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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

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

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1. INTRODUCTION

Equality between men and women is a fundamental principle of the European Union. Both the EU Treaties and the Charter of Fundamental rights of the European Union prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas.

Directive 2004/113/EC¹ ('the Directive') extends the protection against sex discrimination beyond the traditional realm of the labour market to the areas of access to and supply of goods and services. This implements the obligation of equal treatment in most economic day-to-day transactions affecting the lives of citizens in the EU.

In its first report on the application of the Directive, the Commission aims to provide a state of play of the implementation on the ground.

The Court of Justice of the European Union (CJEU) annulled Article 5(2) of the Directive in its 2011 *Test Achats* ruling². The provision had permitted the use of sex-based actuarial factors in insurance contracts. The ruling obliged Member States to make unisex premiums and benefits mandatory by 21 December 2012. The Commission adopted guidelines concerning the consequences of the ruling in 2011³. This report follows up to the guidelines and covers the implementation of the ruling in Member States. It is, however, not limited to the area of financial services but comprehensively reviews the implementation of the Directive as a whole.

All Member States provided the Commission with information contributing to the report. In addition, the Commission consulted national equality bodies and their European Network (Equinet), social partners, civil society organisations and the European Network of legal experts in the field of gender.

2. STATE OF PLAY OF TRANSPOSITION AND INFRINGEMENT PROCEDURES

Directive 2004/113/EC has been transposed into national law in all 28 Member States.

The Commission has checked the conformity of the national implementing laws with the Directive. The review of the national legislation and experiences with its application on the ground shows that there are still challenges relating to the implementation of the Directive concerning in particular the derogation provided in Article 4(5) which permits the provision of goods and services exclusively or primarily to members of one sex under certain conditions.

As a result of these assessments, questions were raised with 17 Member States. The information provided revealed that the transposition was sufficiently clear and compliant

¹ 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, OJ L373, 21.12.2004, p.37.

² Judgment of 1 March 2011 in Case C-236/09, OJ C 130, 30.4.2011, p.4.

³ Communication from the Commission – Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgement of the Court of Justice of the European Union, in case C-236/09 (*Test-Achats*), C(2011)9497 final, 22 December 2011, OJ C11, 13.01.2012.

or was amended in compliance with the Directive in 11 of those Member States. With 6 Member States, the intensive dialogue on sufficient implementation of the Directive continues⁴. The concerns are mainly about a restricted scope of application of the national legislation, for example through an overly restrictive understanding of the notion of goods and services that are available to the public and offered outside the area of private and family life or through protection covering only consumers as recipients of services. Another recurrent issue is an overly broad scope of the possibility to justify unequal treatment on the basis of Article 4(5) of the Directive, which may lead to unjustified unequal treatment in the pricing of the same service (for example entry prices to discotheques or sports events or car rental fees). Some questions are related to insufficient protection on grounds of maternity and pregnancy in the provision of services or an insufficient scope of the right to compensation, for example due to the lack of an entitlement to compensation for immaterial damages.

The Commission has received a number of complaints by citizens, the majority of which concern individual cases of alleged discriminations in transactions between private parties without any involvement of Member States. These cases are not about incorrect transposition or application of the Directive by a Member State. Remedies are only available under national law and through national courts in those situations. There are no infringement proceedings pending following a complaint revealing incorrect transposition or implementation of the Directive by Member States.

3. SCOPE OF APPLICATION OF THE DIRECTIVE

As provided in its Article 3, the Directive is applicable to all persons who provide goods and services, which are available to the public and which are offered outside the area of private and family life. It covers both public and private sectors, including public bodies.

3.1 Notion of services

As pointed out in recital 11 of the Directive, services are those within the meaning of Article 57 TFEU. In conformity with that provision and the relevant case-law of the CJEU, a service must constitute an economic activity, i.e. be normally provided against remuneration.

The economic nature of the activity does not depend on the national legal status of the provider or the service in question. The Court has thus, for example, considered that activities performed by members of a religious or philosophic community⁵ could constitute an economic activity as could activities carried out by an amateur sport association⁶.

