

**PRICING OF INSURANCE CONTRACTS  
OF TWO DIFFERENT RISK GROUPS  
IN THE LIGHT OF A RULING  
BY THE COURT OF JUSTICE OF THE EUROPEAN UNION**

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**Abstract**

Council Directive 2004/113/EC places a ban on any form of discrimination of men and women in the access to, and supply of, goods and services. Until the end of 2012, the directive exempted the insurance sector. Insurance providers were permitted to allow for gender in the calculation of insurance premium under the proviso that exact formulas of insurance mathematics and statistical data are used. The termination of this exemption there is a ban on using gender as a risk factor in calculating assurance premium and claims in all newly opened contracts. This study investigates the impact of introducing common (unisex) mortality tables on the calculation of assurance premium for selected forms of insurance and points out possible impacts of the new legislation and sketches the new development in the area of anti-discrimination legislative efforts.

**Key words:** discrimination, annuity assurance, gender, mortality tables, life assurance.

**JEL Code:** G22, J16

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**Introduction**

First mortality tables constructed in the 18th century allowed only for the factor gender, and only later the variety of risk factors was extended by other factors such as sex, medical condition, active smoking. Although insurance providers have made effort to include risk underwritten as precisely as possible, taking into account all these risk factors, their aspirations were gradually frustrated by directives adopted for the legislation of the European Union. The ban of gender discrimination in the area of insurance was introduced in all the states of the European Union as of 21 December 2012 by the Council Directive 2004/113/EC. Since this date, insurance providers have been bound to use the same policy when calculating price premium for men and women and they have been barred from using gender as a risk

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factor. In addition, some other proposals are under way to amend the directive in connection to including age or medical handicap. In case of their implementation, insurance providers would have to omit almost all the relevant factors affecting the price of insurance policies in calculating premium, and, in consequence, life assurance products would cease to be attractive for potential clients as well as insurance providers themselves. As a result of anti-selection and moral hazard, insurance providers would be unable to set acceptable prices for less risky groups of clients. Regulatory measures in the area of insurance are summarized in a European Union directive named Solvency II<sup>1</sup>, which places an emphasis upon internal control system of insurance providers and assumes a complex approach to all sorts of identifiable risks. Paradoxically, the implementation of Solvency II framework is worsened by anti-discrimination directives of the European Union which impedes serviceability of the currently functioning risk management system.

The goal of the contribution is to describe in some detail the situation that has arisen after the enforcement of Council Directive 2004/113/EC, which removed in the area of insurance the exception of a possibility of price setting based on the most vital risk factor – gender. The contribution considers the process of implementation of the directive, overviews consequences of introducing joint mortality tables for both men and women and explains them in a case study of selected insurance products in relation to the present situation that resides in the insurance market of the Slovak Republic.

Views on representing underwritten risk after the exclusion of the risk factor gender can be classified into two groups. The first group is represented by the studies by Reich (2011), Gomery and John (2011) as well as Tobler (2011). This group of studies occupies itself with the reasons why the European Court of Justice decided to ban gender as a risk factor and points out a negative impact of this decision on the insurance market. The second group consists of studies that aim at incorporating newer and more revolutionary risk factors into price setting of insurance policies, to which insurance providers might attribute higher weights. From amongst Slovak authors, this topic is considered by Palacková (2006) who discusses a possibility of use of genetic testing in the area of insurance and by Janíková (2012) who evaluates usability of demographic and behavioral factors. The leading European analyst company Oxera initiated a number of expert analyses considering the influence of the

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<sup>1</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II). Available fully on <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:335:0001:0155:en:PDF>>.

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directive banning gender discrimination on insurance products.<sup>2</sup> Comité Européen des Assurances, now Insurance Europe, in its analysis (Comité Européen des Assurances, 2011) accentuates first and foremost a necessity of using gender and consequently highlights the impact of using the unified insurance policy premium rates.

## **1 Anti-discrimination policy in insurance**

Grounded on one of the most cherished values in the philosophy of the modern world, that of equality, the law of the European Union accepts no form of discrimination in any walk of life and this is for any reason. The matter of sex discrimination and attempts at its removal thus affected the field of business and financial services provision. The principle of equal treatment between men and women in the access to and supply of goods and services and its implementation is central to Council Directive 2004/113/EC of 13 Dec 2004 (known generally as the „Gender Directive“). Actuarial factors are presented within Article 5(1) of the Directive and places a ban on that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services in all new contracts concluded after 21 Dec 2007 at the latest. Notwithstanding this deadline, member states were under Article 5(2) empowered to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data, for the period of five years after 21 Dec 2007. Unsurprisingly, all the member states of the European Union chosen to utilize this exception in life and pension insurance. The unified (unisex) insurance premiums for men and women were introduced in Belgium and the Netherlands in motor insurance pricing, where gender-differentiated pricing was currently banned, and the German Riester pension annuity product, where unisex pricing was supported by a government subsidy (Oxera, 2011).

