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Equal treatment between men and women in the access to and supply of goods and services


The European Parliament,

– having regard to Articles 19(1) and 260 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to Protocol No 1 on the role of national parliaments in the European Union,

– having regard to Protocol No 2 on the application of the principles of subsidiarity and proportionality,

– having regard to Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services,


– having regard to the judgment of the Court of Justice of the European Union of 1 March 2011 in Case C-236/09 (Test-Achats),

– having regard to the Council of Europe Convention on preventing and combating

3 OJ C 130, 30.4.2011, p. 4.
violence against women and domestic violence (Istanbul Convention), and Article 3 thereof defining ‘gender’ as ‘the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men’,

– having regard to the Commission communication entitled ‘A European agenda for the collaborative economy’ (COM(2016)0356),

– having regard to the European Implementation Assessment on Gender Equal Access to Goods and Services – Directive 2004/113/EC of January 2017 carried out by the European Parliamentary Research Service¹,


– having regard to the report of the European Network of Legal Experts in the Field of Gender Equality of 2014 entitled ‘Gender Equality Law in 33 European Countries: How are EU rules transposed into national law?’,


– having regard to the Court of Justice ruling in case C-13/94 that the right not to be discriminated against on grounds of sex may include discrimination arising from the gender reassignment of a person² as well as to the EU Fundamental Rights Agency’s LGBTI survey of 2014 and its report entitled ‘Professionally speaking: challenges to achieving equality for LGBT people’, all in the area of goods and services,

– having regard to the Commission proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426) and Parliament’s position of 2 April 2009 thereon³,

– having regard to its resolution of 19 January 2016 on external factors that represent hurdles to European female entrepreneurship⁴,

– having regard to Rule 52 of its Rules of Procedure,

– having regard to the report of the Committee on Women’s Rights and Gender Equality and the opinions of the Committee on Transport and Tourism and the Committee on Legal Affairs (A8-0043/2017),

A. whereas combating gender discrimination, both direct and indirect, in the field of goods and services is an integral part of the principle of equality between women and men,

¹ PE 593.787.
² ECLI:EU:C:1996:170. See also joint Council and Commission statement, Addendum to outcome of proceedings to the Proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services (st.15622/04 ADD 1).
³ OJ C 137 E, 27.5.2010, p. 68.
which constitutes a fundamental value of the European Union, and whereas both the Treaties and the Charter of Fundamental Rights prohibit any discrimination on grounds of sex and require equality between women and men to be ensured in all areas and in all EU Member States;

B. whereas Directive 2004/113/EC (hereinafter ‘the Directive’) extends the principle of equal treatment of men and women beyond the realm of employment and the labour market and into the field of access to and supply of goods and services;

C. whereas the Directive prohibits both direct and indirect discrimination based on sex in the access to and supply of goods and services which are available to the public, in both the public and private sectors;

D. whereas the Directive is applicable to all goods and services provided against remuneration, within the meaning of Article 57 TFEU and according to the relevant case-law of the Court of Justice of the European Union (CJEU); whereas remuneration must not necessarily be provided by those for whom the service is performed and it can be provided in a form of an indirect payment which does not necessarily involve the service recipient;

E. whereas the media and advertising sectors, education-related services and the services that are provided for within the private sphere are excluded from the scope of the Directive; whereas the Member States have the legislative competence to safeguard the equal treatment of women and men in other areas, and whereas in some cases national legislation goes further than required by the Directive by covering discrimination between men and women in media, advertising and education;

F. whereas the Directive has been transposed into national law in all 28 Member States; whereas, according to the Commission report, in 2015 intensive dialogue on the sufficient implementation of the Directive was still taking place with six Member States;

G. whereas in the Test-Achats ruling the CJEU concluded that Article 5(2) of the Directive works against the achievement of the objective of equal treatment between men and women; whereas that provision was considered to be invalid with effect from 21 December 2012 and as a result unisex premiums and benefits are mandatory in all Member States;

H. whereas the key problematic areas in the implementation of the Directive include an overly restrictive understanding of the notion of goods and services, broad and sometimes unclear justifications of unequal treatment on the basis of Article 4(5) and insufficient protection of women on grounds of maternity and pregnancy;

I. whereas in prohibiting discrimination it is important to respect other fundamental rights and freedoms, including the protection of private life and transactions carried out in that context and the freedom of religion;

J. whereas the Equal Treatment Directive proposed in 2008 would extend protection from discrimination on grounds of religion or belief, age, disability and sexual orientation beyond the labour market to social protection, including social security and healthcare, social advantages, education, and access to and supply of goods and services; whereas
the Council so far has not adopted its position on this proposal for a directive;

