



An Ever More Powerful Court?

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Publication date:
2015

Document version
Other version

Citation for published version (APA):

Martinsen, D. S. (2015). *An Ever More Powerful Court? The Political Constraints of Legal Integration in the European Union*. Oxford: Oxford University Press. Oxford Studies in European Law

Annex 3 – From Proposal to Final Adopted Act

Case-law concerned	Commission proposal - the formulation of the affected provisions	Political outcome – formulation of the adopted act	Largely identical?
<p>C-346/06 (Rüffert); C-319/06 (Commission vs. Luxembourg); C-49/98-71/98 (Finalarte among others)</p>	<p>COM (2012) 131 – proposed 21/3-2012</p> <p>In Article 9:</p> <p>National control measures</p> <p>1. Member States may only impose the following administrative requirements and control measures:</p> <p>(a) an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision, whereby the declaration may only cover the identity of the service provider, the presence of one or more clearly identifiable posted workers, their anticipated number, the anticipated duration and location of their presence, and the services justifying the posting;</p> <p>(b) an obligation to keep or make available and/or retain copies in paper or electronic form of the employment contract (or an equivalent document within the meaning of Directive 91/533, including, where appropriate or relevant, the additional information referred to in Article 4 of that Directive), payslips, time-sheets and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided;</p> <p>(c) a translation of the documents referred to under (b), may be justified provided these documents are not excessively long and standardised forms are</p>	<p>Directive 2014/67/EU – adopted 15 May 2014</p> <p>In Article 9:</p> <p>Administrative requirements and control measures</p> <p>1. Member States may only impose administrative requirements and control measures necessary in order to ensure effective monitoring of compliance with the obligations set out in this Directive and Directive 96/71/EC, provided that these are justified and proportionate in accordance with Union law.</p> <p>For these purposes Member States may in particular impose the following measures:</p> <p>(a) an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision, into (one of) the official language(s) of the host Member State, or into (an) other language(s) accepted by the host Member State, containing the relevant information necessary in order to allow factual controls at the workplace, including:</p> <p>(i) the identity of the service provider;</p> <p>(ii) the anticipated number of clearly identifiable posted workers;</p> <p>(iii) the persons referred to under points (e) and (f);</p> <p>(iv) the anticipated duration, envisaged beginning and end date of the posting;</p> <p>(v) the address(es) of the workplace; and</p> <p>(vi) the nature of the services justifying the posting;</p> <p>(b) an obligation to keep or</p>	<p>No</p>

	<p>generally used for such documents;</p> <p>(d) an obligation to designate a contact person to negotiate, if necessary, on behalf of the employer with the relevant social partners in the Member State to which the posting takes place, in accordance with national legislation and practice, during the period in which the services are provided.</p> <p>2. Member States shall ensure that the procedures and formalities relating to the posting of workers can be completed easily by undertakings, at a distance and by electronic means as far as possible.</p> <p>3. Within three years after the date referred to in Article 20, the necessity and appropriateness of the application of national control measures shall be reviewed in the light of the experiences with and effectiveness of the system for cooperation and exchange of information, the development of more uniform, standardised documents, the establishment of common principles or standards for inspections in the field of the posting of workers as well as technological developments, with a view to proposing, where appropriate, any necessary amendments or modifications.</p> <p>In Article 12 Subcontracting — Joint and several liability</p> <p>1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States shall ensure on a non-discriminatory basis with regard to the protection of the equivalent rights of employees of direct subcontractors established in its territory, that the contractor of which the employer (service provider or temporary employment undertaking or</p>	<p>make available and/or retain copies, in paper or electronic form, of the employment contract or an equivalent document within the meaning of Council Directive 91/533/EEC (1), including, where appropriate or relevant, the additional information referred to in Article 4 of that Directive, payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided;</p> <p>(c) an obligation to deliver the documents referred to under point (b), after the period of posting, at the request of the authorities of the host Member State, within a reasonable period of time;</p> <p>(d) an obligation to provide a translation of the documents referred to under point (b) into (one of) the official language(s) of the host Member State, or into (an) other language(s) accepted by the host Member State;</p> <p>(e) an obligation to designate a person to liaise with the competent authorities in the host Member State in which the services are provided and to send out and receive documents and/or notices, if need be;</p> <p>(f) an obligation to designate a contact person, if necessary, acting as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State, in accordance with national law and/or practice, during the period in which the services are provided. That person may be</p>	
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	<p>placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:</p> <p>(a) any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners in so far as covered by Article 3 (1) of Directive 96/71/EC;</p> <p>(b) any back-payments or refund of taxes or social security contributions unduly withheld from his/her salary.</p> <p>The liability referred to in the present paragraph shall be limited to worker's rights acquired under the contractual relationship between the contractor and his subcontractor.</p> <p>2. Member States shall provide that a contractor who has undertaken due diligence shall not be liable in accordance with paragraph 1. Such systems shall be applied in a transparent, non-discriminatory and proportionate way. They may imply preventive measures taken by the contractor concerning proof provided by the subcontractor of the main working conditions applied to the posted workers as referred to in Article 3 (1) of Directive 96/71/EC, including pay slips and payment of wages, the respect of social security and/or taxation obligations in the Member State of establishment and compliance with the applicable rules on posting of workers.</p> <p>3. Member States may, in conformity with Union law, provide for more stringent liability rules under national law on a non-discriminatory and proportionate basis in regard to the scope and range of subcontractor liability. Member States may also, in conformity with Union law, provide for such liability in sectors other than</p>	<p>different from the person referred to under point (e) and does not have to be present in the host Member State, but has to be available on a reasonable and justified request;</p> <p>2. Member States may impose other administrative requirements and control measures, in the event that situations or new developments arise from which it appears that existing administrative requirements and control measures are not sufficient or efficient to ensure effective monitoring of compliance with the obligations set out in Directive 96/71/EC and this Directive, provided that these are justified and proportionate. L 159/22 EN Official Journal of the European Union 28.5.2014 (1) Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32). 3. Nothing in this Article shall affect other obligations deriving from the Union legislation, including those deriving from Council Directive 89/391/EEC (1) and the Regulation (EC) No 883/2004, and/or those under national law regarding the protection or employment of workers provided that the latter are equally applicable to undertakings established in the Member State concerned and that they are justified and proportionate.</p> <p>4. Member States shall ensure that the procedures and formalities relating to the posting of workers pursuant to this Article can be completed in a user-friendly way by undertakings, at a distance and by electronic means as far as possible.</p> <p>5. Member States shall communicate to the Commission and inform service</p>	
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	<p>those contained in the Annex to Directive 96/71/EC. Member States may in these cases provide that a contractor that has undertaken due diligence as defined by national law shall not be liable.</p> <p>4. Within three years after the date referred to in Article 20, the Commission shall, in consultation with the Member States and social partners at EU level, review the application of this Article with a view to proposing, where appropriate, any necessary amendments or modifications.</p>	<p>providers of any measures referred to in paragraphs 1 and 2 that they apply or that have been implemented by them. The Commission shall communicate those measures to the other Member States. The information for the service providers shall be made generally available on a single national website in the most relevant language(s), as determined by the Member State.</p> <p>The Commission shall monitor the application of the measures referred to in paragraphs 1 and 2 closely, evaluate their compliance with Union law and shall, where appropriate, take the necessary measures in accordance with its competences under the TFEU. The Commission shall report regularly to the Council on measures communicated by Member States and, where appropriate, on the state of play of its analysis and/or assessment.</p> <p>In Article 12: Subcontracting liability 1. In order to tackle fraud and abuse, Member States may, after consulting the relevant social partners in accordance with national law and/or practice, take additional measures on a non-discriminatory and proportionate basis in order to ensure that in subcontracting chains the contractor of which the employer (service provider) covered by Article 1(3) of Directive 96/71/EC is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker with respect to any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners in so far as covered by Article 3 of Directive 96/71/EC.</p>	
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		<p>the Commission about measures taken under this Article and shall make the information generally available in the most relevant language(s), the choice being left to Member States.</p> <p>In the case of paragraph 2, the information provided to the Commission shall include elements setting out liability in subcontracting chains.</p> <p>In the case of paragraph 6, the information provided to the Commission shall include elements setting out the effectiveness of the alternative national measures with regard to the liability rules referred to in paragraph 2.</p> <p>The Commission shall make this information available to the other Member States.</p> <p>8. The Commission shall closely monitor the application of this Article.</p>	
C-438/05 (Viking); C-341/05 (Laval)	COM (2012) 130 – proposed 21/3-2012 Article 1,2 and 3	Not adopted	
C-158/96 (Kohll); C-368/98 (Vanbraekel); C-372/04 (Watts); C-120/95 Decker; C-157/99 Smits and Peerbooms; C-56/01 Inizan; C-8/02 Leichtle h) C-385/99 Müller-Fauré and Van Riet	<p>COM (2008) 414 – proposed 2/7-2008</p> <p>Legal basis: Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof</p> <p>Article 7 Non-hospital care The Member State of affiliation shall not make the reimbursement of the costs of non-hospital care provided in another Member State subject to prior authorisation, where the cost of that care, if it had been provided in its territory, would have been paid for by its social security system.</p> <p>Article 8 Hospital and specialised care 1. For the purposes of reimbursement of healthcare provided in another Member State in accordance with this Directive, hospital care shall</p>	<p>Directive 2011/24 – adopted 9/3-2011</p> <p>Legal basis: Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 168 thereof</p> <p>Article 7 General principles for reimbursement of costs 1. Without prejudice to Regulation (EC) No 883/2004 and subject to the provisions of Articles 8 and 9, the Member State of affiliation shall ensure the costs incurred by an insured person who receives cross-border healthcare are reimbursed, if the healthcare in question is among the benefits to which the insured person is entitled in the Member State of affiliation. 2. By way of derogation from paragraph 1: (a) if a Member State is listed in Annex IV to Regulation (EC) No 883/2004 and in compliance</p>	No