In reference to proceedings brought by the Belgian consumer association (Association belge des Consommateurs) Test-Achats ASBL and by two private persons against the Conseil des ministres (Council of Ministers) of the Kingdom of Belgium for annulment of this opt-out provision to combating discrimination between men and women, the Court of Justice of the European Union initiated on 18 June 2009 a preliminary ruling. The parties that initiated the proceedings saw a collision between Article 5(2) of Council Directive

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<sup>2</sup> One of the studies (Oxera, 2010) that was prepared on the request of the Association of British Insurers investigated the influence of unisex mortality tables on the insurance market in Great Britain, and another study (Oxera, 2011) prepared on the demand of the German Insurance Association GDV focused on risk-based price setting and analyzed impact of the directive on the insurance market of the European Union.

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2004/113/EC allowing an exemption in the principle of equal treatment in actuarial formulae and Article 6(2) of the Treaty on the European Union, which as the norm with a higher legal force establishes the principle of gender equality. Sustaining the motion, the Court of Justice of the European Union on 1 March 2011 made the final ruling in the Test-Achats case that the exemption of the Directive be inconsistent with the pursuit of equal treatment and declared its invalidity effective as of 21 Dec 2012. The Directive is – in light of this judgement – applied by Guidelines of the European Commission C(2011) 9497 and the effect of this judgement will be related only to new insurance contracts concluded after 21 Dec 2012, where no difference in equal treatment of men and women is tolerated when calculating insurance premiums or benefits.

The European Commission in its guidelines remarked a possibility of a different understanding of the term “new contract” in intra-state regulations and stipulated that new contractual agreements are to be understood as contracts that are concluded after 21 Dec 2012. According to these guidelines, it is still possible to use gender for the purpose of internal risk evaluations when calculating technical reserves in compliance with solvency requirements. There are also some exemptions from new regulations and they represent reinsurance, advertisement and promotion. Of specifics is the area of life and health insurance. The existence of risk factors such as medical condition or family anamnesis, on the basis of which gender discrimination in the form of a differentiation may arise, force insurance providers to account in their evaluation also for gender to make a necessary distinction between some physiological differences between men and women (e.g. breast abscess, alimentary obesity). Insurance providers are also permitted to offer special products orientated on one sex with the aim to cover specific risks that are associated solely with male or female gender.

## **2 Response to new legislative conditions**

In connection to the decision of the Court of Justice of the European Union, several communications and opinions were released. Of especial notice are declarations of insurance associations on this matter. Comité Européen des Assurances (later renamed into Insurance Europe), shortly after passing the judgment, expressed dissatisfaction with this development in insurance and highlighted possible effects for both insurance providers and their clients. Whereas the Slovak Association of Insurance Providers (Slovenská asociácia poisťovní) communicated in its press release its support to activities establishing equal treatment, it stressed that risk pricing in insurance based on gender and its characteristics can no way be

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deemed as discrimination. The association argues that insurance contracts are made of a free choice, and for the private commercial insurance sector exact risk pricing is of vital importance.

The topic of discrimination in insurance, the effect of the judgment of the Court of Justice of the European Union as well as possibilities to solving the situation that emerged afterwards were subject of inquiry of several studies. Of them, probably most important and most comprehensive is the study of the consultancy agency Oxera dated to 2011, which originated on the incentive of German Insurance Association GDV. The study is devoted to various aspects of using gender as a risk pricing factor. Whilst it highlighted importance of gender as a factor in the pricing of insurance policies, summarized experience of some European countries that utilize the unified treatment of gender in the pricing of insurance policies, it also indicated consequences that follow from the ban on the use of gender in pricing pension, life and motor insurance policies. The study evaluated impact on consumer and society. There are some other important contributors to investigating effects of this final decision, and they are Insurance Europe (later known as Comité Européen des Assurances) and companies Milimand and Ernst & Young.

