

8 November 2016

Contribution to High Level Group on Non-Discrimination Focus on age discrimination in the labour market and multiple discrimination

I have the privilege of speaking to you on behalf of [AGE Platform Europe](http://www.age-platform.eu) (AGE), an EU network of associations that represent directly through their membership, more than 40 million older persons across the EU. On behalf of AGE I am incredibly thankful for this opportunity to discuss aspects of age discrimination, notably because we often come across a fundamental misunderstanding of equal treatment in old age.

Age equality is a general principle of EU law; Age counts among the non-discrimination grounds that the EU is equipped and mandated to fight based on its treaties, but it is at the same time the only form of inequality that is widely accepted as normal, legitimate and justifiable, and age categorisations are largely seen as useful or even necessary. There is something fundamentally flawed with those assumptions that consider the discrimination and exclusion of older people as more acceptable than discrimination and exclusion of people with disabilities, women, and migrants.

Some of these distinctions do not even make sense; like age limits for volunteering or job retraining, which persist while at the same time we install policies aiming to extend working lives and promote active ageing. As long as these limits remain unchallenged they affect – not only a large- but also constantly growing part of our population, since age equality is not just for the ‘*millions of older persons*’, who as the UN Independent Expert on the rights of older persons said, are ‘*waiting for their human rights to become a reality*’¹ but it is about addressing the deep structural and cultural factors that impede everyone of us to move seamlessly from one stage of our lives to the next.

It is not so long ago that distinctions on the basis of one’s sex were also considered as ‘*objectively justified*’. In 1961 the Italian Constitutional Court considered female adultery more serious than that of men and therefore approved the differential treatment of men and women on this matter². Obviously Italian caselaw has changed since. Importantly, EU law has been instrumental in challenging gender-based stereotypes and breaking down the barriers to the equal participation of women. But EU law also offers a unique – albeit underused - opportunity to tackle the injustice and prejudices based on age.

In order to understand this opportunity, I think it’s necessary to expose what works in terms of promoting age equality and I will try to do so focusing on the labour market and in particular on some cases of multiple discrimination, on the basis of age, gender and disability.

¹ See her comprehensive report (2016): <http://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/Reports.aspx>

² Cited by Bruno de Witte ‘From a “Common Principle of Equality” to “European Antidiscrimination Law”’ American Behavioral Scientist (2010)





The Employment Framework Directive has helped to challenge ageist prejudices, yet as several surveys have demonstrated³ old age remains the No1 disadvantage in job applications, whereas long-term unemployment is extremely prevalent among older workers. Today – and despite active ageing being high on the political agenda - on average only 1 out of 2 older people is employed. Of course some countries are doing better than others and there are several good practices, but these are not replicated within and across countries. Among these, according to our members, there are 3 types of measures that have the highest potential for equal participation of seniors in the labour market: adapted working conditions, investment in skills and fighting prejudices.

Adapting the workplace is firstly about changes in the physical environment. As people get older they may find themselves facing disadvantages at the intersection of age and disability: ergonomic adaptations, such as larger screens, equipment to help with heavy lifting, and improving overall accessibility are essential to retain employees, maintain their performance levels but also prevent strain and disease. However, often such arrangements need to be initiated by the individual. This can be stigmatizing but in addition it does not allow the early identification of health risks; instead interventions take place when workers are already faced with some physical or mental limitations. Regular medical check-up of all employees can tackle this problem and lead to appropriate individual interventions. This is for example a standard practice in the Audi group in Germany, where medical checks are voluntary but include 90% of all workers.⁴ The experience of the Belgian Professional Experience Fund is particularly interesting because it showcased that, even before making huge investments for physical accessibility, just rethinking the processes - for example reallocation of roles, or reconceptualization of the production routine - can make a workplace more inclusive. Importantly, the Belgian Fund reached out both to employees and employers and offered training to companies of all sizes.

Secondly, working and retirement schemes that are flexible are particularly important for workers with caring responsibilities, who amount to 20% of older workers, without counting those who already stopped working due to caring duties. Where such arrangements - such as reduced and flexible time or work from home - exist, they primarily target younger employees who care for children, or for people with disabilities, failing to extend this possibility to caregivers of older people, or older workers who care for grandchildren to allow other family members to work.

This impacts in particular women aged 45-64 years who have no choice but to withdraw from the labour market to care for their family members and may be penalized not only in terms of professional income and career development but also in terms of lower pension and other entitlements after the care period. Policies are increasingly aware of the gender pension gap, but continue to ignore the intersectional discrimination based on age and gender, which leads to a gap in employment rates, which increases with age, reaching today 13% on EU average. There are huge discrepancies among countries, with differences ranging from

³ http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/factsheets/factsheet_eurobarometer_fundamental_rights_2015_en.pdf

⁴ <https://healthy-workplaces.eu/en/tools-and-publications/case-studies/germany-audi-voluntary-medical-check-ups>





approximately 37% of difference between older men and women to negative values, ie. countries where more older women (55-64) than men are employed⁵.

