

AN EQUINET REPORT

EQUALITY BODIES AND THE GENDER GOODS AND SERVICES DIRECTIVE

Equality Bodies and the Gender Goods and Services Directive

An Equinet Report from the Working Group on Gender Equality

November 2014

Equality Bodies and the Gender Goods and Services Directive is published by Equinet, the European Network of Equality Bodies.

Equinet brings together 41 organisations from 31 European countries which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. Equinet works to enable national equality bodies to achieve and exercise their full potential by sustaining and developing a network and a platform at European level.

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ISBN 978-92-95067-79-0

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This publication is supported by the European Union Programme for Employment and Social Solidarity - PROGRESS (2007-2013).

This programme is implemented by the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment, social affairs and equal opportunities area, and thereby contribute to the achievement of the Europe 2020 Strategy goals in these fields.

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Acknowledgements

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Preface

This Equinet Report on the Application of Directive 2004/113/EC is the second report prepared by the Gender Equality Working Group of Equinet since its establishment in 2013.

It touches upon an area which is less known and often newer for equality bodies working on gender equality: access to and supply of goods and services. Going beyond equal treatment in employment has been challenging and enriching for members of the working group.

This report shows the important work done by equality bodies in the implementation of the principle of equal treatment between men and women in access to and supply of goods and services. It also shows some key areas where further work is needed.

You will find in the next chapters the key findings from our discussions on the experiences of equality bodies in the application of Directive 2004/113/EC and an overview of the outcomes of a survey on the activities of equality bodies about their legal, policy, research, promotional and communication work. We hope that this report will prove a useful contribution to the report being prepared by the European Commission on the application of the Directive 2004/113/EC.

The key findings of the report were discussed during the Equinet High Level Seminar on Gender Equality on 24 April 2014. We warmly thank the speakers of this event who have also contributed to our thinking in the finalisation of this report.

Sandra Ribeiro - Moderator of Equinet Working Group on Gender Equality and President of the Portuguese Commission for Equality in Labour and Employment

Ilaria Volpe - Equinet Policy Officer

Key findings

The experiences of equality bodies in the application of Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services which are presented in the next chapters allow us to draw some lessons learnt.

Action by equality bodies

To ensure the effective implementation on the ground, there is a need for equality bodies to have a mandate and for these bodies to be independent and effective.

- i. Compliance with Article 12 of the Directive in terms of establishment of a body to ensure ‘the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex’ in the access to and supply of goods and services is to be monitored. It is not clear whether all member states have duly designated an equality body to work in this area.
- ii. The field of goods and services poses particular challenges given the high levels of underreporting and the low levels of rights-awareness. Equality bodies need to use their legal, promotional, communication and research work strategically in order to ensure that the Directive is effectively implemented and can reach its full potential.
- iii. Equality bodies need standards for independence and effectiveness in order to pursue their mandate. The lack of sufficient resources to ensure further work in the area of goods and services and to open up the potential of this Directive was reported by several Equinet members.

Further development of the legal framework

Some areas for improvement of the legal framework have been identified by equality bodies.

- i. Equality bodies reported a diversity of experience and to some degree a variation of interpretation of the goods and services provisions. This is also related to different national legislations. Diverse interpretations of Directive 2004/113/EC may cause both confusion and legal uncertainty in the work of equality bodies at the national level as well as for all the persons and entities subject to these provisions. In order to ensure consistent implementation of Directive 2004/113/EC across the EU, there is a clear need for further clarification of some provisions of the Directive.
- ii. In particular the interpretation of article 4.5 and recitals 16 and 17 allowing for differences of treatment appears to cause difficulties. Since there is not much relevant case law at national and EU-level, there is a risk of interpreting the exception too widely or too narrowly. At the same time it is difficult for service providers to comply with the principle of non-discrimination if they cannot foresee whether an initiative could be violating this principle. An authoritative interpretation is needed on how narrowly article 4.5 and preambles 16 and 17 should be interpreted.

Areas where the issue of legitimate aim and proportional means to achieve it may arise are, for example, with reference to free entrance to restaurants and clubs, lower price or special benefits for women only in restaurants, bars and clubs, Women's Day, Mother's Day and Father's Day promotions; women only gyms, driving schools or single-sex floors in hotels.

- iii. Equality bodies currently work also in areas not covered by the Directive or in areas where the Directive leaves it open whether they are included or not in the material or personal scope. Some specific challenges could be identified in this regard:
 - The experience of equality bodies shows the importance of covering areas currently not covered in the Directive: media, advertisement and education.
 - An overwhelming majority of equality bodies reported that their national legislation covers equal treatment between men and women in access to and supply of goods and services in the field of healthcare. However, they pointed out that a definition of services which covers only services provided for remuneration leaves too much space for potential discriminatory behaviours. It would be important to ensure that in all Member States the definition of goods and services covers all healthcare-related goods and services, including services funded publicly as well as by direct transfer from the patient.
 - The importance of ensuring that the provisions of equal treatment in the area of goods and services cover all trans and intersex persons, and that discrimination is addressed. As reported by equality bodies, an increasing number of countries have national legislation in place or apply a broader interpretation of their current anti-discrimination legislation to protect gender minorities and not just persons who have undergone or intend to undergo gender reassignment surgery.
- iv. The material damage caused by discrimination based on sex or gender in the area of goods and services is often considered lower in comparison with the field of employment. This may partially explain why there are relatively few court cases on goods and services, and a lower level of sanctions. It is of particular importance to ascertain and monitor whether the Directive's requirement of dissuasive, proportionate and effective penalties is currently fulfilled.
- v. Legislation in this field could be further improved by strengthening gender mainstreaming and public sector equality duties.

Build a culture of rights in this field

The equality bodies surveyed have highlighted the need to raise awareness and knowledge about this Directive (in the public arena but also in the courts) in order for the principle of equal treatment between men and women in the access to and supply of goods and services to become a reality.

- i. Addressing under-reporting. Under-reporting poses an important challenge in the area of goods and services. Equality bodies should cooperate with women's and men's associations, transgender and intersex organisations, networks of providers of goods and services, and relevant public bodies to establish the causes of and respond to this under-reporting, in particular by building awareness of rights and available remedies.

- ii. Building a culture of rights. It is essential to address public lack of knowledge about this Directive and to build public acceptance of its importance and implications. Challenging stereotypes about gender roles in the area of goods and services and building a shared awareness of the impact of such stereotypes is also important. Equality bodies can be key actors in this field.
- iii. Developing a body of research. The area of equal treatment in the access to and supply of goods and services can be considered relatively new and is less researched. The current work of equality bodies shows the need to carry out more specific research about the modalities and sectors where discrimination is occurring most, its extent and impact, and how people are responding to it. Lack of awareness, understanding and knowledge also point to the need for further research work at EU and national level to ascertain the nature and extent of discrimination on the ground of gender that exists in relation to goods and services. This in turn would raise public awareness, would help identify the impact on women and men and the specific impact on trans people, and facilitate the rationale for positive action measures.

Methodology

Equinet is the European Network of Equality Bodies, bringing together 41 statutory organizations from 31 European countries empowered to counteract discrimination as national equality bodies. In 2013 Equinet established a new Working Group on Gender Equality. The group is currently composed of 30 experts on gender equality from 24 national equality bodies in 21 European countries.

The Working Group on Gender Equality aims to enable mutual learning, exchange of good practices, discussion, reflection, cooperation between staff members of equality bodies and action on the effective promotion of gender equality, and to combat gender discrimination by equality bodies.

This report presents the experiences of equality bodies represented in Equinet's Working Group on Gender Equality in the application of Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Members of the Working Group met in Lisbon, at a meeting hosted by the Commission for Equality in Labour and Employment (CITE), for a first exchange of views on common issues in their work in the area of goods and services and in particular in the application of Directive 2004/113/EC.

As an outcome of these discussions, a survey was prepared. Twenty-two equality bodies represented in the working group responded to the questionnaire¹. As not all equality bodies answered each question of the survey, the different

¹ Ombud for Equal Treatment, Austria; Institute for Equality between Women and Men, Belgium; Cyprus Ombudsman; Public Defender of Rights, Czech Republic; Board of Equal Treatment, Denmark; The Danish Institute of Human Rights, Denmark; Ombudsman for Equality, Finland; Defender of rights, France; Office of the Ombudsman, Greece; Federal Anti-Discrimination Agency, Germany; Equal Treatment Authority, Hungary; Equality Authority, Ireland; National Equality Councillor, Italy; National Commission for the Promotion of Equality, Malta; Equality and Antidiscrimination Ombud, Norway; Human Rights Defender, Poland; Commission for Equality in Labour and Employment, Portugal; National Council for Combating Discrimination,

chapters of this report indicate how many equality bodies shared their expertise on each question. The report aims to provide qualitative evidence and to show the trends in the work of equality bodies.

Following collection of the answers to the survey, the Working Group met for a second time in Brussels to discuss the outcomes of the exercise and to identify common issues to be highlighted in the report and to be discussed during the following Equinet High Level Gender Equality Seminar of 24 April 2014.

The report covers the experiences of equality bodies and their mandate, and legal, policy, research, communication and promotional work in the application of Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services

The content of the report has been discussed with key partners and stakeholders during the Equinet High Level Gender Equality Seminar which took place on 24 April 2014 and then finalised during the month of May.

Introducing the Goods and Services Directive

The Directive 2004/113 of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services sets up a framework prohibiting discrimination based on sex in the access to and supply of goods and services. It applies to direct² and indirect³ discrimination based on sex and to harassment⁴ and sexual harassment⁵ in the area of goods and services.

It adds to the other directives on equal treatment between women and men in EU Member States: the Recast Directive⁶ covering the area of employment and vocational training, the Self-employed Directive⁷ and the Social Security Directive⁸.

Equality bodies are mandated by the directive to ensure the promotion, analysis, monitoring and support of equal treatment.

Romania; Slovak National Centre for Human Rights, Slovakia; Equality Ombudsman, Sweden; Equality and Human Rights Commission, UK-Great Britain; Equality Commission for Northern Ireland, UK-Northern Ireland

2 Article 2(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” .

3 Article 2(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 this aim are appropriate and necessary” .

4 Article 2(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

5 Article 2(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.

6 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

7 Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC

8 Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Definition of goods and services

The Directive does not provide a specific definition of goods and services but refers to the provisions of the Treaty on the Functioning of the European Union (TFEU). Article 57 of the TFEU defines services as “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” . Goods must be understood under EU legislation as “products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions” ⁹.

Scope of the directive

The Directive applies to “all persons who provide goods and services, which are available to the public irrespective of the person concerned as regards both to the public and private sectors and which are offered outside the area of private and family life” ¹⁰. The Directive clearly mentions that its provisions do not prejudice freedom of contract, acknowledging the individual freedom to choose a contractual partner as long as that choice is not based on the partner’s sex¹¹. Media, advertisement and education are expressly excluded from the scope of the Directive¹². However, many Member States went beyond the requirements of the Directive, covering these areas in their national law, and cases in those areas have also been brought to equality bodies.

In line with the case-law of the Court of Justice of the European Union, the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one sex or the other, it also applies to discrimination arising from a person’s gender reassignment (including the intention of a person to undergo gender reassignment).¹³

Justified differences in treatment

Article 4(5) states that differences of treatment between women and men and the provision of goods and services exclusively or primarily to members of one sex can be lawful if they are justified by a legitimate aim and if the means to achieve the aim are proportionate (appropriate and necessary). Recital 16 provides examples of legitimate aims: the protection of victims of sex-related violence, reasons of privacy and decency, the promotion of gender equality or of the interests of men or women, the freedom of association and the organization of sporting activities. The list of legitimate aims is not exhaustive and also within this list differences in treatment should prove being appropriate and necessary. Recital 17 indicates that facilities do not need to be provided on a shared basis as long as they are not provided more favourably to members of one sex.

The role of equality bodies

According to article 12 of the Directive, Member States had to designate and make the necessary arrangements for a body or bodies for the “promotion, analysis, monitoring and support of equal treatment of all persons without

⁹ Case 7/78 Thompson [1978] ECR 2247.

¹⁰ Article 3(1)).

¹¹ Article 3(2).

¹² Article 3(3).

¹³ Cases C-13/94, C-117/01 and C-423/04

discrimination on the grounds of sex” within the scope of the Directive. The Directive provides that the competencies of these bodies should include the provision of independent assistance to victims, the conduct of independent surveys concerning discrimination, the publication of independent reports and the power of making recommendations on any issues relating to discrimination. 31 Equinet members have a mandate under this article as gender equality bodies.

Insurance and the Test-Achats case

With its decision in the Test-Achats case¹⁴ the Court of Justice of the European Union (CJEU) invalidated the provision allowing “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” in the article 5(2). Member States had therefore to adapt their national law to make sure that new contracts do not use sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services (article 5(1)). The European Commission published guidelines to assist in the implementation the Test-Achats case¹⁵.

Horizontal provisions

As in the other equal treatment directives, article 9 provides for the shifting of the burden of proof in cases of presumption of direct or indirect discrimination. When the claimant establishes facts from which it may be presumed that there has been discrimination, the respondent has to prove that the principle of equal treatment has not been breached.

Article 6 sets out the provisions for positive actions to ensuring full equality in practice, to prevent or compensate for disadvantages and victimisation is dealt with under article 10.

Penalties applicable to infringements of the provisions under the Directive are indicated in article 14: Member States have to make sure that penalties, which may include compensation to the victim, are effective, proportionate and dissuasive.

Defence of rights provisions are outlined in article 8. Under article 8(2) real and effective compensation or reparation for the loss and damage sustained by a person injured and a result of discrimination have to be introduced in national legal systems in a way which is dissuasive and proportionate to the damage suffered.

