

CEA's preliminary comments on the Commission's draft Directive prohibiting discrimination outside the employment sphere based on religion or belief, disability, age or sexual orientation

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Initial Comments

The right of people to be equal before the law and entitled without any discrimination to the equal protection of the law is a fundamental right. In this context, the CEA shares the European Commission's desire to ensure that people are treated fairly both in employment and in the provision of goods and services.

Private insurance deals with the financial consequences of the materialisation of a risk. Therefore risk assessment differentiating according to risk exposure is a vital condition necessary for providing insurance services. Insurance clients present different degrees of risk to insurers and these risk factors need to be taken into account when pricing insurance products.

The CEA welcomes the Commission's acknowledgement that risk assessment does not constitute discrimination.

The draft Directive recognizes, in Article 2 (7), that insurers may use age or disability as relevant factors in the assessment of risk when offering insurance policies. However, the article includes issues causing some **major concerns** for the insurance industry as set below.

The CEA believes that risk assessment should not be restricted

Private insurers need, in addition to actuarial and statistical data, also to rely on a wide range of relevant sources including medical reports, medical research and medical experience for a comprehensive risk assessment. The CEA is not sure whether such medical information would also be covered by the insurance clause in the draft Directive. If insurers cannot refer to this information this would lead to restrictions on risk assessment in private insurance and consumers would no longer have access to fairly priced insurance products. But consumers are searching for tailor made private insurance coverage solutions. Legal restrictions could have the effect that insurance cover would no longer be available at affordable prices and that products would ultimately have to be taken off the market. These products serve to cover the most important risks of life, such as the financial consequences of death, occupational disability, total disability, disease and the need for long-term care. However, these are exactly the products for which there is an increasing need due to cuts in the EU Member States' social security systems caused by demographic changes. It needs to be clarified that the list of possible justifying data sources is non-exhaustive.

The CEA is against the Member State option

The draft Directive leaves it at the discretion of the Member States to allow "differences in treatment" in the provision of financial services. The CEA strongly believes that this opt-out provision would create further legal uncertainty for both the consumers as well as the insurance sector and would constitute an exception to the general principle against discrimination.

CEA suggestion

Against this background, the CEA would welcome:

- A clarification in Art 2 (7) of the draft Directive that in addition to actuarial and statistical data, other sources of information, such as medical experience, should be allowed for risk assessment.
- The elimination of the opt-out provision leaving it to the discretion of Member States to allow "differences in treatment" in the provision of financial services.

The CEA would therefore like to propose the following wording for Art 2 (7) of the draft Directive:

"In case of private insurance contracts, differential treatment is allowed when it relies on sound principles of risk-equivalent calculation, in particular on risk assessment that can be based e.g. on statistical data, on medical experiences or on actuarial principles"

The CEA is willing to contribute constructively to a solution to avoid any detrimental impact on European consumers.

About CEA

The CEA is the European insurance and reinsurance federation. Through its 33 member bodies, the national insurance associations, the CEA represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. The CEA, which is based in Brussels, represents undertakings that account for approximately 94% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of €1 110bn, employ over one million people and invest more than €7 200bn in the economy.