Basic information

2003/0265(CNS) CNS - Consultation procedure Directive	Procedure completed
Equal treatment between women and men: access to and supply of goods and services See also 2010/2043(INI) See also 2016/2012(INI) **Subject** 2.50.05 Insurance, pension funds 2.70 Taxation 4.10.04 Gender equality	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
FEMM Women's Rights and Equal Opportunities	PRETS Christa (PSE)	10/09/2003

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	SWIEBEL Joke (PSE)	25/11/2003
ECON Economic and Monetary Affairs	LULLING Astrid (PPE-DE)	02/12/2003
JURI Legal Affairs and Internal Market (Associated committee)	NIEBLER Angelika (PPE-DE)	01/12/2003
ITRE Industry, External Trade, Research, Energy	BERENGUER FUSTER Luis (PSE)	21/01/2004
EMPL Employment and Social Affairs	ATTWOOLL Elspeth (ELDR)	14/01/2004

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2630	2004-12-13
Employment, Social Policy, Health and Consumer Affairs	2586	2004-06-01

European Commission

Commission DG	Commissioner

	Employment, Social Affairs and Inclusion

Key events

Date	Event	Reference	Summary
05/11/2003	Legislative proposal published	COM(2003)0657	Summary
12/01/2004	Committee referral announced in Parliament		
16/03/2004	Vote in committee		Summary
16/03/2004	Committee report tabled for plenary, 1st reading/single reading	A5-0155/2004	
29/03/2004	Debate in Parliament		
30/03/2004	Decision by Parliament	T5-0221/2004	Summary
01/06/2004	Debate in Council		
13/12/2004	Act adopted by Council after consultation of Parliament		
13/12/2004	End of procedure in Parliament		
21/12/2004	Final act published in Official Journal		

Technical information

Procedure reference	2003/0265(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	See also 2010/2043(INI) See also 2016/2012(INI)
Legal basis	EC Treaty (after Amsterdam) EC 013-p1 Rules of Procedure EP 57_o
Stage reached in procedure	Procedure completed
Committee dossier	FEMM/5/20307

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0155/2004	16/03/2004	
Text adopted by Parliament, 1st reading/single reading		T5-0221/2004 OJ C 103 29.04.2004, p. 0036-0221 E	30/03/2004	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0657	05/11/2003	Summary
Document attached to the procedure	SEC(2003)1213	05/11/2003	
Follow-up document	C(2011)9497	22/12/2011	
Non-legislative basic document	COM(2015)0190	05/05/2015	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0016/2003 OJ C 121 30.04.2004, p. 0025-0027	21/04/2004	
EESC	Economic and Social Committee: opinion, report	CES0853/2004 OJ C 241 28.09.2004, p. 0041-0044	02/06/2004	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2004/0113
OJ L 373 21.12.2004, p. 0037-0043 Summary

Equal treatment between women and men: access to and supply of goods and services

2003/0265(CNS) - 13/12/2004 - Final act

PURPOSE: to lay down a framework for combating discrimination based on sex in the access to and the supply of goods and services.

LEGISLATIVE ACT: Council Directive 2004/113/EC.

CONTENT: The Directive prohibits both direct and indirect discrimination based on sex in the access to and supply of goods and services. The main points to note are as follows:

- the prohibition of discrimination applies to access to and supply of goods and services that are available to the public. It does not apply to the content of media or advertising;
- the principle of equal treatment does not preclude differences which are related to goods or services for which men and women are not in a comparable situation because the goods or services are intended exclusively or primarily for the members of one sex. This applies to private membership clubs, or to skills that are practised differently for each sex;
- the use of actuarial factors related to sex is widespread in the provision of insurance services, even when such differences do not necessarily reflect objective differences.

The Directive eliminates the use of actuarial factors related to sex. To avoid a sudden readjustment of the market, the prohibition of the use of such factors applies only to new contracts concluded after 21 December 2007. The phase-in period proposed is a long one;

- during the transitional period, the use of actuarial factors related to sex when calculating premiums and benefits accruing from insurance and other financial services must be transparent for the consumer. Member States have to compile actuarial data for the guidance of insurance companies;
- associations and organisations are empowered to engage in proceedings either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts;
- the rules on the burden of proof are adapted when there is a prima facie case of discrimination. For the principle of equal treatment to be applied effectively, the burden of proof shifts back to the defendant when evidence of such discrimination is brought;
- Member States must establish a body or bodies, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.

