



5th May 2017

AGE Platform Europe input on Equality and non-discrimination

This short answer is submitted in reply to the call of the Chair-designate 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 and to provide a comparative overview of the EU Member States on behalf of the 40 million older citizens represented by our members. Our contribution is based on written answers received by organisations of older people in 16 EU Member States¹, oral debate in the frame of our Council of Administration where representatives from 24 countries² and 6 European organisations/federations³ sit, as well as desk research⁴.

Our answer will be complemented at a later stage with more detailed input, which will be submitted as written NGO contribution to the 8th session of the OEWG.

A separate answer covering questions on elder abuse, violence and neglect is also submitted.

Further resources:

- On [non-discrimination and equality](#)
- [Older persons' self-advocacy handbook](#)

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¹ Poland, Malta, Spain, Netherlands, Austria, Belgium, Portugal, France, Greece, Sweden, Slovenia, Slovakia, United Kingdom, Denmark, Czech Republic, Italy.

² All EU countries with the exception of Croatia, Latvia, Luxembourg and Slovakia

³ FIAPA, ESU, NOPO, EURAG, EDE, OWN Europe

⁴ In particular in publications of Equinet and the European Network of Legal Experts in the non-discrimination field.



Question 1: Constitutional and legislative guarantees at EU and national level

The EU Charter of Fundamental Rights prohibits discrimination on the basis of age (article 21) and includes a specific article on the rights of the elderly under its Equality chapter (article 25), where equality in old age is understood as the right to live in dignity and independence and to participate in all aspects of life. However, EU's secondary legislation only covers prohibition of age discrimination in employment and occupation and to date does not extend to other areas of life, despite a proposal for a new directive which has been blocked in negotiations since 2008. Neither does EU law include an equality duty in terms of preventing age discrimination, making necessary institutional changes, taking positive action and mainstreaming age, whereas this is the case for gender discrimination.

The majority of national constitutions refer to equality before the law and/or prohibition of discrimination on open-ended grounds, without specifically referring to age or older people. Secondary legislation across EU countries reflects the definitions of direct and indirect discrimination found in the EU Employment Framework Directive but varies greatly in scope. A small number of countries only protect from age discrimination in employment. Several countries have extended their legislation in particular in the areas of social protection, social advantages and education, others indirectly cover areas beyond employment through general constitutional guarantees, although the extent and efficiency of this protection remains uncertain. The least covered spheres are access to goods and services and housing. Overall, countries with broad/comprehensive protection from age discrimination co-exist alongside others with uneven guarantees for age compared to other discrimination grounds while a small number of countries provide very limited protection. Therefore, many inconsistencies and gaps can be found across EU countries in terms of:

- **Specificity:** Explicit protection of age/older people
- **Source:** Whether age discrimination is prohibited by constitution, national, federal or regional law
- **Material scope:** Protection beyond the field of employment, areas of life where age discrimination is prohibited and whether prohibition applies only to public provision or also in the private sector⁵
- **Legal status of special measures/differential treatment:** whether they are considered exceptions to the rule of equality, necessary for its achievement or forms of discrimination⁶
- **Scope of equality duties:** including obligation for positive action, the extent/areas to which they apply, whether they target both the public and private sector and sanctions in case of non-compliance
- **Extent of exceptions:** in which areas they apply and whether they are specific to age or apply to all/more grounds; whether they are provided in specific statutory exemptions or through a general justification defence
- **Mandate of national equality bodies:** whether they cover age discrimination and in which areas
- **Extending reasonable accommodation** on grounds of age (ex. Bulgaria)
- **Extent of protection from indirect discrimination**
- **Coverage of multiple discrimination** on age and other grounds

For AGE, the right to equality and non-discrimination should extend to all areas of life and should not be based on chronological age. Discrimination is not only targeted to single individuals but is often structural, systemic and part of institutional practices. This is why - in addition to the obligation to include an explicit prohibition of all forms of direct and indirect discrimination in old age - States should moreover have a duty to provide both for formal and substantive equality, including through the adoption of special measures that are necessary to alleviate the adverse effect of ageism that serves to justify discrimination and leads to the exclusion, abuse and neglect of older people. Legal provisions should also extend the duty of reasonable accommodation to age discrimination, protect from multiple discriminations and foresee monitoring mechanisms, such as national equality bodies, with a comprehensive mandate on age discrimination.