Transpositions and report

The deadline for transposing the Directive was 21 December 2007. The European Commission is in the process of preparing a Report on the application of the Directive which is expected to be submitted to the European Parliament and to the Council by the end of 2014.

14 Case C-236/09 Test-Achats [2011]

15 Guidelines 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), 13.01.2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:011:0001:0011:EN:PDF>

Mandate and functions under the Directive

The Directive 2004/113/EC, in its article 12, outlines the obligation of EU Member States to designate one or more bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex. The mandate of these bodies needs to cover at least three functions: to provide independent assistance to victims of discrimination in pursuing their complaints about discrimination; to conduct independent surveys concerning discrimination; and to publish independent reports and make recommendations on any issue relating to such discrimination¹⁶. The equality bodies members of Equinet are generally, in most Member States, the bodies mandated with these tasks.

I. Bodies mandated to ensure equal treatment

Of the 22 Equality Bodies that responded to the survey, 10 are exclusively mandated in their countries to ensure the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex in the access to and supply of goods and services in line with Art. 12 of the Directive¹⁷.

In 10 countries there are other bodies in addition to the equality body that are mandated according to Art. 12 of the Directive:

- i. In Austria, the Ombud for Equal Treatment is mandated according to Art. 12 of the Directive. Due to the federal structure of the Austrian equal treatment system there are also other mandated bodies for equal treatment.
- ii. Similarly, the Institute for Equality between Women and Men in Belgium is competent in line with Art. 12 as are other bodies equivalent to the Institute by the federal entities. In the Czech Republic the Public Defender of Rights is the national equality body that is mandated in line with Art. 12 of the Directive. Another institution generally dealing with discrimination in access to and supply of goods and services is the Czech Commercial Inspection. The Czech National Bank has a supporting role, being responsible for overseeing the banking sector, insurance sector and the stock market.

¹⁶ Article 12

1. Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, or the implementation of the principle of equal treatment.

2. Member States shall ensure that the competencies of the bodies referred to in paragraph 1 include:

(a) without prejudice to the rights of victims and of associations, organisations or other legal entities referred to in Article 8(3), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;

(b) conducting independent surveys concerning discrimination;

(c) publishing independent reports and making recommendations on any issue relating to such discrimination.

¹⁷ Office of the Commissioner for Administration, Cyprus; The Danish Institute of Human Rights, Denmark; Defender of Rights, France; Federal Anti-Discrimination Agency, Germany; Equal Treatment Authority, Hungary; Equality Authority, Ireland; National Commission for the Promotion of Equality, Malta; Slovak National Centre for Human Rights; Equality Ombudsman, Sweden; Equality and Human Rights Commission, UK-Great Britain; Equality Commission for Northern Ireland, UK-Northern Ireland

- iii. In Denmark, the Board of Equal Treatment has the mandate to produce decisions in cases of discrimination in the access to and the supply of goods and services. The Danish Institute for Human Rights has the mandate to promote, monitor and support victims of discrimination.
- iv. In Finland, the Ombudsman for Equality is mandated according to Art. 12 of the Directive and the Equality Board is an independent committee that oversees compliance with gender equality legislation and resolves matters related to it.
- v. The Greek Ombudsman is the equality body mandated to implement the provisions of the Directive only in Greece' s public sector. The mandate for the private sector has been assigned to the Hellenic Consumer' s Ombudsman.
- vi. In Norway, the Equality and Anti-Discrimination Ombud is mandated as well as the Equality Tribunal.
- vii. The Human Rights Defender in Poland is mandated according to Art. 12 of the Directive. The Government Plenipotentiary of Equal Treatment is competent for the promotion of equal treatment.
- viii. The National Council for Combating Discrimination is the public authority in Romania that rules in matters of discrimination. It is mandated to collaborate with the Department for Equal Opportunities between Women and Men of the Ministry of Labour together with the competent supervisory authorities in the field of insurance, private pensions and financial services. In conjunction with the Ministerial Department, the National Council for Combating Discrimination must ensure the information of the people in this domain.

Two equality bodies are not mandated according to Art. 12 of the Directive:

- ix. The National Equality Councillor in Italy is not the entity appointed in line with Art. 12 of the Directive. It is in fact the Office for the Promotion of Equal Opportunities in the access to and provision of goods and services under the Department of Equal Opportunities which has such mandate.
- x. The Commission for Equality in Labour and Employment in Portugal is only qualified to promote and protect gender equality and non-discrimination of gender in labour and employment.

In different member states equality bodies are either exclusively mandated or they share the task with other bodies in relation to compliance with Article 12. The survey could not verify whether all Member States have indeed designated an equality body in compliance with Article 12 to ensure equal treatment in the public and private sectors fully covering the scope of the Directive.

II. Competence of equality bodies

Concerning the tasks attributed by article 12(2), equality bodies' participating in the survey showed a high level of adherence to the Directive' s provisions.

- i. Providing independent assistance to victims of discrimination in pursuing their complaints about discrimination

19 equality bodies can provide independent assistance to victims of discrimination in pursuing their complaints about discrimination¹⁸, while 2 cannot¹⁹.

In Cyprus, independent assistance is provided to victims of discrimination by non-governmental organizations with legal personality and financed specifically for this purpose by the Ministry of Justice and Public Order in order to deal with their discrimination complaints. However, it is not known if this has yet been enforced.

ii. Conducting independent surveys concerning discrimination

18 equality bodies can conduct independent surveys concerning discrimination²⁰ and 1 cannot²¹. However, the latter coexists with another equality body that ensures this function is carried out in the same country.

iii. Publishing independent reports and making recommendations on any issue relating to such discrimination

Of the 21 Equality Bodies that responded to this question all but the Danish Board of Equal Treatment can publish independent reports and make recommendations on any issue relating to such discrimination. In the Danish case, as stated previously, two equality bodies coexist and ensure different complementary functions.

Most equality bodies answering the survey cover the three functions prescribed by the Directive and in most cases those who do not coexist in the same country with another equality body with complementary competence.

It is not possible to establish if this is the case in all Member States and if these competences are available to all bodies mandated under article 12(1).

The full compliance of equality bodies' competence with the provisions of the Directive should be monitored in order to ensure effective implementation of this Directive.

In the area of goods and services, as well as in other areas of equal treatment legislation, to ensure the effective implementation on the gender ground, there is a need for equality bodies to have full mandate and competence in this area as well as for these bodies to be independent and effective. Equality bodies' independence and effectiveness are essential pre conditions to pursue their mandate and assert their role.²²

¹⁸ Ombud for Equal Treatment, Austria; Institute for Equality between Women and Men, Belgium; Public Defender of Rights, Czech Republic; Board of Equal Treatment, Denmark; The Danish Institute of Human Rights; Ombudsman for Equality, Finland has the mandate to give assistance in to individuals in some cases; Defender of rights, France; Office of the Ombudsman, Greece; Federal Anti-Discrimination Agency, Germany; Equal Treatment Authority, Hungary; Equality Authority, Ireland; National Commission for the Promotion of Equality, Malta; Human Rights Defender, Poland; Commission for Equality in Labour and Employment, Portugal; National Council for Combating Discrimination, Romania (only in equality and non-discrimination of gender in labour and employment and parental protection); Slovak National Centre for Human Rights; Equality Ombudsman, Sweden; Equality and Human Rights Commission, UK-Great Britain; Equality Commission for Northern Ireland, UK-Northern Ireland

¹⁹ Office of the Commissioner for Administration, Cyprus; Equality & Anti-Discrimination Ombud, Norway

²⁰ Ombud for Equal Treatment, Austria; Institute for Equality between Women and Men, Belgium; Office of the Commissioner for Administration, Cyprus; Public Defender of Rights, Czech Republic; The Danish Institute of Human Rights; Ombudsman for Equality, Finland; Defender of Rights, France; Office of the Ombudsman, Greece; Federal Anti-Discrimination Agency, Germany; Equal Treatment Authority, Hungary; Equality Authority, Ireland; Equality and Anti-Discrimination Ombud, Norway; Human Rights Defender, Poland; National Council for Combating Discrimination, Romania; Slovak National Centre for Human Rights; Equality Ombudsman, Sweden; Equality and Human Rights Commission, UK-Great Britain; Equality Commission for Northern Ireland, UK-Northern Ireland

²¹ Board of Equal Treatment, Denmark

²² Equinet, Equality Bodies: Current Challenges, 2012 available at www.equineteurope.org

III. Providing independent assistance to victims: litigation powers

Providing independent assistance to victims of discrimination is at the core of equality bodies' work. Different bodies have different litigation powers to do so, which can include representing individuals through litigation, bringing proceedings in their own name, making interventions in court proceedings and producing decisions or recommendations.²³

i. Representing individuals through litigation

Of the 19 Equality Bodies responding to this question, 9 can represent individuals through litigation²⁴ and 10 cannot²⁵.

In Denmark the Board of Equal Treatment functions as a kind of administrative court and does therefore not represent an individual. However, when the Board rules in favour of the claimant and the respondent does not comply with the decision, the Board must bring the case before the courts. The claimant is represented by the Legal Advisor to the Danish Government and the Board covers the costs of the trial.

ii. Bringing proceedings in their own name

According to the feedback of the equality bodies, 10 can bring proceedings in their own name²⁶ and 8 cannot do so²⁷.

In addition to the particular case of Denmark's Board of Equal Treatment reported previously, France's Defender of Rights may only undertake a direct summons before the penal jurisdiction in a very specific situation following the refusal of a penal transaction by an accused person. A "court summons" is a power that was previously attributed to the HALDE (now Defender of Rights) by the Law of 31st March 2006. It makes court action inevitable. The Defender of Rights had no opportunity so far to use this power.

iii. Making interventions in court proceedings

²³ Equinet, Providing independent assistance to victims of Discrimination, December 2011, available at <http://equineteurope.org/Providing-Independent-Assistance>

²⁴ Institute for Equality between Women and Men, Belgium; Ombudsman for Equality, The Danish Institute for Human Rights, Denmark; Finland has the mandate to give assistance to individuals in some cases; Equality Authority Ireland; Equal Treatment Authority, Hungary; Slovak National Centre for Human Rights, Slovakia; Equality Ombudsman, Sweden, in Labour Court and in the Civil Courts; Equality and Human Rights Commission, UK – Great Britain; Equality Commission for Northern Ireland, UK – Northern Ireland

²⁵ Ombud for Equal Treatment, Austria; Office of the Commissioner for Administration, Cyprus Ombudsman; Public Defender of rights - Ombudsman, Czech Republic; Defender of Rights, France; Office of the Ombudsman, Greece; Federal Anti-Discrimination Agency, Germany; National Commission for the Promotion of Equality, Malta; Equality and Anti-Discrimination Ombud, Norway; Human Rights Defender, Poland; National Council for Combating Discrimination, Romania

²⁶ Institute for Equality between Women and Men, Belgium; Equality Authority, Ireland, in particular circumstances; Equal Treatment Authority, Hungary; Human Rights Defender, Poland; National Council for Combating Discrimination, Romania, takes action ex officio in investigation, ascertaining and sanctioning of discrimination deeds; Slovak National Centre for Human Rights, Slovakia; Equality Ombudsman, Sweden proceeds cases in its own name but on the behalf of the individual who reaches damages if the Court decision is in favour of the Ombudsman; Equality and Human Rights Commission, UK-Great Britain; Equality Commission for Northern Ireland, UK-Northern Ireland

²⁷ Office of the Commissioner for Administration, Cyprus Ombudsman; Public Defender of Rights - Ombudsman; Czech Republic; The Danish Institute for Human Rights, Denmark; Ombudsman for Equality, Finland; Office of the Ombudsman, Greece; Federal Anti-Discrimination Agency, Germany; National Commission for the Promotion of Equality, Malta; Equality and Antidiscrimination Ombud, Norway

Of the respondents, 9 equality bodies can make interventions in court proceedings²⁸ and 10 cannot do so²⁹.

At the request of the parties, or at their own initiative, civil, criminal and administrative courts may request France's Defender of Rights to present observations on the instances of discrimination submitted to them. The Defender of Rights may itself ask to submit evidence to such courts. In such circumstances the right to submit evidence is automatic. However, the Defender of Rights is not mandated to engage as a civil party in any judicial procedure.

iv. Producing decisions or recommendations

The feedback provided by the equality bodies shows that most equality bodies can produce either decisions or recommendations, usually not legally binding.

IV. Technical support

One of the challenges related to the field of goods and services is the often technical aspects which provide the conditions for discriminatory behaviour (e.g. the procedures that insurers follow in assessing the risks and pricing premiums). Most equality bodies do not have in-house experts to deal with very technical questions and would outsource such expertise.

The support of other bodies or agencies is sought by several equality bodies. The Cyprus Ombudsman cooperates with the Cyprus Insurance Companies Supervisory Authority and the Association of Insurance Companies.

The Equal Treatment Department of the Czech Republic's Public Defender of Rights would use the method of outsourcing expertise through some specialized and independent institution like the Centre for Economic Research and Graduate Education – Economics Institute or some other (mainly academic) institution.

Germany's Federal Anti-Discrimination Agency refers people to the Federal Financial Supervisory Authority in cases regarding financial issues.

For the risks and pricing premiums, the Institute for Equality between Women and Men in Belgium consults external lawyers or investigators.

When there is an issue calling for external expertise, the Human Rights Defender in Poland may commission an expert opinion. For instance, an Ombudsman's survey on elderly people's access to financial services was published in a report, which was supplemented by several articles prepared by external experts.

The Swedish Ombudsman has the possibility to use expert opinions from specialists and researches when investigating complaints and taking cases to court.