	<p>mean:</p> <p>(a) healthcare which requires overnight accommodation of the patient in question for at least one night.</p> <p>(b) healthcare, included in a specific list, that does not require overnight accommodation of the patient for at least one night. This list shall be limited to:</p> <ul style="list-style-type: none"> - healthcare that requires use of highly specialised and cost-intensive medical infrastructure or medical equipment; or - healthcare involving treatments presenting a particular risk for the patient or the population. <p>2. This list shall be set up and may be regularly updated by the Commission. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).</p> <p>3. The Member State of affiliation may provide for a system of prior authorisation for reimbursement by its social security system of the cost of hospital care provided in another Member State where the following conditions are met:</p> <p>(a) had the healthcare been provided in its territory, it would have been assumed by the Member State's social security system; and</p> <p>(b) the purpose of the system is to address the consequent outflow of patients due to the implementation of the present Article and to prevent it from seriously undermining, or being likely to seriously undermine:</p> <ul style="list-style-type: none"> (i) the financial balance of the Member State's social security system; and/or (ii) the planning and rationalisation carried out in the hospital sector to avoid hospital overcapacity, imbalance in the supply of hospital care and logistical and financial wastage, 	<p>with that Regulation has recognised the rights to sickness benefits for pensioners and the members of their families, being resident in a different Member State, it shall provide them healthcare under this Directive at its own expense when they stay on its territory, in accordance with its legislation, as though the persons concerned were residents in the Member State listed in that Annex;</p> <p>(b) if the healthcare provided in accordance with this Directive is not subject to prior authorisation, is not provided in accordance with Chapter 1 of Title III of the Regulation (EC) No 883/2004, and is provided in the territory of the Member State that according to that Regulation and Regulation (EC) No 987/2009 is, in the end, responsible for reimbursement of the costs, the costs shall be assumed by that Member State. That Member State may assume the costs of the healthcare in accordance with the terms, conditions, criteria for eligibility and regulatory and administrative formalities that it has established, provided that these are compatible with the TFEU.</p> <p>3. It is for the Member State of affiliation to determine, whether at a local, regional or national level, the healthcare for which an insured person is entitled to assumption of costs and the level of assumption of those costs, regardless of where the healthcare is provided.</p> <p>4. The costs of cross-border healthcare shall be reimbursed or paid directly by the Member State of affiliation up to the level of costs that would have been assumed by the Member State of affiliation, had this healthcare been provided in its territory without exceeding the actual costs of healthcare received.</p> <p>Where the full cost of cross-</p>	
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	<p>the maintenance of a balanced medical and hospital service open to all, or the maintenance of treatment capacity or medical competence on the territory of the concerned Member State.</p> <p>4. The prior authorisation system shall be limited to what is necessary and proportionate to avoid such impact, and shall not constitute a means of arbitrary discrimination.</p> <p>5. The Member State shall make publicly available all relevant information on the prior authorisation systems introduced pursuant to the provisions of paragraph 3.</p>	<p>border healthcare exceeds the level of costs that would have been assumed had the healthcare been provided in its territory the Member State of affiliation may nevertheless decide to reimburse the full cost.</p> <p>The Member State of affiliation may decide to reimburse other related costs, such as accommodation and travel costs, or extra costs which persons with disabilities might incur due to one or more disabilities when receiving cross-border healthcare, in accordance with national legislation and on the condition that there be sufficient documentation setting out these costs.</p> <p>5. Member States may adopt provisions in accordance with the TFEU aimed at ensuring that patients enjoy the same rights when receiving cross-border healthcare as they would have enjoyed if they had received healthcare in a comparable situation in the Member State of affiliation.</p> <p>6. For the purposes of paragraph 4, Member States shall have a transparent mechanism for calculation of costs of cross-border healthcare that are to be reimbursed to the insured person by the Member State of affiliation. This mechanism shall be based on objective, non-discriminatory criteria known in advance and applied at the relevant (local, regional or national) administrative level.</p> <p>7. The Member State of affiliation may impose on an insured person seeking reimbursement of the costs of cross-border healthcare, including healthcare received through means of telemedicine, the same conditions, criteria of eligibility and regulatory and administrative formalities, whether set at a local, regional or national level, as it would</p>	
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		<p>impose if this healthcare were provided in its territory. This may include an assessment by a health professional or healthcare administrator providing services for the statutory social security system or national health system of the Member State of affiliation, such as the general practitioner or primary care practitioner with whom the patient is registered, if this is necessary for determining the individual patient's entitlement to healthcare. However, no conditions, criteria of eligibility and regulatory and administrative formalities imposed according to this paragraph may be discriminatory or constitute an obstacle to the free movement of patients, services or goods, unless it is objectively justified by planning requirements relating to the object of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources.</p> <p>8. The Member State of affiliation shall not make the reimbursement of costs of cross-border healthcare subject to prior authorisation except in the cases set out in Article 8.</p> <p>9. The Member State of affiliation may limit the application of the rules on reimbursement for cross-border healthcare based on overriding reasons of general interest, such as planning requirements relating to the aim of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and</p>	
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		<p>human resources.</p> <p>10. Notwithstanding paragraph 9, Member States shall ensure that the cross-border healthcare for which a prior authorisation has been granted is reimbursed in accordance with the authorisation.</p> <p>11. The decision to limit the application of this Article pursuant to paragraph 9 shall be restricted to what is necessary and proportionate, and may not constitute a means of arbitrary discrimination or an unjustified obstacle to the free movement of goods, persons or services. Member States shall notify the Commission of any decisions to limit reimbursement on the grounds stated in paragraph 9.</p> <p>Article 8 Healthcare that may be subject to prior authorisation</p> <p>1. The Member State of affiliation may provide for a system of prior authorisation for reimbursement of costs of cross-border healthcare, in accordance with this Article and Article 9. The system of prior authorisation, including the criteria and the application of those criteria, and individual decisions of refusal to grant prior authorisation, shall be restricted to what is necessary and proportionate to the objective to be achieved, and may not constitute a means of arbitrary discrimination or an unjustified obstacle to the free movement of patients.</p> <p>2. Healthcare that may be subject to prior authorisation shall be limited to healthcare which:</p> <p>(a) is made subject to planning requirements relating to the object of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and</p>	
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		<p>human resources and:</p> <ul style="list-style-type: none">(i) involves overnight hospital accommodation of the patient in question for at least one night;or(ii) requires use of highly specialised and cost-intensive medical infrastructure or medical equipment; <p>(b) involves treatments presenting a particular risk for the patient or the population; or</p> <p>(c) is provided by a healthcare provider that, on a case-by-case basis, could give rise to serious and specific concerns relating to the quality or safety of the care, with the exception of healthcare which is subject to Union legislation ensuring a minimum level of safety and quality throughout the Union.</p> <p>Member States shall notify the categories of healthcare referred to in point (a) to the Commission.</p> <p>3. With regard to requests for prior authorisation made by an insured person with a view to receiving cross-border healthcare, the Member State of affiliation shall ascertain whether the conditions laid down in Regulation (EC) No 883/2004 have been met. Where those conditions are met, the prior authorisation shall be granted pursuant to that Regulation unless the patient requests otherwise.</p> <p>4. When a patient affected, or suspected of being affected, by a rare disease applies for prior authorisation, a clinical evaluation may be carried out by experts in that field. If no experts can be found within the Member State of affiliation or if the expert's opinion is inconclusive, the Member State of affiliation may request scientific advice.</p> <p>5. Without prejudice to points (a) to (c) of paragraph 6, the Member State of affiliation may not refuse to grant prior authorisation when the patient</p>	
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		<p>is entitled to the healthcare in question in accordance with Article 7, and when this healthcare cannot be provided on its territory within a time limit which is medically justifiable, based on an objective medical assessment of the patient's medical condition, the history and probable course of the patient's illness, the degree of the patient's pain and/or the nature of the patient's disability at the time when the request for authorisation was made or renewed.</p> <p>6. The Member State of affiliation may refuse to grant prior authorisation for the following reasons:</p> <ul style="list-style-type: none">(a) the patient will, according to a clinical evaluation, be exposed with reasonable certainty to a patient-safety risk that cannot be regarded as acceptable, taking into account the potential benefit for the patient of the sought cross- border healthcare;(b) the general public will be exposed with reasonable certainty to a substantial safety hazard as a result of the cross- border healthcare in question;(c) this healthcare is to be provided by a healthcare provider that raises serious and specific concerns relating to the respect of standards and guidelines on quality of care and patient safety, including provisions on supervision, whether these standards and guidelines are laid down by laws and regulations or through accreditation systems established by the Member State of treatment;(d) this healthcare can be provided on its territory within a time limit which is medically justifiable, taking into account the current state of health and the probable course of the illness of each patient concerned. <p>7. The Member State of affiliation shall make publicly</p>	
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		available which healthcare is subject to prior authorisation for the purposes of this Directive, as well as all relevant information on the system of prior authorisation.	
a) C-180/95 (Draehmpaehl); b) C-271/91 (Marshall)	COM (2009) 410 – proposed 30/7-2009 Article 2 Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. They may comprise payment of compensation, which may not be limited by the fixing of a prior upper limit.	Directive 2010/18 – adopted 8/3-2010 Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed. The penalties shall be effective, proportionate and dissuasive.	Yes
C-43/99 (Leclere)	COM (2004) 830 – proposed 23/12-2004 Annex IIa is amended as follows: (a) Under the heading "D. GERMANY", the word "none" shall be replaced by: "Benefits to cover subsistence costs under the basic provision for jobseekers unless, with respect to these benefits, the eligibility requirements for a temporary supplement following receipt of unemployment benefit (Article 24 (1) of Book II of the Social Code) are fulfilled" (b) Section "L. LATVIA" is replaced by the following: "L. LATVIA (a) State Social Security Benefit (Law on State Social Benefits of 1 January 2003) (b) Allowance for the compensation of transportation expenses for disabled persons with restricted mobility (Law on State Social Benefits of 1 January 2003)" (c) Section "S. POLAND" is replaced by the following: "S. POLAND Social pension (Act of 27 June 2003 on social pension)"	Regulation 629/2006 – adopted 5/4-2006 Annex IIa is amended as follows: (a) in point 'D. GERMANY', 'None' is replaced by: 'Benefits to cover subsistence costs under the basic provision for jobseekers unless, with respect to these benefits, the eligibility requirements for a temporary supplement following receipt of unemployment benefit (Article 24(1) of Book II of the Social Code) are fulfilled'; (b) point 'L. LATVIA' is replaced by the following: 'L. LATVIA (a) State Social Security Benefit (Law on State Social Benefits of 1 January 2003); (b) Allowance for the compensation of transportation expenses for disabled persons with restricted mobility (Law on State Social Benefits of 1 January 2003); (c) point 'S. POLAND' is replaced by the following: 'S. POLAND Social pension (Act of 27 June 2003 on social pensions)'; (d) point 'V. SLOVAKIA' is replaced by the following: 'V. SLOVAKIA	Yes

