

MARKET BULLETIN

REF: Y4642

Title	European Union ban on insurers' use of gender
Purpose	To remind underwriters that, from 21 December 2012, gender cannot result in differences in premiums and benefits in new insurance contracts
Type	Event
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Deadline	21 December 2012
Related links	European Court of Justice ruling European Commission guidance HM Treasury response

Application of European Court of Justice (ECJ) ruling

From 21 December 2012, providers of insurance and related financial services in the EU may not discriminate on the grounds of sex in the prices and benefits offered to consumers.

This does not affect contracts concluded before 21 December 2012.

To assist insurers in implementing this change, the European Commission has issued [guidance](#) to the insurance industry. These guidelines define “new contractual agreements” that must comply with the ruling and give examples of gender-related insurance practices which remain possible, i.e.:

- Collection and use of gender status for internal risk assessment;
- Reinsurance pricing, if this does not lead to gender differentiation at individual level.
- Marketing and advertising.
- Some differentiation in risk factors in life and health underwriting (see the guidance for details).

In the UK, HM Treasury has issued the [UK's response](#) to the ECJ ruling that insurance benefits and premiums after 21 December 2012 should be gender-neutral. The UK Government was disappointed with this ruling, which it expects will have a largely negative impact on consumers, but is obliged to implement the judgement into UK law. HM Treasury suggests insurers should seek legal advice when considering how to amend their practices to comply with the ECJ judgment and the Gender Directive.

Background

EU Council Directive 2004/113/EC ('the Gender Directive') came into force in December 2004. Article 5(1) of the Gender Directive provides that, for contracts concluded after 21 December 2007, the use of sex as an actuarial factor in the calculation of premiums and benefits must not result in differences in individuals' premiums and benefits. Article 5(2) provides a derogation from this rule, by allowing Member States to maintain 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. In the UK and many other EU Member States, insurers were therefore permitted to continue to use sex as a factor in risk assessment, leading to differences in premiums and benefits, subject to conditions.

In 2009, Test Achats, the Belgian Consumer Association, brought a case before the Belgian Constitutional Court regarding the Article 5(2) derogation. They argued that this provision was not compatible with the principles of equality and non-discrimination guaranteed in European legislation. The Belgian Constitutional Court referred the case to the ECJ.

In March 2011, [the ECJ ruled that Article 5\(2\) of the Gender Directive is invalid](#) with effect from 21 December 2012. As a result, from 21 December 2012, Article 5(1) must be applied to new insurance contracts without derogation and gender cannot result in differences in individual premiums and benefits.

Further Information

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