It is well established by the case-law, in particular, in the field of health services that the service must not necessarily be paid by those for whom it is performed⁷.

Therefore the Directive is applicable to all goods and services provided against remuneration (including notably health services⁸), except those explicitly excluded from

⁴ BE, DE, DK, LT, LV, PL.

⁵ Case C-196/87 *Steymann*, 5 October 1988, paras. 9 and 12.

⁶ See for example Cases C-51/96 *Delière* and C-191/97, *Pacqué*, 11 April 2000, para.46.

⁷ See for example, C-157/99 *Smits and Peerbooms*, 12 July 2001, para.57.

⁸ However sex discrimination in statutory social security schemes falls within the scope of Directive 79/7/EEC.

its scope, i.e. education services and the content of media and advertising. In addition, the public sector actions that entail exercise of public authority (e.g. by the police) without any element of provision of a 'service', fall outside the scope of the Directive.

3.2 Notion of goods and services available to the public and offered outside the area of private and family life

The Directive provides for equal treatment between women and men in the access to goods and services, while specifying that it concerns goods and services which are "available to the public" and "offered outside the area of private and family life" (Article 3(1)). Questions concerning the exact scope of the Directive might be raised and could notably play a role in Court rulings.

The notion of services "available to the public" and "offered outside the area of private and family life" would, *a contrario*, exclude from the scope of the Directive activities within relationships that fall exclusively within the sphere of private and family life and are not available to the public. This is the case where the offer of good or service is not made in the public space (e.g. by an advertisement in a newspaper or on a publicly accessible website) but the good or service is offered to a limited circle of persons (family members, friends, colleagues or other acquaintances). In addition, this exclusion covers situations where the proximity to the personal sphere of the person offering goods or services influences the choice of the contractual partner more than ordinary economic considerations⁹.

3.3 Notion of sex discrimination – gender reassignment

In conformity with the case law of the CJEU, the scope of the principle of equal treatment for men and women and the prohibition of sex discrimination also applies to discrimination arising from the gender reassignment of a person¹⁰.

Only 5 Member States¹¹ have explicitly included gender reassignment as a specific ground of discrimination in their legislation. The other Member States have not expressly covered gender reassignment but claim that the protection against discrimination in this area derives from the prohibition of sex discrimination in line with the CJEU case law. For example, in Cyprus, the Courts have already clarified that discrimination on the basis of gender reassignment falls under the notion of sex discrimination. In Ireland this has been clarified for discrimination in the employment area.

So far the CJEU has only ruled on gender reassignment. There is no case law concerning gender identity¹² more generally speaking as covered by the protection against sex discrimination but the Commission considers that the approach should be materially similar.

⁹ E.g. where a person sublets a room in his or her own apartment. In such cases the exclusion would appear to apply even if the room is offered publicly in a newspaper or on the internet.

¹⁰ See case C-13/94 *P v S and Cornwall County Council*, 30 April 1996 and case C-423/04, *Richards v Secretary for Work and Pensions*, 27 April 2006.

¹¹ BE, CZ, SE, SK, UK.

¹² For more information about gender identity see the 2011 report "*Discrimination on the grounds of sex, gender identity and gender expression*", by the European network of legal experts in the non-discrimination field. This report is available at this address: <http://bookshop.europa.eu/en/trans-and-intersex-people-pbDS3212033/>

3.4 Definition of harassment

Article 4(3) of the Directive clarifies that harassment and sexual harassment as defined in Article 2 (c) and (d) constitute prohibited discrimination.

No specific difficulty in implementing the prohibition of harassment based on gender in the area of equal access to goods and services has been mentioned. However, questions have arisen in some Member States¹³ concerning the implementation on the ground in situations involving a third party harasser who is not the provider of goods or services and the issue of liability in such a situation. The question of the liability of a service provider for third party harassment could be relevant in particular where the core service is providing a platform for communication between clients in the use of which the harassment occurs, for example on the internet.