	(d) Section "V. SLOVAKIA" is replaced by the following: "V. SLOVAKIA Adjustment of pensions as the sole source of income with their entitlement arisen according to the Act No 100/1998 Coll."	Adjustment awarded before 1 January 2004 to pensions constituting the sole source of income.'	
C-215/99 (Jauch); C-43/99 (Leclere,); C-160/96 (Molenaar); and others	COM (2003) 468 – proposed 31/7-2003 Annex IIa shall be replaced by the following text: Annex IIa SPECIAL NON-CONTRIBUTORY CASH BENEFITS Article 10(a) A. BELGIUM a) Income replacement allowance (Law of 27 February 1987); b) Guaranteed income for elderly persons (Law of 1 April 1969). B. DENMARK Accommodation expenses for pensioners (Law on individual accommodation assistance, consolidated by Law No 204 of 29 March 1995). C. GERMANY Benefits pursuant to the law on a minimum needs-based provision in old age and in the event of reduced earning capacity. D. SPAIN a) Minimum income guarantee (Law No 13/82 of 7 April 1982); b) Cash benefits to assist the elderly and invalids unable to work (Royal Decree No 2620/81 of 24 July 1981); c) Non-contributory invalidity and retirement pensions as provided for in Article 38(1) of the Consolidated Text of the General Law on Social Security, approved by Royal Legislative Decree No 1/1994 of 20 June 1994. E. FRANCE a) Supplementary allowance from the National Solidarity Fund (Law of 30 June 1956); b) Disabled adults' allowance (Law of 30 June 1975); c) The special allowance (Law of 10 July 1952). F. GREECE	Regulation 647/2005 – adopted 13. April 2005 Annex IIa shall be replaced by the following text that includes, unchanged, the entries as set out in the 2003 Act of Accession: Article 10a A. BELGIUM (a) Income replacement allowance (Law of 27 February 1987) (b) Guaranteed income for elderly persons (Law of 22 March 2001). B. CZECH REPUBLIC Social allowance (State Social Support Act No 117/1995 Sb). C. DENMARK Accommodation expenses for pensioners (Law on individual accommodation assistance, consolidated by Law No 204 of 29 March 1995). D. GERMANY Basic subsistence income for the elderly and for persons with reduced earning capacity under Chapter 4 of Book XII of the Social Code. E. ESTONIA (a) Disabled adult allowance (Social Benefits for Disabled Persons Act of 27 January 1999). (b) State unemployment allowance (Social Protection of the Unemployed Act of 1 October 2000). F. GREECE Special benefits for the elderly (Law 1296/82). G. SPAIN (a) Minimum income guarantee (Law No 13/82 of 7 April 1982); (b) cash benefits to assist the elderly and invalids unable to work (Royal Decree No 2620/81 of 24 July 1981); (c) non-contributory invalidity	No

