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Age Discrimination in Austria and Ireland

An analysis of the impact of the
existence and absence of equality laws
on age discrimination in access to
goods and services.



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Short Project Description

The present "booklet" represents the first-year research report from the PhD-project "The social construction of age discrimination experiences in two European countries with different legal protection frameworks", which is part of the interdisciplinary research network programme "EuroAgeism" (<https://euroageism.eu>). This multi-disciplinary, multi-sectorial, science-policy international network of researchers, policy makers and social and health care professionals is dedicated to exploring and addressing the complex and often negative construction of old age and is a direct response to the European Commission's Active and Healthy Ageing initiative, with an overarching goal to improve the quality of life of older people.

Based on an older people-centred approach, the current project investigates how older adults experience ageism in accessing goods and services, e.g. health or financial services. The goal is to demonstrate the impact of the existence and non-existence of specific equality legislation, by exploring how the different legal contexts manifest themselves in the narrative descriptions of discrimination experiences. Consequently, the study aims to explore whether there is evidence proving the need to further develop and improve the current legal situation. The research will provide a fresh perspective to the topic of ageism both in terms of its focus on the impact of law, and because the methodology will be grounded in the realities faced by older people

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This booklet is the first of several versions that will be issued in the course of the research project (duration Sep. 2018 - Sep. 2021). If you have any questions, suggestions or other feedback, please do not hesitate to contact the responsible researcher.

Age Discrimination in Austria and Ireland
Research Report Booklet Version 1.2

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Aim – Purpose - Limitations

This "booklet" is a first step towards providing participants and supporters of the present project with information about the progress of the study on an ongoing basis and thus enabling them to participate continuously in the research process. The aim of this first version is to give the participants an initial overview of the preliminary results.

Results contained in this booklet serve primarily as a kind of feedback and dialogue basis and are subject to some limitations regarding their validity:

- The *quantitative data* only provide descriptive overviews and require further analysis in order to be validated.
- The *qualitative analyses* are also in an early phase and should only give a first impression and lack analytical depth and significance.

If further use of this booklet or data contained therein (e.g. distribution within or outside your organization) are planned, these restrictions must be taken into account. Generalisations or conclusions based on this booklet are not recommended at this time from a scientific point of view. Nevertheless, we would like to thank you for your support and would like to share the findings with you in this issue.

The booklet is divided into five parts. In *Part I* the research project will be presented in detail and an overview of the research objective will be given. Subsequently in *Part II* you will find a short overview of the population structure in Austria and Ireland as well as descriptive analyses of data from the European Social Survey (wave 4) regarding age discrimination experiences in both countries. *Part 3* provides information on the most important aspects of the current legal situation regarding age discrimination in Ireland and Austria. Following this, *Part 4* gives an insight into the first results of a series of expert interviews. Concluding the booklet, the most important points are summarized in *Part 5*.

Part I - Project Overview

European Union law contains various provisions (e.g. Article 10 or 19 Treaty on the Functioning of the European Union, Employment Equality Directive 2000/78/EC) which - along with other grounds - prohibit age discrimination. Although in principle the EU formally committed to combat age discrimination, actual protection that had to be implemented in national law is limited to employment and employment-related areas. Consequently, in other areas of life protection against age discrimination varies across member states. In Austria the protective legislation on age discrimination covers for the most part only employment law issues, while the Irish legislation also includes access to goods, services, accommodation, education and clubs. Such differences in the legal framework can form the basis for differences in the experience and handling of age discrimination among the affected persons in the respective countries.

Based on a multi-perspective approach, which also includes the voice and experience of older persons themselves, this project explores the impact of such different legal contexts for individual experiences and assesses whether there is evidence proving the need to further develop and improve the current legal situation.

In order to achieve this goal, the project is divided into **3 phases** with a total of five work steps:

„Mapping the field”

- (1) Identification of stakeholders and experts as well as those areas of life aside from employment in which age discrimination is a common problem.
- (2) Analysis of the legal framework and the national age policy agendas on the basis of expert interviews and document analyses.
- (3) Exploring the socio-political relevance of the topic in Austria and Ireland through focus group discussions with stakeholders and NGOs.



„The social experience of age discrimination”

- (4) The voice of older people, their experiences, attitudes and needs in relation to age discrimination will be included in the study by interviewing target group members who have experienced age discrimination in accessing goods and services.



Comparative Analysis

- (5) In the final analysis, these different perspectives are linked. The aim is to show how structural elements, such as the law, can influence individual experiences - and vice versa.

