



I P E B L A

International Pension and Employee Benefits Lawyers Association Teleconference

Teleconference:	“The implications of the European Court of Justice’s decision in the Test-Achats case – the next Barber case?”
Live Date:	Monday 7th March, 2011
Time:	10:30 a.m. Eastern Daylight Savings Time (Toronto, Canada) 3.30 p.m. UK Time 4.30 p.m. Central European Time
Replay Date:	Replay available up until 1st April, 2011

The IPEBLA Teleconference Committee has assembled an expert panel of speakers who will address the topic “**The implications of the European Court of Justice’s decision in the Test-Achats case – the next Barber case?**”.

This Teleconference will be conducted in English.

Speakers: Isabelle de Somviele, Claeys & Engels, Belgium
Jens Lund Mosbek, Kromann Reumert, Denmark
Mark Heemskerk, Houthoff Buruma, The Netherlands
Philip Bennett, Slaughter and May, UK

Moderator: Jens Lund Mosbek, Kromann Reumert, Denmark

The European Court of Justice (the “**ECJ**”) is expected to give its judgment in the Test-Achats case on 1st March, 2011. This case has substantial ramifications for both insurance companies and pension plans operating in the European Union. It could be as significant for pension schemes as the original Barber decision on 17th May, 1990.

The case is about whether insurance companies, when pricing insurance policies, can charge a different price to a man and a comparator woman, where that differentiated price is justified through the use of actuarial factors reflecting different average experience as between comparable men and woman.

For example an insurance company will, in general, charge a woman more for an annuity than a comparator man of the same age, reflecting, on average, expected longer life expectancy of the woman.

The Advocate General’s opinion in the Test-Achats case concluded that the exception in an EU Directive (Directive 2004/113/EEC¹) allowing gender differentiated actuarial factors for pricing insurance policies is unlawful and should be removed.

¹ Equal treatment between men and women in the access for supply of goods and services.

If the ECJ follows the Advocate General's opinion, the domestic legislation of an EU member state (such as Belgium, Denmark, The Netherlands and the UK), which has taken advantage of this exception, would also have to be interpreted as if that exception did not exist (or the domestic legislation would otherwise have to be modified to remove the exception).

If, as seems likely, the ECJ follows the Advocate General's opinion, then it would no longer be permissible, subject to any temporal limitation, for EU insurers to use differential pricing of insurance policies for men and for woman in comparable situations (with are some very limited exceptions).

The likely effect, if the ECJ judgment goes as expected, is that occupational pension schemes will also have to use gender neutral factors for all of the following:

- commutation factors in exchanging pension for lump sum (and vice versa),
- factors for calculating the transfer value for a transfer out in respect of a member's defined benefit benefits,
- early retirement factors,
- late retirement factors,
- factors for conversion of money purchase benefits in to scheme pension,
- factors for surrender of a member's pension to increase the spouse pension,
- factors for calculating transfer credits on a defined benefit basis in respect of transfer values received in by an occupational pension scheme.

If gender neutral factors have to be used, then the member who has the less advantageous factors applied to his or her benefits, would be entitled to require the more favourable factor for a comparator of the opposite sex be used instead. In other words, the levelling up amounts involved could be quite material.

The Advocate General's opinion proposed that there should be a 3 year temporal limitation running from the date of delivery of the judgment (ie. 1st March, 2011). But, after the end of that period, even for contracts entered into before 1st March, 2011, premiums and benefits would need to be equalised to the extent they were unequal as a result of the use of gender differentiated factors as between men and comparator woman (and vice versa).

This teleconference will look at:

- the EU Treaty and Directive framework within which the judgment sits,
- an overview of the impact of the judgment on insurance companies, and
- the implications of the judgment for defined benefit and defined contribution pension plans established in the EU including, in particular:
 - Belgium
 - Denmark
 - The Netherlands
 - United Kingdom

Length of teleconference:

The panel discussion will run for approximately 70 minutes, followed by a 20-minute question and answer session.

This presentation will be repeated as a replay. Please see replay schedule below. The replay will include the presentation and questions and answers but will not include a live opportunity to ask questions.

Timing:

Date	Time	Country
Monday 7th March, 2011	10:30	USA/Canada: Eastern Daylight Savings
	15:30	UK
	16:30	Central European Time and Johannesburg and South Africa
Until 1st April, 2011	Up to 23:00	USA/ Canada

Teleconference Format:

For those not familiar with the format of a teleconference, it is a bit like listening to a radio programme on the topic in question. The expert panel will discuss the chosen topic. Those who have signed up for the teleconference will receive an electronic confirmation with dial-in instructions, speaker slides and any other materials to which the speakers will be talking for the call.

For those joining the live discussion, you will have the opportunity to ask questions of the speakers. For those joining the replay, you will hear the replay and the question and answer session.

For registration form, please scroll down to page 4.



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IPEBLA TELECONFERENCE REGISTRATION FORM

Teleconference: “The implications of the European Court of Justice’s decision in the Test-Achats case – the next Barber case?”

Date: Monday 7 March 2011

The price for this teleconference is **US\$40.00 for IPEBLA members** and **US\$75.00 for non-members**. To register, please complete the form below and fax (+1 416 929 5256) to IPEBLA or e-mail (ipebla@managingmatters.com) with credit card payment for the registration fee. You can also register on line at: www.ipebla.org

(Non members who decide to join IPEBLA within 30 days of the conference will receive a reduction in their membership fee of US\$50.00)

The registration deadline for this teleconference is **Friday 4 March 2011**.

I am an IPEBLA member I am not an IPEBLA member I would like to become a member

Mr. Ms. Mrs. Dr.

Name: _____

Position: _____

Company/Organization: _____

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Please indicate for which session you are registering:

I am registering for the live session I am registering for the replay session