

Tuesday 16 April 2013

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

P7_TA(2013)0118

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

European Parliament resolution of 16 April 2013 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 (2010/2043(INI))

(2016/C 045/01)

The European Parliament,

- having regard to Articles 19(1) and 260 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to 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 ⁽¹⁾,
- having regard to the Commission's Guidelines of 22 December 2011 on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (Test-Achats) ⁽²⁾,
- having regard to the judgment of the Court of Justice of the European Union of 1 March 2011 in Case C-236/09 (Test-Achats) ⁽³⁾,
- having regard to the report of the European Network of Legal Experts in the Field of Gender Equality of December 2010 entitled 'EU Rules on Gender Equality: How are they transposed into national law?',
- having regard to the report of the European Network of Legal Experts in the Field of Gender Equality of July 2009 entitled 'Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC',
- having regard to the report of the European Network of Legal Experts in the Field of Gender Equality of June 2011 entitled 'Trans and intersex people: Discrimination on the grounds of sex, gender identity and gender expression',
- having regard to its position of 30 March 2004 on the proposal for a Council directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services ⁽⁴⁾,

⁽¹⁾ OJ L 373, 21.12.2004, p. 37.

⁽²⁾ OJ C 11, 13.1.2012, p. 1.

⁽³⁾ OJ C 130, 30.4.2011, p. 4.

⁽⁴⁾ OJ C 103 E, 29.4.2004, p. 405.

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- having regard to its resolution of 17 June 2010 on assessment of the results of the 2006-2010 Roadmap for Equality between women and men, and forward-looking recommendations ⁽¹⁾,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Women's Rights and Gender Equality (A7-0044/2013),
 - A. whereas the directive prohibits both direct and indirect discrimination based on sex in access to and the supply of goods and services that are available to the public, in both the public and private sectors;
 - B. whereas the directive addresses aspects related to discrimination based on sex outside the labour market;
 - C. whereas less favourable treatment of women for reasons of pregnancy and maternity is also prohibited, as well as harassment and sexual harassment and instruction to discriminate wherever goods or services are offered or supplied;
 - D. whereas following the entry into force of the Lisbon Treaty, appropriate action to combat discrimination based on sex will be dealt through a special legislative procedure requiring unanimity in the Council and the consent of Parliament (Article 19(1) TFEU);
 - E. whereas according to the information available, the directive has been transposed in most of the Member States either through the adoption of new legislation, or by amending the existing legislation in this field;
 - F. whereas in some Member States transposition was incomplete or the deadline for transposition was delayed;
 - G. whereas in some cases national legislation goes further than required by the directive by also covering education or discrimination in relation to the media and advertising;
 - H. whereas the opt-out laid down in Article 5(2) of the directive created legal uncertainty and potential legal challenges in the long term;
 - I. whereas the Commission's application report, which, under the directive, was due in 2010, has been postponed until 2014 at the latest;
 - J. whereas the judgment of the Court of Justice of the European Union of 1 March 2011 in Case C-236/09 (Test-Achats) stated that Article 5(2) of this directive providing derogation to insurance and related financial services works against the achievement of the objective of equal treatment between men and women and is incompatible with the EU's Charter of Fundamental Rights;
 - K. whereas the provision concerned is consequently considered to be invalid upon the expiry of an appropriate transitional period, in this case with effect from 21 December 2012;
 - L. whereas, on 22 December 2011, the Commission published non-binding guidelines aimed at clarifying the situation with regard to insurance companies and related financial services;
 - M. whereas, in line with Court of Justice of the European Union jurisprudence, discrimination against transgender people and discrimination on grounds of gender identity may amount to discrimination on grounds of sex ⁽²⁾ in policy and legislation in the field of equality between women and men;
1. Regrets the fact that the Commission has not presented its report on the application of Council Directive 2004/113/EC or published up-to-date data on ongoing national implementation processes;
 2. Acknowledges that the Test-Achats ruling may have had an impact on Member States' implementation processes, but notes that this alone cannot justify the failure to publish the report required by the directive in time;
 3. Calls on the Commission to publish its report and all available data with all possible dispatch;

⁽¹⁾ OJ C 236 E, 12.8.2011, p. 87.

⁽²⁾ Case C-13/94 (P. v S. and Cornwall County Council); Case C-117/01 (K.B. v National Health Service Pensions Agency and Secretary of State for Health); Case C-423/04 (Sarah Margaret Richards v Secretary of State for Work and Pensions).