²⁸ Institute for Equality between Women and Men, Belgium; Federal Anti-Discrimination Agency, Germany, amicus curiae; Equality Authority, Ireland; Equal Treatment Authority, Hungary; Equality and Anti-Discrimination Ombud, Norway, amicus curiae; Human Rights Defender, Poland; Commission for Equality in Labour and Employment; Slovak National Centre for Human Rights, Slovakia; Equality and Human Rights Commission, UK-Great Britain; Equality Commission for Northern Ireland, UK-Northern Ireland

²⁹ Ombud for Equal Treatment, Austria; Office of the Commissioner for Administration, Cyprus Ombudsman; Public Defender of Rights, Czech Republic; Board of Equal Treatment, Denmark; The Danish Institute for Human Rights, Denmark; Ombudsman for Equality, Finland; Office of the Ombudsman, Greece; National Council for Combating Discrimination, Romania; Equality Ombudsman, Sweden

The Equal Treatment Authority in Hungary can appoint an expert who has the sufficient expertise.

In addition, training can be organized for the staff of equality bodies. The Austrian Ombud for Equal Treatment tries to organise training on a specific issue if it is relevant in particular cases. Malta' s National Commission for the Promotion of Equality (NCPE) generally addresses technical issues through in-house expertise which is regularly enhanced through capacity building. In relation to cases when further expertise is required, NCPE may seek advice from relevant stakeholders, namely legal advice or organisations working in the respective field.

The importance clearly emerges for equality bodies to receive and allocate sufficient funds in order to ensure the expertise needed, when not available in house.

Legal work

I. Working with cases in different areas

Equality bodies were asked whether they have dealt with cases concerning equal treatment in the access to and supply of goods and services in a number of different areas, as shown in Table 1 below.

	yes	no
a) insurances	8	9
b) financial services	6	11
c) access to gyms/hotels/restaurants etc.	14	3
d) sexual harassment in healthcare	2	15
e) trans people in transition period or trying to access healthcare for transition	10	7
f) taxation	9	8
g) housing	9	8
h) employment related insurance schemes	4	13
i) access to public transport	7	10
j) equal access to pension	9	8
k) self-employed workers and access to private insurance	0	17
l) education	12	5
m) advertisement	12	5
n) media	9	8

The feedback provided by 17 equality bodies revealed a quite a diversity of experience and, to some degree, a variation of interpretation of the goods and services provisions among the equality bodies, also related to different national legislation.

Some equality bodies have not dealt with cases on equal treatment in the access to and supply of goods and services. Other equality bodies have dealt with a wide range of cases concerning equal treatment in the access to and supply of goods and services. Some equality bodies, such as the Danish Institute for Human Rights, can deal with a substantially wider range of cases as their field of application is nationally defined by previous legislation with a broader scope of application than the field of application defined by the Directive.

The variation in the interpretation among equality bodies of the provisions on gender equality in access to and supply of goods and services, may cause both confusion and uncertainty in the work of equality bodies at the national level. The same confusion creates legal uncertainty for all those subjected to the provisions and providers of goods and services.

In order to ensure a consistent implementation of Directive 2004/113/EC, there is a clear need for further clarification of the provisions of the Directive.

Equality bodies have a joint responsibility with national and European courts and legislators as, by taking cases to the courts, they can generate case-law which could clarify provisions open to different interpretations.

- i. Insurance and financial services

Eight³⁰ equality bodies reported that they had cases on insurance and related financial services. The survey reveals no significant change in the number of claims after the Test Achats case.

For example, the French Defender of Rights dealt with a claim relating to the refusal of an insurance company to repay a mortgage when the claimant was unable to work after a car accident, for the reason that the claimant was on maternity leave. The Defender of Rights concluded that this refusal constituted direct discrimination on the gender ground, pregnancy or maternity, including maternity. In its Decision no. 2012-152, the Defender of Rights recommended the insurance company change its internal rules in order to ensure that the period of maternity leave would deprive the insured from the warranty in case of interruption in employment when the insured are entitled to have such a warranty as a result of illness or accident. The Defender also requested the insurance company to pay compensation to the victim.

Concerning financial services, in 2013, a claim was lodged with the Defender of Rights related to the refusal of a credit institution to mention the full name of the claimant on the loan agreement that she signed with her husband and mentioning only his name. After the inquiry, the credit institution changed this practice that appeared discriminatory and this closed the case.

³⁰ Ombud for Equal Treatment, Austria; Institute for Equality between Women and Men, Belgium; Public Defender of Rights – Ombudsman, Czech Republic; Ombudsman for Equality, Finland; Defender of Rights, France; Federal Anti-Discrimination Agency, Germany; Equality and Anti-Discrimination Ombud, Norway; Equality and Human Rights Commission, UK-Great Britain

The German Federal Anti-Discrimination Agency (FADA) has also dealt with several cases linked to insurance and financial services. Among those cases, we can turn to the example of a woman who had to pay 30% more than men to get the same pension payment, which was justified by the fact that, according to statistics, men usually die younger. Another case which was reported to the FADA was of a 32 year old woman who was denied occupational disability insurance because of her pregnancy. Concerning financial services, there was also the case of a woman who was not allowed to transfer money from her joint account opened with her husband.

Even before the Test Achats case, equality bodies have interacted on the derogations admitted by the Directive. In France, the HALDE (now, Defender of Rights) was informed about an advertising campaign of an insurance company according to which young female drivers, being more cautious and having less car accidents than male drivers, were eligible for a cheaper rate. The HALDE decided to investigate ex officio and concluded in its Decision no. 2007-38 of 23 April 2007 that even if the time-limit for transposition of the 2004/113 Directive had not expired yet, gender equality precluded such difference of treatment grounded on the sex of the insured. In its Decision 2007-231 of 24 September 2007, the HALDE expressed its strong reservation concerning the derogation admitted by the Directive 2004/113 before the Test-Achats case and the corollary French legislation, notably because of the lack of public monitoring of the actuarial data which may not be accurate or updated. In its Decision no. 2010-266 of 13 December 2010, the HALDE reminded its first reservation and also mentioned the conclusions of the Advocate General in the then pending Test-Achats case requesting the insurance companies to rely on objective factors such as the lifestyle of the insured instead of on their sex.

In February 2013, the Federal Anti-Discrimination Agency in Germany dealt with the case of an insurance company which refused to insure transsexuals.

ii. Gyms and fitness clubs

The great majority of equality bodies answering the survey have dealt with cases concerning equal access to gyms. With regard to women-only gyms or women-only spaces in fitness clubs, equality bodies reached different conclusions on whether the limitation of access to members of one sex only is allowed or not.

The Finnish Ombudsman for Equality, for example, has seen this as justified on grounds of women's potential embarrassment at exercising in the same area as men. The objective has been to promote women's opportunities to use fitness facilities and the means (providing a separate space or opening hours or clubs exclusively for women) have been seen as appropriate and necessary for achieving this objective. The principle can also be used to establish clubs or a separate space exclusively for men.

Oppositely, in its Decision no. 2006-153 of 19 June 2006, the French HALDE (now Defender of Rights) concluded gender discrimination in a case where a man who had subscribed to, and was regularly attending, a beauty clinic for more than two years was suddenly refused on the grounds that only women were then admitted.

In Sweden, the Ombudsman reached a Court decision 2010-10-05 in a case concerning a gym that applied a ban against headgears for the members of the sport centre. The claimant was a Muslim woman wearing a head cloth/veil. The sport centre applied the ban because of health and safety reasons. The Court found that it was a case of indirect

discrimination since in particular religious people were mistreated because of the ban. The Court also concluded that the ban on discrimination covers a non-profit association (the sport centre argued that it was not covered by the Discrimination Act). The woman received 5 000 SEK in damages (approximately 500 EUR). [Case Ref no T 3169-08]

iii. Restaurants and clubs

With regard to access to restaurants and clubs, and in particular to different access prices and conditions to men and women, the national practice varies considerably.

Some equality bodies interpret as an obvious case of direct discrimination based on sex or gender the cases where women have free access to restaurants and clubs while men must pay an entry fee. However, in Germany, the General Equal Treatment Act provides that this kind of different treatment can be justified if the different treatment based on sex or gender grants special advantages and if there is no interest in enforcing equal treatment. The interpretation is that there is no interest in enforcing equal treatment as the result would be that the privilege (free entry for women) would be abolished, resulting in a situation where nobody would have free entry. Amongst the bodies which interpret the situation as an obvious case of discrimination, some consider it discrimination both for men and women. This interpretation considers this behaviour as constituting discrimination for men because they have to pay an entry fee but also for women as they are used as "incentives" to attract more (male) clients.

A question that has arisen among equality bodies is whether all three interpretations can be allowed in accordance with the Directive.

iv. Hotels

An example was also provided about a hotel which had reserved a whole floor only for women. The hotel Bella Sky in Copenhagen, Denmark, with 814 rooms, had reserved an entire floor (20 rooms) for women. This so called Bella Donna floor was found by the Danish Board of Equal Treatment in breach of the national non-discrimination laws. The Eastern High Court decision was in consistency with the Danish Board as it found that the prohibition of men's access to the floor was not based on a legitimate aim because it was not necessary in order to fulfil terms of privacy and decency or to counter real identified problems in relation to women's safety.

v. Short time discounts (one day)

Equality bodies had to deal with cases of short time (one day) discounts based on gender, usually linked to Women's Day, Mother's Day, and Father's Day.

An example was given by the Finnish Ombudsman for Equality according to which goods and services can be made available to only men or women if this is done to achieve an acceptable objective and the means chosen are appropriate and necessary for achieving the objective. International Women's Day, Mother's Day and Father's Day discounts have been seen as acceptable, as long as they are of minor monetary value. The same approach has been adopted for temporary discounts, but not for season tickets, offered for example by sports clubs.

vi. Hairdressers and barbers

Another example of cases brought to equality bodies is the different pricing for women and men at hairdressers and barbers for identical services.

According to the Finnish Ombudsman for Equality, the provision prohibiting discrimination in the access to and supply of goods and services in the Equality Act has not affected the right of barbers and hairdressers to promote their services according to their respective business ideas, professional expertise and chosen tools regardless of sex and gender, as long as pricing is not based on gender. Acceptable pricing principles include the skill level, tools and time required. Following the same reasoning, also the Austrian Ombud for Equal Treatment published a recommendation on this issue. In several examples from Denmark it is also stated that pricing at hairdressers cannot be based on gender. As in the Danish hotel-case (Bella Sky) the providers would not accept the decision from the Danish Board of Equal Treatment, and the case is at the time of writing pending in court.

vii. Transgender people and transitioning

In the case of transgender people in transition period of trying to access healthcare for transition, the French Defender of Rights has been lodged with the case of transgender people whose change of civil status is not taken into account by bank services or when it comes to the re-issuing of their diploma. In Poland, the Ombudsman received complaints from NGOs dealing with the fact that the State is not covering financially access to healthcare for transition.

viii. Functions of the state, pensions and taxes

All equality bodies reported that their national legislation covers services arising from functions of the state/public administration/public services.

Regarding taxation and tax returns or benefits that the state gives to women and men, the French Defender of Rights communicated having received claims of women relating to their husband's surname appearing on their tax assessment notices. For the moment, these claims are still under investigation.

As regards equal access to pension, an example was given by the Polish Human Rights Defender where the constitutionality of a legal provision concerning unequal retirement age for men and women was questioned. The negative impact of the law was evident in the level of pensions received by women as the pensions for women were in most cases much lower than the pensions for men. The retirement age, in 2010, was 60 years for women and 65 years for men. However, the Constitutional Court of Poland did not agree with the view of the equality body and declared in its judgement that such a provision constituted positive action for women. Few years later, the law was amended and the retirement age for both men and women will gradually rise to 67 years.

Two bodies considers that pensions and taxes are not services in the sense of the Directive.

ix. Housing

Over half of the respondents have dealt with cases concerning housing. The French Defender of Rights received claims regarding housing as well. In its Decision no. 2010-197 of 11 October 2010, the HALDE investigated the case of women registered in the top-ranking higher education establishments who were excluded from high school boarding accommodation. Most of time, this exclusion was inherited from the times when the schools were not

mixed. The HALDE concluded to a double discrimination in the access of housing and in vocational training and recommended to end up the discriminatory situation. The Austrian Equal Treatment Commission in 2008 decided on a housing project which gave tenancy contracts to women only, that it was no discrimination of men, since both the exemption clause of recital 16 of the Directive and the provision on positive measures could be applied in the case.

x. Transport

Seven bodies over 17 dealt with cases on access to public transport. The French Defender of Rights received a complaint relating to the refusal of check-in to a woman and her daughter. Despite the fact that the mother produced the two IDs, the family record book proving that she was the mother of the child and the Family Court's Decision acknowledging that the father and mother shall exercise in common parental authority, it was required to the claimant that the father personally showed up to authorise the child to leave the national territory. This procedure was required because the child did not bear the same name as the mother but the father's. It would not have been asked to the father in a similar situation. Taking into account the tradition relating to the transmission of the father's surname to children in France and its impact on women, the Defender of Rights concluded that such a practice is indirectly discriminatory on the ground of gender.

xi. Media, advertisement and education – the existing legislation

With regard to education, advertisement and media, a number of equality bodies pointed out that, as Directive 2004/113/EC does not apply to the content of media or advertising nor to public or private education, questions concerning these areas have not necessarily been dealt with by provisions on access to and supply of goods and services. However, several equality bodies do cover these areas notwithstanding EU legislation.

Eight equality bodies indicated that their national law covers the three areas³¹. In addition, in Sweden, only the area of education is covered by the national law. In Ireland, the national law covers advertisement and education, whereas in Poland, the national law covers media and advertising. In Norway, the area of media is not clearly covered. In four equality bodies, the national law does not cover these areas³².

