



Equal treatment: the Goods and Services Directive

Pauline Loeckx, 12 May 2015

1



Importance of discrimination phenomena in the field of goods and services

Complaints dealt with by the IEFH, according to field

Fields	2011	2012	2013
Work	90	66	76
Goods and services	33	35	91
Culture and media	18	67	24
Social security	20	8	8
Education and training	7	10	6
Private relationships	14	15	10
Economic, social, cultural and political activity	/	1	3
Career guidance and vocational training	/	2	4
Mention in official document/report	2	/	4
Other	9	22	17



INSTITUUT VOOR
DE GELIJKHEID
VAN VROUWEN
EN MANNEN



INSTITUT
POUR L'ÉGALITÉ
DES FEMMES
ET DES HOMMES



3



INSTITUUT VOOR
DE GELIJKHEID
VAN VROUWEN
EN MANNEN



INSTITUT
POUR L'ÉGALITÉ
DES FEMMES
ET DES HOMMES



4

Directive 2004/113 of 13 December 2004
implementing the principle of equal treatment
between women and men in access to and
supply of goods and services,

So-called “Goods and Services” Directive

5

1. Objective

To lay down a framework for combating discrimination based on sex in access to the supply of goods and services, with a view to putting into effect the principle of equal treatment between men and women.

6



2. Banned conduct

- Direct discrimination
- Indirect discrimination
- Harassment
- Sexual harassment
- Instruction to discriminate

Protection criteria: a person's sex, pregnancy and maternity, gender reassignment (according to CJEU case law)

7



3. Scope

The 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.

- Goods: are defined in reference to the provisions relating to the free movement of goods
- Services: activities within the meaning of Article 57 TFEU

8

The Goods and Services Directive does not concern:

- Private and family life
- Contractual freedom
- The media, advertising and education
- Employment (as other legislative instruments exist)

9

4. Justifications

- Difference in treatment is justified by a legitimate aim and where the means of achieving that aim are appropriate and necessary.
- Positive action.

10

Examples of legitimate justification:

- The protection of victims of sex-related violence
- Reasons of privacy and decency
- Freedom of association, which allows membership of single-sex private clubs
- The organisation of sporting activities

11

5. Mechanisms put in place by the Goods and Services Directive

- Minimum requirements
- Remedies for persons who consider themselves wronged
- Effective, dissuasive and proportionate penalties and compensation or reparation
- The possibility for associations, organisations or other legal entities with a legitimate interest to take action

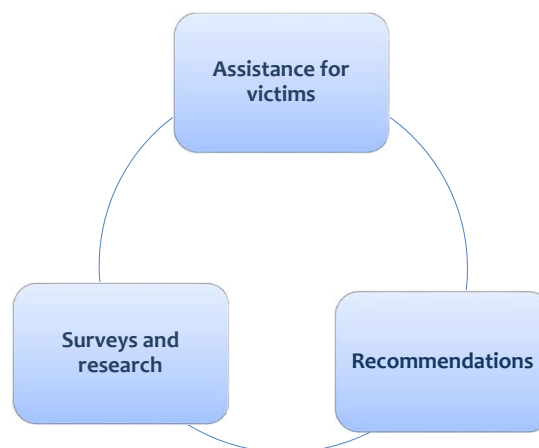
12

5. Mechanisms put in place by the Goods and Services Directive (continued)

- Sharing of the burden of proof
- Protection from victimisation
- Encouragement of dialogue with relevant stakeholders
- Dissemination of information
- Designation of a body for the promotion of equal treatment

13

Body for the promotion of equality



14



6. Actuarial factors

- Costs related to pregnancy and maternity shall not result in differences in premiums and benefits for insured persons.
- The use of a person's sex as an actuarial factor should not result in differences in premiums and benefits for customers.
However :
 - This affects only new contracts from 21 December 2007 onwards
 - Member States have the option of permitting (before 21 December 2007) proportionate differences in premiums and benefits where the use of the sex of a person or group is a determining factor in the assessment of risk, based on relevant and accurate actuarial data.

15



Test-Achats judgment (CJEU, C-236/09, 11 March 2011):

The Court invalidates the possibility of derogations as from 21 December 2012 because maintaining derogations without temporal limitation would be contrary to the higher principle of equality.

X. judgment (CJEU, C-318/13, 9 September 2014)

This case does not come under the Goods and Services Directive but the Court opposed the use of the difference in life expectancies of men and women as an actuarial factor in calculating compensation for an accident at work.

16

Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

- Women are often victims of multiple discrimination
- The prohibitions and mechanisms put in place are more or less the same, but there are differences:
 - scope
 - limitations

17

Conclusion

- Not much case law but, recently, more complaints have been emerging
- Report on the application of the Goods and Services Directive expected this year

18



INSTITUUT VOOR
DE GELIJKHEID
VAN VROUWEN
EN MANNEN



INSTITUT
POUR L'ÉGALITÉ
DES FEMMES
ET DES HOMMES



Thank you for your attention!

Contact : www.igvm-iefh.belgium.be - 0800/12.800

19