Few complaints¹⁴ have been reported concerning harassment and sexual harassment in the area of equal access to goods and services. There is a scarcity of information because in some Member states no data is collected on this issue¹⁵ and in others no differentiation is made concerning the ground of discrimination¹⁶.

3.5 Protection of pregnant women and mothers

Article 4(1) (a) expressly mentions less favourable treatment for reasons of pregnancy and maternity as prohibited sex discrimination. No specific difficulty in implementing the protection of pregnant and breastfeeding women has been signalled. However, the issue of the correct transposition of this provision is subject to intensive dialogue with the Member States concerned¹⁷ which have either provided for explicit protection in the law or implicitly derive this protection from the general prohibition of sex discrimination.

There seem to be rather widespread practical problems concerning restrictions by service providers on the possibility to breastfeed on their premises. In some Member States restaurants prohibit breastfeeding in their premises¹⁸. In other Member States problems occur because of access to services with a baby carriage¹⁹. One Member State²⁰ has published specific guidance on the issue of breastfeeding whilst providing or using a service.

To a lesser extent, difficulties were reported for pregnant women in the areas of financial services or housing. Lithuania mentions the refusal to provide credit services because of pregnancy and the related loss of income. Austria reports on the complaint of a pregnant student whose tenancy agreement with a church-run student hostel was terminated after she became pregnant.

¹³ Notably AT

¹⁴ AT with around 50 complaints in 2012, BE with 1 or 2 every year (with some coming from transgender people), DK with 15 to 20 cases, SE with 5 cases between 2009 and 2013. FR reported the lack of distinct and specific data concerning harassment in the access to goods and services.

¹⁵ CZ.

¹⁶ BG.

¹⁷ LT and LV.

¹⁸ E.g. in DK. Similar cases were reported for EE and HU in restaurants and for IE in cinemas and theatres.

¹⁹ HU, LV.

²⁰ UK.

4. ACCESS TO GOODS AND SERVICES EXCLUSIVELY FOR MEMBERS OF ONE SEX OR ON DIFFERENT TERMS FOR MEN AND WOMEN

4.1 Article 4(5) and its implementation

Article 4(5) of the Directive provides that the Directive shall not preclude differences in treatment if the provision of goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving it are appropriate and necessary. Recital 16 of the Directive clarifies the notion of legitimate aim by providing that such aim could be the protection of victims of sex-related violence (e.g. in single-sex shelters), reasons of privacy and decency, the promotion of gender equality or of the interests of men or women (e.g. single-sex voluntary bodies), the freedom of association (single-sex private clubs) and the organisation of (single-sex) sporting activities.

The correct implementation of this derogation appears to be one of the main issues of the implementation of the Directive concerning the transposition into national law as well as its interpretation in individual cases. The information provided by a number of Member States and stakeholders²¹ suggests some difficulties in the interpretation and implementation on the ground of Article 4(5) with the consequence of legal uncertainty as there appear to be divergent approaches concerning the interpretation of this provision²².

As an exception to the principle of equal treatment, the derogation must be construed narrowly²³. It would appear to cover only situations in which the goods and services are available exclusively or primarily to members of one sex without providing for a possibility to offer goods and services to the general public. In case both sexes have access to the service or goods, different conditions for men and women apply.

The relative lack of case law on this provision has been mentioned as the main difficulty in practice to assess on a case by case basis the justification and proportionality of a derogation based on Article 4(5)²⁴.

Problems seem to repeatedly arise in relation to the question whether the requirements for a legitimate objective under that provision are fulfilled²⁵. Thus, for example, with regard to women-only gyms, fitness or beauty clubs, equality bodies seem to have reached different conclusions on whether the limitation of access to members of one sex only is allowed or not²⁶.

Furthermore, often suppliers of services accused of gender-based different treatment of men and women (generally in the form of different prices) try to rely on a justification on the basis of Article 4(5) although the service is not offered exclusively to members of one sex. This applies, for example, in cases where the goal is to reach a balanced number of members of each sex. Different interpretations seem to exist as to the admissibility of such practices.

²¹ AT, BE, DK, Equinet.

²² See the Equinet report in relation to the equality bodies in different Member States.