It should be noted that some equality bodies are at the same time Ombudsman institutions, and may also act under the provisions of the Constitution. Several equality bodies, which reported that their legislation covers these areas, emphasised that if they have no competences under the Anti-Discrimination law they will act under the general mandate of the Ombudsman. Additionally, equality bodies which are also Ombudsman, can be entitled to request the case to be explained by relevant public agencies, especially those responsible for the supervision or prosecution. Appropriateness of these actions may be then verified by the Ombudsman. This is an indirect way in which it is possible to deal with cases of discrimination in media and advertising area.

³¹ Institute for Equality between Women and Men, Belgium; Public Defender of Rights – Ombudsman, Czech Republic; Board of Equal Treatment, Denmark; Ombudsman for Equality, Finland; Defender of Rights, France; Equal Treatment Authority, Hungary; National Council for Combating Discrimination, Romania; Equality and Human Rights Commission, UK-Great Britain

³² Ombud for Equal Treatment, Austria; Office of the Commissioner for Administration, Cyprus Ombudsman; Office of the Ombudsman, Greece; Federal Anti-Discrimination Agency, Germany

In some countries the areas of media and advertising are regulated in specific acts³³. The area of education is often separated and regulated differently than the areas of media and advertising. For instance, in Belgium, it is a community competence and not federal competence, in Germany, the General Equal Treatment Act (GETA) covers only private education and in Sweden, Czech Republic and Slovakia, the area of education - in contrast to the areas of media and advertising - is covered by the Anti-Discrimination Act. However, in Sweden there is an Advertising Ombudsman within the private business sphere who can produce non-binding decisions on discriminatory advertisements. . In relation to content of media and advertisements in the provision of goods and services, despite not being covered by legislation, Malta' s National Commission for the Promotion of Equality contacts companies regarding adverts about which members of the general public complain.

- Media and advertisement:

Although media and advertisement are not covered by the Directive, the casework of the equality bodies in this area including sexist and stereotyped advertising and media, is quite rich, demonstrating the need for protection in this area.

The Swedish Equality Ombudsman has received 78 complaints about media and advertising since legislation came into force in 2009. The complaints concern for example opinions expressed in media or advertising that the complainant had found discriminatory or stereotypical.

In the case of Belgium, in the field of advertising, the Institute for the Equality of Women and Men, whose actions are based on the law of 10 May 2007 aimed at combating discrimination between women and men, may consider an advert, including a sexist advert, as being discriminatory within the meaning of the law. To this end, cooperation has been developed between the Institute for the Equality of Women and Men and the Jury for Ethical Advertising Practices (JEP), which is a self-regulatory body in the field of advertising in Belgium which every week handles complaints lodged by any physical or legal person concerning adverts. The task of the JEP is to determine the compliance of adverts with the legal and/or ethical provisions intended to protect the public/consumers, including those relating to the representation of the person.

Among the cases which have been dealt with by the Institute, we can mention the one of a sexist advertising campaign launched by a store on the occasion of the men' s day which takes place on 19 November in Belgium. The Institute managed to remove the video clip of the campaign from the shop' s website on the basis of the law of 10 May 2007.

The Danish Board of Equal Treatment has a pending case on whether or not the board is competent to deal with complaints regarding advertisements. The advertisement is on the side of a truck and has a picture of a woman in her underwear wearing a hard hat and the text says "Don' t let a woman do a working man' s job" . Discriminatory advertisements are also covered by the marketing provisions and the consumer ombudsman.

The Polish Human Rights Defender received as well complaints about advertisements containing stereotypes and negative sexual image of women in public spaces.

³³ Public Defender of Rights – Ombudsman, Czech Republic; Ombudsman for Equality, Finland; Human Rights Defender, Poland

- Education

In the area of education, in general, complaints concerning the unequal treatment of girls and boys in accessing different classes, may span from situations where girls in school are being offered advice on careers as make-up artists, while boys are advised on how to write their CVs, to cases where more special education teachers are allocated for boys than for girls, but also to case of the segregation of men and women at universities for religious reasons.

The Danish Board of Equal Treatment has recently made a decision regarding harassment in the area of education: before an exam at a high school, the students received a message from their teacher informing them that the examiner would not shake hands with female students because of his religious beliefs. The board found that the message from the teacher was covered under harassment provisions. Since it was a high school, the case was dealt with under the Danish law on discrimination in the employment sphere and not in access to goods and services.

The Polish Human Rights Defender received cases concerning recruitment to trainings financed by EU structural funds. In some trainings, men or women were treated preferably and received more points in the recruitment process. Both men and women complained that it constitutes violation of equal treatment principle, although it was legitimate by a smaller representation of a particular gender in a particular field of economy.

In the case of Greece, the Ombudsman does not have the competence to deal with cases linked to the access to and supply of goods and services in the field of media, education and advertisement. However, one claim was received on the access to public education of an adult transsexual student. The Ombudsman could not use the Directive 2004/113; therefore the case was dealt with under the general mandate of the Ombudsman.

xii. Healthcare

An overwhelming majority of equality bodies reported that their national legislation covers equal treatment between men and women in access to and supply of goods and services in the field of healthcare.

In a few cases, there was a problem with as the definition of this area under “services”, in particular with regard to the remuneration aspect. For instance, in Denmark “services” are normally defined by a transaction of money, while healthcare is financed via taxes and public healthcare providers are considered to be public authorities. Therefore, services are covered by the law even though there is no exchange of money. For example, a man complained about a clinic that provided free HIV-tests for homosexual men and men who have sex with other men. He argued that it was discrimination against women and heterosexual men. The Board of Equal Treatment found that the clinic was not covered by the law because the service was free and the clinic was not a public clinic within the public administration.

It would be important to ensure that anti-discrimination law covers healthcare services also when they are not provided against a direct transfer of money by the patient.

The casework of the equality bodies reveals a range of complaints relating to healthcare. Some examples concerned multiple discrimination. For instance, in Germany, a woman that was wearing a headscarf was denied treatment at a gynaecologist’s office. In Sweden, the Ombudsman received a discrimination claim on the ground of religion

in the case of a woman who was denied a health examination by a doctor since she refused to shake hands with him (according to her religion). In Greece, an obstetrician refused to examine a woman at a public hospital when she was 7 months pregnant, because “she had gained a lot of weight” .

Equality bodies reported also other complaints, including:

- Discrimination against transgender persons, e.g. different types of insurance policies or complaints from NGOs that the state is not covering financial access to healthcare for transition. This is the case for example of Belgium; in 2011, more than 10% of the complaints received by the Institute for Equality between Women and Men concerned discrimination against transgender persons. In reaction, the Institute published a document with recommendations to end structural discriminations against transgender persons. Covering of healthcare expenses for transition is one of the recommendations of this document³⁴. Discrimination against transgender persons is the major subject matter in the personal inquiries on gender which apply to the counselling unit in the Danish Institute for Human Rights. They are primarily about access to health care and public service.
- Less favourable treatment in medical reimbursements depending on gender: in Belgium, the reimbursements of medication for the treatment of osteoporosis were smaller for men. This difference in treatment was justified by the argument that there were no existing medical studies supporting the suitability and effectiveness of such medication for men and by the fact that those medicines were mainly used by women for a female-specific disease.
- The hospitals from different cities in Romania established certain internal rules and displayed them on their webpage and in the hospitals that children cannot be hospitalized with their fathers, because there are not any wards for fathers. Between 2008 and 2013, the N.C.C.D has received 11 complaints reporting these facts and decided in most of the cases that it was a direct discrimination of fathers.

II. Burden of proof

Equality bodies were asked to evaluate, from their experience, whether the reversal of the burden of proof was considered to be more difficult or less difficult in cases on goods and services than in cases on employment.

The answers given revealed quite a heterogeneous experience among the equality bodies. Five out of the 15 equality bodies that answered the questions were of the opinion that the reversal of the burden of proof was more difficult in cases on goods and services; 2 were of the opposite view and 8 either saw no difference between cases on goods and services and cases on employment, or noted that it depended completely on the specificity of the case at hand.

Those equality bodies that considered the reversal of the burden of proof is generally easier in cases on goods and services noted that, at least theoretically, it is easier in these cases to show that someone is in a comparable situation and, consequently, to have the burden of proof shifted.

It was also noted how the discrimination in employment cases is often more hidden: the employer is usually aware that discrimination based on sex or gender is forbidden by law, and therefore uses other reasons for, for example,

³⁴ Available at http://igvm-iefh.belgium.be/fr/binaries/Texte%20vision%20transgenre_tcm337-224388.pdf, p7

dismissal, as a way to discriminate. In such cases, the complainant is left merely with the assumption that the real reason behind the dismissal is the employee's sex or gender.

In many cases related to the access to and supply of goods and services, the facts are undeniable, for example in the case of gender-specific pricing, which is out in the open. However, not all cases in the area on goods and services are similar. It is, for example, much more difficult to establish the facts in a case on sexual harassment in the field of goods and services than in a case on gender specific pricing.

It was also importantly pointed out that the manner in which a case is handled depends on which law is applied on the case at hand. For example, the French Defender of Rights, commented that, if a case on discrimination concerning access to and supply of goods and services is being dealt with under criminal law, then this kind of case is difficult to compare with a case that is being dealt with under civil law. In this regard, it was underlined by the Polish Human Rights Defender that judges may be more accustomed to apply a law according to which the burden of proof is laying on the claimant.

Some lessons can be drawn on this topic:

- The factual evidence is often easily available as, for example, in the case of gender specific pricing. In such cases on goods and services, the reversal of the burden of proof would be easier than in cases on employment.
- It has to be acknowledged that, ultimately, it will depend on the specific details of a case whether or not the reversal of the burden of proof is considered to be more difficult or less difficult in cases of goods and services rather than in cases on employment.
- An employer may be more aware of legislation prohibiting discrimination than a service provider, and therefore may use other justifications when acting in a discriminatory manner.

III. Under-reporting

Equality bodies were also asked about their view on underreporting. The intention of the survey was to examine whether underreporting was seen as being more prevalent in the area of access to and supply of goods and services than in employment.

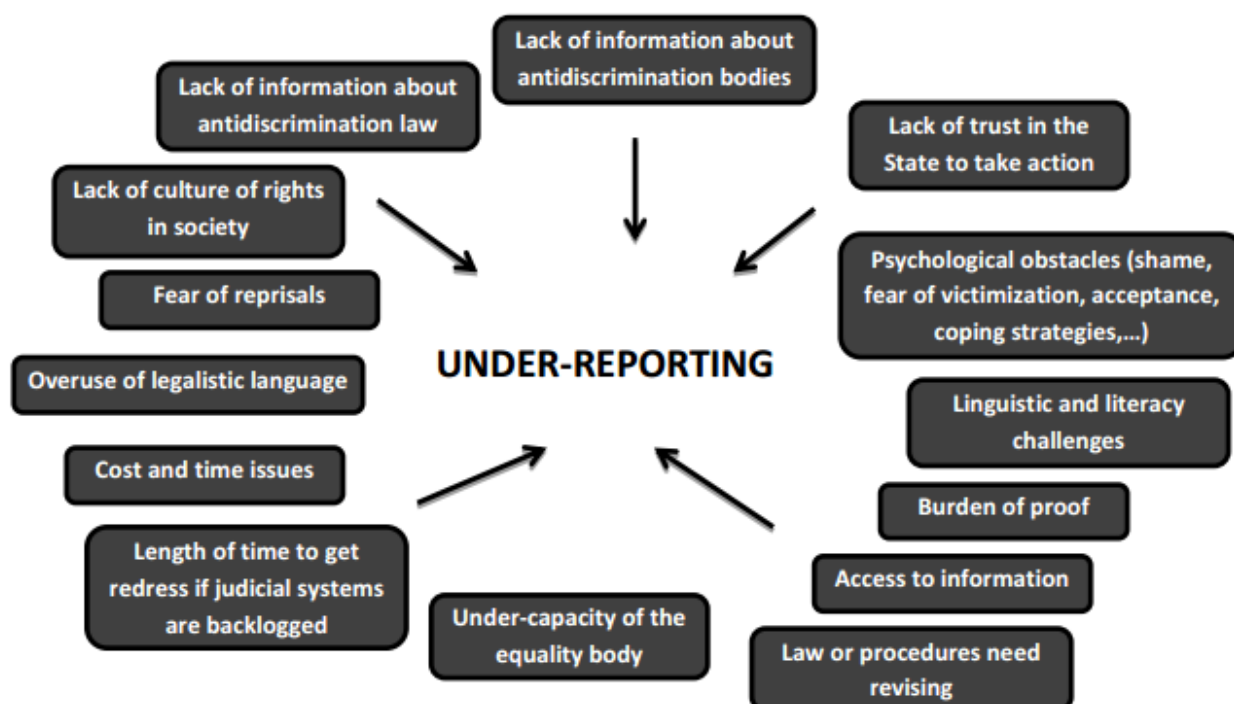
Nine out of the 15 equality bodies that answered the question were of the opinion that underreporting was more prevalent in the area of goods and services than in the area of employment. None of the equality bodies were of the view that there were less underreporting in the area of goods and services than in the area of employment.

It was generally assumed that underreporting in the area of goods and services was a result of a lack of knowledge about relevant legal provisions.

As in the case of employment-related provisions, some areas might be affected by a higher level of underreporting. For example, according to the Austrian Ombud for Equal Treatment, cases on gender specific pricing are frequently reported, whereas cases of sexual harassment in the context of access to and supply of goods and services are reported very rarely.

