

Guiding questions for the thirteenth session

Focus area 1: Right to health and access to health services

National legal and policy framework

1. What are the legal provisions and policy frameworks in your country that guarantee the right of older persons to the enjoyment of the highest attainable standard of physical and mental health, including access to promotive, preventive, curative, rehabilitative and palliative health facilities, goods and services?
2. What steps have been taken to ensure that every older person has access to affordable and good quality health care and services in older age without discrimination?
3. What data and research are available regarding older persons' right to health and access to health care and services? Please indicate how national or sub-national data is disaggregated by sex, age and inequality dimensions, and what indicators are used to monitor the full realization of the right to health of older persons.
4. What steps have been taken to provide appropriate training for legislators, policymakers, health and care personnel on the right to health of older persons?

First of all, it should be pointed out that the Constitution of the Grand Duchy of Luxembourg of 17 October 1868 takes precedence over other national norms and must therefore be respected by the latter, namely the laws and regulations of the Grand Duchy (rule of the hierarchy of norms). It is therefore of paramount importance in the domestic legal order. The principle of equality is enshrined first of all in its Article *10bis* paragraph 1^{er} : "Luxembourgers are equal before the law".

In addition, there is a constitutional principle of equality between men and women, proclaimed in Article 11 paragraph 2 of the Constitution as follows: "Women and men are equal in rights and duties. The State shall actively promote the elimination of any obstacles that may exist in the area of equality between women and men ».

These provisions, because of their cross-cutting and general nature, therefore also cover non-discrimination on grounds of age.

It should be noted that Luxembourg is also a member of the European Union, with all the repercussions that this entails in terms of the legal system (such as the recognition of the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000). Thus, the Grand Duchy ardently supports the objectives of this international organisation, which are the defence of human rights, the guarantee and preservation of parliamentary democracy and the rule of law, the promotion of the development of European cultural identity and the fight against the problems facing European society. Furthermore, since October 1945, Luxembourg has been one of the 51 founding members of the United Nations. Peace and security, development and human rights are the three pillars on which the United Nations rests.

Secondly, mention should be made of the law of 28 November 2006¹ on:

¹ <https://legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo>

1. transposition of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
2. Transposition of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
3. Amending the Labour Code and introducing into Book II a new Title V on equal treatment in employment and occupation;
4. Amendment of Articles 454 and 455 of the Criminal Code;
5. Amendment of the law of 12 September 2003 on the disabled.

The Centre for Equal Treatment (CET) was established by the same law. It carries out its tasks independently. Its purpose is to promote, analyse and monitor equal treatment of all persons without discrimination on grounds of race or ethnic origin, gender, sexual orientation, religion or belief, disability and **age**.

In carrying out its mission, the CET can, in particular,² :

- publish reports, issue opinions and recommendations and conduct studies on all issues related to discrimination;
- produce and provide any information and documentation within the framework of its mission
- provide assistance to people who feel they have been discriminated against by providing a counselling and referral service aimed at informing victims of their individual rights, legislation, case law and the means of enforcing their rights;
- conduct or commission independent surveys and analyses of unjustified restrictions and obstacles to the right of free movement or discrimination on grounds of nationality against EU workers and their family members within the meaning of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

The same law made changes to the Criminal Code and the Labour Code. Article L.251-1 of the latter stipulates, "any direct or indirect discrimination based on religion or belief, disability, age, sexual orientation, membership or non-membership, real or assumed, of a race or ethnic group is prohibited".

As for the Penal Code, it should be noted that it also provides for the repression of discrimination, particularly in Articles 454 et seq. Thus, according to Article 454 of the Penal Code: "any distinction made between natural persons on the basis of their origin, skin colour, sex, sexual orientation, family status, age, state of health, disability, morals, political or philosophical opinions, trade union activities, or their actual or supposed membership or non-membership of a particular ethnic group, nation, race or religion constitutes discrimination".

The Luxembourg State is setting up a social security scheme³ to alleviate the financial consequences of the possible occurrence of a social risk for the nine classic branches of social security, as defined by Convention No 102 of the International Labour Organisation, which are: health care, sickness, unemployment, old age, industrial accidents, maternity, family allowances, invalidity and survivors' rights.

The risks are covered by the Social Security Code, as well as by the Labour Code.

² <https://cet.lu/missions/>

³ <https://igss.gouvernement.lu/dam-assets/publications/droit-de-la-s%C3%A9curit%C3%A9-sociale/Droit2021.pdf>

Statistical data are partly collected by the IGSS and the health observatory created by the law of 2 March 2021⁴.

