



AGE contribution to the Commission Report on the application of the Employment Directive

Introduction

The Directive establishing a general framework for equal treatment in employment and occupation (2000/78/EC) is the only legal text in the European Union implementing the principle of non-discrimination on the ground of age, enshrined in the EU Charter of Fundamental Rights (art. 21). The European Commission has an obligation to report every five years on the implementation of the directive. In its letter of 03 April 2020, the Directorate-General for Justice and Consumers invites stakeholders to provide their views on the application of the directive.

AGE is pleased to respond to the Commission on the application of this groundbreaking piece of legislation. The implementation of the directive into national law has had important effects even beyond the area of employment and occupation, as several Member States decided to protect from age discrimination also in the access to goods and services, an area where the EU legal *acquis* still represents an important gap. The lack of protection against discrimination in the access to goods and services has impacts on the application of the Employment Directive, as certain occupational requirements may not be met by older persons and therefore not be eligible to a certain task: examples are lack of access to rental cars because of age limits in motor insurance¹ or higher premiums for occupational health or accident insurances for employers employing many older employees. Furthermore, the lack of protection against discrimination in all walks of life reinforces the pervasiveness of ageism that underpins discriminatory practices.²

Ageism in society and particularly in the labour market not only contravenes the promise enshrined in the EU Charter of Fundamental Rights, but also is an immense loss for older workers who would like to participate economically in society and society at large as it disregards a wealth of skills and experience of those workers whose careers end or stop flourishing prematurely. While equality law has an important role in creating awareness for ageism and age discrimination and reducing it, it also needs to be addressed on the larger, societal level as well, by tackling

1 Cf. Age UK, Car insurance discrimination continues, 2012: <https://www.ageuk.org.uk/latest-press/archive/older-people-still-facing-discrimination-in-car-insurance/>

2 Cf. AGE Platform Europe, European Network Against Racism, ILGA Europe, European Network on Religion and Belief, European Disability Forum: 'Millions of citizens across the EU still not equally protected against discrimination', 7 October 2019: <https://www.age-platform.eu/policy-work/news/millions-citizens-across-eu-still-not-equally-protected-against-discrimination-ngos>



ageist prejudices and stereotypes through promotional measures and encouraging contacts between generations inside and outside of workplaces.³

Question 1: Assistance to victims of age discrimination by older peoples' organisations and equality bodies (art. 9)

After a survey of AGE members, it appeared that no responding member organisation has been involved in legal proceedings over age discrimination in the labour market. However, the Employment Directive's implementation has triggered a number of significant court cases on the ground of age discrimination in employment.

While not all equality bodies have sponsored cases on age discrimination in national courts, they have an important role in raising awareness and developing policy guidance in the field:

The **Polish** Commissioner for Human Rights held a workshop on 22 November 2019 on the way toward a Convention on the Rights of Older Persons, during which non-discrimination in employment was a topic.

The **Maltese** National Commission for the Promotion of Equality worked with the National Association of Pensioners on age discrimination more generally.

In **France**, the 'Défenseur des Droits' has the role of investigating, among other grounds of discrimination, age discrimination, but it has not worked with AGE members on a particular case. A Committee works on cases of degrading treatment and rights of older persons and persons with disabilities and gives guidelines but has not brought forward specific cases.

In **Germany**, the federal Anti-Discrimination Agency has a legal obligation to exchange with a stakeholder group, in which the largest German senior citizens' organisation BAGSO has a seat. Furthermore, the Anti-Discrimination Agency held a debate about equality in December 2019, during which a specific panel addressed human rights of older persons. However, the Anti-Discrimination Agency does not sponsor particular court cases and puts its efforts rather into policy advice and public awareness-raising.

In **Italy**, AGE member Lavoro Over 40 has established a protocol with the national equality body UNAR to submit complaints about age discrimination in job vacancies. Both Lavoro and UNAR can contact and discuss the matter with concerned employers.

In June 2019, AGE in collaboration with Equinet [brought together](#) around 50 representatives of older people's organisations and Equality Bodies with the aim to discuss avenues of collaboration to fight ageism and age discrimination at national level. One group focused on case work, including how NGOs and equality bodies can litigate together. A checklist including concrete recommendations about how national

³ Cf. UNECE, Combating ageism in the world of work. Policy brief on Ageing No. 21, February 2019: https://www.unece.org/fileadmin/DAM/pau/age/Policy_briefs/ECE-WG1-30.pdf



actors can take this forward was produced. Still, some AGE members consider that it is hard to approach National Equality Bodies and others that Equality Bodies' work focusses much more on race and gender than on age

Question 2: Dialogue between older people's organisations and governments on the implementation of the Employment Directive