²³ see notably case C-451/03, *Servizi Ausiliari Dottori Commercialisti Srl*, 30 March 2006, para.45.

²⁴ BE, HU.

²⁵ Interestingly, some Member States, e.g. BE and NL, have chosen to exhaustively list the sectors which could benefit from this derogation in their legislation or provided for such a possibility.

²⁶ See Equinet report.

4.1.1 *Services provided to one sex only*

Some of the cases where services were only offered to members of one sex have been brought before the national courts²⁷. For example, in Belgium, it was held unjustified to reserve the entry to a fitness centre to women exclusively. Similarly, in Denmark a Court considered it discriminatory that a hotel reserved one furnished floor to women only.

In some sectors, even if a service is provided to both sexes in principle, service providers tend to sometimes temporarily reserve access to members of one sex in order to attain a balanced number of members of both sexes. This is notably the case in discotheques, clubs, fitness or spa centres. Some of these cases have been the subject of court rulings. For example, in Germany several courts ruled that it was not justified to temporarily reserve the entry to a club or the access to a fitness centre membership to women on the basis that the desired representation of women has not been reached yet. By contrast, the Czech equality body considers that different prices intended to balance the number of users may be justified.

4.1.2 *Differential in prices for the same service*

Among the most commonly cited examples of unequal treatment is the differential pricing for the same services provided. This practice occurred notably in the leisure sector with different entry prices for men and women to discotheques (or free access granted to women), clubs and bars²⁸, to Internet dating websites²⁹, to sport events and spa and sauna activities³⁰. The gender-based differentiation in the pricing of hairdressers' services is also a frequent practice³¹.

Some of these differences in prices have been the subject of court ruling to assess the necessity and proportionality on a case by case basis. For example, in Austria, a court held that the objective of extending the football fan base and promoting women football justified cheaper entry tickets for women. In Germany, a court ruled that the free use of a dating website for women was justified by the need to encourage women to register which would constitute an advantage for the men looking for a partner on the website.

The Austrian Constitutional Court ruled that a different age limit for men and women concerning the access of senior citizens to ticket discounts in public transport linked to the different statutory retirement ages for men and women in Austria constitutes discrimination and that the exemption corresponding to Article 4(5) does not apply to services offered to both sexes.

Another recurring issue giving rise to complaints is the commercial practice of short-term special offers for members of one sex (e.g. Ladies Days), often on occasions like the international women's day. Targeted debates are taking place in some Member States concerning the justification of this type of promotion. For example, in Finland, the Employment and Equality Committee of the Finnish Parliament proposes to only allow promotions targeted at either of the sexes alone in connection with rare and special occasions such as mother's day or father's day and only if the monetary value of the promotion is relatively minor.

²⁷ One train compartment (CZ) or one floor of a hotel (DK) reserved for women.

²⁸ Reported by AT, BE, DK, LV, PL, SI.

²⁹ Reported by BE, DE, DK.

³⁰ Reported by MT, PL, SI.

³¹ Reported by SI, DK.

4.2 Article 6 – Positive action

According to Article 6 of the Directive, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex with a view to ensuring full equality in practice between men and women.

Only some Member States reported on the existence of specific provisions on positive action allowing providers to differentiate between men and women in order to achieve a balance between both sexes in access to goods and services. For instance in Slovakia, public authorities or legal entities may adopt temporary positive actions to eliminate disadvantages related to reasons of gender or sex, notably, with the aim of ensuring equal opportunities in practice³². In United Kingdom, a general positive action provision allows providers to target or tailor the delivery of goods and services at people of a particular sex if there is evidence of disproportionately low uptake or participation³³.

It must be noted that, apart from the derogation provided in Article 4(5), Article 6 of the Directive is also sometimes used by service providers to justify the different treatment of men and women in the provision of goods and services. In the event of a narrow interpretation of Article 4(5), positive action could be the only possibility to justify different conditions in access to goods and services proposed to both sexes. This option however is always subject to a case by case assessment on the necessity and proportionality of the measures taken.

