Basic information

2016/2012(INI) INI - Own-initiative procedure	Procedure completed
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 See also Directive 2004/113/EC 2003/0265(CNS) **Subject** 4.10.04 Gender equality	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
FEMM Women's Rights and Gender Equality	KOZŁOWSKA Agnieszka (PPE)	16/11/2015
	Shadow rapporteur REGNER Evelyn (S&D) GIRLING Julie (ECR) MLINAR Angelika (ALDE) PIMENTA LOPES João (GUE/NGL) DELLI Karima (Verts/ALE) VON STORCH Beatrix (EFDD)	

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	

	TRAN Transport and Tourism	NILSSON Jens (S&D)	25/01/2016
	JURI Legal Affairs	MAŠTÁLKA Jiří (GUE/NGL)	15/03/2016
	LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	

European Commission	Commission DG	Commissioner
	Justice and Consumers	JOUROVÁ Věra

Key events

Date	Event	Reference	Summary
05/05/2015	Non-legislative basic document published	COM(2015)0190	Summary
21/01/2016	Committee referral announced in Parliament		
06/02/2017	Vote in committee		
20/02/2017	Committee report tabled for plenary	A8-0043/2017	Summary
13/03/2017	Debate in Parliament		
14/03/2017	Decision by Parliament	T8-0074/2017	Summary
14/03/2017	Results of vote in Parliament		
14/03/2017	End of procedure in Parliament		

Technical information

Procedure reference	2016/2012(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
Amendments and repeals	See also Directive 2004/113/EC 2003/0265(CNS)
Legal basis	Rules of Procedure EP 55
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	FEMM/8/05519

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE592.221	20/10/2016	
Committee opinion	TRAN	PE585.500	14/11/2016	
Amendments tabled in committee		PE593.809	15/11/2016	
Committee opinion	JURI	PE589.255	29/11/2016	
Committee report tabled for plenary, single reading		A8-0043/2017	20/02/2017	Summary
Text adopted by Parliament, single reading		T8-0074/2017	14/03/2017	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2015)0190	05/05/2015	Summary
Commission response to text adopted in plenary	SP(2017)390	22/08/2017	

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.

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) - 14/03/2017 - Text adopted by Parliament, single reading

The European Parliament adopted by 499 votes to 104, with 81 abstentions, a resolution 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.

As a reminder, Directive 2004/113/EC extends the principle of equal treatment of men and women beyond the realm of employment and the labour market and into the field of access to and supply of goods and services. It prohibits both direct and indirect discrimination based on sex in the access to and supply of goods and services which are available to the public, in both the public and private sectors.

Concerned that the **application of the Directive is not uniform**, Members called for the elimination of any remaining gaps in the implementation of the Directive in some sectors in certain Member States. In this regard, they suggested **raising awareness** about the provisions of the Directive to enhance the perceived importance of equal treatment in the field of goods and services.

Insurance, banking and financial sectors: in the *Test-Achats* ruling, the Court of Justice concluded that Article 5(2) of the Directive works against the achievement of the objective of equal treatment between men and women. This provision was considered to be invalid with effect from 21 December 2012 and as a result unisex premiums and benefits are mandatory in all Member States.

Parliament welcomed the implementation of the ruling in national legislation by the Member States and the fact that national legislation has been amended in a legally binding manner. However, it pointed out that there are still challenges related to the conformity of national legislation with the ruling, for example in **medical insurance schemes** and in relation to the full elimination of **discrimination on the grounds of pregnancy and maternity**.

Members called on the Commission to monitor the **proper and full implementation of the ruling** in the Member States in order to safeguard women against unqualified pregnancy-related costs, as pregnant women should not experience higher costs on the sole grounds of their pregnancy.

Transport sector and public spaces: Parliament stressed the need to enhance preventive measures against **harassment** experienced by women in transport. It called on the Commission and the Member States to facilitate the exchange of best practices in this area and called for progress to be made regarding the EU's accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

Furthermore, Members regretted the fact that **parents and carers of small children** still face physical access barriers and other obstacles such as insufficient access to baby changing facilities on the premises of service providers.

The Commission is called upon to consider all obstacles and constraints to **accessibility** encountered by women as the main users of public transportation services and by carers of small children and carers in general.

The collaborative economy: the Commission is asked to integrate the principles of gender mainstreaming and reflect the regulations of the Directive to safeguard equal treatment of women and men and effectively prevent **harassment** in the services offered within the collaborative economy. The "zero-tolerance" policy towards harassment should be further strengthened in the sector and there is a need to create clear procedures for users to report cases of abuse.

