

EQUINET HIGH-LEVEL SEMINAR ON GENDER EQUALITY

Gender Equality in the Access to Goods and Services: the Role of Equality Bodies

Thursday, 24 April 2014, European Economic and Social Committee, Brussels



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Equinet warmly thanks the European Economic and Social Committee for having hosted this seminar, as well as all the speakers and participants for having contributed to the success of this event.

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BACKGROUND INFORMATION ON THE SEMINAR

PRESENTATION OF EQUINET

Equinet is the **European Network of Equality Bodies**, a membership organisation bringing together [41 equality bodies](#) from 31 European countries including all EU Members States.

Equality bodies are public organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality. They are legally required to do so in relation to one, some or all the grounds of discrimination covered by European Union law – **gender, race and ethnicity, age, sexual orientation, religion or belief, and disability**.

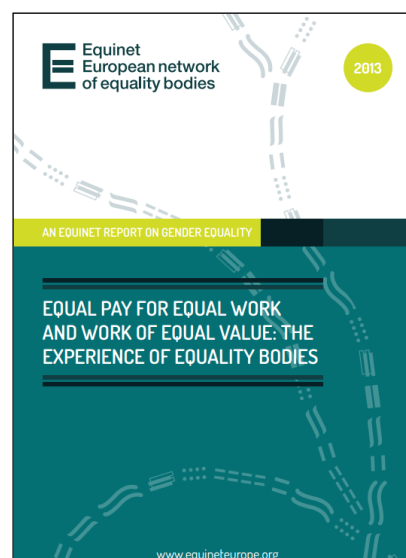
Equinet aims to enhance the strategic capacity of its members and to develop the skills and competences of their staff. Equinet also works to identify and communicate the learning from the work of equality bodies, and enhance their recognition and strategic positioning in relation to all stakeholders at European level.

EQUINET GENDER EQUALITY WORKING GROUP

In 2013, Equinet increased its range of activities by creating a new working group on gender equality, as a platform for staff members of equality bodies that are working on these issues. The working group ensures policy and legal analysis on key topics relating to gender equality, building on their everyday role in defending victims of discrimination on the gender ground. In its work a particular attention to multiple discriminations and intersectionality is ensured. It aims to enable discussion, reflection and action on the effective promotion of gender equality and to combat gender discrimination by equality bodies. The Working Group is moderated by Sandra Ribeiro from the [Portuguese Commission for Equality in Labour and Employment](#).

The working group published its first report in 2013 on the experience of equality bodies

on equal pay (available on our website by clicking on this [link](#)).



This year, the working group is preparing a report on the current situation in relation to gender equality in the access to goods and services and the experiences of equality bodies in supporting the implementation of the Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. This report aims to identify key challenges and good practices in the application of the Directive, assesses its effectiveness and impact, and suggests recommendations.

OBJECTIVES OF THE SEMINAR

This High Level Seminar aimed at sharing with EU level stakeholders experiences and expertise coming from equality bodies' work on the application of the Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services. It also aimed at providing equality bodies with an overview and a platform for dialogue on EU developments concerning the fight against gender inequalities.

The Seminar strived to:

- Allow an exchange between equality bodies, EU institutions and stakeholders on how to best cooperate for the promotion of gender equality in the access to and supply of goods and services.
- Present equality bodies' experiences in the implementation of the Goods and Services Directive 2004/113/EC.
- Provide a platform for discussion on key priorities, best practices and possible future developments at EU and national level.
- Position Equinet and national equality bodies' work in the field of gender equality at EU level



Equinet High-Level Seminar on Gender Equality

Gender Equality in the Access to Goods and Services: the Role of Equality Bodies

Thursday – 24 April 2014

VENUE

European Economic and Social Committee, Jacques Delors Building, rue Belliard, 1040 Brussels, room JDE 62 (6th floor)

AGENDA

08.30 - 09.00

Registration and Welcome

09.00 - 09.30

Opening Address

Jane Morrice - Vice-President, European Economic and Social Committee

Lina Papamichalopoulou - Head of Non-discrimination Policies and Roma Coordination Unit, Directorate for Equality, DG Justice, European Commission

Evelyn Collins – Chair of the Equinet Executive Board , Chief Executive of the Equality Commission for Northern Ireland

09.30 - 10.00

Setting the Scene: the Goods and Services Directive

Prof. Aileen McColgan, King's College London, UK National Expert on the European Networks of Legal Experts in the Field of Gender Equality and of Experts in the Non-discrimination Field.

