

Information on the situation at European Union level, provided by the European Commission¹

Guiding Questions: Autonomy and Independence

1) In your country/region, how is the right to autonomy and independence of older persons defined in legal and policy frameworks?

The Charter of Fundamental Rights of the EU¹ contains the fundamental rights and freedoms protected in the EU. It applies since 2009 to the legal order of the EU and prevents the EU institutions from taking any action that violates rights included in the Charter; it obliges Member States to comply with the Charter when EU law is being implemented. This contribution refers to various Articles of the Charter.

Article 25 of the Charter is about the fundamental **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”. Article 26 applies to many older persons as it deals with the integration of persons with disabilities: “The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”. Article 21 on non-discrimination also refers to age: “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”. The Charter also includes articles about gender equality, social protection, health, consumers’ rights and many other areas of (older) people’s lives.

The Charter applies at national level only when Member States are implementing EU law, like EU regulations or decisions or an EU directive. For example, when they adopt or apply a national law implementing an EU directive or when their authorities apply an EU regulation directly. This means that an individual can take a Member State to court for failing to uphold the rights in the Charter only if the Member State was implementing EU law. Outside of this scope, the protection of fundamental rights is guaranteed under national law by the constitutions or constitutional traditions of EU countries and the international treaties and conventions by which they are bound. It is important therefore also to take account of the individual replies by EU Member States.

2) What other rights are essential for the enjoyment of the right to autonomy and independence by older persons, or affected by the non-enjoyment of this right?

Legal capacity - Equal recognition before the law

The EU has no competence to regulate the question of legal capacity; this rests with the Member States. In affirming that everyone is equal before the law, Article 20 of the EU Charter of Fundamental Rights is generally intended to guarantee equality and non-discrimination with respect to legislative enactments.

Access to justice

¹ https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en

The right of access to justice is provided in Article 47 of the Charter (on the right to an effective remedy and to a fair trial). Directive 2012/29/EU² establishes minimum standards on the rights, support and protection of victims of crime.

Liberty and security of person

Article 6 of the Charter states that everyone has the right to liberty and security of person.

Freedom from exploitation, violence and abuse

Art. 1 of the Charter states that human dignity is inviolable and must be respected and protected. The EU has shared competence in the area of freedom, justice and security, and judicial cooperation in criminal matters.

Protecting the integrity of the person

Article 3 of the Charter states that everyone has the right to respect for his or her physical and mental integrity. The EU has shared competence on common safety concerns in public health matters, and supporting competence in health protection and research and technological activities.

Liberty of movement and nationality

Any person who holds the nationality of an EU Member State is automatically also an EU citizen. EU citizenship is additional to and does not replace the nationality of an EU Member State (Article 20 TFEU). EU citizenship gives every EU citizen a number of important rights, including the right to move freely around the EU and settle anywhere within its territory. Freedom of movement for all EU citizens implies freedom to travel, live, work, study and retire in another Member State.

Directive 2004/38 provides that EU citizens residing in another Member State are entitled to equal treatment with nationals within the scope of the Treaty. As regards access to social assistance, under Article 24(2) of the Directive, Member States are not obliged to grant social assistance to non-economically active EU citizens during the first three months of residence in their territory. If they lawfully reside there for a period longer than three months, EU citizens are entitled to social assistance benefits on an equal footing with nationals of the Member State concerned. However, in specific cases where authorities have a reasonable doubt that the EU citizens concerned may become an unreasonable burden on their social assistance system, they may assess the individual situation taking into account all relevant circumstances and the principle of proportionality, and could, on this basis, terminate the right of residence of the persons concerned. After five years of legal residence, EU citizens are entitled to social assistance in the same way as nationals of the host Member State.

Living independently and being included in the community

EU competence for the promotion of independent living and inclusion in the community is shared with the Member States.

Promoting the transition from institutional to community-based services is one of the investment priorities of the European Regional Development Fund (ERDF). The ERDF can support targeted investments in mainstream health and social infrastructure, education, housing and specialised services to enhance access to high-quality services in the community, with the aim of ensuring individualised care and support, social inclusion and respect for the rights of the service users. EU law does not directly address the issue of personal assistance schemes, which are a matter of national competence. Regulation (EC) No. 883/2004 provides for the coordination of social security schemes and, in certain specific circumstances, for the entitlement to have a

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0029>

social security benefit “exported” to another Member State. A benefit relating to independent living such as personal assistance would need to be regarded as a sickness benefit for it to be exportable under EU law. In all other cases, there is no obligatory exportability of such benefits under EU law.

