

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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 13(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament<sup>(1)</sup>,

Having regard to the Opinion of the European Economic and Social Committee<sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(3)</sup>,

Whereas:

- (1) In accordance with Article 6 of the Treaty on European Union, the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States, and respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States as general principles of Community law.
- (2) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.
- (3) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the protection of private and family life and transactions carried out in that context and the freedom of religion.
- (4) Equality between men and women is a fundamental principle of the European Union. Articles 21 and 23 of the Charter of Fundamental Rights of the European Union prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas.

- (5) Article 2 of the Treaty establishing the European Community provides that promoting such equality is one of the Community's essential tasks. Similarly, Article 3(2) of the Treaty requires the Community to aim to eliminate inequalities and to promote equality between men and women in all its activities.
- (6) The Commission announced its intention of proposing a directive on sex discrimination outside of the labour market in its Communication on the Social Policy Agenda. Such a proposal is fully consistent with Council Decision 2001/51/EC of 20 December 2000 establishing a Programme relating to the Community framework strategy on gender equality (2001-2005)<sup>(4)</sup> covering all Community policies and aimed at promoting equality for men and women by adjusting these policies and implementing practical measures to improve the situation of men and women in society.
- (7) At its meeting in Nice of 7 and 9 December 2000, the European Council called on the Commission to reinforce equality-related rights by adopting a proposal for a directive on promoting gender equality in areas other than employment and professional life.
- (8) The Community has adopted a range of legal instruments to prevent and combat sex discrimination in the labour market. These instruments have demonstrated the value of legislation in the fight against discrimination.
- (9) Discrimination based on sex, including harassment and sexual harassment, also takes place in areas outside of the labour market. Such discrimination can be equally damaging, acting as a barrier to the full and successful integration of men and women into economic and social life.
- (10) Problems are particularly apparent in the area of the access to and supply of goods and services. Discrimination based on sex, should therefore be prevented and eliminated in this area. As in the case of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin<sup>(5)</sup>, this objective can be better achieved by means of Community legislation.
- (11) Such legislation should prohibit discrimination based on sex in the access to and supply of goods and services. Goods should be taken to be those within the meaning of the provisions of the Treaty establishing the European Community relating to the free movement of goods. Services should be taken to be those within the meaning of Article 50 of that Treaty.
- (12) To prevent discrimination based on sex, this Directive should apply to both direct discrimination and indirect discrimination. Direct discrimination occurs only when one person is treated less favourably, on grounds of sex, than another person in a comparable situation. Accordingly, for example, differences between men and women in the provision of healthcare services, which result from the physical differences between men and women, do not relate to comparable situations and therefore, do not constitute discrimination.
- (13) The prohibition of discrimination should apply to persons providing goods and services, which are available to the public and which are offered outside the area of private and

family life and the transactions carried out in this context. It should not apply to the content of media or advertising nor to public or private education.

- (14) All individuals enjoy the freedom to contract, including the freedom to choose a contractual partner for a transaction. An individual who provides goods or services may have a number of subjective reasons for his or her choice of contractual partner. As long as the choice of partner is not based on that person's sex, this Directive should not prejudice the individual's freedom to choose a contractual partner.
- (15) There are already a number of existing legal instruments for the implementation of the principle of equal treatment between men and women in matters of employment and occupation. Therefore, this Directive should not apply in this field. The same reasoning applies to matters of self-employment insofar as they are covered by existing legal instruments. The Directive should apply only to insurance and pensions which are private, voluntary and separate from the employment relationship.
- (16) Differences in treatment may be accepted only if they are justified by a legitimate aim. A legitimate aim may, for example, be the protection of victims of sex-related violence (in cases such as the establishment of single-sex shelters), reasons of privacy and decency (in cases such as the provision of accommodation by a person in a part of that person's home), the promotion of gender equality or of the interests of men or women (for example single-sex voluntary bodies), the freedom of association (in cases of membership of single-sex private clubs), and the organisation of sporting activities (for example single-sex sports events). Any limitation should nevertheless be appropriate and necessary in accordance with the criteria derived from case law of the Court of Justice of the European Communities.
- (17) The principle of equal treatment in the access to goods and services does not require that facilities should always be provided to men and women on a shared basis, as long as they are not provided more favourably to members of one sex.
- (18) The use of actuarial factors related to sex is widespread in the provision of insurance and other related financial services. In order to ensure equal treatment between men and women, the use of sex as an actuarial factor should not result in differences in individuals' premiums and benefits. To avoid a sudden readjustment of the market, the implementation of this rule should apply only to new contracts concluded after the date of transposition of this Directive.
- (19) Certain categories of risks may vary between the sexes. In some cases, sex is one but not necessarily the only determining factor in the assessment of risks insured. For contracts insuring those types of risks, Member States may decide to permit exemptions from the rule of unisex premiums and benefits, as long as they can ensure that underlying actuarial and statistical data on which the calculations are based, are reliable, regularly up-dated and available to the public. Exemptions are allowed only where national legislation has not already applied the unisex rule. Five years after transposition of this Directive, Member States should re-examine the justification for these exemptions, taking into account the most recent actuarial and statistical data and a report by the Commission three years after the date of transposition of this Directive.

- (20) Less favourable treatment of women for reasons of pregnancy and maternity should be considered a form of direct discrimination based on sex and therefore prohibited in insurance and related financial services. Costs related to risks of pregnancy and maternity should therefore not be attributed to the members of one sex only.
- (21) Persons who have been subject to discrimination based on sex should have adequate means of legal protection. To provide a more effective level of protection, associations, organisations and other legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (22) The rules on the burden of proof should be adapted when there is a *prima facie* case of discrimination and for the principle of equal treatment to be applied effectively, the burden of proof should shift back to the defendant when evidence of such discrimination is brought.
- (23) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.
- (24) With a view to promoting the principle of equal treatment, Member States should encourage dialogue with relevant stakeholders, which have, in accordance with national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of sex in the area of access to and supply of goods and services.
- (25) Protection against discrimination based on sex should itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims. The body or bodies may be the same as those with responsibility at national level for the defence of human rights or the safeguarding of individuals' rights, or the implementation of the principle of equal treatment.
- (26) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation, which already prevails in each Member State.
- (27) Member States should provide for effective, proportionate and dissuasive penalties in cases of breaches of the obligations under this Directive.
- (28) Since the objectives of this Directive, namely to ensure a common high level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (29) In accordance with paragraph 34 of the interinstitutional agreement on better law-making<sup>(6)</sup>, Member States are encouraged to draw up, for themselves and in the interest

of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and to make them public,

HAS ADOPTED THIS DIRECTIVE:

- (1) Opinion delivered on 30 March 2004 (not yet published in the Official Journal).
- (2) [OJ C 241, 28.9.2004, p. 44.](#)
- (3) [OJ C 121, 30.4.2004, p. 27.](#)
- (4) [OJ L 17, 19.1.2001, p. 22.](#)
- (5) [OJ L 180, 19.7.2000, p. 22.](#)
- (6) [OJ C 321, 31.12.2003, p. 1.](#)