	<p>Special benefits for elderly persons (Law 1296/82).</p> <p>G. IRELAND</p> <p>a) Unemployment assistance (Social Welfare (Consolidation) Act 1993, Part III, Chapter 2);</p> <p>b) Old age and blind pensions (non-contributory) (Social Welfare Consolidation) Act 1993, Part III, Chapters 4);</p> <p>c) Widow's (non-contributory) pension, widower's (non-contributory) pension (Social Welfare (Consolidation) Act 1993, Part III, Chapter 6 as amended by Part V of the Social Welfare Act 1997);</p> <p>d) Disability allowance (Social Welfare Act 1996, Part IV).</p> <p>H. ITALY</p> <p>a) Social pensions for persons without means (Law No 153 of 30 April 1969);</p> <p>(b) Pensions and allowances for the civilian disabled or invalids (Laws No 118 of 30 March 1974, No 18 of 11 February 1980 and No 508 of 23 November 1988);</p> <p>(c) Pensions and allowances for the deaf and dumb (Laws No 381 of 26 May 1970 and No 508 of 23 November 1988);</p> <p>(d) Pensions and allowances for the civilian blind (Laws No 382 of 27 May 1970 and No 508 of 23 November 1988);</p> <p>(e) Benefits supplementing the minimum pensions (Laws No 218 of 4 April 1952, No 638 of 11 November 1983 and No 407 of 29 December 1990);</p> <p>(f) Benefits supplementing disability allowances (Law No 222 of 12 June 1984);</p> <p>g) Social allowance (Law No 335 of 8 August 1995);</p> <p>h) Social increase.</p> <p>I. LUXEMBOURG</p> <p>None.</p>	<p>and retirement pensions as provided for in Article 38(1) of the Consolidated Text of the General Law on Social Security, approved by Royal Legislative Decree No 1/1994 of 20 June 1994;</p> <p>(d) allowances to promote mobility and to compensate for transport costs (Law No 13/1982 of 7 April 1982).</p> <p>H. FRANCE</p> <p>(a) supplementary allowances of the special invalidity fund and the old age solidarity fund (Law of 30 June 1956, codified in Book VIII of the Social security code);</p> <p>(b) disabled adults' allowance (Law of 30 June 1975, codified in Book VIII of the Social security code);</p> <p>(c) special allowance (Law of 10 July 1952, codified in Book VIII of the Social security code).</p> <p>I. IRELAND</p> <p>(a) Unemployment assistance (Social Welfare (Consolidation) Act 1993, Part III, Chapter 2);</p> <p>(b) old-age (non-contributory) pension (Social Welfare (Consolidation) Act 1993, Part III, Chapter 4);</p> <p>(c) widow's (non-contributory) pension and widower's (non-contributory) pension (Social Welfare (Consolidation) Act 1993, Part III, Chapter 6 as amended by Part V of the Social Welfare Act 1997);</p> <p>(d) disability allowance (Social Welfare Act 1996, Part IV);</p> <p>(e) mobility allowance (Health Act 1970, Section 61);</p> <p>(f) blind pension (Social Welfare (Consolidation) Act 1993, Part III, Chapter 5).</p> <p>J. ITALY</p> <p>(a) Social pensions for persons without means (Law No 153 of 30 April 1969);</p> <p>(b) pensions and allowances for the civilian disabled or invalids (Laws No 118 of 30 March 1974, No 18 of 11 February 1980 and No 508 of 23 November 1988);</p>	
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	<p>J. NETHERLANDS</p> <p>a) Incapacity benefits for disabled young people (Law of 24 April 1997);</p> <p>b) Law concerning the provision of supplements up to the relevant social minimum to recipients of benefits under the Unemployment Benefits Act, the Sickness Benefits Act, the Invalidity Insurance (Self-employed Persons) Act, the Invalidity Insurance (Young Disabled Persons) Act, the Invalidity Insurance Act and the Military Personnel Invalidity Insurance Act (Toeslagenwet, 6 November 1986).</p> <p>K. AUSTRIA</p> <p>Compensatory supplement (Federal Act of 9 September 1955 on General Social Insurance — ASVG, Federal Act of 11 October 1978 on Social Insurance for Persons engaged in Trade and Commerce — GSVG and Federal Act of 11 October 1978 on Social Insurance for Farmers — BSVG).</p> <p>L. PORTUGAL</p> <p>a) Non-contributory State old-age and invalidity pension (Decree-Law No 464/80 of 13 October 1980);</p> <p>b) Non-contributory widow's pension (Regulatory Decree No 52/81 of 11 November 1981).</p> <p>M. FINLAND</p> <p>a) Disability allowance (Disability Allowance Act, 124/88);</p> <p>b) Housing allowance for pensioners (Act concerning the Housing Allowance for Pensioners, 591/78);</p> <p>c) Labour market support (Labour Market Support Act 1542/93).</p> <p>N. SWEDEN</p> <p>a) Housing supplements for persons receiving a pension (Law 1994: 308);</p> <p>b) Financial support for the elderly (Law 2001: 853).</p>	<p>(c) pensions and allowances for the deaf and dumb (Laws No 381 of 26 May 1970 and No 508 of 23 November 1988);</p> <p>(d) Pensions and allowances for the civilian blind (Laws No 382 of 27 May 1970 and No 508 of 23 November 1988);</p> <p>(e) benefits supplementing the minimum pensions (Laws No 218 of 4 April 1952, No 638 of 11 November 1983 and No 407 of 29 December 1990);</p> <p>(f) benefits supplementing disability allowances (Law No 222 of 12 June 1984);</p> <p>(g) social allowance (Law No 335 of 8 August 1995);</p> <p>(h) social increase (Article 1 (1) and (12) of Law No 544 of 29 December 1988 and successive amendments).</p> <p>K. CYPRUS</p> <p>(a) Social Pension (Social Pension Law of 1995 (Law 25(I)/95), as amended);</p> <p>(b) severe motor disability allowance (Council of Ministers' Decision Nos 38.210 of 16 October 1992, No 41.370 of 1 August 1994, No 46.183 of 11 June 1997 and No 53.675 of 16 May 2001);</p> <p>(c) special grant to blind persons (Special Grants Law of 1996 (Law 77(I)/96), as amended).</p> <p>L. LATVIA</p> <p>(a) State Social Security Benefit (Law on social assistance of 26 October 1995);</p> <p>(b) allowance for the compensation of transportation expenses for disabled persons with restricted mobility (Law on social assistance of 26 October 1995).</p> <p>M. LITHUANIA</p> <p>(a) Social pension (Law of 1994 on social pensions);</p> <p>(b) special transport compensation for the disabled who have mobility problems (Law of 2000 on Transport Compensation, Article 7).</p> <p>N. LUXEMBOURG</p> <p>Income for the seriously disabled (Article 1(2), Law of 12</p>	
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	<p>O. UNITED KINGDOM</p> <p>a) Pension credit;</p> <p>b) Income-based allowances for jobseekers (Jobseekers Act 1995, 28 June 1995, Sections I, (2) (d) (ii) and 3, and Jobseekers (Northern Ireland), Order 1995, 18 October 1995, Articles 3 (2) (d) (ii) and 5).</p>	<p>September 2003), with the exception of persons recognized as being disabled workers and employed on the mainstream labour market or in a sheltered environment.</p> <p>O. HUNGARY</p> <p>(a) Invalidity annuity (Decree No 83/1987 (XII 27) of the Council of Ministers on Invalidity Annuity);</p> <p>(b) non-contributory old-age allowance (Act III of 1993 on Social Administration and Social Benefits);</p> <p>(c) Transport allowance (Government Decree No 164/1995 (XII 27) on Transport allowances for persons with severe physical handicap).</p> <p>P. MALTA</p> <p>(a) Supplementary allowance (Section 73 of the Social Security Act (Cap. 318) 1987);</p> <p>(b) age pension (Social Security Act (Cap. 318) 1987).</p> <p>Q. NETHERLANDS</p> <p>(a) Disablement Assistance Act for Handicapped Young Persons, of 24 April 1997 (Wajong);</p> <p>(b) supplementary Benefits Act of 6 November 1986 (TW).</p> <p>R. AUSTRIA</p> <p>Compensatory supplement (Federal Act of 9 September 1955 on General Social Insurance – ASVG, Federal Act of 11 October 1978 on social insurance for persons engaged in trade and commerce – GSVG and Federal Act of 11 October 1978 on social insurance for farmers – BSVG).</p> <p>S. POLAND</p> <p>Social pension (Act of 29 November 1990 on social assistance).</p> <p>T. PORTUGAL</p> <p>(a) Non-contributory State old-age and invalidity pension (Decree-Law No 464/80 of 13 October 1980);</p> <p>(b) non-contributory widowhood pension (Regulatory Decree No 52/81 of 11 November 1981).</p>	
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		<p>U. SLOVENIA (a) State pension (Pension and Disability Insurance Act of 23 December 1999); (b) income support for pensioners (Pension and Disability Insurance Act of 23 December 1999); (c) maintenance allowance (Pension and Disability Insurance Act of 23 December 1999).</p> <p>V. SLOVAKIA Adjustment of pensions as the sole source of income (Act No 100/1988 Zb.).</p> <p>W. FINLAND (a) Disability allowance (Disability Allowance Act, 124/88); (b) childcare allowance (Child care Allowance Act, 444/69); (c) housing allowance for pensioners (Act concerning the Housing Allowance for Pensioners, 591/78); (d) labour market support (Act on Unemployment benefits 1290/2002); (e) special assistance for immigrants (Act on Special Assistance for Immigrants, 1192/2002).</p> <p>X. SWEDEN (a) Housing supplements for persons receiving a pension (Law 2001:761); (b) financial support for the elderly (Law 2001:853); (c) disability allowance and care allowance for disabled children (Law 1998:703).</p> <p>Y. UNITED KINGDOM (a) State Pension credit (State Pension Credit Act 2002); (b) income-based allowances for jobseekers (Jobseekers Act 1995, 28 June 1995, Sections 1, (2)(d)(ii) and 3, and Jobseekers (Northern Ireland) Order 1995 of 18 October 1995, Articles 3(2)(d)(ii) and 5); (c) income Support (Social Security Act 1986 of 25 July 1986, Section 20 to 22 and Section 23, and Social Security (Northern Ireland) Order 1986 of</p>	
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		<p>5 November 1986, Articles 21 to 24);</p> <p>(d) disability living allowance (Disability Living Allowance and Disability Working Allowance Act 1991 of 27 June 1991, Section 1, and disability living allowance and disability working allowance (Northern Ireland) order 1991 of 24 July 1991, Article 3);</p> <p>(e) attendance allowance (Social Security Act 1975 of 20 March 1975, Section 35, and Social Security (Northern Ireland) Act 1975 of 20 March 1975, Section 35);</p> <p>(f) carer's allowance (Social Security Act 1975 of 20 March 1975, Section 37, and Social Security (Northern Ireland) Act 1975 of 20 March 1975, Section 37).';</p>	
<p>C-200/91 (Coloroll); C-43/75 (Defrenne II)</p>	<p>COM (2003) 657 – proposed 5/11-2003</p> <p>Article 4</p> <p>Actuarial factors</p> <p>1. Member States shall ensure that the use of sex as a factor in the calculation of premiums and benefits for the purpose of insurance and related financial services is prohibited in all new contracts concluded after [date referred to in Article 16(1)] at the latest.</p> <p>2. Member States may defer implementation of the measures necessary to comply with paragraph 1 until [six years after date referred to in paragraph 1] at the latest.</p> <p>In that case, the Member States concerned shall immediately inform the Commission. They shall compile, publish and regularly update comprehensive tables on the mortality and life expectancy of women and men.</p>	<p>Directive 2004/113 – adopted 13. December 2004</p> <p>Article 5</p> <p>Actuarial factors</p> <p>1. Member States shall ensure that in all new contracts concluded after 21 December 2007 at the latest, the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits.</p> <p>2. Notwithstanding paragraph 1, Member States may decide before 21 December 2007 to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. The Member States concerned shall inform the Commission and ensure that accurate data relevant to the use of sex as a determining actuarial factor are compiled, published and regularly updated.</p>	<p>No</p>

