

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to the insurance market regarding the application of article 5 (1) of Council Directive 2004/113/EC of the 13th December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (“the Directive”)

The purpose of this circular is to provide the insurance market with:

- [i] background on Article 5 of the Directive
- [ii] the relevant amendments
- [iii] practical implications of the amendments.

Background on Article 5 of the Directive

Article 5 of the Directive provides that for new contracts concluded after the 21st 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. Nevertheless, Article 5(2) of the said Directive provides for 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 a judgement delivered on the 1st March 2011, the European Court of Justice of the European Union ruled that the opt-out derogation contained in Article 5(2) of the Directive was deemed to be incompatible with European law and thus declared it invalid as from the 21st December 2012. The Court considered that this subarticle ran counter to the achievement of the objective of equal treatment between men and woman in relation to the calculation of insurance premiums and benefits, which is the purpose of the Directive (“[Test-Achats ruling](#)”). Following this judgement, the European Commission issued [Guidelines on the application of Council Directive 2004/113/EC](#) to insurance in the light of the Test-Achats judgement.

Further to these developments, the MFSA issued two circulars to the insurance market in order to keep the market updated with developments on this issue. On the 2nd March 2011, the MFSA issued a [Note for Information](#) on Council Directive 2004/113/EC of 13 December 2004 notifying the insurance market of the judgement delivered by the European Court of Justice (Test-Achats ruling). On the 27th January 2012, the MFSA issued a further [Note for](#)

[Information](#) notifying the market of the Guidelines issued by the European Commission on the Test-Achats ruling.

The relevant amendments

Article 5 of the Directive has been transposed in regulation 5 of the Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008 (L.N. 181 of 2008) (“the Regulations”) issued by the Minister of Social Policy under the Equality For Men and Women Act (Cap. 456).

These Regulations have been amended by means of the [Access to Goods and Services and their Supply \(Equal Treatment\)\(Amendment\) Regulations, 2012 \(L.N. 417 of 2012\)](#) published in the Government Gazette of Malta No. 18, 995 on the 30 November 2012 in order to bring the said Regulations in line with the Test-Achats ruling and the Guidelines issued by the European Commission.

Moreover, on the 13th February 2012, the MFSA amended Insurance Rule 6 of 2011 on the Scheme of Operations Relating to the Business of Insurance so as to refer to the Guidelines issued by the European Commission to clarify that the unisex rule contained in Article 5(1) of the Directive is to apply to all insurance contracts entered into **after** the 21st December 2012.

Practical Implications of the amendments

As from the 21st December 2012, the unisex rule contained in Article 5(1) of the Directive must be applied by the insurance market without any possible exception in relation to the calculation of individuals’ premiums and benefits in new contracts in accordance with the European Commission Guidelines on the application of Council Directive 2004/113/EC to insurance, and the Regulations as amended by Access to Goods and Services and their Supply (Equal Treatment)(Amendment) Regulations, 2012 (L.N. 417 of 2012).

Contacts

Should you have any queries regarding the above, please contact the MFSA Insurance and Pensions Supervision Unit by email: ipsu@mfsa.com.mt

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