

7. **Discrimination in the provision of goods and services**

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Issue: In July 2008, the Commission published a draft Directive on anti-Discrimination in access to goods and services encompassing age, disability, sexual orientation, race and religion and belief.

Status: In April the final report went to Plenary in the European Parliament. The insurance industry gained the support of the Conservative party (EPP) who agreed to table an amendment in the final report:

Notwithstanding paragraph 2, in the provision of financial services proportionate differences in treatment where, for the product in question, the use of age and disability is a determining factor in the assessment of risk based on relevant actuarial principles, accurate statistical data or medical knowledge shall not be considered as discrimination for the purposes of this directive.

This amendment gained support in the Parliament by one vote, showing a significant shift in views of many MEP's and whilst this is not the end of the road, it paved a positive path for further lobbying on this issue in the Council.

The Swedes started discussions in July, and whilst we were pleased with the changes they made to Article 2(7) they were unable to get full agreement on the wording. This is now being passed to the Spanish.

Discussions in the Council have not progressed as well as the Commission had hoped and 18 months after the Directive was issued there seems to be no agreement in sight. This is concerning for two reasons. Firstly, the recent ratification of the Lisbon Treaty means that the decision made on this dossier is still subject to unanimity in the Council but also the "consent" of the European Parliament. This differs from the original decision making process where the Parliament only gave their opinion to the Council. Secondly, the Spanish have expressed no interest in pushing this through and given the strong Czech, Austrian and German opposition to this dossier it is likely it will be passed onto the Belgians. The Belgians take a strict view on anti-discrimination law and do not believe that the insurance industry needs to use age and disability when underwriting all types of insurance.

In June, Test Achats, the Belgian Consumer Association, bought a case before the Belgian Constitutional Court regarding the opt-out in Article 5(2) of the Gender Directive 2004. They argued that this provision is not compatible with the principles of equality and non-discrimination guaranteed in European Legislation. The Belgian Constitutional Court, not having the competency to decide this case, referred the case to the European Court of Justice (ECJ). There was a short period where the parties, Member States, the Commission and, where appropriate, the European Parliament, the Council and the European Central Bank, were entitled to submit statements of case or written

observations to the court. Once these were made, the ECJ will now make a decision on the merits of the case. This ruling will bind the national court that requested the judgment and all other Member States. Therefore, if the ECJ declares Article 5(2) void, all Member States must also consider that provision void and the insurance industry will no longer be able to use sex as a pricing factor in insurance.

In the summer the European Commission commissioned Civic Consulting (a German management consulting company) to carry out a study on the use of age and disability, sex, region or belief and race or ethnic orientation in financial services (in both insurance and banking). In the study, Civic are looking at various product lines including private medical insurance, travel and motor insurance, and will analyse current risk assessment practices by financial services providers, identify actual and/or potential problems of discrimination, and finally make recommendations to the Commission for possible action at EU, national and industry level. They have issued a questionnaire to industry associations, equality bodies, supervisory authorities and nominated insurance companies, and are in the process of organizing follow up phone interviews. The study will run until May 2010 when Civic will report back to the Commission on their findings.

The European Commission held an expert hearing on the use of age and disability as factors in risk assessment on 8 December. This dialogue was launched by the Commission to achieve a better understanding of how age and disability in particular are relevant factors for the design and pricing of products in financial services. The insurance industry was invited to speak and focus on 4 categories of insurance: motor; travel; private health insurance and term life insurance. The industry explained the importance of using all factors in risk assessment and the benefit for consumers. The Commission will hold another hearing May 2010 to discuss these practices further.

Following the ABI submission to the Government Equalities Office (GEO) consultation on the European Directive in July, a summary of responses was due in the autumn. This has not been issued and the Secretariat will be following up on this.

ABI Action: The ABI met with the GEO to discuss their consultation. They were very open in their discussions with us and said they had taken neither a positive nor negative position during discussions in Council but had remained relatively quiet. However, they said now the Equality Bill had been published in the UK, their negotiating position would be shaped by developments made on the Bill. They also said that responses to the EU consultation would be read across to the Equalities Bill. The ABI followed up this meeting by responding to the GEO EU consultation in July and highlighted a range of constraints the Commission text would have on the way the industry priced insurance products. The GEO said they would comment on the responses in late autumn and we are still waiting for this.

The ABI spoke at the European Commission hearing in December on the issue of travel insurance and explained how the use of age and disability was

crucial for pricing travel insurance and allows for the simple and quick distribution of policies. In response to this, AGE Europe discussed age limits in travel insurance and argued that refusal to provide cover or the excessive conditions imposed on older people constituted a barrier to freedom of movement. AGE went on to question why medical costs within EU are covered under EHIC and why insurance companies say older people are a higher risk due to health costs and charge more. The ABI responded to these concerns with evidence from a Defaqto Study in 2009 that found there were 66 policies available for people over the age of 85 and over 23 annual policies. The ABI also explained that there are differing practices under EHIC and many member states charge for emergency medical treatment and this is why many consumers take out travel insurance for peace of mind and total cover. The ABI has followed up on these concerns with AGE Europe.

The ABI has also been working with Civic Consulting on their study on the use of age, disability and gender in financial services. We are concerned that the terms of the study are loaded against the insurance industry, but will respond to the questionnaire and participate in the interviews with Civic to explain the use of age, disability and gender in the provision of insurance. We will have a chance to comment on the preliminary findings of the study in Spring 2010 before it is finalized and released.

The ABI is closely following the case submitted to the ECJ and wrote to the GEO requesting them to intervene in this process and to submit a written statement supporting Article 5(2). The GEO agreed to intervene in the process and submitted a statement supporting Article 5(2) and the use of gender in the provision of financial services. We provided them with further evidence and information to back up their statement on why Article 5(2) is important to the insurance industry. A judgment is expected in late 2010/early 2011.

Background: The Gender Directive prohibits gender-based differences in insurance premiums and benefits and this is currently being transposed into the law of the UK. The Commission's proposal was to extend this protection to encompass age, disability, sexual orientation, race and religion and belief. Since October 2007, the ABI and member companies have actively lobbied the Commission on the need for an insurance-specific exception in a possible Directive prohibiting discrimination in access to goods and services.

Useful documents:

[Proposal for a draft Directive](#)

[ECJ – Gender Directive notification](#)