Differential treatment: the largest share of issues addressed and complaints received by the equality bodies in the Member States concern differential treatment predominantly within the leisure and entertainment sector. They concern justification of unequal treatment based on the derogation provided in Article 4(5) that leads, for example, to differential pricing, refusals to provide services and differing conditions of access for women and men.

Members called for the promotion of forms of **positive action** in this area.

Enhancing the application of the Directive: the Commission recommended, *inter alia*:

- addressing, as a priority, the **transposition issues** with the Member States concerned;
- ensuring sufficient competence and independence as well as sufficient resources for **national equality bodies**;
- improving **access to justice** for victims of discrimination by giving independent equality bodies the competences to provide assistance, including free legal aid, and the right to represent individuals in cases of alleged discrimination;
- improving comprehensive, comparable specific **data collection** on harassment and sexual harassment in the area of equal access to goods and services;
- examining the possibilities to enhance equal treatment of women and men in advertising and to promote best practices in this field.

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) - 20/02/2017 - Committee report tabled for plenary, single reading

The Committee on Women's Rights and Gender Equality adopted an own-initiative report by Agnieszka KOZŁOWSKA-RAJEWICZ (EPP, PL) 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.

As a reminder, Directive 2004/113/EC extends the principle of equal treatment of men and women beyond the realm of employment and the labour market and into the field of access to and supply of goods and services. It prohibits both direct and indirect discrimination based on sex in the access to and supply of goods and services which are available to the public, in both the public and private sectors.

Members regretted that the application of the Directive is not uniform and varies across the Member States. They called for the remaining **gaps in its implementation to be addressed** in some Member States and across certain sectors.

They suggested in particular increasing **awareness** about the provisions of the Directive to enhance the perceived importance of equal treatment in the field of goods and services.

The insurance sectors: the report welcomed the implementation of the ***Test-Achats* ruling** in national legislation by the Member States and the fact that national legislation has been amended in a legally binding manner. However, it pointed out that there are still challenges related to the conformity of national legislation with the ruling, for example in **medical insurance schemes** and in relation to the full **elimination of discrimination on the grounds of pregnancy and maternity**.

Members considered that ensuring **proper and full implementation** of the ruling in all Member States and areas is crucial. The conformity with the ruling across Member States should be monitored in periodic reports by the Commission and any gaps should be addressed as a priority.

Member States are called upon to make a greater effort and enhance clarity in protecting the rights and welfare of **pregnant women.** They should not experience higher costs on the sole grounds of their pregnancy. Awareness should be raised among service providers as to the special protection afforded to pregnant women.

Transport sector and public spaces: Members stressed the need to enhance preventive measures against **harassment** experienced by women in transport. They called on the Commission and the Member States to facilitate the exchange of best practices in this area and called for progress to be made regarding the EU's accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

Furthermore, Members regretted the fact that **parents and carers of small children** still face physical access barriers and other obstacles such as insufficient access to baby changing facilities on the premises of service providers. Members emphasised the need to safeguard the rights of both mothers and fathers to enjoy equal opportunities in the company of their children on the premises of service providers.

The Commission therefore to consider all **obstacles and constraints** to accessibility encountered by women as the main users of public transportation services and by carers of small children and carers in general.

The collaborative economy: Members highlighted the new possible areas of application of the Directive, in particular as a result of digitalisation of certain services and sectors as well as the proliferation of collaborative forms of service provision. They pointed out that the recently published Commission communication entitled "European agenda for the collaborative economy" should serve as a first step for promoting and regulating this sector effectively.

The Commission should integrate the principles of gender mainstreaming and reflect the regulations of the Directive to safeguard equal treatment of women and men and effectively prevent harassment in the services offered within the collaborative economy and ensure adequate safety.

Differential treatment: the largest share of issues addressed and complaints received by the equality bodies in the Member States concern differential treatment predominantly within the **leisure and entertainment sector**. They concern justification of unequal treatment based on the derogation provided in Article 4(5) that leads, for example, to differential pricing, refusals to provide services and differing conditions of access for women and men.

Members considered that the relative lack of **positive action** based on Article 4(5) across Member States constitutes a gap in the implementation of the Directive. They called for the promotion of forms of positive action.

Enhancing the application of the Directive: the Commission is urged to prioritise addressing the transposition issues with the Member States concerned by means of concrete measures, and to support them in implementing the Directive in a more consistent manner;.

Given the varying degree of effectiveness with which national equality bodies carry out their tasks, Member States are called on to guarantee sufficient competence and independence in accordance with the provisions of the Directive and national law as well as sufficient resources for national equality bodies.

The Commission, the Member States and equality bodies are called on to raise awareness about the provisions of the Directive among both service providers and users in order to implement the principle of equal treatment in this field and reduce the number of breaches of the Directive left unreported.