

Now gender, what – if anything – next?

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There are reasons to be concerned...

- Precedent set by ECJ
 - “Substitute criterion” = “incompatible with equal treatment”
 - Causation v correlation
 - Changeable v innate characteristics
 - Dismissive of statistical evidence
 - Not a response to market failure (may create one)
- Scope
 - CFR (Article 21) covers discrimination on any grounds; TFEU (Articles 10 and 19) empowers EU-level action
 - Caveat: Interaction with new EU-level action?

... as change could lead to major problems ...

- Restricting characteristic-based pricing
 - Efficiency reduced (i.e. society loses)
 - Re-distribution effects
 - Adverse selection (sustainable pricing?)
- Cumulative effects

... but some mitigating actions should be possible ...

- Increased weighting on other, risk-related, “characteristics”
- Search for novel characteristics (need not be “second best”)
- Fresh impetus to novel pricing methodologies
- Differentiation at point of supply (?)
- Access conditions (?)

... and we should not get too carried away (yet)

- Again, need to consider
 - Causation v correlation
 - Changeable v innate characteristics
- Disability: little used as a blanket factor
- Age: would have a wider impact even than gender but
 - Kokott draws the distinction that “everyone may, on the basis of age, in the course of his life be in receipt of insurance products which are more or less favourable to him” (see footnote 37 to opinion)
- Other “substitute criteria”