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*Plenary sitting*

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**A8-0043/2017**

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# **REPORT**

on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services  
(2016/2012(INI))

Committee on Women's Rights and Gender Equality

Rapporteur: Agnieszka Kozłowska-Rajewicz

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### **on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (2016/2012(INI))**

*The European Parliament,*

- having regard to Articles 19(1) and 260 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the Protocol (No 1) to the Treaty on the Functioning of the European Union (TFEU) on the role of national parliaments in the European Union,
- having regard to the Protocol (No 2) of the Treaty on the Functioning of the European Union (TFEU) on the application of the principles of subsidiarity and proportionality,
- having regard to 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<sup>1</sup>,
- having regard to the Commission report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (COM(2015)0190),
- having regard to the Commission guidelines of 22 December 2011 on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (*Test-Achats*)<sup>2</sup>,
- having regard to the judgment of the Court of Justice of the European Union of 1 March 2011 in Case C-236/09 (*Test-Achats*)<sup>3</sup>,
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and Article 3 thereof defining ‘gender’ as ‘the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men’,
- having regard to the Commission communication entitled ‘A European agenda for the collaborative economy’ (COM(2016)0356),
- having regard to the European Implementation Assessment on Gender Equal Access to Goods and Services – Directive 2004/113/EC of January 2017 carried out by the European Parliamentary Research Service<sup>4</sup>,
- having regard to the Equinet Report of November 2014 entitled ‘Equality Bodies and

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<sup>1</sup> OJ L 373, 21.12.2004, p. 37.

<sup>2</sup> OJ C 11, 13.1.2012, p. 1.

<sup>3</sup> OJ C 130, 30.4.2011, p. 4.

<sup>4</sup> PE 593.787

the Gender Goods and Services Directive’,

- having regard to the report of the European Network of Legal Experts in the Field of Gender Equality of 2014 entitled ‘Gender Equality Law in 33 European Countries: How are EU rules transposed into national law?’,
  - having regard to the report of the European Network of Legal Experts in the Field of Gender Equality of July 2009 entitled ‘Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC’,
  - having regard to the Court of Justice ruling in case C-13/94 that the right not to be discriminated against on grounds of sex may include discrimination arising from the gender reassignment of a person<sup>1</sup> as well as to the EU Fundamental Rights Agency's LGBTI survey of 2014 and its report entitled ‘Professionally speaking: challenges to achieving equality for LGBT people’, all in the area of goods and services,
  - having regard to the Commission proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426) and Parliament’s position thereon,
  - having regard to its resolution of 19 January 2016 on external factors that represent hurdles to European female entrepreneurship<sup>2</sup>,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Women’s Rights and Gender Equality and the opinions of the Committee on Transport and Tourism and the Committee on Legal Affairs (A8-0043/2017),
- A. whereas combating gender discrimination, both direct and indirect, in the field of goods and services is an integral part of the principle of equality between women and men, which constitutes a fundamental value of the European Union, and whereas both the Treaties and the Charter of Fundamental Rights prohibit any discrimination on grounds of sex and require equality between women and men to be ensured in all areas and in all EU Member States;
- B. whereas Directive 2004/113/EC (hereinafter ‘the Directive’) extends the principle of equal treatment of men and women beyond the realm of employment and the labour market and into the field of access to and supply of goods and services;
- C. whereas the Directive prohibits both direct and indirect discrimination based on sex in the access to and supply of goods and services which are available to the public, in both the public and private sectors;
- D. whereas the Directive is applicable to all goods and services provided against remuneration, within the meaning of Article 57 TFEU and according to the relevant

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<sup>1</sup> Joint Council and Commission statement, Addendum to outcome of proceedings to the Proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services.

<sup>2</sup> Texts adopted. P8\_TA(2016)0007.

case-law of the Court of Justice of the European Union (CJEU); whereas remuneration must not necessarily be provided by those for whom the service is performed and it can be provided in a form of an indirect payment which does not necessarily involve the service recipient;

- E. whereas the media and advertising sectors, education-related services and the services that are provided for within the private sphere are excluded from the scope of the Directive; whereas the Member States have the legislative competence to safeguard the equal treatment of women and men in other areas, and whereas in some cases national legislation goes further than required by the Directive by covering discrimination between men and women in media, advertising and education;
- F. whereas the Directive has been transposed into national law in all 28 Member States; whereas, according to the Commission report, in 2015 intensive dialogue on the sufficient implementation of the Directive was still taking place with six Member States;
- G. whereas in the *Test-Achats* ruling the CJEU concluded that Article 5(2) of the Directive works against the achievement of the objective of equal treatment between men and women; whereas that provision was considered to be invalid with effect from 21 December 2012 and as a result unisex premiums and benefits are mandatory in all Member States;
- H. whereas the key problematic areas in the implementation of the Directive include an overly restrictive understanding of the notion of goods and services, broad and sometimes unclear justifications of unequal treatment on the basis of Article 4(5) and insufficient protection of women on grounds of maternity and pregnancy;
- I. whereas inequalities between men and women have widened, and this fact cannot be uncoupled from the policies of austerity, impoverishment, low wages and precarious employment and labour deregulation;
- J. whereas discrimination affecting women's access to goods and services is increasing at the basic level of their ability to acquire and choose them, owing to disparities in access to quality employment and access to decent wages and pensions;
- K. whereas in prohibiting discrimination it is important to respect other fundamental rights and freedoms, including the protection of private life and transactions carried out in that context and the freedom of religion;
- L. whereas the Equal Treatment Directive proposed in 2008 would extend protection from discrimination on grounds of religion or belief, age, disability and sexual orientation beyond the labour market to social protection, including social security and healthcare, social advantages, education, and access to and supply of goods and services; whereas the Council so far has not adopted its position on this proposal for a directive;
- M. whereas, while the recent Commission communication entitled 'European agenda for the collaborative economy' represents a good starting point for promoting and regulating this sector effectively, there is a need to incorporate the gender equality perspective and reflect the provisions of the Directive in further analysis and

recommendations in this field;