10:00 - 10:10

Questions & Answers

10.10 - 11.20

SESSION 1 – The application of the Directive

Chair: Sandra Ribeiro, Moderator of Equinet Gender Equality Working Group, Equinet Board Member, President of CITE (Portugal)

10.10 -10.35

Equality bodies and the Directive: The Equinet Draft Report

Miroslaw Wróblewski and Stefania Minervino - Members of Equinet's Gender Equality Working Group

10.35 - 11.00

The European Commission Report on the Application of the Directive

Sophie Maletras – Equal Treatment Legislation, European Commission, DG Justice

11:00 - 11:20

Questions & Answers – Discussion

11:20 - 11:35

Coffee break

11.35 - 13.00 **SESSION 2 – The Experiences of Stakeholders**
Chair: Mari-Liis Sepper, Equinet Board Member, Gender Equality and Equal Treatment Commissioner (Estonia)

Videomessage from:

- MEP Marije Cornelissen, (NT, GREEN/ALE) Shadow Rapporteur for the European Parliament’s Report on the transposition and application of Council Directive 2004/113/EC
- MEP Zita Gurmai (HU, S&D) Rapporteur for the European Parliament’s Report on the transposition and application of Council Directive 2004/113/EC TBC

Stakeholders interviewed by equality bodies, including:

- Pierrette Pape, Acting Coordinator, European Women’s Lobby
- Richard Köhler, Senior Policy Officer, Transgender Europe

13:00 – 14:20	Lunch
14:20 - 14:30	Videos from campaigns on gender equality from Equinet members

14.30 - 16.30 **SESSION 3 – Ways forward**
Chair: Néphéli Yatropoulos, Equinet Board Member, Advisor on European and International Affairs of the Defender of Rights (France)

14.30 - 15.00	Insurance services and gender equality	<i>Yves Thiery</i> - Leuven University
15.00 - 15.30	Media, education and advertisement and gender equality	<i>Silvia Sansonetti</i> – Fondazione Brodolini/ENEGE

15:30 - 16:15	Questions & Answers – Discussion
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16.15 - 16.30	Closing of the seminar <i>Anne Gaspard</i> – Executive Director, Equinet
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Co-funded by the Employment and Social Solidarity – PROGRESS Programme of the European Union

SUMMARY OF THE SEMINAR



OPENING ADDRESS



Evelyn Collins, *Chair of the Equinet Executive Board and Chief Executive of the Equality Commission for Northern Ireland*, opened the Seminar by welcoming the participants and the European Economic and Social Committee (EESC). She underlined the very timely moment of the event due to the future report of the European Commission on the [Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services](#).

Jane Morrice, *Vice-President of the EESC*, introduced the role of the European and Social Committee in making the voices of the citizens heard in the European Union (EU). She underlined its core function: building the consensus between employers, employees and representatives of the civil society. She concluded by recalling that the article 1-4-1 of the Rome Treaty in 1957 was already mentioning the principle of equal pay between women and men, and that this fundamental right is far from being a reality today.

Lina Papamichalopoulou, *Head of Non-Discrimination Policies and Roma Coordination Unit (Directorate for Equality, DG Justice, European Commission)*, congratulated Equinet for the work made in the area of gender equality after the incorporation of the former Network of Gender Equality Bodies, which was previously facilitated by the European Commission. She underlined that the most successful achievement of the European Commission was the inclusion of provisions in the Directives for the creation of the equality bodies.

SETTING THE SCENE: THE GOODS AND SERVICES DIRECTIVE

Prof. Aileen McColgan, *King's College London, UK National Expert on the European Networks of Legal Experts in the Field of Gender Equality and of Experts in the Non-Discrimination Field*.