Some national courts have already ruled on the application of Article 6 to such differential treatment. For example, in Austria, a lower court held that cheaper tickets for football matches for women constituted positive action within the meaning of the Equal Treatment Act to prevent or eliminate women's disadvantages³⁴. The CJEU has not yet ruled on the notion of positive action outside the specific area of access to employment. However, in the *Griesmar* judgment³⁵, it has held that more generous rules on the calculation of occupational pensions for women cannot be qualified as positive action in relation to the disadvantages for women due to interruptions in their careers because they do not prevent or eliminate those disadvantages. In the light of that interpretation, positive action may not be easily available in similar situations where there is not a clear and direct link between preferential treatment on the one hand and the disadvantages to be prevented or eliminated on the other hand.

5. IMPLEMENTATION OF THE TEST- ACHATS JUDGMENT

5.1 Ruling

In its *Test-Achats* judgment, the CJEU invalidated Article 5(2) which permitted the maintenance of sex-based differentiations in the provision of insurance services provided that it was based on relevant and accurate actuarial and statistical data. The Court considered that by enabling Member States to maintain without temporal limitation an exemption from the unisex rule laid down in Article 5(1), Article 5(2) runs counter to achievement of the objective of equal treatment between men and women in relation to

³² SK, Section 8a of the Antidiscrimination Act.

³³ Section 158 of the 2010 Act

³⁴ Leopoldstadt District Court (31 C 649/09z-9). See also above section 4.1 on German courts relying on Article 4(5) in a comparable situation.

³⁵ C-366/99, *Griesmar*, 29 November 2001.

the calculation of insurance premiums and benefits, which is the purpose of the Directive in the insurance field. Article 5(2) is therefore incompatible with Articles 21 and 23 of the Charter of Fundamental Rights. The Court concluded that from 21 December 2012, the unisex rule had to apply without derogation in relation to the calculation of individuals' premiums and benefits in new contracts.

5.2 Implementation of the ruling

27 Member States have already implemented the ruling into their legislation³⁶. In all cases, the national legislation has been amended³⁷ in a legally binding manner by adapting existing legislation on insurance³⁸, equal treatment³⁹ or in both areas⁴⁰. Some Member States provided further guidance to facilitate the changes for the insurance sector. For example, in Austria, the financial market authorities (FMA) sent out a circular asking insurance companies to substantiate their unisex actuarial tables. In UK, guidance was issued by the Financial Services Authority (FSA).

The majority of the Member States implemented the ruling within the deadline given by the CJEU⁴¹. In a few Member States, the legislation entered into force later⁴². Member States seem to have received only very few complaints concerning a violation of the unisex principle by insurance companies. However, in the Netherlands, in a recent judgment, the equality body (2014-97 of August 2014) ruled that an insurer had unlawfully discriminated against a woman on grounds of her sex by granting her compensation after an accident calculated on the presumption/statistics that she would not work, as a woman, between the ages of 27 and 36 and that she would only work part-time. The same case was also judged by a Dutch Court. It came to the result that using actuarial statistics with regard to the victim's cultural background and gender does not run counter the principle of equality. The case is now pending before the Court of appeal.

The conformity of all laws notified with the *Test-Achats* ruling has been checked by the Commission. As a result of these assessments, questions have been raised with some Member States. On the basis of the replies received, the Commission may start infringement proceedings in case of non-conformity of the national legislation with the ruling.

One Member State reported that the implementation of the ruling is ongoing but legislation not yet adopted⁴³. The Commission is monitoring the situation in this Member State closely and will engage dialogue in case of failure to adopt the necessary implementing measures.

The case law of the CJEU is not directly applicable in the EFTA countries⁴⁴. Therefore, to ensure the coherence of legislation, a procedure for the possible adaptation of Annex

³⁶ In some Member States (e.g. DE, FR, IT, UK), the ruling and its implementation led to an intense debate and considerable media attention.

³⁷ See EIOPA report on the implementation of the Test Achats ruling, EIOPA-CCPFI-13/091, 6 February 2014.

³⁸ AT, BG, DE, EE, FI, FR, GR, HR, CZ, HU, LT, LV, PL, SI.

