



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	Belgium
Title:	Use of gender neutral actuarial factors
Date:	1 January 2016
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<u>Context</u>	
Issue at stake:	Gender equality in statutory social security
Ground of discrimination:	Sex
Source:	Legislation
Field:	Statutory social security
Applicable law:	Royal Decree of 30 November 2015

Content

Legislative development: A Royal Decree of 30 November 2015 amended the R.D. of 24 December 1987 so that gender neutral actuarial factors must now be used for the calculation of the lump sum due as compensation for an accident at work; as explained hereafter, this amendment applies both to the private sector and public sector schemes. This development results from the judgment of the CJEU in Case C-318/13 X., and the subsequent letter addressed by the Commission to Member States. As a reminder, the CJEU found in Case X. that while Article 7(1) of Directive 79/7/EEC concerning the equal treatment of men and women in statutory social security offered Member States an exhaustive list of grounds for 'derogations' that they could opt to permit, the use of gender based actuarial factors (GBAF) in the calculation of a statutory social security benefit did not appear on that list. Thus, when in Finland the male victim of an accident at work applied for the conversion of the annual compensation into a lump sum, the CJEU ruled that the application of GBAF constituted gender discrimination.

Consequently, the European Commission requested all Member States to scan their respective statutory social security legislation (within the material scope of Directive 79/7/CEE) for any uses of GBAF and, if any were found, to let the Commission know what steps had been or would be taken in order to comply with the CJEU's decision. The Belgian government received the Commission's letter on 12 March 2015.

The Belgian legislation concerning accidents at work was similar to the Finnish, except that the victim might only apply for conversion of one third of the aggregate value of the compensation into a lump sum (private sector: Article 45 of the Accidents at Work Act of 10 April 1971; public sector: Article 12(1) of the Accidents at Work and Occupational Diseases Act of 3 July 1967). In order to calculate the amount of the lump sum, GBAF were used (private sector: Article 6 of the ancillary Royal Decree of 24 December 1987; public sector: Article 21 of the ancillary Royal Decree of 24 January 1969 referred to the private sector scheme).

Key points of analysis: The replacement of GBAF with gender neutral actuarial factors is applicable retrospectively to accidents at work which occurred as early as 1995, but

the R.D. of 30 November 2015 only came into force on 1 January 2016 and only applies to lump sums to be paid as from the same date, which raises a question of general interest for all Member States.

On the one hand, the CJEU found in Case C-187/98 *Commission v. Greece* that when a Member State brought its legislation in compliance with EU gender equality law only belatedly, it must do so with retroactive effect (see also Case C-515/14 *Commission v. Cyprus*, concerning Directive 2000/78/EC).

On the other hand, in Case X. the CJEU advised the Finnish court, which had to assess the liability of the State whose legislation had been found faulty, that it should “*take into consideration*” the fact that so far, the CJEU had not ruled on the legality of GBAF within the scope of Directive 79/7/EEC.

Thus, a communication of the European Commission concerning the impact of Case C-318/13 on the correct implementation of Directive 79/7/EEC might be useful to the Member States.