- N. whereas realisation of the full potential of the Directive rests on efficient and consistent gender mainstreaming across the relevant sectors to which it applies;
- O. whereas the work of the European Network of Equality Bodies is crucial for enhancing the implementation of legislation on equal treatment and coordinating cooperation and the sharing of best practices between national equality bodies across the EU;

### ***General considerations***

1. Is concerned that the application of the Directive is not uniform and varies across the Member States and that, despite progress achieved in this area, there are still challenges and gaps in its implementation that need to be addressed in some Member States and across certain sectors without delay; calls on the Commission to prioritise addressing in their dialogue with the Member States any remaining gaps in the implementation; stresses the Member States' crucial role in implementing the EU legislation and policies and recommends that greater support from regional and local authorities as well as cooperation with civil society, together with guidance to industry from Member States, may be necessary in ensuring full implementation of the Directive;
2. Notes that the Commission has presented its report on the application of Directive 2004/113/EC with a long delay since its first report in 2009;
3. Notes that, while the Commission report states that no specific difficulties have been signalled in implementing several provisions of the Directive, this statement is based on very few cases of discrimination reported, and that overall there is very limited information and that data collection in this area varies considerably at Member State level;
4. Underlines that one of the challenges encountered in some Member States is the low awareness about the rights and protections given to citizens as embedded in the Directive among policy-makers, service providers and citizens themselves; points out that the lack of public knowledge and awareness of the Directive and its provisions may result in a lower number of gender discrimination claims; calls on the Member States, the Commission and the relevant stakeholders to raise awareness, potentially in cooperation with consumer protection organisations, about the provisions of the Directive to enhance the perceived importance of equal treatment in the field of goods and services;
5. Notes that only some Member States have reported the existence of specific provisions on positive action; calls on the Member States to better integrate and promote provisions on positive action, which is based on a legitimate aim and strives to prevent or compensate gender-based inequalities, as outlined in the Directive;

### ***Insurance, banking and financial sectors***

6. Welcomes the implementation of the *Test-Achats* ruling in national legislation by the Member States and the fact that national legislation has been amended in a legally binding manner; points out that there are still challenges related to the conformity of

national legislation with the ruling, for example in medical insurance schemes and in relation to the full elimination of discrimination on the grounds of pregnancy and maternity;

7. Highlights the equalising effect on pensions of the ruling which prohibited sex-based actuarial factors in insurance contracts and made unisex premiums and benefits mandatory in private insurance schemes, including pensions; notes that, while this ruling applies only to private schemes, the unisex rule in pensions constitutes a good practice in terms of reducing the gender pension gap; welcomes the decision of some Member States to go beyond the scope of the ruling by extending the unisex rule to cover other types of insurance and pensions, including occupational pension schemes, in order to ensure equality between women and men in these areas; encourages other Member States to consider following suit, if appropriate;
8. Considers that ensuring proper and full implementation of the ruling is crucial; calls on the Commission to monitor, by means of periodic reports, conformity with these rules in the Member States in order to ensure that any gaps are addressed;
9. Highlights that the Directive expressly prohibits the use of pregnancy and maternity as a way to differentiate in the calculation of premiums for the purposes of insurance and related financial services; calls on the Member States to make a greater effort and enhance clarity in protecting the rights and welfare of pregnant women in this field, to safeguard them against unqualified pregnancy-related costs, as pregnant women should not experience higher costs on the sole grounds of their pregnancy, and to raise awareness among service providers as to the special protection afforded to pregnant women; stresses, in particular, the need to ensure that transitional periods in different types of insurance, especially medical insurance, do not interfere with the rights of pregnant women to enjoy equal treatment throughout the period of pregnancy;
10. Reiterates that the right not to be discriminated against on grounds of sex may include discrimination arising from the gender reassignment of a person<sup>1</sup>, and calls on the Commission to ensure that women and men are protected against discrimination on these grounds; highlights that the Directive offers protection in this regard and any further specification can be made in the national law of the Member States; points out, in this respect, that 13 Member States have not yet adopted direct legal provisions protecting transgender persons, who continue to experience discrimination in the supply of and access to goods and services, and points that including such provisions might contribute to raising awareness about the non-discrimination principle; calls on the Commission to monitor discrimination on these grounds in its future reports on the implementation of the Directive;
11. Regrets the persisting discriminatory practices against women and discriminatory practices linked to pregnancy, maternity plans and maternity in terms of access to services provided by the insurance and banking sectors;
12. Notes that the greater difficulty for female entrepreneurs in accessing financing could in

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<sup>1</sup> Joint Council and Commission statement, Addendum to outcome of proceedings to the proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services.

part be related to a difficulty in building up sufficient credit history and managerial experience; calls on the Member States to collaborate with the financial sector to ensure equality between men and women in access to capital for freelancers and SMEs; invites them to explore the possibilities of introducing a gender equality perspective into their reporting structures on the attribution of loans, into the tailoring of their risk profiles, investment mandates and staff structures, and into financial products; invites the Commission to cooperate with the Member States to adopt effective measures with practical examples to ensure that everyone can fully and properly utilise the Directive as an effective means of protecting their rights to equal treatment in accessing all goods and services;

13. Calls for a holistic approach to female entrepreneurship, aimed at encouraging and supporting women in building a career in entrepreneurship, facilitating access to finance and business opportunities, and creating an environment enabling women to realise their potential and become successful entrepreneurs by ensuring, inter alia, the reconciliation of professional and personal life, access to childcare facilities and tailor-made training;

