

## **Insurance Gender Agenda Outlawed**

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### **The Decision**

The European Court of Justice (ECJ) has issued a landmark ruling in a case brought by the Belgian consumer group, Association Belge des Consommateurs Test - Achats ASBL and others against the Belgian Government. The issue to be determined was whether using gender to calculate insurance premiums and annuity rates breached EU rules on equality. The ECJ upheld the Advocate General's earlier opinion, namely, that the use of actuarial factors based on sex to determine risk is incompatible with the fundamental right of equal treatment between men and women.

### **Background**

Currently, member states are explicitly permitted to discriminate on insurance rates and benefits "if sex is a determining risk factor, and that can be substantiated by relevant and accurate actuarial and statistical data". Accordingly, there is a standard practice amongst insurers of relying on statistics about life expectancies or road accident records in setting premiums for car, medical insurance, life insurance and pensions.

However, the court has now ruled that such an approach "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", declaring Article 5(2) of the Gender Directive (2004/1213EC) invalid. This change in the law will likely have significant repercussions for car insurance and pensions.

### **Car Insurance**

Prior to the ruling, insurers were permitted to discriminate against men by charging women less for car insurance, based on statistics which demonstrate that the latter are generally less likely to have accidents and therefore make fewer claims than men.

Women may now notice a significant increase in the cost of their car insurance premiums, with women under the age of 26 perhaps facing an increase of as much as 25%. Men, on the other hand, may see their insurance rates drop by around 10%.

### **Pensions**

The cost of annuities will inevitably rise. Men currently benefit from higher annuity rates as they have a lower life expectancy, however, prohibiting the use of this statistic means that their annuity rates could be slashed by between 5% and 10%, putting them at, or nearer, female rates. This would result in a significant loss of annual income for male pensioners.

### **Implementation**

The ECJ's ruling does not have retroactive effect. Insurers have until 21 December 2012 to move to a unisex pricing system.

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