It is to be borne in mind that the answers by the equality bodies on underreporting represent views for which supporting data is often not available. If, on the other hand, an equality body has never dealt with a single case concerning the access to and supply of goods and services, this could well be understood as to indicate that underreporting is evident.

Previous Equinet work has shown how underreporting lays at the intersection of multiple issues, as shown in the figure below.³⁵ Further work from the equality bodies is needed to understand the causes of underreporting in the area of goods and services. It would be important to ensure that discrimination cases are reported to equality bodies and had a chance for legal or other type of redress.



IV. Sanctions and compensations

Equality bodies were requested to evaluate their experience concerning sanctions applied. The survey examined whether equality bodies considered compensation awarded in cases on goods and services to be higher or lower than compensation awarded in employment cases.

According to the survey, 7 out of the 15 equality bodies that answered the questions on compensation were of the view that compensation awarded in the area of access to and supply of goods and services was far lower than

³⁵ Equinet, Tackling the Known Unknown: how Equality Bodies can Address Under-Reporting of Discrimination Through Communications, 2012, available at: http://equineteurope.org/IMG/pdf/tackling_the_known_unknown_final_merged_.pdf

compensation awarded in the area of employment.³⁶ For instance, the Danish Board of Equal Treatment underlined that compensations in case of discrimination in employment are between 6 and 12 months' pay in case of dismissal, and 25.000 DKK if the person has been rejected for a job because of her/ his gender, whereas in cases of goods and services, the compensations are never higher than 2.500 DKK.

The common reasoning given to the significantly lower compensation awarded in the area of access to and supply of goods and services compared to those awarded in the area of employment was, as pointed out for example by the Swedish Equality Ombudsman, that a case of employment has more far-reaching consequences than for example a case of denial of entering a restaurant.

It was also noted, however by the French Defender of Rights, that the compensation awarded in a case on goods and services might also be significant. An example was given about a case concerning the refusal of private housing grounded on nationality where the tribunal awarded three times the amount of the rent as compensation.

It was also noted that the legal provisions on compensation might be the same for both cases on access to and supply of goods and services and for employment cases. Nonetheless, this does not mean that the amount of compensation awarded in cases concerning goods and services would correspond with compensation awarded in the area of employment.

It can be questioned whether current sanctions are dissuasive, proportionate and effective.

V. Scope and definitions

The intention of the survey was also to examine whether national legislation implementing Directive 2004/113/EC also covers trans people and intersex people. 16 out of the 18 equality bodies that answered the survey, mentioned that this was the case either by a provision specifically mentioning trans and intersex people or by an interpretation of a more generally formulated provision, usually under the gender ground.³⁷

Some equality bodies noted that their national anti-discrimination legislation covers only trans people who are undergoing or have already undergone gender reassignment. A majority of the equality bodies who had mentioned that their national anti-discrimination legislation covered also trans people, noted also that they applied a broader interpretation of their current legislation so as to include more broadly gender minorities and not just to persons who have undergone or are about to undergo gender reassignment surgery.

It was also investigated what are the issues in national legislation implementing Directive 2004/113/EC regarding the definition of maternity (e.g. if breastfeeding is covered as direct discrimination and if there are set time limits in the definition and/or protection of "maternity"). A majority of the equality bodies answering the survey noted that the national legislation implementing the goods and services Directive did neither contain a definition of

³⁶ Ombud for Equal Treatment, Austria; Institute for Equality between Women and Men, Belgium; Board of Equal Treatment, Denmark; Federal Anti-Discrimination Agency, Germany; Equality Authority, Ireland; Equality Ombudsman, Sweden; Equality and Human Rights Commission, UK-Great Britain

³⁷ Ombud for Equal Treatment, Austria; Institute for Equality between Women and Men, Belgium; Public Defender of Rights – Ombudsman, Czech Republic; Board of Equal Treatment, Denmark; Ombudsman for Equality, Finland; Defender of Rights, France; Federal Anti-Discrimination Agency, Germany; Equal Treatment Authority, Hungary; National Commission for the Promotion of Equality, Malta; Equality Authority, Ireland; Equality and Anti-Discrimination Ombud, Norway; Human Rights Defender, Poland; National Council for Combating Discrimination, Romania; Slovak National Centre for Human Rights, Slovakia; Equality Ombudsman, Sweden; Equality and Human Rights Commission, UK-Great Britain

maternity nor mentioned breastfeeding. It was generally noted that definitions and/or the protection of maternity were often regulated in other national legislation concerning maternity protection, and not necessarily in the anti-discrimination legislation. However, it was also noted that as legislation on maternity protection protects expecting mothers as well as breastfeeding mothers, for example in the workplace, some equality bodies commented that they would interpret the term “maternity” in the anti-discrimination legislation as to cover also breastfeeding. The set time limits for the protection of maternity are also found in national legislation concerning maternity protection, and not from legislation specifically implementing Directive 2004/113/EC.

Most equality bodies reported that their definitions on these concepts do not differ from the interpretation presented by courts. In one country, maternity is not considered to be a ground of discrimination by national courts³⁸. However, it is worth noting that to-date, there is scarce jurisprudence in the area of goods and services on grounds of gender.

VI. Possible justifications of different treatment

(Article 4.5 and Recitals 16 and 17)

According to article 4.5 of Directive 2004/113/EC the “...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.”

The feedback of the equality bodies is shared between those considering that article 4.5 is problematic in terms of giving service providers too much freedom (5 out of 12) and those who think it is not (7).

Some of the respondents have pointed out that the courts and other authorities dealing with these cases should test on a case by case basis whether a difference in treatment complies with the criteria set out in article 4.5 in accordance with national law, the scope of the Directive and national and EU-case law.

However, the survey shows that there is not yet much case-law to refer to when deciding these cases. It should be pointed out that one potential problem with the exception in article 4.5 is that the scope of the article is not quite clear in terms of guidance on what can be considered as a legitimate aim and which means are appropriate and necessary. Some inspiration can be found in the ECJ and national case law on indirect discrimination but national case law on indirect discrimination can be scarce or not distinct. Courts and equality bodies in each member state have to interpret the exception on their own causing perhaps different interpretations.

Recital 16 of the Directive gives examples of legitimate aims by stating that “...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 organization of

³⁸ National Council for Combating Discrimination, Romania

sporting activities (for example single-sex sports events). Any limitation should nevertheless be appropriate and necessary in accordance with the case law of the Court of Justice of the European Communities.”

Since recital 16 only gives examples of legitimate aims, it could on the one hand be argued that there is still wide room for interpretation and that other aims could be regarded as legitimate. On the other hand, the examples given in recital 16 are very general socially beneficial aims. It is not quite clear from article 4.5 or recital 16 what the intention is regarding which types of aims could be legitimate and how widely or narrowly the exception could be used. It is unclear whether the intention of the recital is to establish that only socially beneficial aims could be regarded as legitimate. It remains to be seen if also more commercial or economic aims can be legitimate, such as for example different prices for men and women where the service provider claims that the different prices are necessary to attract customers of one gender in order to ensure profit.

From the point of view of providers of goods and services, having to comply with the principle of non-discrimination, it can be very difficult to know in advance whether or not an initiative containing a difference in treatment could violate the principle of equal treatment. One equality body has in the survey pointed out that it is not very clear from the Directive where to draw the line between positive action and justified differential treatment according to article 4.5.

Examples of legitimate aims and appropriate and necessary means acknowledged in national case law:

The feedback provided by the equality bodies shows that many of the responding Member States do not have any case law in the field of goods and services, and more specifically, on differential treatment justified by a legitimate aim and achieved through appropriate and necessary means. Member States which have case law in this area, have provided the following examples of legitimate aims and appropriate and necessary means, which sometimes actually present opposite interpretations of similar cases:

- i. Free admission for women

The former Equality Ombudsman of Sweden has found that free admission for women to a football match was justified with reference to the fact that the profit went to research in breast cancer. The Danish Board of Equal Treatment ruled differently in a similar case. The board did not find that the free admission for women with the aim of promoting or supporting the work of The Danish Cancer Society, was a legitimate aim.

The Danish Board of Equal Treatment has had several cases concerning free admission for women to bars, discotheques and swinger clubs either in the form of free entrance, lower entrance fee or benefits included in the entrance fee, such for example free drinks. In these cases, the service providers have tried to argue that free admission of women was necessary for them to attract more women in order to run their business with profit. The board has not found that the economic reason was a legitimate aim for differential treatment of men and women. The board has also found that setting different prices was not an appropriate and necessary mean to ensure that

women followed the guidelines of the national health authorities recommending that women drink less alcohol than men.

In Hungary, the Equal Treatment Authority found that free admission for women could not be considered as a necessary and adequate mean for reducing waiting time for entering a discotheque. Following the appeal of the defendant the Authority's decision was upheld by the Court. According to the discotheque, free admission for women was introduced as a positive measure to keep certain men from pushing women aside while waiting in line, and thereby prolonging the waiting time for women.

The National Commission for the Promotion of Equality in Malta considered the reduced ticket prices paid by women attending football games to be appropriate and necessary in view of the low attendance of women. Charging lower price of tickets for women to attend events which are not attended by women was seen as legitimate positive action as it was based on statistical analysis, with the aim of increasing the attendance of women.

ii. Single-sex activities or spaces

Women-only trips have featured in the case law from the Danish Board of Equal Treatment and have been justified with reference to privacy, decency, organization of sport activities, freedom of association and men and women's different interests. The theme of the trips mentioned was to explore women's culture in Burma and Nepal, and according to the travel agencies, it would be difficult to see the real women's culture if the trip also included men. Also, on one of the trips there were no single-sex facilities available.

Women-only gyms or women-only spaces in fitness clubs have been regarded by the Finnish Ombudsman for Equality as justified with reference to the promotion of women's use of fitness facilities in order to remove women's potential embarrassment when exercising in the same area as men. Providing a separate space, special opening hours or a club exclusively for women has been regarded as appropriate and necessary in order to achieve the legitimate aim. The Danish Board of Equal Treatment has come to the same conclusion in similar cases on fitness clubs and public swimming pools.

In Belgium, the court has found that an economic reason for having women-only gyms was not an objective reason for differential treatment of men and women.

In Denmark, the Board of Equal Treatment has dealt with a case concerning a hotel with a women-only floor. One member of the board found that the hotel's wish to comply with some women's demands for a floor completely free of men was a legitimate, commercial aim and that the fact that women are more often victims of gender-based violence justified the need of reducing the risk of violence as a legitimate aim. However, the majority of the board found that the hotel's initiative did not fall within the exception in the Directive and that the hotel failed to prove that there were such inequalities between men and women within the hotel business which could justify having a floor only for female customers.

iii. Is there a difference regarding justification when services are provided to one gender only as opposed to when services are provided to both genders on different terms?

The question is whether there might be less favourable treatment in what is considered justified differential treatment, depending on whether the different treatment is based on the fact that the service provider provides services only to one gender, vis- à-vis the situation where the same service provider provides services to both genders but on different terms and conditions.

Recital 17 of the Directive states that “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.”

According to the respondents, there is no clear general opinion as to whether there is a less favourable treatment or not. One equality body has pointed out that it can be argued that gender segregated services or single-sex facilities are in fact different types of services and therefore not comparable with the others. The issue is where to draw the line between the choice of specialising in offering goods or services to one gender only and an illegitimate discriminatory behaviour excluding one gender by choosing to get into contract with members of the other gender. Examples may include the situation where the service in question requires some kind of different skills, qualifications or knowledge, such as for example the case of the hairdresser with different cutting techniques related gender or a clothes store specialising on only one gender as a target group.

Some equality bodies have instead pointed out that in instances when services are provided to one gender only and when services are provided to both genders on different terms, the authority dealing with the specific case must consider these cases in light of article 4.5 and recital 16 and consider whether the differential treatment meets the criteria set out herein: whether the aim pursued by the service provider is legitimate and whether the means used to achieve this aim are appropriate and necessary. The guidance criteria are the same and there is no clear distinction as to whether or not the service is provided to only one or both genders.

According to the Austrian Ombud for Equal Treatment there has to be a relationship between the respective measure taken and the argued aim. The highest constitutional court in Austria has decided that the respective provision cannot be applied to cases where the service is offered to both men and women on different terms and conditions such as for example different prices for the same service.

VII. Directive 2004/113 and other legislative instruments

i. Potential conflicts between the Directive and other legislative instruments

The equality bodies which have answered the survey have not experienced any potential conflicts between the Directive and other legislative instruments such as for example the CEDAW or the Charter of Fundamental Rights. One equality body has pointed out that perhaps the CEDAW is more open to positive action than the Directive 2004/113.

ii. Do the equality bodies use other legislative instruments in their reasoning in concrete cases?

The equality bodies and national courts or judicial authorities are obligated to interpret the national legislation in conformity with EU-directives and international law.

12 out of 15 of the respondent equality bodies generally use other legislative instruments when applying reasoning in concrete cases, either by referring to them directly or indirectly, or simply by using them as part of their legal “toolbox” but not necessarily by quoting them directly in the decision. However, some equality bodies have not used other legal instruments in cases on gender discrimination in relation to goods and services or have not had relevant cases in this area.

In Belgium, the Institute for Equality between Men and Women mentions the Charter of Fundamental Rights in every judicial case.

In a case regarding discriminatory exclusion of women registered in “grandes ecoles” from high school boarding accommodation, the French Defender of Rights (formerly HALDE) based its reasoning on the EU directives, in particular the 2004/113 Directive, and article 10 of the CEDAW.

