

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

CHAPTER I

**GENERAL PROVISIONS**

*Article 1*

**Purpose**

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

*Article 2*

**Definitions**

For the purposes of this Directive, the following definitions shall apply:

- (a) direct discrimination: where one person is treated less favourably, on grounds of sex, than another is, has been or would be treated in a comparable situation;
- (b) indirect discrimination: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
- (c) harassment: where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- (d) sexual harassment: where any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

*Article 3*

**Scope**

1 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.

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2 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.

3 This Directive shall not apply to the content of media and advertising nor to education.

4 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.

#### *Article 4*

### **Principle of equal treatment**

1 For the purposes of this Directive, the principle of equal treatment between men and women shall mean that

- a there shall be no direct discrimination based on sex, including less favourable treatment of women for reasons of pregnancy and maternity;
- b there shall be no indirect discrimination based on sex.

2 This Directive shall be without prejudice to more favourable provisions concerning the protection of women as regards pregnancy and maternity.

3 Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited. A person's rejection of, or submission to, such conduct may not be used as a basis for a decision affecting that person.

4 Instruction to direct or indirect discrimination on the grounds of sex shall be deemed to be discrimination within the meaning of this Directive.

5 This Directive shall not preclude differences 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 5*

### **Actuarial factors**

1 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.

2 Notwithstanding paragraph 1, 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. The Member States concerned shall inform the Commission and ensure that accurate data relevant to the use of sex as a determining actuarial factor are compiled, published and regularly updated. These Member States shall review their decision five years after 21 December 2007, taking into account the Commission report referred to in Article 16, and shall forward the results of this review to the Commission.

3 In any event, costs related to pregnancy and maternity shall not result in differences in individuals' premiums and benefits.

Member States may defer implementation of the measures necessary to comply with this paragraph until two years after 21 December 2007 at the latest. In that case the Member States concerned shall immediately inform the Commission.

#### *Article 6*

##### **Positive action**

With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex.

#### *Article 7*

##### **Minimum requirements**

1 Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment between men and women than those laid down in this Directive.

2 The implementation of this Directive shall in no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.