

# **Implementation of Council Directive 2004/113/EC in Germany, Austria, Spain and Hungary in the light of the judgment of the CJEU in Case C-236/09 (Test-Achats): interesting differences**

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# About the Case C-236/09 (Test-Achats)

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- Article 5(2) of Council Directive 2004/113/EC is invalid with effect from 21 December 2012 according to the judgement of the CJEU
- Questions about the decision:
  - a) which contracts are concerned?
  - b) which gender related insurance practices are still legitimate?



# Guidelines of the EC (2012/C 11/01)

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- The Test-Achats ruling means that for new contracts concluded as from 21 December 2012 the unisex rule has to be applied without any exception
- New contract:
  - a) contracts concluded for the first time as from 21 December 2012
  - b) agreements between parties, concluded as from 21 December 2012, to extend contracts concluded before that date which would otherwise have expired
  - c) amendment to an existing contract requiring the expression of consent by all parties



# Germany

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- First sentence of Section 20(2) of AGG (which was consistent with Article 5(2) of CD 2004/113/EC) was repealed (the new rule shall not be applied for the contracts concluded before 21 December 2012)
- The AGG has not implemented Article 5(1) of CD 2004/113/EC, and according to Section 20(1) differences of treatment on grounds of sex is lawful if they are based on objective grounds
- The transitional provisions do not prescribe that an amendment to an existing contract is a new contract



# Austria

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- The VAG and the VersVG was amended by the VersVG 2013
- The new Section 1c of VersVG and Section 9(2) of VAG prescribe that the use of sex as a factor shall not result differences in premiums and benefits of women and men, but this rule above shall not be applied for:
  - a) group insurances
  - b) contracts concluded before 21 December 2012



# Spain

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- Second sentence of Section 71(1) of Ley Orgánica 3/2007 (which was consistent with Article 5(2) of CD 2004/113/EC) was repealed by Ley 11/2013
- First sentence of Section 71(1) of Ley Orgánica 3/2007 still prescribes that the use of sex as a factor shall not result differences in premiums and benefits of women and men
- The new rule shall be applied for the contracts concluded as from 21 December 2012 (conclusion also means modification, amendment or extension of a contract if it is based on the expression of consent by all parties



# Hungary I.

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- Section 30/A of Ebktv. was amended according to the Test-Achats Decision and now it prescribes that the use of sex as a factor shall not result differences in premiums and benefits of women and men, but this rule shall not be applied:
  - a) for group insurances
  - b) if an act rules it otherwise



# Hungary II.

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- The new rule shall be applied for contracts concluded
  - a) as from 21 December 2012
  - b) between 21 December 2007 and 20 December 2012, if the contract was amended as from 21 December 2012 with the expression of consent by all parties in the scope of premium or service by the insurer
- The new rules shall not be applied for contracts concluded before the 21 December 2007





# Questions

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- Which one is the correct way of implementation?
- Is there only one correct way?
- Is an amendment based on the expression of consent by all parties a new contract? If yes, what shall be the scope of the amendment?
- Which are the relevant dates?

