



This training session is commissioned under the European Union's Programme for Employment and Social Solidarity – PROGRESS (2007-2013).

Directive 2004/113/EC Equal treatment goods and services

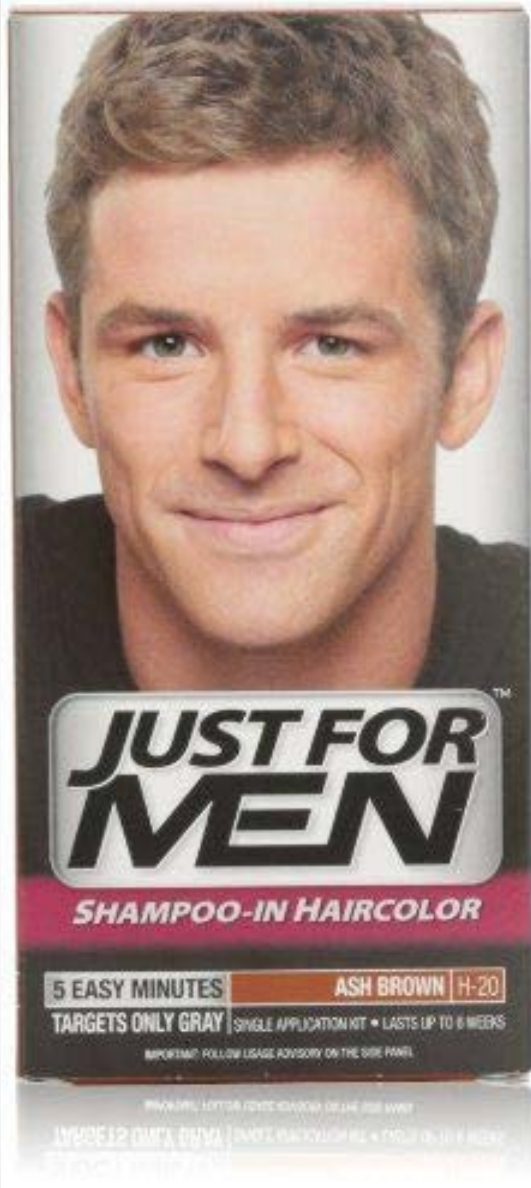
ERA EU Gender Equality Seminar

Trier 24 April 2016

Nathalie Wuiame

Objective and scope

- Objective: to ensure equal treatment for women and men in the access and supply of goods and services
- Scope:
 - All persons providing goods and services
 - Available to the public (public and private sectors)
 - Goods: as defined in provisions on free movement of goods = monetary value
 - Services: activities within the meaning of article 57 TFUE; financial and insurance services, health etc.



LADIES@THE MOVIES
BY KINEPOLIS

Does not cover...

- Goods and services provided in the area of private and family life
- Media and advertising content
- Education
- Employment, self-employment and occupation, covered by other directives

Does not prejudice freedom of contract
Other fundamental rights to be respected

Forms of discrimination...

- Direct discrimination
- Indirect discrimination
- Instruction to discriminate
- Harassment and sexual harassment

Direct discrimination...

- ...if in comparable situations
So no discrimination in provision of healthcare services resulting from the physical differences between men and women
- ...if in a situation linked to maternity or pregnancy, no need for a comparison

Exceptions...

- Provisions protecting women in pregnancy and maternity (art. 4(2))
- Differences in treatment justified by legitimate aim (art. 4.5)
- Positive actions (art. 6)

Legitimate aim...

- Protection of victims of gender-based violence
- Privacy and decency
- Freedom of association which allows membership of single-sex private clubs
- Sporting activities: single-sex sport events

Other legitimate aims?...

Strict interpretation of exceptions
(CJ)

- Objective justification
- Principle of proportionality:
 - appropriate means
 - necessary means

Example 1

- Promotional action of a train company (high speed):
- A number of cheaper tickets are available for women only around 8th March (women's rights day).
- Positive action? Legitimate aim?

Example 2

- A woman requests a quote to move house. She is told that she needs two professional movers + two male extras as helpers.
- If one man and one woman are provided as helpers, then an additional professional mover is needed and will be charged for.

Presumption of discrimination

- A woman in the same situation as a man, namely hiring professional movers, will get a higher quote for the same service on the basis that she will not count as a helper.
- Same service will be more expensive based on sex.
- Presumption of discrimination in tariffs.
- The mover will have to demonstrate that its practice has a legitimate aim and that means to achieve it are appropriate and necessary.

Actuarial factors

- Grounded on a combination of statistics, probabilities, mathematics and economics, actuarial factors are used to assess if an event is likely to happen in the future.
- When life expectancy constitutes a relevant factor in respect of that risk, sex distinction is used.
- Justification: within any human group mortality tables differ between men and women.
- But does this imply a causal link between sex and longevity?



Actuarial factors: article 5

1. **General rule:** sex as a factor in the calculation of premiums and benefits cannot result in differences in individuals' premiums and benefits.

Valid for all new contracts after 21 December 2007.

2. **Exception:** proportionate differences are permitted where the use of sex is a determining factor and the assessment of risks is based on relevant and accurate actuarial and statistical data.



Test-Achats Case 236/09

BUT Test-Achats case

- Invalid exception because:
 - enables MS to maintain without temporal limitations an exemption to this rule
 - against the achievement of the objective of equality between women and men
- Invalid with effect from 21 Dec 2012
- Commission guidelines: applicable to new contracts

Thank you for your attention!

nathalie.wuiame@skynet.be

CESEP scrl, rue du Luxembourg 23/8 – B-1000 Brussels
+32 2 502 1880