Prof. Aileen McColgan opened her presentation by underlining the rather modest ambitions of the Directive 2004/113, particularly compared to the text of the [Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin](#) (so-called "Race Directive"). She mentioned the specific reference made to

contractual freedom and the fact that the Directive does not apply to education, media and advertisement. Moreover, she pointed out that the article 50 of the Treaty of the EC and the recital 11 narrow the scope of the Directive. The application to healthcare is also limited.

Aileen McColgan referred to the 2009 report "[Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC](#)" issued by the European network of legal expert in the field of gender equality of the European Commission, which underlines the **limited coverage of transgender discrimination** and the **limited express protection of breastfeeding**. Regarding the definition itself of services, most Member States adopted a broad approach.

Only two cases were brought at the moment of the report, one of them being the **Test-Achats case**. Factors such as cost of litigation vs. attainable compensation, difficult use of relevant legislation, inadequate or unavailable legal, and the fact that some Member States never had provisions on the topic of goods and services can explain this **lack of litigation**.



Aileen McColgan recalled the content of the Article 12 of the Directive 2004/113 and the **responsibility of equality bodies in making sure cases are brought**. She underlined in this context the need for sustainable thinking about how to enforce provision whose enforcement may not be attractive to victims of discrimination. There is no “one size fits all” model, which means that the approach should be different for each area of goods and services. **All discriminations should be addressed**, even the ones which look “trivial”, such as hairdresser pricing.

Equality bodies have to think of different ways of enforcing the Directive by using for instance penal law and consumer rights. She also highlighted the importance of distinguishing differences of treatment which are not discrimination, as they aim at encouraging disadvantaged groups.

She pointed out that **gender equality is a horizontal obligation** and a constitutional principle of EU, not just ‘another ground of discrimination’. It should be therefore promoted proactively by all the Member States. She underlined the hierarchy of protection which gives to the ground of race/ethnicity a greater protection. As a future development, Aileen McColgan mentioned hoping a new directive on goods and services extended to other grounds.

SESSION 1: THE APPLICATION OF THE DIRECTIVE



Session chaired by **Sandra Ribeiro**, *Moderator of Equinet Gender Equality Working Group, Equinet Board Member, President of CITE (Portugal)*

Equality bodies and the Directive: the Equinet Draft Report

Ilaria Volpe, *Policy Officer (Gender Equality), Equinet Secretariat* & **Stefania Minervino**, *Development Officer, Equality Authority (Ireland)*

Ilaria Volpe and Stefania Minervino presented the main conclusions of the upcoming Equinet's report on the application of Directive 2004/113/EC. The report was built on the contributions of 21 equality bodies' members of Equinet.

3 lessons have been drawn from this consultation.

The need for equality bodies action

To ensure the effective implementation on the ground of the principle of equal treatment in access to and supply of goods and services, there is a need for equality bodies to **have mandate in this area** and for these bodies to be independent and effective. It is therefore necessary to monitor the **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. **It is not clear if all member states have duly designated an equality body to work in this area.**

The need for an effective implementation of the principle of equal treatment in the area of goods and services poses a challenge to **equality bodies to build a strategy to explore the potential of this Directive** and to make this Directive more effective. **Promotional work, communication work and research work** could be enhanced as tools to combat the high level of underreporting and low general awareness registered.

To finish, equality bodies need **independence and effectiveness** in order to pursue their mandate and ensure their role. Equality bodies reported on several occasions **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.

The need for further development of the legal framework

The feedback provided by equality bodies revealed quite a **heterogeneous 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. This implies a **variation in the interpretation of Council Directive 2004/113/EC**, which may cause both confusion and legal uncertainty in the work of equality bodies at the national level as well as for all persons subject to these provisions.

Therefore, in order to ensure a consistent implementation of the principle of equal treatment between men and women in the access to and supply of goods and services across the EU, there is a clear need **for further clarification of some provisions of the Directive** and for ensuring enhanced **harmonisation** of national laws.

In particular, it can be difficult to **interpret article 4.5 and recitals 16 and 17** allowing difference in treatment. For goods and services available to men only or to women only, or to both on a segregated basis, or to both with different prices or benefits: which aims are legitimate? Which means of achieving that aim are appropriate and necessary?