³⁹ BE, CY, DK, IE, NL, SE, UK.

⁴⁰ ES, MT, RO, SK.

⁴¹ AT, BE, DK, FI, FR, GR, IE, HU, LV, NL, MT, SE, SI and UK.

⁴² CY, CZ, DE, EE, ES, LT, PL, RO, SK.

⁴³ LU.

⁴⁴ However, the EFTA Court shall pay due account to the principles laid down by the relevant rulings by the CJEU pursuant to Article 3(2) agreement Surveillance/EFTA Court.

XVIII of the EEA Agreement to the *Test-Achats* ruling has been initiated on 30 January 2014⁴⁵.

As set out in the Commission guidelines on *Test-Achats*, the ruling only concerns private insurance contracts falling within the scope of Directive 2004/113/EC. It has no direct legal implications for occupational pensions which are covered by Directive 2006/54/EC. Article 9(1) (h) of that Directive allows for the setting of different levels of benefits between men and women when justified by actuarial calculation factors.

Some Member States have nevertheless decided to apply the unisex rule also to occupational pension schemes in order to ensure gender equality in all areas⁴⁶. But the vast majority of the Member States have provided for the implementation of the unisex rule only as required by the ruling for private insurance contracts. In those Member States differences based on actuarial data concerning life expectancy are still admissible in occupational pensions.

5.3 Economic impact of the ruling in the insurance market

In the follow-up to the *Test-Achats* ruling significant repercussions on price levels were predicted by parts of the insurance sector arguing that the loss of gender as an easy and reliable risk allocation factor would lead to an increase overall prices for insurance products.

The judgment and its implementation had some one-off costs for the insurance industry when they had to create unisex actuarial tables and to re-price and re-launch their products to make them gender neutral. These initial compliance costs were estimated at about € 14 million for Spain and at € 7.7 million for The Netherlands.

As regards the developments in insurance pricing it must be highlighted that there is no precise economic evidence of the impact the ruling had. It is difficult to provide reliable, quantifiable data and information on the impact of the shift to unisex pricing for a number of reasons.

The lack of available data highlighted by some Member States and stakeholders⁴⁷ is likely to be linked to the fact that the *Test-Achats* ruling only had to be implemented by 21 December 2012. The period that has lapsed since appears to be too short to allow the collection of economic evidence and data going beyond very short-term effects.

Furthermore, it is very complex to distinguish the effects of different factors at stake in the evolution of the insurance market and to correctly estimate the specific influence of the unisex premium factor on price or product development. In most markets, insurers

⁴⁵ Norway has already adopted the necessary amendments have been adopted on 20 June 2014 with an entry into force on 1st January 2015.

⁴⁶ BG, CY, CZ, DK, FR, LV, SE.

⁴⁷ FR, LU, Insurance Europe, BIPAR, AAE. Some replies recalled also constraints on the systematic monitoring of insurance premiums under EU competition law.

had to implement not only unisex premiums but a number of other legal and regulatory developments affecting price levels, both at national and EU level⁴⁸.

Beyond legal requirements insurance companies may have changed product features to improve insurance products in the regular product cycle. They might have also implemented developments in risk factors assessments⁴⁹, used new criteria to assess the products and differentiate premiums (e.g. the use of telematics - also known as 'black box' technology - by insurers in motor insurance⁵⁰) or developed new products to attract targeted clients. For example, in Spain, some insurers have introduced new products benefitting mostly women thus trying to attract female clients. Other offers concern coverage against theft of bags inside the car or specific assistance to pregnant women in case of health problems while driving. All these changes may have had an influence on the price of products or on the cover provided.