		<p>These Member States shall review their decision five years after 21 December 2007, taking into account the Commission report referred to in Article 16, and shall forward the results of this review to the Commission.</p> <p>3. In any event, costs related to pregnancy and maternity shall not result in differences in individuals' premiums and benefits.</p> <p>Member States may defer implementation of the measures necessary to comply with this paragraph until two years after 21 December 2007 at the latest. In that case the Member States concerned shall immediately inform the Commission.</p>	
C-303/98 (SiMAP); C-151/02 (Jaeger)	COM (2004) 607 – proposed 22/9-2004 Article 2a	Not adopted	
C- 157/99 (Smits and Peerbooms) among others	COM (2004) 2 proposed 5/3-2004 Article 23	Not adopted	
C-479/93 (Frankovich); C-117/96 (Mosbaek); C-198/98 (G.Everson, T.J. Barras/Bell Lines Ltd)	COM (2000) 832 – proposed 15/1-2001 Article 8 a When an undertaking with establishments in the territories of at least two Member States is in a state of insolvency within the meaning of Article 2(l) and the opening of insolvency proceedings has been requested in a Member State other than that in which the worker habitually works, the competent guarantee institution shall be that in the latter Member State.	Directive 2002/74 - adopted 23/9-2002 1. When an undertaking with activities in the territories of at least two Member States is in a state of insolvency within the meaning of Article 2(l), the institution responsible for meeting employees' outstanding claims shall be that in the Member State in whose territory they work or habitually work.	Yes
149/77 (Defrenne III); C-450/93 (Eckhard Kalanke v Freie Hansestadt Bremen); C-222/84 (Johnston); and others	COM (2000) 334 – proposed 7/6-2000 Article 2.2 Member States may provide, as regards access to employment, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a	Directive 2002/73 – adopted 23/9-2002 Article 2.6 6. Member States may provide, as regards access to employment including the training leading thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities	Yes

	<p>characteristic constitutes a genuine occupational requirement. Derogations to the principle of equal treatment shall remain within the limits of what is appropriate and necessary in order to achieve the aim in view.</p> <p>Article 6.1 Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Articles 3, 4, and 5 to pursue their claims by judicial process after possible recourse to other competent authorities, even after the employment relationship has ended.</p>	<p>concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.</p> <p>Article 6.1 Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.</p>	
<p>C-237/94 O'Flynn; C-450/93 Kalanke; C-409/95 Marchall; C-109/88 (Danfoss); C-127/92 (Enderby); C-400/93 (Royal Copenhagen);</p>	<p>COM (1999) 565 – proposed 25/11-1999 Article 2 (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is liable to affect adversely a person or persons to whom any of the grounds referred to in Article 1 applies, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary.</p> <p>Article 6 Positive action This Directive shall be without prejudice to the right of the Member States to maintain or adopt measures intended to prevent or compensate for disadvantages concerning persons to whom any of the discriminatory grounds referred to in Article 1 apply.</p> <p>Article 9.1</p>	<p>Directive 2000/78 – adopted 27/11-2000 Article 2 (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless: (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or (ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.</p>	<p>Yes</p>

	<p>Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.</p>	<p>Article 7 Positive action 1. With a view to ensuring full equality in practice, 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 any of the grounds referred to in Article 1. 2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.</p> <p>Article 10 Burden of proof 1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.</p>	
Reference to the court but not to specific case-law	<p>COM (1998) 662 - 98/0318 (SYN) – proposed 24/11-1998 the following subparagraph in Article 5 is deleted: ‘The minimum rest period referred to in the first subparagraph shall in principle include Sunday.’</p>	<p>Directive 2000/34 – adopted 22/6-2000 In Article 5, the following subparagraph shall be deleted: "The minimum rest period referred to in the first subparagraph shall in principle include Sunday."</p>	Yes
C-279/93 (Finanzamt Köln-Altstadt v Schumacher); C-19/92 (Kraus);	<p>COM (97) 486 – proposed 8/10-1997 Art. 6.2 Where, pursuant to paragraph 1, contributions continue to be</p>	<p>Directive 98/49 – adopted 29/6-1998 Art. 6.2 Where, pursuant to paragraph 1, contributions continue to be</p>	No

