



CHARLES UNIVERSITY
Faculty of Law

Equal treatment outside employment: access to goods and services

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EU law

- Treaty on European Union, Art. 2
- Treaty on the Functioning of the EU, Art. 1a, 2, 6, 19
- Charter of Fundamental Rights of the EU, Art. 21, 23, ch. III
- Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Gender equal access to goods and services Directive 2004/113/EC



Equal access to goods and services

- With respect to men and women it came later compared to equal treatment regardless of race and ethnic origin
- Originally, it was proposed to include education and advertising in the material scope – not implemented
- COUNCIL DIRECTIVE 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services



Scope

- Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons who provide goods and services, which are available to the public irrespective of the person concerned as regards both the public and private sectors, including public bodies, and which are offered outside the area of private and family life and the transactions carried out in this context.
- This Directive does not prejudice the individual's freedom to choose a contractual partner as long as an individual's choice of contractual partner is not based on that person's sex.
- This Directive shall not apply to the content of media and advertising nor to education.
- This Directive shall not apply to matters of employment and occupation. This Directive shall not apply to matters of self-employment, insofar as these matters are covered by other Community legislative acts.

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Scope

'Services' shall in particular include:

- (a) activities of an industrial character;*
- (b) activities of a commercial character;*
- (c) activities of craftsmen;*
- (d) activities of the professions.*



Practical problems

- Unequal prices
 - Insurance products
 - Services
- Unequal treatment
 - Different access to services



2004/113/EC and insurance contracts

- “The use of actuarial factors related to sex is widespread in the provision of insurance and other related financial services. In order to ensure equal treatment between men and women, the use of sex as an actuarial factor should not result in differences in individuals' premiums and benefits. Less favourable treatment of women for reasons of pregnancy and maternity should be considered a form of direct discrimination based on sex and therefore prohibited in insurance and related financial services. Costs related to risks of pregnancy and maternity should therefore not be attributed to the members of one sex only.”
- Member States shall ensure that in all new contracts concluded after 21 December 2007 at the latest, the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits.
- Article 5 (2) Member States may decide before 21 December 2007 to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data.



C-326/09 Test-Achats

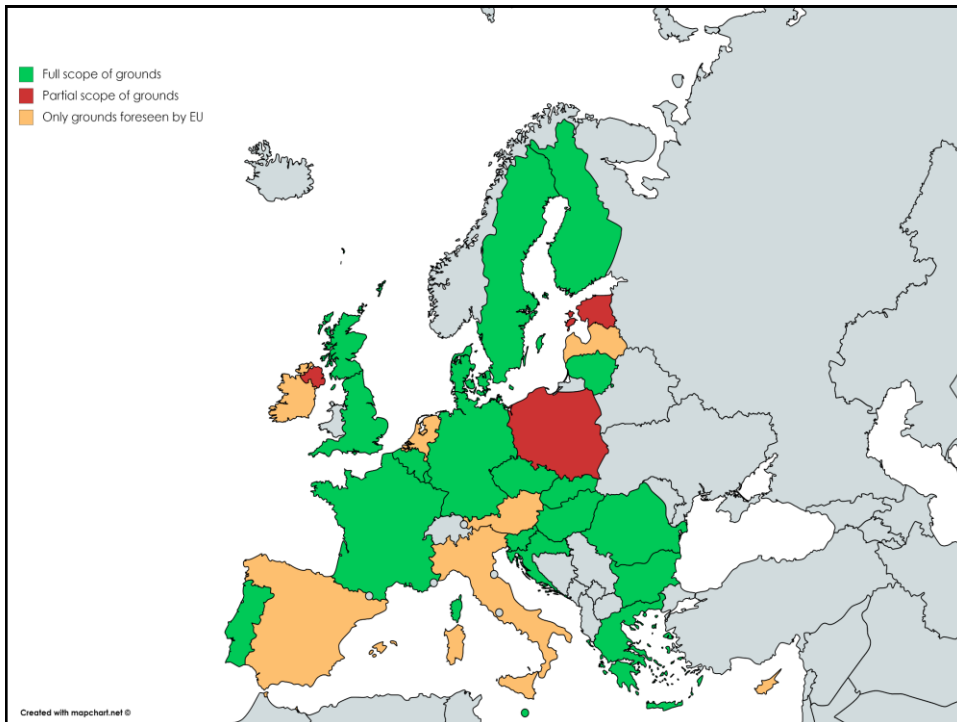
Is Article 5(2) of the Directive, enabling States to permit gender specific risk differences in the calculation of premiums and benefits of insurance services, compatible with the Treaty on EU?

Can the application of Article 5(2) of the Directive be limited to life insurance contracts?



C-326/09 Test-Achats

Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services is invalid with effect from 21 December 2012.



Member States case law

- VB: Lee v. Ashers Baking Company of 10.10.2018
- A bakery refused an order for a cake with a message „support gay marriage“ for religious reasons
- No discrimination on the grounds of sexual orientation found



Access to goods and services

Non-discrimination in EU law

- Race, ethnic origin
- Gender

Non-discrimination in CZ law

- Race, ethnic origin
- Gender
- Nationality
- Sexual orientation
- Age
- Disability
- Religion, belief, opinions
- Nationality in EU



Czech practice

- Rejection of access to housing
I. Ombudsperson's opinion (112/2012/DIS)

If the published lease offer, even if owned by a private person, excludes members of particular ethnicity, the person making the offer commits direct discrimination against these persons.

<http://eso.ochrance.cz/nalezene/edit/2000>



Czech practice

- Rejection of access to housing

II. Judgment (14 C 46/2013-107)

- Order of written apology
- Financial compensation declined

(https://www.ochrance.cz/fileadmin/user_upload/ESO/112-2012-DIS-VP-rozsudek_OS_Litomerice.pdf)



Czech practice

-  Ombudsperson's opinion (6899/2015/VOP)¹

Prohibition of entry with baby-carriages into a shop puts child-carers into a disadvantaged position as they cannot use the services. Such prohibition may fulfill the characteristics of indirect discrimination on grounds of sex (parenthood) in access to goods and services.

(<https://eso.ochrance.cz/Nalezene/Edit/5332>)



Czech practice

- Ombudsperson's opinion (3939/2015/VOP)

An insurance company's refusal to conclude a travel insurance contract with a pregnant woman, or exclusions for certain types of accidents or sudden illnesses, constitutes direct discrimination on grounds of sex. Further exceptions must be based on specific data from which greater insurance risk can be deduced.

<https://eso.ochrance.cz/Nalezene/Edit/5888>



Czech practice

- Ombudsperson's opinion (4637/2015/VOP)

By choosing the passengers for security pre-screening according to their ethnicity, the airline commits direct discrimination.

<https://eso.ochrance.cz/Nalezene/Edit/5670>



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Thanks for your attention



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