Highlighted studies catalogue the eventual results of this ban and foresee joining the low-risk and high-risk client groups into one joint group, which necessarily brings about two side effects: adverse selection and moral hazard. Adverse selection occurs if a uniform premium deters the low-risk group from buying insurance, whereas attracting more buys from the high-risk group. Setting premiums separately for the two groups leads to insurance adoption that better corresponds to economic optimality. However, setting premiums jointly for both risk groups will result in an out-flow of clients from insurance and, by chain links, will lead to a rise in average risk present in the given line of business and to an increase in the sum of expected insurance claims. Simultaneously these changes will be reflected in a rise of insurance premiums and will just strengthen the out-flow of clients. (Oxera, 2011.) The other effect, moral hazard, arises when insurance results in clients changing their risk behaviour – the high-risk group will have its insurance policies cheaper and is thus anticipated to alter its risk-taking behaviour toward accepting a higher level of risk as it will be cheaper.

In connection to shifting to the unified system of pricing in insurance, some additional costs must be taken under advisement. Additional costs will be likely passed on to clients and arise if restrictions are placed on risk-based priced in insurance, as is done by the ban. Two main classes of additional costs can be distinguished: direct costs and portfolio mix effect

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costs. In the first class of additional costs, the ban on the use of gender as a rating factor imposes compliance costs on insurance providers in the form of costs resulting from system changes, actuarial re-pricing and some administrative changes such as updating all information communicated to clients in print and on the web site. These (probably one-off) costs might be significant. Transition from gender to unisex pricing will cause that men become the source of higher costs than women and a higher proportion of men buying insurance protection might represent a new source of risk. In the second group of additional costs, these arise with respect to pricing risks and the undesired adverse consequences associated with the less accurate pricing. The uncertainty of the gender mix adds a new element of risk and incites a higher amount of economic capital set aside to cover the risk.

On the other hand, from adaptation to new legislation conditions not only threats follow but also some new opportunities spring out to insurance providers, and they are an incentive to changes in selling policies. Response is required chiefly in the field of risk calculation and risk management and some changes should also be made in product strategies. In the field of risk management, risk providers must deal with “lapse and re-entry” risk of existing policies. This form of risk applies when a customer cancels insurance protection and subsequently takes out a new insurance policy with the same or a different insurance provider with the intent of profiting from a cheaper unisex insurance premium. Eliminating this risk demands that insurance providers carefully monitor the rate of client migration and stimulate loyalty of existing clients (Kay et al., 2012). The company Ernst & Young (2012) goes on to add that in order to eliminate their risks insurance providers should also identify, monitor and estimate the proportion of men and women in their portfolio with greatest care.

In addition to having impact on consumers or insurance providers, the ban on the use of gender as a rating factor may also result in broader social consequence. Impact on society may present itself in the future as a decreased demand of women for life insurance and may result in poorer financial security of households. Another danger associated therewith is worsening of old-age poverty since men may unintentionally lose interest in ensuring their security in their old age and be put at risk by unisex pricing as a result of their higher prices due to higher longevity of women. (Oxera, 2011.)

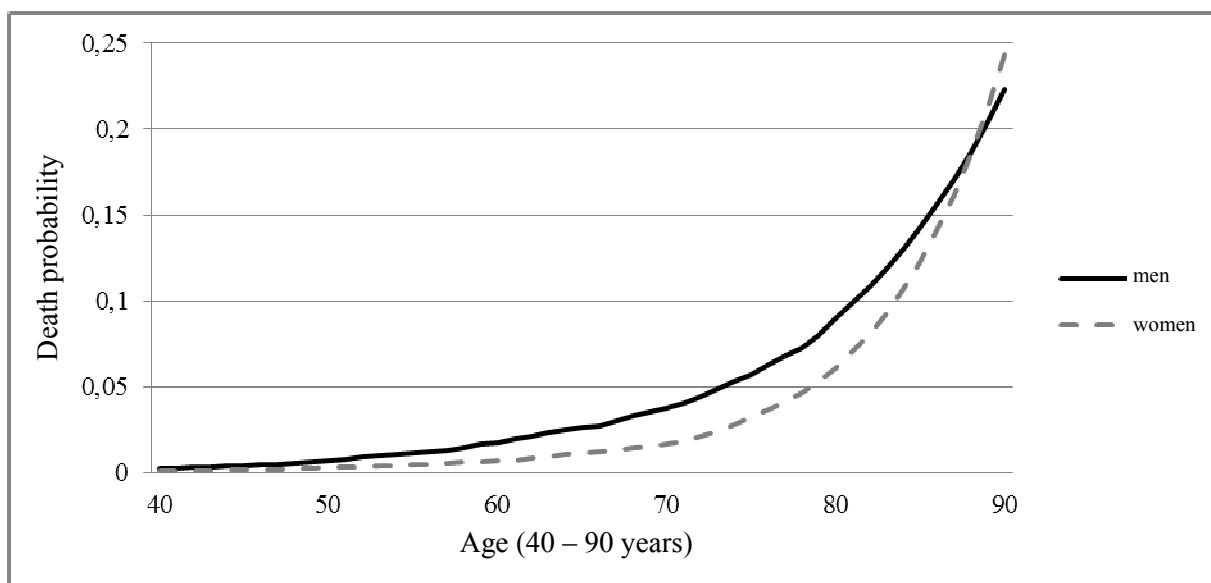
### **3 Gender as an established risk factor and possibilities to its substitution**

