

Guiding questions for defining the normative content of the issues examined at the eleventh session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Right to work and access to the labor market

Definition

1. How is the right to work and access to the labor market for older persons defined in the national legislation in your country? If such a definition is not available, how should it be defined considering relevant existing national, regional and international legal frameworks?

The German legal system does not contain a general or specific definition of the right to work and access to the labour market for older persons.

Rather, access to the labour market must generally be guaranteed for workers of all ages and thus also for older people without discrimination. This is regulated in the General Act on Equal Treatment [Allgemeines Gleichbehandlungsgesetz, AGG].

According to sections 1 and 2 of the General Act on Equal Treatment, discrimination, also on grounds of age, is inadmissible, especially with regard to the access to dependent employment or self-employment. The prohibition on grounds of age does not provide for a minimum age. The group of persons protected by the prohibition of discrimination thus includes workers of all ages and not only workers of advanced age.

The prohibition of discrimination on grounds of age does not imply a preferential treatment of older persons or an unrestricted right of older persons to work. A (general) preferential treatment of older persons with regard to the right to work and access to the labour market would always entail discrimination against younger people which would be incompatible with the provisions of the German Basic Law and European law.

Scope of the right

2. What are the key normative elements of the right to work and access to the labor market for older persons? Please provide references to existing standards on elements such as

a) Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to employment.

If older people are in employment, they fall within the scope of the General Act on Equal Treatment and discrimination on grounds of age is therefore inadmissible. The prohibition of discrimination applies to all stages of an employment relationship, from the stage of application, recruitment, with regard to promotion and working conditions (e.g. the level of income, working hours, leave and dignified treatment in the working environment) and to the termination of the employment relationship.

Employers are obliged to take measures (including preventive measures) to protect workers from discrimination on grounds of age (section 12 AGG).

Section 10 AGG allows different treatment on grounds of age if it is **objective and reasonable and justified by a legitimate aim**. The means of achieving that aim must be **appropriate and necessary**.

These are the **normative elements** for exceptions where different treatment on grounds of age is admissible. This may involve both favourable treatment (e.g. making the amount of severance pay dependent on age) and unfavourable treatment (e.g. statutory or collectively agreed maximum age limits) of older workers.

Legitimate aims to determine specific conditions on grounds of age can be the objectives in the fields of employment policy, labour market, vocational training, social policy and health protection set out under Article 6(1) of Directive 2000/78/EC.

b) Elimination of all forms of ageism and age discrimination from the workplace and organizational cultures.

See answers regarding a) and c). For example, effective public awareness-raising can be considered as a measure to eliminate age discrimination at the workplace and in organisational culture. Older workers should be seen as an opportunity and negative prejudices should be eliminated.

c) Provision of reasonable accommodation to older persons in the workplace.

Ensuring access to continuing education and training is an important element in countering discrimination on grounds of age; targeted continuing education and training can also reduce the risk of job losses and long-term unemployment. Other important measures include age-appropriate occupational safety and health arrangements and workplace health management targeted at older workers.

d) Affirmative action programs to promote the hiring of older persons.

The standard employment promotion instruments are generally available to all workers. If the statutory requirements are met, older people are thus supported in line with their needs in the same way as other people. There are no specific action programmes to support the recruitment of older people. The promotion of upskilling is also available to both employed and unemployed workers without any age limit. The introduction of the Participation Opportunities Act [Teilhabechancengesetz] which provides for wage subsidies for long-term unemployed persons in combination with intensive coaching particularly supports older recipients of basic income support benefits who are fit for work in taking up employment subject to compulsory social insurance.

e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.

Labour market integration support by the Federal Employment Agency: The new recruitment of workers who have reached the age of 50 years can be supported by a wage subsidy of up to 50 % of their remuneration for a period of up to 36

months (see also question 6). In-company upskilling support by the Federal Employment Agency: For older workers in SMEs who have reached the age of 45, the costs of continuing education and training can be reimbursed in full.

f) Access to flexible or gradual retirement schemes and flexible working practices for older workers.

The currently applicable pension law provides many opportunities for managing the transition to retirement, also taking personal circumstances into account. For older workers who do not want to give up their jobs entirely, the flexible pension provides the possibility of a gradual transition to retirement, allowing a flexible combination of part-time employment and a partial pension. Furthermore, it is also possible to postpone the entry into retirement for an unlimited period of time even after reaching the statutory retirement age.

g) Promotion of older persons' self-employment and entrepreneurship.

Instruments to support self-employment of unemployed persons: Start-up grant under Book III of the Social Code (SGB III) and support for business starters under Book II of the Social Code (SGB II). These are instruments that are available to all age groups, including older persons.

h) Favorable, fair, and safe working conditions when undertaking formal, informal or unenumerated work.

There are many regulations that take particular account of the characteristic of ageing (e.g. the Transition to Retirement Act [Altersteilzeitgesetz], age limits, collectively agreed wage arrangements and leave arrangements etc.). As far as the AGG is concerned, see answer to question 2a.

i) Access to prompt remedies and redress when older persons' right to work and access to the labor market is denied.

Effective legal protection is guaranteed for older workers in the same way as for any other person. Under section 13 AGG, older people who are already in employment are expressly entitled to complain to the competent department of their firm, company or organisation if they feel disadvantaged by the employer, their superiors, other employees or third parties on account of their age.

In the event of violations of the prohibition of discrimination, affected persons may, inter alia, enforce claims for compensation and damages in court (Section 15 AGG). In these cases, there is an eased burden of producing evidence and of the burden of proof on claimants.

State obligations

- 3. What are the measures that should be undertaken by the State to respect, protect and fulfil the right to work and access to the labor market for older persons, regarding the normative elements as provided above?**

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Special considerations

- 4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to work and access to labour market, such as protection and regularization of older workers in informal sector, equal remuneration for work of equal value particularly for older women as well as recognition of unpaid work often carried out by older women?**

Specific measures and considerations that may be taken into account with regard to the normative content of the right to work and access to the labour market for older workers are in particular:

- Enabling lifelong learning and in-company upskilling (also within the meaning of the National Skills Strategy and the plans contained in the Coalition Agreement of the governing parties for the 20th legislative period).
- Promotion and improvement of the integration opportunities of older people in the labour market (e.g. through state subsidies for the recruitment of unemployed older people, including persons with disabilities)
- Promotion of an ageing-appropriate design of working conditions of older workers.

- 5. How should the responsibilities of non-State parties such as private sector be defined in the context of the right to work and access the labour market for older persons?**

The General Act on Equal Treatment and thus the prohibition of discrimination on grounds of age applies to private-law relationships between workers and employers. See answer to question 2 a).

Implementation:

- 6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to work and access to the labor market for older persons?**

Continuing education and training measures

The Federal Employment Agency offers a range of support services for integration into the labour market which are generally provided independent of age. Employers can be supported by an integration grant if they hire jobseekers who are difficult to place for reasons relating to their personal characteristics and who require support for their labour-market integration. This grant may be extended from 12 to up to 36 months for older people aged 50 or over. The extended support for older workers is due to the fact that, compared to younger jobseekers, they often find it more difficult to overcome unemployment.