GENDER EQUALITY IN GOODS AND SERVICES

ERA SEMINAR EU GENDER EQUALITY LAW

Katrine Steinfeld
Policy Officer (Gender Equality)
Equinet – European Network of Equality Bodies

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)
- **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 II**

**BOBIES FOR THE PROMOTION OF EQUAL TREATMENT**

Article 17

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) protecting the rights of victims and of associations, organizations or other legal entities referred to in Article 8(1), 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)


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

3. 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.

4. 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 prevention of harassment by a person in a part of that person’s home, the protection of gender equality or of the interests of men or women (for example, single-sex voluntary bodies for the prevention of problems such as single-sex youth clubs), and the organisation of sporting activities (for example, single-sex sports clubs). Such provisions should nevertheless be appropriate and necessary in accordance with the criteria derived from case law of the Court of Justice of the European Communities.

5. 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

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

<table>
<thead>
<tr>
<th>Areas</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Insurance</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>b) Financial services</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>c) Access to gym/hotel/restaurant etc.</td>
<td>14</td>
<td>3</td>
</tr>
<tr>
<td>d) Sexual harassment in healthcare</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>e) Trans people in transition period or trying to access healthcare for transition</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>f) Taxation</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>g) Housing</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>h) Employment-related insurance schemes</td>
<td>4</td>
<td>13</td>
</tr>
<tr>
<td>i) Access to public transport</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>j) Equal access to pension</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>k) Self-employed workers and access to private insurance</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>l) Education</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>m) Advertisement</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>n) Media</td>
<td>9</td>
<td>8</td>
</tr>
</tbody>
</table>

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

- 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?

www.equineteurope.org

EquinetEurope  @EquinetEurope

EQUINET SECRETARIAT
138 Rue Royale / Koningsstraat
B-1000 Brussels, Belgium
Tel: +32 (0)2 212 3182
info@equineteurope.org