

EQUAL TREATMENT OUTSIDE EMPLOYMENT: ACCESS TO GOODS AND SERVICES

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EU LAW – ROMANIAN LAW

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<p>Council Directive 2014/113/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</p> <p><i>Minimum requirements (Article 7)</i></p>	<p>Government Emergency Ordinance No.61/2008 on the implementation of the principle of equal treatment between women and men in the field of access to goods and services and the provision of goods and services</p> <p>General framework: -Government Ordinance No.137/2000 on the prevention and sanctioning of all forms of discrimination -Law 202/2002 on equal opportunities between women and men</p>

SCOPE OF THE DIRECTIVE 2004/113

Article 3:

- All persons who provide goods and services (both public and private sector).
- Goods and services are available to the public.
- Does not apply to:
 - Goods and services offered inside the area of private and family life and the transactions carried out in this context.
 - The content of media and advertising. ✓
 - The content of education. ✓
 - Employment and occupation. ✓
- Shall be without prejudice to more favourable provisions concerning the protection of women as regards pregnancy and maternity.

REPORT OF THE EUROPEAN PARLIAMENT (16.04.2013)

- Discrimination in relation to pregnancy, planning of motherhood, and maternity as regards for instance:
 - housing sector (renting),
 - obtaining loans,
 - access to medical goods and services, in particular access to legally available reproductive health care and gender reassignment treatment (*UN CEDAW Committee, General Recommendation No.24 - Directive 2004/113, Preamble, ¶ 12*),
 - breastfeeding and access in public spaces and areas,
 - pregnant asylum-seeking women awaiting the outcome of their asylum claims and their access to goods and services,
 - women entrepreneurs, in particular single mothers, are frequently discriminated against when trying to secure loans or credit for their businesses and still often face barriers based on gender stereotypes.

EXAMPLES FROM ROMANIA

- ✓ The selling of tickets for a football game exclusively for men.
- ✓ Hospitals allowing only women (mothers) to attend to their small children-patients.
- ✓ A striptease show with the occasion of 8 March allowing only women in the public.

EXCEPTIONS OF THE DIRECTIVE 2004/113

1. Difference 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 (Article 4.(5)).
2. **Gender as a factor of risk** in insurance and related financial services. (Article 5.(2) was declared invalid by the CJEU starting with 21 December 2012 (C-236/09, *Test Achats*)).

EXCEPTION 1: GOODS AND SERVICES EXCLUSIVELY OR PRIMARILY FOR WOMEN/MEN

- **Justified by a legitimate aim & the means of achieving that aim are appropriate and necessary** (*Preamble, ¶16*)
 - Sex segregation
 - Sex-related violence
 - Privacy and decency
 - Promotion of gender equality (*Article 6*)
 - Freedom of association
 - Organization of sporting activities
 - Differential pricing

EXCEPTION 2: GENDER AS A FACTOR OF RISK

CJUE, Case C-236/09, *Test-Achats*, judgment of 1 March 2011

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 factor in the assessment of risk based on relevant and accurate actuarial and statistical data.

Questions to CJUE:

1. Is Article 5(2) of Directive 2004/113 ... compatible with Article 6(2) [EU] and, more specifically, with the principle of equality and non-discrimination guaranteed by that provision?
2. If the answer to the first question is negative, is Article 5(2) of the Directive also incompatible with Article 6(2) [EU] if its application is restricted to life assurance contracts?

PRELIMINARY RULING OF THE COURT:

- Articles 21 and 23 of the Charter state, respectively, that any discrimination based on sex is prohibited and that equality between men and women must be ensured in all areas.
- Transitional periods or derogations limited in scope – Art.5.(2) no temporal limitation.
- The principle of equal treatment requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified.
 - Council: the *modus operandi* of insurers, in accordance with which risks are placed in categories on the basis of statistics, the levels of insured risk may be different for men and for women.
 - CJUE: The comparability of situations must be assessed in the light of the subject-matter and purpose of the EU measure which makes the distinction in question (the application of unisex rules on premiums and benefits).

=>Article 5(2) of Directive 2004/113 is invalid with effect from 21 December 2012.

GUIDELINES IN THE FIELD OF INSURANCE AFTER *TEST-ACHATS* (EC, 2011)

- “New contract”
- **Gender-related insurance practices which remain possible:**
 - reserving an internal pricing
 - reinsurance pricing
 - marketing and advertising
 - life and health underwriting
- **Use of other risk factors:**
 - factors correlated with gender
 - factors not correlated with gender
- **Insurance and occupational pensions**