Questions 2 & 3: availability of information on discrimination and equality and main findings

Data on all forms of discrimination across old age are not readily available but mainly focus on access to employment and public services. Whereas EU funding is at least partially used to extract information about the situation of older people, as for example in the case of the European Social Survey, the European Quality of Life Survey and the Active Ageing Index, overall, however - based on the views of NGOs and equality bodies – data focusing specifically on age

⁵ See also distinction between services available to the public (e.g. Shops, restaurants, banking, etc) and those that are available privately (e.g. a person being able to rent out their house, members of an association) which applies in Sweden but not in Spain for instance.

⁶ For example in the Netherlands measures introduced to support longer working lives, such as extra holidays for older workers are considered discriminatory and therefore abolished, whereas in other countries similar policies are considered to be positive action and allowed.

discrimination is largely missing. Eurobarometer has published surveys on general attitudes towards the 55+, focusing on perceived discrimination in employment. In 2015 the survey targeted attitudes towards older people with high political posts and the discriminatory effect of the crisis. At national level many states stop collecting data for people over 74, failing to reflect large differences between the living conditions of 65-74 year olds, the 75-84 year olds and those older than 85. Vulnerable groups, such as older persons living in institutions, older prisoners or older homeless people are also groups that are often neglected or excluded in data collection. Ad hoc surveys by private entities, NGOs, foundations, human rights and equality bodies may be undertaken in selected areas such as employment, access to health care and social services. Where such studies exist they do not reflect trends and changes over time as they provide a snapshot of a situation at a given time. Moreover, the EU Fundamental Rights Agency has not - to date - undertaken any study on age discrimination, whereas it has already developed work on all other grounds of discrimination prohibited under EU law.

Although it is impossible to give a comparative account of the findings on old age inequalities across EU countries, the [experience of representative organisations of older people](#) points to widespread discrimination in many areas of their lives, while such phenomena remain largely invisible and unaddressed. Discrimination affects their access to and enjoyment of resources such as jobs and income, education, health and accommodation, leading to abuse, poverty and exclusion from power, participation and decision making. In addition due to ageism, older people are not factored in policy decisions and are therefore frequently neglected or not given equal due consideration and adequate policy responses. This is for instance the reason why older people are considered as the most excluded group from national policies during the crisis (Eurobarometer, 2015).

For AGE, States should undertake or fund research on inequalities in old age, covering all sub-groups of older people, including the oldest old. Data need to be disaggregated by smaller age groups and by gender to better capture the diverse socio-economic realities. They should also raise awareness about the detrimental effect of ageism and discrimination in old age, combat negative prejudices and promote positive images of older people. Moreover they need to promote awareness of the benefits of age equality and of investing in old age and disseminate information on older people's rights and the available complaint and redress mechanisms.

Question 4: Justification of differential treatment

In EU law, age is the only ground for which direct discrimination is clearly allowed whilst a wide range of exemptions and justifications exist under the EU Employment Directive (see article 6 of directive 2000/78) and the draft horizontal Equal Treatment Directive (see articles 2§6 and 2§7). All EU countries foresee exceptions on the grounds of age and age limits in access to goods and services (incl. banking and insurance products), social benefits (e.g. disability allowances), preventive health treatment and rehabilitation services, renewal of driving licences, but also mandatory retirement ages are widely accepted as normal practice. Some of these exceptions relate to the limited scope of age discrimination provisions (e.g. insurance products in Sweden) or are specifically permitted by law (e.g. fixing retirement ages in Ireland) whereas others fall under general justifications allowed by law or are merely tolerated and unchallenged, albeit lacking specific justification (e.g. age limits in disability benefits in France). Some forms of differential treatment benefit older people aiming to compensate for specific disadvantages in the form of targeted measures, such as free public transport for people over a certain age/pensioners. On the other hand, there are plenty of paradoxical laws and policies: for example, in Ireland, the most common contractual retirement age is at the age of 65, whereas according to law entitlement to old age pension is only given at the age of 66. During this year older people are eligible for Jobseekers' Allowance but are not allowed to work. In other countries, people of 65+ are considered capable of working but are 'too old' to drive and to receive preventive treatment due to age limits. To avoid such inconsistencies that work against older people and society as whole, cases when differential treatment is necessary and justified by a legitimate aim need to be closely scrutinized.

For AGE the prohibition of discrimination and inequality in old age should not in principle entail a wider range of exceptions than what is permitted for other discrimination grounds. States should recognize that age limits, categories and proxies, as well as differential treatment, are not *per se* acceptable but likely to reflect pervasive prejudices against older people. Therefore States should have a duty (i) to specifically justify exceptions to equal treatment, (ii) to ensure that differential treatment does not undermine older people's dignity, independence and opportunities for participation and (iii) to assess the differential impact(s) of their decisions/policies on the older population.