



# Directive 2004/113/EC Equal treatment in access to goods and services

ERA Seminar  
EU Gender Equality Law  
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## Introduction Directive 2004/113/EC

- **Adoption of the directive as a major step**
  - Prior to the Treaty of Amsterdam, the legal basis only covered the area of employment,
  - The Treaty of Amsterdam gave competence to take the necessary measures to combat all types of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

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## Introduction Directive 2004/113/EC

- **Deadline for implementation 21.12.2007**
  - Minimum requirements (national legislation might provide greater protection/no reduction in the level of current protection is possible)
- **Modification of the directive with the Test Achats ruling**

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## Main features of Directive 2004/113/EC

**Objective:** to ensure equal treatment for men and women in the access to and supply of goods and services

### 1. Scope of application

- Notion of goods and service providers,
  - applicable to all services provided against remuneration (including health services),
- Are excluded: media content, advertisement and education,
- Not applicable to employment matters,

### 2. Principle of equal treatment

- Prohibition of direct and indirect discrimination (including harassment and sexual harassment and instruction to discriminate)

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## Main features of Directive 2004/113/EC

### 1. Possible derogation from the principle of equal treatment : article 4-5

→ Differences in treatment are not precluded *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 it are appropriate and necessary.

→ Derogation to be implemented by the Member States

### 2. Positive action

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## Main features of Directive 2004/113/EC Financial services – article 5-

- Principle of equal treatment fully applicable to financial services
- Derogation granted in article 5-2 annulled by the CJEU in Test Achats ruling.
- Unisex rule
  - Use of sex as a factor in the calculation of premiums and benefits shall not result in differences in individuals premiums and benefits.

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## Main features of Directive 2004/113/EC Financial services – article 5-

- **2011 Commission guidelines to support the implementation of the Test Achats ruling**
  - Unisex rules applicable to all new contracts concluded after 21.12.2012
  - Allowed practices:
    - The use of gender is not prohibited (only differentiation at individual level)
    - Possible to collect, store and use gender status,
- **Use of article 4-5** → gender specific insurance products remain possible (for conditions exclusively/primarily concerning one sex)
- **Exception: solidarity mechanism of Article 5-3 for pregnancy and maternity costs.**

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## Main features of Directive 2004/113/EC

- **Defence of rights**
  - Availability of judicial and administrative procedures
  - Real and effective compensation and/or reparation for the discrimination, without any maximum limit.
- **Protection against victimisation**
- **Burden of proof**
- **Compliance and penalties**

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## Main features of directive 2004/113/EC

- **Role assigned to equality bodies**
  - Provide assistance to victims,
  - Conduct independent surveys,
  - Publish independent reports and make recommendations.
- **Equality bodies are crucial to disseminate information and to raise awareness on the ground.**
- **To ensure effective equality bodies**

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## Directive 2004/113/EC State of play of the implementation

- **All MS have notified to the Commission their implementing measures.**
  - The Commission is currently assessing the compliance of the notified national measures with Directive 2004/113
- **Test Achats ruling to be implemented by 21.12.2012**
  - Implementing measures notified by nearly all the MS.
  - The Commission will assess the compliance of the amending law received with the Directive as modified by the ruling.

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## Directive 2004/113/EC Report on the implementation

- **General report on the implementation of the directive to be adopted by the end of 2014.**
  - Report on the state of play of the implementation
  - Including report on the implementation of the Test achats ruling.
- **Report based on feedback received from**
  - MS,
  - Relevant stakeholders,
  - Gender network,
  - Equinet report and equality bodies,

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## Directive 2004/113/EC Report on the implementation

- **Some key issues...**
  - **Interpretation of the directive**
    - to be applied in the light of the TFEU and the relevant case law of the CJEU.
  - **Implementation of Article 5 of the Directive**
    - impact of the application of the unisex rules on financial services,
  - **Implementation of Article 4-5**
    - Scope of derogation foreseen in MS
    - Application of the proportionality principle

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## Directive 2004/113/EC Impact

- **Sectors with most complaints according to Equinet report**
  - Access to gyms/hotels/restaurants,
  - Healthcare (especially for transsexual persons),
  - Housing
  - Access to transport
  - Insurance and financial services
  - Education and advertisement, media (not covered),

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**Thank you  
for your attention !**

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