<p>C-80/94 (Wielockx); C-107/94 (Asscher); C-272/94 (Guiot)</p>	<p>made to a supplementary pension scheme in the Member State of origin, the host Member State shall recognize these as equivalent to contributions to a supplementary pension scheme in the host Member State.</p> <p>Article 7 Where contributions continue to be made in accordance with Article 6(1) to an approved supplementary pension scheme, a host Member State shall, to the extent that it has taxing rights, treat such contributions in the same way as it would treat contributions paid to a comparable approved supplementary pension scheme established in the host Member State.</p>	<p>made to a supplementary pension scheme in one Member State, the posted worker and, where applicable, his employer shall be exempted from any obligation to make contributions to a supplementary pension scheme in another Member State.</p> <p>Article 7 Member States shall take measures to ensure that employers, trustees or others responsible for the management of supplementary pension schemes provide adequate information to scheme members, when they move to another Member State, as to their pension rights and the choices which are available to them under the scheme. Such information shall at least correspond to information given to scheme members in respect of whom contributions cease to be made but who remain within the same Member State.</p>	
<p>C-251/94 (Eduardo Lafuente Nieto)</p>	<p>COM (97) 378 – proposed 18/7-1997 Annex VI In section "D. SPAIN", paragraph 4(b) is reworded as follows: "b) The amount of the pension obtained shall be increased by the amount of the increases and revalorisations calculated for each previous year, for pensions of the same nature".</p>	<p>Regulation 1223/98 – adopted 4/6-1998 Annex VI in section 'D. SPAIN', paragraph 4(b) shall be replaced as follows: '(b) the amount of the pension obtained shall be increased by the amount of the increases and revalorisations calculated for each subsequent year, for pensions of the same nature';</p>	<p>Yes</p>
<p>C-109/88 (Danfoss); C-318/86 (Commission v. France); C-127/92 (Enderby); C-400/93 (Royal Copenhagen); and others.</p>	<p>COM 96/340 – proposed 17/7-1996 Article 4 Burden of proof 1. Member States shall take such measures as are necessary in accordance with their national judicial systems: (a) to ensure that where persons who consider themselves wronged by failure to apply to them the principle of equal</p>	<p>Directive 97/80 – adopted 15/12-1997 Article 4 Burden of proof 1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them</p>	<p>Yes</p>

	<p>treatment establish, before a court or other competent authority, facts from which discrimination may be presumed to exist, it shall be for the respondent to prove that there has been no contravention of the principle of equal treatment. The plaintiff shall benefit from any doubt that might remain;</p> <p>(b) to ensure that it is for the defendant, when it applies a system or a decision lacking transparency, to prove that the apparent discrimination is due to objective factors unrelated to any discrimination based on sex;</p> <p>(c) to ensure that the plaintiff does not have to prove the existence of any fault on the part of the defendant to establish that the ban on discrimination based on sex has been infringed.</p> <p>2. This Directive does not prevent Member States from introducing evidential rules which are more favourable to the plaintiff.</p>	<p>establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.</p> <p>2. This Directive shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.</p> <p>3. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.</p>	
<p>C-109/88 (Danfoss); C-318/86 (Commission v. France); C-127/92 (Enderby); C-400/93 (Royal Copenhagen); and others</p>	<p>COM (96) 340 – proposed 17/7-1996</p> <p>Article 4: Burden of proof</p> <p>1. Member States shall take such measures as are necessary in accordance with their national judicial systems: (a) to ensure that where persons who consider themselves wronged by failure to apply to them the principle of equal treatment establish, before a court or other competent authority, facts from which discrimination may be presumed to exist, it shall be for the respondent to prove that there has been no contravention of the principle of equal treatment. The plaintiff shall benefit from any doubt that might remain;</p> <p>(b) to ensure that it is for the defendant, when it applies a system or a decision lacking transparency, to prove that the apparent discrimination is due to objective factors unrelated to any discrimination based on sex;</p> <p>(c) to ensure that the plaintiff</p>	<p>Council Directive 97/80/EC – adopted 15/12-1997</p> <p>Article 4: Burden of proof</p> <p>1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.</p> <p>2. This Directive shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.</p> <p>3. Member States need not apply paragraph 1 to proceedings in which it is for the</p>	Yes

	<p>does not have to prove the existence of any fault on the part of the defendant to establish that the ban on discrimination based on sex has been infringed.</p> <p>2. This Directive does not prevent Member States from introducing evidential rules which are more favourable to the plaintiff.</p>	<p>court or competent body to investigate the facts of the case.</p>	
<p>270/80 (John Webb); C-113/89 (Rush Portuguesa); and others</p>	<p>COM (91) 230 – proposed 1/8-1991</p> <p>Article 3</p> <p>1. Member states shall see to it that, whatever the law applicable to the employment relationship, the undertaking does not deprive the worker of the terms and conditions of employment which apply for work of the same character at the place where the work is temporarily carried out, provided that:</p> <p>a) they are laid down by laws, regulations and administrative provisions, collective agreements or arbitration awards, covering the whole of the occupation and industry concerned having an ‘erga omnes’ effect and/or being made legally binding in the occupation and industry concerned, and</p> <p>b) the concern the following matters:</p> <p>(i) maximum daily and weekly hours of work, rest periods, work on Sundays and night work;</p> <p>(ii) minimum paid holidays;</p> <p>(iii) the minimum rates of pay, including overtime rates and allowances, but excluding benefits provided for by private occupational schemes;</p> <p>(iv) the conditions of hiring out workers, in particular the supply of workers by temporary employment businesses;</p> <p>(v) health, safety and hygiene at work;</p> <p>(vi) protective measures with regard to the working conditions of pregnant women or women who have recently given birth, children, young people and other groups enjoying special protection;</p> <p>(vii) equality of treatment</p>	<p>Directive 96/71 – adopted 16/12-1996</p> <p>Article 3</p> <p>Terms and conditions of employment</p> <p>1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:</p> <p>- by law, regulation or administrative provision, and/or</p> <p>- by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:</p> <p>(a) maximum work periods and minimum rest periods;</p> <p>(b) minimum paid annual holidays;</p> <p>(c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;</p> <p>(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;</p> <p>(e) health, safety and hygiene at work;</p> <p>(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;</p> <p>(g) equality of treatment</p>	<p>No</p>

