



GENDER EQUALITY IN GOODS AND SERVICES

ERA SEMINAR EU GENDER EQUALITY LAW


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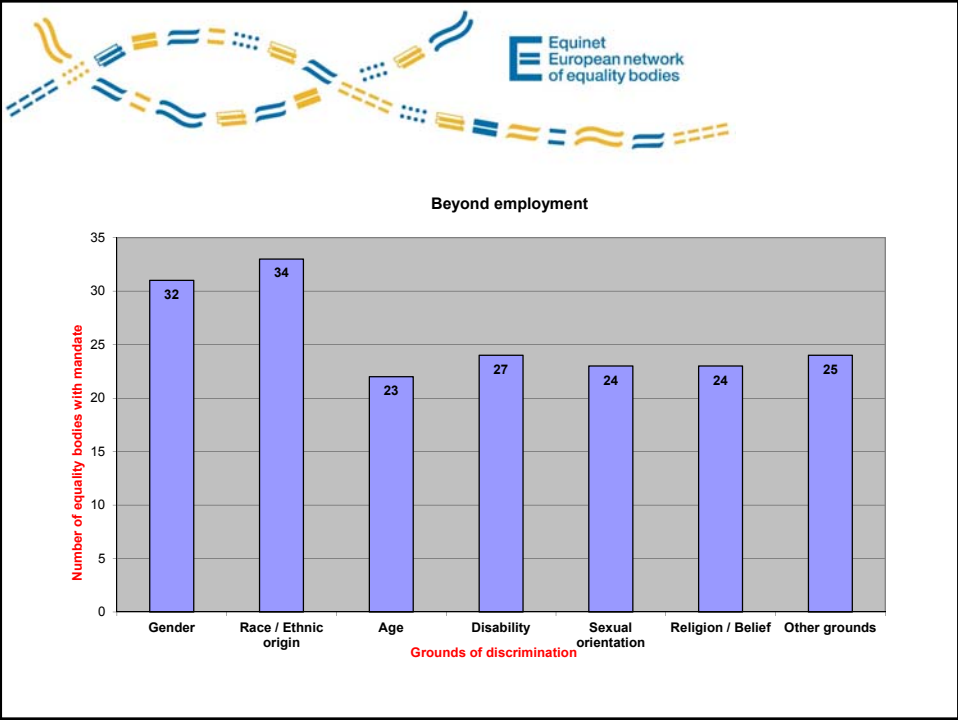
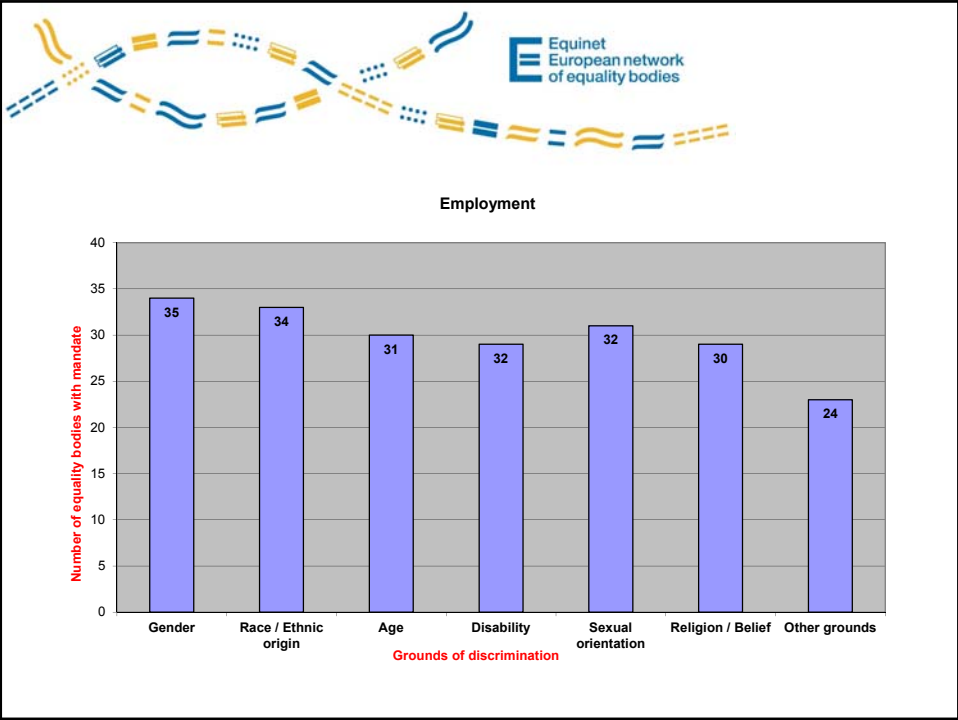
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Equinet Members

