streamlined approach towards implementing the full range of provisions of the law.

II. SOME AREAS OF PROGRESS

6. In addition to the recommendations provided article by article in Part B, attention is drawn to a few crosscutting issues identified during the legal review and areas where the draft law could be further strengthened.

Terminology and definitions could be more consistent throughout the text

7. While rather clear definitions are provided under Chapter I, consistency could be strengthened throughout the draft law. In addition to this general comment, attention should be drawn to two terms specifically: "sexual characteristics" and "equal opportunities".
8. The draft law makes several references to the term "sexual characteristics". However, it is not clear how the inclusion of this term would strengthen the scope and application of the draft law on gender equality. The term "sexual characteristics", referred to as a ground for discrimination in Article 4, is not consistently applied in the provisions of the draft law, putting into question its applicability within the scope of the draft law.
9. Moreover, the inclusion of "sexual characteristics" in Article 4 as a ground for discrimination, in addition to sex and gender, is not supported by international and EU law, and a rationale for its inclusion is not provided. According to CEDAW General Recommendation GR28, the grounds for discrimination include "sex and gender differences". Similarly, 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, makes explicit reference to discrimination on the grounds of sex. Sexual characteristics also do not appear amongst the grounds of discrimination mentioned in the European Convention on Human rights, its protocols and the case-law of the European Court of Human Rights.

10. **It is recommended to remove “sexual characteristics” throughout the draft law and to replace “violence based on sex, sexual characteristics, gender or sex reassignment” with the expression “gender-based violence and violence against women” to ensure consistency and coherence in all its provisions and ensure that discrimination on the basis of sex and gender differences is affirmed throughout based on international and EU law.**
11. References to the term “equal opportunities” are made throughout the draft law, in particular in Chapter V on special measures. However, the concept of equal opportunities between women and men falls short of the achievement of substantive equality between women and men as required by the CEDAW Convention. The CEDAW Convention recognizes that formal equality alone is insufficient for a state to meet its obligations and requires measures to address both direct and indirect discrimination to achieve substantive equality between men and women. In other words, substantive equality goes beyond ensuring equal opportunities but requires equality of results or de facto equality upon access to opportunities.
12. **To highlight the objective of de facto equality between women and men, it is recommended to replace “equal opportunities” with more affirmative language. Specific recommendations are made in the relevant articles.**

The structure of the law could be streamlined to facilitate readability and understanding for the multiple stakeholders involved, specifically regarding the institutional set-up

13. The institutional set-up for the design and implementation of gender equality policies appears to be scattered throughout Chapters III, IV, VII, VIII, IX and X, going back and forth between planning, monitoring and reporting processes. In addition, whereas external/sectoral policy actions are developed in separate Chapters (Chapter V with a sector-by-sector approach – including in the workplace and Chapter VI on gender-based violence), policies related to gender equality in the workplace – including within public body authorities – are mixed with institutional set-up and scattered throughout the Chapters. This leads to challenges in understanding the organisation, the roles and responsibilities of all stakeholders to the draft law.
14. **The structure should be revised to provide better visibility and understanding of the extensive institutional set-up foreseen, to clarify roles and responsibilities throughout policy development (from the planning of gender equality policies to their implementation, monitoring and assessment) and to facilitate clear understanding of the obligations and powers of all stakeholders involved.**

Institutional set-up and specifically the reporting process could be strengthened while being streamlined and balanced

15. Whereas strong and exhaustive reporting processes are key to ensuring the full implementation of the provisions of the law, there is a risk of overburdening stakeholders involved in the implementation of gender equality policies. For instance, bodies of public authority must provide: an annual report on the implementation of the National Action Plan - Art. 17, an annual report as an employer - Art. 18, an annual report on the Risk management plan - Art. 21, establish quantitative and qualitative mechanisms for monitoring progress as Management and Supervisory Bodies - Art. 26, as well as other specific disaggregated data - Art. 65. Formal and procedural reporting exercises should not involve more time and effort than implementing the policy itself. Bodies of public authority that have more than 50 employees are particularly burdened with numerous reporting mechanisms related to internal employment issues. It is recommended to rationalise and streamline the reporting requirements and processes foreseen to focus on meaningful reports that can facilitate gender impact assessments that will lead to strengthening existing policies.
16. **It is recommended to:**
- a) **Revise the structure of Chapters III, IV, VII, VIII, IX and X to provide a better visibility and understanding of the institutional set-up and to clarify roles and responsibilities throughout the policy development cycle.**
 - b) **Rationalise and streamline the reporting requirements foreseen with Chapters III, IV, VII, VIII, IX and X.**

Sufficient and appropriate funding should be secured for the implementation of policies

17. **While the scope and comprehensiveness of the draft legislation should be commended, in order to ensure effective implementation of both gender mainstreaming provisions and gender equality policies, including special measures, the authorities are invited to consider introducing a specific provision ensuring appropriate human and financial resources both to the bodies working specifically on gender equality and in relation to gender-mainstreaming. It is also recommended that public authorities record data on the specific funds allocated for the implementation of the provisions of the law and make information on public expenditure publicly available.**

Cooperation with civil society could be strengthened

18. An area not sufficiently developed throughout the draft law concerns the mechanisms to establish, at different levels of government, cooperation with women's organisations and NGOs working on gender-equality issues. Provision has not been sufficiently made in the draft law to include women's organisations and NGOs in the design and implementation of policies and measures to promote gender equality, as well as for the provision of specialist services, including on preventing and combating gender-based violence and violence against women.
19. For example, in the Chapter on gender-based violence, provisions to strengthen multi-agency cooperation and referral mechanisms including with women's specialist

support services, are missing.

20. **To this end, the authorities are invited to consider:**
- a) **Including provisions for meaningful and active consultation and cooperation with women's organisations and NGOs in the design and implementation of gender equality policies across policy areas;**
 - b) **Including provisions for ensuring appropriate funding through suitable funding opportunities based on transparent procedures, including procurement procedures, for women's organisations and NGOs.**

[Links to other strategies and plans with strong focus on women and girls should be reinforced](#)

21. In addition to the National Strategy on Gender Equality, other plans related to gender equality and women's rights are, or have been, implemented in Serbia: the National strategy for the prevention and elimination of trafficking in persons, especially women and children, and for the protection of victims (2017–2020) and the accompanying action plan; the National action plan for the implementation of Security Council resolution 1325 (2000) on women, peace and security (2017–2020); the National programme for the preservation and improvement of sexual and reproductive health; and the National strategy for the social inclusion of Roma women and men for the period 2016–2025.
22. **It is recommended to strengthen the coordination and implementation of policies related to gender equality, including through the full institutionalisation of the Coordination Body for Gender Equality, and to facilitate stakeholders' involvement and a clear understanding in recognising in the draft law the linkages between the National Strategy on Gender Equality and other plans of action.**

B. SPECIFIC OBSERVATIONS

I. CHAPTER I - INTRODUCTORY PROVISIONS

i. Scope of the Law - Article 1

Measures for achieving and promoting gender equality shall refer to the establishment of equal opportunities for participation and equal treatment of women and men in the areas of labour, employment, self-employment, ICT, social insurance, social protection and healthcare, education, defence and security, transportation, energy, environmental protection, culture, public information, sports, governing and monitoring institutions and their bodies, political activity and public affairs, reproductive and sexual rights, access to goods and services.

23. Article 1 provides a presentation of the scope of the law. The aims pursued by gender equality policies and the areas should be completed to comply with definitions provided in Article 3 and areas identified in Chapter V.

24. **In this respect, it is recommended to:**

- a) **Use the expression “of equal rights, responsibilities, opportunities, equal participation and balanced representation of women and men, while honouring different interests, needs and priorities of men and women” instead of “the establishment of equal opportunities for participation and equal treatment of women and men”.**
- b) **Amend the list of areas as following: delete social insurance (5.2 The area of social protection and healthcare); add “science and technological development” after education (5.3 The Area of Education, Science and Technological Development); replace “ICT” with “of information and communication technologies and information society” (5.4 in the field of information and communication technologies and information society); replace “governing and monitoring institutions and their bodies” with “management and supervisory authorities and their bodies” (5.12 in the Management and Supervisory Authorities and Their Bodies); replace “reproductive and sexual rights” with “sexual and reproductive health and rights” (5.14 reproductive and sexual rights) and situate it after “social protection and healthcare”.**

ii. Gender Equality - Article 3

Gender equality shall mean equal rights, responsibilities and opportunities, equal participation and balanced representation of women and men in all areas of social life, equal opportunities to exercise rights and freedoms, use of personal knowledge and abilities for personal growth and development of the society, as well as deriving equal benefits from the results of work, while honouring different interests, needs and priorities of men and women in the process of adoption of public and other policies and deciding on rights and obligations based on the law and Constitutional provisions.

25. The definition of gender equality is comprehensive and generally in line with international standards. However, the definition of gender equality according to the CoE Gender Equality Strategy 2018-2023 includes ‘equal access to and distribution of resources between women and men’.¹ Furthermore, Article 47 of the draft law aligns domestic legislation with the Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. Thus, the definition of gender equality should include access to goods and services in line with CoE standards and the Directive 2004/113/EC, as well as to ensure coherence with Article 47 of the draft law.

26. The definition of gender equality in Article 3 should include equal access to and distribution of resources between women and men in line with CoE standards.

iii. Discrimination based on sex, sexual characteristics or gender - Article 4

Discrimination based on sex, sexual characteristics or gender shall be any unjustified differentiation, unequal treatment of or omission (exclusion, restriction or giving preference), openly or covertly, in relation to persons or groups of persons, as well as members of their families or persons close to them, based on sex, sexual characteristics or gender, in: the political, educational, media and economic fields; the area of employment, occupation and labour, self-employment, consumer protection (goods and services); healthcare insurance and protection; social insurance and protection, marriage and family relations; the area of security; the environment; the area of culture; sports and leisure; as well as in the area of public advertising and other areas of social life. (Para 1)

27. Article 4 defines discrimination and the scope of the application of the principle of non-discrimination in the draft law.

28. The principle of non-discrimination is clearly set out in the European Convention on Human Rights, as interpreted by the European Court of Human Rights in its case-law. If “sex” is explicitly indicated as a prohibited ground of discrimination, gender, sexual orientation and gender identity have also been recognised as prohibited grounds in the case-law of the Court. It also appear, in relation to the enjoyment of economic and social rights, in the European Social Charter. With particular regard to women, the definition of discrimination is contained in article 1 of CEDAW. This definition points out that any distinction, exclusion or restriction, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms, is discrimination, even where discrimination was not intended.

29. According to CEDAW General Recommendation 28², the grounds for discrimination include “sex and gender differences”. 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, makes explicit reference to discrimination on the grounds of sex.

¹ <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1> p.5

² CEDAW General Recommendation 28, <https://undocs.org/CEDAW/C/GC/28>

Sexual characteristics also do not appear amongst the grounds of discrimination mentioned in the European Convention on Human rights and the case-law of the European Court of Human Rights.

30. Article 4 of the draft law defines discrimination on the basis of “sex, sexual characteristics or gender”. However, the draft law does not define “sexual characteristics” so it is not clear how the inclusion of this term strengthens the scope and application of the law in the promotion of gender equality, in line with international standards and the EU Directives in the field as indicated in the Rationale of the draft law.
31. **It is recommended to remove “sexual characteristics” throughout the draft law to ensure consistency and coherence in all its provisions and ensure that discrimination on the basis of sex and gender differences is affirmed throughout based on international and EU law.**

Direct discrimination based on sex, sexual characteristics or gender shall exist if persons or groups of persons are or have been put at a disadvantage in the same or similar situation based on sex, sexual characteristics or gender, by any act, action or omission.

Indirect discrimination based on sex, sexual characteristics or gender shall exist if an apparently neutral provision, criterion or practice puts or might put a person or a group of persons at a disadvantage based on their sex or gender, compared to other persons in the same or similar situation, unless this is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. (Para 2 & 3)

32. CEDAW General Recommendation 28 defines direct discrimination as “different treatment explicitly based on grounds of sex and gender differences.”³ According to EU Directive 2006/54/EC, direct discrimination is “where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation”.⁴ In addition, the European Court of Justice has established that as only women can become pregnant, a refusal to employ or the dismissal of a pregnant woman based on her pregnancy or her maternity amounts to direct discrimination on the grounds of sex. Based on this principle, the Court has further held that any unfavourable treatment directly or indirectly connected to pregnancy or maternity constitutes direct sex discrimination.⁵
33. According to CEDAW General Recommendation 28, “Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral

³ Ibid,

⁴ 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 2.1.(a).

⁵ Ibid,

measure.”⁶ According to Directive 2006/54/EC, indirect discrimination appears “where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary”.⁷

34. The definition of indirect discrimination in Article 4 is generally in line with CEDAW and EU law. However, as mentioned above, the definition lacks coherence as the inclusion of “sexual characteristics” is not consistent with the definition provided in the development of the Article (Para 3) that provides for “disadvantage based on their sex or gender”. There is no legal basis in international and EU law for the inclusion of sexual characteristics in Article 4, and a rationale for its inclusion is not provided. Furthermore, as mentioned above, there are inconsistencies in the application of the grounds “sex, sexual characteristics or gender” throughout the provisions of the draft law, putting into question its applicability. Discrimination on the basis of “sex or gender” is understood to also cover “sexual characteristics”.
35. **It is recommended that the authorities:**
- a) **Remove “sexual characteristics” as a ground for discrimination throughout the draft law to ensure consistency and coherence in all its provisions and ensure that discrimination based on sex and gender differences is affirmed throughout based on international and EU law.**
 - b) **Ensure consistency through the provisions of the draft law when referring to grounds of discrimination in line with CEDAW general recommendation 25 (para. 8) that states, “biological as well as socially and culturally constructed differences between women and men must be taken into account.”**

Discrimination based on sex, sexual characteristics or gender shall exist if a person or a group of persons are unjustifiably treated, or would be treated, worse than others solely or predominantly because they have sought or intend to seek protection from discrimination based on sex or gender, or because they have offered or intend to offer evidence of discriminatory conduct.

Discrimination based on sex, sexual characteristics or gender shall also include harassment, degrading treatment, sexual harassment and sexual extortion, gender-based hate speech, violence based on sex, sexual characteristics, gender or sex reassignment, unequal treatment based on pregnancy, maternity leave, absence for the purpose of childcare and special childcare in the capacity of fatherhood and motherhood (parenthood), adoption, foster care, guardianship and incitement to discrimination, as well as any less favourable treatment a person receives for refusing or enduring such conduct. (Para 4 & 5)

36. This paragraph introduces a new term: “sex reassignment”. This is inconsistent with the terms and definitions provided in the draft law and is not mentioned as a ground for discrimination, nor is it referred to in Chapter IV on gender-based violence. Furthermore, the term is not consistent with international human rights standards,

⁶ CEDAW General Recommendation 28, para. 16 p. 4 <https://undocs.org/CEDAW/C/GC/28>

⁷ 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 2.1.(b)

and specifically the CoE Istanbul Convention that refers to gender-based violence and violence against women.