### ***Transport sector and public spaces***

14. Notes that while the prohibition of harassment, including sexual and gender-based harassment, is embedded in national legislation, women and transgender and intersex persons continue to experience forms of abuse on means of transport on a systematic and frequent basis and there is a persisting need to enhance preventive measures against harassment, including raising awareness among the service providers;
15. Calls on the Commission and the Member States to facilitate the exchange of best practices in this area; calls for focusing on those preventive measures which are consistent with the principle of equality between women and men, as recommended for example in the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which are not limiting to women's liberties and which concentrate primarily on addressing potential perpetrators rather than modifying women's behaviour as potential victims; notes that the Istanbul Convention states that 'the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women' and, therefore, calls on the Member States and the Commission to follow this comprehensive approach in their policy aimed at eradicating violence against women, including the implementation of the anti-harassment provisions outlined in the Directive; calls on the Member States who have not yet done so to ratify the Istanbul Convention and on the Commission and the Council to advance the process of the EU's accession to the Convention;
16. Regrets the fact that parents and carers of small children still face physical access barriers and other obstacles such as insufficient access to baby changing facilities on the premises of service providers; emphasises the need to safeguard the rights of both mothers and fathers to enjoy equal opportunities in the company of their children on the premises of service providers; highlights that equal treatment of both women and men, as parents and carers of small children, in the access to and use of services is crucial for gender equality in general as it promotes equal and shared responsibility for childcare between women and men; calls on the Member States therefore to raise awareness



among service providers about the need to have equal and safe facilities for both parents available within their premises;

17. Notes moreover, that carers, predominantly women, have specific accessibility requirements and encourages the Commission therefore to consider all obstacles and constraints encountered by women as the main users of public transportation services and by carers in general, in accordance with the conclusions of the Fifth Conference on Women's Issues in Transportation held in Paris in 2014; underlines that, despite research in this area, limited attention has been given to developing gender-specific policies in the transport sector; notes that integrating the gender-sensitive perspective into the early stages of planning and structuring of means of transport and other public spaces as well as conducting regular gender impact assessments constitutes a good and cost-efficient practice for eradicating physical barriers which undermine equal access for parents and carers of small children;
18. Points out that unequal treatment of women on the grounds of maternity or pregnancy, including breastfeeding on the premises of service providers, still persists across the Member States; considers that the protection of women on the grounds of maternity and pregnancy, including breastfeeding, as guaranteed by the Directive needs to be strengthened and fully implemented at Member State level; points out that service providers must comply with the Directive's guiding principles and national legislation transposing it;
19. Calls on the Commission and the Member States to ensure that public transport vehicles and infrastructure are equally accessible and adapted to women and men, not only as end-users and passengers, but also as professionals working in the sector;
20. Calls on the Commission to assess airlines' rules on allowing pregnant women to board flights, and on assisting them during flights, and to take steps to make airlines ensure a harmonised approach in this regard;
21. Calls on the Council to adopt Parliament's position on the Passengers' Rights Regulation as regards the obligation of airport handlers to return baby carriages to passengers immediately after disembarking, or to provide alternative means of transport to spare passengers from carrying children through the airport until they reach the baggage reclaim area;
22. Takes the view that offering a network of maternity-support services, notably crèches and pre-school and after-school services, is essential to help ensure that the principle of equality between men and women in access to goods and services is actually implemented; takes the view that this network should include a level of public services that meets the population's needs;
23. Notes that discrimination and disparities are still being recorded in access to medical goods and services, which highlights the need to boost access to high-quality free public health services;

### *The collaborative economy*

24. Highlights the new possible areas of application of the Directive, in particular as a result

of digitalisation of certain services and sectors as well as the proliferation of collaborative forms of service provision which have changed the access to and supply of goods and services, while noting that the Directive remains applicable to the digital sphere; points out that the recently published Commission communication entitled ‘European agenda for the collaborative economy’ should serve as a first step for promoting and regulating this sector effectively, and that in further stages the Commission should integrate the principles of gender mainstreaming and reflect the regulations of the Directive to safeguard equal treatment of women and men and effectively prevent harassment in the services offered within the collaborative economy and ensure adequate safety;

25. Notes that harassment poses a particular challenge for gender equality in the area of collaborative economy services; highlights that while the ‘zero-tolerance’ policy towards harassment adopted by many platforms constitutes a good practice to be further strengthened in the sector, there is a need for the platforms concerned to prioritise prevention of harassment and to consider creating clear procedures for users to report cases of abuse; stresses the need for clarification of the provisions of liability for providers of goods and services, including in instances of third-party harassment, and the connecting online platforms on the basis of the Directive;
26. Considers that those services offered within the collaborative economy which are available to the public and run for profit fall within the remit of the Directive and should, therefore, be consistent with the principle of equal treatment of women and men;
27. Notes in this context that, in the digital sphere, ‘profit’ does not necessarily mean money and that data is increasingly used as a counter-performance for goods and services;
28. Calls on the Commission to monitor the principle of gender equality in the collaborative economy in its future reports on the application of the Directive and to issue specific guidelines identifying good practices to safeguard equal treatment of women and men in the services offered within the collaborative economy;

### ***Differential treatment***

29. Points out that the application of Article 4(5) has proved to be a major challenge in the implementation of the Directive, constituting the grounds for the largest share of complaints received by the equality bodies in the Member States, mainly pertaining to the leisure and entertainment sector;
30. Emphasises that, despite the ambiguity surrounding the application of Article 4(5), the main purpose of this derogation is to create opportunities for further enhancing equality between women and men in the provision of goods and services;
31. Notes that there are divergent practices, e.g. as regards cases where services are offered to members of one sex only or where differential pricing is applied for the same services; highlights that the application of differential treatment should be assessed on a case-by-case basis with a view to evaluating whether it is justified by a legitimate aim, as specified by the Directive;

