

Unisex Pricing in Private Insurance? —An Analysis of the ECJ *Test-Achats ASBL* Judgment from the Perspective of German Law

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Abstract

The purpose of this paper is to analyze the 2011 decision of the European Court of Justice in *Test-Achats ASBL*. The ECJ ruled that the different premiums based purely on the grounds of gender were incompatible with the unisex rule, which is the purpose of the Directive 2004/113/EC in the insurance field and therefore, with the EU Charter of Fundamental Rights. The core issue is—Could insurers use sex as a determining risk factor to justify differences in individuals' premiums? Gender is commonly used as a determining risk-rating factor for certain insurance products because there is statistical data to back it up. This article thus aims to examine the discrimination disputes caused by different premiums for men and women in light of the boundary of statistical discrimination on the grounds of sex. According to the ECJ's judgment, from 21 December 2012, insurance companies in the EU are no longer allowed to charge different prices based on a person's sex. This restricts private company's freedom of contract. The article hence goes on to discuss the relationship between prohibition of sex discrimination and the principle of freedom of contract.

Key Words: unisex pricing, prohibition of sex discrimination, statistical discrimination, stereotype, freedom of contract