Since there is not much relevant case law on national and EU-level, it produces a risk of interpreting the exception too widely or too narrowly. At the same time, it is difficult for the service providers having to comply with the principle of non-discrimination to foresee if an initiative could be violating the principle.

As interpretation among equality bodies appears to vary considerably as regards goods and services available to men only or to women only, or to both on a segregated basis, or to both with different prices or benefits, **an authoritative interpretation would be welcomed** to the question as to how narrowly article 4.5 and preambles 16 and 17 should be interpreted. Of course **equality bodies have a joint responsibility** with the national and European courts as they need to take cases to the courts to generate case law.



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. 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.**
- In the same manner, 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**. It is important to ensure that all Member States include this area and that the definition of goods and services covers also healthcare-related goods and services.

- 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 so as to also protect more broadly gender minorities and not just persons who have undergone or are about to undergo gender reassignment surgery. However, there are still countries where the national anti-discrimination legislation protects only trans people who are undergoing or have already undergone gender reassignment surgery.

In the same manner, the typically lower material damage caused by discrimination based on sex or gender in the area of goods and services (compared with the field of employment) may explain why there are relatively few court cases on goods and services, and the lower level of **sanctions**. Nonetheless one may wonder whether the Directive's requirement of dissuasive, proportionate and effective sanctions is currently fulfilled.

The importance of **gender mainstreaming** and **public sector duties** could be an important further improvement of legislation in this field, 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 own employees, including having due regard to the need to eliminate discrimination and to advance gender equality.



Building a culture of rights

A clear need to **raise awareness and knowledge** about this Directive (in the public but also in the Courts) emerges in order to ensure the effectiveness of the principle of equal treatment between men and women in the access to and supply of goods and services.

- **Addressing under-reporting.** The area of goods and services seems to be particularly challenged by underreporting. Equality bodies could cooperate with women's associations, service provider networks, and relevant public bodies to play roles in establishing the

causes of and responding to under-reporting and in particular building awareness of rights and available remedies in this area.

- **Building a culture of rights.** It is essential to address public lack of knowledge about this Directive and to build public acceptance of importance of and implications of this Directive. Equality bodies can be key actors in this field, together with service provider associations, relevant public bodies and women's associations.
- **Developing a body of research** in this field as the area of goods and services can be considered relatively new to equal treatment provisions and therefore less researched upon. Experiences show the need to establish how and where discrimination is occurring in this field, its extent, how people are responding to it and its impact. Research is needed to support strong evidence and to build the case for legislation in this area and support for its effective implementation. This would raise public awareness, identify the impact on women and men and the specific impact on trans people and facilitate positive action measures.

The European Commission Report on the Application of the Directive

Sophie Maletras, *Equal Treatment Legislation, DG Justice, European Commission*



At the time of the Seminar, the report of the European Commission on the implementation of the Directive 2004/113 was at an early stage of preparation. The European Commission report is based on the feedback of the Member States, the legal experts of the gender network, Equinet, national equality bodies and other stakeholders. It will be **adopted by the end of the year**. A conference will be organised on 10th September 2014 to discuss the findings of the report.

Both conference and report will mainly focus on article 4(5) and article 5 of the Directive.

Sophie Maletras started her presentation by clarifying some aspects of the Directive 2004/113. She explained that its legal basis was initially on employment but the Amsterdam Treaty expanded it to article 19, which gives competence to the EU Member States to take the necessary measures to combat all types of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. She also clarified the notion of goods and services, which are **provided against remuneration**, and underlined that this also **includes health services**. In the same manner, media and advertisement have been excluded because of the conflict between gender equality and freedom of expression. Education is not covered by the Directive because

basic education does not constitute a service under the Treaty, but higher education might. The Directive is also not applicable to employment matters.

Article 4(5) deals with **differences of treatment and proportionality test**. Sophie Maletras referred to recital 16 of the Directive which gives examples of “legitimate aims” to justify differences of treatment. Recital 17 also refers to services which do not have to be provided on a shared basis as long as there is not gendered differentiation. It means that it is fine to gear services towards one gender, but services to the other gender as also to be offered.