K. whereas, while the recent Commission communication entitled ‘European agenda for the collaborative economy’ represents a good starting point for promoting and regulating this sector effectively, there is a need to incorporate the gender equality perspective and reflect the provisions of the Directive in further analysis and recommendations in this field;

L. whereas realisation of the full potential of the Directive rests on efficient and consistent gender mainstreaming across the relevant sectors to which it applies;

M. whereas the work of the European Network of Equality Bodies is crucial for enhancing the implementation of legislation on equal treatment and coordinating cooperation and the sharing of best practices between national equality bodies across the EU;

General considerations

1. Is concerned that the application of the Directive is not uniform and varies across the Member States and that, despite progress achieved in this area, there are still challenges and gaps in its implementation that need to be addressed in some Member States and across certain sectors without delay; calls on the Commission to prioritise addressing in their dialogue with the Member States any remaining gaps in the implementation; stresses the Member States’ crucial role in implementing the EU legislation and policies and recommends that greater support from regional and local authorities as well as cooperation with civil society, together with guidance to industry from Member States, may be necessary in ensuring full implementation of the Directive;

2. Notes that the Commission has presented its report on the application of the Directive with a long delay since its first report in 2009;

3. Notes that, while the Commission report states that no specific difficulties have been signalled in implementing several provisions of the Directive, this statement is based on very few cases of discrimination reported, and that overall there is very limited information and that data collection in this area varies considerably at Member State level;

4. Underlines that one of the challenges encountered in some Member States is the low awareness about the rights and protections given to citizens as embedded in the Directive among policy-makers, service providers and citizens themselves; points out that the lack of public knowledge and awareness of the Directive and its provisions may result in a lower number of gender discrimination claims; calls on the Member States, the Commission and the relevant stakeholders to raise awareness, potentially in cooperation with consumer protection organisations, about the provisions of the Directive to enhance the perceived importance of equal treatment in the field of goods and services;

5. Notes that only some Member States have reported the existence of specific provisions on positive action; calls on the Member States to better integrate and promote provisions on positive action, which is based on a legitimate aim and strives to prevent or compensate gender-based inequalities, as outlined in the Directive;

Insurance, banking and financial sectors
6. Welcomes the implementation of the Test-Achts ruling in national legislation by the Member States and the fact that national legislation has been amended in a legally binding manner; points out that there are still challenges related to the conformity of national legislation with the ruling, for example in medical insurance schemes and in relation to the full elimination of discrimination on the grounds of pregnancy and maternity;

7. Highlights the equalising effect on pensions of the ruling which prohibited sex-based actuarial factors in insurance contracts and made unisex premiums and benefits mandatory in private insurance schemes, including pensions; notes that, while this ruling applies only to private schemes, the unisex rule in pensions constitutes a good practice in terms of reducing the gender pension gap; welcomes the decision of some Member States to go beyond the scope of the ruling by extending the unisex rule to cover other types of insurance and pensions, including occupational pension schemes, in order to ensure equality between women and men in these areas; encourages other Member States to consider following suit, if appropriate;

8. Considers that ensuring proper and full implementation of the ruling is crucial; calls on the Commission to monitor, by means of periodic reports, conformity with these rules in the Member States in order to ensure that any gaps are addressed;

9. Highlights that the Directive expressly prohibits the use of pregnancy and maternity as a way to differentiate in the calculation of premiums for the purposes of insurance and related financial services; calls on the Member States to make a greater effort and enhance clarity in protecting the rights and welfare of pregnant women in this field, to safeguard them against unqualified pregnancy-related costs, as pregnant women should not experience higher costs on the sole grounds of their pregnancy, and to raise awareness among service providers as to the special protection afforded to pregnant women; stresses, in particular, the need to ensure that transitional periods in different types of insurance, especially medical insurance, do not interfere with the rights of pregnant women to enjoy equal treatment throughout the period of pregnancy;

10. Reiterates that the right not to be discriminated against on grounds of sex may include discrimination arising from the gender reassignment of a person, and calls on the Commission to ensure that women and men are protected against discrimination on these grounds; highlights that the Directive offers protection in this regard and any further specification can be made in the national law of the Member States; points out, in this respect, that 13 Member States have not yet adopted direct legal provisions protecting transgender persons, who continue to experience discrimination in the supply of and access to goods and services, and points that including such provisions might contribute to raising awareness about the non-discrimination principle; calls on the Commission to monitor discrimination on these grounds in its future reports on the implementation of the Directive;

11. Regrets the persisting discriminatory practices against women and discriminatory practices linked to pregnancy, maternity plans and maternity in terms of access to services provided by the insurance and banking sectors;

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

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

**Transport sector and public spaces**

14. Notes that while the prohibition of harassment, including sexual and gender-based harassment, is embedded in national legislation, women and transgender and intersex persons continue to experience forms of abuse on means of transport on a systematic and frequent basis and there is a persisting need to enhance preventive measures against harassment, including raising awareness among the service providers;