The Observatory's missions are to :

1° to evaluate :

- a) the health status of the population in terms of morbidity and mortality ;
- b) risk behaviours of the population by improving knowledge of information on health determinants;
- (c) the quality, efficiency and accessibility of the health system and to identify health inequalities between different population groups.

2° to study the evolution and adequacy of the resources of health professionals intervening within the health system to meet the health needs of the population.

3° to publish and distribute :

- (a) information on the health status of the population and the health system resulting from the assessment carried out by the Centre ;
- (b) the results of studies on health professional resources.

4° proposing to the Minister public health priorities aimed at improving the health of the population, the health system and the state of health professional resources.

5° drawing up the health map referred to in Article 3 of the Act of 8 March 2018 on hospitals and hospital planning.

In order to carry out the tasks set out in paragraph 1, the Centre shall :

1° define a scoreboard of indicators, preferably internationally comparable;

2° centralize the information and data available;

3° conduct analyses and prepares studies and reports.

Progressive realization and the use of maximum available resources

5. What steps have been taken to align macroeconomic policies and measures with international human rights law, to use maximum available resources for the realization of older persons' right to health, such as through expanding fiscal space, adopting targeted measures and international cooperation?

Equality and non-discrimination

6. What are the challenges faced by older persons in their enjoyment of the right to health, including the impact of intersectional discrimination and inequality based on age, gender, disability and other grounds?
7. What measures have been taken to eliminate ageism and discrimination based on age, including discriminatory laws, policies, practices, social norms and stereotypes that perpetuate health inequalities among older persons and prevent older persons from enjoying their right to health?
8. What measures have been taken to ensure that older persons are able to exercise their legal capacity on an equal basis with others, including making an informed consent, decisions and choices about their treatment and care?

The policy for the elderly, as implemented by the Ministry for the Family, Integration and the Greater Region in accordance with the government programme, is based on a positive concept of the elderly, including the promotion of intergenerational dialogue, the fight against social isolation, quality control of activities, services and structures for the elderly, the development of new living concepts, the

⁴ <https://legilux.public.lu/eli/etat/leg/loi/2021/03/02/a168/jo>

integration of non-Luxembourgish elderly, the supervision, support and training of families, as well as the training of professionals

A draft law on the quality of services for the elderly is pending⁵. In residential care for the elderly, particular attention has been paid to the key concept of 'living actively together'. The text places particular emphasis on the participation and animation of residents, as well as on the provision of communal living spaces. In the living units, which can accommodate a maximum of thirty residents, there are plans to create at least two common stays. This will help to prevent the more dependent residents from being confined to their own homes. The communal living areas are intended for community living, to enable social contact, to maintain motor and intellectual skills and autonomy through exchanges and activities that may be offered.

This bill provides for the introduction of a complaints management system by the various managers of the elderly sector (accommodation structures, assistance and care networks, day centers), the creation of ethics committees within these structures and the creation of a national mediation and information service for the elderly.

A national action plan on "well ageing", which is currently being conceptualized, will have as one of its tasks the promotion of positive images of ageing, thus encouraging the destigmatisation of age itself. Another important point of this plan will be to promote the independence and autonomy of the individual, as well as the inclusion of older people in society.

Accountability

9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for the denial of their right to health?

10. What mechanisms are in place to ensure the effective and meaningful participation of older persons living in different geographic areas of the country in the planning, design, implementation and evaluation of health laws, policies, programs and services that affect them?

The above-mentioned bill provides, among other things, for the establishment of a complaints management system by the various managers in the elderly sector (accommodation facilities, care and assistance networks, day centers), the creation of ethics committees within these facilities and the creation of a national mediation and information service for the elderly.

In addition to these measures, the bill gives a legal basis to the High Council for the Elderly, which has already been in place since 2022, and clarifies its tasks:

- 1° assisting and advising the minister in his work of coordinating government policy in favour of the elderly;
- 2° promoting the rights of the elderly;
- 3° encouraging projects that meet the needs of older people and promote the skills and resources, integration, involvement and social participation of older people;
- 4° promoting intergenerational and intercultural exchange and cooperation;
- 5° advising on any draft law or Grand-Ducal regulation concerning the elderly that is submitted to it by the Government;
- (6) studying all matters referred to it by the Minister and all matters which it considers to be useful.

⁵ <https://www.chd.lu/fr/dossier/7524>

Other bodies to which older people can appeal are, for example, the health ombudsman⁶ and the Luxembourg consumers' union⁷.

⁶ <https://mediateursante.public.lu/fr.html>

⁷ <https://www.ulc.lu/fr/>