In Poland, the Human Rights Defender uses the Polish Constitution, which mostly covers the protection set out in the CEDAW and the Charter of Fundamental Rights, because one of the many actions that can be taken by the Ombudsman is to initiate proceedings before the Constitutional Tribunal (the so-called abstract application), or report participation in the proceedings before the Constitutional Tribunal in the cases of constitutional complaints and take part in those proceeding.

National courts are more willing to apply the Constitution or the European convention rather than international legislative instruments they are often less familiar with.

Policy work

Equality bodies, as part of their activities to promote equal treatment, seek to influence and inform policy - making processes on the basis of their experience and expertise and through direct contact with the public and with different stakeholders. A variety of initiative can be mapped under policy work, including the issuing of legal and policy recommendations, submissions made during consultative processes around national policies and strategies or regulatory standards, as well as the provision of policy support in relation to equality issues for private organisations as well as for public institutions.

I. Initiatives undertaken to influence and inform policymaking

Sixteen equality bodies shared their experience on policy initiatives carried out on equal treatment of men and women in the access to and supply of goods and services. The majority of recent policy initiatives originated from the immediate impact of the ‘Test Achats’ judgment³⁹ in relation to the goods and services provided by the insurance industry to men and women.

³⁹ CJEU, Case C-236/09, Judgment of the Court (Grand Chamber) of 1 March 2011. Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres.

In this sense, it has to be acknowledged that one of the main drivers for policy-making initiatives is indeed new case-law and the related need for a clear interpretation of EU directives and their correct transposition into national laws.

The handling of related complaints is also a driving factor in some cases. The range of policy initiatives may include opinions and recommendations to government departments or to regulatory bodies, specific training, seminars and meetings, the provision of organisational policy advice on equality mainstreaming, as well as a closer monitoring of complaints on the ground of gender.

Some examples of policy-influencing and policy-making initiatives driven by the Test Achats case are as follows:

- i. The Belgian Institute for Equality between Women and Men has carried out both policy and legal work stemming from the implications of the ‘Test Achats judgment’. In 2011, the Institute noted the high level of complaints (over than 10% of the complaints) received by transgender persons. The Institute therefore produced an opinion in which it expressed its vision for the elimination of the structural discrimination towards transgender persons and put forward a series of recommendations. This document was then transmitted to the Minister responsible for Equal Opportunities. The Belgian Institute produced another opinion in 2013 concerning the discrimination faced by transgender persons in different types of insurance policies. This opinion aims at being a useful tool in the context of mediation with insurance companies and will provide the basis for recommendations to relevant Ministries.
- ii. The Belgian Institute for Equality between Women and Men produced another opinion about the powers of the Inspectorate for Economic Affairs with regard to goods and services in order to support litigation in discrimination cases.
- iii. The Office of the Commissioner for Administration (Cyprus Ombudsman), following the publication of the Test-Achats case, organised a series of meetings and discussions on how to implement the European Commission guidelines at national level, in co-operation with relevant stakeholders (i.e. Ministry of Justice and Public Order, the Cyprus Insurance Companies Supervisory Authority, the Attorney General Office and the Association of Insurance Companies).
- iv. The Equality Ombudsman in Sweden produced a written opinion to the government to point out that the exception for insurances in the Discrimination Act was not in accordance with the Directive 2004/113/EC.
- v. The Federal Anti-Discrimination Agency in Germany (FADA) met with the German Insurance Association (GDV) to discuss gender issues in the context of insurance policies.
- vi. The Austrian Ombud for Equal Treatment provided observations (mainly of legal nature) and reports on the implementation of the Equal Treatment Act. The Ombud organised a seminar on gender discrimination in the field of goods and services - targeting civil servants and policy makers - on foot of its legal observations.
- vii. The Office of the Public Defenders of Rights of the Czech Republic elaborated and officially presented recommendations regarding price differentiation (in August 2011) and gender equality implications.

The survey results have also provided examples of good practices in relation to policy- influencing and policy-making which are not only driven by case law, but which respond to the general need for ensuring gender equal outcomes in the access to and supply of goods and services. In this regard, policy work may intersect with promotional work and awareness-raising activities, as well as aiming at influencing policy making processes in different sectors at national level:

- viii. The Human Rights Defender in Poland is working on challenging women's stereotyping and objectification in the contents of TV commercials, billboards and outdoor advertising directed to promoting the sale of goods and services. This was done by petitioning the National Broadcasting Council's Office and the Advertising Ethics Commission in relation to the nature of the discriminatory messages promoted. A similar initiative was directed to the General Directorate for National Roads and Motorways on the problem of discriminatory content of its social media campaign, which focuses on women as sexual objects.
- ix. The Defender of Rights in France has produced factsheets and publications in relation to the issue of stereotyping of women and its impact on their choices with regard to academic and vocational orientations.
- x. The Equality and Anti-Discrimination Ombud in Norway has produced a number of opinions and sent them to relevant ministries in relation to:
 - Different prices for sterilisation for women and men;
 - Crisis centres for women (to be separated according to gender);
 - Gender cases related to pension entitlements.
- xi. The Equality Authority in Ireland has actively participated to the advisory working group on a Gender Mainstreaming Strategy for the Health Service Executive (launched in 2013) and has provided policy advice in relation to the strategy as well as comments on the training guidance manual for implementing the strategy. The Equality Authority has strongly suggested the inclusion of transgender issues in the Gender Mainstreaming Strategy, in consultation with national transgender organisations.
- xii. The Equality Ombudsman in Sweden has taken various initiatives in the area of health care and the treatment of patients, in partnership with other national key actors such as the National County Council, the National Board of Health and Welfare. A booklet of good practices and a handbook will be finalised soon.
- xiii. The Danish Institute for Human Rights has published a report which clarifies the extent and scope of the prohibition of sex discrimination in access to goods and services, The prohibition has in Denmark a broader application than the Directive, as the Equality Act covers both public and private sellers and suppliers of goods and services and all areas of society (labour market being regulated in other pieces of legislation). The report has been sent to ministries, municipalities and other decision makers.
- xiv. The National Commission for the Promotion of Equality in Malta seeks to influence and inform policy-making on the implementation of gender equality in policies and programmes through gender mainstreaming. NCPE provides training to various stakeholders in this regard. Moreover, NCPE

developed a set of tools on gender mainstreaming with the aim of assisting policy makers to further safeguard and promote gender equality in different spheres, including the provision of goods and services.

II. Provision of recommendations to policymakers

The fact that the greatest majority of the equality bodies actively engage in providing recommendations to policy makers shows the importance attributed to policy influencing following assessment on the ground of existing policy gaps, needs and issues.

15 equality bodies indicated that they provide recommendations to policy makers⁴⁰.

Some examples are as follows:

- i. The Equality Commission for Northern Ireland provides recommendations in response to consultations, in the development of strategies and by developing policy positions in general.
- ii. The Office of the Commissioner for Administration (Cyprus Ombudsman) has provided legal opinions in writing which will have a policy impact (e.g. the definition of ‘new contract’), especially in relation to gender as a factor in the calculation of premiums for males and females.
- iii. The Equality Authority in Ireland has provided written submissions in relation to national policies and regulatory standards in the area of goods and services (for example, to the Health Information Quality Authority suggesting the introduction of equality standards in the health quality standards; submissions during the consultations for the establishment of the institution SOLAS, the new Further Education and Training Authority, etc.). The Equality Authority also provides policy guidance in relation to equality to the Public Sector Equality Learning Network through the organisation of training and seminars.
- iv. The National Commission for the Promotion of Equality in Malta provides assistance on policy drafting as well as giving recommendations and suggestions as to how the equality perspective can be mainstreamed in draft policies and national strategies. In effect, NCPE participates in consultation processes at a national level and gives advice to policy makers on various subject matters, including specific policies that are related to the provision of goods and services (e.g. the provision of childcare, school uniforms etc.)

From the outcome of the survey, it appears that policy work may stem from urgent issues related to legal compliance and the monitoring of complaints received but also to the ongoing engagement with different stakeholders in society, or a pro-active approach to mainstreaming equality in policy making and policy implementation.

The policy work of equality bodies does not appear, however, to be utilised to its fullest strategic potential and it could lend itself to a much greater strategic scope, in terms of strengthening the impact of the equality bodies’ work and availing of all the opportunities to influence policies at national, regional and local levels. The policy approach to gender equality and equality could play a much greater role in raising awareness on gender equality

⁴⁰ Ombud for Equal Treatment, Austria; Institute for Equality between Women and Men, Belgium; Office of the Commissioner for Administration, Cyprus Ombudsman; Public Defender of Rights – Ombudsman, Czech Republic; Ombudsman for Equality, Finland; Defender of Rights, France; Equal Treatment Authority, Hungary; Defender of Rights, Ireland; National Commission for the Promotion of Equality, Malta; Equality and Anti-Discrimination Ombud, Norway; Human Rights Defender, Poland; Commission for Equality in Labour and Employment, Portugal; Slovak National Centre for Human Rights, Slovakia; Equality Ombudsman, Sweden; Equality Commission for Northern Ireland, UK-Northern Ireland

and equality at institutional levels, and in preventing discrimination when issues of structural or institutional discrimination need to be addressed. In these instances, the individual legal redress system may not be the first choice of individuals affected by gender discrimination, because of the length and stress caused by the legal process. The importance of promoting gender mainstreaming and public sector duties could also play an essential role in further improvement in the field of goods and services, requiring public bodies to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their workplace, including having due regard to the need to eliminate discrimination and to advance gender equality.

III. Difficulties encountered in policy work

Equality bodies have underlined as a key challenge for policy work a notable lack of awareness by the general public and key stakeholders in relation to the application and implementation of the Directive on the principle of equal treatment between men and women in the access to and supply of goods and services.

The equality infrastructure set up by EU directives is in fact much more advanced in employment equality than in the equal treatment in the provision of goods and services. Equality in employment and in the labour market is therefore a better understood topic, as opposed to the relatively new area of goods and services.

The definition of goods and services may be also quite problematic as it may differ substantially in different national contexts and may not include both public and private providers and suppliers of goods and services or certain ‘functions’ of the government (i.e.. Ireland).

The issue of accountability of providers of goods and services in relation to equal treatment is quite complex because multiple actors may be involved in the final delivery of a certain product or service, and this may also include a variety of public and private actors, including government departments, contractors, privatised services.

Some equality bodies have highlighted the fact that gender equality is still misunderstood and gender inequalities are not fully acknowledged, in terms of public awareness. Furthermore, the lack of resources and staff for some of the equality bodies is still an issue in relation to their capacity of carrying out policy work,

Examples of factors influencing in a negative manner the policy work of equality bodies have been identified as follows:

- i. Complex research may be needed in order to produce robust policy or legal recommendations, and this could be very time-consuming and resource-intensive;
- ii. Equality bodies may not have sufficient staff and resources to dedicate to more effective policy work.
- iii. Not all equality bodies fully agree with the application of EU guidelines to the insurance industry (e.g. the definition of ‘new contract’), in relation the implications of the ‘Test Achats’ judgment.
- iv. There is a limited experience within national equality bodies in the area of gender in goods in services in general, as the implementation of this Directive is quite recent and there is only a limited amount of complaints lodged.
- v. The lack of a legal requirement for a positive duty towards equality and gender equality means that there is no effective obligation by government departments, regulatory bodies or other stakeholders to incorporate

policy recommendations made by an equality body into national policies, strategies, procedures and regulatory standards etc.

- vi. It has been observed a lack of follow-up by relevant authorities in relation to relevant policies.
- vii. In some countries, the actions by natural persons and other non-state entities are governed by private law and fall outside the direct competence of the equality body.
- viii. There is a lack of emphasis on developing positive action measures to overcome gender inequalities in goods and services
- ix. Time constraints are also an issue when reactions and recommendations are requested in a short period of time

Research work

As part of their mandate, many equality bodies often conduct or commission surveys or research projects and produce also other qualitative evidence as part of their research work.

Research has a pivotal role in documenting and highlighting gender inequalities as well as in informing the development of positive action measures to address them. Research can be used effectively to give visibility to groups experiencing discrimination and can provide an opportunity to engage more robustly with key policy and decision makers at EU and national levels, as well as being a useful tool for raising awareness amongst the public in general.

Equality bodies may initiate research for general as well as for very specific reasons. These may include, among others, the need to document experiences of gender discrimination through qualitative or quantitative evidence, the need to strategically support policy, promotional and informational work as well the need to support certain sectors requiring specialised or technical expertise. There is very little research, however, produced regarding the prevalence, nature and type of gender discrimination in specific sectors providing goods and services.

I. Rationale for research work

Equality bodies' representatives were asked what their equality body is trying to achieve by conducting or commissioning research and by producing evidence related to the equal treatment between men and women in the access to and supply of goods and services.

Feedback was provided by 14 equality bodies⁴¹, and eight respondents stated that they had carried out specific research in the area of gender equality and the provision of goods and services⁴².

For those equality bodies who have produced research in this field, the main rationale is quite multi-faceted: it might be linked directly to the specific mandate of the equality body; it may aim at documenting experiences of gender discrimination, either through qualitative or quantitative evidence; it may also aim at supporting strategically the policy, promotional and informational work of equality bodies or the legal processes through expert opinions; finally, it may be used to document examples of best practice and to inform public debates or public campaigns.

The commissioning of research may also be linked to the lack of a specialised or technical expertise within the equality body itself, therefore giving rise to the need of the external procurement of expert opinions.

