Application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services

2016/2012(INI) - 05/05/2015 - Non-legislative basic document

PURPOSE: to present a report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

BACKGROUND: Council Directive 2004/113/EC extends the protection against sex discrimination beyond the traditional realm of the labour market to the areas of access to and supply of goods and services. This implements the obligation to **apply the principle of equal treatment in most economic day-to-day transactions** affecting the lives of citizens in the EU.

In its first report, the Commission aims to provide information on the state of play of implementation on the ground.

The report concerns in particular the consequences of the ***Test Achats* ruling**.

CONTENT: the Court of Justice of the European Union annulled Article 5(2) of the Directive in its 2011 *Test Achats* ruling. The provision had **permitted the use of sex-based actuarial factors in insurance contracts.** The ruling obliged Member States **to make unisex premiums and benefits mandatory by 21 December 2012.** The Commission adopted guidelines concerning the consequences of the ruling in 2011. This report covers the **implementation of the ruling in Member States**. It is, however, not limited to the area of financial services but comprehensively reviews the implementation of the Directive as a whole.

Transposition of the directive in Member States and infringements: Directive 2004/113/EC has been transposed into national law in all 28 Member States.

The Commission has checked the conformity of the national implementing laws with the Directive. The review of the national legislation and experiences with its application on the ground shows that there are **still challenges relating to the implementation of the Directive** concerning, in particular, the derogation provided in Article 4(5) which permits the provision of goods and services exclusively or primarily to members of one sex under certain conditions.

As a result of these assessments, questions were raised with 17 Member States. The information provided revealed that the **transposition was sufficiently clear and compliant** or was amended in compliance with the Directive in 11 of those Member States. With 6 Member States, the intensive dialogue on sufficient implementation of the Directive continues.

The main concerns regard the **restricted scope of application of the national legislation**, for example, through an overly restrictive understanding of the notion of goods and services that are available to the public and offered outside the area of private and family life or through protection covering only consumers as recipients of services. Another recurrent issue is an overly broad scope of the possibility to justify unequal treatment on the basis of Article 4(5) of the Directive, which **may lead to unjustified unequal treatment in the pricing of the same service** (e.g. entry fees to discotheques or sports events or car rental fees). Some questions are related to insufficient protection on grounds of maternity and

pregnancy in the provision of services or an insufficient scope of the right to compensation, for example due to the lack of an entitlement to compensation for immaterial damages.

The Commission has received a number of complaints from citizens, the majority of which concern **individual cases** of alleged discriminations in transactions between private parties without any involvement of Member States. These cases are not about incorrect transposition or application of the Directive by a Member State. In such cases, remedies are only available under national law and through national courts in those situations. There are **no infringement proceedings pending following a complaint revealing incorrect transposition or implementation of the Directive by Member States.**

Main conclusions of the report:

In the specific area of financial services, **the implementation of the *Test-Achats* ruling in the insurance sector has been the most important challenge**. All Member States have implemented the ruling or are implementing it. Some Member States have chosen to go beyond the ruling by applying the **unisex rule to all types of insurance and pension**, including occupational social security funds, which fall within the scope of Directive 2006/54/EC. In September 2014, the CJEU further held that **differentiated benefits on the basis of gender-specific actuarial data are inadmissible in statutory social security pensions** under Directive 79/7/EEC5. In the light of these developments, the Commission will assess the application of gender-differentiated conditions to occupational pensions under Directive 2006/54/EC and whether action should be taken to ensure the comprehensive application of the unisex rule in all pillars of the pension system, whether voluntary, occupational or statutory.

As regards impacts of the *Test-Achats* judgment on price levels of insurances, it seems too early to come to final conclusions. However, evaluated on the basis of the little evidence available, the **impact seems very limited.**

Concerning implementation of the Directive, all Member States have taken measures to transpose the Directive into their domestic legal orders and to set up the procedures and bodies for its implementation. The Commission **does not consider it necessary to propose amendments to the Directive at this stage** but will prioritise addressing the remaining transposition issues with the Member States concerned, mainly in relation to the scope of the exception provided for in Article 4(5) of the Directive.

Further enforcement work as well as case law at national and EU level should lead to clarifications on some of the questions raised in the report. Thereafter, the main challenge will be for Member States to ensure that their administrative and judicial authorities and their equality bodies systematically provide **full protection to victims on the ground**. The Commission will continue its monitoring activities and support Member States in order to realise the full potential of the Directive.