Certain categories of insurance risk may and do differ with respect to gender. In the case of insurance contracts that cover these categories of risk (in life assurance there is a risk

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of different mortality between the men and women population), insurance providers were permitted not later than the end of 2012 apply an exemption from the Directive. This was possible only if price setting was based on accurate actuarial data compiled, published and regularly updated. The fundamental source of difference between risk of men and risk of women is different mortality of men and women as virtually in all age groups a tendency to higher mortality of men is exhibited in comparison to that of women. Based on data retrieved from the Statistical Office of the Slovak Republic, Fig. 1 displays probability of death for men and women that was estimated for the year 2012. Fig. 1 produced for the age group from 40 to 90 years exhibits a higher mortality rate in the selected (and populated) age group) between 40 and 85 years of age for men. This indicates that gender represents, for insurance providers, one of the fundamental risk factors as the mortality behaviour of men and women is crucially dissimilar.

**Fig. 1: Mortality of men and women in the Slovak Republic in 2012**



Source: the authors on the basis of the data from the Statistical Office of the Slovak Republic.

The application of the Directive enforcing the ban of gender as a rating factor in actuarial pricing formulas incites a need to search for suitable substitutes of the factor gender. In life insurance, premium is determined through age, gender, medical condition and smoking habits. In some situations geographical location as an indicator of the socio-economic conditions is utilized, but this is not practice of the European insurance market as yet. The primary source of information for precise risk valuation in life insurance are mortality tables including death probabilities structured across age and gender. After the ban on using gender,

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it is needful to replace this factor. Possible substitutes are information on employment and leisure activities that associate difficulties with their collection and verification. Moreover, these factors do not have a stable character and are prone to a change over time. For products of life insurance, which usually are concluded long-term, this may make risk identification impractical or difficult. (Oxera, 2011.) On the alternative in the form of a higher weight attributed to customers' behaviour, on pricing based on characteristics such as social standing, income, occupation, life style is also debated and this course is indicated by Insurance Europe. Some suggestions are systemized in an article by Pastoráková (2012). The shortcoming of this alternative is the nature of private information whose stipulation by insurance providers might be in conflict with the principles of personal data protection or may be freely interpreted as a form of indirect discrimination (Comité Européen des Assurances, 2011).

#### **4 Influence of the Gender Directive on insurance products**

Additional costs of insurance providers that are incurred by transition to unisex insurance rates will ultimately burden consumers. Another cause of higher insurance premiums in comparison to the previous level is a frequent 60 % – 80 % proportion of men in the portfolio of insurance providers (Oxera, 2011). These factors will result in setting unisex price of insurance policies closely at a maximum value of insurance premiums of men and women. It may be said that new insurance rates tend to close significantly to rates of the gender at which they are higher and not towards the weighted average of insurance rates as suggested by empirical evidence accrued in the past (Molik, 2012). For example, in Belgium after the introduction of unisex pricing in motor insurance, women experienced an increase of their insurance premiums by 7 % – 15 % whereas insurance premiums of men decreased only by 3 % – 4 %. Estimates of price changes produced by Oxera are differentiated across various types of insurance, whilst most important impacts are anticipated for life assurance of women, in which a chance of exceeding the earlier insurance rate even by 30 %. Comité Européen des Assurances (2011) in its analysis assumes an increase of prices of life assurance for women by 35 % – 50 %, and announces an anticipated decline in interest of women in taking out insurance policies. The unification of insurance rates will affect chiefly young single mothers who need life assurance with the aim of guaranteeing a mortgage. In products of pension insurance, the calculations are that annuity payments of women should increase to 6 %; and, reversely, men should see a decrease in their annuities paid out by 3 % – 8 %, which inevitably lowers attractiveness of insurance for women. Pension insurance will



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become unattractive for men who will begin to prefer bank investment products without biometrical coverage of risk. Difficulties that may arise due to the loss of interest in financial security in old age in the case of men are, as a matter of fact, of a broader social impact which may influence stability of the pension system of the country. A higher difference in insurance prices is predicted for life assurance products and it can easily be explained by a lower gender differentiation in higher age groups, with which it is calculated in pension insurance.