Concerning **financial services and Test-Achats case**, in 2011, the European Commission published [guidelines](#) following the ruling, which state that the unisex rule is only applicable for new contracts concluded after 21 December 2012. The use of gender in insurances is not prohibited, only if the differentiation is made at the individual level.

Sophie Maletras recommended national equality bodies to disseminate **information and raise awareness** about the Directive, as well as to **provide support and encouraging reporting**. In this view, the European Commission supports exchange of information between equality bodies. They must be able to provide efficient, independent and quality support to victims of discrimination.

All Member States have notified implementation measures to the European Commission, including implementation of consequences of Test-Achats case. The European Commission is currently **assessing the compliance of national measures** with the provisions of the Directive.

SESSION 2: THE EXPERIENCES OF STAKEHOLDERS

Video message

MEP Marije Cornelissen (NL, GREEN/ALE), *Shadow Rapporteur for the European Parliament's Report on the transposition and application of Council Directive 2004/113/EC*



In her video message, Marije Cornelissen underlined that the work of equality bodies is highly valuable but underrated. Equality bodies are the one real resort for the people discriminated and ensure that the equal treatment legislation is a reality.

In particular, she underlined the fact that equal pay is still not a reality today in the EU, as well as equal treatment by banks, insurance and service providers. She advised equality bodies to make full use of the European elections campaigns and to get in contact with MEPs candidates.

Interaction exchange session with civil society organisations

Session chaired by **Mari-Liis Sepper**, *Equinet Board Member, Gender Equality and Equal Treatment Commissioner (Estonia)*

Pierrette Pape, *Acting Coordinator, European Women's Lobby* & **Richard Köhler**, *Senior Policy Officer, Transgender Europe*

Pierrette Pape (EWL) and **Richard Köhler** (Transgender Europe) exchanged their views on the experience of women's and trans' organisations on the principle of gender equality in access to and supply of goods and services.



The areas covered by the Directive

Both Pierrette Pape and Richard Köhler agreed on the lack of information on the Directive and the necessity to raise awareness.

Richard Köhler underlined the positive aspects of the directive, which covers a lot of area, is directly applicable and strengthens the role of equality bodies. However, he pointed out the importance of breaking stereotypes and promoting a culture of rights through awareness raising. He took the example of the health sector, in which 80% of transgender persons who ask funds for reassignment treatment are refused. He referred to the [Fundamental Rights Agency report on LGBT discrimination](#) (2012), which underlines the high level of discrimination in access to housing and the problems encountered by transgender people when they have to show their identity card. These problems existed before the Directive. It is difficult to talk about equal access to goods and services if some forms of discrimination are not covered by the Directive. He hopes that the provisions of article 12 could allow Member States to rethink the legal recognition procedure. The fact that public services are not covered by the Directive is also problematic when it comes to deliver identity documents. Therefore, gender identity and gender expression should be clearly included in the Directive.

Pierrette Pape underlined that the costs related to pregnancy and maternity leave should be bound on society. It is a positive aspect that maternity is mentioned in the Directive, especially in the field of insurance. For EWL, the absence of an EU definition of services is a problem. National authorities should involve more equality bodies and NGOs in the implementation of the Directive. She raised the issue of the many forms of discrimination in access to health and underlined that the Directive should protect all women, whatever their migration status is. In general, equality should be seen as a clear objective

Pierrette Pape pointed out the persistence of discriminations in media and education, and underlined the fact that they should be included in the Directive.

Cooperation with of NGOs with national equality bodies

Pierrette Pape highlighted the crucial role of equality bodies in spreading legal knowledge and bringing cases, and the importance of the cooperation between NGOs and equality bodies. Equality bodies have a broader perspective than NGOs on equality issues. She also underlined that equality bodies can compensate the problem of resources encountered by NGOs. Some equality bodies also address the issue of sexist advertisements, even if it is not in the Directive.

Richard Koehler took the example of the cooperation of Transgender Europe with the Belgian Institute for Equality between Women and Men, which published a study and launched an awareness raising campaign and policy recommendations on transgender people in Belgium. He also mentioned the example of the Greek Ombudsman, who intervened in the case of abuse at school from the director. The intervention of the Ombudsman allowed an understanding and support to the victims.

