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## United Nations Open-Ended Working Group 11<sup>th</sup> Session (2020)

### AGE Platform Europe submission on Focus Area: Right to Work and Access the Labour Market

This short answer is submitted in reply to the call of the Chair of the Open-Ended Working Group on Ageing (OEWG) to NGOs. AGE Platform Europe (AGE) has ECOSOC status and is accredited to the OEWG since 2012.

As the largest European network of self-advocacy organisations of older people, our position aims to reflect the situation at EU level on behalf of the 40 million older citizens represented by our members. Our contribution is based on written answers received from organisations of older people in several EU Member States and oral debate in the frame of our Council of Administration where representatives from 24 countries<sup>1</sup> and 6 European organisations/federations<sup>2</sup> sit.

As AGE answer cannot provide information around specific issues and provisions on older people's right to access the labour market across all EU member states, our submission is focusing on challenges that are commonly faced by older people in this area

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<sup>1</sup> All EU countries except for Croatia, Latvia, Luxembourg and Slovakia

<sup>2</sup> FIAPA, ESU, NOPO, EURAG, EDE, OWN Europe





## National Legal and Policy Framework

1. What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?

Directive 2000/78/EC prohibits in principle discrimination based on age in the employment and training. However, age is the only ground for which direct discrimination is allowed. The directive leaves room for a wide margin of exemptions, notably regarding mandatory retirement ages and vocational training policies. As a result, several discriminatory practices and attitudes continue to be tolerated as 'objectively justified', and there are discrepancies in caselaw across the EU.

2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?

Employment rates of older workers are increasing in line with rising retirement ages. However, this is a result of older workers staying in their job for longer, while older people who lose their job before pension are unlikely to be hired again. This is exemplified by high rates of inactivity: many older jobseekers do not register as unemployed because they have given up on finding a job. Older persons are also covertly discriminated in practices of promotion to leadership positions and to participate in life-long learning, which in turn has an impact on the employability of older workers. Some job advertisements are discriminatory in using terms such as 'dynamic' or 'youthful' or by using only certain media channels (social networks), discouraging older jobseekers to apply.

Mandatory retirement still exists in many EU member states and professional sectors.<sup>3</sup> Even in countries where it is abolished, retirement can be forced in the form of a right of an employer to terminate a contract, age barriers in the exercise of certain professions, setting different pension ages for men and for women, or by forcing workers to receive unemployment/severance allowance until pension age<sup>4</sup>. The EU Court of Justice (CJEU) has not been resolute in considering cases of mandatory early retirement as unlawful. The Court accepted general arguments, such as existing access to a (pre-)pension scheme or the will to avoid humiliation by

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3 For example, Bulgaria sets a fixed age limit for working in the police and military (regardless of the actual tasks performed or functional capacities of the employee), lower than national retirement age. Public employees in Austria can be forced to retire at 61.5 years and employment contracts can be renewed for maximum five 1-year fixed-term contracts from 65 years onwards, only in the case of 'important operational reasons' for the continuation. In Slovenia, public servants who have reached old-age pension age can be laid off, if the functioning of the public service is not interrupted by this.

<sup>4</sup> E.g. in Ireland and in some cases of dismissals for company restructurings.





health or fitness checks for older employees as a sufficient justification to force workers to retire<sup>5</sup>.

3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?

In 2018, only 58% of 55-65 year-olds are in employment, vs 67% of the total population. Employment rates of older people vary between 41% in Luxembourg and Greece to 77% in Sweden, showing that it is possible to reach high levels of employment. Gender gaps are highest in old age.<sup>6</sup> Women in the EU have an average working life duration of 34 years, versus 38.6 years for men. Only one in two older women are in employment.

In a 2019 survey<sup>7</sup>, 47% of respondents thought that age was perceived as a factor for disadvantaging an equally qualified candidate against another. In 13 EU member states, age was perceived as the most important disadvantaging factor.

One in five older workers (55-64) is caring for a family member in need for care and assistance, showing the importance of affordable care services to reduce employment barriers.

### **Availability, Accessibility, Acceptability and Quality**

4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?

Incentives exist in some member states, such as personal training accounts, which can reduce older people's problems to find or stay in work because of skills. This is not widely used and older workers are the age group which least benefit from life-long learning opportunities. Little incentives exist regarding the promotion of age

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<sup>5</sup> Another reported practice is that employment contracts may be terminated at a certain age and employment may continue only with a series of fixed-term contracts. The Court of Justice of the European Union has provided inconclusive guidelines on whether such a practice is acceptable. In the Mangold case, it ruled that such a practice was against the principle of equal treatment at age 52, but in Georgiev, it ruled that it is an acceptable practice at age 65. Note that in a case against Keolis in Sweden, the national Labour Court ruled that while it is legal to dismiss workers at age 67, the legal retirement age, such a dismissal on the ground of age is not legal beyond that date, allowing workers to continue in one-year fixed-term contracts with annual health checks beyond the initial age limit of 70.

<sup>6</sup> While the gender employment gap is of about 10 percentage points for 15-64 year-olds, it is of 13 percentage points for 55-64 year-olds

<sup>7</sup> European Commission (2019): Discrimination in the European Union. Special Eurobarometer 493 report. <https://ec.europa.eu/commfrontoffice/publicopinionmobile/index.cfm/Survey/getSurveyDetail/surveyKy/2251>





diversity in the workforce. The Employment Directive referred to above requires employers to make 'reasonable adjustments' to include workers with disabilities. However, this requirement does not necessarily apply to older workers who do not have a recognised disability and might develop only light functional limitations or be subject of physical or mental wearing out due to repetitive tasks.