32. Encourages equality bodies and consumer protection organisations both to raise awareness about the limits and conditions for differential treatment among service providers and to enhance awareness about the rights for equal treatment among service users, as it is often reported that users are not familiar with applicable provisions in the field of goods and services;
33. Considers that the relative lack of positive action based on Article 4(5) across Member States constitutes a gap in the implementation of the Directive; calls for the promotion of forms of positive action based on a legitimate aim in which there is a direct link between preferential treatment and the disadvantages to be prevented or eliminated, such as the protection of victims of sex-related violence in cases of single-sex shelters;
34. Reiterates its call on the Council to consider all possible avenues to ensure that the proposed Equal Treatment Directive is adopted without further delay, thereby guaranteeing comprehensive protection against discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation on an equal footing;

#### ***Recommendations on enhancing the application of the Directive***

35. Calls on the Commission to prioritise addressing the transposition issues with the Member States concerned by means of concrete measures, and to support them in implementing the Directive in a more consistent manner;
36. Points out that, while equality bodies play a crucial role in monitoring and ensuring that the rights derived from the Directive are fully exercised at national level, their attributed competences in relation to the supply of and access to goods and effectiveness in fulfilling the designated goals varies; calls on the Member States to guarantee sufficient competence and independence in accordance with the provisions of the Directive and national law as well as sufficient resources for national equality bodies so they can fulfil their principal tasks in an effective way, which include providing independent assistance to victims of discrimination in pursuing their complaints, conducting independent surveys on discrimination, publishing independent reports and recommendations, raising awareness about the Directive and challenging stereotypes about gender roles in the supply of and access to goods and services; notes that national equality bodies should be adequately supported in the performance of their tasks, with regard to the promotion, monitoring and support of equal treatment in an independent and effective manner;
37. Calls on the Commission to enhance its cooperation with equality bodies in monitoring whether the relevant provisions regarding their competences are met in all the Member States and to provide support to systematically identify the main challenges and share best practices; calls on the Commission to gather best practices and make them available to Member States in order to provide the necessary resources for supporting positive action and ensuring better implementation of the respective provisions at national level;
38. Points out that access to justice for victims of discrimination could be improved by giving independent equality bodies the competences to provide assistance, including free legal aid, and the right to represent individuals in cases of alleged discrimination;

39. Calls on the Commission to closely monitor the effectiveness of national complaint bodies and procedures in the context of the implementation of the Directive and to ensure that transparent and effective complaint mechanisms, including dissuasive sanctions, are in place;
40. Calls on the Commission, the Member States and equality bodies, potentially in cooperation with consumer protection organisations, to raise awareness about the provisions of the Directive among both service providers and users in order to implement the principle of equal treatment in this field and reduce the number of breaches of the Directive left unreported;
41. Calls on the Commission, given the persisting gaps in the practical application of the Directive, to ask the European Network of Legal Experts, in cooperation with equality bodies, to launch a comprehensive study, also taking into account intersectional forms of gender inequalities and multiple grounds of discrimination which include a variety of vulnerable social groups, to continue its monitoring activities and to support and encourage the Member States in collecting and providing data in order to realise the full potential of the Directive; calls on the Member States for improved comprehensive, comparable specific data collection on harassment and sexual harassment in the area of equal access to goods and services in order to differentiate between grounds of discrimination, and in this respect encourages enhanced cooperation with relevant institutions; calls on the Commission to establish a public database of relevant legislation and case law regarding equal treatment between women and men as a means to raise awareness about the application of the legal provisions in this field;
42. Points out that the field of advertising is linked to the area of goods and services, which are predominantly presented to consumers through advertisements; highlights the significance of advertising in the creation, retention and development of gender-based stereotypes and discriminatory portrayals of women; invites the Commission therefore to conduct a study on gender equality in advertising and to explore the need and possibilities to enhance equal treatment of women and men in the field of advertising and to promote best practices in this field; welcomes national regulations and guidelines on equality between women and men in the media, and calls on the Member States to strengthen these provisions where needed in order to ensure equal treatment of women and men;
43. Calls on the Member States to encourage dialogue with relevant stakeholders which have 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;
44. Calls on the Member States and the Commission to integrate a sector-specific gender-mainstreaming approach in enhancing implementation of the Directive;
45. Calls on the Commission in monitoring and supporting the Member States in implementing the Directive to better coordinate the requirements of the Directive with the other equality directives;
46. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

The primary objective of the Directive 2004/113<sup>1</sup> has been to extend the principle of equal treatment between women and men, as enshrined in the Treaty on the Functioning of the European Union (TFEU) and other relevant directives<sup>2</sup>, beyond the realm of employment and the labour market to include the field of access to and supply of goods and services in both the public and private sectors<sup>3</sup>, as well as to strengthen the principle of gender mainstreaming in these areas. The Directive prohibits direct (Article 2) and indirect discrimination (Article 3) within the relevant sectors of goods and services provision, such as e.g. transport and insurance, including less favourable treatment of women on grounds of pregnancy and maternity (Article 5(3)). Furthermore, harassment and sexual harassment as well as instructions to discriminate, are prohibited on the grounds of the Directive (Article 4).

Whilst goods and services are not defined in the Directive itself, there is a reference to Article 57 of the TFEU, which stipulates that services are “*normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons*”. The established case law of the CJEU defines goods as “*products which can be valued in money and which are capable as such of forming the subject of commercial transaction*”<sup>4</sup>. Furthermore, the Commission in its application report specified that a service must not necessarily be paid by those for whom it is performed. The only instances where differential treatment is allowed under the Directive are those where a justified and legitimate aim can be identified, such as women-only shelters for victims of gender-based violence (Article 4(5)). The Directive is not applicable to media, advertising and education as well as matters of employment and occupation that are covered by other relevant laws. Article 4(3) also excludes those services that are provided within the private sphere, within a smaller circle of individuals.