Part II - Population structure in Austria & Ireland

In European societies the positive trend of increasing average life expectancies continues and the proportion of “older people” is still growing. In 2017 Eurostat reports that **19.7%** of the EU population were aged 65 years and older, with Italy having the highest share (22,6%). Ireland has by far the lowest proportion of people 65+, with only **13.8%**. In Austria, with **18.7%**, the ratio is just 1% below the EU average¹.

Figure 1

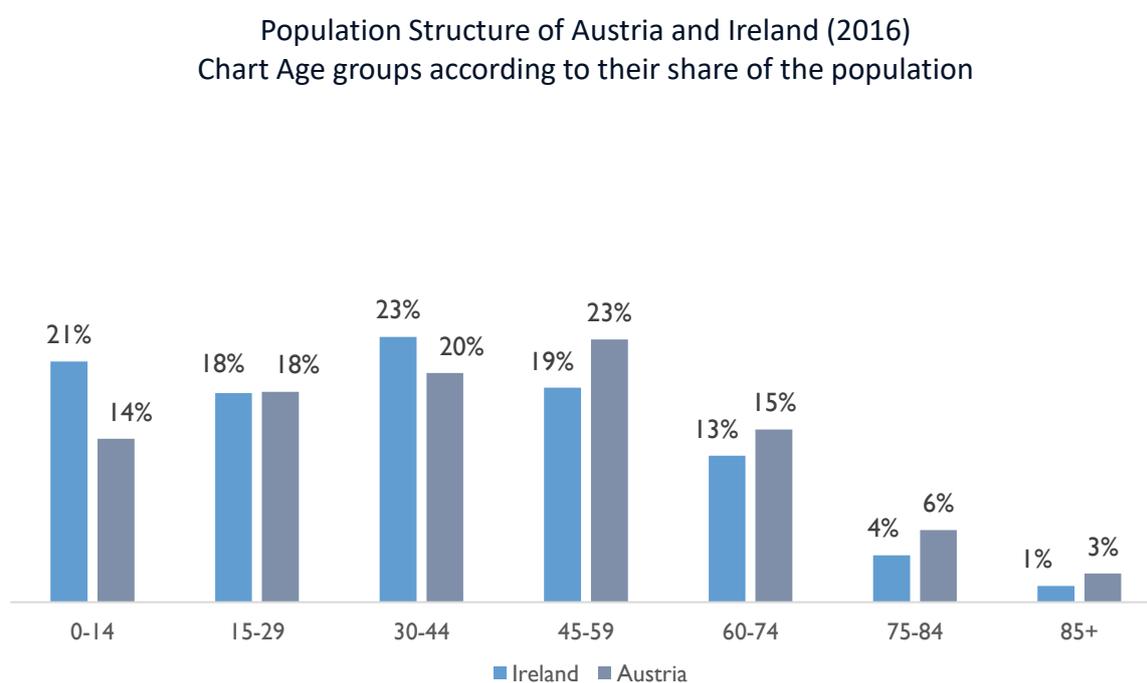


Figure 1 displays the national population structure of Austria and Ireland in 2016 (calculation based on figures from national statistical bodies), which shows differences in the young and older age groups in detail. While the proportion of people aged 14 years (7%) and between 30 to 44 years (3%) is higher in Ireland, from middle age (45 years) onwards the Austrian values exceed the Irish, with up two 4% (45 to 59 years)².

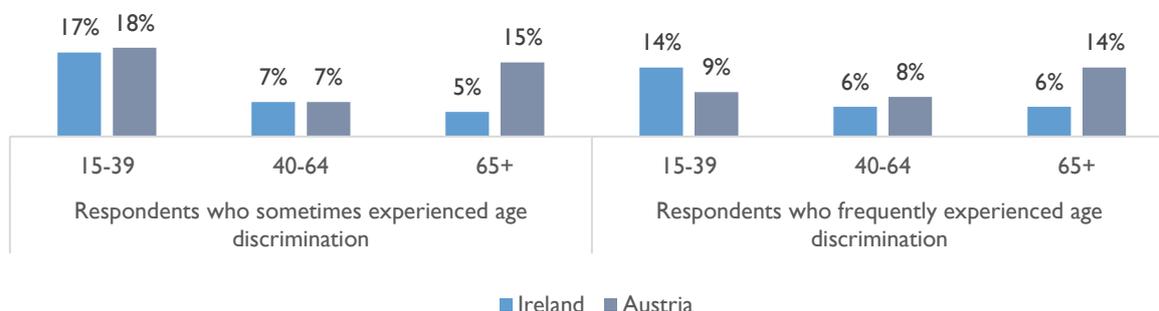
Age Discrimination in Austria & Ireland

While 20 years ago the main reason for discrimination in Europe was ethnicity, in the last 10 years **age** has become the **most frequently** mentioned ground in Europe. Initial analysis of the European Social Survey Wave 4 (Irish Data submitted 2010; Austrian Data submitted 2011) found that **11%** of European adults aged 62 years and older frequently experience age discrimination and **15%** do sometimes. However, there are substantial differences between countries³.