ENTRY INTO FORCE: 21/12/2004.

DATE OF TRANSPOSITION: 21/12/2007.

Equal treatment between women and men: access to and supply of goods and services

2003/0265(CNS) - 05/11/2003 - Legislative proposal

PURPOSE : to lay down a framework for combating discrimination based on sex in the access to and the supply of goods and services. PROPOSED ACT : Council Directive. CONTENT : this proposal prohibits both direct and indirect discrimination based on sex in the access to and supply of goods and services. Services should be taken to be those which are normally provided for remuneration. The main points to note are as follows: - the prohibition of discrimination applies to access to and supply of goods and services which are available to the public. It does not apply to the content of media or advertising; - the principle of equal treatment does not preclude differences which are related to goods or services for which men and women are not in a comparable situation because the goods or services are intended exclusively or primarily for the members of one sex. This applies to private membership clubs, or to skills which are practised differently for each sex; - the use of actuarial factors related to sex is widespread in the provision of insurance services, even when such differences do not necessarily reflect objective differences. This proposal eliminates the use of actuarial factors related to sex. To avoid a sudden readjustment of the market, the prohibition of the use of such factors applies only to new contracts concluded after the date of transposition of this Directive. The phase in period proposed is a long one; - during the transitional period, the use of actuarial factors related to sex when calculating premiums and benefits accruing from insurance and other financial services must be transparent for the consumer. Member States have to compile actuarial data for the guidance of insurance companies; - associations and organisations are empowered to engage in proceedings either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts; - the rules on the burden of proof are adapted when there is a prima facie case of discrimination. For the principle of equal treatment to be applied effectively, the burden of proof shifts back to the defendant when evidence of such discrimination is brought; - Member States must establish a body or bodies, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.

Equal treatment between women and men: access to and supply of goods and services

2003/0265(CNS) - 30/03/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Christa PRETS (PES, A) by 313 votes for, 141 against and 47 abstentions. (Please refer to the summary dated 15 March 2004). The new directive which attacks discrimination in particular regarding private pension schemes and the insurance sector, but also more broadly regarding the provision of goods and services caused great debate in Plenary. All goods and services available to the public are included, providing they have an economic value and are supplied for payment, whether in the public or private sectors. This includes medical and health care services, insurance and financial services - essentially all good and services outside the workplace, which is covered by an existing directive. There is no impact on the content of the media or on advertising except for advertising relating to the conditions of access to goods and services. The new Directive is based on Article 13 of the EC Treaty, which gives the Council the power to take measures to combat all forms of discrimination, notably those based on sex. This legal base allows only for the consultation of Parliament. The European Parliament is of the opinion that sex is a factor which may not be influenced, so the differences in premiums or benefits of insurance products based on this (including the risk of pregnancy) are discriminatory. Different pricing should be linked to individual behaviour and choices (such as eating habits, smoking, use of alcohol, job etc.). Concerning the implementation of the Directive, Member States have 2 years to transpose the directive into national law, except for the insurance and financial services sector, where Parliament proposes an additional period of 4 years, bringing the total to 6 years. This is in anticipation of possible difficulties for this sector, on which the Parliament wants Member States to report to the Council, Commission and Parliament. Given the differences between the Member States and the risk of competition being distorted during the transition period, the Member States must also report to the Commission on the progress made in eliminating the use of sex as a factor in calculation premiums, insurance and contributions. These reports, which would also be sent to Parliament and the Council, have the aim of ensuring objectivity and transparency. Lastly, the European Parliament is also calling for a change to the name of the directive, which originally referred to the principle of equal treatment - it should now refer simply to equality, reflecting the inclusion of equality between men and women as one of the fundamental rights of the proposed European Constitution.

Equal treatment between women and men: access to and supply of goods and services

2003/0265(CNS) - 05/05/2015

The Commission presents 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: the Directive 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.

***Test-Achats* ruling**: 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.