Indirect measures include awareness campaigns to promote occupational health and safety in a life-long perspective.

5. What steps have been taken to ensure the availability of specialised services to assist and support older persons to identify and find employment?

Some programmes exist to help older jobseekers into work, such as reduction of social contributions of employers, targeted training and placement measures by public employment agencies or a combination thereof. Given the low hiring rates of older jobseekers, these can be seen as insufficient. Job search assistance often focusses on issues for younger jobseekers (e.g. CV building) rather than on issues of more experienced workers.

6. What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?

These include consulting services offered to employers about workplace design and adaptation for older workers, including through financial incentives. Health and safety rules can also have a major impact in mitigating risks related to occupational health and safety, thereby allowing older workers to stay fit for their job for longer. Age management plans in a company<sup>8</sup> or the need to use outplacement services for the dismissal of older employees<sup>9</sup> can be made mandatory.

The possibility to combine part-time pensions and employment is seen as a measure to promote longer careers.

7. What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?

Whereas such protections rarely exist under law, an interesting practice is that employees can be shifted from strenuous to less strenuous tasks by their employer, who pays a premium to the worker for this. The premium is exempt of social security contributions.<sup>10</sup>

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<sup>8</sup> This exists in Belgium for companies over 20 employees and was practiced in France.

<sup>9</sup> Cf. Eurofound (2018): State initiatives supporting the labour market integration of older workers. <https://www.eurofound.europa.eu/sites/default/files/wpef18003.pdf>.

<sup>10</sup> Practice from Belgium for workers of 58 years or older.



## Equality and non-discrimination

8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?

The Employment Directive includes age as a ground. As outlined above, several lawful exemptions and justifications apply, permitting a wider range of practices that restrict older people's right to access or remain in the labour market.

Challenges to employment are higher for older foreigners or refugees, older persons with disabilities<sup>11</sup> as well as older Roma<sup>12</sup> and people who have responsibilities for the care of family members<sup>13</sup>.

## Remedies and Redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?

Workers can appeal to the national courts, however, as shown in national and EU jurisprudence, courts still consider age discrimination as less severe compared to

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<sup>11</sup> In 2014, less than 50% of persons with disabilities were in employment according to estimations – cf. European Commission (2017): *Progress report on the implementation of the European Disability Strategy (2010-2020)*, SWD(2017)29 final. P.9. The likelihood of an individual to report a disability increases with age, as 8.5% of people 15-44 reported to have a disability, 18.8% of people 45-64, 35.6% of people 65 and above in 2011, showing the strong link between disability and age as a barrier to exercise the right to employment. Cf. Eurostat (2015), *Disability Statistics – prevalence and demographics*. Statistics Explained. P. 5f. <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/34409.pdf>. Note that in many cases, disability is not recognised when acquired during the life-course, especially when in the case of 'normal' age-related impairments.

<sup>12</sup> Cf. AGE and ERIO Joint Statement (2014): "The socio-economic discrimination of older Roma should be included in Roma integration strategies": [https://www.age-platform.eu/sites/default/files/ERIO-AGE-joint\\_statement\\_on\\_InternationalRomaDay2014\\_0.pdf](https://www.age-platform.eu/sites/default/files/ERIO-AGE-joint_statement_on_InternationalRomaDay2014_0.pdf) In the 2013 survey, while 39% of Roma women over 50 and 36% of Roma men over 50 stated that retirement was their main activity, this was the case for 58% non-Roma men and 52% of non-Roma women. This gap suggests many older Roma are not eligible for pensions because of lack of access to the formal labour market and the corresponding social security contributions.

<sup>13</sup> Among older workers (55-64), 18% of men and 22% of women provide care. The majority of these are in employment, but about half of fulltime informal carers and 30% of part-time carers are not. AGE Platform Europe (2016): *Carers' leave and reconciling work and family life for older workers*. Policy Statement [https://www.age-platform.eu/sites/default/files/Carer%E2%80%99s%20leave%20and%20reconciling%20work%20and%20family%20life\\_AGE%20paper\\_Feb2016.pdf](https://www.age-platform.eu/sites/default/files/Carer%E2%80%99s%20leave%20and%20reconciling%20work%20and%20family%20life_AGE%20paper_Feb2016.pdf)

other grounds and they reflect ageist views about the ability of older workers to perform.<sup>14</sup>

Some national equality bodies can take up a case brought to them by individual workers. Equality Bodies are often faster to recognise age discrimination in access to the labour market than courts, as several cases brought forward by equality bodies have been judged at the favour of the defendant. Legal advice is also offered in some member states by trade unions to their members, but overall high legal costs and lengthy proceedings discourage litigation by older workers.

### Further information

Regarding an overview of practices regarding support to find employment and age-friendly workplaces, the national situation in 10 EU member States and assessments of AGE members of national practices, please refer to the 2019 AGE Barometer, published to feed into the European Pillar of Social Rights, the UNECE Implementation Strategy of the Madrid International Plan of Action on Ageing and the Sustainable Development Goals:

**AGE Platform Europe, AGE Barometer 2019**, <https://www.age-platform.eu/policy-work/age-barometer>

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<sup>14</sup> Cf. Equinet (2019): Fighting Discrimination on the Ground of Age. Discussion Paper. <https://www.age-platform.eu/publications/fighting-discrimination-ground-age-equinet-discussion-paper>