Responses focused on the following research aims:

- i. Building an authoritative body of evidence on the nature and extent of inequalities and discrimination on the gender ground. (Equality Authority, Ireland)
- ii. Developing measures that may help to prevent discrimination and provide good practice examples for a variety of stakeholders engaged in the fight against discrimination. (Federal Anti-Discrimination Agency, Germany)
- iii. Producing expert legal opinions. (Austrian Ombud for Equal Treatment, Equality Ombudsman Sweden)
- iv. Informing the public and raising awareness about the state of play with regard to discrimination and equal treatment in society. (Office of the Public Defender of Rights, Czech Republic)
- v. Collecting and disseminating information on the situation of various groups that experience discrimination in order to stimulate an informed public debate on equal rights and provide public relations material for target audiences (Federal Anti-Discrimination Agency, Germany).
- vi. Identifying gaps in current research in the field of discrimination and anti-discrimination. (Federal Anti-Discrimination Agency, Germany).
- vii. Documenting discrimination through the promotion of national surveys on discrimination.(National Council for Combating Discrimination, Romania)
- viii. Promoting and supporting equal treatment of all persons without discrimination on the grounds of sex in the access to and supply of goods and services. (Equal Treatment Authority, Hungary)
- ix. Compiling information on cases of discrimination in order to gain further knowledge and to be better able to address discriminatory attitudes and practices (National Commission for the Promotion of Equality, Malta).

⁴¹ Ombud for Equal Treatment, Austria; Office of the Commissioner for Administration, Cyprus Ombudsman; Public Defender of Rights – Ombudsman, Czech Republic; Ombudsman for Equality, Finland; Defender of Rights, France; Federal Anti-Discrimination Agency, Germany; Office of the Ombudsman, Greece; Equal Treatment Authority, Hungary; Equality Authority, Ireland; National Commission for the Promotion of Equality, Malta; Equality and Anti-Discrimination Ombud, Norway; Human Rights Defender, Poland; National Council for Combating Discrimination, Romania; Equality Ombudsman, Sweden

⁴² Ombud for Equal Treatment, Austria; Public Defender of Rights – Ombudsman, Czech Republic; Federal Anti-Discrimination Agency, Germany; Equal Treatment Authority, Hungary; Equality Authority, Ireland; National Commission for the Promotion of Equality, Malta; National Council for Combating Discrimination, Romania; Equality Ombudsman, Sweden.

II. Actions for research work

Six equality bodies⁴³ highlighted that, while they are gradually promoting more research with regard to the provision of goods and services, only a few pieces of research work seem to focus specifically on the equal treatment of men and women in the access and supply of goods and services.

For example, the Office of the Public Defender of Rights in Czech Republic has recently concluded a survey into the accessibility of financial services for the elderly and considers that this research methodology could be applied to gender research in the field of good and services.

In other countries, such as Northern Ireland (UK), the Equality Commission updates key inequalities research on a rolling basis, while the Austrian Ombud for Equal Treatment focuses its research work on expert opinions (e.g. on liabilities and on gender performance) as well as promoting a survey on the compliance of housing advertisements according to the principle of non-discriminatory advertisement.

The Federal Anti-Discrimination Agency in Germany produced an expert opinion on The Discrimination Ban and Justifications for Discrimination in the Conclusion of Insurance Contracts with Private Carriers and a factsheet based on such expert opinion⁴⁴.

The Equality Authority in Ireland has promoted the collection of official data on discrimination in employment as well as on the access to goods, services and facilities. Nationally representative surveys of discrimination among the adult population were carried out by the Irish Central Statistics Office in 2004 and 2010. These surveys examined reported discrimination in work, job search, as well as in seven service domains: health services; shops/pubs and restaurants; financial services; housing and accommodation; education; transport; and other public services. On foot of these surveys, a number of research reports have been produced in relation to goods and services, and provided some insight on experiences of discrimination on the gender ground (often at the intersection with other grounds).

The first study⁴⁵ showed that women were much more likely to report discrimination on marital and family status grounds and, to a lesser extent, on the gender ground. Forty-five per cent of reports of gender based discrimination came from men, predominantly in relation to financial services. Age, nationality/ethnicity and disability were more commonly cited by men as the perceived grounds of discrimination. In services, women were more likely to say they had been discriminated against in accessing health services while men were more likely to say they experienced discrimination accessing financial services such as banking and insurance. Lone parents, who are predominantly women, have one of the highest probabilities of reporting discrimination in relation to the services domain, with housing/accommodation, transport and other public services standing out as contexts in which lone parents are most likely to experience discrimination.

⁴³ Public Defender of Rights – Ombudsman, Czech Republic; Ombudsman for Equality, Finland; Federal Anti-Discrimination Agency, Germany; Equal Treatment Authority, Hungary; Equality Authority, Ireland; Equality Commission for Northern Ireland, UK-Northern Ireland

⁴⁴ Univ.-Prof. Dr. Christian Armbruster (2010) *Benachteiligungsverbot und Rechtfertigungsgründe beim Abschluss privatrechtlicher Versicherungen*

⁴⁵ Helen Russell, Emma Quinn, Rebecca King-O’ Riain and Frances McGinnity (2008) *The Experience of Discrimination in Ireland: Analysis of the QNHS Equality Module*. Dublin: The Equality Authority and the Economic and Social Research Institute.

The second study⁴⁶ found that women are more likely to experience discrimination overall than men. Similarly to the previous research in 2008, women were more likely to experience discrimination in health and education, and men in financial services. Women comprised two thirds of those who report discrimination specifically on the gender ground. In many specific service domains, lone parents reported higher rates of discrimination. The statistical models indicate that this is mainly accounted for by their education profile, housing tenure and other characteristics. The one exception is in accessing other public services, which includes social welfare services, where there remains an independent impact of lone parenthood even when these factors are controlled for. Significantly, lone parents are also more likely to report that service-related discrimination has a serious impact on their lives.

In Malta, further to the enforcement of Legal Notice 181 of 2008 ‘Access to Goods and Services and their Supply (Equal Treatment) Regulations’, Ministries and departments were requested to identify any policies and practices which were not in line with this legislation, as well as propose solutions or amendments to safeguard gender equality in the access to and supply of goods and services. The National Commission for the Promotion of Equality in Malta collected these submissions by Ministries and departments within the public administration in an effort to monitor the implementation of this legislation.

III. Gaps in the research work

Despite the growing body of work, there is still a need to recognise and fill the gaps. Apart from the general scarcity of research produced in the area of gender inequalities in the access and supply of goods and services, eight respondents⁴⁷ also identified specific thematic gaps which are related to the need for a correct interpretation of the Directive, the need for more sector-specific research, the need to document issues of multiple discrimination (at the intersection of gender and other grounds) and understand the causes of under-reporting.

Some of the equality bodies reiterated the need to allocate more resources and more specialised staff to research work (e.g. Office of the Public Defender of Rights in Czech Republic, Ombudsman for Equality in Finland, Equality Authority in Ireland)

Some of the examples around specific research gaps included:

- i. The need for research with regard to the interpretation of the Directive itself, i.e. specifically how narrowly paragraph 16 in the preamble and article 4.5 of the goods and services Directive should be interpreted (e.g. in relation to services available only to men or only to women, such as women-only driving schools, women-only areas in hotels; free entry of women into restaurants and clubs, etc.).
- ii. The need to promote more research to ascertain reasons for under-reporting of gender discrimination in the area of goods and services.
- iii. The need to have sufficient literature, e.g. in the form of legal comments, on this issue and the need to have case-law, especially on the issue of sexual harassment in the field of goods and services.

⁴⁶ Frances McGinnity, Dorothy Watson and Gillian Kingston (2012) *Analysing the Experience of Discrimination in Ireland: Evidence from the 2010 QNHS Equality Module*. Dublin: The Equality Authority and the Economic and Social Research Institute.

⁴⁷ Ombud for Equal Treatment, Austria; Public Defender of Rights – Ombudsman, Czech Republic; Ombudsman for Equality, Finland; Federal Anti-Discrimination Agency, Germany; Equal Treatment Authority, Hungary; Equality Authority, Ireland; National Council for Combating Discrimination, Romania; Equality Commission for Northern Ireland, UK-Northern Ireland

- iv. The need to promote national surveys with focused studies in key sectors, through the appropriate allocation of resources and staff to equality bodies.
- v. The need to research multiple discrimination experiences of women at the intersection of gender and ethnicity, with regard to access to schools, police, use of public administration and health care;
- vi. The need to collect empirical data on transgender and intersex persons and their experiences of discrimination; common stereotypes on transgender and intersex people in society in general; the role of ‘self-help’ organisations for transgender and intersex people in supporting victims of discrimination, and the issue of access to those organisations; the nature and impact of media representations in relation to transgender and intersex people and the need to challenge these stereotypes;
- vii. The need to promote research on sexual harassment from a multiple discrimination perspective.
- viii. The need to have both quantitative as well as qualitative data.

IV. Difficulties encountered in doing research work

The analysis of the feedback in relation to the difficulties encountered with regard to research activities overlaps to some extent with some of the issues already outlined in relation to the identification of research gaps. The lack of economic and staff resources to ensure adequate research work is identified as central difficulty.

The correct interpretation of the Directive in different national contexts remains a problematic and controversial point, together with a lack of awareness by the public and by key stakeholders in the area of gender discrimination in the access and supply of goods and services, specifically with regard to the legal and policy frameworks. Concerns were also expressed in relation to the lack of research in key sectors providing goods and services, and the limited evidence related to sectors like housing, education, healthcare etc. Different definitions of what constitute a service in national legislations, may also pose challenges.

The interpretation of the Directive is also considered challenging with regard to the equal treatment of transgender people.

As mentioned earlier, national equality bodies are often guided in their work by the nature of the complaints received. In this context, the scarcity of specific complaints related to the implementation of the Directive to-date, may not strongly support or warrant the rationale for further research in this area from a strategic point of view. On the other hand, Equality bodies have highlighted several times through the survey that there is a substantial lack of awareness and knowledge about the Directive.

Equality bodies commented as follows on their challenges regarding the research work:

- i. There is no uniformity in the interpretation of the Directive. There are different interpretations in different countries. (Ombudsman for Equality, [Finland](#))
- ii. The awareness that gender equality is a topic that not only applies to women and men, but also to transgender and intersex persons, often seems limited. Moreover, it is difficult to capture the public attention by launching information on transgender and equal rights, as this issue is often perceived as marginal and not very common or important. (Federal Anti-Discrimination Agency, [Germany](#))

- iii. More focused studies within key sectors of supply of goods and services are needed, as well as more staff and resources dedicated to carrying out research. (Equality Authority, Ireland, National Commission for the Promotion of Equality, Malta)
- iv. In the same manner, the lack of staff resources has been highlighted by several respondents. (Austrian Ombud for Equal Treatment, Office of the Public Defender of Rights, Czech Republic)

Promotional work

Promotional work involves equality bodies in activities that stimulate and support good practices in promoting equality and combating discrimination within the organization, including accommodating diversity. Promotional work involves practical, hands-on advice and often working together with the providers of goods and services. This work is of fundamental importance as underreporting is perceived as being quite high in the particular area of goods and services.

I. Assisting providers of goods and services to promote good practice

Not all equality bodies provide assistance to providers of goods and services with a view to promote good practices. This may also be due to lack of resources and staff specifically allocated for carrying out this type of actions.

In general, most of the equality bodies inform the providers on the provisions of their national laws and they include gender in their multi-ground promotional work with providers of goods and services.

The National Commission for the Promotion of Equality in Malta awards the Equality Mark Certification to companies that truly foster gender equality at the workplace, following an assessment of respective policies and practices. In this regard, one of the criteria assessed is gender equality in the access to and supply of goods and services. In fact, through this certification, NCPE ensures that any goods and/or services supplied and/or managed by the organisation are equally accessible to men and women as stipulated in Directive 2004/113/EC. Furthermore, NCPE provides training to employers, employees and providers of goods and services to inform them on their rights and responsibilities related to gender equality in the access to and supply of goods and services. Training sessions are provided to any groups that request such training.

II. Difficulties encountered in promotional work

Key challenges encountered in ensuring activities that stimulate and support good practices in promoting equality relate to the difficulty to get the attention and interest of providers of goods and services for economic reasons. In the area of goods and services often economic reasons prevail over fearing legal consequences or damage claims. It can be said that in the area of goods and services it pays off to discriminate (especially in the field of gender specific pricing and marketing). An entrance fee of a few euros will not hold against the costs to be spent by the potential victim of discrimination or the equality body willing to take legal action. This difficulty to engage with providers

could be challenged if penalties were dissuasive enough to counteract the perception and belief that it pays off to discriminate.

Another prominent barrier is the lack of knowledge of the various parties involved. A significant number of providers of goods and services fail to recognise and subsequently curb discriminatory attitudes and practices in this regard. The Finnish Ombudsman for Equality refers for example to the poor knowledge about the Equality Act among providers of goods and services. It is not uncommon that e.g. a restaurant owner believes that the Equality Act does not concern restaurants. Students studying to become e.g. hairdressers are not provided with a basic knowledge of the Equality Act. Consequently, young entrepreneurs are not necessarily aware that pricing according to sex is against the law. The Office of the Commissioner for the Administration (Cyprus Ombudsman) commented on the very technical knowledge that is needed especially in relation to insurance, finance, medical and taxation services in order to provide targeted information and guidance to service providers. Moreover, stereotypical attitudes on gender roles in relation to goods and services may be ingrained and deep-rooted, thus making it more difficult for service providers to acknowledge that particular practices are discriminatory.

Both the Equality Authority in Ireland and the Equality Ombudsman in Sweden advocate for implementing the process of gender mainstreaming (or equality mainstreaming) in the goods and services. Equality mainstreaming in Ireland has been weaker in general in service provision than in workplaces and Further Education and Training (FET) programs. In the absence of a positive duty in the current legislation, it is harder to promote good equality practices in service provision due to possible resource implications for service providers.