## **5 Present situation at the insurance market**

Insurance providers switched to the new system of insurance pricing based on unisex rates at different dates. This is because all insurance providers had been preparing for this transition as from March 2011, when the decision of the Court of Justice of the European Union was made known, and they considered 21 Dec 2012 for the ultimate deadline. For this purpose, insurance providers that effected necessary vast changes in their software, business strategy and practice, administration and other areas started to apply unisex rates already as of December 2011. Other insurance providers availed oneself of the fact that Slovak legislation is delayed with transposition. Although Slovak insurance providers implemented the updated wording of the Directive gradually as from 21 Dec 2012, the amendment to the Antidiscrimination Law (zákon č. 365/2004 Z. z. v zn. n. p.) came into force as of 1 Apr 2013, for which sanctions later may be imposed.

Insurance providers could react to the new regulation of the insurance market in two alternative ways. The reactionary approach prefers construction of unisex mortality tables based on the expected proportion of men and women in the insurance portfolio with an application of risk margin for adverse selection. The other approach is referred to as the innovative and active approach, which represents the new design of products and innovative marketing strategies. (Kay et al., 2012).

Intensive marketing campaign oriented on increasing the number of women in the portfolio was undertaken by the insurance provider MetLife Amslico with its product Eva plus, which offers, in addition to some other benefits, coverage in the case of diagnosing cancer of female organs. MetLife Amslice also sells a variation of this product for potential male clients under the name Adam plus, which in addition to covering critical male illnesses also includes coverage in the case of a car accident. The marketing campaign of these two products was strategically divided into separate time periods since the product Eva plus was advertised before introducing unified insurance rates and the product Adam plus was promoted only later

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with a notification of a 30 % reduction in the insurance premium. The insurance provider Axa offers within its critical illnesses insurance also specific packages for men and women. The insurance provider While Generali Slovensko designed a special life assurance product customized for women, Allianz makes an offer for its clients in the form of a new program of capital life insurance “Flexi Život Ona a on”. A survey of life assurance products suggests that Slovak insurance providers adjusted their business activities to the imposition of unisex interest rates especially in the form of extending their product portfolios by innovative and specific products with an emphasis placed on additional insurance facilities for typical critical illnesses for both men and women.

## **Conclusion**

The paper is devoted to the situation on the insurance market that emerged as a consequence of the exemption cancellation from the Gender Directive, which requires the ban of using gender as a rating factor in calculating insurance premiums and evaluating insurance claims for all new contracts concluded in the member states of the European Union as from 21 Dec 2012. It comes into question whether this decision does not present hindrance to competitiveness of insurance products on the insurance market of the European Union and does not strengthen the insurance market of the United States of America and its products. Impact of these ultimate decision on men and women depends on the concrete type of insurance product. Statistical data available with the Statistical Office of the Slovak Republic are firmly indicative of a tendency to a higher mortality of the male population in comparison to the female population. Whilst in products of pension insurance an increase of insurance premiums for men is expected accompanied by a decrease of insurance premiums for women, in other lines of business, such insurances for the case of death, women are required on unifying mortality tables to pay a higher insurance premium and to be disadvantaged in view of higher mortality of men. Equal treatment in insurance established in two completely different risk groups, men and women, deters the group of clients with lower risk and encourage those who bear high risk. This deformation eats away the very function of insurance coverage as a specific service. For these reasons, the use of gender in insurance is justified since it is based on statistical data proving different mortality of men and women.

Besides the ban of gender discrimination, there are other changes under way and shall be published in another Directive. These should forbid discrimination for age or health handicap. Should these changes be implemented, the possibility of calculating insurance

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prices based on the very crucial risk factors would be destroyed. In effect, life assurance would probably cease to exist.

As from 25 June 2013, the maximum technical interest rate for the Slovak insurance market is decreased from 2.5 % p.a. to 1.9 % p.a., which will result in lower evaluation of funds accumulated during the existence of insurance. This is another example that insurance providers as private institutions are constantly subjected and influenced by restrictive regulatory decisions, either at the level of state or at the level of international community.

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