Among the AGE members responding to our survey, few have been involved in discussions with the government on the implementation of the employment directive. In **France**, discussions with the government were limited to pension reforms and more recently the risk of discrimination due to COVID-19, but not specifically on the access to employment and occupation. Older people's organisations have been involved in discussions with the government think tank France Stratégie⁴ for establishing a working paper on older workers, in which discrimination is mentioned among other relevant topics. In **Germany**, occupational age limits are frequently raised by senior citizens' organisations. Particularly the issues of flexible end-of career policies, voluntary continuation of work after retirement age and access to training are topics, but the impression is that structural disadvantages are not addressed. In **Italy**, AGE members have intervened in the Senate to challenge age caps in competition for public employment (at 45 years).

Overall, AGE members express disappointment about the lack of dialogue and outreach of governments on the implementation of the Employment Directive, especially given this is a requirement under art. 14 of the Directive. At least, governments should be required to seek advice of civil society organisation for the preparation of the 5-years reports under article 19(1).

Question 3: Good practices in implementing the employment directive

The European agency Eurofound has collected a host of good practices for state initiatives to support older workers recently⁵.

The removal of default retirement age in the **United Kingdom** in 2011, leaving it up to the worker to decide on her or his date of retirement, can be considered a good practice, as it allows older workers to continue their employment until a date of their choice.

In **Poland**, an NGO was established in Warsaw to act as an employment agency for older persons. The project '[Active Together 45+](#)' in Lodz helped 120 socially

4 France Stratégie (2018), Les seniors, l'emploi et la retraite.

https://www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/fs_rapport-seniors-emploi-retraite_01102018_0.pdf

5 Eurofound (2018): State initiatives supporting the labour market integration of older workers. <https://www.eurofound.europa.eu/sites/default/files/wpef18003.pdf>





excluded persons to return to the labour market, providing them with financial resources to create their own employment agency.

In **Belgium**, employees can be shifted from strenuous to less strenuous tasks by their employer, who pays a premium to the worker for this. The premium is exempt of social security contributions.

In **Spain**, a programme to fight long-term unemployment specifically targets workers above 52 (Plan Reincorpora-T 2019-2021). It offers measures aimed at persons who are over 30 and unemployed since more than 12 months within the last 18 months. It promotes depersonalised selection procedures and anonymous CVs and raise awareness among companies. The scheme promotes the recovery of access to contributory pensions for persons over 52.

In **Italy**, [AGE member ATDAL Over 40](#) runs a service where applicants can find information about how to contest age discrimination in recruitment processes.

In **Sweden**, the Discrimination Act was amended in 2017 to require employers and education providers to investigate the existence of risks of discrimination or other obstacles to individuals' equal rights and take action proactively.

The **European Union** has created a network of 'Diversity Charters', promoting diversity in the workplace along different dimensions: age, gender, ethnic, disability diversity. While initially, many national charters looked at how to promote age diversity, other grounds of discrimination have been more in focus more recently. The idea of creating and showcasing good practices from employers of different sizes can have an important and inspiring effect.

Question 4: Remaining challenges and concerns for older persons in the field of employment and occupation

Conditions for access to employment: selection criteria in recruitment (art. 3.1.a)

Managers especially in small and medium-sized enterprises carry stereotypes linked to age and often see older workers as less creative, having lower digital skills or being less dynamic than younger workers. They often try to rejuvenate the staff, creating barriers for older jobseekers to recruitment.

New hiring practices, such as promoting job advertisements via social media, exclude many older applicants because of different usage patterns of these media. Also, vacancies promoted via online advertising platforms can be restricted so that only certain age groups can see the advertisement, opening the door for direct discrimination that remains invisible to applicants. Furthermore, specific wordings are used to make clear that vacancies target only younger workers (for example: 'looking for a starter', 'part-time student', 'dynamic', 'flexible', etc.)





Even in the absence of indicating a certain age, employers discriminate in recruitment based on the length of professional experience, indicating the age of a candidate. Because of the prevailing policies of early retirement in the past, employers also do not think about the opportunity to hire older workers, even if the older workers already employed might be highly valued in the company.

Absence of age diversity of staff in very visible sectors, such as in the media, communications, public relations, justice or insurance promotes unconscious bias and stereotypes against older workers.

There is a lack of positive guidance from member states on how to avoid age discriminations, bringing together good practices or golden rules.

In **Spain**, there is a lack of active policies towards recruitment of older persons, contrary to other under-represented groups: for instance, companies above a certain size have to have equality plans to promote employment of women and 2% of jobs filled by persons with disabilities. Public procurement rules imposing these plans are also a good way to promote employment diversity objectives.

