

## Case C-236/09

### Association belge des Consommateurs Test-Achats ASBL and Others

v

### Conseil des ministres

(Reference for a preliminary  
ruling from the Cour constitutionnelle)

(Reference for a preliminary ruling — Fundamental rights — Combating  
discrimination — Equal treatment for men and women — Access to and supply of  
goods and services — Insurance premiums and benefits — Actuarial factors — Sex  
as a factor in the assessment of insurance risks — Private life assurance contracts —  
Directive 2004/113/EC — Article 5(2) — Derogation not subject to any temporal  
limitation — Charter of Fundamental Rights of the European Union — Articles 21  
and 23 — Invalidity)

Opinion of Advocate General Kokott delivered on 30 September 2010 . . . . .	I - 775
Judgment of the Court (Grand Chamber), 1 March 2011 . . . . .	I - 800

### Summary of the Judgment

*European Union law — Principles — Equal treatment — Equal treatment for men and women  
in the access to and supply of goods and services — Directive 2004/113 — Actuarial factors  
(Council Directive 2004/113, Art. 5(2))*

Article 5(2) of Directive 2004/113 implementing the principle of equal treatment between men and women in the access to and supply of goods and services is invalid with effect from 21 December 2012.

It is not disputed that the purpose of Directive 2004/113 in the insurance services sector is, as is reflected in Article 5(1) of that directive, the application of unisex rules on premiums and benefits. Recital 18 in the preamble to Directive 2004/113 expressly states that, in order to guarantee equal treatment between men and women, the use of sex as an actuarial factor must not result in differences in premiums and benefits for insured individuals. Recital 19 in the preamble to that directive describes the option granted to Member States not to apply the rule of unisex premiums and benefits as an option to permit 'exemptions.' Accordingly, Directive 2004/113 is based on the premiss that, for the purposes of applying

the principle of equal treatment for men and women, enshrined in Articles 21 and 23 of the Charter, the respective situations of men and women with regard to insurance premiums and benefits contracted by them are comparable.

Article 5(2) of Directive 2004/113, which enables the Member States in question to maintain without temporal limitation an exemption from the rule of unisex premiums and benefits, works against the achievement of the objective of equal treatment between men and women, which is the purpose of the directive, and is incompatible with Articles 21 and 23 of the Charter of Fundamental Rights of the European Union. That provision must therefore be considered to be invalid upon the expiry of an appropriate transitional period.

(see paras 30, 32-34, operative part)