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4. Calls on the Commission and the Member States to take concrete measures to explain the directive and its impact, with concrete examples, in order to ensure that both women and men can take full ownership of the directive and use it appropriately as an effective tool for safeguarding their rights with regard to equal treatment in access to all goods and services;
5. Welcomes the Test-Achats ruling, but considers that it has created ongoing uncertainty on the insurance market; expects the development of unisex criteria to result in pricing based on multiple risk factors which fairly reflects individuals' level of risk regardless of gender, and to detect any potential gender-based discrimination;
6. Considers that the guidelines published by the Commission — in the absence of a binding or legislative effect — have not fully dispelled this uncertainty;
7. Calls on the Commission to take practical steps to address the problem by proposing a new legislative text that is fully in line with the guidelines;
8. Notes that the insurance industry should keep making an effort to rearrange premiums in line with unisex criteria by applying actuarial calculations on the basis of other factors;
9. Calls on the Commission to open informal dialogue with the insurance industry on risk assessment;
10. Calls on the Commission to present the methodology it will use to measure the effects of the Test-Achats ruling on insurance pricing;
11. Calls on the Commission to analyse the issue with a focus on consumer protection policy as well;
12. Calls on the Commission and the Member States closely to follow developments on the insurance market, and if there are any signs of de facto indirect discrimination, to take all necessary measures to address the problem and to avoid unjustified higher pricing;
13. Stresses that this directive is not limited solely to the insurance field and that its broader scope and potential for progress in respect of access to goods and services in both the public and private spheres need to be explained in detail in order to enable both women and men fully to understand its reach and purpose, and consequently to make appropriate use of its features and possibilities;
14. Notes that the provision relating to the shift in the burden of proof has been implemented in most national legislation in the Member States; calls on the Commission to monitor the application of this provision in all Member States;
15. Calls on the Commission to take into consideration 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;
16. Calls on the Commission to monitor particularly closely any discrimination related to breastfeeding, including possible discrimination in access to goods and services in public spaces and areas;
17. 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;
18. Calls on the Commission, in line with Court of Justice case-law, fully to include discrimination on grounds of gender identity in future policy and legislation in the field of equality between women and men;
19. Notes with disappointment 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;
20. Calls on the Commission to gather best practices and make them available to Member States in order to provide the necessary resources for supporting positive action and ensuring better implementation of the respective provisions at national level;

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21. Draws attention to the lack of effectiveness of some equality bodies owing to their lack of actual ability to act, staff shortages and lack of adequate financial resources;
22. Calls on the Commission properly and accurately to monitor the situation of the 'equality bodies' established following the entry into force of the directive, and to check whether all the conditions laid down by EU legislation have been met; places particular emphasis on the fact that the current economic crisis cannot be used as a justification for shortcomings as regards the proper functioning of equality bodies;
23. Underlines the need for data and more transparency from the Commission on ongoing infringement procedures and actions;
24. Calls on the Commission to establish a public database of legislation and case law relating to discrimination on gender; insists on the need to improve protection for victims of gender-based discrimination;
25. Points out the need for financial support for, and EU coordination of, further training for legal practitioners active in the field of gender-based discrimination, taking into account the role played by national courts;
26. Points out the need for the directive to be transposed in a timely manner in all Member States;
27. Instructs its President to forward this resolution to the Council and the Commission, and to the governments of the Member States.

P7_TA(2013)0119

Advancing development through trade

European Parliament resolution of 16 April 2013 on Advancing Development through Trade (2012/2224(INI))

(2016/C 045/02)

The European Parliament,

- having regard to the Commission's communication of 18 September 2002 on trade, growth and development, (COM(2012)0022) of 27 January 2012, which updates a communication on the same subject,
- having regard to Articles 207 and 208 of the Treaty on the Functioning of the European Union and Article 3 of the Treaty on European Union,
- having regard to the Commission's other communications and staff working documents in recent years of relevance to this subject, including those on Policy Coherence for Development (COM(2009)0458, SEC(2010)0421, SEC(2011)1627), on the EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015 (SEC(2010)0265), on increasing the impact of EU development policy: an Agenda for Change (COM(2011)0637), on financing for development COM(2012)0366, on the EU approach to resilience (COM(2012)0586), on social protection in EU development cooperation (COM(2012)0446) and on engagement with civil society in external relations (COM(2012)0492), as well as to its communication on Aid for Trade (COM(2007)0163) and its annual monitoring reports on this aid,
- having regard to the Council's conclusions on the EU's approach to trade, growth and development in the next decade, of 16 March 2012, and to its other conclusions of relevance to this subject,
- having regard to the Cotonou Agreement ⁽¹⁾,
- having regard to the regulations relating to the Development Cooperation Instrument (DCI) ⁽²⁾ and the European Development Fund (EDF) and their implementation,

⁽¹⁾ The Cotonou Agreement, as revised in 2005 and 2010.

⁽²⁾ Regulation (EC) No 1905/2006, (OJ L 378, 27.12.2006, p. 41).