15. Calls on the Commission and the Member States to facilitate the exchange of best practices in this area; calls for focusing on those preventive measures which are consistent with the principle of equality between women and men, as recommended for example in the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which are not limiting to women’s liberties and which concentrate primarily on addressing potential perpetrators rather than modifying women’s behaviour as potential victims; notes that the Istanbul Convention states that ‘the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women’ and, therefore, calls on the Member States and the Commission to follow this comprehensive approach in their policy aimed at eradicating violence against women, including the implementation of the anti-harassment provisions outlined in the Directive; calls on the Member States who have not yet done so to ratify the Istanbul Convention and on the Commission and the Council to advance the process of the EU’s accession to the Convention;

16. Regrets the fact that parents and carers of small children still face physical access barriers and other obstacles such as insufficient access to baby changing facilities on the premises of service providers; emphasises the need to safeguard the rights of both mothers and fathers to enjoy equal opportunities in the company of their children on the premises of service providers; highlights that equal treatment of both women and men, as parents and carers of small children, in the access to and use of services is crucial for gender equality in general as it promotes equal and shared responsibility for childcare between women and men; calls on the Member States therefore to raise awareness among service providers about the need to have equal and safe facilities for both parents...
available within their premises;

17. Notes moreover, that carers, predominantly women, have specific accessibility requirements and encourages the Commission therefore to consider all obstacles and constraints encountered by women as the main users of public transportation services and by carers in general, in accordance with the conclusions of the Fifth Conference on Women’s Issues in Transportation held in Paris in 2014; underlines that, despite research in this area, limited attention has been given to developing gender-specific policies in the transport sector; notes that integrating the gender-sensitive perspective into the early stages of planning and structuring of means of transport and other public spaces as well as conducting regular gender impact assessments constitutes a good and cost-efficient practice for eradicating physical barriers which undermine equal access for parents and carers of small children;

18. Points out that unequal treatment of women on the grounds of maternity or pregnancy, including breastfeeding on the premises of service providers, still persists across the Member States; considers that the protection of women on the grounds of maternity and pregnancy, including breastfeeding, as guaranteed by the Directive needs to be strengthened and fully implemented at Member State level; points out that service providers must comply with the Directive’s guiding principles and national legislation transposing it;

19. Calls on the Commission and the Member States to ensure that public transport vehicles and infrastructure are equally accessible and adapted to women and men, not only as end-users and passengers, but also as professionals working in the sector;

20. Calls on the Commission to assess airlines’ rules on allowing pregnant women to board flights, and on assisting them during flights, and to take steps to make airlines ensure a harmonised approach in this regard;

21. Calls on the Council to adopt Parliament’s position on the Passengers’ Rights Regulation as regards the obligation of airport handlers to return baby carriages to passengers immediately after disembarking, or to provide alternative means of transport to spare passengers from carrying children through the airport until they reach the baggage reclaim area;

22. Takes the view that offering a network of maternity-support services, notably crèches and pre-school and after-school services, is essential to help ensure that the principle of equality between men and women in access to goods and services is actually implemented; takes the view that this network should include a level of public services that meets the population’s needs;

23. Notes that discrimination and disparities are still being recorded in access to medical goods and services, which highlights the need to boost access to high-quality free public health services;

The collaborative economy

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

25. Notes that harassment poses a particular challenge for gender equality in the area of collaborative economy services; highlights that while the ‘zero-tolerance’ policy towards harassment adopted by many platforms constitutes a good practice to be further strengthened in the sector, there is a need for the platforms concerned to prioritise prevention of harassment and to consider creating clear procedures for users to report cases of abuse; stresses the need for clarification of the provisions of liability for providers of goods and services, including in instances of third-party harassment, and the connecting online platforms on the basis of the Directive;

26. Considers that those services offered within the collaborative economy which are available to the public and run for profit fall within the remit of the Directive and should, therefore, be consistent with the principle of equal treatment of women and men;

27. Notes in this context that, in the digital sphere, ‘profit’ does not necessarily mean money and that data is increasingly used as a counter-performance for goods and services;

28. Calls on the Commission to monitor the principle of gender equality in the collaborative economy in its future reports on the application of the Directive and to issue specific guidelines identifying good practices to safeguard equal treatment of women and men in the services offered within the collaborative economy;

**Differential treatment**

29. Points out that the application of Article 4(5) has proved to be a major challenge in the implementation of the Directive, constituting the grounds for the largest share of complaints received by the equality bodies in the Member States, mainly pertaining to the leisure and entertainment sector;

30. Emphasises that, despite the ambiguity surrounding the application of Article 4(5) of the Directive, the main purpose of this derogation is to create opportunities for further enhancing equality between women and men in the provision of goods and services;