37. The expression “gender-based violence and violence against women” is fully inclusive, while recognizing the specific experiences of women and girls, and consistent with the definitions provided in Article 6 and as foreseen by the Istanbul Convention.
38. **It is therefore recommended to replace “violence based on sex, sexual characteristics, gender or sex reassignment” with the term “gender-based violence and violence against women”.**

Discrimination against a person based on two or more personal characteristics, regardless of whether the impact of individual personal characteristics can be separated (multiple discrimination) or not (intersectional discrimination). (Para 6)

39. Article 4 of the draft law introduces the concept of multiple/intersectional discrimination defining this as discrimination based on two or more personal characteristics. However, multiple discrimination and intersectional discrimination are not defined in Article 6 of the draft law, and an indicative list of ‘personal characteristics’ is not provided leaving it open to interpretation.
40. Relevant international standards and references include:
- Intersectionality is officially recognised by the CEDAW Committee as a pertinent concept for understanding the scope of State Parties’ obligation to eliminate discrimination. The Committee stated that, “States parties must legally recognise and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”⁸
 - In 1995, the World Conference for Women, held in Beijing, drew attention to the fact that age, disability, social and economic status, ethnicity and race can create particular barriers for women. This led to the development of a framework for recognising multiple and coexisting forms of discrimination, which became part of the Beijing Platform for Action.⁹
 - The Council of Europe Committee of Ministers Recommendation CM/Rec (2007) 17 on Gender equality standards and mechanisms, Section 12 “Specific situation of vulnerable groups exposed to multiple discrimination”, Paragraph 59 states that “Certain groups of women, due to the combination of their sex with other factors, such as their race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, are in an especially vulnerable position. In addition to discrimination on the grounds of sex, these women are often subjected simultaneously to one or several other types of discrimination”.¹⁰
 - Recommendation CM/Rec(2019)1 on preventing and combating sexism stipulates

⁸ CEDAW General Recommendation 28 para. 18, <https://undocs.org/CEDAW/C/GC/28>

⁹ <https://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

¹⁰ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4aa3

that “Women and men may be confronted with different and intersecting forms of sexism, based on a range of other factors including but not limited to ethnicity, minority or indigenous status, age, religion, refugee or migrant status, disability, marital status, social origin, gender identity, sexual orientation or sexuality.”¹¹

- Article 4 of the Istanbul Convention includes in the list of non-discrimination grounds that the drafters considered relevant to the subject matter of the Convention gender, sexual orientation, gender identity, age, state of health, disability, marital status, and migrant or refugee status or other status, while indicating that this is an open-ended list.¹²
- Article 14 of the European Convention of Human Rights and Protocol No. 12 to the European Court of Human Rights (ECHR), introduces the principle of non-discrimination and provides a list of non-discrimination grounds including “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”¹³.

41. **The terms ‘multiple discrimination’ and ‘intersectional discrimination’ should be defined in Article 6 of the draft law, and an indicative list of characteristics that may intersect with sex or gender based on the Council of Europe Committee of Ministers Recommendations CM/Rec (2007) 17 - Section 12 and CM/Rec(2019)1 should be introduced. The list should be non-exhaustive and open-ended.**

Measures to protect motherhood and fatherhood (parenthood), adoption, foster care, guardianship, as well as protection at work for employees of different sexes based on regulations that govern employment, health and safety at work, special measures introduced to achieve full gender equality, protection and development of persons or a group of persons at a disadvantage based on their sex, sexual characteristics or gender, shall not be deemed discrimination based on sex, sexual characteristics or gender. (Para 7)

42. **The expression “employees of different sexes” should be replaced with “all employees” as the paragraph already refers to disadvantage based on sex or gender.**

Special measures introduced to eliminate or prevent the unequal position of women and men and secure the exercise of equal opportunities for women and men shall not be deemed discrimination based on sex, sexual characteristics or gender. (Para 8)

43. Drawing on Article 4 of CEDAW, this paragraph stipulates that special measures, which aim at eliminating or preventing gender inequality, do not constitute a form of discrimination. However, the concept of equal opportunities between women and men falls short of the achievement of substantive equality between women and men as required by the CEDAW Convention. The CEDAW Convention recognizes that formal equality alone is insufficient for a state to meet its obligation and requires measures to address both direct and indirect discrimination to achieve substantive

¹¹ <https://rm.coe.int/cm-rec-2019-1-on-preventing-and-combating-sexism/168094d894>

¹² Istanbul Convention, Explanatory report, p. 9-10, <https://rm.coe.int/16800d383a>

¹³ European Convention of Human Rights https://www.echr.coe.int/documents/convention_eng.pdf and Protocol No. 12 https://www.echr.coe.int/Documents/Library_Collection_P12_ETS177E_ENG.pdf

equality between men and women. In other words, substantive equality goes beyond ensuring equal opportunities but requires equality of results or de facto equality upon access to opportunity.¹⁴ Therefore, it is recommended that this article goes beyond the achievement of equal opportunities and ensure the practical realisation of rights.

44. **The expression replacing “the exercise of equal opportunities for women and men” should be replaced by “the achievement of de facto equality between women and men”.**

iv. Gender Responsive Budgeting - Article 5

Bodies of public authority shall engage in gender responsive budgeting and plan revenues and expenses with the aim of improving gender equality in accordance with the law regulating the budget system and the principle of gender responsive budgeting.

45. The term “gender budgeting” is not defined under Article 6 of the draft law. According to the Council of Europe, “Gender budgeting is the application of gender mainstreaming in the budgetary process. It means a gender-based assessment of budgets, incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures to promote gender equality.”¹⁵

46. **It is recommended to:**

- a) **Add a definition of gender budgeting under Article 6 of the draft law in line with the one provided by the Council of Europe.**
- b) **Move Article 5 on gender responsive budgeting to Chapter II of the draft law, given that gender responsive budgeting is a means for achieving gender equality.**

v. Definition of Terms - Article 6

1) “gender” refers to socially defined roles, opportunities, behaviours, activities and attributes, which a certain society considers appropriate for women and men, including mutual relationships between men and women and roles in these relationships that are socially determined depending on their sex;

47. Article 3C of the Istanbul Convention defines gender as “socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”.¹⁶ The definition of gender provided by Article 6 complies with the Istanbul Convention and goes a step further to include roles in relationships between women and men that are socially determined based on sex.

¹⁴ <https://cedaw.iwraw-ap.org/cedaw/cedaw-principles/cedaw-principles-overview/substantive-equality/>

¹⁵ <https://rm.coe.int/1680596143#:~:text=Definition%20and%20scope,-Taking%20into%20account&text=Gender%20budgeting%20is%20an%20application,order%20to%20promote%20gender%20equality.>

¹⁶ Istanbul Convention, Article 3

2)“vulnerable social groups” are rural women, victims of violence, as well as groups of persons who are at a disadvantage as a result of their social background, nationality, property status, sex, gender identity, sexual orientation, age, mental and/or physical disability, life in an underdeveloped area or for some other reason or trait;

48. The categorization of women and girls as passive ‘vulnerable groups’ in need of protection is problematic from a feminist perspective. According to the European Institute for Gender Equality (EIGE), “the stereotyped preconception that ‘vulnerability’ is an inherent characteristic of women masks the fact that stereotypical gender roles and attitudes and their discriminatory impact on women, sustained by the lack/omission of acts on the part of states to effectively address them, impose disadvantages on women, which may result in increased risks of becoming vulnerable to discrimination, including violence.”¹⁷
49. The CEDAW Committee has identified many aspects of identity and situations intersecting with gender as being important: “ethnicity/race, indigenous or minority status, colour, socio-economic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, trafficking of women, armed conflict, being a refugee, internal displacement, statelessness, migration, heading households, widowhood, living with HIV/AIDS, deprivation of liberty, being in prostitution, geographical remoteness and stigmatisation of women fighting for their rights, including human rights defenders. The vision in the CEDAW Convention is of substantive equality across all human rights, beyond equality and practice towards transformative, participatory equality”.¹⁸
50. The Istanbul Convention requires state parties to ensure that preventive, protective and support measures take into account the specific needs of persons made vulnerable by particular circumstances and place the human rights and safety of all victims at their centre (Article 12(3) and Article 18(3)). It recognises that such persons might be at heightened risk of violence and covers for instance: pregnant women, persons with disabilities, women living in rural areas, substance abusers, people living with HIV/AIDS, prostitutes, migrants and refugees, etc.
51. The Council of Europe Recommendation CM/Rec(2019)1 on preventing and combating sexism stipulates that “Women and men may be confronted with different and intersecting forms of sexism, based on a range of other factors including but not limited to ethnicity, minority or indigenous status, age, religion, refugee or migrant status, disability, marital status, social origin, gender identity, sexual orientation or sexuality.”¹⁹

52. It is recommended to:

¹⁷ <https://eige.europa.eu/thesaurus/terms/1429?lang=en>

¹⁸ <https://www.wrc.org.uk/blog/temporary-special-measures-to-accelerate-progress-towards-equality-article-4-cedaw>

¹⁹ <https://rm.coe.int/cm-rec-2019-1-on-preventing-and-combating-sexism/168094d894>

- a) Use the term 'disadvantaged groups' instead of the term 'vulnerable groups' and replace it when relevant throughout the draft law (ex. Articles 7, 10, 27, 29, 36, 37, 49, 52, 54, 55)
- b) Expand the definition of disadvantaged groups to include ethnicity, minority status, religion, refugee or migrant status, marital status, pregnant women, and persons in prostitution.

3) "sex" is a biological characteristic on the basis of which people are divided into women and men;

53. The World Health Organisation defines sex as "the different biological and physiological characteristics of males and females, such as reproductive organs, chromosomes, hormones, etc."²⁰ The European Institute for Gender Equality also provides a definition of sex as "the biological and physiological characteristics that define humans as female or male. These sets of biological characteristics are not mutually exclusive, as there are individuals who possess both, but these characteristics tend to differentiate humans as females or males."²¹

54. **The definition should be amended to "Sex refers to the biological characteristics that define humans as female or male".**

4) "equal opportunities" refers to the equal achievement of rights and freedoms of women and men, their equal treatment and equal participation in the political, economic, cultural and other aspects of social life and in all stages of planning, preparation, adoption and implementation of decisions and equal use of their results, without gender restrictions and gender discrimination;

55. **The definition should be entitled "substantive equality" rather than "equal opportunities" and the expression "without gender restrictions and gender discrimination" should be deleted.**

5) "discrimination against a person based on two or more personal characteristics, regardless of whether the impact of individual personal characteristics can be separated (multiple discrimination) or not (intersectional discrimination);"

56. **Intersectional discrimination and multiple discrimination should be defined in line with the recommendation made under Article 4 (para. 41) above.**

6) "gender perspective" refers to taking into account gender-based differences, sex-based differences and different interests, needs and priorities of women and men and their inclusion in all phases of planning, preparation, adoption and implementation of public policies, regulations, measures and activities;

²⁰ World Health Organization - Gender, equity and human rights: Glossary of terms and tools.
<http://www.who.int/gender-equity-rights/knowledge/glossary/en/>

²¹ European Institute for Gender Equality (EIGE) - Glossary & Thesaurus.
<http://eige.europa.eu/rdc/thesaurus/terms/1361>

57. **The expression “in all phases” should be replaced with “at all stages and levels” for clarity and in line with the definition of gender mainstreaming.**

7) “gender analysis” represents an assessment of the impact of consequences of each planned activity, including legislation, measures and activities, public policies and programmes, on women and men and gender equality in all fields and at all levels;

58. The definition provided for “gender analysis” in the draft law corresponds more accurately to “gender impact assessment”. The European Commission defines gender analysis as “the study of differences in the conditions, needs, participation rates, access to resources and development, control of assets, decision-making powers, etc., between women and men in their assigned gender roles”.²² The European Commission defines gender impact assessment as follows: “Gender impact assessment is the process of comparing and assessing, according to gender relevant criteria, the current situation and trend with the expected development resulting from the introduction of the proposed policy.”²³ In addition, “Gender impact assessment” is the estimation of the different effects (positive, negative or neutral) of any policy or activity implemented to specific items in terms of gender equality.”²⁴

59. **Depending on the actual purpose sought by the authorities when introducing this definition, the definition of “gender analysis” should be amended in accordance with the definition of the European Commission; or, alternatively, the term “gender analysis” should be replaced by “gender impact assessment” in order to comply with the definition provided.**

8) “gender mainstreaming” is a means to achieve and promote gender equality through the integration of the gender component in all public policies, plans and practices;

60. In 1998, the Council of Europe defined 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 policy-making.”²⁵ According to the United Nations, “Mainstreaming a gender perspective is 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 way to make women’s as well as men’s concerns and experiences an integral dimension of the design, implementation,

²² European Commission, Communication from the Commission to the Council and the European Parliament – Programme of action for the mainstreaming of gender equality in Community development co-operation, COM (2001) 295 final), 2001.

Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2002-0066+0+DOC+XML+V0//EN>

²³ European Commission (1998), A Guide to Gender Impact Assessment, <http://bookshop.europa.eu/en/a-guide-to-gender-impact-assessment-pbCE1698788/?CatalogCategoryID=WpIKABst.SMAAAEjGJEY4e5L>

²⁴ European Commission (2009), Evaluating Socio-Economic Development, Sourcebook 2: Methods & Techniques. Gender impact assessment, <http://ec.europa.eu/social/BlobServlet?docId=4215&langId=en>

²⁵ <https://www.unhcr.org/3c160b06a.pdf>

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. The ultimate goal is to achieve gender equality".²⁶

61. It is recommend to:

- a) **Replace "gender component" with "gender perspective" throughout the text to ensure consistency of terms used in the draft law.**
- b) **Replace "all public policies, plans and practices" with "any planned action, including legislation, policies or programmes in all political, economic and societal spheres at all levels and stages".**

18) "gender-sensitive language" is a language that promotes equality between women and men and a means of making an influence on the awareness of those who use that language towards achieving equality, including changing their opinions, positions and behaviour within the language they use in their private and professional life;

62. The definition of "gender-sensitive language" focuses on the effects it can provoke in terms of awareness raising about gender equality issues and does not mention the issue of visibility of women in the language as a mirror of society. According to the Council of Europe Recommendation no. r (90)4 of the Committee of Ministers to member states on the elimination of sexism from language (1990), "Governments of member states promote the use of language reflecting the principle of equality of women and men, and take any measures they consider appropriate with a view to: 1. encouraging the use, as far as possible, of non-sexist language to take account of the presence, status and role of women in society, as current linguistic practice does for men; 2. bringing the terminology used in legal drafting, public administration and education into line with the principle of sex equality; 3. encouraging the use of non-sexist language in the media". These principles are reaffirmed in Committee of Ministers' Recommendation CM/Rec(2019)1 on preventing and combating sexism.

63. It is recommended:

- a) **In addition to "language", to refer to gender sensitive "communication" under this provision to cover other non-verbal forms of expression.**
- b) **That the definition also indicates that gender-sensitive language and communication should "take into account the presence, status and role of women in society".**

23) "unpaid housework" refers to activities for the performance of which no monetary compensation is earned, including running a household, looking after children, the elderly and sick family members, farm-work, as well as other similar unpaid activities ;

64. The definition provided in paragraph 23 refers to unpaid care work. As laid out in the 19th ICLS Resolution, unpaid care work refers to the own-use provision of services, to volunteer work in households providing care services for other households and to

²⁶ <https://www.un.org/womenwatch/daw/csw/GMS.PDF>

unpaid trainee care work.²⁷ Drawing on the 19th ICLS Resolution, the draft law focuses on unpaid domestic services for household and family members and unpaid caregiving services for household and family members. Given that such care activities are not confined to “housework” and may involve travelling, moving, transporting or accompanying goods or persons related to unpaid domestic services for household and family members, it is recommended that the term “unpaid care work” is used.

65. The term “unpaid housework” should be replaced with “unpaid care work”.

II. CHAPTER II - EQUAL OPPORTUNITIES POLICY AND MEASURES FOR ACHIEVING AND PROMOTING GENDER EQUALITY

66. The title of Chapter II should be changed into “Policy and measures for promoting and achieving gender equality”.

i. Equal Opportunities Policy - Article 7

An equal opportunities policy shall mean:

- equal participation of women and men in all stages of planning, preparation, adoption and implementation of decisions that affect the position of women;
- taking into account different interests, needs and priorities of women and men in the adoption of public and other policies and in deciding on rights, obligations and legally based interests, taking into account different interests, needs and priorities of women and men in the adoption of public and other policies and in deciding on rights, obligations and legally based interests;
- undertaking measures that provide an equal starting point for achieving the principle of equal opportunities of persons or groups of persons who are at a disadvantage based on their sex, sexual characteristics or gender, especially members of vulnerable social groups.

67. It is recommended:

- a. That “Gender equality policy” replaces the term “equal opportunities policy” in line with Article 3 of the draft law.
- b. As Article 7 already refers to groups at a disadvantage, to delete the term “vulnerable social groups” and to include “social status” as a basis for disadvantage.
- c. To delete the reference to “sexual characteristics” (see recommendations under article 4)

ii. Statistical Data Disaggregated by Sex - Article 12

In addition to being presented collectively, information and statistics collected and recorded by bodies of public authority and by employers in all areas in which measures referred to in this Law are implemented must also be disaggregated and presented by sex and age.