In its Report on the application of the Directive<sup>5</sup>, the Commission has concluded, based on their consultations with Member States (MS), national equality bodies and Equinet as well as other civil society organisations, that all MS have transposed the Directive into their domestic laws. While the application of the *Test-Achats* ruling, seen by the Commission as the principal challenge for the MS, has been accomplished, problems with effective implementation of the Directive remain. Among the most common issues are the overly restrictive understanding of goods and services, broad and sometimes unclear justifications of unequal treatment on the grounds of Article 4(5) as well as insufficient protection of women during maternity and pregnancy.

The Rapporteur has further identified the most important gaps and challenges in each of the relevant sectors and proposed tailored gender-mainstreaming recommendations. While the

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<sup>1</sup> Directive 2004/113/EC (Implementing the principle of equal treatment between men and women in the access to and supply of goods and services)

<sup>2</sup> Such as Directive 2000/78/EC (Employment Equality Directive) or 2006/54/EC (Equal Pay and Equal Treatment)

<sup>3</sup> EPRS (2016). E. Caracciolo di Torella and B. McLellan, Research paper on the implementation across the Member States of the Directive 2004/113/EC on the principle of equal treatment between men and women in the access to and supply of goods and services

<sup>4</sup> Case 7/78, Judgement of the Court of 23 November 1978, Means of payment and movements of capital

<sup>5</sup> Commission (2015). Report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Directive offers solid tools for safeguarding the principle of equality between women and men, the realisation of the full potential of the Directive depends on awareness raising among both service providers and users as well as consistent gender-mainstreaming across relevant sectors to which its regulations apply.

### ***The insurance sectors***

The Rapporteur welcomes the implementation of the 2011 *Test-Achats* ruling<sup>1</sup>, which obliged MS to make unisex premiums and benefits mandatory, into the legislation by the large majority of MS and the fact that in all cases, the national legislation has been amended in a legally binding manner. However, in some areas gaps in implementation remain, for example in sickness and travel insurance schemes, and require further analysis of non-conformity of the national legislation with the ruling. Furthermore, while the Directive states that in any event, costs related to pregnancy and maternity shall not result in differences in individual premiums and benefits, cases of differential treatment on the grounds of pregnancy still take place. In Rapporteur's view ensuring proper and full implementation of the ruling in all MS and areas concerned is crucial and, for this reason, the conformity with the ruling across MS should be monitored in periodic reports by the Commission and any gaps should be addressed as a priority.

### ***Transport sector and public spaces***

Public transport principally raises the question of harassment and sexual harassment in particular, prohibited under Article 4(3). Harassment experienced by women in transport is a widespread problem across the MS and as surveys suggest, 1 out of 6 women<sup>2</sup> has experienced unwanted sexual behaviour during train journeys. In Rapporteur's view, measures aimed at preventing violence against women, including social campaigns, should be consistent with the wider principle of gender equality, as recommended, for example, in the Istanbul Convention. The Rapporteur highlights that measures which limit women's liberties, such as women-only carriages, are not effective in the long-term perspective as they are not in line with the principle of equality between women and men.

Despite progress made in the overall accessibility in the field of transport and public spaces, physical barriers which undermine equal access for parents and carers of small children still persist. Furthermore, the insufficiency of baby changing facilities, predominant especially in case of male carers, is still commonplace in both relevant means of transport, such as trains, as well as premises of service providers. A greater effort at the level of the MS needs to be also accomplished in terms of equal access to services for breastfeeding mothers who continue to experience unequal treatment. The Rapporteur believes that enhancing equal rights of both parents in the access to service combined with awareness raising are crucial for strengthening the principle of equality of women and men in everyday life.

### ***The collaborative economy***

Rapid digitalisation across different sectors and the proliferation of collaborative forms of service provision offers new contexts for the application of the Directive. The Rapporteur extends her recommendations beyond traditional services that were considered at the time

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<sup>1</sup> Case C-236/09, Judgement of the Court of 1 March 2011, *Test-Achats*

<sup>2</sup> The Telegraph (2015). Available at:

<http://www.telegraph.co.uk/news/worldnews/europe/france/11545643/100-per-cent-of-Frenchwomen-victimsof-sexual-harassment-on-public-transport.html>, as well as Project Guardian, available at:

[http://www.btp.police.uk/advice\\_and\\_info/how\\_we\\_tackle\\_crime/project\\_guardian.aspx](http://www.btp.police.uk/advice_and_info/how_we_tackle_crime/project_guardian.aspx)

when the Directive was drafted and highlights new areas of application, in particular the collaborative economy. While the extent to which the Directive applies to the services within the collaborative economy remains to be specified, the Rapporteur considers that publicly advertised services offered for profit should be in line with the principle of equal treatment of women and men. The Rapporteur notes that while the collaborative economy offers great benefits to both providers and users, there are some challenges and good practices to be identified to ensure full protection and prevention of incidents of gender-based harassment. In Rapporteur's view, in its further stages the "European agenda for the collaborative economy", proposed by the European Commission, should integrate the principle of gender mainstreaming and reflect regulations of the Directive to safeguard equal treatment of women and men, and to effectively prevent harassment in the services offered within the collaborative economy.