- **Network of specialised equality bodies** (46 members from 34 European countries)
- Specialised equality bodies on the basis of **EC Equal Treatment Directives (2000/43/EC; 2004/113/EC; 2006/54/EC)**
- **Diversity among national equality bodies** in terms of size, mandate, grounds, structure and experience








Working Group on Gender Equality

- Equality Bodies Promoting a Better **Work-Life Balance** for All (2014)
- **Equal Pay**: the Experience of Equality Bodies (2014)
- Equality Bodies and the Gender **Goods and Services** Directive (2014)
- The Work of Equality Bodies Informing a New European Commission **Strategy for Gender Equality** (2015)
- **Harassment** on the Basis of Gender and Sexual Harassment: Supporting the Work of Equality Bodies (2015)
- How to Build a Case on **Equal Pay** (coming in 2016)



Equality Bodies competent under Directive 2004/113/EC

CHAPTER III

BODIES FOR THE PROMOTION OF EQUAL TREATMENT

Article 12


1. Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, or the implementation of the principle of equal treatment.

2. Member States shall ensure that the competencies of the bodies referred to in paragraph 1 include:

(a) without prejudice to the rights of victims and of associations, organisations or other legal entities referred to in Article 8(3), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;


(b) conducting independent surveys concerning discrimination;

(c) publishing independent reports and making recommendations on any issue relating to such discrimination.



Other relevant directives


- 'Race' Directive 2000/43/EC references to **gender and multiple discrimination** and **gender mainstreaming** (Recital 14, Article 17(2))
- Gender Recast Directive 2006/54/EC (field of **employment**)
- Council Directive 79/7/EEC principle of equal treatment between men and women in matters of **social security**




Experience of National Equality Bodies

Lessons from the 2014 Equinet *perspective* on Gender Goods and Services

Heterogeneous experience and **variation of interpretation** of the goods and services provisions among equality bodies, also related to different national legislation.



- Need for further **clarification** of some provisions of the Directive
- Need to ensure **harmonization** of national laws and interpretation of the directive
- **Lack** of positive duties to promote gender equality in field of goods and services




Art 4.5 & Recitals 16 and 17 of Directive 2004/113/EC

5. This Directive shall not preclude differences in treatment, if the provision of the goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.


(16) Differences in treatment may be accepted only if they are justified by a legitimate aim. A legitimate aim may, for example, be the protection of victims of sex-related violence (in cases such as the establishment of single-sex shelters), reasons of privacy and decency (in cases such as the provision of accommodation by a person in a part of that person's home), the promotion of gender equality or of the interests of men or women (for example single-sex voluntary bodies), the freedom of association (in cases of membership of single-sex private clubs), and the organisation of sporting activities (for example single-sex sports events). Any limitation should nevertheless be appropriate and necessary in accordance with the criteria derived from case law of the Court of Justice of the European Communities.

(17) The principle of equal treatment in the access to goods and services does not require that facilities should always be provided to men and women on a shared basis, as long as they are not provided more favourably to members of one sex.




