



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

### NEWS REPORT

<b>Country:</b>	Portugal
<b>Title:</b>	New legislation regarding gender equality in the access to and providing for goods and services
<b>Date:</b>	9 April 2015
<b>Expert:</b>	Maria do Rosário Palma-Ramalho
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Implementation of Test-Achats Judgement at national level
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation
<b>Field:</b>	Goods and services

### **Content**

**Legislative development:** New legislation (Law No. 9/2015, of 11 February 2015) has been published, implementing the CJEU Judgement on the Test-Achats Case at national level, by way of amending Law No. 14/2008, of 12 March 2008, that regards gender equality in the access to and providing for goods and services.

Despite the general principle of non-discrimination on the grounds of sex in insurance and financial services contracts, established in Article 6 No. 1 of Law No. 14/2008, Article 6 No. 2 explicitly allowed for different prizes and benefits in insurance contracts and other contracts providing for financial services, based on sex as an actuarial factor, under the condition that such differences were proportional and based on relevant and rigorous actuarial and statistic data. In the original version, the Law indicated that actuarial data for this purpose were only to be considered proportional, rigorous and relevant if calculated in accordance with the Guidelines established by the Portuguese Insurance Institute for that purpose (Article 6 No. 3). Finally Article 6 No. 4 established the obligation to assess and review the derogations applied under Article 6 No. 2 in a period of 5 years.

The amendment of this Law, now introduced by Law No. 9/2015, consists basically of the following:

- The general principle establishing that the taking into consideration of sex as an actuarial factor for the calculation of prizes and benefits in insurance and financial services contracts cannot result in different prizes and benefits was kept (Article 6 No. 1).
- This general principle is now applicable not only to private insurance contracts but also to voluntary and private pension schemes not related to employment contract (New Article 6 No. 5)
- The derogations of the general principle established in Article 6 No. 1, by way of making use of sex as an actuarial factor in these contracts (as established in Article 6 No. 2 of Law No. 14/2008, in its original version) are eliminated; and as a result Articles 6 No. 3 and 4 were also eliminated.

- However, the Law allows for the keeping of different treatment in the areas of health and life insurance where those practises are admitted by the European Commission in the Communication of 22 December 2011, and gives the Portuguese Insurance Institute the competence to divulge those practices (new Article 6 No. 6).

The above indicated changes in Article 6 were given retroactive effect to 21 December 2012 (Article 5 of Law No. 9/2015), thus avoiding an infringement of EU Law due to the late implementation of the Test-Achats Judgement.

Nonetheless, a clear distinction is established in the Law between insurance and financial services contracts concluded until 20 December 2012 and the contracts concluded after that date. For previous contracts, the ancient provision that allowed for derogations (Article 6 No. 2 and 3) is still admissible, while for new contracts the new rules apply. As for contracts concluded between 21 December 2014 and Law No. 9/2015, a period of 90 days to adapt them to the new provisions is indicated (Article 3 of Law No. 9/2015).

**Key points of analysis:** This amendment changed Article 6 of Law No. 14/2008, that deals with insurance and financial services contracts, in the part of this provision that allowed for derogations to the gender equality principle, as regards sex as an actuarial factor taken into consideration to calculate benefits and prizes inserted in such contracts. These derogations (indicated in Article 6 No. 2) have been abolished, thus putting national legislation in line with the Test-Achats Judgement.

**Internet link source:** [www.dre.pt](http://www.dre.pt), accessed on 11 February 2015.