### ***Differential treatment***

The largest share of issues addressed and complaints received by the equality bodies in the MS concern differential treatment predominantly within the leisure and entertainment sector. They notably concern justification of unequal treatment based on the derogation provided in Article 4(5) that leads, for example, to differential pricing, refusals to provide services and differing conditions of access for women and men. As reported by the Commission itself, derogations in Article 4(5) of the Directive have been a source of ambiguity and case law does not offer a unified direction of interpretation. For this reason, the Rapporteur considers that instances of differential treatment should be assessed on a case-by-case basis in the view of whether they are justified by a legitimate aim. The Rapporteur emphasises that despite the ambiguity surrounding its application, the main purpose of this derogation is to create opportunities for further enhancement of equality between women and men in the provision of goods and services. The Rapporteur stresses the need to further promote forms of positive action based on a legitimate aim, in which there is direct link between preferential treatment, on the one hand, and the disadvantages to be prevented or eliminated, on the other hand.

### ***Enhancing the application of the directive***

In Rapporteur's view the equality bodies play a crucial role in monitoring and ensuring that the rights derived from the Directive are fully exercised on the national level. Whilst the Commission report concludes that all MS have established these bodies, their effectiveness in fulfilling designated goals tends to vary. For example, some equality bodies are not able to represent individuals through litigation which is a necessary condition for proper protection of victims<sup>1</sup>. The Rapporteur calls on MS to guarantee sufficient competences for equality bodies in this regard and calls on the Commission to enhance the cooperation with equality bodies and provide support to systematically identify the main challenges and share best practices. While significant progress has been achieved as regards equal treatment of women and men in the field of goods and services, the remaining gaps in practical application need to be addressed. The Rapporteur believes that awareness raising among all parties concerned, including service providers and users, as well as sectorial gender-mainstreaming recommendations are crucial for practical application of the principle of equal treatment of women and men in everyday experiences within the area of supply and access to goods and services.

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<sup>1</sup> Equinet (2014). Implementation of Directive 2004/113/EC, Gender equality in the access to goods and services: the role of equality bodies

14.11.2016

## **OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM**

FOR THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

Report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (2016/2012(INI))

Rapporteur: Jens Nilsson

### **SUGGESTIONS**

The Committee on Transport and Tourism calls on the Committee on Women's Rights and Gender Equality, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Having regard to Articles 10 and 19(1) of the Treaty on the Functioning of the European Union (TFEU);
2. Notes that the Commission has presented its report on the application of Directive 2004/113/EG with a long delay after its first reporting in 2009;
3. Recalls that there have always been major differences between men and women with regard to transport policy, including travel patterns, access to and choice of transport means, security, safety and gender imbalance in employment in the transport sector; encourages, therefore, the Commission to consider all obstacles and constraints encountered by women travellers in accordance with the conclusions of the Fifth Conference on Women's Issues in Transport in Paris in 2014;
4. Underlines that, while the Horizon 2020 strategy for the period 2014 to 2020 is structured to respond to societal challenges that need innovative solutions, and while many of the issues in gender mobility and travel patterns have been researched extensively in recent years, limited attention has been given to developing gender-specific policies, programmes and mandates;
5. Calls on the Commission, and on insurance companies, not to discriminate between gender when it comes to car insurance pricing for accidents, but rather to include the individual's performance in their assessments;
6. Regrets that differential treatment of men and women still prevails in travel insurances,



and that this creates a barrier for equal access in the tourism sector, especially for pregnant women;

7. Calls on the Commission to clarify whether the activities of the fast-growing sharing economy in the transport and tourism sectors constitute goods and services that fall under the scope and the application of the directive, and whether the service providers and the associated online platforms are liable on the basis of it;
8. Encourages innovative concepts, such as ‘mobility of care’ and ‘trip planning analysis’, that support the design and implementation of more equitable and responsive public transport services and more efficient urban planning; insists that regular and systematic gender impact assessments are essential for designing and implementing gender-neutral transport in all Member States;
9. Reaffirms its call on the Commission to create a publicly accessible database on gender-related non-discrimination legislation and European Court of Justice rulings;
10. Highlights the key role that equality bodies play in ensuring the enforcement of gender equality for all persons living in the EU, and calls on the Commission to assist in safeguarding the independence and effectiveness of these bodies in all Member States;
11. Encourages the Member States, including at regional and local level, to equip their national equality bodies with sufficient resources to provide information on remedy proceedings, and on the range of consultation services available to assist in national compliance with the directive;
12. Emphasises the role in this domain of local and regional institutions – as service providers, regulators and parties to inspections – with regard to the basic aspects of transport and tourism;
13. Regrets the lack of awareness of the directive across the Member States, and encourages competent authorities at all levels to raise awareness of rights and obligations under the directive;
14. Calls on the Commission to collect examples of best practices to ensure better application of the directive, and to continue efforts to unify definitions and concepts with regard to this issue; highlights the role and competence of the European Institute for Gender Equality (EIGE) in realising this objective;
15. Recalls that women account for only 22 % of the workforce in the EU transport sector, reflecting the fact that the number of women holding technical and operational jobs is especially low (less than 10 %); urges, therefore, ambitious and continuous measures to be taken to improve the attractiveness of the transport sector for prospective female employees;
16. Recalls that promoting equal access for women to public and private goods and services must be based on the recognition of women’s and girls’ distinct choices, needs and experiences, and must be guaranteed without undermining their fundamental rights;
17. Asks the Commission to apply to the transport policy, and to the funds managed by

DG MOVE, a global strategy favouring the equality of men and woman similar to the one currently in force in the implementation of the Horizon 2020 programme;