²⁷ [19th International Conference of Labour Statisticians Resolution](#) and [International Classification of Time Use Activities \(ICATUS\) 2016](#)

Data on unpaid housework that are collected, recorded by the producer of official statistics and published represent the official statistics of the Republic of Serbia, in accordance with the law.

Bodies of public authority shall publish administrative data on unpaid housework at the annual level, which are to be downloaded by the producer of official statistics for the purpose of determining its total value and its share in the gross national income.

Information and statistics referred to in paragraph 1 of this Article, disaggregated by sex and age, shall represent an integral part of the official statistics of the Republic of Serbia and shall be available to the public, in accordance with the law.

68. To avoid duplication with provisions in Article 28 and Article 65 in relation to “unpaid housework”, paragraphs 2 and 3 of Article 12 should be deleted, and only the general principles on data collection should be covered here.

III. CHAPTER III - PLANNING ACTS IN THE FIELD OF GENDER EQUALITY AND REPORTING ON THE IMPLEMENTATION OF PLANNING ACTS

69. Chapter III has been reviewed based on the following international and European standards: CEDAW General Recommendation No. 6: Effective National Machinery and Publicity²⁸; United Nations Fourth World Conference on Women (1995) – Beijing Platform for Action²⁹ ; Council of Europe Recommendation no. r (98) 14 on gender mainstreaming.³⁰

i. Types of Planning Acts - Article 13

The following planning acts shall be adopted for the purpose of development, promotion and achievement of gender equality:

- 1) National Gender Equality Strategy.
- 2) Action plan for the implementation of the National Gender Equality Strategy;
- 3) Local self-governance action plans;
- 4) Plans or programmes of work, i.e., operation of bodies of public authority and employers, which must also contain a section on gender equality in the body of public authority and at the employer;
- 5) risk management plan for violations of the gender equality principle.

70. Article 13 foresees the planning acts supporting gender equality policy at national and local level, except for those foreseen for autonomous provinces. The authorities should consider including them in the list (see Article 62 for further details).

71. **It is recommended:**

²⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/5828&Lang=en

²⁹ https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

³⁰ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4aa3

- a) To add “Autonomous provinces action plans” in the list of planning acts.
- b) To replace the term “local self-governance” under (3) with “local self-government units” in accordance with the term used in Article 6.

ii. National Gender Equality Strategy - Article 14

Policies for achieving and promoting gender equality, preventing and combatting gender-based violence and violence against women shall be implemented in accordance with the National Gender Equality Strategy (hereinafter referred to as: the Strategy).

The Strategy shall be the main public policy document which shall comprehensively determine the strategic direction of action and public policies in the field of gender equality, in accordance with the law.

The strategy shall be adopted for a period of ten years, and a new one shall be drafted no later than a year before the expiry of the current strategy.

The strategy shall be adopted by the Government, at the proposal of the ministry responsible for human rights, which refer to gender equality and issues related to gender equality (hereinafter referred to as: the Ministry).

72. Article 14 foresees the objective, content, frequency and approval process of the Strategy. The Strategy aims to “determine the strategic direction of action and public policy”. To ensure progress, the draft law should explicitly indicate that the Strategy identifies specific, measurable, realistic quantitative and qualitative indicators and targets, including intermediary targets, as well as the necessary and adequate funding and human resources to ensure the effective implementation of gender equality policies and relevant mechanism to plan, coordinate/monitor the implementation and assess the Strategy. In addition, no provisions are foreseen either to support the assessment and revision of the Strategy or to organise participatory mechanisms for its planning, implementation or monitoring.
73. **The institutional set-up related to the National Gender Equality Strategy should be strengthened by foreseeing:**
- a) **Specific, measurable, realistic quantitative and qualitative indicators and targets, including intermediary targets, as well as the necessary and adequate funding and human resources;**
 - b) **A mid-term independent assessment and a final independent assessment with the aim to feed into the national action plans and the revised strategy;**
 - c) **The involvement of relevant stakeholders in the process of planning, monitoring and assessing the Strategy, including centres for women’s studies and research, academic and educational institutions, the private sector, the media, non-governmental organizations, especially women’s organizations, and all other actors of civil society (in addition to Article 25 that is a general provision about the cooperation with the civil society);**
 - d) **The involvement of the Parliament, for instance in sending monitoring and assessment reports to the national legislative bodies on the progress of gender equality efforts, on a regular basis.**

74. **The authorities are also invited to consider reducing the foreseen duration of the Strategy to 6 years instead of 10, to allow for the development of a new Strategy that will take into account and respond to emerging challenges and any new realities. Alternatively, the Serbian authorities could consider keeping the 10-year length but introducing a mid-term review.**

iii. Action Plan for the Implementation of the Strategy - Article 15

The action plan shall be a document used for implementing the Strategy.

The action plan shall be adopted for a period of two years, and the development of a new action plan shall begin no later than six months before the expiry of the deadline for the implementation of the currently applicable action plan.

The action plan shall determine the implementation of measures referred to in the Strategy through the process of gender mainstreaming, determine the manner of cooperation between social partners, define the reporting plan of associations in charge of implementing measures referred to in the action plan, as well as data that these associations include in reports which primarily refer to data on planned and implemented projects, including data on the amount of funds spent on individual projects.

The action plan shall be adopted by the Government, at the proposal of the Ministry.

75. Article 15 foresees the objective, content (incl. some characteristics related to reporting), frequency, approval process of national 2-years action plans on gender equality.
76. Name - The draft law foresees various plans and reports. To promote clarity and avoid confusion, the draft law should foresee a specific name for the action plan. The action plan mentioned in Article 15 could be named "National Action Plan" and the corresponding report could be named "Report on the National Action Plan".
77. Planning - The National action plan aims to "determine the implementation of measures referred to in the Strategy". To ensure progress, the draft law should explicitly indicate that for each action, the NAP should identify the body responsible for the implementation, and specific, measurable, realistic quantitative and qualitative indicators, targets and deadlines, and an indicative budget.
78. Implementation & Monitoring – The Article does not develop how the NAP will be implemented and monitored. The monitoring of gender equality policies is developed in Article 25 without explicitly referring to the National Action Plan. To facilitate understanding and coherence, Article 17 could mention that the monitoring part is developed in Article 25.
79. Reporting – The Article foresees some reporting characteristics, but only related to "associations in charge of implementing measures" of the Plan. Provisions related to the National Action Plan can also be found in Article 17 that foresees NAP reporting mechanisms through annual reports transmitted by each body of public authority involved in the NAP (at national and local levels) to the Ministry in charge of gender equality by 31st January each year, as well as a global annual report by the Ministry in

charge of gender equality to be approved by the Government by 31st March each year. Article 65 provides for a list of sex-disaggregated data to be recorded in a “special form” to present the data to be shared with relevant inspections and the Ministry in charge of gender equality (including data related to actions covered by the Strategy/NAP). The draft law would gain consistency in gathering and detailing the NAP reporting process in a unique Article.

80. Independent assessment – The draft law could foresee an independent assessment of the National Action Plan, on a regular basis.

81. Social partners – The Article foresees that the NAP will determine the manner of cooperation between social partners. The draft law would gain consistency in detailing in this Article all the cooperation processes, not limited to social partners, i.e. including centres for women’s studies and research, academic and educational institutions, the private sector, the media, non-governmental organizations, especially women’s organizations, and all other actors of civil society, etc.) – or in adding a new Article dedicated to the responsibilities of social partners (in addition to Article 25 that is a general provision about the cooperation with the civil society).

82. Funding - In addition, the draft law could make explicit that the NAP should foresee the necessary and adequate funding and human resources to ensure the effective implementation of gender equality policies and relevant mechanisms to plan, coordinate/monitor the implementation and assess the NAPs.

83. **It is therefore recommended to:**

- a) **Specify the names of the various action plans foreseen by the draft law to facilitate the understanding.**
- b) **Strengthen the 2-year National Action Plan development in 1) planning stage: in foreseeing that it shall identify the body responsible for the implementation, and foresee specific, measurable, realistic, both quantitative and qualitative indicators, targets, budget as well as deadlines; 2) implementation stage: in referring to Article 25; 3) reporting stage: in gathering and detailing the NAP reporting process in a unique Article; 4) assessment stage: in foreseeing and independent assessment on a regular basis; 5) in detailing the participatory process; 6) in identifying and planning the adequate funding and human resources.**

84. **In line with the proposed reduced duration of the Strategy to 6 years (instead of 10) and in order to dedicate a reasonable amount of time to the implementation of the measures, the National Action Plan duration could be extended to 3 years.**

- iv. Plan and Programme of Bodies of Public Authority and the Employer - Article 16

Bodies of public authority and employers that have more than 50 employees and persons hired for work shall determine and implement special measures depending on the goals that need to be achieved

through their determination and implementation.

Special measures shall be determined and implemented within annual work plans or programmes, i.e., in accordance with this and other laws, which are prepared and adopted by bodies of public authority and employers (hereinafter referred to as: plan or programme), which, in addition to elements prescribed by law, must also contain a part that refers to the achievement and promotion of gender equality.

The part of the plan or programme that refers to the achievement of gender equality shall contain in particular: a brief assessment of the situation concerning the position of women and men in the body of public authority or at the employer, including their ages, a list of special measures, reasons for the determination of special measures and their goals, beginning of application, manner of implementation and control and cessation of the implementation of special measures.

Bodies of public authority and employers whose plans or programmes are not publicly available shall notify the Ministry about the adoption of the plan or programme and attach to the notification an excerpt from the plan or programme which refers to the achievement and promotion of gender equality no later than 15 days from the date of their adoption.

Bodies of public authority and employers whose plans or programmes are publicly available shall submit to the Ministry a notification on the newsletter or website where the plan or programme was published, within 15 days from the date of its adoption.

85. Article 16 foresees that bodies of public authorities and private employers with more than 50 employees develop a new and dedicated section on gender equality in the workplace within their mandatory Annual Plan or management programs (a mandatory act foreseen by another law³¹), including a diagnosis, special measures to achieve gender equality in the workplace, a timeframe and a monitoring and control process – to be published or notified to the Ministry in charge of gender equality. If such Annual plans or management programs are dedicated to internal employment issues (i.e. gender equality within the workplace), it would be recommended to transfer those provisions in a dedicated Chapter – or within Chapter V.1 dedicated to the area of Labour, employment and self-employment.

86. All provisions dedicated to gender equality in the workplace for bodies of public authorities and employers of more than 50 employees should be gathered in a separate Chapter (together with Article 18, Article 26, Article 64 and a part of Article 65 and 66).

v. Reporting on the Implementation of the Action Plan - Article 17

The body of public authority, i.e., the employer responsible for the implementation of activities determined by the action plan referred to in Article 15 of this Law shall submit a report on the implemented activities to the Ministry by 31 January of the current year for the previous year.

The report referred to in paragraph 1 of this Article shall contain an assessment of the state of gender equality in the area of competence of the body of public authority or employer, results of implemented activities as per indicators with the initial and target values, data on the spent funds and recommendations for the improvement of gender equality in the area to which the report refers.

Based on the report referred to in paragraph 1 of this Article and reports of associations of citizens

³¹ Obligation of compiling, submitting and disclosing consolidated annual financial statements or management reports https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

referred to in Article 15, paragraph 3 of this Law, which are involved in the implementation of measures, the Ministry, in cooperation with the gender equality coordination body, relevant organisational bodies of the autonomous province referred to in Article 59 of this Law, bodies of local self-government units referred to in Article 60 of this Law and persons in charge of gender equality referred to in Article 61 of this Law, shall prepare the annual report on the implementation of the action plan and submit it for adoption to the Government by 31 March of the current year for the previous year.
After adoption, the annual report on the implementation of the action plan shall be published on the Government and Ministry websites.

87. Article 17 foresees NAP reporting mechanisms through annual reports, transmitted by each body of public authority involved in the NAP (at national and local levels) to the Ministry in charge of gender equality by 31st January each year and a global annual report by the Ministry in charge of gender equality to be approved by the Government by 31st March each year.
88. Responsible bodies – In the first line, the expression of “i.e., the employer” after “body of public authority” appears to be unclear and inconsistent. Considering the reference to Article 15 (National Action Plan), it can be assumed that it covers the “body of public authority” as defined in Article 6 (“state authorities, bodies of the autonomous province and local self-government unit, as well as public enterprises, institutions, public agencies and other organisations and persons entrusted with certain public competences by law, as well as legal entities established or financed as a whole or in the predominant part by the Republic of Serbia, the autonomous province or the local self-government unit”), and not the “Bodies of public authority and employers that have more than 50 employees and persons hired for work” as mentioned in Article 16. The terminology should be clarified.
89. In addition, the draft law could propose a clearer presentation of the organisation of the reporting mechanisms in gathering the provisions of Article 17 with Chapter VII Article 65 entitled “Reporting on the Achievement of Gender Equality” and foreseeing a list of data to be recorded – the data collection should be fully integrated within the annual reporting process.
90. **The presentation of the reporting process could be rationalised, notably by integrating reports drafting and data collection in a unique process, for instance in merging article 17 with Chapter VII - Article 65 (‘Recording and reporting on the achievement of gender equality’).**

- vi. Reporting on the Implementation of the Plan or Programme of a Body of Public Authority and Employers - Article 18

Data on the implementation of the plan or programme referred to in Article 16 of this Law, in the part that refers to the achievement of gender equality, shall represent an integral part of the annual report on the implementation of the annual plan or programme adopted by bodies of public authority and bodies of employers in accordance with the Law.
Bodies of public authority and employers whose annual reports on the implementation of the plan or

programme are not publicly available shall inform the Ministry about the adoption of the report on the implementation of the annual plan or programme and attach to the notification an excerpt from the annual report on the implementation of the plan or program – the part which refers to the achievement of gender equality – no later than 30 days from the date of its adoption, for the purpose of informing and monitoring the implementation of planned activities in this area.

Bodies of public authority and employers whose reports are publicly available shall inform the Ministry about the media outlet, i.e., website where the report was published, within 30 days from the date of adoption.

91. Article 18 foresees a reporting mechanism for the gender equality part of the “Employer annual action plan” foreseen in Article 16. Internal employment actions (gender equality within the workplace) are also covered by: Article 26 on the “Structure of Management and Supervisory Bodies at Bodies of Public Authority” – that does not foresee any reporting mechanism; Article 64 on “Obligations of Bodies of Public Authority to Appoint a Person in Charge of Gender Equality”, foreseeing the appointment of a gender focal point in charge of drafting a report on gender equality in the area; Article 65 Para 2 on “Recording Data on the Achievement of Gender Equality” where a list of specific data is provided and a special form is foreseen; Article 66 Para 1 “Reporting on the Achievement of Gender Equality” provides additional information related to this reporting”, where another report is foreseen.

92. The number of reports covering internal employment issues (gender equality within the workplace) to be undertaken by bodies of public authorities and employers of more than 50 employees should be rationalised and reduced.

vii. Risk Assessment and Risk Management - Articles 19 to 24

93. Articles 19 to 24 foresee that bodies or public authorities conduct a risk assessment, adopt, implement, and monitor a risk management plan, and report to the Ministry in charge of gender equality, according to a rulebook to be provided by the Ministry. While seeing the interests of such an exercise, the attention of the authorities is drawn on the importance to fully integrate the risks management in the mechanisms foreseen for the planning, implementation, monitoring and reporting of the gender equality actions – and not to develop a parallel mechanism.

94. The risk management process should be fully integrated within the global planning, implementation, monitoring and reporting process of the gender equality policy, and not be carried out through a parallel process.

IV. CHAPTER IV - BODIES OF PUBLIC AUTHORITY AND SPECIAL MEASURES

i. Monitoring, Planning, Implementing and Publishing the Results of Equal Opportunities Policies - Article 25

Bodies of public authority shall continuously monitor the achievement of gender equality in the area of social life for which they are responsible, implementation of international standards and Constitutionally guaranteed rights in this field, the use of gender-sensitive language in the names of jobs, positions, titles and occupations, as well as pursue, within their competences, an equal opportunities policy for women and men, as well as plan, adopt, implement and publicly announce the results of special measures.

Bodies of public authority shall prepare their financial plans and plans or programmes of work or business programmes in accordance with Articles 5 and 16 of this Law and the law governing the budget system.