Regarding the main causes of underreporting, he mentioned that intersectionality between different grounds of discrimination should be practically addressed.



The need to break stereotypes and promote a culture of rights

Both highlighted the need to break stereotypes in access to goods and services. Pierrette Pape mentioned that most of the time, culture of the society does not even think that there can be stereotypes. Stereotypes are persistent against women, especially pregnant, migrant and entrepreneurs women. Even if there is no direct discrimination, there can be indirect discrimination. She took the example of a café only frequented by men, not because it is

forbidden to women, but because stereotypes and culture of the society give more public space to men.

Richard Koehler also highlighted that visibility is a huge issue. Transphobia comes from a lack of knowledge and needs to be address by awareness raising and communication work.

VIDEOS FROM EQUALITY BODIES ON GENDER EQUALITY



[Pipe Up](#) – Equality Human Rights Commission (UK) [10:30]



[Oost West Thuis Best – Coups Bas, Prends Ca](#) – Institut pour l’Egalité entre les Femmes et les Hommes (BE) [03:20]



[Parentalidade](#) – Comissão para a Igualdade no Trabalho e no Emprego (PT) [00:27]



[What do kids think? \(Hospital nurse\)](#) – Equality Human Rights Commission (UK) [00:44]



[Ryst Posen](#) – Danish Institute for Human Rights (DK) [01:07]



[Viol – Brisez le Silence](#) – Institut pour l'Egalité entre les Femmes et les Hommes (BE) and Belgian Federal Police [01:51]

SESSION 3 – WAYS FORWARD

Session chaired by Néphéli Yatropoulos, *Equinet Board Member, Advisor on European and International Affairs of the Defender of Rights (France)*



Insurance Services and Gender Equality

Yves Thiery, Leuven University

Yves Thiery started his presentation by explaining the potential conflict between gender equality and the right of insurers to differentiate prices. Insurance is based on differentiation between low and high risks. Differentiation can be discrimination if it is based on discrimination grounds which are immutable (gender, age, disability, health status, sexual orientation, religion and race). Women and men should be treated differently only if they are in **incomparable situations that have nothing to do with gender**. There is therefore a conflict between the right not to be discriminated and the need for adequate and affordable insurance.

The **roots of the conflict** are to be traced back to an opposition between the right of the individual not to be discriminated against on the basis of certain characteristics such as age, health, gender, etc. and the right of the insurer to divide risk in to homogeneous risk groups. For example, common statistics indicate that on average, young men have a higher probability of being involved in a car accident. Consequently, a young man who wants to conclude motor vehicle liability insurance is considered to be a higher risk than a woman or older man, and therefore will pay a higher premium. A single young man and a single woman with the same loss-probability will receive the same damage amount after a given accident, but the young man with a comparable risk-profile will have paid more for it. Therefore, there is an inequality or an unequal treatment between the individual woman and the individual man.

Before the Test-Achats case and for the contracts concluded before 21 December 2012, gender had a direct influence on pricing/benefits in life insurance. After 21 December 2012 (“new contracts”), no exemption from the rule of unisex premiums as incorporated in article 5.1 2004/113/EC Directive was possible.

The **conclusions on the Test-Achats of the Advocate General of the Court of Justice of the EU Juliane Kokott** underlined that justification for direct discrimination on the grounds of sex is conceivable only in limited circumstances, and has to be carefully reasoned. For instance, different life expectancy, difference in inclination to use medical services, different propensity to take risks when driving merely come to light statistically, but it does not suffice.

Habits of each individual and economic and social circumstances are relevant, but much more difficult to verify. Those practical difficulties alone do not justify the use of sex as a differentiation factor. Clearly demonstrable biological differences between sexes could be considered as justification grounds, whereas purely financial considerations such as danger of an increase in premiums do not constitute justification ground. AG Juliane Kokott concluded her opinion by mentioning that the use of actuarial factors based on sex is incompatible with the principle of equal treatment for men and women.