Communications work

The lack of awareness in the general public, as well as by providers and consumers of goods and services, on the existence and extent of equal treatment provisions in the field of goods and services is at the centre of many of the difficulties in working in this area. It is therefore of key importance the role played by equality bodies in informing people who might experience discrimination, as well as providers of goods and services, in order to build a culture of equality and rights and a shared understanding of equal treatment in the field of goods and services.

I. Communications activities

Most of the communication practices on equal treatment between men and women in the access to and supply of goods and services are incorporated in broader practices linked to gender equality and equal treatment in general. Therefore, we considered in this section both specific practices which focus in particular on equal treatment between men and women in the access to and supply of goods and services as well as general practices which include this topic in a larger equality and multi-ground framework.

A first essential element underlined by equality bodies is the extent to which the equality body is mandated to undertake such communication work. In some Member States, the provision of information on equal treatment

matters is clearly a part of the mandate of the equality body. Other equality bodies mentioned that they do not have neither the competence nor the mandate to deal with such communication work. In the same manner, the scope of the mandate of the equality body can have an influence on the extent and impact of the communication work. For instance, equality bodies that only have the competence to deal with discrimination cases in the public sector, do not have the competence to reach private parties.

Regarding the communications channels used by the equality bodies to undertake communication work, most of them use their websites and send newsletters to share information and updates on their work. Traditional media such as television and radio have been highlighted as means of promoting their message. Social media such as Facebook and Twitter have also been indicated as ways of providing information.

One type of communication work which has been highlighted by equality bodies is the direct information to the public on their rights. Several equality bodies communicated on the topic of goods and services by launching information campaigns. The Greek Ombudsman is currently launching a radio campaign on the promotion of gender equality and one of the aspects of this campaign will focus on the access to and supply of goods and services. This campaign will take the form of radio spots and will convey messages regarding the prohibition of sexual harassment in the provision of transport services, healthcare, education and security, and the prohibition of different treatment in taxation, funding opportunities and professional support.

The Federal Anti-Discrimination Agency in Germany dedicates one entire year to each one of the grounds of discrimination covered by the General Equal Treatment Act; therefore FADA launches research projects, workshops, conventions, and other events focusing on one specific ground of discrimination per year. The 2012 thematic year focused on discrimination based on age, the 2013 thematic year was dedicated to discrimination based on disability and the 2014 thematic year is about discrimination based on ethnic origin. The 2015 thematic year will be on gender. Within the thematic years, FADA works closely with civil society organisation and in 2015 organisations dealing with various issues on equal treatment of men and women will be involved. Among other focal points, there will be research projects on the subject and a symposium will present and discuss the results of that work.

Different types of information mechanisms have been set up, such as information centres or telephone lines. In Hungary, the Equal Treatment Authority launched, in the framework of the TAMOP-5.5.5 programme, a network of county-level equal treatment consultants who provide information to the victims of discrimination and raise awareness on equal treatment issues by creating partnerships with media and administrative and civil bodies. This network of consultants is competent for equal treatment and general, including the access to and supply of goods and services. Another example is provided by the work of the Equality Authority in Ireland, which provides information to the public through a telephone service with a voice mail option and the possibility to talk directly to a communications officer, an e-mail contact address, provisions of materials through Citizens Information Centres and City and County Libraries are means of providing information to the public.

The Equality Authority of Ireland has also produced information booklets in plain English, different languages and accessible formats on the equality legislation provisions (also in relation to specific service provision, such as health services and schools).

In Sweden, an information service responds to questions regarding equal treatment between men and women, including on the access to and supply of goods and services. The purpose of the information service is threefold: to give information about the discrimination legislation in Sweden, to give support regarding what constitutes discrimination to people wanting to make complaints of discrimination and finally to give support to the public as it is their duty as a governmental authority. The information service receives more than 4500 calls and more than 2000 e-mails/letters every year. According to the assessment of the Swedish Equality Ombudsman, questions regarding gender equality in access to goods and services seem less frequent than for instance questions regarding equal pay regardless of gender, the right not to be treated less favourably due to pregnancy or being a parent in the workplace or the right to access goods and services regardless of race or ethnicity.

Leaflets have been created by some equality bodies to promote information on equality rights. The Austrian Ombud for Equal Treatment produced for example a leaflet on sexual harassment targeting girls and young women. This leaflet was spread in around 500 education and youth work institutions.

Targeted communication and interaction with providers of goods and services is also part of the ordinary work carried out by equality bodies.

Equality bodies support providers of goods and services by:

- i. Providing advice in specific cases such as the common statement that the Ombudsman for Equality in Finland gave together with the Finnish Competition and Consumer Authority on the effects of the Directive on hairdressers and barbers. This statement was widely distributed. In 2011, the Austrian Ombud for Equal Treatment, representatives from the Equal Treatment Commission and Austrian representative of the hairdresser's guild met at the Austrian Federal Economic Chamber to discuss the issue of gender neutral pricing. The Austrian Ombud published a recommendation on this topic.
- ii. Informing service providers on how to prevent and avoid discriminatory behaviours. In 2012, the Austrian Ombud for Equal Treatment attended one of the meetings of the regional representatives of the Austrian driving schools and gave an informative seminar on sexual harassment in the context of driving lessons. The initiative especially focused on how to avoid such incidents and on the issue of liability. The Austrian Ombud then published a recommendation on this topic.
- iii. Organising seminars and workshops with a focus on mapping the current situation of gender equality and gender stereotypes (e.g. the Slovak National Centre for Human).
- iv. Establishing working groups on specific topics. The Defender of Rights in France has just launched a working group on sport and discrimination that will focus some of its work on gender stereotypes in particular;
- v. Sharing good practices via training sessions. The Equal Treatment Authority in Hungary has also launched an accredited training series based on a curriculum and study materials designed by itself. The law modules

were taught by lawyers active in the area of enforcement, while the instructors of the sensitivity modules were trainers with specialised skills. A legal awareness and sensitivity assessment was conducted among the participants before the training and immediately after, and a follow-up was then carried out a year and a half later, to continue to provide quality assurance. As part of the training programme, regional workshops with hundreds of participants were held, which gave public administration employees and civil organisations representatives the opportunity to express their needs and expectations to the Authority. At the experience-sharing conferences, held in Budapest with the involvement of the Authority's partner authorities and civil organisations, the most important objective - apart from sharing and disseminating knowledge, - was to present best practices that reduce the discrimination risks for groups with protected characteristics;

- vi. Exchanging experiences and best practices with NGOs (e.g. the Slovak National Centre for Human Rights)
- vii. Promoting diversity charters. On 14th February 2013 new companies have signed up to a Diversity Charter in Poland during the conference Polish Diversity Charter. Responsible Business Forum, which is the coordinator of the Diversity Charter in Poland has drafted and finalised the Charter text in conjunction with the Ombudsman (Human Rights Defender in Poland);
- viii. Disseminating to target audiences good practice guides (e.g. the Equality Commission for Northern Ireland (UK-Northern Ireland); the Equality Authority in Ireland; the Austrian Ombud for Equal Treatment sent a brochure on discrimination in the field of housing to various advice centres and public institutions dealing with tenancy law.
- ix. Via various types of media (e.g. the National Commission for the Promotion of Equality in Malta publishes articles on printed media on a regular basis, as well as participates in programmes on the broadcast media to address specific areas related to the provision of goods and services with the aim of informing stakeholders on their rights and responsibilities and to challenge stereotypes and discrimination).

II. Difficulties encountered in communications work

Equality bodies have underlined several difficulties and challenges which should be taken into account when it comes to communicate around the topic of equal treatment between women and men in the access to and supply of goods and services.

Difficulties

- i. First, the complexity of the topic of equal treatment between women and men in the access to and supply of goods and services makes it difficult to communicate with the public and especially with the groups at risk of discrimination. The simplification of complex concepts on discrimination (particularly indirect discrimination) in the provision of goods and services on the grounds of gender is not an easy feat for equality bodies. Among the obstacles underlined is the difficulty to communicate about the different levels of protection and the different discrimination grounds.

Furthermore, it was highlighted the difficulty to make the link between practical situations and the implementation of Directive 2004/113/EC. Similarly, the general low awareness on the topic by the public makes it difficult to elaborate an effective communication strategy. The general low awareness of the topic by the public as well as difficulties faced in providing factual examples of gender discrimination in this area makes it difficult to elaborate in an effective communication strategy.

- ii. Secondly and as a consequence of the abovementioned issue, the misinterpretation of the legal provision or the concept of gender equality has caused in an instance a high number of unfounded requests addressed to several equality bodies. The Hungarian Equal Treatment Authority underlined the increase of unfounded requests due to a misunderstanding of the concept. Equality bodies underlined that unfounded requests have the unfortunate consequence to jeopardise the credibility of the well-founded requests.
- iii. Thirdly, general material difficulties have also been mentioned by the working group members, such as budget cuts and current restructurings of equality bodies. Even if those challenges have a general negative impact on the work of the equality body, they have been mentioned as clearly impacting on the communication work.

Challenges

Equality bodies highlighted the difficulty to overcome the public acceptance of discriminatory practices linked to the access to and supply of goods and services. An example is the different prices at the hairdresser for men and women. Gender stereotypes are therefore a real obstacle to overcome when it comes to the strategic elaboration of communication work on this topic.

The potential conflict between contract law and freedom of business and the measures aiming at ensuring equal treatment is another challenge mentioned. The issue of freedom of contract and business is a counter-argument often utilised in this debate. Equality bodies have underlined that communicating on the topic of equal treatment in the access to and supply of goods and services implies that people have clearly understood the links between business practices and potential discriminations that may arise in this context.

As a consequence of the abovementioned challenges, it is necessary to develop innovative means and tools of communications to reach different audiences, and especially, the groups which are more likely to be discriminated against. Communication needs to be specific and to the point given that the subject matter can cover various facets on a wide range of goods and services.

The difficulties and challenges of communicating on goods and services clearly show the need for equality bodies to build a communication strategy on this topic, to raise awareness and to ensure a correct understanding on the equality issues at stake. The global impact that the access to and supply of goods and services has on the daily life makes it even more crucial to focus on innovative and specific communication tools that aim at building a shared culture of rights.

III. How to communicate efficiently

Several ways to ensure an efficient communication work have been highlighted by equality bodies.

Communicating on successful case law has been underlined as a way to communicate efficiently. Equality bodies have mentioned the Test-Achats case as one example of a successful case which has been shared with the public.

The exchange of information between equality bodies has been another helpful practice highlighted by equality bodies. In particular, the experience of other equality bodies on their way to interpret the Directive 2004/113/EC has been mentioned as a precious tool.

The cooperation with all the actors is crucial to ensure an effective communication work. Cooperating and working especially with the business sector has been highlighted as an effective way to communicate on the topic. In the same manner, cooperating with NGOs and consumers' organisations is essential, as they have an important role in bringing cases linked to this type of discrimination to the equality body, in addition to their role in informing people on their rights.

Some lessons can be learnt with regard to the role of the communication work:

i. Communication work is essential

Communication work is an essential part of the effective implementation of the principle of equal treatment between women and men in the access to and supply of goods and services. The effectiveness of such communication work implies a clear mandate of the equality body to have the competence to act in this field and to have the specific expertise and resources to ensure proper communication

ii. Targeting and involving all the stakeholders

Implementing the principle of equal treatment between women and men in the access to and supply of goods and services requires the good understanding and awareness of issues at stake and of rights and responsibilities of all actors and stakeholders. General communication to the public should be accompanied by specific measures, such as targeting groups at risk of discrimination and suppliers of goods and services.

iii. Overcoming the complexity of the topic by providing guidance and explanations

Communicating and raising awareness on the principle of equal treatment between women and men in the access to and supply of goods and services requires equality bodies to provide guidance and explanations in simple terms due to the specificity and the complexity of such topic. Obstacles such as the persistence of gender stereotypes and the general perception of the normality of certain discriminations (e.g. gender-based prices at the hairdresser) should be overcome by pedagogical and innovative tools, as well as the use of examples on factual instances of discrimination in the provision of goods and services.

iv. The exchange of information between equality bodies

Sharing experience, tools and advice on the interpretation of the Directive 2004/113/EC between equality bodies is key for an effective implementation of the same.

Notes

EQUINET MEMBER EQUALITY BODIES

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.at

BELGIUM

Interfederal Centre for Equal Opportunities
www.diversite.be and www.diversiteit.be

BELGIUM

Institute for the Equality of Women and Men
<http://igvm-iefh.belgium.be>

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudsman
www.ombudsman.hr

CROATIA

Gender Equality Ombudsperson
www.prs.hr

CYPRUS

Office of the Commissioner for Administration (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Office of the Public Defender of Rights
www.ochrance.cz

DENMARK

Board of Equal Treatment
www.ast.dk

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.svv.ee

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FINLAND

Ombudsman for Minorities
www.ofm.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Equal Treatment Authority
www.egyenlobanasmod.hu

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Irish Human Rights and Equality Commission
www.equality.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

ITALY

National Equality Councillor
www.lavoro.gov.it/ConsiglieraNazionale/

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

(FYRO) MACEDONIA

Commission for the Protection against Discrimination
www.kzd.mk/mk/

MALTA

National Commission for the Promotion of Equality
www.equality.gov.mt

MALTA

National Commission for Persons with Disability
www.knpd.org

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Human Rights Defender
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Immigration and Intercultural Dialogue
www.acidi.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.org.ro

SERBIA

Commission for the Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

National Centre for Human Rights
www.snslp.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.net

SPAIN

Spanish Race and Ethnic Equality Council
www.igualdadyndiscriminacion.org

SWEDEN

Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org



Co-funded by the PROGRESS Programme of the European Union

ISBN 978-92-95067-79-0

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