Bodies of public authority shall cooperate directly or through the body responsible for cooperation with the civil society, with associations, especially for the needs of:

- 1) *proposing and adopting measures for the achievement and promotion of gender equality and preparing reports on the achievement and promotion of gender equality in the Republic of Serbia;*
- 2) *monitoring the implementation of laws, other regulations and strategic documents in the field of gender equality;*
- 3) *implementing activities related to the promotion of gender equality, prevention and suppression of gender-based violence and violence against women, fight against discrimination based on sex or gender, in the areas of labour, employment, self-employment, social insurance, social protection and healthcare, education, defence and security, transportation, energy and communication, environmental protection, culture, public information, sports, political activity and public affairs, reproductive and sexual rights and access to goods and services with the aim of promoting the principle of equal treatment and overcoming and combatting gender stereotypes.*

95. **The references to equal opportunity policy in the title and the body of Article 25 should be replaced with “gender equality policies”.**

96. **The inclusion of Article 25, recalling the key role of the cooperation with civil society in planning, implementing and monitoring gender equality policies should be commended. To enhance consistency throughout the text, it is recommended to add here a reference to the “gender equality council, as an advisory body of the Government with the widest inclusion of civil society” foreseen in Article 60 (assuming this is a different body than the “body responsible for cooperation with the civil society” mentioned in this Article).**

ii. Structure of Management and Supervisory Bodies at Bodies of Public Authority - Article 26

A balanced representation of the sexes shall be ensured in the bodies of public authority that have management and supervisory bodies and at appointed positions, in accordance with regulations based on which they were established and general internal acts.

The balanced representation of sexes referred to in paragraph 1 of this Article shall be looked after by the body in charge of appointment, i.e., giving consent for the appointment. This body shall undertake special measures whenever there is a visibly unbalanced representation of the sexes in the management and supervisory bodies.

By way of exception, whenever there are objective reasons under the law and on the basis of a special explanation that contains and takes into account specific features resulting from the nature of a job, service or activity, and place and conditions of work, bodies of public authority referred to in paragraph 2 of this Article shall adopt special measures in order to achieve balanced representation of sexes in accordance with these specific features.

The body of public authority shall establish quantitative and qualitative mechanisms for monitoring progress in the achievement of balanced representation of sexes in the management and supervisory bodies.

The body referred to in paragraph 2 of this Article shall monitor progress in the achievement of balanced representation of sexes in the management and supervisory bodies referred to in paragraph 1 of this Article.

97. As mentioned in the context of Article 18, internal employment actions (gender equality within the workplace) are covered under numerous provisions: Article 16 and 18 (see above), Article 26 – that does not foresee any reporting mechanism, Article 64 - foreseeing the appointment of a gender focal point in charge of drafting a report on gender equality in the area, Article 65 Para 2 - where a list of specific data is provided and a special form is foreseen; Article 66 Para 1 - where another report is foreseen.
98. **The number of reports covering internal employment issues (gender equality within the workplace) to be drafted by bodies of public authorities and employers of more than 50 employees should be rationalised and reduced (see recommendation related to Article 18).**

V. CHAPTER V - AREAS IN WHICH GENERAL AND SPECIAL MEASURES ARE DETERMINED AND IMPLEMENTED

- i. General and Special Measures for Reducing Unemployment and Increasing Employment and Self-Employment Opportunities - Article 27

Organisations in charge of employment (National Employment Service and employment agencies) shall ensure equal opportunities for the employment of women and men and members of vulnerable social groups, equal accessibility of jobs, self-employment, including selection criteria and conditions, regardless of the branch of industry, and at all levels of professional hierarchy, including career advancement, and shall undertake general and specific measures for this purpose.

Differentiation, exclusion or giving preference due to specific characteristics of a particular job in which sex or gender is a realistic and decisive requirement for doing the job shall not be regarded as discrimination if the desired purpose is justified and if the requirements are appropriate, provided that such unequal treatment is justified by a legitimate aim.

Incentives for the purpose of employment and self-employment of hard-to-employ categories of persons, such as women, pregnant women, postpartum women, victims of domestic violence, victims of gender-based violence, parents, persons younger than 18, persons with disabilities and others, shall not be regarded as discrimination.

Introducing incentives for the development of entrepreneurship among women shall not be regarded as discrimination.

99. (Terms and definitions) To ensure consistency throughout the text of the draft law the expression “Increasing Employment and Self-Employment Opportunities” in the title of Article 27 should be replaced with “Ensuring gender equality in employment and self-employment”. Similarly, the text of Article 27 should be amended, replacing “equal opportunities for the employment of women and men” with “ensuring gender equality in employment and self-employment”.
100. (Scope) Articles 2 and 3 of the Treaty on the Functioning of the European Union (TFEU) formalise gender mainstreaming as a horizontal goal when formulating and implementing laws, regulations, administrative provisions, policies, and activities, including a fortiori public employment services (PES) throughout their activities. To ensure that the Serbian PES ensures gender equality in all the missions it performs, including for instance vocational training, counselling, unemployment benefits distribution, etc., the list of areas where equality is ensured should be non-exhaustive and open-ended.
101. (Categories) Each paragraph of the article addresses a different category of persons: paragraph 1 “women and men and members of vulnerable social groups”; paragraph 2 “sex or gender”; paragraph 3 “hard-to-employ categories of persons, such as women, pregnant women, postpartum women, victims of domestic violence, victims of gender-based violence, parents, persons younger than 18, persons with disabilities and others”; paragraph 4 “women”.
102. (Positive action) To comply with Directive 2006/54 on the implementation of

the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), paragraphs 3 and 4 could make explicit the pursued objective of the provision, i.e. to ensure full de facto equality between men and women.

103. (Monitoring) To support the implementation of the law, a monitoring and reporting process should be developed.

104. **It is recommended:**

- a) To replace “Increasing Employment and Self-Employment Opportunities” in the title of Article 27 with “Ensuring gender equality in employment and self-employment”.
- b) To replace “equal opportunities for the employment of women and men” with “ensuring gender equality in employment and self-employment” in paragraph 1 of Article 27 .
- c) To add “and in all activities performed by the afore-mentioned institutions” in paragraph 1 before “and shall undertake general and specific measures”.
- d) To replace the term “vulnerable social groups” in paragraph 1 with “disadvantaged groups”.
- e) To replace the category of beneficiaries in paragraph 3 by “disadvantaged groups” (see article 6 on definitions) and to add “and disadvantaged groups” in paragraph 4, after “among women”.
- f) That the Public Employment Service of Serbia publish sex-disaggregated data on the beneficiaries of their activities on a regular basis.
- g) To add before “incentives shall not be regarded as discrimination” the expression “With a view to ensuring full de facto equality between men and women in working life”. Same after “entrepreneurship” in paragraph 4.

ii. Equal Opportunities in the Area of Employment and Labour and Assessment of the Total Value of Unpaid Housework - Article 28

In the area of employment and labour, equal opportunities shall be guaranteed and the implementation shall be secured of general and special measures for the purpose of ensuring the right to work for women and men with regard to access to executive and appointed positions; requirements for access to employment, self-employment or occupation, including selection criteria and recruitment conditions regardless of the branch of activity and at all levels of the professional hierarchy, including career advancement, all types of paid work engagement; deployment and promotion; working hours; flexible working hours for the purpose of balancing family and work obligations of men and women, absence from work; payment; working conditions; professional development and additional education, including practical working experience, daily, weekly and annual leave; termination of employment and hiring for work; collective negotiations; informing; social security; maternity leave, duration of maternity leave and compensation of salary paid during maternity leave; absence for childcare and special care of a child with disability; protection of the right to work and in connection with work.

Data on unpaid housework, collected and recorded by the producer of official statistics, shall be published in accordance with the five-year statistical programme and annual applicable plans of the main producer and disseminator of official statistics of the Republic of Serbia.

The total value of unpaid housework in the society shall represent a part of the total gross national income, and shall be determined on the basis of statistical data of bodies of public authority, which are collected and processed in accordance with the law.

A person who does not have health insurance on any other basis shall acquire the right to health insurance on the basis of unpaid housework (running a household, looking after the children, looking after other family members) and unpaid farmwork, etc.

105. (Scope) Article 28 identifies a list of areas in the fields of employment where gender equality should be guaranteed. To promote ease of readability, the list could be rationalised. According to Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation encompasses: (a) access to employment, including promotion, and to vocational training; (b) working conditions, including pay; c) occupational social security schemes.
106. (Terminology) Consistency of terminology should be strengthened throughout the draft law. See for instance: “maternity leave, duration of maternity leave and compensation of salary paid during maternity leave; absence for childcare and special care of a child with disability” to be compared with Art. 33, para 1 “absence from work due to pregnancy, maternity leave, absence from work for childcare or special childcare, adoption, foster care and guardianship”); or with respect to Article 4 on discrimination and Article 6 on definitions (such as unpaid care work); and with respect to Chapter 9 (“regardless of their sex or gender and family status” in Articles 64 and 65 vs. “for women and men” in Article 29).
107. (Provisions on Compensation and reparation, Burden of Proof, Prevention) The draft law does not foresee provisions encompassed by the Recast Directive (Directive 97/80)³² and it is unclear whether they are already foreseen by other legal acts, including the parallel draft law on discrimination in preparation. The Recast Directive (Directive 97/80)³³ stipulates that:
- Compensation or reparation (Article 18) “Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an

³²Directive 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) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0054&from=FR>

³³Directive 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) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0054&from=FR>

applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.”

- Burden of proof (Article 19) “Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure 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.”
- Prevention of discrimination (Article 26) “Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.”

108. (Right to health insurance based on unpaid housework/farmwork) In addition to terminology consistency issues as already mentioned, and from a feminist perspective, the provision should not lead to recognise a “housewife salary” but rather contribute to the development of a universal health insurance approach. In addition, the definition of the beneficiaries of this benefit and eligibility criteria could be detailed and the expression “Etc.” should be avoided and replaced with precise and explicit criteria.

109. **It is therefore recommended:**

- a) **To replace the term “equal opportunity” with “gender equality” in paragraph 1.**
- b) **To categorize the list of areas where general and special measures should be implemented to guarantee gender equality, to facilitate readability.**
- c) **To strengthen terminology consistency.**
- d) **To foresee provisions on Compensation and reparation, Burden of Proof and Prevention**
- e) **To define more precisely the beneficiaries and eligibility criteria to access health insurance based on unpaid housework and farmwork.**

iii. Obligations of Employers and Bodies of Public Authority - Article 29

The employer in the public and private sectors and the body of public authority shall provide employees, regardless of their sex or gender and family status, with equal opportunities in connection with the exercise of rights from employment and rights pertaining to employment, or other forms of engagement for work, in accordance with the law governing labour for an employer or body of public authority.

The employer in the public and private sectors and the body of public authority shall ensure to stakeholders, regardless of their sex, gender and family status, equal opportunities for employment, other types of engagement for work, or performing a certain job, in accordance with the law governing labour for an employer or public authority.

During the implementation of special measures referred to in this Article, bodies of public authority

and employers shall pay due attention to ensuring the equality of persons belonging to vulnerable social groups.

The employer in the public and private sectors and the body of public authority shall be prohibited to discriminate against persons referred to in paragraphs 1-3 of this Article on the basis of sex or gender in relation to:

- 1) requirements for employment and selection of candidates for a particular job;*
- 2) working conditions and all employment-related rights;*
- 3) professional development and additional education;*
- 4) career advancement;*
- 5) termination of the labour contract.*

The employer and the body of public authority shall provide employees, regardless of their sex or gender and gender status, with equal opportunities for professional development and additional education, as well as professional training of trainees, professional orientation, advanced specialisation and requalification, including practical work experience.

The employer in the public and private sectors and the body of public authority shall:

- 1) implement professional development and professional training programmes taking into account their family obligations (obligation to look after and care for children, the elderly and sick family members, etc.);*
- 2) provide employees or their representatives, at least once a year, with information on the position of women and men employed or hired for work by the employer and the body of public authority, including the information on special measures applied to promote gender equality. an overview of representation of women and men at different levels of the organisation, information on their salaries and differences in their salaries disaggregated by the employees' sex, without employees' personal data, in accordance with regulations governing personal data protection, as well as data on special measures;*
- 3) ensure financial resources for the fulfilment of obligations referred to in this Article.*

110. (Objective) The ambition of the article, that defines a strong objective of a balanced representation of both sexes (min. 40% of each sex) in management and supervisory bodies, is to be commended. However, the question of how the list of features is supposed to be considered arises. The Article may be more effective by being more specific with regard to implementation and monitoring and could foresee for instance the publication of sex-disaggregated on data on management and supervisory bodies on a regular basis.

111. **Incentives should be foreseen for employers to effectively progress towards a balanced representation of both sexes in management and supervisory bodies, by publishing sex-disaggregated data on their composition on a regular basis. The expression “regardless of their sex or gender and gender status” should be replaced with “regardless of their sex or gender and family status”.**

iv. Structure of the Employer’s Management and Supervisory Bodies - Article 30

A balanced representation of sexes shall be ensured in the management and supervisory bodies of the employer, as well as at appointed positions in these bodies, taking into account specific features resulting

from the nature of the job, service or activity, place and conditions of work, prescribed criteria for selection or appointment and other objective reasons, in accordance with the law.

The body responsible for appointing management and supervisory bodies shall look after the balanced representation of sexes referred to in paragraph 1 of this Article. This body shall take special measures in all cases of visibly unbalanced gender representation in these bodies.

112. (Objective) The same considerations made on the previous article would apply to Article 30 The Article may be more effective by being more specific with regard to implementation and monitoring and could foresee for instance the publication of sex-disaggregated on data on management and supervisory bodies on a regular basis.

113. **It is recommended to foresee incentives for employers to effectively progress towards a balanced representation of both sexes in management and supervisory bodies, by publishing sex-disaggregated data on their composition on a regular basis.**

v. Prohibition of Termination of Employment - Article 31

Employers or bodies of public authority shall be prohibited from dismissing an employee, terminating employment or declaring an employee redundant based on sex or gender, due to pregnancy, maternity leave or absence from work for childcare and special childcare, as well as due to the initiation of proceedings for the protection from discrimination, harassment, sexual harassment and sexual extortion.

114. (Discrimination) According to Directive 2006/54/EC, harassment and sexual harassment are “contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex”.

115. **The word “including” should be added after discrimination (“protection from discrimination, including harassment, sexual harassment, and sexual extortion). This is without prejudice to the possibility of considering harassment, sexual harassment and particularly sexual extortion as possible offences on their own.**

vi. Prohibition of Harassment, Sexual Harassment and Sexual Extortion - Article 32

Harassment, sexual harassment and sexual extortion based on sex or gender at work or in connection with work by employers, employees or other persons hired for work against other employees or other persons hired for work, shall be prohibited.

Harassment because of one’s sex and sexual harassment shall be prohibited not only in the workplace, but also in the process of employment, professional development and career advancement.

116. **The term “based on sex or gender” and “because of one’s sex” should be**

deleted, since the grounds of sex or gender are characteristics of the definition of harassment and sexual harassment in Article 6.

- vii. Prohibition of Gender Inequality During Absence from Work Due to Pregnancy, Maternity Leave and Absence From Work For Childcare and Special Childcare - Article 33

The employer shall return an employee to the same or equivalent job following absence from work due to pregnancy, maternity leave, absence from work for childcare or special childcare, adoption, foster care and guardianship.

The transfer of employees referred to in paragraph 1 of this Article or assignment to work for another employer shall be prohibited if it is less favourable for the employee, unless this is done in accordance with the findings of a competent healthcare authority or another competent authority or because of the employer's organisational changes, or changes in the internal organisation of the state authority, authority of the autonomous province and authority of the local self-government unit, carried out in accordance with the law.

Absence from work due to pregnancy, maternity leave, absence for childcare and special childcare, or fatherhood and motherhood (parenthood), adoption, foster care, guardianship, may not be a reason for denying the right to: professional development and additional education;

- 1) promotion and acquisition of a higher title, or transfer to an immediately higher executive position, once requirements have been met, in accordance with the law;*
- 2) taking advantage of all improvements in the working conditions created during absence.*

The period in which an employee was absent from work due to pregnancy, maternity leave, absence for childcare and special childcare shall not be taken into account in the work performance assessment in the total period of in which work performance is assessed.

