Pensions

pensions update

European Commission confirms that ban on gender-based annuities doesn't apply to occupational pension schemes

The European Commission has published guidance confirming that occupational pension schemes will generally be unaffected by the ban on gender-based actuarial factors in pricing annuities.

In March last year, the European Court of Justice ruled in the case of *Test-Achats* that insurance companies will no longer be able to base the price of annuities on gender. The ban on gender-based pricing will apply to new contracts concluded from **21 December 2012**. The ban is likely to mean that annuity costs will go up for men and fall for women.

The European Commission's guidance confirms that the ban on gender-based pricing will only apply to private pensions that are separate from an employment relationship. EU law covering sex discrimination in relation to occupational pension schemes is separate from that covering annuities bought outside an employment context. Gender-based pricing of annuities is lawful in occupational pension schemes where this is justified by actuarial factors. The European Commission considers that the *Test-Achats* ruling does not affect this.

Consequently, where an occupational pension scheme provides for a pension to be paid from an annuity policy, the ban on gender-pricing will not apply. However, if the member has to enter into an insurance contract directly with the insurer without the employer's involvement, the ban will apply. When a member of a DC pension scheme chooses an annuity, the price of the annuity will need to be gender-neutral.

The guidance also considers what is meant by a "new contract concluded from 21 December 2012" (since the *Test-Achats* ruling applies only to those new contracts). This part of the guidance will be of considerable importance for insurance companies. A contractual amendment that requires the parties' agreement will give rise to a new contract. However, the taking out of top-up or follow-on policies at the option of a member will not.

Comment: Many within the pensions industry had speculated that the Test-Achats ruling would be just the start. In time, the EU would expand the requirement for gender-neutral pricing to actuarial factors used in occupational pension schemes. The European Commission's guidance confirms that it is not current policy to expand the ban on gender-based pricing in that way. The guidance provides welcome comfort for occupational pension schemes that would otherwise face the expense and upheaval of revaluing liabilities. However, although the risk of that scenario is reduced, the guidance does not entirely rule out a contrary ruling by the European Court of Justice.

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