On 7 December 2017 the EU EPSCO Council adopted conclusions on Enhancing Community-Based Support and Care for Independent Living³.

Personal mobility

The EU has shared competence in matters relating to personal mobility. Various pieces of EU legislation impose obligations on transport operators to provide assistance to passengers with disabilities or reduced mobility. These include the 2006 Air Passengers Regulation, the 2007 Rail Passengers Regulation, the 2010 Sea and Inland Waterways Regulation and the 2011 Bus and Coach Regulation.

Accessibility (physical environment, transport, access to information)

The European Commission has adopted a proposal for a directive –referred to as the European Accessibility Act - that provides for a common EU definition of, and implementation framework for, accessibility requirements for certain products and services. The European Accessibility Act⁴ aims to improve the functioning of the internal market for accessible products and services by removing barriers created by divergent legislation. This will facilitate the work of companies and will bring benefits for disabled and older people in the EU. The Act covers a number of products and services with diverging accessibility requirements across EU countries. It aims to use the same accessibility requirements to provide a clear definition of the existing general accessibility obligation laid down in European law. The proposal is under negotiation between the European Parliament, the European Council and the European Commission.

Respect for privacy

Article 7 of the Charter states that everyone has the right to respect for his or her private and family life, home and correspondence. It is complemented by Article 8 of the Charter, about the right to the protection of personal data. Under Article 8(2), data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or other legitimate basis laid down by law. Everyone has the right of access to data that have been collected concerning him or her, and the right to have them rectified. Article 16 TFEU provides a specific legal basis for the adoption of rules on the protection of personal data processed by EU institutions, bodies, offices and agencies and by the Member States when carrying out activities that fall within the scope of Union law. Regulation (EU) 2016/6791, the new General Data Protection Regulation (‘GDPR’)⁵, regulates the processing by an individual, a company or an organisation of personal data relating to individuals in the EU. It is applicable as of 25 May 2018. It doesn’t apply to the processing of personal data of deceased persons or of legal entities. The rules do not apply to data processed by an individual for purely personal reasons or for activities carried out in one’s home, if not connected to a professional or commercial activity. They do apply when an individual uses personal data outside the personal sphere, for example for socio-cultural or financial activities. The Regulation reinforces the protection of health data about the physical or mental health of an individual, including information on a disease, disability, disease risk, medical history, clinical treatment. It also covers biometric data, including data relating to the physical, physiological or behavioural characteristics of an individual which allow their unique identification, such as facial images, or dactyloscopic data.

³ <http://data.consilium.europa.eu/doc/document/ST-15563-2017-INIT/en/pdf>

⁴ <http://ec.europa.eu/social/main.jsp?catId=1202>

⁵ https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern_en

Respect for home and the family

Article 7 of the Charter states that everyone has the right to respect for his or her private and family life, home and correspondence. The EU has no direct competence with respect to the substance of family law, which remains largely the prerogative of the Member States. However, EU competence with respect to civil and criminal cooperation in judicial matters can have direct implications for families.

Education

Article 14 of the Charter provides that everyone has the right to education and to have access to vocational and continuing training, including the possibility to receive free compulsory education. EU discrimination law extends to the educational field at least to a limited extent. The Employment Equality Directive prohibits discrimination on the ground of age in the field of vocational training.

Health

Article 35 of the Charter provides that everyone has the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices. The EU has the competence to carry out actions to support, coordinate and/or supplement the actions of Member States in the area of health. Under Article 9 TFEU, in defining and implementing its policies, the Union must take into account requirements linked *inter alia* to the protection of human health. Article 168 TFEU on public health provides that the definition and implementation of all Union policies and activities must ensure a high level of human health protection. Union action, complementing national policies, aims at improving public health, preventing physical and mental illness and diseases, and protection against physical and mental health risks. Actions include research, health information and education, and monitoring, providing early warning of, and combating serious cross-border threats to health. The Union also encourages cooperation of Member States' health services in cross-border areas. The Union may adopt legislation to meet common safety concerns with regard *inter alia* to setting high standards of quality and safety for medicinal products and devices.

Adequate standard of living and social protection

Article 34 of the Charter recognises the right to social security and ensures for everyone residing and moving legally within the EU, an entitlement to social security benefits and social advantages in accordance with Community law and national laws and practices. Article 45 TFEU enshrines the right of EU citizens to move to another Member State for work purposes. It specifically includes the right not to be discriminated against on the grounds of nationality as regards access to employment, remuneration and other conditions of work.