117. (Terminology consistency) Consistency of terminology should be strengthened throughout the article (paragraph 1 "absence from work due to pregnancy, maternity leave, absence from work for childcare or special childcare, adoption, foster care and guardianship", paragraph 3 "due to pregnancy, maternity leave, absence for childcare and special childcare, or fatherhood and motherhood (parenthood), adoption, foster care, guardianship, paragraph 7 "absent from work due to pregnancy, maternity leave, absence for childcare and special childcare").

118. **Terminology used in different parts of Article 33 should be harmonised and consistent, also in line with other relevant provisions (such as Article 28).**

- viii. Prohibition of Unequal Pay for the Same Work or Work of Equal Value - Article 34

Employees shall be guaranteed equal pay, either in cash or in goods and services, directly or indirectly, for the same work, or work of equal value for the employer.

Work of equal value shall refer to work for which the same level of qualification or education, knowledge and ability is required, in which equal contribution has been made with equal responsibility.

When the pay referred to in paragraph 1 of this Article is determined, the workplace or job classification must be based on the same criteria for women and men, and regulated in such a way as to rule out

discrimination based on sex or gender.

119. According to Article 4 §3 of the 1961 European Social Charter and Article 20c of the 1996 Revised Social Charter, to which Serbia is a party, States Parties undertake to recognise the right of women and men to equal pay for work of equal value.
120. Directive 2006/54/EC on equal treatment of women and men in matters of employment and occupation requires employers to ensure equal pay for equal work or work of equal value between women and men. Article 4 of the Directive states that “For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.” It is recommended that paragraph 1 of Article 34 be amended to specify that direct or indirect discrimination based on sex in all aspects and conditions of remuneration be prohibited, in compliance with the Directive.
121. (Definition) The definition of “work of equal value” seems consistent with the proposed Directive by the EU commission, encompassing “education, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved work”.
122. (Sanction) Whereas Article 64 foresees a punitive provision for Employers, Insurance Companies and Media (“A fine of between RSD50,000 and RSD2,000,000 shall be imposed on the employer who has the status of a legal entity if the employer: 6) acts in contravention with the prohibition referred to in Articles 31, 32, 33, 34 and 47 paragraph 6 of this Law;”), no provision are foreseen for Bodies of Public Authority.
123. **It is recommended:**
- a) **To amend paragraph 1 of Article 34 to specify that “direct or indirect discrimination on the basis of sex in all aspects and conditions of remuneration is prohibited”, in compliance with the Directive.**
 - b) **To remove the reference to “the employer” from paragraph 1 as the Court of Justice of the European Union has established that, in certain circumstances, the principle of equal pay is not limited to situations in which men and women work for the same employer.**
 - c) **To foresee a punitive provision for the responsible person at the authority of the Republic of Serbia, body of territorial autonomy and body of local self-government unit, if the responsible person acts in violation of the prohibition referred to in Article 34.**

ix. Social Dialogue and Gender Equality - Article 35

During the establishment of negotiation boards, in accordance with regulations governing labour relations, social partners shall ensure equal opportunities for the participation of women and men in negotiation boards, and take appropriate special measures in case of a visibly unbalanced representation of sexes.

During collective negotiations at all levels, social partners shall collaborate in order to ensure gender

equality in respect of:

- 1) *requirements for access to employment, self-employment or occupation, including criteria and conditions for the selection of candidates for positions within professional hierarchy;*
- 2) *working conditions, including pay, salary and other remuneration for work of equal value;*
- 3) *career advancement, i.e., access to the right to professional development, professional training and additional education;*
- 4) *balancing of the private and professional life, especially with respect to pregnancy, maternity leave, absence for childcare and special childcare, or fatherhood and motherhood (parenthood), adoption, foster care, guardianship;*
- 5) *prevention of harassment because of one's sex and sexual harassment in the workplace, in the process of employment, professional development and promotion;*
- 6) *implementation of measures for preventing discrimination based on sex or gender;*
- 7) *monitoring practice in the workplace;*
- 8) *monitoring collective agreements, codes of conduct;*
- 9) *encouraging research or exchange of experiences and good practice examples;*
- 10) *introducing flexible working hours in order to facilitate the balancing of the private and professional life;*
- 11) *concluding agreements at the appropriate level, which shall determine the rules for combatting discrimination in areas that are within the scope of collective negotiations.*

124. (Scope) The list of items complies with Recast Directive Article 21(2).

125. (Monitoring) To support the implementation of the law, a monitoring and reporting process should be developed.

126. **It is recommended:**

- a) **To replace the term "equal opportunities for the participation of women and men" with "equal participation of women and men", in order to highlight the objective of de facto equality.**
- b) **To include a provision for employers to publish sex-disaggregated data on the listed items on a regular basis.**
- c) **To develop a monitoring and reporting process to support the implementation of the law.**

x. The Area of Social Protection and Healthcare - Article 36

Bodies of public authority performing activities in the area of social protection and healthcare shall provide equal opportunities in the provision of social protection and healthcare for all beneficiaries of services and rights regardless of their sex or gender, including equal access to services and rights in the area of social protection and healthcare, especially for persons belonging to vulnerable social groups.

Discrimination based on sex or gender shall be prohibited in the pension system, in respect of coverage and requirements for accessing the system, obligation to calculate and pay contributions, including additional levies.

Indirect and direct discrimination based on sex shall be prohibited in the social security systems, especially with regard to the:

- 1) scope of and requirements for accessing these systems;
- 2) obligation to pay contributions and the calculation of contributions;
- 3) calculation of levies, including additional levies paid for the spouse and dependent family members and the conditions regulating the duration and retention of the right to levies.

127. As indicated throughout the text, it is recommended that equal opportunities be replaced with more affirmative language, emphasising the objective of achieving de facto equality between women and men.

128. **It is therefore recommended:**

- a) **To replace “provide equal opportunities” with “ensure gender equality”, delete “regardless of their sex or gender” in para. 1.**
- b) **To replace “Discrimination based on sex or gender” with “Direct or indirect discrimination based on sex or gender in para. 2.**

xi. The Area of Education, Science and Technological Development - Article 37

Bodies of public authority and employers who, in accordance with laws and other regulations, perform activities in the area of education, science and technological development shall:

1) include gender equality contents in the adoption of teaching and learning curricula or study programmes and materials, in the determination of textbook standards, teaching methods and regulations governing school space and equipment and exclude from curricula and teaching materials at all levels of education contents that include gender stereotypes as well as misogynistic and misandrian contents, include gender equality contents with the aim of overcoming gender stereotypes and prejudices, fostering mutual respect, non-violent resolution of conflicts in interpersonal relations, preventing and suppressing gender-based violence and observing the right to personal integrity, in the way adapted to the age of the pupil or student;

2) provide support to publicly funded educational programmes and scientific research for the purpose of helping them to promote gender equality and of overcoming gender stereotypes;

3) ensure that the contents of curricula or study programmes and textbooks and other teaching materials affirm equality and increase visibility of vulnerable social groups, contributing to science, technological development, culture and arts;

4) in accordance with the law, undertake measures including:

(1) integration of gender equality in teaching and learning curricula, including the recognition of and encouragement for the reporting of gender-based violence and violence against women, within:

- regular courses and extra-curricular activities;

- planning and organisation of different types of training at all educational institutions, centres or organisations that educate teaching staff.

(2) modifying the contents of teaching and learning curricula or study programmes and textbooks and other teaching materials, so as to affirm equality and increase the visibility of women's contribution to science, technological development, culture and arts;

(3) using gender-sensitive language, i.e., language in accordance with grammatical gender, in textbooks and teaching materials, as well as in certificates, diplomas, classifications, titles, occupations and licences, as well as in other forms of educational work;

(4) assessing the contents of textbooks and other teaching materials from the aspect of their influence on the promotion of gender equality;

(5) continuous professional development and additional training of employees in education, as well as professional training of trainees for the promotion of gender equality, recognition and protection from discrimination based on sex or gender, sexual orientation, sexual characteristics, disability, race, nationality or ethnic origin, as well as based on other personal characteristics, increasing sensitivity to the content of the curriculum and teaching material, human rights, discrimination based on sex or gender, position and protection of persons with disabilities, bullying, gender-based violence and violence against women and girls;

(6) taking special measures for the purpose of encouraging a balanced representation of sexes during enrolment in study programmes, scholarship programmes, lifelong learning programmes, as well as for using information and communication technologies;

(7) taking special measures for the purpose of ensuring active inclusion in the education system of persons who are at a greater risk of dropping out due to their sex or gender, sexual characteristics, gender stereotypes, marital status, tradition and socio-economic conditions;

(8) adoption and implementation of special measures in the area of publicly funded research for the purpose of including the gender perspective in all stages of development, evaluation, selection, implementation and assessment of results of scientific research projects, as well as equal participation of women and men in research teams and bodies responsible for evaluation, selection and assessment of scientific research projects.

Institutions in the area of education shall ensure equal opportunities for active participation in sports activities without any discrimination based on sex or gender, and undertake special encouragement measures.

129. Given that Article 38 has been dedicated to gender equality in the field of information and communication technologies, it is recommended that Article 37 be entitled “Gender equality in the area of education and research” in order to better reflect the provisions covered in the article.

130. In paragraph 1, reference is made to “misogynistic and misandrian” contents. It is recommended that these are deleted and replaced by “sexist contents” in line with terminology used in the CoE Recommendation on preventing and combating sexism.³⁴

131. In paragraph 7, it is recommended that “sexual characteristics” and “gender stereotypes” are removed and “and any other characteristic” is included at the end of the sentence, to expand the scope of the provision.

132. In the last paragraph, with reference to gender equality in sports, it is recommended, in line with the recommendations made throughout the draft law, to

³⁴ [CoE Recommendation on preventing and combating sexism](#)

replace the term “equal opportunities” with “equal participation of girls and boys, women and men”. This terminology is consistent with Recommendation CM/Rec(2010)9 of the Committee of Ministers to member States on the revised Code of Sports Ethics demanding the “equal participation of women, girls, men and boys in all individual and/or team sports without gender-based discrimination”.³⁵

133. **It is recommended:**

- a) That Article 37 be entitled “Gender equality in the area of education and research” to better reflect the provisions covered in the article.
- b) In paragraph 1, to replace the reference “misogynistic and misandrian” contents and replacing it with “sexist contents” in line with terminology used in the CoE Recommendation on preventing and combating sexism.
- c) In paragraph 4 (2), to add “history” after “technological development”.
- d) In paragraph 4 (3), to replace “gender-sensitive language” with “gender-sensitive language and communication”.
- e) In paragraph 7, to include “and any other characteristic” at the end of the sentence, to expand the scope of the provision.
- f) To replace the term “equal opportunities” with “equal participation of girls and boys, women and men”.
- g) To include an additional provision in relation to sports “ensure the implementation of gender mainstreaming in all fields and at all levels of sport and the establishment of specific mechanisms to this end”.
- h) To include the following additional provisions:
 - i. Implementing gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies in the area of education and research;
 - ii. Promoting gender equality in the management of their human resources and in the labour market in the area of education and research;
 - iii. Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of educational and research policy.
 - iv. Recording sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans.
- xii. General comment on Articles 38 to 45

134. Articles 38 to 45 foresee provisions related to gender equality policies in the areas of Information and communication technologies, Defence and Security, Transport, Energy, Environmental Protection, Culture, Public Informing and Media, Sports. Articles identify specific objectives, general and special measures to ensure gender equality to be implemented by bodies of public authority of the related sector including by local self-government units.

³⁵ Recommendation [CM/Rec\(2010\)9](#) of the Committee of Ministers to member States on the revised Code of Sports Ethics

135. While the draft law commits and gives visibility to each sector in developing separate articles, some lack of consistency among the various articles is noted.

136. A more systematic approach could be applied in presenting the provisions for each sector, by applying the following structure:

- a) Identify specific objectives related to the sector: "Gender equality policies in the area of [SECTOR] shall include: [to be completed with specific objectives related to the sector]".
- b) List the measures to be implemented: "Bodies of public authority and employers in the area of [SECTOR] shall ensure the implementation of gender equality policies, including with special measures taking into account different interests, needs and priorities of women and men:
 - i. Promoting equal access of men and women, including young women, to the policies, programmes and services developed and ensure their right to information about them;
 - ii. Implementing gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies;
 - iii. Promoting gender equality in the management of their human resources and in the labour market in the area of [SECTOR], including through training;
 - iv. Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of gender equality policies;
 - v. Using gender-sensitive language and communication and contributing to eliminate gender stereotypes in exercising of rights and obligations of persons of both sexes in the area;
 - vi. Collecting sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans.
- c) Involve the units of local self-government: "Units of local self-government implement gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies."

xiii. Gender equality in the field of information and communication technologies and information society - Article 38

Gender equality in the field of information and communication technologies and information society includes:

- 1) promotion of information and communication technologies and advantages of using modern technologies among women and girls;
- 2) ensuring a balanced representation of the sexes and equal opportunities for dealing with information and communication technologies, as well as the implementation of gender mainstreaming in financing these activities.

Special measures implemented in the field of information and communication technologies include:

- 1) support for programs financed from public funds that contribute to the promotion of gender equality in the field of information and communication technologies and the deconstruction of gender stereotypes;
- 2) improvement of digital literacy and digital competencies of women in order to establish a balanced representation of the sexes in digital labour market;
- 3) retraining and additional training of women in the field of information and communication technologies;
- 4) promoting the inclusion of young people, especially girls in Science, Technology, Engineering and Mathematics (STEM) science and the Information and Communication Technologies (ICT) sector.

Public authorities in the field of information and communication technologies are taking special measures to ensure gender balance in the field of information and communication technologies in order to overcome the digital gender gap and improve the socio-economic position of women.

137. **It is recommended:**

- a) **In line with previous recommendations throughout the text, to replace the term “equal opportunities for dealing with” in paragraph 1 point (1) with “gender equality in access to”.**
- b) **Under paragraph 1 defining the scope of policies, to add 3) increasing the participation of women and girls in the information and technology area as students, professionals and decision makers.**
- c) **Under special measures point (1), to replace “deconstruction” with “elimination” to comply with the objective of eliminating stereotypes and achieving de facto equality.**
- d) **Under special measures point (2), to replace “improvement” with “the promotion”.**
- e) **Under special measures point (3), to begin the sentence with “provision of”.**
- f) **Under special measures point (4), it is recommended that “the inclusion of young people, especially girls” be replaced with “gender equality and a balanced representation of both sexes”, for consistency and coherence with the terms used in the draft law.**
- g) **After special measures point (4), to add the following provisions:**
 - i. **Implementing gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies in the area of information and communication technologies and information society, including in relation to artificial intelligence to avoid the potential risks of technology perpetuating sexism and gender stereotypes;**
 - ii. **Promoting gender equality in the management of their human resources and in the labour market in the area of information and communication technologies and information society.**
 - iii. **Ensuring a balanced representation of sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of information and communication technologies policy.**
 - iv. **Recording sex-disaggregated data and reporting to the relevant authorities**

in the framework of the National Gender Equality Strategy and related action plans.

xiv. Gender Equality in the Area of Defence and Security - Article 39

Bodies of public authority and employers in the area of defence and security shall ensure the implementation of equal opportunity policies, and promotion of gender equality inclusive security and promotion of gender equality and help to eliminate gender stereotypes in exercising of the realisation of rights and obligations of persons of both sexes in the area of defence and security.

In order to achieve policy objectives referred to in paragraph 1 of this Article, special measures and activities shall be implemented, including:

- (1) improving the safety of women in peace, conflict and post-conflict recovery of the society, at home and abroad in the areas of: prevention, participation, protection and recovery;
- (2) increasing the representation and involvement of women in decision-making in all peace and security processes;
- (3) improving the accessibility and effectiveness of women's protection;
- (4) improving the system of support to the recovery of women whose security has been threatened in any way;
- (5) active participation in the coordinated implementation of systemic policies and planned activities focused on the promotion of gender equality in the society;
- (6) active participation in improving the safety and protection of women and men;
- (7) cooperation with other bodies of public authority in preventing and combatting violence, in particular domestic violence, gender-based violence and violence against women;
- (8) implementing gender analysis of bodies of public authority and employers in the area of defence and security regarding the implementation of special measures, plans and projects for promoting gender equality and reporting to the Ministry, in accordance with Article 58 of this Law.

