

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.