

20170510 contribution to questions on Equality and non-discrimination

Information on the situation at European Union level, provided by the European Commission (DG Justice and Consumers)ⁱ

Guiding Questions: Equality and non-discrimination

- 1) Does your country's constitution and/or legislation (a) guarantee equality explicitly for older persons or people of all ages and (b) forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?

The EU Charter of Fundamental Rights

Human dignity, freedom, democracy, equality, the rule of law and respect for human rights are the core values of the EU. Since 2009, the EU's Charter of Fundamental Rights brings all these rights together in a single document. The EU's institutions are legally bound to uphold them, as are EU governments whenever they apply EU law. Article 21 prohibits discrimination on the basis of age. The Charter also contains a specific Article (25) on the Rights of the elderly: "The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life."

The European Union shares responsibilities and competences with its Member States when it comes to the promotion and protection of the rights of older persons. Many of the policies and related implementation instruments are in the direct remit of the Member States. In a number of areas the EU has its own responsibilities and actions, often to support the action of its Member States. The replies from the EU perspective given here need to be complemented with more detailed data from the Member States.

The main relevant specific EU hard law is Directive 2000/78/EC, *the Employment Equality Directive*, that prohibits discrimination in employment and vocational training on a number of grounds, including age. This Directive has been transposed into national law of all EU Member States.

In many EU Member States there is additional protection in various forms against discrimination on the ground of age in other areas, on the basis of national law.

European Pillar of Social Rights (Commission Recommendation of 26/04/2017)ⁱⁱ:

3. Equal opportunities:

"Regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered."

The EU Action Plan on Human Rights and Democracy 2015-2019 contains an action point 16g: "Increase awareness of the human rights and specific needs of older persons paying particular attention to age based discrimination. "

- 2) Does your country produce **information about discrimination** against older persons in the following or other areas? If so, what are the main findings?

- Employment
- Access to goods and services
- Social protection
- Health care

- Social care
- Justice, Inheritance
- Decision-making and autonomy, Living environment
- Other areas (please specify)

- a) In 2012 the statistical office of the EU, Eurostat, prepared statistics on active ageing and solidarity between generations, with data for age-related inequalities in Europe: "Eurostat, Active ageing and solidarity between generations – A statistical portrait of the European Union 2012." Available at: <http://ec.europa.eu/eurostat/documents/3217494/5740649/KS-EP-11-001-EN.PDF/1f0b25f8-3c86-4f40-9376-c737b54c5fcf> .
- The latest 2016 update on Population structure and ageing can be found under: http://ec.europa.eu/eurostat/statistics-explained/index.php/Population_structure_and_ageing
- Since 2001 the European Commission has issued five "Ageing Reports", the latest in May 2015. This fifth ageing report examines the budgetary impact of population ageing also based on long-term projections. It covers the 28 EU Member States and Norway over the period 2013–2060 and aims at assessing the impact of our ageing population.
- The report analyses, on the basis of demographic trends and macro-economic assumptions, age-related expenditures covering pensions, health care, long-term care, education and unemployment benefits. The projections feed into a variety of policy debates at EU level, including the Europe 2020 strategy for smart, sustainable and inclusive growth. In particular, they are used in the context of the European Semester to identify policy challenges, in the annual assessment of the sustainability of public finances carried out as part of the Stability and Growth Pact and in the analysis of the impact of ageing populations on the labour market and potential economic growth.
- b) Jurisprudence of the Court of Justice of the European Union (CJEU).
- In the 2014 (most recent) Implementation Report (COM 2014 (2) final) about Directive 2000/78/EC, it is clearly stated that most of the cases decided by the CJEU concerning Directive 2000/78/EC are about discrimination on the ground of age. In particular the cases concern the interpretation of Article 6(1) of Directive 2000/78/EC that states: 'Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary'
- The judgments of the CJEU concerned mainly discrimination against older workers, for example, rules providing for the termination of an employment contract when workers reach pensionable age. The CJEU has consistently ruled since 2010 that prohibition of discrimination on the grounds of age must be considered as a general principle of EU law to which the directive merely gives expression.
- c) Eurobarometer data
- See: Special Eurobarometer 437 of 2015 "Discrimination in the EU." The report contains data from a survey among 27,718 respondents. (see: www.equineteurope.org/IMG/pdf/ebs_437_en.pdf)
- It contains a sub-chapter devoted to age discrimination against older people: "Personal discrimination experience of persons above 55: it appears that on average in the EU in the past 12 months, 10% of 55+ respondents have felt personally discriminated because of their age. This average percentage is an indication of the significance of age discrimination, with substantial differences between countries.
- In the EU the majority of all respondents, 56%, perceive "age" as a disadvantage in employment.

There are substantial differences between Member States with regard to the acceptance of older persons over 75 in political positions; on average close to 50% feel comfortable or very comfortable about this. There are also quite diverging views on whether or not sufficient efforts are made in the workplace to promote diversity, as far as 55+ persons are concerned. In the EU on average, 22% of people believe that sufficient work is done on age diversity, whereas 19% believe it is not. When it comes to economic recovery measures, just over half (52%) of respondents in the EU believe that elder people are included in economic recovery measures. In almost every country the population is quite divided when it comes to the perception of inclusion of 55+ persons in economic recovery measures.

3) Is there **information available about inequality of opportunities or outcomes** experienced by older persons in the following areas?

- Availability of, access to and quality of health care services
- Financial services

- For the first item the main data source would be the 2015 WHO World Report on Ageing and Health.

- For the second item a 2016 EU study on consumer vulnerability shows that both young and old age can be drivers of consumer vulnerability depending on the situation and that older age cohorts when it comes to access to and availability of financial services are not per definition at a disadvantage.

4) Are there any areas where differential treatment based on old age is explicitly justified?

Examples:

- Access to goods
- Mandatory age of retirement
- Age limits in financial services and products
- Age-based benefits

Article 6(1) of Directive 2000/78/EC, provides that differences of treatment based on age (in the sphere of employment and vocational training) may be justified if they have a legitimate aim and the means used to achieve that aim are appropriate and necessary. The CJEU has developed jurisprudence about the interpretation of this article. In addition, Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits does not constitute discrimination. Member States may also decide that the provisions of the Directive do not apply to the armed forces as regards, notably, the ground of age. The Directive specifically mentions that it is without prejudice to national provisions laying down retirement ages. Finally, Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds covered by the Directive shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

ⁱ Individual EU Member States give in their own contributions information on the situation and legislation at the level of their country.

ⁱⁱ This is a general policy document, adopted as a Recommendation by the European Commission. It has also been proposed for inter-institutional proclamation by the European Parliament and by the European Council as it contains broadly supported policy principles, though it has not yet been adopted by EU Member States.