31. Notes that there are divergent practices, e.g. as regards cases where services are offered to members of one sex only or where differential pricing is applied for the same services; highlights that the application of differential treatment should be assessed on a case-by-case basis with a view to evaluating whether it is justified by a legitimate aim, as specified by the Directive;

32. Encourages equality bodies and consumer protection organisations both to raise awareness about the limits and conditions for differential treatment among service
providers and to enhance awareness about the rights for equal treatment among service users, as it is often reported that users are not familiar with applicable provisions in the field of goods and services;

33. Considers that the relative lack of positive action based on Article 4(5) across Member States constitutes a gap in the implementation of the Directive; calls for the promotion of forms of positive action based on a legitimate aim in which there is a direct link between preferential treatment and the disadvantages to be prevented or eliminated, such as the protection of victims of sex-related violence in cases of single-sex shelters;

34. Reiterates its call on the Council to consider all possible avenues to ensure that the proposed Equal Treatment Directive is adopted without further delay, thereby guaranteeing comprehensive protection against discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation on an equal footing;

Recommendations on enhancing the application of the Directive

35. Calls on the Commission to prioritise addressing the transposition issues with the Member States concerned by means of concrete measures, and to support them in implementing the Directive in a more consistent manner;

36. Points out that, while equality bodies play a crucial role in monitoring and ensuring that the rights derived from the Directive are fully exercised at national level, their attributed competences in relation to the supply of and access to goods and effectiveness in fulfilling the designated goals varies; calls on the Member States to guarantee sufficient competence and independence in accordance with the provisions of the Directive and national law as well as sufficient resources for national equality bodies so they can fulfil their principal tasks in an effective way, which include providing independent assistance to victims of discrimination in pursuing their complaints, conducting independent surveys on discrimination, publishing independent reports and recommendations, raising awareness about the Directive and challenging stereotypes about gender roles in the supply of and access to goods and services; notes that national equality bodies should be adequately supported in the performance of their tasks, with regard to the promotion, monitoring and support of equal treatment in an independent and effective manner;

37. Calls on the Commission to enhance its cooperation with equality bodies in monitoring whether the relevant provisions regarding their competences are met in all the Member States and to provide support to systematically identify the main challenges and share best practices; calls on the Commission to gather best practices and make them available to Member States in order to provide the necessary resources for supporting positive action and ensuring better implementation of the respective provisions at national level;

38. Points out that access to justice for victims of discrimination could be improved by giving independent equality bodies the competences to provide assistance, including free legal aid, and the right to represent individuals in cases of alleged discrimination;

39. Calls on the Commission to closely monitor the effectiveness of national complaint bodies and procedures in the context of the implementation of the Directive and to
ensure that transparent and effective complaint mechanisms, including dissuasive sanctions, are in place;

40. Calls on the Commission, the Member States and equality bodies, potentially in cooperation with consumer protection organisations, to raise awareness about the provisions of the Directive among both service providers and users in order to implement the principle of equal treatment in this field and reduce the number of breaches of the Directive left unreported;

41. Calls on the Commission, given the persisting gaps in the practical application of the Directive, to ask the European Network of Legal Experts, in cooperation with equality bodies, to launch a comprehensive study, also taking into account intersectional forms of gender inequalities and multiple grounds of discrimination which include a variety of vulnerable social groups, to continue its monitoring activities and to support and encourage the Member States in collecting and providing data in order to realise the full potential of the Directive; calls on the Member States for improved comprehensive, comparable specific data collection on harassment and sexual harassment in the area of equal access to goods and services in order to differentiate between grounds of discrimination, and in this respect encourages enhanced cooperation with relevant institutions; calls on the Commission to establish a public database of relevant legislation and case law regarding equal treatment between women and men as a means to raise awareness about the application of the legal provisions in this field;

42. Points out that the field of advertising is linked to the area of goods and services, which are predominantly presented to consumers through advertisements; highlights the significance of advertising in the creation, retention and development of gender-based stereotypes and discriminatory portrayals of women; invites the Commission therefore to conduct a study on gender equality in advertising and to explore the need and possibilities to enhance equal treatment of women and men in the field of advertising and to promote best practices in this field; welcomes national regulations and guidelines on equality between women and men in the media, and calls on the Member States to strengthen these provisions where needed in order to ensure equal treatment of women and men;

43. Calls on the Member States to encourage dialogue with relevant stakeholders which have a legitimate interest in contributing to the fight against discrimination on grounds of sex in the area of access to and supply of goods and services;

44. Calls on the Member States and the Commission to integrate a sector-specific gender-mainstreaming approach in enhancing implementation of the Directive;

45. Calls on the Commission in monitoring and supporting the Member States in implementing the Directive to better coordinate the requirements of the Directive with the other equality directives;

46. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.