



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 12/11

Luxembourg, 1 March 2011

Judgment in Case C-236/09

Association belge des Consommateurs Test-Achats ASBL and Others v
Conseil des ministres

Taking the gender of the insured individual into account as a risk factor in insurance contracts constitutes discrimination

The rule of unisex premiums and benefits will apply with effect from 21 December 2012

Directive 2004/113/EC¹ prohibits all discrimination based on sex in the access to and supply of goods and services.

Thus, in principle, the Directive prohibits the use of gender as a factor in the calculation of insurance premiums and benefits in relation to insurance contracts entered into after 21 December 2007. By way of derogation², however, the Directive provides that Member States may, as from that date, permit exemptions from the rule of unisex premiums and benefits, so long as they can ensure that the underlying actuarial and statistical data on which the calculations are based are reliable, regularly updated and available to the public. Member States may allow such an exemption only if the unisex rule has not already been applied by national legislation. Five years after the transposition of the Directive into national law – that is to say, on 21 December 2012 – Member States must re-examine the justification for those exemptions, taking into account the most recent actuarial and statistical data and a report to be submitted by the Commission three years after the date of transposition of the Directive.

The Association belge des Consommateurs Test-Achats ASBL and two individuals brought an action before the Belgian Constitutional Court for annulment of the Belgian law transposing the Directive. It is within the context of that action that the Belgian court asked the Court of Justice to assess the validity of the derogation provided for in the Directive in the light of higher-ranking legal rules and, in particular, in the light of the principle of equality for men and women enshrined in EU law.

In today's judgment, the Court first points out that, under Article 8 TFEU, the European Union is to aim, in all its activities, to eliminate inequalities and to promote equality between men and women. In the progressive achievement of that equality, it is for the EU legislature to determine, having regard to the development of economic and social conditions within the European Union, precisely when action must be taken. Thus it was – the Court states – that the EU legislature provided in the Directive that **the differences in premiums and benefits arising from the use of sex as a factor in the calculation thereof must be abolished by 21 December 2007 at the latest**. However, as the use of actuarial factors related to sex was widespread in the provision of insurance services at the time when the Directive was adopted, it was permissible for the legislature to implement the rule of unisex premiums and benefits gradually, **with appropriate transitional periods**.

In that regard, the Court notes that the Directive derogates from the general rule of unisex premiums and benefits established by the Directive, by granting Member States the option of deciding, before 21 December 2007, to permit proportionate differences in individuals' premiums

¹ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ 2004 L 373, p. 37).

² Article 5(2) of Directive 2004/113.

and benefits where, on the basis of relevant and accurate actuarial and statistical data, sex is used as a determining factor in the assessment of risks.

Any decision to make use of that option is to be reviewed five years after 21 December 2007, account being taken of a Commission report, but, ultimately, **given that the Directive is silent as to the length of time during which those differences may continue to be applied, Member States which have made use of the option are permitted to allow insurers to apply the unequal treatment without any temporal limitation.**

Accordingly, the Court states, **there is a risk that EU law may permit the derogation from the equal treatment of men and women, provided for by the Directive, to persist indefinitely.** A provision which thus enables the Member States in question to maintain without temporal limitation an exemption from the rule of unisex premiums and benefits **works against the achievement of the objective of equal treatment between men and women and must be considered to be invalid upon the expiry of an appropriate transitional period.**

Consequently, the Court rules that, in the insurance services sector, the **derogation** from the general rule of unisex premiums and benefits is **invalid with effect from 21 December 2012.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106