138. Stronger language could be used throughout the article (gender equality instead of equal opportunities, ensure or guarantee instead of increase or improve, etc.). In compliance with UN Resolution 1325, the objective of “guaranteeing the safety of women in peace, conflict and post-conflict recovery of the society, at home and abroad, in the areas of prevention, participation, protection and recovery” should be recognised as one of the main objectives of gender equality policy in the field.

139. Regarding paragraph 2 and in line with the general comments above, the list of special measures should be strengthened, and provisions on gender-sensitive language and sex-disaggregated data could be added. Point 5) (“active participation in the coordinated implementation of systemic policies and planned activities focused on the promotion of gender equality in the society”) could be deleted, as it appears not specific to the area of defence and security.

140. **The paragraph could be redrafted as follows: “Bodies of public authority and employers in the area of defence and security shall promote and ensure the implementation of gender equality policies, and help to eliminate gender**

stereotypes in exercising of rights and obligations of persons of both sexes in the area of defence and security and guaranteeing the safety of women in peace, conflict and post-conflict recovery of the society, at home and abroad, in the areas of prevention, participation, protection and recovery.

In order to achieve policy objectives referred to in paragraph 1 of this Article, special measures and activities shall be implemented, including:

- a) In the areas of prevention, developing preventive mechanisms to increase the security of women in peace, conflict and post-conflict rehabilitation of society in the country and abroad;
- b) In the area of participation: guarantee a balanced representation of sexes in decision-making in all peace and security processes, including in their management and supervisory bodies, at appointed positions and throughout the implementation phases of policies;
- c) In the area of protection, guaranteeing accessible and effective protection of women;
- d) In the area of recovery, ensuring support to the recovery of women who have suffered any form of threat to their security in the post-conflict rehabilitation of society, crisis and emergency situations;
- e) Guaranteeing cooperation with other bodies of public authority in preventing and combatting violence, in particular gender-based violence and violence against women, including domestic violence ;
- f) Implementing gender analysis of bodies of public authority and employers in the area of defence and security regarding the planning, implementation, monitoring and budgeting of special measures, plans and projects for promoting gender equality and reporting to the Ministry, in accordance with Article 58 of this Law;
- g) Using gender-sensitive language and contributing to eliminating gender stereotypes in the exercising of rights and obligations of persons of both sexes in the area;
- h) Recording sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans."

xv. Gender equality in the field of Transport - Article 40

Institutions in charge of transport, will provide equal opportunities for women and men in transportation management and infrastructure. When managing human and material resources, different interests, needs and priorities of women and men are considered and taken into account.

The Ministry in charge of transport and infrastructure, when planning, managing and implementing plans, projects and policies for the development and improvement of transport and infrastructure, implements the gender mainstreaming process and integrates a gender perspective into the planning of transport policy and infrastructure development, with the aim to increase mobility and improve safety.

In local self-government units, during the planning, management and implementation of plans, projects and policies for the development and improvement of

transport and infrastructure, the gender mainstreaming process is carried out and the gender perspective is integrated into the planning of transport policy and infrastructure development, with the aim to increase mobility and improve safety.

141. In line with the general comments above and for consistency and comprehensiveness, the article could be drafted the following way: “Public/state administration/Institutions in the field of transport, transport management and infrastructure shall ensure the implementation of gender equality policies, including in taking into account different interests, needs and priorities of women and men:

1. Promoting equal access of men and women to the policies, programmes and services developed in the area of transport policy and infrastructure development and to the right to information about them;
2. Implementing gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies in the area of transport policy and infrastructure development;
3. Promoting gender equality in the management of their human resources and in the labour market in the area of transport policy and infrastructure development, including through training;
4. Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of transport policy and infrastructure development;
5. Recording sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans;
6. Units of local self-government implement gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies in the area of transport policy and infrastructure development.”

xvi. Gender equality in the field of Energy - Article 41

Public/state administration/Institutions in charge of energy and energy policy provide equal opportunities for women and men as regards the employment system and energy exploitation. In the process of energy management (energy resources management) different interests, needs and priorities of women and men as consumers need to be considered and taken into account.

The Ministry in charge of energy, when planning, managing and implementing plans, projects and policies for sustainable energy development, conducts the process of gender mainstreaming.

In the units of local self-government during the planning, management and implementation of plans, projects and policies of sustainable energy development, the process of gender mainstreaming is carried out.

142. In line with the general comments above and for reasons of consistency and comprehensiveness, the article could be drafted the following way: “Public/state

administration/Institutions in the area of energy and energy policy shall ensure the implementation of gender equality policies, including in taking into account different interests, needs and priorities of women and men:

- a) Promoting equal access of men and women, to the policies, programmes and services developed in the area of energy and energy policy and to the right to information about them;
- b) Implementing gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies in the area of energy and energy policy;
- c) Promoting gender equality in the management of their human resources and in the labour market in the area of energy and energy policy, including through training;
- d) Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of energy policy;
- e) Recording sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans;
- f) Units of local self-government implement gender mainstreaming and gender budgeting in the process of planning, managing and implementing plans, projects and policies in the area of energy and energy policy."

xvii. Gender Equality in the Area of Environmental Protection - Article 42

Institutions responsible for environmental protection shall ensure equal opportunities for women and men in the system of management of natural resources and the right to information about the state of the environment. During the management of human resources, different interests, needs and priorities of women and men shall be reviewed and taken into account.

The Ministry responsible for environmental protection shall implement the procedure of gender mainstreaming during the planning, management and implementation of environmental protection plans, projects and policies.

The gender mainstreaming procedure shall be implemented at local self-government units during the planning, management and implementation of environmental plans, projects and policies.

143. In line with the general comments above and for consistency and comprehensiveness purposes, the article could be drafted the following way: "Public/state administration/Institutions in the area of environmental protection and management of natural resources shall ensure the implementation of gender equality policies, including in taking into account different interests, needs and priorities of women and men:

- a) Promoting equal access of men and women, to the policies, programmes and services developed in the area of environmental protection and management of natural resources and to the right to information about them;
- b) Implementing gender mainstreaming and gender-budgeting in the process

- of planning, managing and implementing plans, projects and policies in the area of environmental protection and management of natural resources;
- c) Promoting gender equality in the management of their human resources and in the labour market in the area of environmental protection and management of natural resources, including through training;
 - d) Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of environmental protection and natural resource management policy.
 - e) Recording sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans.
 - f) Units of local self-government implement gender mainstreaming and gender budgeting in the process of planning, managing and implementing plans, projects and policies in the area of environmental protection and natural resource management.”

xviii. Gender Equality in the Area of Culture - Article 43

Gender equality in the area of culture shall include:

- 1) equal freedom of cultural and artistic creation for women and men;
- 2) equal opportunities in the expression and development of talents in the artistic and cultural creation for women and men;
- 3) equal access to cultural goods and cultural contents for women and men;
- 4) equal participation in competitions for projects in the area of culture and arts, as well as participation in competitions for awards in the areas of culture and arts for women and men.

Special measures determined and implemented in this area shall include:

- 1) support to publicly funded cultural programmes that contribute to the promotion of gender equality and prevention and suppression of gender stereotypes and prejudices;
- 2) establishment of balanced representation of sexes in the management and supervisory bodies of cultural institutions that have such bodies, in accordance with the law governing the area of culture.

144. According to the Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism, the list of objectives pursued by gender equality policy in the area of culture could also include: “5) prevention and elimination of sexism and gender-based violence against women and girls in culture, namely, physical intimidation or violence, verbal, psychological, physical and sexual harassment and abuse. 6) Promotion of research on women and girls in culture.”

145. For consistency and comprehensiveness, it is recommended to replace Paragraph 2 with: “Bodies of public authority and employers in the area of culture shall ensure the implementation of gender equality policies, including with special measures taking into account different interests, needs and priorities of women and

men, in:

- a) Promoting equal access of men and women, including young women, to the policies, programmes and services developed and to the right to information about them;
- b) Implementing gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies;
- c) Promoting gender equality in the management of their human resources and in the labour market in the area of culture, including through training;
- d) Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of gender equality policies;
- e) Using gender-sensitive language and contributing to eliminate gender stereotypes in exercising of rights and obligations of persons of both sexes in the area;
- f) Collecting sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans;
- g) Units of local self-government implement gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies.”

xix. Gender Equality in the Area of Public Informing and Media - Article 44

Media contents, including advertising, must not contain data that create or encourage discrimination based on sex or gender.

Expressing hatred and belittling women and men, as well as publicly advocating, supporting and acting in accordance with prejudices, customs and other social behaviour patterns based on the idea of subordination or superiority of women and men, or on gender stereotypes, shall be prohibited.

Media shall use gender-sensitive language in reporting and, through the development of awareness of the importance of gender equality, contribute to combatting gender stereotypes in social and cultural patterns, customs and practices based on gender stereotypes, discrimination based on sex, or gender and other personal characteristics as well as by developing awareness of the importance of gender equality, and gender-based violence, domestic violence and violence against women.

146. Considering the Council of Europe Recommendation CM/Rec(2019)1 on preventing and combating sexism Recommendation CM/Rec(2017)9 on gender equality in the audiovisual sector³⁶ and Recommendation CM/Rec(2013)1 on gender equality and media³⁷ and in line with general comments above and for consistency and comprehensiveness, the article could be drafted the following way: “Gender equality policies in the area of public information and media shall include:

- a) Elimination of media contents, including advertising and social media content, containing data that create or encourage discrimination based on sex

³⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016807509e6

³⁷ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c7c7e

or gender

- b) Prohibition of sexist hate speech and expressing hatred and belittling women and men, as well as publicly advocating, supporting and acting in accordance with prejudices, customs and other social behaviour patterns based on the idea of subordination or superiority of women and men, or on gender stereotypes
- c) Equal access to public information and content for women and men, equal opportunities in the expression of women and men and equal access to policies or programmes supporting content creation and distribution.

Bodies of public authority and employers in the area of Public informing and media shall ensure the implementation of gender equality policies, including in taking into account different interests, needs and priorities of women and men:

- a) Promoting equal access of men and women, including your women, to the policies, programmes and services developed and to the right to information about them;
- b) Implementing gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies;
- c) Promoting gender equality in the management of their human resources and in the labour market in the area of public information, including through training;
- d) Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of gender equality policies;
- e) Using gender-sensitive language in reporting and, through the development of awareness of the importance of gender equality and contributing to combat gender stereotypes in social and cultural patterns, customs and practices based on gender stereotypes, discrimination based on sex, or gender and other personal characteristics as well as by developing awareness of the importance of gender equality, and gender-based violence, violence against women and domestic violence;
- f) Recording sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans.
- g) Units of local self-government implement gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies."

xx. Gender Equality in the Area of Sports - Article 45

Gender equality in the area of sports shall include:

- 1) promotion of sports, fitness and healthy lifestyles that preserve and improve the health of women and men, girls and boys;
- 2) ensuring a balanced representation of sexes and equal opportunities for engaging in sports activities as well as implementing gender mainstreaming procedures in the financing of these activities.

Special measures implemented in the area of sports shall include:

- 1) support to publicly funded sports programmes that contribute to the promotion of gender equality and deconstruction of gender stereotypes;
 - 2) establishing balanced representation of sexes in the management and supervisory bodies in the area of sports which have such bodies;
 - 3) securing a balanced representation of sexes at appointed positions in sports organisations.
- Bodies of public authority in the area of sports shall undertake special measures for the purpose of ensuring a balanced representation of sexes in the management bodies and at appointed positions in sports organisations, taking into account specific features of this area of social life.

147. In addition to the general comments developed above related to the structure of the article, and according to Recommendations CM/Rec(2015)2 of the Committee of Ministers to member States on gender mainstreaming in sport³⁸ and Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism³⁹, the list of objectives pursued by gender equality policy in the area of sports could also include:

- a) Equal access of women and men to sport and physical activities, throughout the different stages of life;
- b) Equal participation of women and men in competitions, including for awards through grants, pay, prize money and bonuses;
- c) Promote non-stereotyped images and roles in the broadcasting and balanced coverage by the media, especially public media, of women's and men's sport events; publicly celebrate women's achievements and ensure the equal visibility of women and men in sport;
- d) Prevention and elimination of sexism and gender-based violence against women and girls in sport, namely, physical intimidation or violence, verbal, psychological, physical and sexual harassment and abuse;
- e) Promotion of research on women and girls in sport.

148. Paragraphs 2 and 3 could be replaced by the following: "Bodies of public authority and employers in the area of Sport shall ensure the implementation of gender equality policies, including in taking into account different interests, needs and priorities of women and men:

- a) Promoting equal access of men and women, including young women, to the policies, programmes and services developed and to the right to information about them, including support to publicly funded sports programmes that contribute to the promotion of gender equality and deconstruction of gender stereotypes
- b) Implementing gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies;
- c) promoting gender equality in the management of their human resources and in the labour market in the area of public information, including through

³⁸ [Recommendation CM/Rec\(2015\)2 of the Committee of Ministers to member States on gender mainstreaming in sport](#)

³⁹ <https://rm.coe.int/cm-rec-2019-1e-sexism/1680a217ca>

training;

- d) Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of gender equality policies;
- e) Using gender-sensitive language in reporting and, through the development of awareness of the importance of gender equality and contributing to combat gender stereotypes in social and cultural patterns, customs and practices based on gender stereotypes, discrimination based on sex, or gender and other personal characteristics as well as by developing awareness of the importance of gender equality, and gender-based violence, domestic violence and violence against women.
- f) Recording sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans.
- g) Units of local self-government implement gender mainstreaming and gender-budgeting in the process of planning, managing and implementing plans, projects and policies.”

- xxi. Gender Equality in the Management and Supervisory Authorities and Their Bodies - Article 46

Bodies of public authority, as the founders of institutions in the areas of social protection and healthcare, education, science and technological development, defence and security, environmental protection, public media services, organisations in the areas of culture, and sports, trade, telecommunications, transport and energy shall undertake special measures whenever there is a visible imbalance in the representation of sexes in the management and supervisory authorities, as well as in their bodies.

The authority responsible for the selection and appointment of management and supervisory authorities, as well as their bodies, shall look after the implementation of measures referred to in paragraph 1 of this Article.

- 149. Article 46 is redundant with provisions already foreseen in articles dedicated to the following areas: social protection and healthcare, education, science and technological development, defence and security, environmental protection, public media services, organisations in the areas of culture, and sports, trade, telecommunications, transport and energy.

- 150. **It is recommend to delete the article.**

- xxii. Gender Equality in the Exercise of Electoral Rights and in the Area of Political Activity - Article 47

Everyone, regardless of their sex or gender, shall have the right to equal opportunities in participation in decision-making and management of public affairs and the right to enter public services and take public office under equal conditions.

A balanced representation of sexes shall be secured during the nomination of

candidates for MPs, deputies and councillors in the way defined in and in accordance with regulations governing elections.

A balanced representation of sexes shall be secured during the implementation of the election procedure through the composition and work of bodies responsible for implementing elections, in accordance with regulations governing elections.

The National Assembly, the Government and other authorities, within their election rights as well as in exercising the rights of the entity authorized to nominate election candidates, shall undertake general and special measures ensuring a balanced representation of sexes in the establishment of permanent and temporary working bodies and in proposing the compositions of permanent delegations representing the Republic of Serbia in international bodies.

151. **In paragraph 1 “shall have the right to equal opportunities in participation” should be replaced by “shall have the right to equal participation”.**

xxiii. Sexual and Reproductive Health and Rights - Article 49

The ministries responsible for education, training and healthcare, family care and demography, as well as public institutions established in these fields, shall ensure that all women and men, as well as girls and boys, have the right to access under equal conditions and in accordance with their age easily accessible information, education and services relating to sexuality, contraception, family planning, marital and family life, particularly taking into account the position of persons belonging to vulnerable social groups.

General and special measures encouraging childbirth, equality of parents in the exercise of parental rights and duties, and ensuring the sexual and reproductive health of women and men shall not be regarded as discrimination.

