



EUROPEAN WOMEN'S  
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# CONTRIBUTION

Brussels, 21 May 2014

## European Women's Lobby contribution to the European Commission's questionnaire on the implementation of Directive 2004/113/EC

The EWL welcomes the European Commission DG Justice's initiative to conduct a questionnaire in order to assess the implementation of Directive 2004/113/EC, based on the feedback of a variety of stakeholders.

The **European Women's Lobby** (EWL) is the largest umbrella organisation of women's associations in the European Union (EU), working to promote women's rights and equality between women and men. EWL membership extends to organisations in all 28 EU Member States and three candidate countries, as well as to 21 European-wide organisations, representing a total of more than 2000 associations.

### The EWL and the Directive 2004/113/EC

In 2004, the European Women's Lobby welcomed the Directive 2004/113/EC as it was the first time that EU legislation was adopted on gender equality beyond the matters of employment and occupation. Already at that time, the EWL took a position (together with Test-Achats and AGE) against discrimination based on sex for insurance and financial products, which reinforces the already weaker economic position of women, especially when they reach old age. Article 5(2) of the Directive was clearly in contradiction with the principle of equal treatment between women and men.

The EWL [contributed to the European Commission's consultation in 2009](#) (together with Test-Achats and AGE), and was active in supporting the case of Test Achats, which ended up with a strong ruling calling in 2011 for an end to sex discrimination in insurance premiums, making article 5(2) illegal. The EWL welcomed the ruling of the European Court of Justice in a joint press release with AGE: "[ECJ ruling against sex discrimination in insurances key victory for women's rights](#)".

For the EWL, this judgment was important in terms of EU harmonised policy on gender equality. Generally speaking, the ruling asks the EU and the Member States to implement equality between women and men in all insurance premiums. More specifically, it ensures women's basic rights in a context of an ageing population and increasing pressure on state pension systems. Women were offered much less favourable conditions in private pension schemes compared to men because of their higher average life expectancy. Now, private pension and saving schemes have to comply with the principle of equality between women and men.

Also, women had higher premium in complementary health insurance or travel insurance, which made women workers, and especially older women, more expensive for employers. It was a clear case of indirect discrimination, as women workers would therefore represent higher employment insurance costs for the employers.

The Directive provides protection against discrimination in insurance with respect to costs relating to pregnancy and maternity, according to article 5(3). Indeed, costs relating to childbirth and pregnancy should not be borne exclusively by women, and pregnancy/maternity "risks" should be borne by society as a whole. The Directive is a very good tool and the EWL welcomes the consultation of the European Commission.



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**However, the EWL would like to highlight some issues linked to the implementation of the Directive:**

- **Visibility of the Directive**
- **Scope of the Directive**
- **Persisting discrimination**

## **Visibility of the Directive**

For the EWL, although the Directive is very important, it is not very well known by professionals, women's organisations at national and local level, and by women and men in Europe. All stakeholders working on sex-based discrimination should get expertise on the Directive. **The lack of awareness about the Directive's legally-binding principles leads to an important underreporting phenomena about cases of discrimination in the access to goods and services.** This underreporting is also linked to the lack of trust in institutions where reporting is possible, in a broader context of persistent sexism and wide social acceptance of discrimination against women and girls, and of discriminatory practices in general.

**Women's organisations also lack resources to support individual women in their cases,** and are not able, due to a lack of sustainable funding and human resources, to develop strategic litigation, which would however be a way to give life to the Directive and explore areas where non-discrimination should be confirmed.

Women's organisations need to effectively play an important role in raising awareness of the Directive and measures should be strengthened to implement Article 11 "Dialogue with non-governmental organisations", as well as the horizontal measures particularly relating to Remedies, in Article 8 "Defence of rights" according to which organisations *"may engage, on behalf or in support of the complainant, in any judicial and/or administrative procedure."*

**Discrimination on the basis of sex/gender is still not visible and detected as such, because of the structural nature of inequality between women and men. This leads to a lack of implementation of the Directive.** When facing cases of multiple discrimination, which include discrimination on the basis of sex/gender in access to goods and services, individuals, organisations or justice professionals, will tend to use other grounds of discrimination, which are still easier to qualify and address, and in particular the ground of race/ethnicity for which discrimination is tackled at EU level. The current EU anti-discrimination framework allows for a hierarchy of protection, with race/ethnicity attracting greater protection than sex/ gender at EU level. This leads to the invisibility of discrimination on the basis of sex.

When another ground of discrimination than race/ethnicity is involved, individuals, organisations or justice professionals will look at national frameworks regarding anti-discrimination on the basis of other grounds, such as age, disability, sexual orientation or religion/belief. However, because of the lack of horizontal EU legislation to address discrimination on the grounds of age, sexual orientation, disability, and religion and belief, there is no harmonised protection for women and men in Europe on those grounds, due to the various levels of national standards and definitions. Therefore, when those grounds are invoked to address a case of multiple discrimination against women in access to good and services, the level of protection that women can get might not be as high as the one provided with the EU directive 2004/113 because stakeholders don't use the directive but other national frameworks for the other grounds of discrimination.



