Overview of the existing European Community legislation on equal treatment and the novelties of the recast Directive

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EMPL/G-2

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Current EC legislation

equal treatment between men and women

EC Treaty

Art. 141 - Principle of Equal Pay for Equal Work

Art. 13 - Competence to act against discrimination on:

sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation

Article 3(2) - Gender Mainstreaming - in all its activities the EC must aim to eliminate inequalities & promote equality between men and women
Directives I

- Dir 75/117/EEC - equal pay for men and women

- Dir 76/207/EEC and Dir 2002/73/EC - equal treatment for men and women in access to employment, vocational training and working conditions

- Dir 79/7/EEC - equal treatment for men and women in social security

- Dir 86/378/EEC and Dir 96/97/EC - equal treatment in occupational social security schemes

Directives II

- 92/85/EEC on protection of pregnant workers and maternity leave provisions (14 weeks minimum + sick leave pay)

- 96/34/EC on parental leave (3 months for each parent)

- 97/80/EC on the sharing of the burden of proof

- 2002/73/EC amending 76/207/EEC: definitions of direct and indirect discrimination, maternity protection, equality body, sanctions
Directives III

- **2004/113/EC** equal treatment in the access to and supply of goods and services (first Directive based on Art 13 EC - equal treatment outside employment): equal treatment in every day contracts and situations (not media and advertising, not education), actuarial factors

- **2006/54/EC (recast)** reformulating 4 Directives (75/117, 76/207, 86/378 and 97/80) which have being repealed with effect 15 August 2009

Material Scope I

The Gender-Directives prohibit discrimination as regards:

- Access to employment, self-employment, vocational guidance and training
- Employment and working conditions, including dismissals and pay
- Membership in organisations
- Occupational social security and statutory social security (partly) (1 and 2 pillar)
- Access to/supply with goods and services (3 pillar)
**General issues concerning: Definitions**

**(2002/73/CE)**

**Direct discrimination:** Where one person is treated less favorably than another is, has been or would be treated in a comparable situation on grounds of sex.

**Indirect discrimination:** Where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with other people, unless it is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

**Harassment/Sexual harassment:** When an unwanted conduct of a sexual nature related to the sex of a person occurs with the purpose or effect of violating a person’s dignity and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

**Instruction to discriminate, etc…**

**General issues concerning: The Specialised Bodies**

**(2002/73 and 2004/113)**

The Directives requires the existence of a national body for the promotion of equal treatment for gender equality with the following tasks:

- Independent assistance to victims
- Independent surveys
- Independent reports and recommendations
Recast: codification

transposition 15.08.2008

Why?

- Updated
- Modernisation and coherence
  (art. 13 ECT)
- ECJ jurisprudence
- Harmonisation and simplification

2006/54/EEC (I)

• Equal pay (75/117)
• Acces to employment
  (76/207; 2002/73)
• occupationnel social
  security systems (86/378;
  96/97) First and second Pillar
• Burden of proof (97/80)

2006/54/EEC (II)

Novelties (1):

1. Principle of equal opportunities

2. Uniform definitions:
   ▪ Indirect discrimination.
   ▪ Harassment and sexual harassment.

3. Integration of ECJ case-law:
   ▪ Definition of payment and application of the
     principle of equal pay.
   ▪ Material scope of the principle of equal
     treatment in social security schemes (civil
     servants) Art.7(2)
### Novelties (2):

4. Application to gender reassignment (recital 3)

5. Concerning occupational social security schemes:
   - Material scope: art. 7(2) pension-payment (ECJ)
   - Enlargement of equality body’s competences
   - Equalities plans
   - Sotions (proportionate and disuasive)
   - Associations, organisations, other legal entities: possibility to engage procedures for the defence of rights
   - Burden of proof
   - Broadening application of positive actions (recitals 21-22)

6. Reconciliation of work, private and family life (article 9(1) (g) and 21 (2); recitals 11, 26, 27)

### Commission’s role as “Guardian of the Treaties”

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<th>MS Communication transposition mesures</th>
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1. Letter of Formal Notice
2. Reasoned Opinion
3. Referral to ECJ

However, most of the cases at the ECJ arrive there directly from Member States’ Courts asking for preliminary ruling, Art 234 EC Treaty
Future regarding the Gender-Acquis

- **New proposals:**
  - To amend maternity and parental leave Directives.
    [Link](http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=fr&DosId=197460)
  - To amend Directive 86/613/EEC on self-employed and helping spouses.
  
- **Study** on discrimination in social protection.
  [Link](http://ec.europa.eu/social/main.jsp?catId=626&langId=en&callId=170&furtherCalls=yes)

Further information?

- [Link](http://ec.europa.eu/social)
- Documents of the European Network of Legal Experts in the field of gender equality
  - Transposition of Recast Directive 2006/54/EC
  - Gender equality law in 30 European countries (2008).
  - Etc...

[Link](http://ec.europa.eu/social/main.jsp?catId=641&langId=en&moreDocuments=yes)