Bodies of public authority that perform activities in the areas of social protection and healthcare shall ensure in particular:

- 1) implementation of special measures for monitoring, supporting and promoting sexual and reproductive health;
- 2) organising and implementing programmes for the prevention and overcoming of early pregnancy problems and of the establishment of partner relationships among and with persons under 18 years of age;
- 3) implementation of special measures for the early detection of diseases.

152. Since sexual and reproductive health of women and men are key for the full realisation of women’s rights and gender equality in the society, this article should be strengthened through a stronger language and additional provisions. In addition, it should be stressed that women’s sexual and reproductive rights and autonomy should be upheld notwithstanding any measures to encourage an increase in the birth rate.

153. **It is therefore recommended to qualify the information to be provided as “evidence-based and scientifically accurate”, and to replace “vulnerable social group” with “disadvantaged group”.**

The following provisions could be added after “3) implementation of special

measures for the early detection of diseases”:

“4) Implementation of policy guaranteeing safe and legal abortion care as well as quality maternal health care;

5) Promoting gender equality in the management of their human resources and in the labour market in the area of public information, including through training;

6) Ensuring a balanced representation of both sexes in their management and supervisory bodies, at appointed positions and throughout the implementation phases of gender equality policies in the area of sexual and reproductive health and rights;

7) Implementation of public information campaigns and other targeted communication measures to disseminate evidence-based information to the public on sexual and reproductive health and rights using gender-sensitive language;

8) implementation of age-appropriate comprehensive sexuality education at all educational levels by trained personnel;

9) recording sex-disaggregated data and reporting to the relevant authorities in the framework of the National Gender Equality Strategy and related action plans.”

Finally, Article 49 should be moved after Article 36 “The Area of Social Protection and Healthcare”.

xxiv. Access to Goods and Services - Article 50

Restricting access to services and accessibility of goods and their procurement on the basis of sex or gender, in the public and private sectors, shall be prohibited.

All individuals shall be free to enter into contracts and to choose contractual partners for relevant deals. An individual who delivers goods or provides services may have a number of subjective reasons for selecting a contractual partner, which must not be based on the sex or gender of the relevant person.

An insurance company may not, on the basis of an insurance contract and/or a contract on financial services related to insurance, use the gender factor in the calculation of premiums and fees that will result in different individual premiums and fees. Expenses related to pregnancy and maternity leave shall not result in different individual premiums and fees.

The National Bank of Serbia shall prescribe the manner in which the uniform application of the provision referred to in paragraph 3 of this Article by the insurance company shall be ensured.

If the insurance company acts in contravention to paragraph 3 of this Article, the National Bank of Serbia shall impose measures and/or fines on that company in accordance with the law governing insurance.

Discrimination based on sex or gender in the access to goods and services of women and men shall be prohibited. This provision shall apply to all persons who deliver goods and provide publicly available services, in the public and private sectors alike, which are offered beyond the domain of private and family life and business operation in that context.

The violation of the principle of equal treatment of women and men, if the supply of goods and provision of services exclusively or primarily to members of one sex is justified by

a legitimate aim and if the means for achieving that aim are appropriate and necessary, shall not be regarded as discrimination.

154. The Gender Goods and Services Directive (2004/113/EC)⁴⁰ provides for protection against direct and indirect discrimination on the grounds of sex regarding access to and supply of goods and services. It covers all persons and organisations (both in the public and private sectors) that make goods and services available to the public and/or goods and services offered outside the area of private and family life. It excludes the following from its scope of application: media content, advertisement and education. Furthermore, it does not apply in the field of employment and self-employment.
155. The Gender Goods and Services Directive (2004/113/EC) recognizes that harassment and sexual harassment, also takes place in areas outside of the labour market. The Directive also states that the burden of proof should shift back to the defendant when evidence of such discrimination is brought.
156. **It is recommended:**
- a) **That the provisions of Article 50 extend also to the supply of goods and services, as provided for in the Gender Goods and Services Directive (2004/113/EC) and that the title of the article reflects this.**
 - b) **That paragraph 6 includes both direct and indirect discrimination.**
 - c) **If not provided for elsewhere in Serbian law, to include a provision shifting the burden of proof to the defendant to prove that there has been no breach of the principle of equal treatment in access to goods and services.**
 - d) **To include a provision stating that harassment or sexual harassment in accessing and supplying goods and services is prohibited.**
157. **Chapter V should include a separate article on special measures in the justice sector, structured according to the recommendations made above, in line with CoE Recommendation CM/Rec (2019)1, with provisions, to ensure for example: regular and adequate training for all judges and magistrates on human rights and gender equality; regular and adequate training for law-enforcement personnel on sexism and gender-based violence, and to ensure that systems for reporting violations and access to law enforcement are secure, available and appropriate.**

⁴⁰ 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 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113>

VI. CHAPTER VI - PREVENTION AND SUPPRESSION OF GENDER-BASED VIOLENCE

- i. Prohibition of Violence Based on Sex, Sexual Characteristics or Gender - Article 51

Any type of violence based on sex, sexual characteristics or gender in the private and public spheres shall be prohibited.

158. While Article 6 (10) defines gender-based violence and violence against women (11) and domestic violence (12), no definition of “Violence Based on Sex, Sexual Characteristics or Gender” is provided. Similarly, as highlighted elsewhere, a definition of “sex characteristics” is not provided, and its inclusion is not supported by international standards on gender-based violence. Therefore, it is recommended to use the same terms throughout the text of the draft law.
159. The forms of gender-based violence and violence against women criminalized under the draft law are not specifically mentioned. According to the GREVIO baseline report, forms of violence against women are criminalized under the Serbian penal code, as well as in the law on domestic violence.⁴¹ Furthermore, GREVIO encourages the Serbian authorities “to harmonise across all areas of law all legal definitions of violence against women, gender-based violence and domestic violence on the basis of the definitions set out in the Istanbul Convention”.⁴²
160. It is recommended that forms of violence referred to under Chapter V of the Istanbul Convention be specifically mentioned in the draft law, and reference made to the relevant provisions of the criminal code and law on domestic violence. These are psychological violence, stalking, physical violence, sexual violence, including rape, forced marriage, female genital mutilation, forced abortion, forced sterilisation and sexual harassment.
161. **It is recommended:**
- a) **That the expression “sexual characteristics” is deleted and the expression “gender-based violence and violence against women” replaces the “Violence Based on Sex, Sexual Characteristics or Gender” to ensure coherence and clarity throughout the text of the draft law, and consistency with definitions provided in Article 6 thereof.**
 - b) **In order to ensure clarity as well as consistency with the Istanbul Convention and the provisions in the criminal code and the law on domestic violence, that the forms of gender-based violence and violence against women that are criminalized be listed under this Article, and that reference be made to the relevant provisions of the criminal code and the law on domestic violence.**

⁴¹ GREVIO’s baseline evaluation report on Serbia.

⁴² GREVIO’s baseline evaluation report on Serbia, para.12.

ii. Special Measures and Programmes - Article 52

2) *preventing the perpetrator of violence from continuing or repeating violence;*

162. It is not clear what such special measures this paragraph is referring to.

163. **Article 52 should indicate the type of special measures to prevent the perpetrator of violence from continuing or repeating violence it refers to.**

6) *victims of violence and perpetrators of violence belonging to vulnerable social groups.*

164. It is not clear what such special measures for vulnerable social groups this paragraph is referring to.

165. **Article 52 (6) should indicate the type of special measures referring to victims of violence and perpetrators of violence belonging to “vulnerable social groups”, including measures for prevention and training of professionals. As recommended elsewhere, the term “vulnerable social groups” should be replaced by “disadvantaged groups”.**

iii. Obligation to Report Violence - Article 53

All persons, bodies of public authority, employers, associations and institutions shall report any type of violence based on sex or gender in the private and public spheres.

166. **The term ‘Violence based on sex or gender’ should be replaced by ‘gender-based violence and violence against women’ for consistency and coherence reasons throughout the text of the draft law, and in compliance with the terms used in the Istanbul Convention.**

Bodies of public authority shall report without delay to the competent police administration or public prosecutor’s office any violence referred to in Article 51 of this Law that they learn about while performing tasks within their competence, i.e., while discharging their activity.

167. While the draft law provides for access to support and protection to all victims independently of an official report, or cooperation/participation in criminal proceedings, this Article requires all bodies of public authority to report instances of gender-based violence to the police or public prosecutor’s office. The duty to report is not tempered by any duty to provide full information to the victim in order to allow her to make an informed decision herself and maintain her autonomy. Furthermore, the duty to report is not accompanied by any risk assessment in order to ensure the safety of victims and their children. GREVIO, in its baseline report, strongly encouraged the Serbian authorities “to review the existing reporting obligations to ensure that they integrate a gendered approach based on respect for women’s

autonomy and self-determination, while operating from a multi-agency perspective involving both statutory agencies and women's specialist support services run by NGOs."⁴³

168. **The duty to report should take into account the informed opinion of the victim and her own estimation of risk. It should also be based on a risk assessment, to ensure that any duty to report does not put the victim and her children at risk of retaliation and revictimisation. Finally, it should be completed by a duty to provide full information to the victim, including by referring to general and specialist support services.**

iv. General Support Services - Article 54

The victim of violence shall be entitled to psychosocial assistance in accordance with the law, as well as free social protection and healthcare.

169. **In accordance with the provisions of the Istanbul Convention (Article 20) these measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.**

v. Specialised Services - Article 55

1) provision of a confidential SOS telephone service for young women and women who have experienced gender-based violence, where calls will not be recorded or otherwise made available to third parties, and which shall be provided and financed in the form of a free national SOS telephone by the ministry responsible for social protection, and in the territory of local self-government units or regions (districts) by the competent authority or authorities of the autonomous province and local self-government unit;

170. **Anonymity as well as confidentiality should be guaranteed to those using the SOS telephone service in compliance with Article 24 of the Istanbul Convention.**

4) provision of free support to victims of sexual violence available 24 hours a day, seven days a week, as well as providing contraceptive protection and protection against sexually transmitted diseases and forensic examinations;

171. This provision falls short of the recommendation made by GREVIO in its baseline report⁴⁴ urging the Serbian authorities to "set up rape crisis and/or sexual violence referral centres, ensuring a sensitive response by trained and specialist staff, in sufficient numbers, recalling that one such centre should be available for every 200 000 inhabitants and that their geographical spread should make them accessible to victims in rural areas as much as in cities."

⁴³ GREVIO's baseline evaluation report on Serbia, para. 152

⁴⁴ GREVIO's baseline evaluation report on Serbia, para.143

172. **This provision should make specific reference to victims of sexual violence and rape, and should be further elaborated to include the setting up of specific services that will provide medical and forensic examination as well as trauma support and counselling for victims, in compliance with Article 25 of the Istanbul Convention.**

The specialised support services referred to in paragraph 1 of this Article must be accessible to all and adapted to the individual needs of victims of violence, including victims belonging to vulnerable social groups.

173. Article 55 does not make reference to women's specialist support services run by NGOs nor to a coordinated multi-agency response to gender-based violence and violence against women.

174. **Article 55 should include a provision to promote cooperation between state actors and NGOs providing specialist services to victims of violence, through the development of multi-agency protocols. It should also include a provision ensuring appropriate funding through suitable funding opportunities such as long-term grants based on transparent procurement procedures to ensure sustainable funding levels for women's NGOs that run specialist support services for women victims of all forms of violence.**

vi. Programmes for Perpetrators of Violence - Article 56

In cooperation with other authorities, organisations and institutions in charge of protection from violence, the Ministry shall ensure the implementation of programmes for the treatment of perpetrators of violence.

The aims of the programme referred to in paragraph 1 of this Article shall be to ensure that perpetrators of violence adopt a non-violent model of behaviour in interpersonal relations and to prevent the repetition of the crime of violence.

Perpetrators of violence may join the programmes referred to in paragraph 1 of this Article at the decision of the competent authority or at their own request.

Authorities, organisations and institutions that implement programmes for perpetrators of violence shall ensure that the safety, rights and support to victims of violence be given primary importance, as well as that the implementation of these programmes be realised in close cooperation with specialised services for the support to victims of violence.

Professionals and persons who have reported violence, who participate in the protection of victims of violence and their children, may not simultaneously participate in the implementation of treatment programmes for perpetrators of violence, nor can these services be organised in the same space, i.e., within the same authority, organisation and institution.

175. **It should be added to Article 56 that participation in perpetrator programmes should not be an alternative to any other sentence as foreseen by law and should not be considered a mitigating factor to reduce any other sentence foreseen by law.**

vii. Prevention of Violence - Article 57

In cooperation with authorities, organisations and bodies for gender equality, the Ministry shall organise, implement and finance measures aimed at raising public awareness of the need to prevent violence, including encouraging everyone to report every case of violence to competent authorities and institutions in charge of protection from violence.

In addition to authorities and organisations referred to in paragraph 1 of this Article, other bodies of public authority shall also implement measures of prevention and suppression of violence, such as: planning, organising, implementing and financing measures for the protection from violence, programmes of prevention of all forms of violence and programmes of support to victims of violence and persons reporting violence; raising public awareness of the need to prevent violence; specialisation and regular training of professionals who act in the cases of protection of victims of violence; training of professionals on gender equality and concept of gender-based violence; providing social, legal and other assistance and compensation with the aim of protecting from violence and eliminating and mitigating consequences of violence; providing social, legal and other assistance and compensation, for the purpose of protecting from violence and eliminating and mitigating consequences of violence; ensuring services pertaining to the taking care of victims of violence; providing services to perpetrators of violence in order to prevent further violence, and other measures.

176. Article 57 on prevention of violence consists of an open-ended list of possible measures to prevent and combat violence ranging from awareness raising, training of professionals, to support and protection services.
177. Support and protection of victims and the provision of social, legal and other assistance are covered under Article 54 and 55 of the draft law. **Therefore, it is recommended that these obligations are not repeated under Article 57 and that this article focuses on obligations on prevention foreseen under Chapter III of the Istanbul Convention under separate paragraphs.**
178. While awareness raising is mentioned under Article 57, it falls short of fully complying with obligations as foreseen under Article 13 of the Istanbul Convention. Article 13 requires state parties to “promote or conduct awareness raising campaigns on a regular basis and at all levels” including in cooperation with gender equality bodies and non-governmental organisations, on all forms of violence covered by the Convention. GREVIO, in its baseline report, strongly encourages the Serbian authorities to further develop and sustain their efforts at awareness raising, including through the provision of sufficient resources and engaging in partnerships with the media and specialist women’s organisations.⁴⁵
179. Similarly, training of professionals is not afforded sufficient attention in Article 57 and falls short of obligations under Article 15 of the Istanbul Convention. GREVIO in its baseline report encouraged the Serbian authorities to include violence against women as a compulsory topic in vocational curricula as well as in university study

⁴⁵ GREVIO’s baseline evaluation report on Serbia, para. 69

programmes.⁴⁶ GREVIO has also recommended that the Serbian authorities ensure continuous and systematic in-service training on all forms of violence against women, including among first responders and members of referral mechanisms.

180. **Article 57 should include a dedicated paragraph on awareness raising and provisions on sufficient resourcing of such campaigns and on partnerships with non-governmental organisations and the media. A dedicated paragraph should also be added on training of professionals dealing with victims or perpetrators of violence, including training on co-ordinated multi-agency co-operation.**

viii. Financial Resources for the Organisation and Implementation of Specialised Services - Article 58

Financial resources for the organisation and implementation of specialised services referred to in Articles 55 and 57 of this Law shall be allocated in the budget of the Republic of Serbia, the budgets of autonomous provinces and budgets of local self-government units, in accordance with the law governing the budget system. (Para 1)

Financial resources for the organisation and implementation of specialised services referred to in Article 56 of this Law shall be allocated in the budget of the Republic of Serbia in accordance with the law governing the budget system. (Para 2)

(...)