On the basis of the information available the impact of the introduction of the unisex principle on insurance pricing appears to have been generally insignificant or moderate⁵¹. As expected and indeed inevitable the premiums have increased for women (and decreased for men) for certain insurances (such as motor insurance). According to Insurance Sweden, young women's motor insurance has become around 10% more expensive while young men who are over-represented in traffic accidents have obtained a corresponding reduction in their insurance premiums. In Italy, research carried out from July 2012 to January 2013 show that the premiums of middle-aged women expert drivers were 3% more expensive than those of men in the same situation before December 2012. The situation is quite different for young drivers: before December 2012 women paid 18% less than men for car insurance, and after that date, the increase of their premiums by up to 18% has corresponded to a decrease of men's premiums by 10%. For other product lines there have been increases in premiums for men (and reductions for women). But on balance, although the picture does not appear to be identical across the board the impact on the market seems to have been rather neutral or very limited and in any event there appears to be no indication of unjustified price developments.

6. PROTECTION GRANTED TO THE VICTIMS OF DISCRIMINATION

There is access to redress through judicial proceedings and also through national equality bodies which are tasked, amongst others, to provide independent assistance to victims. These provisions are practically identical in the EU equal treatment and anti-discrimination acquis and the findings recently made in reports on other Directives⁵² in relation to key concepts such as access to justice, the burden of proof rule and the requirement of effective, proportionate and dissuasive sanctions equally apply here.

⁴⁸ Such as Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

⁴⁹ Insurance Europe.

⁵⁰ As identified by EIOPA in its last consumers trend report, EIOPA-BoS-13/175 rev1, 15 December 2013.

⁵¹ FI, CZ, PL, LT, HR.

⁵² See for example, Report from the Commission to the European Parliament and the Council, Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), 17 January 2014, COM(2014) 2 final.

To combat discrimination and ensure equal treatment, Member States and stakeholders have recognised that equality bodies are essential to move from "the law on paper to the law in practice" and to ensure that the legal rights are actually applied on the ground. This is the reason why the Commission, in its communication on the EU Justice agenda for 2020, highlighted the key role that equality bodies can play in ensuring effective remedies to citizens⁵³. The Commission will continue its work to ensure that equality bodies can actually and fully play this role, notably through the monitoring and enforcement of the applicable rules. It will also explore ways of clarifying the requirements concerning equality bodies under the Directive, particularly the key concepts of independence and effectiveness.

The Commission will promote best practices to improve the awareness of the citizens about their rights in order to guarantee the full application of the principle of equal treatment across the EU and to further enhance the protection of victims.

7. CONCLUSIONS AND WAY FORWARD

In the specific area of financial services, the implementation of the *Test-Achats* ruling in the insurance sector has been the most important challenge. All Member States have implemented the ruling or are implementing it. Some Member States have chosen to go beyond the ruling by applying the unisex rule to all types of insurance and pension, thus also to occupational social security funds which fall within the scope of Directive 2006/54/EC. In September 2014, the CJEU further held that differentiated benefits on the basis of gender-specific actuarial data are inadmissible in statutory social security pensions under Directive 79/7/EEC⁵⁴. In the light of these developments, the Commission will assess the application of gender-differentiated conditions to occupational pensions under Directive 2006/54/EC and whether action should be taken to ensure the comprehensive application of the unisex rule in all pillars of the pension system, whether voluntary, occupational or statutory.

As regards impacts of the *Test-Achats* judgment on price levels of insurances, it seems too early to come to final conclusions. However, evaluated on the basis of the small evidence available the impact seems very limited.

Concerning the implementation of the Directive, all the Member States have taken measures to transpose the Directive into their domestic legal orders and to set up the procedures and bodies for its implementation. The Commission does not consider it necessary to propose amendments to the Directive at this stage but will prioritise addressing the remaining transposition issues with the Member States concerned, mainly in relation to the scope of the exception provided for in Article 4(5) of the Directive.

Further enforcement work as well as case law at the national and EU level should lead to clarifications on some of the questions raised in this report. Thereafter, the main challenge will be for Member States to ensure that their administrative and judicial authorities and their equality bodies systematically provide full protection to victims on the ground. The Commission will continue its monitoring activities and support Member States in order to realise the full potential of the Directive.

⁵³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Justice Agenda for 2020 – Strengthening trust, mobility and growth within the Union, C(2014)144 final, 11 March 2014.

⁵⁴ C-318/13, *Proceedings brought by X*, 3 September 2014.