18. Highlights the fact that, while official statistics show that the mobility needs and travel patterns of women and men differ widely, very little attention has been paid to this issue, whether in Commission legislative proposals or in the public transport policies of most Member States;
19. Recalls that women are the main users of public transport services all around the EU; calls on local, regional and national authorities specifically to take into account the mobility needs of women when designing and developing their public transport services; calls on the Commission properly to include the gender dimension in its main approach to transport legislation in the EU;
20. Considers that, in order to provide transport and tourism services that are free of genre discrimination, it is essential that the service providers concerned implement global strategies ensuring equal treatment of clients and providers, as well as of consumers;
21. Emphasises that breastfeeding in public is covered by the directive and shall not be restricted by service providers; welcomes national legislation supporting the right of women to breastfeed in public, and reiterates the importance of this right for the tourism sector; strongly encourages Member States to adopt and fully implement legislation preventing discrimination against breastfeeding in public;
22. Considers that providing baby changing facilities in all public toilets free of charge would help promote inclusive transport and tourism; considers, furthermore, that such facilities should not be linked to a specific gender;
23. Deplores the poor hygienic state of public toilet and shower facilities; calls on the Commission to take practical steps to overcome this problem which persist in many Member States and hampers inclusive tourism and transport;
24. Stresses that rest stops and facilities must be accessible and safe for all persons regardless of gender expression, as this would promote inclusive tourism and could promote an improved gender balance in the transport sector;
25. Notes that persons, usually women, responsible for caring for other family members often need to plan and undertake complex journeys with specific timing, transport and accessibility requirements;
26. Points to the need to improve the accessibility of public transport infrastructure, and to remove barriers on board means of transport, in order to make them easier to use for parents travelling with children; calls, in particular, for measures to ensure adequate accessibility for pushchairs in the public transport area;
27. Calls on the Commission and the Member States to ensure that public transport vehicles and infrastructures are equally accessible and adapted to women and men, not only as end-users and passengers, but also as professionals working in the sector;
28. Calls on the Commission, when proposing or mandating new design requirements for

transport vehicles, services or infrastructures, to take into account the diverse needs of men and women, as well as of persons with reduced mobility (i.e. toilets adapted for both genres, vehicles accessible for pregnant women, changing facilities, space for baby carriages, etc.);

29. Calls on the Commission to assess airlines' rules on allowing pregnant women to board flights, and on assisting them during flights, and to take steps to make airlines ensure a harmonised approach in this regard;
30. Calls on the Council to adopt Parliament's position on the Passengers' Rights Regulation as regards the obligation of airport handlers to return baby carriages to passengers immediately after disembarking, or to provide alternative means of transport to spare passengers from carrying children through the airport until they reach the baggage claim area;
31. Expresses serious concern over the fact that cases of verbal and physical violence, including sexual harassment, occur on both public transport and on-demand transport, including in the context of the sharing economy;
32. Stresses, in particular, that Article 4(3) of Directive 2004/113/EG on sexual harassment, which is of utmost importance for the public transport sector, lacks a clear interpretation of liability for goods and service providers in instances involving third-party harassers other than the providers of goods and services;
33. Calls, therefore, on the Member States and the Commission urgently to address the issues of liability in the aforementioned contexts, and to provide a better interpretation of Directive 2004/113/EG for victims of harassment and service providers alike;
34. Recalls that promoting safe public spaces and safe public transit for everyone – during the daytime and at night, in particular for vulnerable individuals and in more isolated places and situations – is a responsibility shared by all actors at all levels;
35. Stresses that safety issues should play an important part in urban planning, ensuring, for example, the provision of adequate lighting at night at bus and tram stops, and on paths to and from them;
36. Considers that segregated wagons for women is not a good way to address sexual harassment in public transport; calls on Member States to address sexual harassment in transport and tourism services through comprehensive policies that including adequate wagons and alert systems, more surveillance staff, education and law enforcement;
37. Calls on transport and tourist service providers explicitly to condemn and sue sex offenders;
38. Calls for a deeper legal debate on the responsibility of internet service providers for the prevention and suppression of harassment using virtual relationship platforms, and on the role they can play in improving such prevention and suppression;
39. Condemns any restriction of access to transport services for passengers travelling with children;

40. Encourages Member States to take a flexible approach to regulating safety requirements for passengers of taxi services, specifically to avoid discrimination of woman and passengers travelling with children.

## RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	10.11.2016
<b>Result of final vote</b>	+: 33 -: 4 0: 1
<b>Members present for the final vote</b>	Daniela Aiuto, Lucy Anderson, Marie-Christine Arnautu, Georges Bach, Izaskun Bilbao Barandica, Deirdre Clune, Michael Cramer, Luis de Grandes Pascual, Andor Deli, Karima Delli, Isabella De Monte, Ismail Ertug, Jacqueline Foster, Bruno Gollnisch, Merja Kyllönen, Miltiadis Kyrkos, Bogusław Liberadzki, Peter Lundgren, Marian-Jean Marinescu, Gesine Meissner, Cláudia Monteiro de Aguiar, Renaud Muselier, Jens Nilsson, Salvatore Domenico Pogliese, Gabriele Preuß, Dominique Riquet, Massimiliano Salini, David-Maria Sassoli, Claudia Schmidt, Jill Seymour, Claudia Țapardel, Pavel Telička, István Ujhelyi, Wim van de Camp, Roberts Ziļe, Elżbieta Katarzyna Łukacijewska
<b>Substitutes present for the final vote</b>	Maria Grapini, Ramona Nicole Mănescu

30.11.2016

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Women's Rights and Gender Equality

on the report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (2016/2012(INI))

Rapporteur: Jiří Maštálka

### SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Women's Rights and Gender Equality, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas equality between women and men is a fundamental principle of the European Union, and whereas both the EU Treaties and the Charter of Fundamental Rights prohibit any discrimination on grounds of gender and require equality between women and men to be ensured in all areas, this being one of the essential tasks of the Union<sup>1</sup>;
- B. whereas Directive 2004/113/EC (hereinafter 'the Directive') extends protection against gender discrimination and aims at better mainstreaming the principle of gender equality beyond the traditional realm of the labour market to the area of access to and supply of goods and services, but explicitly excludes the media, advertising and public and private education;
- C. whereas all Member States have taken measures to transpose the Directive into their domestic legal orders and set up the necessary procedures and bodies for its implementation; whereas the Commission has concluded in its report on the application of Directive 2004/113/EC<sup>2</sup> that, while all Member States have transposed the directive into national law, problems still persist regarding the effective implementation thereof;
- D. whereas the effectiveness of the organisations responsible for promoting equality in

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<sup>1</sup> Pursuant to Article 8 TFEU (ex Article 3(2) TEC), 'In all its activities, the Union shall aim to eliminate inequalities and to promote equality, between men and women'.