	<p>between men and women and prohibition of discrimination on the grounds of color, race, religion, opinions, national origin or social background.</p> <p>2. Paragraphs 1(b) (ii) and (iii) shall not apply to employment relationships referred to in Article 2 when the length of the posting of the workers is less than three months, within a reference period of one year from the beginning of the posting. In calculating the three month period, account should be taken of any previous periods for which the post has been filled by a posted worker.</p>	<p>between men and women and other provisions on non-discrimination.</p> <p>For the purposes of this Directive, the concept of minimum rates of pay referred to in paragraph 1 (c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.</p> <p>2. In the case of initial assembly and/or first installation of goods where this is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use and carried out by the skilled and/or specialist workers of the supplying undertaking, the first subparagraph of paragraph 1 (b) and (c) shall not apply, if the period of posting does not exceed eight days.</p> <p>This provision shall not apply to activities in the field of building work listed in the Annex.</p> <p>3. Member States may, after consulting employers and labour, in accordance with the traditions and practices of each Member State, decide not to apply the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) when the length of the posting does not exceed one month.</p> <p>4. Member States may, in accordance with national laws and/or practices, provide that exemptions may be made from the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) and from a decision by a Member State within the meaning of paragraph 3 of this Article, by means of collective agreements within the meaning of paragraph 8 of this Article, concerning one or more sectors of activity, where the length of the posting does not exceed one month.</p> <p>5. Member States may provide for exemptions to be granted</p>	
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		<p>from the first subparagraph of paragraph 1 (b) and (c) in the cases referred to in Article 1 (3) (a) and (b) on the grounds that the amount of work to be done is not significant.</p> <p>Member States availing themselves of the option referred to in the first subparagraph shall lay down the criteria which the work to be performed must meet in order to be considered as 'non-significant`.</p> <p>6. The length of the posting shall be calculated on the basis of a reference period of one year from the beginning of the posting.</p> <p>For the purpose of such calculations, account shall be taken of any previous periods for which the post has been filled by a posted worker.</p> <p>7. Paragraphs 1 to 6 shall not prevent application of terms and conditions of employment which are more favourable to workers. Allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.</p> <p>8. 'Collective agreements or arbitration awards which have been declared universally applicable` means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.</p> <p>In the absence of a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:</p> <ul style="list-style-type: none">- collective agreements or arbitration awards which are generally applicable to all similar	
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		<p>undertakings in the geographical area and in the profession or industry concerned, and/or</p> <ul style="list-style-type: none">- collective agreements which have been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory, <p>provided that their application to the undertakings referred to in Article 1 (1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.</p> <p>Equality of treatment, within the meaning of this Article, shall be deemed to exist where national undertakings in a similar position:</p> <ul style="list-style-type: none">- are subject, in the place in question or in the sector concerned, to the same obligations as posting undertakings as regards the matters listed in the first subparagraph of paragraph 1, and- are required to fulfil such obligations with the same effects. <p>9. Member States may provide that the undertakings referred to in Article 1 (1) must guarantee workers referred to in Article 1 (3) (c) the terms and conditions which apply to temporary workers in the Member State where the work is carried out.</p> <p>10. This Directive shall not preclude the application by Member States, in compliance with the Treaty, to national undertakings and to the undertakings of other States, on a basis of equality of treatment, of:</p> <ul style="list-style-type: none">- terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph	
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		1 in the case of public policy provisions, - terms and conditions of employment laid down in the collective agreements or arbitration awards within the meaning of paragraph 8 and concerning activities other than those referred to in the Annex.	
20/85 (Roviello)	COM (91) 247 - proposed 12/7-1991 Annex VI In heading C. Germany: (v) point 15 is deleted,	Regulation 1249/92 – adopted 30/4-1992 Annex VI b) in heading 'C. GERMANY': (iv) point 15 shall be deleted;	Yes
Reference to the court but not to specific case-law	COM (85) 396 – proposed 8/8-1985 The following Article 10a is inserted after Article 10: 'Article 10a 1. Notwithstanding the provisions of Article 10 and the provisions of Title III, persons to whom this Regulation applies shall be granted special non-contributory cash benefits as referred to in Article 4 (2a) exclusively in accordance with the legislation of the Member State in whose territory they reside, provided that such benefits are listed in Annex Ha. Such benefits shall be granted by and at the expense of the institution of the place of residence. 2. The institution of a Member State whose legislation makes entitlement to the benefits referred to in paragraph 1 subject to the completion of periods of employment, self-employment or residence shall take account, to the extent necessary, of periods of employment, self-employment or residence completed in the territory of any other Member State as if they were periods completed in the territory of the first Member State. 3. Where the legislation of a Member State makes entitlement to a benefit, which comes within the scope of paragraph 1 but which is granted in the form of a supplement, subject to receipt of a benefit coming within the scope of Article 4 (1) (a) to (h),	Regulation 1247/92 – adopted 30/4-1992 The following Article shall be inserted: 'Article 10a Special non-contributory benefits 1. Notwithstanding the provisions of Article 10 and Title III, persons to whom this Regulation applies shall be granted the special non-contributory cash benefits referred to in Article 4 (2a) exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State, provided that such benefits are listed in Annex IIa. Such benefits shall be granted by and at the expense of the institution of the place of residence. 2. The institution of a Member State under whose legislation entitlement to benefits covered by paragraph 1 is subject to the completion of periods of employment, self-employment or residence shall regard, to the extent necessary, periods of employment, self-employment or residence completed in the territory of any other Member State as periods completed in the territory of the first Member State. 3. Where entitlement to a benefit covered by paragraph 1 but granted in the form of a supplement is subject, under the legislation of a Member State, to receipt of a benefit covered by	No

