



NEWS REPORT

Date:	28-12-2013
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Title:	CJEU's judgment forces Dutch Government to adjust law
Country:	The Netherlands
<u>Context</u>	
Issue at stake:	Use of age criteria in actuarial calculations judged unlawful, forcing the Netherlands to adjust the Act on Equal Treatment based on Age in Employment (ADA) . Age
Ground of discrimination:	
Source:	European Court of Justice
Field:	Employment
Legislative provisions:	Article 6(2) of the Employment Equality Framework Directive; Article 8(2) and (3) ADA.

Content

The European Court of Justice has recently given a preliminary ruling concerning the interpretation of Article 6(2) of the Employment Equality Framework Directive, which contains the grounds of exception to the general prohibition of age discrimination.¹ The case concerned the lawfulness of a Danish occupational pension scheme, but is of paramount importance to the Dutch situation.

The Dutch government has always interpreted the grounds of exception as such that three legitimate reasons to make a difference on the ground of age existed: regarding the fixing of ages for admission to occupational social security schemes (1), the setting of the retirement age (2) and in actuarial calculations (3).

However, the Court rules in its judgment that the setting of the amount of contributions to a retirement scheme cannot be assimilated to a 'use of age criteria in actuarial calculations'.² It follows that age-related increases in pension contributions do not fall within the scope of Article 6(2) of the Directive, which has severe consequences for the Netherlands.

The Dutch pension system is built on three pillars: the state pension ('AOW'), the supplementary collective occupational pensions and the possible private individual pension. The second pillar is funded through contributions paid by members of the scheme ('*werknemersbijdrage*') and by contributions of employers ('*werkgeversbijdrage*'). More than 90 percent of all employees contribute to such a collective pension fund.³

¹ CJEU 26 September 2013, C-476/11: HK Danmark v Experian A/S.

² Par. 53 of the judgment.

³ More information on the Dutch pension system (in English) can be found in 'The Dutch Pension System: an overview of the key aspects', an information brochure published by the Dutch Association



It follows from this judgment that these contributions to the pension scheme may not be differentiated on the ground of age, as they do not fall under the scope of Article 6(2). Many pension funds currently apply such differentiations to the employers' contributions, and may now be forced to adjust this practice. The Dutch government's interpretation of the Directive was manifest in its legal implementation, rendering it necessary to adjust Article 8(2) and (3) of the Act on Equal Treatment based on Age in Employment (ADA) to reflect the CJEU's judgment.

Source: The Court's judgment can be found at:

<http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=142214&occ=first&dir=&cid=359553> (last accessed 28 December 2013.)

of Industry-wide Pension Funds (VB). This document also contains a paragraph on equal treatment (p. 29) and can be retrieved online at http://www.pensioenfederatie.nl/Document/Publicaties/English/%20publications/Nederlandse_pensioensysteem_Engelstalige_versie.pdf (last accessed 28 December 2013).