

## discrimination in goods, facilities and services

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## the legal framework

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- Directive 2000/43 (race/ethnicity)
- Directive 2004/113 (gender)
- proposed Directive on sexual orientation/ religion and belief/ disability/ age

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- very little litigation to date on goods and services
  - why?
    - costs and risks of litigation;
    - relatively low stakes;
    - ignorance of the law;
    - relative unavailability of “representative actions”

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### findings on Directive 2004/113

- *Sex-segregated Services* (December 2008)
- *Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC* (July 2009)

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### summary of findings

- problems of transposition
  - definitions (or lack of definitions) of “goods” and “services”
  - uncertainty
  - complexity
  - problems of “fit” with national legislation

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## issues arising

- material scope:
  - exclusion of education,
  - content of advertising/ media
- permitted differential treatment
  - positive action
  - sex segregated services
  - financial services

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## extent of differential treatment

- general
- insurance/ finance
- pregnancy-related
- sex-segregated services
- sex-related pricing

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## sex-segregated services/ pricing

- extent
- nature
- rationale
  - decency
  - safety etc
  - counteracting stereotypes
  - sex as a proxy
  - services with a sexual component
  - differential exercise of skill
  - social reasons

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## proposed Directive

- material scope
  - social protection, including social security and health care, social advantages, education, access to and supply of public goods and services including housing
- “within the limits of the powers conferred upon the European Community”

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## proposed directive

- definitions of discrimination
  - inclusion of harassment
  - denial of reasonable accommodation
- permitted differential treatment
  - age
  - financial services
  - religious schools

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## core questions

- defensible grounds? – religion or belief
- regulation of “harassment”
- proper approach to “discrimination”
- defensible hierarchy?
- intersecting grounds
- enforcement

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