

Guiding questions for the thirteenth session

Focus area 2: Social Inclusion

The Scope:

Social inclusion is a precondition for the ability of older persons to exercise multiple human rights. Social inclusion is the process of improving the terms of participation in society for people who are disadvantaged on the basis of age, sex, disability, race, ethnicity, origin, religion, or economic or other status through (1) enhanced opportunities, (2) access to resources (3) voice and (4) respect for rights¹. From a human rights perspective, achieving social inclusion requires addressing the discriminatory structures that have led to exclusion, deprivation of resources and lack of opportunities identified in multiple international human rights instruments.

On one hand, the full social inclusion of older persons lays upon removing existing barriers and, on the other hand, on the adoption of measures that actively promote their inclusion. As such, the achievement of social inclusion is realized through the exercise of human rights that have already been or will be analyzed by the Working Group. These guiding questions are therefore geared towards addressing exclusively those areas that have not been, nor will be, addressed in other sessions of the Working Work.

The following focus areas and their impact on the social inclusion and/or exclusion of older persons have already been covered by the Working Group.

- Equality and non-discrimination
- Neglect, violence and abuse
- Autonomy and independence
- Long-term care and palliative care
- Social protection and social security
- Education, training, lifelong learning and capacity building
- Access to justice
- Right to work and access to the labour market
- Economic security
- Contribution of older persons to sustainable development

The following focus areas and their impact on the social inclusion and/or exclusion of older persons may be covered by the Working Group in a forthcoming session:

- Participation in the public life and in decision-making processes
- Accessibility, infrastructure and habitat (transport, housing and access)

The guiding questions:

¹ UN DESA (2016) Report of the World Social Situation 2016

- What are the legal provisions, policy frameworks and/or measures in your country that explicitly focus on older persons who are marginalized on the grounds of their sex, disability, race, ethnicity, origin, religion, economic or other status? (*This may include addressing older populations on frameworks dedicated to other marginalized groups such as women, persons with disabilities, migrants, minorities, homeless people etc.; or addressing marginalized groups within frameworks devoted to older persons*)
- What legal age limits exist in your country that prevent the full and equal participation of older persons in societies in areas such as employment, education, healthcare, financial goods and services, or others?
- What measures are in place, if any, to ensure that older persons in institutions segregated from their communities -such as institutional care systems or prisons- can continue participating in their society?
- States have an obligation to use maximum available resources to progressively achieve the full realization of economic, social and cultural rights. What is the share of national public expenditure budget targeted to older persons as a distinct group?

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 2006² on:

² <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,³ :

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

³ <https://cet.lu/missions/>

A draft law on the quality of services for the elderly is pending⁴. 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.

Each residential home for the elderly must, among other things, guarantee the provision of entertainment and social services which ensure that the residential home for the elderly is open to the social life of the community and society, the organisation of social and cultural activities, freedom of worship, and access to meals which give structure to the day and are a source of encounter and exchange. The range of activities must be adapted to the needs of the resident.

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.

⁴ <https://www.chd.lu/fr/dossier/7524>