In **Spain**, a measure to formally protect older persons has unintended consequences: companies with more than 100 employees have to cover parts of the costs of unemployment insurance and contributions in case of collective dismissals where the share of workers above 50 laid off is higher than the company average. This creates a fear of an extra costs for companies in hiring older workers.

In the **UK and in Austria**, tax measures exist to encourage hiring of older workers, however, the budget allocated to these measures is not sufficient to have an impact. Recently, the Austrian programme targeted towards jobseekers over 50 has been upscaled, though.

In **Germany**, older workers form a significant part of unemployed (21% in 2016 were over 54 years of age) and face an increased risk of long-term unemployment, with only 35% who take up a new job within two years. In Public Employment Agencies, not enough staff is available to focus on the target group of older workers and provide advice and guidance. After retirement age, only individual local initiatives exist to help pensioners who still need to earn additional income, Public Employment Agencies do not provide further services. Some specific measures exist to help workers find employment after periods of career breaks due to child care or care and assistance to a family member in need, however few are tailored towards older jobseekers in this situation.

In access to promotions (art. 3.1.a)

Rather than age, it is often the lack of access to life-long learning which limits chances for promotion for older workers. Self-stereotyping plays a strong role as well, as many older workers think they are not necessarily promotable and do not put themselves forward. Furthermore, there is a lack of measures promoting career management and anticipation, both within companies and outside of companies





(public employment services). A solution would be to better accompany older workers, to support their own initiative to access training and life-long learning.

Access to training and vocational guidance (art. 3.1.b)

Older workers remain the age group that participates the least in life-long learning (according to Eurostat, 6.2 % of adults 55-64 participated in education and training 4 weeks prior to the survey in 2019, compared to 10.8% for 25-64-year-olds. Both figures are far from the ET2020 target of 15%.

Older workers' qualifications are often seen as outdated, therefore the lack of opportunities to validate and certify skills learned through experience and lack of access to reskilling and upskilling opportunities is a particular challenge to them.

Older workers are often seen as being less digitally skilled and might have fewer opportunities for training, education or experience-building in digital skills. They should be more proactively included in efforts to promote digital skills.

Rather than passively allow older workers to access learning and training, they should be actively encouraged. Education and training opportunities should be adapted to older learners' needs. Ageism and lack of adapted opportunities can lead to negative self-perception in relation to learning, further creating barriers to older learners.

Beyond promoting training and life-long learning within workplaces to maintain and promote employability of workers of all ages, employers should be encouraged to adopt career management strategies, based on the establishment of a career project at the moment of recruitment and regularly reviewed with the employee. Horizontal job mobility should be encouraged

Workers in atypical, part-time or temporary employment contracts are often not considered for training or career management measures. This puts older women at a disadvantage, as they are more likely to work in such non-standard employment relationships.

In **Germany**, the Federal Employment Agency promotes training under certain conditions, but participation in life-long learning is highest among adults aged 35-44 and decreases rapidly for older workers. Entitlements to professional training do exist in some federal states, but there is no obligation for employers to provide it – they need to be individually organised. The offers for professional training usually end with statutory retirement age, and there is an insufficient number of trainings tailored to the needs of older employees.

In **France**, training policies have often been targeted to the young and have not been designed along the idea of life-long learning, leaving older learners often uncomfortable to look for, enrol in and pursue training opportunities.





Employment and working conditions: dismissals (art. 3.1.c)

Pre-retirement is still used in cases of negotiated, collective dismissals – a particularly worrying phenomenon in the context of the economic crisis due to COVID-19. There is a risk that pre-retirement is transformed into an obligation.

AGE members report issues where employment contracts with a particular end date fixed at the day of retirement – although retirement ages have been raised meanwhile.

Employment and working conditions: accessibility and reasonable accommodation in workplaces (art. 3.1.c and art. 5)

Staying in the same job can be a challenge especially in physically or mentally challenging jobs, but also in jobs where workers have low control about working procedures or schedules or are performing monotonous tasks. Adaptability of workplaces is an issue limiting employment take-up and continuation for older workers. Workplaces are not fully accessible and adaptable for persons developing mobility problems. Lack of encouragement for adaptable workplaces also discourages employers to hire older employees, as many employers think that they need to make costly adaptations or measures promoting well-being in case they hire an older worker.