<sup>2</sup> Commission report to the European Parliament, the Council and the European Economic and Social Committee - 'Report on the application of Directive 2004/113/EC implementing the principle of equal treatment between men and women in access to goods and services and the supply of goods and services' (COM / 2015/0190 final) - <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52015DC0190>

achieving their objectives varies from one Member State to another;

- E. whereas in the Test-Achats judgment of the Court of Justice of the European Union of 1 March 2011 in Case C-236/09<sup>1</sup> (hereinafter ‘the ruling’), the Court annulled Article 5(2) of the Directive, which permitted the differentiated use of gender-based actuarial factors in private insurance contracts falling within the scope of the Directive;
1. Stresses that some challenges and problems regarding effective and uniform implementation of the Directive persist, and that the most common issues include an overly restrictive understanding of the meaning of ‘goods and services’, the broad and sometimes unclear justifications of unequal treatment on the basis of Article 4(5), and insufficient protection of women during maternity, breastfeeding and pregnancy;
  2. Regrets that the scope of the Directive is rather narrow and does not cover media, advertising or public or private education, but does include health services;<sup>2</sup>
  3. Considers that there is a lack of awareness among the general public regarding the content and implications of the Directive, as well as among protected persons and providers of goods and services regarding their rights and obligations, arising from a lack both of reporting and of case law; invites the Commission, the Member States and equality bodies therefore to improve awareness of the content and implications of the Directive;
  4. Welcomes the fact that all Member States have implemented or are implementing the ruling, and points out that some of them have chosen even to go beyond the scope of the ruling by extending the unisex rule to other types of insurance and pensions;
  5. Welcomes this initiative and stresses the need to urge the Member States to ensure that the organisations responsible for promoting equality have a sufficient degree of independence and adequate powers; stresses in this connection the need to strengthen cooperation between the Commission and these bodies by systematically identifying key issues, and developing exchanges of best practice, so as to achieve a uniform degree of effectiveness in achieving their objectives;
  6. Calls on the Member States and the Commission to raise awareness among all parties concerned of the content and implications of the Directive;
  7. Calls on the Commission to launch a comprehensive and detailed study and data collection exercise on the implementation of the Directive, to improve its monitoring activities, and to support the Member States in order to realise the full potential of the Directive;
  8. Highlights that, although the digitalisation of certain services and sectors and the proliferation of collaborative forms of service provision have changed access to and the supply of goods and services, the Directive remains applicable to the digital sphere; calls on the Commission to evaluate the impact of digitalisation and the collaborative economy on access to and the supply of goods and services from a gender equality perspective;

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<sup>1</sup> Judgment of 1 March 2011, C-236/09, ECLI:EU:C:2011:100.

<sup>2</sup> Judgement of the Court of Justice of 12 July 2001, *Geraets-Smits and Peerbooms*, C-157/99, ECLI:EU:C:2001:404.

9. Stresses the need for clarification of the provisions on liability for providers of goods and services and connecting online platforms on the basis of the Directive; calls on the Member States and the Commission therefore to urgently address the issue of liability in this context.



## RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	29.11.2016
<b>Result of final vote</b>	+: 19 -: 1 0: 2
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Dietmar Köster, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Daniel Buda, Angel Dzhambazki, Angelika Niebler, Virginie Rozière, Kosma Złotowski

## RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	6.2.2017
<b>Result of final vote</b>	+: 18 -: 2 0: 4
<b>Members present for the final vote</b>	Daniela Aiuto, Beatriz Becerra Basterrechea, Malin Björk, Vilija Blinkevičiūtė, Viorica Dăncilă, Iratxe García Pérez, Arne Gericke, Anna Hedh, Mary Honeyball, Agnieszka Kozłowska-Rajewicz, Florent Marcellesi, Maria Noichl, Pina Picierno, João Pimenta Lopes, Terry Reintke, Michaela Šojdrová, Ernest Urtasun, Ángela Vallina, Elissavet Vozemberg-Vrionidi, Anna Záborská
<b>Substitutes present for the final vote</b>	Inés Ayala Sender, Evelyn Regner, Mylène Troszczynski
<b>Substitutes under Rule 200(2) present for the final vote</b>	Claudia Schmidt

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

18	+
ALDE	Beatriz Becerra Basterrechea
EFDD	Daniela Aiuto
PPE	Agnieszka Kozłowska-Rajewicz, Claudia Schmidt, Elissavet Vozemberg-Vrionidi, Michaela Šojdrová
S&D	Inés Ayala Sender, Vilija Blinkevičiūtė, Viorica Dăncilă, Iratxe García Pérez, Anna Hedh, Mary Honeyball, Maria Noichl, Pina Picierno, Evelyn Regner
VERTS/ALE	Florent Marcellesi, Terry Reintke, Ernest Urtaşun

2	-
ECR	Arne Gericke
ENF	Mylène Troszczynski

4	0
GUE/NGL	Malin Björk, João Pimenta Lopes, Ángela Vallina
PPE	Anna Záborská

**Key to symbols:**

+ : in favour

- : against

0 : abstention