	<p>and no such benefit is due under that legislation, any corresponding benefit granted under the legislation of any other Member State shall be treated as a benefit granted under the legislation of the first Member State for the purposes of entitlement to the supplement.</p> <p>4. Where the legislation of a Member State makes entitlement to a benefit, as referred to in paragraph 1, for disability or invalidity, subject to the condition that the disability or invalidity should be diagnosed for the first time in the territory of that Member State, this condition shall be deemed to be fulfilled where such diagnosis is made for the first time in the territory of another Member State.'</p> <p>5. The following Annex IIa is inserted:</p> <p>'ANNEX IIa (Article 10a of the Regulation)</p> <p>A. BELGIUM (a) Allowances for disabled persons (Law of 27 June 1969); (b) Guaranteed income for elderly persons (Law of 1 April 1969); '(c) Guaranteed family benefits (Law of 20 July 1971).</p> <p>B. DENMARK None.</p> <p>C. GERMANY None.</p> <p>D. FRANCE (a) Supplementary allowance (National Solidarity Fund) (Law of 30 June 1956); (b) Special allowance (Law of 10 July 1952); (c) Allowance for handicapped adults (Law of 30 June 1975).</p> <p>E. GREECE (a) Special benefits for elderly persons (Order of 31 July 1981).</p> <p>F. IRELAND (a) Unemployment assistance; (b) Old age non-contributory pension; (c) Widow's non-contributory pension; (d) Orphan's non-contributory</p>	<p>Article 4 (1) (a) to (h), and no such benefit is due under that legislation, any corresponding benefit granted under the legislation of any other Member State shall be treated as a benefit granted under the legislation of the first Member State for the purposes of entitlement to the supplement.</p> <p>4. Where the granting of a disability or invalidity benefit covered by paragraph 1 is subject, under the legislation of a Member State, to the condition that the disability or invalidity should be diagnosed for the first time in the territory of that Member State, this condition shall be deemed to be fulfilled where such diagnosis is made for the first time in the territory of another Member State.';</p> <p>The following Annex shall be inserted:</p> <p>'ANNEX II a (Article 10 a of the Regulation)</p> <p>A. BELGIUM (a) Allowances for disabled persons (Law of 27 February 1987). (b) Guaranteed income for elderly persons (Law of 1 April 1969). (c) Guaranteed family benefits (Law of 20 July 1971).</p> <p>B. DENMARK None.</p> <p>C. GERMANY None.</p> <p>D. SPAIN (a) Benefits under the Law on the social integration of disabled persons (Law No 13/82 of 7 April 1982). (b) Cash benefits to assist the elderly and invalids unable to work (Royal Decree No 2620/81 of 24 July 1981).</p> <p>E. FRANCE (a) Supplementary allowance from the National Solidarity Fund (Law of 30 June 1956). (b) Disabled adults' allowance (Law of 30 June 1975).</p> <p>F. GREECE</p>	
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	<p>pension; (e) Blind person's pension; (f) Disabled person's maintenance allowance; (g) Mobility allowance; (h) Infectious diseases maintenance allowance; (i) Allowance for parents of severely handicapped children; (j) Blind welfare allowance; (k) Maintenance allowance for persons undergoing rehabilitation.</p> <p>G. ITALY (a) Social pension for persons without means (Law No 153 of 30 April 1969); (b) Benefits for the civilian disabled or invalids (Law No 118 of 30 March 1974); (c) Pension for the deaf and dumb (Law No 381 of 26 May 1970); (d) Pension for the blind (Law No 382 of 27 May 1970).</p> <p>H. LUXEMBOURG (a) National Solidarity Fund benefits (Law of 30 July 1960); (b) Compensatory cost of living allowance (Law of 13 June 1975); (c) Special severe disablement allowance (Law of 16 April 1979).</p> <p>I. NETHERLANDS None.</p> <p>J. UNITED KINGDOM (a) Mobility allowance (Social Security Act 1975 of 20 March 1975, Section 37A); (b) Invalid care allowance (Social Security Act 1975 of 20 March 1975, Section 37).¹</p>	<p>(a) Special benefits for elderly persons (Law 1296/82). (b) Allowance for children of non-working mothers whose husbands have been called up for military service (Law 1483/84, Article 23 (1)). (c) Allowance for children of non-working mothers whose husbands are in prison (Law 1483/84, Article 23 (2)). (d) Allowance for persons suffering from congenital hemolytic anaemia (Decree-Law 321/69) (Common ministerial order G4a/F.222/oik.2204). (e) Allowance for the deaf and dumb (Exceptional Law 421/37) (Common ministerial order G4B/F.422/oik.2205). (f) Allowance for seriously disabled persons (Decree-Law 162/73) (Common ministerial order G4a/F.225/oik.161). (g) Allowance for spasmophiliacs (Decree-Law 162/72) (Common ministerial order G4a/F.224/oik.2207). (h) Allowance for persons suffering from a serious mental disability (Decree-Law 162/73) (Common ministerial order G4b/F.423/oik.2208). (i) Allowance for the blind (Law 958/79) (Common ministerial order G4b/F.421/oik.2209).</p> <p>G. IRELAND (a) Unemployment assistance (Social Welfare (Consolidation) Act, 1981, Part III, Chapter 2). (b) Old age and blind pensions (non-contributory) (Social Welfare (Consolidation) Act, 1981, Part III, Chapter 3). (c) Widows' and orphans' pensions (non-contributory) (Social Welfare (Consolidation) Act, 1981, Part III, Chapter 4). (d) Lone parent's allowance (Social Welfare Act, 1990, Part III). (e) Carer's allowance (Social Welfare Act, 1990, Part IV). (f) Family income supplement (Social Welfare Act, 1984, Part III). (g) Disabled person's</p>	
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		<p>maintenance allowance (Health Act, 1970, Section 69).</p> <p>(h) Mobility allowance (Health Act, 1970, Section 61).</p> <p>(i) Infectious diseases maintenance allowance (Health Act, 1947, Sections 5 and 44 (5)).</p> <p>(j) Domiciliary care allowance (Health Act, 1970, Section 61).</p> <p>(k) Blind welfare allowance (Blind Persons Act, 1920, Chapter 49).</p> <p>(l) Disabled person's rehabilitation allowance (Health Act, 1970, Sections 68, 69 and 72).</p> <p>H. ITALY</p> <p>(a) Social pensions for persons without means (Law No 153 of 30 April 1969).</p> <p>(b) Pensions and allowances for the civilian disabled or invalids (Laws No 118 of 30 March 1974, No 18 of 11 February 1980 and No 508 of 23 November 1988).</p> <p>(c) Pensions and allowances for the deaf and dumb (Laws No 381 of 26 May 1970 and No 508 of 23 November 1988).</p> <p>(d) Pensions and allowances for the civilian blind (Laws No 382 of 27 May 1970 and No 508 of 23 November 1988).</p> <p>(e) Benefits supplementing the minimum pension (Laws No 218 of 4 April 1952, No 638 of 11 November 1983 and No 407 of 29 December 1990).</p> <p>(f) Benefits supplementing disability allowances (Law No 222 of 12 June 1984).</p> <p>(g) Monthly allowances for continuous personal assistance for those receiving pensions for incapacity for work (Law No 222 of 12 June 1984).</p> <p>I. LUXEMBOURG</p> <p>(a) Compensatory cost of living allowance (Law of 13 June 1975).</p> <p>(b) Special severe disablement allowance (Law of 16 April 1979).</p> <p>(c) Maternity allowance (Law of 30 April 1980).</p> <p>J. NETHERLANDS</p> <p>None.</p>	
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		<p>Section 23 and Social Security (Northern Ireland) Order 1986 of 5 November 1986, Articles 21 to 28).</p> <p>(f) Disability living allowance (Disability Living Allowance and Disability Working Allowance Act 1991 of 27 June 1991, Section 1 and Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 of 24 July 1991, Article 3).</p> <p>(g) Disability working allowance (Disability Living Allowance and Disability Working Allowance Act 1991 of 27 June 1991, Section 6 and Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 of 24 July 1991, Article 8).'</p>	
<p>302/84 (Ten Holder); 58/87 (Rebmann)</p>	<p>COM (90) 335 – proposed 3/8–1990</p> <p>In Article 13 (2) the following subparagraph is added: '(f) A person to whom the legislation of a Member State ceases to be applicable without the legislation of another Member State becoming applicable to him, in accordance with one of the rules laid down in the foregoing subparagraphs of this paragraph shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'</p> <p>In Article 45 the following paragraph is added: '8. A period of full unemployment of a worker to whom Article 71 (1) (a) (ii) or (b) (ii), first sentences, applies shall be taken into account by the competent institution of the Member State in whose territory the worker concerned resides in accordance with the legislation administered by that institution, as if that legislation applied to him during his last employment. If the period of full</p>	<p>Regulation 2195/91 adopted 25/6-1991</p> <p>In Article 13 (2) the following subparagraph shall be added: '(f)a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the foregoing subparagraphs or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'</p> <p>The following paragraph shall be added to Article 45: '8. A period of full unemployment of a worker to whom Article 71 (1) (a) (ii) or (b) (ii), first sentence, applies shall be taken into account by the competent institution of the Member State in whose territory the worker concerned resides in accordance with the legislation administered by that institution, as if that legislation applied to</p>	<p>Yes</p>

	<p>unemployment in the country of residence of the person concerned can be taken into account only if periods of contribution have been completed in that country, this condition shall be deemed to be fulfilled if the contribution periods have been completed in another Member State.</p> <p>Without prejudice to the second subparagraph, if this period cannot be taken into account under the said legislation, it shall be taken into account by the competent institution of the Member State in the territory of which the person was last employed in accordance with the legislation administered by that institution.'</p>	<p>him during his last employment.</p> <p>If the period of full unemployment in the country of residence of the person concerned can be taken into account only if contribution periods have been completed in that country, this condition shall be deemed to be fulfilled if the contribution periods have been completed in another Member State.'</p>	
41/84 (Pinna)	<p>COM (88) 27 – proposed 5/2-1988</p> <p>Article 73: An employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of the members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI.</p> <p>In Annex VI, E. France, (b) The following paragraph 7 is added. Notwithstanding the provisions of Articles 73 and 74 of the Regulations the housing allowance referred to in Article 510 (5) of the social security Code, the housing allowances financed by the National Housing Assistance Fund and the removal grants introduced by Article 16 (h) of the Law of 22 August 1946 shall be granted only to persons concerned residing on French territory</p>	<p>Regulation 3427/89 – adopted 30/10-1989</p> <p>Article 73: An employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of the members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI.</p> <p>Annex VI, point E. FRANCE is amended as follows:</p> <p>(b) the following point is added:</p> <p>'7. Notwithstanding Articles 73 and 74 of the Regulation, the housing allowances, the home child-care allowance and the parental child-rearing allowance shall be granted only to persons concerned and to members of their families standing residing in French territory.'</p>	No
377/85 (Burchell)	<p>COM (88) 538 – proposed 18/10-1988</p> <p>In Article 76: (i) in the second line of the title</p>	<p>Regulation 2332/89 – adopted 18/7-1989</p> <p>In Article 76: i(i) in the second line of the title,</p>	Yes

	<p>the following phrase: 'only of the national legislation or' is inserted after the words 'in pursuance';</p> <p>(ii) the following phrase: 'due only under the national legislation or' is inserted after the word 'allowances' at the end of the first line of the text of the Article.</p> <p>7. In paragraph 3 of Article 79, the following phrase: 'only under the national legislation or' is inserted after the word 'due' in the first line of the text.</p>	<p>'only of the national legislation or' is inserted after 'in pursuance';</p> <p>(ii) 'due only under the national legislation or' is inserted after 'allowances' at the end of the first line of the text of the Article.</p> <p>7. In Article 79 (3), 'only under the national legislation or' is inserted after 'due' in the first line of the text.</p>	
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