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As a result, multiple discrimination involving sex/gender is not understood and tackled in a proper way. Moreover, equality between women and men is a horizontal objective and a positive and proactive constitutional principle of the EU. It should therefore be protected for all, in all areas of life.

**Equality bodies** play a key role in supporting persons facing discrimination, analysing gaps in legislation and raising awareness of the directive. They face funding and sustainability problems, due to the austerity measures and the lack of political prioritisation of human rights and women's rights. Moreover, the EWL members point out that in countries where gender equality bodies have merged with other equality and/or human rights bodies, i.e. gender equality and equality for all covering a broad spectrum of grounds, has in effect weakened the gender equality institutional mechanism as discrimination based on sex becomes more invisible and difficult to seek redress. This confirms many of the EWL members concerns voiced at the time of such mergers and remains relevant today particularly as mechanisms for multiple discrimination are lacking.

The EWL's assessment is that when institutional mechanisms to promote women's rights and equal treatment of women and men are mixed up with institutions promoting rights of groups in society, this results in less efficient implementation of gender equality legislation and leads to the reduction of gender equality as a mere form of discrimination when in fact discrimination constitutes one element of gender inequality. EWL members in Slovenia note that there is a clear lack of knowledge and awareness on the Directive because of the weakening of institutional mechanisms dedicated to gender equality. Slovenia sees no independent body for gender equality (the office was dissolved in March 2012); there is now a small department inside the Ministry of Labour, with no cooperation with other ministries and no priority given to gender equality. This situation also explains why EWL Slovenian members say that the [assessment made in 2009 by the European Network of Legal Experts on Gender Equality](#) is still relevant to evaluate the implementation of the Directive in Slovenia and that progress has not been made. Women are half of the population in Europe, and **targeted institutional mechanisms to promote and implement women's rights should be established at all levels.**

## Scope of the Directive

The Directive currently explicitly excludes the content of media or advertising, and public and private education (recital 13). No such exceptions apply in the Racial Equality Directive. Social advantages are not explicitly included in the scope of the Directive, as the definition of "goods and services" is not clear and open to interpretation by the Member States. Moreover, the EU legislation doesn't protect women from discrimination in access to the welfare system (beyond social security only, where EU legislation prohibit discrimination on the basis of sex/gender, with still some exceptions when it comes to statutory social security schemes). These situations create gaps in the EU legislation.

The EWL has highlighted this persisting gap in protection on the ground of sex/gender in its publication "[Protecting all women from discrimination](#)" (2010), and **calls on EU legislation on sex discrimination to cover access to the welfare system, and the content of media or advertising, and public and private education.**

The EWL sees no reason why the principle of equal access to goods and services for men and women does not cover education and the content of media and advertising. These sectors, which are very important in our society, should never have been excluded in the Directive.

**Sexist advertising** demonstrates stereotypical gender roles that present narrow ideas of how women and men should act and look. Men are portrayed as strong, active and powerful and are usually fully dressed, while women are shown as passive, weak, sexual and naked. This stereotyped presentation has vast consequences



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for individuals and for our society; it is a problem of public health and an obstacle for reaching gender equality.

A recent study by the Swedish Women's Lobby (SWL) shows that advertising has made 9 out of 10 girls feel bad about themselves and that they have wanted to change something with themselves, for example their weight or looks. In Sweden, sexist ads can exist, surrounded by gender blind politicians, without any legal consequences for companies. This situation is unique compared to Sweden's Nordic neighbours. The SWL has started a [campaign](#) in order to increase awareness of this problem and we have requested legalisation against this practice.

Also in **education**, EWL members see differences in treatment of women and men. Stereotyped learning material and content in schoolbooks are the main rule the most common situation in schools. Teachers are only in few cases trained in gender and are therefore less aware of it. This creates a false picture of society for children, young girls and boys who are growing up with a wrong image of sexist, stereotyped roles, which are then conserved for the rest of their lives.

## **Examples of inequality/discrimination in media and advertising, and in education in Finland:**

**Education and advertising:** the ongoing campaign of University of Applied Sciences Vaasa - see the Finnish page banners (in the banner the pictures are moving), especially the picture with the woman and the car: <http://www.puv.fi/fi/>. "Insinööreillä on vientiä" means "Engineers are popular" (+ there is a sexual tone in that sentence).

**Advertising and children:** 2013 Tiimari leaflet advertising children party accessories, different sections for "girls", "boys" and "all" (no more than one picture for "all"). See the picture on this page: <http://www.iltasanomat.fi/kotimaa/art-1288500943065.html>. Tiimari pages are not up anymore, and actually Tiimari has gone to bankruptcy (not in connection to this). There was a facebook debate on that and after that media took it up also.

## **Persisting discrimination**

Despite article 5(3) of the Directive, **discrimination on the basis of pregnancy/maternity** in the access to goods and services still prevail. The [European Parliament resolution of 16 April 2013 on transposition and application of Council Directive 2004/113/EC](#) points out to "cases of discrimination in relation to pregnancy, planning of motherhood, and maternity as regards, for instance, the housing sector (renting) or difficulties in obtaining loans, as well as access to medical goods and services, in particular access to legally available reproductive healthcare and gender reassignment treatment".