Allowing differences in treatment

- Article 4.5 and recitals 16 and 17 allow differences in treatment
- Which aims are **legitimate**?
- Which means of achieving an aim are **appropriate** and **necessary** (and **proportionate**) ?
- Body of case law at national and EU-level needs to be **developed**
- **Risk of interpreting** these exceptions too widely or too narrowly
- Case-law interpretation **varies** from country to country in **similar situations**



A “legitimate aim” and “proportionate” means to achieve that aim


- E.g. protection of victims of Gender based violence; reasons of privacy and decency; promotion of gender equality; freedom of association; sporting activities; single-sex voluntary bodies; single-sex clubs; healthcare services.
- Recital 17: facilities do not need to be provided on a shared basis as long as they are **not provided more favorably** one gender over another
- Test-Achats case (CJEU) invalidating the provision (article 5.2) allowing proportionate differences in individual premium and benefits where the use of sex is a determining factor in risk assessment (based on accurate actuarial and statistical data) – incompatibility with art. 21 and 23 of the Charter of Fundamental Rights
- European Commission guidelines on Test-Achats:
http://ec.europa.eu/justice/gender-equality/files/com_2011_9497_en.pdf



National case-law

Emerging areas where equality bodies have dealt with cases:

- Hotel floor for women only (Denmark) – Court held it was a legitimate aim
- Headgear ban in Gyms – indirect discrimination (Sweden)
- Different pricing for women and men in restaurants, clubs (Germany) – discriminatory
- Housing – tenancy contracts to women only (Austria - accepted)
- Transgender people in transition and access to healthcare, financial services, etc.
- Insurance company refusing to insure transgender people (Germany)




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Areas where NEBs have handled gender based discrimination cases in goods and services

Table 1

| | yes | no |
|--|-----|----|
| a) insurances | 8 | 9 |
| b) financial services | 6 | 11 |
| c) access to gyms/hotels/restaurants etc. | 14 | 3 |
| d) sexual harassment in healthcare | 2 | 15 |
| e) trans people in transition period or trying to access healthcare for transition | 10 | 7 |
| f) taxation | 9 | 8 |
| g) housing | 9 | 8 |
| h) employment related insurance schemes | 4 | 13 |
| i) access to public transport | 7 | 10 |
| j) equal access to pension | 9 | 8 |
| k) self-employed workers and access to private insurance | 0 | 17 |
| l) education | 12 | 5 |
| m) advertisement | 12 | 5 |
| n) media | 9 | 8 |


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- ## Gaps in the Directive's legal provisions
- The experience of equality bodies shows the importance of covering areas/scope currently not or not clearly covered in the Directive:
- **Advertisement**
 - **Media**
 - **Education**
 - **Public healthcare**
 - **Trans and intersex persons**
 - Is the Directive's requirement for sanctions to be dissuasive, proportionate and effective currently fulfilled?
 - The Directive also covers goods and services that are paid for by the state and others
 - Importance of gender mainstreaming and public sector duties



OTHER FINDINGS – promotional, policy and research

Build a culture of rights by:

- Addressing **underreporting** by raising awareness on this Directive; cooperation with civil society organizations; women’s groups; public bodies, etc.
- Challenge **stereotypes** about gender roles in the areas of goods and services, and build a shared culture aware of stereotyping in the field.
- The area of goods and services can be considered relatively **new** to equal treatment provisions and therefore less researched.
- Promote and produce **research** to establish
 - **how and where** discrimination occurs in this field,
 - the **extent** of this discrimination,
 - how people are **responding** to this discrimination
 - the **impact** of this discrimination.



Challenges in implementation of Directive 2004/113/EC

Developing standards for
Equality Bodies
 KEY MESSAGES FROM THE EQUINET 2016 WORKING PAPER
 OVERVIEW – A Framework for Standards