Obviously the extent to which states provide comprehensive formal care, affects how far informal carers can remain active in the labour market. In addition, flexible working and retirement schemes are necessary. For example, the chemistry industry in Germany has introduced a demography fund, which among other provisions allows older workers to accumulate time that can be used towards the end of their career to take time off for caring duties or partial retirement. Just like with the Belgian example, measures that are generally applicable enhance equality more than targeted initiatives. This is why the universal right to flexible working conditions, which exists in the UK, can be particularly helpful for older workers, who do not need to individually negotiate with their employers for exceptional part-time or other tailored arrangements.

Most firms invest less in vocational training for older employees, leading to fewer chances to progress in the workplace. In addition, blunt age limits restrict their (re-)training opportunities as they approach retirement age⁶. This makes senior employees less competitive in the labour market and creates a perpetual circle of unemployment in case of job loss. There is a complete paradox between rising retirement ages and lacking services aiming to upgrade and update their professional skills.

In Estonia there is a decentralised lifelong learning programme covering all regions, aiming not only at the development of life skills, but also improving the employability of people 50+. In Finland there is a professional nursing school open to people with practical experience and the unemployed. This programme takes advantage of the personal experience, validating formal and informal skills, based on which an individual curriculum is built. Such measures, although not directly targeting older people can be particularly helpful for those wanting to re-enter the labour market, as instead of penalising people who may have withdrawn to informal care, they valorise their experience.

You may have already guessed it, but what these practices have as a common denominator is the combination of universal schemes with a notion of 'reasonable accommodation'. This concept, which currently applies only on disability discrimination, could make a huge difference if it were applied also in the context of age, including all those forms of multiple discrimination, which require particular attention.

Article 25 of the EU Charter of Fundamental Rights, which enshrines the rights of the elderly, is placed under the Equality Chapter. This is no coincidence. This provision is a benchmark, a compass and a roadmap about what age equality should look like in practice. This article is the normative imperative on which a more substantive application of age equality needs to be based. Article 25 requires us to ask whether differential treatment – be it in the form of 'justified discrimination' or positive action – facilitates the participation of older people in public, social and cultural life or rather impedes their dignity and independence and therefore

⁵ Calculations made based on Eurostat data for 2015

⁶ Marie Mercat Brun, Age and disability differential treatment in France – Contrasting EU and national court's approaches to the inner limits of anti-discrimination law, *International Journal of Discrimination and the Law* (2015)





breaches article 25. This is a simple test but also a fundamental change in mind set that is essential if we are serious about delivering the promise of age equality and challenging ageism in the same way we attempt to do with other forms of discrimination, especially considering that the prevalence of ageism increases while that of racism and sexism decreases⁷.

Obviously, these are just tentative ideas, but we hope that we will have the opportunity to explore them in more details with you in follow-up meetings. To conclude I would just like to underline that the momentum is particularly favourable for this exchange. Firstly, because due to demographic ageing, but also the pressure of the crisis, more often than ever we come across age inequalities and various forms of multiple discrimination experienced by older women, migrants, LGBTI, and other groups. Secondly, we have an important EU directive that would extend the scope of age equality, stuck in the pipeline since 2008. Thirdly, the implementation of the UNCRPD could at least partially address some of the inequalities faced by older people with disabilities. And lastly, global attention on age equality is increasing as the UN is reflecting on the adoption of a new international treaty, while the UN Independent Expert supported this idea in her comprehensive report⁸. The World Health Organisation is also initiating a big campaign against ageism⁹. All these are great opportunities to continue the debate, but also examples of concrete measures that can fight age prejudices from their root cause, which is – as mentioned earlier – the last pillar of an effective approach to age equality.

For more information:

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Useful resources:

- AGE position on structural ageism: http://www.age-platform.eu/sites/default/files/AGE_IntergenerationalSolidarity_Position_on_Structural_Ageism2016.pdf
- Older persons self-advocacy handbook: <http://publications.age-platform.eu/>
- AGE Special Briefing on older women: <http://agepla.accept.upcom.eu/special-briefing/international-womens-day-%E2%80%93-toward-greater-gender-parity>
- Discrimination against older people with disabilities: <http://age-platform.eu/policy-work/news/age-highlights-structural-discrimination-against-older-people-disabilities>
- Joint NGO statement Equal treatment law: The time is now! : http://www.age-platform.eu/images/2015-06-17_Joint_NGO_Statement_on_Horizontal_Directive_before_Junes_EPSCO_Council.pdf

⁷ Based on the outcomes of the European Social Survey. See also Liat Ayalon, Perceived Age, Gender and Racial/Ethnic Discrimination in Europe: Results from the European Social Survey (2013)

⁸ <http://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/Reports.aspx>

⁹ http://www.who.int/ageing/events/idop_rationale/en/