The services referred to in Article 55, paragraph 1, items 2) and 4) shall be provided by the local self-government unit. (Para 5)

The services referred to in Article 55, paragraph 1, items 2) and 4) shall be provided by the local self-government unit independently or in cooperation with one or more neighbouring local self-government units. (Para 6)

181. The obligations under Article 8 and 9 of the Istanbul Convention, namely to allocate appropriate financial and human resources to non-governmental organisations and civil society that work on preventing and combating violence against women, including specialist support services, are not reflected in Article 58. GREVIO in its baseline report urged the Serbian authorities to “ensure appropriate funding through suitable funding opportunities such as long-term grants based on transparent procurement procedures to ensure sustainable funding levels for women’s NGOs that run specialist support services for women victims of all forms of violence”.⁴⁷

182. **Article 58 should include an obligation to provide sufficient financial resources to NGOs and civil society that work on preventing and combating violence against women, including specialist support services (see also the recommendation under Article 55).**

183. **It is also recommended that an additional article is added to Chapter VI on**

⁴⁶ GREVIO’s baseline evaluation report on Serbia, para. 81

⁴⁷ GREVIO’s baseline evaluation report on Serbia, para.

“Risk assessment and risk management” in compliance with Article 51 of the Istanbul Convention, and in accordance with GREVIO’s recommendation in its baseline report to ensure that risk assessment and management is systematically carried out in relation to all forms of violence against women covered by the Istanbul Convention, including in relation to women and girls at risk of early and forced marriage. Risk assessment and management should be embedded in a multi-agency framework to enable all relevant risk factors to be identified.

184. **The authorities should consider integrating the provisions on data collection included in Article 65 in a separate article under Chapter VI of the draft law for all forms of gender-based violence and violence against women, indicating the agencies responsible for collecting such data including law enforcement agencies, social services, and the health care sector in compliance with GREVIO’s recommendations in its baseline report (paragraphs 49, 52, 54).**

VII. CHAPTER VII - INSTITUTIONAL FRAMEWORK FOR ENSURING GENDER EQUALITY

185. The following standards have been taken into account to review the institutional machinery: CEDAW General Recommendation No. 6: Effective National Machinery and Publicity⁴⁸, United Nations Fourth World Conference on Women (1995) – Beijing Platform for Action⁴⁹, Council of Europe Recommendation no. r (98) 14 on gender mainstreaming⁵⁰.

i. Authorities and Types of Organisation - Article 59

The development, implementation, monitoring and improvement of policies aimed at achieving gender equality shall be carried out by the:

- 1) Government;
- 2) Ministries and other state administration authorities, the ambit of which includes the determination and implementation of general and special measures for achieving and promoting gender equality;
- 3) gender equality coordination body;
- 4) authorities of the autonomous province;
- 5) authorities of local self-government units;
- 6) other bodies of public authority, organisations and institutions that, in accordance with their competences, participate in the prevention of discrimination based on sex or gender and the prevention of gender-based violence.

186. Article 59 identifies the institutional stakeholders involved in gender equality policies. In its Statement on Parliaments and the CEDAW, “the Committee reiterates the importance of strengthening the national machinery dedicated to equality at the level of Parliament, such as Commissions on gender equality, missions and information on inquiries relating to violence against women, and improvement of legislation on equality between women and men”.⁵¹

187. The Parliament should be added among the institutions responsible to develop, implement, monitor and improve gender equality policies.

ii. The Government - Article 60

In the development, implementation, monitoring and improvement of the policy for achieving gender equality, the Government shall:

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/5828&Lang=en

⁴⁹ https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

⁵⁰ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d4aa3

⁵¹ <https://www.ohchr.org/documents/HRBodies/CEDAW/Statements/Parliamentarians.pdf>

- 1) *takes care about the compatibility/ harmonisation of policies and measures taken in the field of gender equality with the international obligations of the Republic of Serbia;*
- 2) *develop and pursue the active equal opportunities policy in all spheres of social life, ensuring the equal participation of women and men in all stages of planning, preparation, adoption and implementation of decisions that affect the position of women and men;*
- 3) *determine measures with the aim of creating equal opportunities for the exercise of rights and freedoms of women and men, and preventing and eliminating discrimination based on sex or gender;*
- 4) *adopt a National Gender Equality Strategy;*
- 5) *establish the gender equality coordination body tasked with directing and coordinating the work of state authorities with respect to gender equality and reviewing all issues and improving the state of gender equality, as well as the gender equality council, as an advisory body of the Government with the widest inclusion of the civil society.*
- 6) *perform other tasks in this area, in accordance with the law.*

188. **Article 60 identifies the roles and responsibilities of the Government in gender equality policies. To highlight the key role of political will at the highest level in the development of gender equality policies and enhance consistency throughout the draft law, it is recommended to develop the roles and responsibilities by recalling/referring to other relevant Articles of the draft law, such as Article 15 “The action plan shall be adopted by the Government, at the proposal of the Ministry” and Article 17 “prepare the annual report on the implementation of the action plan and submit it for adoption to the Government by 31 March of the current year for the previous year”.**

189. Regarding the Gender Equality Coordination Body and the Gender Equality Council, reference should be made to the key success factors for the effective functioning of such mechanisms, as frequently recalled by the CEDAW Committee, namely: the status, structure and location, scope of mandate and functions, legal basis, financial and human resources, political legitimacy, power, visibility and authority of these mechanisms, both at central and decentralised level in executive and legislative branches of Government.

190. **Paragraph 4 should be replaced by “adopt a National Gender Equality Strategy, National Action Plans and their implementation reports;”.**

iii. Ministries and Other Bodies of Public Authority - Article 61

During their participation in the development, implementation, monitoring and improvement of sectoral policies, drafting of laws, regulations, administrative provisions and activities in the areas within their competence, and especially in areas in which general and special measures are implemented in accordance with this law, the ministries and other bodies of public authority shall take into account the aims of equality among women and men.

191. Article 61 foresees the roles and responsibility of ministries and other bodies of public authority and remains very general. To strengthen the understanding of the

draft law and support its enforcement – specifically in monitoring the Misdemeanours foreseen in Articles 67 and 68, this article could recap and recall roles and responsibilities identified elsewhere in the law.

192. The article could specify that the ministry in charge of gender equality shall:
- a) Prepare and propose the National Gender Equality Strategy and the National action Plan;
 - b) Supervise the adoption and implementation of annual action plan or programme of the bodies of public authority involved in the implementation of the National action plan, collect and analyse the reports and data transmitted;
 - c) Cooperate with the gender equality coordination body, relevant organisational bodies of the autonomous province, bodies of local self-government units and persons in charge of gender equality;
 - d) Regulate a programme and method of training of persons in charge of gender equality;
 - e) Collect annual reports of the plan or programme in Bodies of public authority and employers that have more than 50 employees and persons hired for work, prepare a summary report on the state of gender equality and control appointment of the person in charge of gender equality;
 - f) Collect and analyse reports containing data on the number of women and men in management authorities, supervision authorities and their bodies from political parties and trade unions.

193. **It is recommended to strengthen and specify the list of roles and responsibilities of ministries and other bodies of public authority in the framework of gender equality policies.**

iv. Gender Equality Bodies in Autonomous Provinces - Article 62

The authorities of the autonomous province, within the framework of and in accordance with the competences of the autonomous province and with the aim of developing and pursuing the equal opportunities policy, shall establish organisational structures for achieving and promoting gender equality, determine their composition, method of selection, scope and method of work.

The assembly of the autonomous province shall establish a standing working body for gender equality.

The provincial government shall establish:

1. A gender equality coordination body of the provincial government for the purpose of harmonizing the positions of authorities and organisations of the provincial administration and other provincial organisations and services;

2. A gender equality council as an advisory body of the provincial government.

In addition to the above-mentioned bodies, the authorities of the autonomous province may also establish other bodies in charge of gender equality.

Gender equality bodies at autonomous provinces shall cooperate with all other gender equality bodies on issues of relevance for achieving gender equality.

194. Article 62 foresees various institutional bodies to support the promotion of

gender equality policy in autonomous provinces. However, the provisions remain very general, and the law does not foresee any specific characteristics, nor supervision or reporting mechanisms to ensure its implementation. It is recommended to define a more detailed institutional framework or to foresee incentives to encourage autonomous provinces to comply with the obligations referred to in the Article, within the framework of and in accordance with the competences and level of autonomy of the autonomous provinces.

195. In addition, Article 62 does not foresee any planning or reporting process related to gender equality. However, as part of bodies of public authority as defined in Article 6, autonomous provinces are covered by Para 1 of Article 17 and “shall submit a report on the implemented activities to the Ministry by 31 January of the current year for the previous year”. Article 17 also foresees that the Ministry in charge of gender equality cooperates with autonomous provinces to prepare the annual report on the implementation of the National action plan. To clarify and facilitate the understanding of the institutional mechanisms and to integrate it within the institutional set-up, Article 62 should recall this reporting exercise requested from autonomous provinces, in adding for instance that “Autonomous provinces submit a report on the implemented activities to the Ministry by 31 January of the current year for the previous year and cooperate with the Ministry to prepare the annual report on the implementation of the National action plan as referred in Article 17.” The gender equality council could also be involved in the process of planning/reporting. In addition, to facilitate the preparation of the report, Articles 65 and 66 dedicated to recording data should foresee provisions to this effect, as it is the case for local self-government units (see Para 3 of Article 65 identifying a list of data to be recorded on and Para 2 and 3 of Article 66 foreseeing annual reports related to gender equality in the workplace).

196. Finally, the institutional framework in autonomous provinces could be enhanced by the appointment of a gender focal point within the staff that should have access to specific training by the National Academy of Public Administration as foreseen in Article 64.

197. **It is recommended to specify the characteristics and strengthen the role of institutional bodies in autonomous provinces related to gender equality policies: 1) in foreseeing incentives to encourage autonomous provinces to comply with the obligations of establishing the Gender equality coordination body and the Gender equality council (in Article 68); 2) in detailing the reporting exercise and recording data requested from autonomous provinces (Article 62, 65 and 66); 3) in foreseeing the appointment of Gender focal point among the staff to be trained by the National Academy of Public Administration.**

v. Gender Equality Bodies at Local Self-Government Units - Article 63

Gender equality bodies shall be established at local self-government units, as follows:
 1) *gender equality commissions at the assemblies of local self-government units, as the assemblies' standing working bodies made up of councillors, which shall review all acts referred to the*

assembly from the gender perspective;

2) gender equality councils shall be established at the administrative bodies of local self-government units, and shall be made up of nominated or appointed persons, representatives of institutions, authorities and organisations in the areas of importance for gender equality and prevention and suppression of gender-based violence; they shall monitor the situation in the field of gender equality and initiate and propose measures for promoting gender equality. Persons in charge of gender equality at the administrative bodies of local self-government units shall also participate in the work of the councils, providing professional, administrative and technical support to the work of these councils.

Gender equality bodies referred to in paragraph 1 of this Article shall cooperate with each other as well as with all other gender equality bodies at the level of local self-government units, autonomous provinces and the republic.

The acts of the local self-government unit assembly shall regulate in more detail the election, competencies and manner of work of the gender equality body referred to in paragraph 1 of this Article.

198. Article 63 foresees various institutional mechanisms to support the promotion of gender equality policy in local Self-Government Units. However, the provisions remain very general and the law does not foresee any specific characteristics, nor supervision or reporting mechanisms to ensure its implementation. As for Article 62 above, it is recommended to define a more detailed institutional framework or to foresee incentives to encourage the implementation of the law.

199. In addition, Article 63 does not foresee the preparation of the local self-government action plan as set out in Article 13. To clarify and facilitate the understanding of the institutional mechanisms and to integrate it within the institutional set-up, the Article 63 should recall the planning and reporting exercise requested from Local self-government units, in adding for instance that “Local self-government units prepare an action plan and submit a report on the implemented activities to the Ministry by 31 January of the current year for the previous year and cooperate with the Ministry to prepare the annual report on the implementation of the National action plan as referred in Articles 17 and 65.” The gender equality council could also be involved in the process of planning/reporting.

200. Finally, the institutional framework in autonomous provinces could be enhanced by the appointment of a gender focal point within the staff that should have access to specific training by the National Academy of Public Administration as foreseen in Article 64.

201. **It is recommended to specify the characteristics and strengthen the roles of institutional bodies in local Self-Government Units related to gender equality policies: 1) in foreseeing incentives to encourage local Self-Government Units to comply with the obligations of establishing the Gender equality commission and the Gender equality council (in Article 68); 2) in detailing the reporting exercise and recording data requested from local Self-Government Units (Article 62, 65 and 66); 3) in foreseeing the appointment of Gender focal point among the staff to be trained by the National Academy of Public Administration.**

vi. Obligations of Bodies of Public Authority to Appoint a Person in Charge of

Gender Equality - Article 64

Bodies of public authority with more than 50 employees and persons hired for work shall appoint a person in charge of gender equality from amongst their employees in accordance with their internal organisation and job classification act.

The head of the public authority body shall appoint, as the person referred to in paragraph 1, the head of the organisational unit in charge of keeping records in the area of labour.

The bodies of public authority referred to in paragraph 1 of this Article shall notify the Ministry of the appointment of the person in charge of gender equality and of any replacement of this person.

The person in charge of gender equality shall:

1) monitor the implementation of policies and measures for the achievement and promotion of gender equality within the ambit of the authority where they are employed;

2) monitor the gender structure of employees and persons hired for work in the authority in which they are appointed and draft reports on the state of gender equality in the area within the ambit of the authority;

3) submit reports referred to in item 2) of this Article to the head of the authority, which the body of public authority shall submit to the Ministry after adoption;

4) cooperate with the Ministry and gender equality bodies on issues of importance for the achievement and promotion of gender equality;

5) prepare data, analyses and materials needed for the operation of gender equality bodies;

6) perform other activities in accordance with the act on the appointment of the person in charge of gender equality.

Persons in charge of gender equality must be trained for performing tasks referred to in paragraph 4 of this Article.

The Ministry, in coordination with the National Academy of Public Administration shall regulate in more detail the programme and method of training of persons in charge of gender equality, in compliance with the Law.

202. Article 64 foresees the appointment of a person in charge of gender equality in each body of public authority with more than 50 employees and persons hired for work. Tasks of the focal point cover exclusively issues related to employment within the body – for which the focal points receive training.

203. The appointment of gender focal points and the programme of training should be commended, since the responsibility for promoting gender equality is a matter of the whole government - as frequently recalled by the CEDAW Committee. Focal points should then 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.

204. However, the tasks of the focal points are limited to the scope of internal employment issues (gender equality within the workplace). Their mandate should be extended to cover all the responsibilities of the body of public authority, including in its sectoral/operational activities. Consequently, they should be in charge of supporting gender mainstreaming by advocating, advising, building capacities among

colleagues for incorporating gender equality into their work, in terms of content and processes, as well as for monitoring and reporting on progress. The focal point should not necessarily be from the unit in charge of keeping records in the area of labour.

205. **The scope of the gender focal points should be expanded to cover all issues related to gender equality (and not limited to gender equality within the workplace). In addition, gender focal points should have sufficient authority within the body, and have access to appropriate financial and human resources to perform their tasks.**

VIII. CHAPTER VIII - RECORDING AND REPORTING ON THE ACHIEVEMENT OF GENDER EQUALITY

- i. Recording Data on the Achievement of Gender Equality - Article 65 and Reporting on the Achievement of Gender Equality - Article 66

206. To facilitate the preparation of the report, Articles 65 and 66 should foresee provisions for autonomous provinces, expanding the ones foreseen for local self-government units (Para 3 of Article 65 identifying a list of data to be recorded on and Para 2 and 3 of Article 66 foreseeing annual reports related to gender equality in the workplace).

207. **The provisions foreseen for local self-government units should be expended to autonomous provinces.**

IX. CHAPTER IX - PUNITIVE PROVISIONS

208. Comments related to punitive provisions have been integrated in the development related to the corresponding articles.

X. CHAPTER X - SUPERVISION OF THE IMPLEMENTATION OF THE LAW

- i. Supervising Bodies - Article 71 and Supervision of the Ministry and Inspection Bodies - Article 72

209. In addition to the reports that can be requested by the Ministry in charge of gender equality, all inspections mentioned could integrate sex-disaggregated data in the regular reports they have to produce. A step further could encompass the appointment of a gender focal point within the staff that should have access to specific training by the National Academy of Public Administration as foreseen in Article 64.

210. **Inspection bodies' capacities as regards gender equality should be strengthened: 1) by requesting the development of sex-disaggregated data in the regular reports; 2) by appointing a gender focal point within the staff, to be trained by the National Academy of Public Administration.**