| MANDATE | INDEPENDENCE |
|---|---|
| <ul style="list-style-type: none"> • Mandate should be clear, specific and measurable • Mandate should cover all areas of discrimination covered by the Directive • Mandate should include the power to investigate, mediate, conciliate, and refer cases to the courts • Mandate should include the power to issue recommendations and to conduct research • Mandate should include the power to act as a public prosecutor • Mandate should include the power to act as a guardian of the law • Mandate should include the power to act as a watchdog • Mandate should include the power to act as a promoter of equality • Mandate should include the power to act as a promoter of good practice • Mandate should include the power to act as a promoter of equality in the workplace • Mandate should include the power to act as a promoter of equality in the public sector • Mandate should include the power to act as a promoter of equality in the private sector • Mandate should include the power to act as a promoter 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power to act as a promoter of equality in the financial services industry • Mandate should include the power to act as a promoter of equality in the telecommunications industry • Mandate should include the power to act as a promoter of equality in the information and communication technology industry • Mandate should include the power to act as a promoter of equality in the research and development industry • Mandate should include the power to act as a promoter of equality in the innovation industry • Mandate should include the power to act as a promoter of equality in the creative industry • Mandate should include the power to act as a promoter of equality in the cultural and creative industries • Mandate should include the power to act as a promoter of equality in the digital industry • Mandate should include the power to act as a promoter of equality in the green industry • Mandate should include the power to act as a promoter of equality in the sustainable industry • Mandate should include the power to act as a promoter of equality in the social economy • Mandate should include the power to act as a promoter of equality in the social enterprise sector • Mandate should include the power to act as a promoter of equality in the social innovation sector • Mandate should include the power to act as a promoter of equality in the social impact investment sector • Mandate should include the power to act as a promoter of equality in the social finance sector • Mandate should include the power to act as a promoter of equality in the social business sector • Mandate should include the power to act as a promoter of equality in the social entrepreneurship sector • Mandate should include the power to act as a promoter of equality in the social innovation ecosystem • Mandate should include the power to act as a promoter of equality in the social innovation landscape • Mandate should include the power to act as a promoter of equality in the social innovation environment • 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| EFFECTIVENESS | ADDITIONAL MANDATES |
| <ul style="list-style-type: none"> • Effectiveness should be guaranteed by the mandate • Effectiveness should be guaranteed by the budget • Effectiveness should be guaranteed by the staff • Effectiveness should be guaranteed by the procedures • Effectiveness should be guaranteed by the results • Effectiveness should be guaranteed by the reputation • Effectiveness should be guaranteed by the credibility • Effectiveness should be guaranteed by the trust • Effectiveness should be guaranteed by the respect • Effectiveness should be guaranteed by the dignity • Effectiveness should be guaranteed by the honor • Effectiveness should be guaranteed by the glory • Effectiveness should be guaranteed by the fame | <ul style="list-style-type: none"> • Additional mandates should be clear, specific and measurable • Additional mandates should cover all areas of discrimination covered by the Directive • Additional mandates should include the power to investigate, mediate, conciliate, and refer cases 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For more information: www.equinet.org

- Tackle **underreporting** and **low awareness**
 - promotional,
 - communication,
 - policy, and
 - research work
- Lack **sufficient resources** to fulfill mandate
- **Independence** and **effectiveness** to pursue and fulfill mandate

KS2 **New visual aid**


Katrine Steinfeld; 02.03.2017



Equinet report on Harassment on the basis of gender and sexual harassment

Goods and Services Directive 2004/113/EC affirms that:

“Discrimination based on sex, including harassment and sexual harassment, also takes place in areas **outside of the labour market**. Such discrimination can be equally damaging, acting as a barrier to the full and successful integration of men and women into economic and social life” (Preamble)

Issues raised in context of harassment

- **Media, advertisement and education** are excluded from the scope of the Gender Goods and Services Directive
- EU policy makers to **review this exception**, as important roots of sexism take place in media
- In particular, **sexual harassment in education** among teens is a worrying phenomenon that should be firmly combated at EU level
- **Cyber harassment** needs to be effectively monitored. International or EU coordination may be needed in this area because of the world-wide nature of the internet and social media networks.
- EU institutions could establish a **coherent system for collecting statistics on gender violence, including sexual harassment**.
- **Transphobia and misogyny; incitement to hatred; hate speech**

KS3

new visual aid

Katrine Steinfeld; 02.03.2017



**Thank you for your attention!
Any questions?**

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