For persons exercising their right of free movement inside the EU there is EU law in the field of social security that provides for the coordination of Member States' national social security systems. Each Member State is free to determine the details of its own social security system, including which benefits are provided, the conditions of eligibility, how benefits are calculated and how many contributions should be paid. The EU Mutual Information System on Social Protection (MISSOC)⁶ provides comparative information on the legal basis, scope, eligibility and amount of social protection benefits in 31 countries across a range of areas, including healthcare, sickness, maternity/paternity, invalidity, old age, survivors, accidents at work and occupational diseases, family, unemployment, guaranteed minimum resources and long-term care. Union law, in particular Regulation (EC) No. 883/2004 on the coordination of social security systems, establishes common rules and principles which must be observed by all national authorities when applying national law. These rules ensure that the application of national legislation respects the basic principles of equality of treatment and non-discrimination and does not adversely affect persons exercising their right to move freely within the EU.

⁶ <http://ec.europa.eu/social/main.jsp?catId=815&langId=en>

Participation in political and public life

Most competences with respect to the rights to participation in political and public life rest with the Member States, like the rules for electing national institutions. The procedures for electing the European Parliament are governed by EU legislation, defining certain rules common to all the Member States, and by specific national provisions. The common rules provide for the principle of proportional representation and cover incompatibilities with the mandate of the members of the EP (MEPs). All other aspects, including the right to stand for elections, are governed by national law.

Article 22(2) TFEU provides for citizens' right to vote and stand as a candidate in municipal elections in the Member State in which they reside under the same conditions as nationals.

The participation rate of older persons in most elections in the European Union, whether at local, national or European levels tends to be above average, except for older persons with severe disabilities or frailty.

3) What are the key issues and challenges facing older persons in your country/region regarding autonomy and independence? What studies and data are available?

In order to enable older persons to live their lives independently the availability of certain "community based services" is essential. There is a growing demand for such services and in many parts of the EU it is a challenge to organise them on a sufficient scale. Main bottlenecks often are staff shortages and financial issues. De-institutionalisation, abolishing institutional settings where human rights are often insufficiently respected, is a policy objective shared between the EU and its Member States. However, this does not exclude all shared residential settings, for some modern forms of which there remains a substantial demand among the eldest.

FRA, the Fundamental Rights Agency of the EU, has published in October 2017 three reports on de-institutionalisation "From institutions to community living" and also a summary overview of types and characteristics of institutional and community-based services for persons with disabilities available across the EU⁷. The research conducted by FRA provides baseline information on the different types of available institutional and community-based services in the 28 EU Member States, complemented by background country reports for each EU Member State. While the focus is on persons with disabilities, the findings are relevant for a large number of older persons.

The European Commission has also been active in promoting and supporting independent living through e-accessibility and the development of ICT, including by funding research, development and innovation. The Active and Assisted Living (AAL) programme funds projects in the field of information and communication technology (ICT) for active and healthy ageing since 2008. The programme aims to enhance the quality of life of older adults in Europe through the use of ICT. Since 2008, AAL has funded more than 150 trans-national innovation projects with over 1000 partners. Almost half of these project partners are small and medium enterprises (SMEs), collaborating with user organisations, large enterprises, universities and research organisations. The topics covered by the programme include management of chronic conditions, social inclusion, access to the self-serve society, mobility of older adults, management of daily activities, support from informal carers (e.g. family and friends) and occupation in life.

The European Innovation Partnership on Active and Healthy Ageing⁸ promotes the uptake of digital innovation for active and healthy ageing across the European Union.

⁷ <http://fra.europa.eu/en/publication/2017/independent-living-structures>

⁸ https://ec.europa.eu/eip/ageing/home_en

The **Active Ageing Index** is a joint project of UNECE and the European Commission⁹. It is a tool to monitor the status and progress of policies aiming to develop environments that allow older people to live more healthy, active and independent lives. It underlines that being active is not only about work or volunteering. Rather, access to health, living independently within a supportive community, having sufficient financial means, security, education, and more are all aspects of older people's lives that need to be addressed together.

Guiding questions 4,5,6 can be better answered at the national level, insofar as they are not yet already covered in the above answers.

4) What steps have been taken to ensure older persons' enjoyment of their right to autonomy and independence?

5) What mechanisms are necessary, or already in place, for older persons to seek redress for the denial of autonomy and independence?

6) What are the responsibilities of other, non-State, actors in respecting and protecting the right to autonomy and independence of older persons?

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

⁹ <https://www.unece.org/population/aai.html>