The EP resolution also points out to **discrimination related to breastfeeding**, including possible discrimination in access to goods and services in public spaces and areas, and highlights that in some Member States women entrepreneurs, in particular single mothers, are frequently discriminated against when trying to secure loans or credit for their businesses and still often face barriers based on gender stereotypes.

Finally, the European Parliament calls on the Commission to monitor the implementation and application of the directive with regard to pregnant asylum-seeking women awaiting the outcome of their asylum claims, in order to ensure that these women are covered by the contracts and products in question. The EWL also alerts on the **limited access of domestic workers to sexual and reproductive health services and the protection of**



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**maternity**; such a situation has been highlighted in the Report on the status of domestic workers of the Cyprus Ombudsman's Office.

The EWL would like to also highlight **persisting cases of discrimination, in situations which are so entrenched in gender stereotypes and structural inequality that they don't even appear as potential cases to be covered by the Directive**. During the [Equinet high-level seminar of 24 April 2014](#) in Brussels, dedicated to the Directive 2004/113/EC, some representatives of equality bodies gave examples of persisting inequalities and discrimination. For example, there is still a differentiated access to discotheques in Denmark, because compensation is small and penalty is limited. Sweden sees women paying higher interests on loans because banks consider that they create higher risks due to their lower income.

This is also the case of the **areas of taxation, access to public benefits, transport services, where gaps are persisting and haven't been yet identified or studied**. While women are remaining in the labour market, they are still considered as 'second earners' in dual earner households, which impede upon their own economic independence and maintain them in a dependency status. This situation must be addressed, and discrimination on the basis of sex/gender in taxation and access to public services must be ended.

There should be also **monitoring of the use of scoring boards**: scoring boards can be used for example for basic banking services and seem too often include questions related to sex, age, marital status, nationality, and can therefore lead to discriminatory or unequal pre-screening in the access to some services, including basic banking services such as credit cards.

## **Examples of continued discrimination from Sweden and Finland, provided by EWL members:**

*Article 5.2 of the Directive concerned a general exception to the rule of equal treatment with regard to calculation of premiums and benefits in the insurance sector, where different treatment of women and men was permitted. However, according to Case C-236/09, Test-Achats from 2009, the Court of Justice declared Article 5.2 void with effect as from 21 December 2012. The Swedish Women's Lobby (SWL) welcomes that unequal treatment between women and men is no longer allowed in the insurance sector. In fact, the exception should never have been introduced.*

*However, the new **Swedish Law** has not fully abolished discrimination. As concerns individual employment based pension insurance, women and men are still treated unequal. There are as much as four exceptions where the insurance is discriminatory: if the conditions are changed, if the premium is changed, if the contract is prolonged and even if the insurance is transferred to another insurance company.*

*The above-mentioned discriminatory practices should be abolished. The SWL regrets that the Swedish Government does not consider that the Court Case Test-Achats should be applied in the insurance sector. It should be noted that private employment based pension insurances are a very important part of total pensions for employees in the private sector of the Swedish labour market.*

*The SWL regrets that the Law entered into force on 21 December 2012 and not on 1 July 2012 as we had wished. As we expected, insurance companies preferred that pension insurances should be signed earlier than 21 December 2012. The insurances of the biggest pension insurance company in Sweden became sex neutral on 15 December but the announcement on its website was that the insurances should be signed on 14 December at the latest – a rather insolent action against women.*

*From that, the SWL concludes that the Commission should examine how the insurance companies have implemented the Directive.*



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*In Finland, the ombudsman for equality has tried to raise the issue of different prices for men and women in hairdressing services. It's illegal but still persistent all over Finland.*

*There has been some public discussion on sports hall practice times (indoor ice rinks and other indoor team sports): it's very common that women teams have to practice very early in the morning and very late in the evening because men's teams get all good practice times.*

## **EWL recommendations:**

- **The EWL would like to see the principle of equal access to goods and services for women and men cover education and the content of media and advertising, and the definition of “goods and services” allow for all goods and services to be covered, including public services.**
- Small compensation and limited penalty are obstacles for the effective implementation of the Directive. Compensation and sanctions should be strong enough to allow for a change of mentalities and a culture of reporting and therefore an end to impunity.
- The EWL should monitor that all insurance premiums, including funded pension schemes, will comply with the principle of gender equality as requested by the European Court of Justice ruling C-236/090 and introduce unisex tariffs.
- There is a need to better implement and monitor the directive, including in terms of dialogue with relevant stakeholders (article 11).
- There is a need to explore new areas of goods and services, where cultural/stereotypical views don't bring people/institutions/NGOs to think about gender discrimination.
- In order to give visibility to the Directive and for it to become an effective tool, there is a need for awareness raising campaigns, legal work to identify gaps, sustainable support to equality bodies, and collaboration with women's organisations.

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