In the Test-Achats Case, the court tackled **the inadequacy of legislation**. It was already stated in the Directive that it was prohibited to make use of gender as a risk-factor in insurance agreements but the Directive allowed a derogation from this principle. The problem was the absence of a temporal limitation for this derogation, which made it incompatible with the Charter of Fundamental Rights. Men and women are comparable for insurance purposes and situations must be compared “in the light of the subject-matter and purpose of the EU measure which makes distinction”.

Many questions were raised after the Test Achats Case, as freedom of contract was made subordinate to the equal treatment principle. Imposing an equal price is not the same as influencing the price level. What remains allowed in gender classification? What about premiums? However, the conflict became more deeply rooted, since the ECJ seems to indicate that the European principles of freedom to market insurance products and the freedom to set rates are merely subordinate to the legal principle of equal treatment.



Basically insurance companies must find **other factors** instead of gender. In any case, they have to prove legitimate aim, appropriateness and necessity.

Yves Thiery highlighted the need to take into account the **economic reality of insurance as well**. Interests need to be weighed up against each other. For instance, in Canada, the US and South Africa, justification of using gender is still possible, but there is very strong scrutiny. Such model could be also interesting in Europe. In any case, insurance companies usually are really keen to avoid court rulings.

Yves Thiery concluded his presentation by mentioning that **abolishing the justification scheme still left possibilities of stereotypes or poorly reasoned judicial decisions**. Dissemination of guidance, such as the one published by the European Commission, is recommended to clarify the situation, as well as effective and dissuasive sanctions. He underlined the necessity to include

broadly trans people, and not only the ones undergoing or having undergone gender reassignment surgery. Equality bodies have also a crucial role in advising, noticing default, mediation, and representation in court.

Media, education and advertisement and gender equality

Silvia Sansonetti – *Fondazione Brodolini/ENEGE*



Silvia Sansonetti presented the findings of two studies conducted by the Fondazione Brodolini. The first one deals with the [representation of women in the media](#) and provided best practices and examples of legislations. The second one deals with [sex/gender discrimination in access to education](#) and assesses the need for and effectiveness of the current in the Member States. Both studies focused on gender stereotyping and the role of socialisation agencies (media, education system, family) in reproducing the gender stereotypes. In particular, she took the example of the fact that very few women are represented as experts in the media.

The **Women and Media study** presented the in-depth analysis and evaluation of the existing regulatory acts tackling the issues of women and girls as subject of the media's attention in the EU-27 Member States. Half of the regulatory acts in Member States are not binding and only try to encourage positive behaviours. They do not contain sanctions. They also studied 26 laws on the matter, conduct codes and regulation by bodies. In any case, it is difficult to find a binding rule. One of the main conclusions is that it should be legally binding.

The **Gender and Education Study** presented the overview of the EU and national anti-discrimination legislation with reference to gender-based discrimination and its application to the field of education and the effectiveness of existing legislative measures. Two folds of reflection: the exclusion of certain vulnerable groups such as Roma and Travellers people, and the choice in a career. Male students from low income families were also more likely to drop out school. At the national level, most EU Member States have constitutional guarantees and legislative provisions to prohibit sex discrimination in access to education. The studies also underline the lack of monitoring of legislation on discrimination in access to education.

As a conclusion, **Anne GASPARD** expressed her hope that the seminar provided participants and speakers with an interesting and useful opportunity to network and to exchange views and experiences. She underlined the essential role of equality bodies in engaging in this topic.

Speakers' presentations are available by clicking [on this link](#)

ANNEX - READINGS AND USEFUL LINKS

- [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
- European Commission - [Strategy for equality between women and men](#) (2010-2015) and [Mid-term review of the Strategy for Equality between Women and Men](#) (2013)
- European Parliament - [Report on transposition and application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services](#) (25 February 2013)
- European Network of legal experts in the field of gender equality – Susanne BURRI and Aileen McCOLGAN - [Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC](#) (2009)
- Fondazione Giacomo Brodolini - [Women and girls as subject of media's attention and advertisement campaigns: the situation in Europe, best practices and legislations](#) (2013)
- European Women's Lobby – [Article on the Seminar](#) (2014)
- Equinet - ["Making equality legislation work for trans people"](#) (2012)

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EQUINET

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Equinet is an international non-profit organisation (AISBL)