In the **European Union**, the health and safety legislation and promotional actions can have a key role in improving employability of workers through better health and the adaptability of workplaces. The Employment Directive however foresees a right to 'reasonable accommodation' only relative to persons with disabilities, not to older persons. This leaves out cases where accommodation is needed on other grounds than disability, such as the need to adapt working arrangements to the need to provide care to a family member. Also, age-related disabilities, such as reduced hearing or eyesight, are often not considered disabilities giving rise to a right to reasonable accommodation. Several important occupational risks such as psycho-social risks are not fully integrated into legislation and figure only in promotional campaigns. Research funds from the Horizon 2020 programme have only to a small extent addressed the development of work environments for all ages.

Belgium, Austria and Cyprus still lack structured interventions to tackle the needs of older people in the workplace.

Italy and Malta have elaborated plans to improve older workers' health and safety, but there is not sufficient funding attached to the implementation of these plans.

In **Spain**, age is not taken into account when designing protocols for the annual medical examinations of companies and, in general, the activity of company doctors, however Spain provides incentives for supporting changes at work to support older workers.

Sweden has adapted its occupational health and safety legislation in view of ageing.





In **Germany**, employment rates of older workers significantly vary depending on gender, education and health. Adaptation of workplaces towards age-appropriate working conditions and health-promoting measures are not implemented everywhere, although state subsidies are available for adaptation. Awareness for measures to allow for employment beyond pension age is not widespread among older workers.

Retirement age and employment (Recital 14, art. 6)

Many Member States have succeeded in the years since the adoption of the employment directive to increase employment rates of older workers by reducing access to early retirement and increasing retirement ages. However, this has effects mainly on older workers who manage to remain in their job for longer. Job transitions in older age, including finding a new job after dismissals, are much more unlikely when approaching statutory retirement age.

In the spirit of the Employment Directive, retirement should be a right, not an obligation. For AGE, this means that it should be possible for the worker to continue in her or his employment even beyond retirement age when desired, while continuing to contribute towards an increased pension. However, this should not penalise persons who, for health or economic reasons, are unable to complete their career and drop out of the labour market before.

In some cases, company restructuring is forcing older employees to leave companies more than younger ones. Given the difficulty of finding new employment as an older worker, this penalises them double as they will be lacking pensions contributions between their dismissal and retirement age. Pension information should be made available to all approaching retirement age to increase awareness for the need to create savings to guarantee a decent income in older age. This, in particular, is a challenge for self-employed workers.

In **Spain**, self-employed, who can choose the amount of their social security contributions, are not sufficiently informed about the impact of this on their pension and unemployment rights, leading to inadequate pensions for them and forcing them to continue working.

In **Malta**, employees can choose to continue combining pension and employment beyond retirement age both in the public or private sector, however this comes at the condition of their income being not above minimum wage. Not only does this mean that continuing to work is not financially interesting for older persons beyond retirement age, but also that if they continue to work, they might not be able to count on an income that allows them to live in dignity. Continuing to work with full salary and national insurance contributions is only possible when accepting not to receive a pension at all.





The income criterion is not applied when certain posts of public interest – often in health or education – cannot be filled and the government accepts to employ pensioners.

In **Germany**, often specific retirement ages are fixed by collective agreements that date back to a period where pension benefits were higher; nowadays these mandatory pension ages rather lead to a risk of old-age poverty and social exclusion. Courts do not consider mandatory retirement ages in collective agreements as a case of age discrimination, even in cases where this leads to pension entitlements that fall below the amount of social assistance benefits. However, age limits laid down for specific professions (e.g. pilots or midwives) are increasingly called into question. Partial retirement exists where it is laid down in collective agreements, but there is no legal right to partial retirement. The current law foresees the possibility to continue employment beyond retirement age, in which case pensions payments are not reduced, but work income is fully subject to social contributions (except for the employee's pension contribution; the employer's pension contribution is still due).

Promotional measures to promote employment of older persons (art. 7)

There is a lack of promotional measures. Often, these are thought about as upward promotion rather than job mobility from a job which might not be sustainable to a workers' health, skills or motivation towards a more suitable job on the same level.

Other limiting factors for older person's access to employment

Lack of care services is a key factor limiting older persons' access to the labour market, as many have to combine work with caring responsibilities. In 2016, 34% of carers interviewed aged between 50-64 had difficulties to combine work with care duties, compared to 27% in 2011. Informal carers might be victims of discrimination by association in the light of the Employment Directive: their relatives with needs for care and assistance being persons with disabilities, the workers' care responsibilities might be a factor for discrimination in the area of employment and occupation. However, this notion is not very developed and legal clarification, guidance and awareness-raising would be warranted.

In **Malta**, costs may be a limiting factor for employers to employ older persons, as certain occupational insurances may become more expensive.

In **France**, drivers of trucks or public transport vehicles must get a medical check-up every year from age 60 onwards, creating additional costs to employers and stereotyping them as potentially less competent.