The analysis of discrimination experiences⁴ across three broad age groups shows that in **Ireland** people aged 15-39 years sometimes (17%) or frequently (14%) experience age discrimination. Older respondents (**65+**) have comparatively lower rates, with **5%** reporting experience of age discrimination “sometimes” and **6%** “frequently”. Remarkably values for this age group change little (2% “sometimes”) or not at all (“frequently”) compared to those of the middle age categories (40-64 years). These results are consistent with the analyses of the QNHS Equality Module 2014 of the Central Statistics Office⁵.

Figure 2

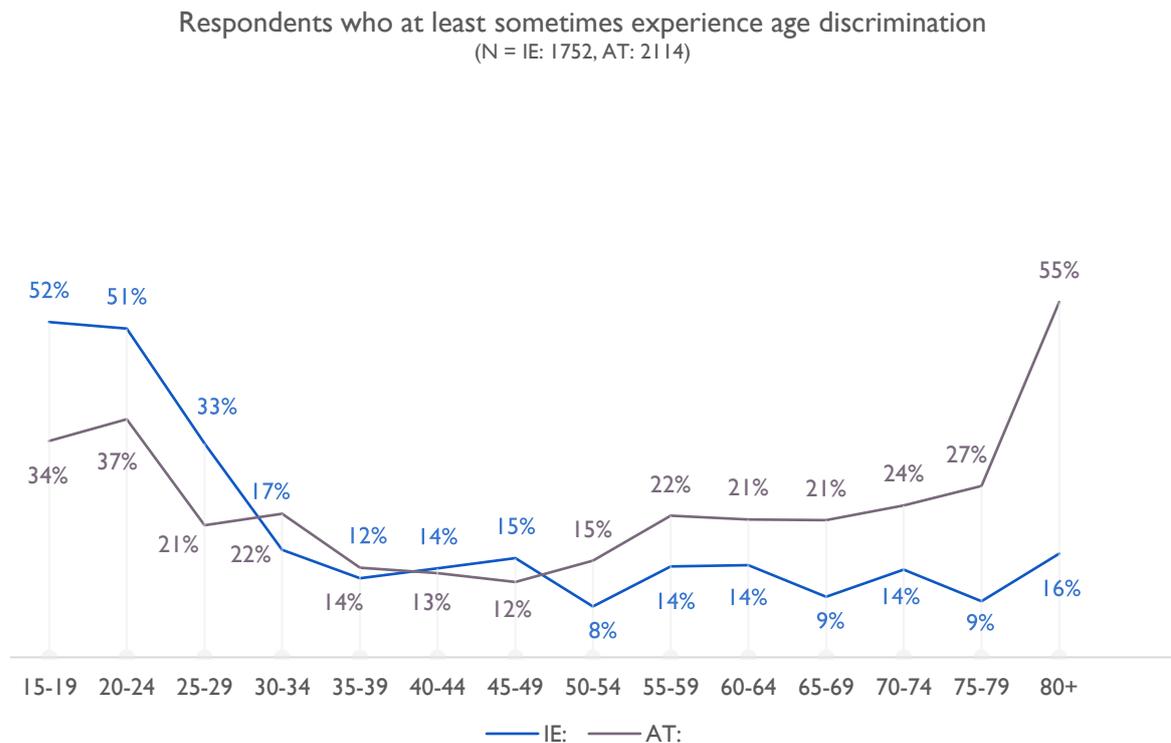
Subjectively experienced age discrimination across three age group (N = IE: 1752, AT: 2114)



In **Austria** the ratios are quite different. While the share of younger respondents who report to “sometimes” experience age discrimination is about the same between both countries (18%), fewer young people in Austria (9%) state to experience discrimination “frequently”. In older age, the pattern is reverses. The proportion of Austrians aged 65+ who frequently experience age discrimination (**14%**) is more than twice as high as the proportion of people affected in Ireland (**6%**). Austria is also 3% above the EU average.

In Table 3, experiences of discrimination are re-examined for considerably narrower age groups and the categories "sometimes" and "frequently" were merged into one category (“at least sometimes experienced discrimination”).

Figure 3



The analysis shows that in **Austria** slightly more than a third of the respondents in each of the two youngest groups (34% of 15-19 year olds; 37% of 20-24 year olds) are at “least sometimes” affected by discrimination. Thereafter, the rate drops significantly to 12% for the 45-49 age group. From the age of 50, the proportion of respondents exposed to age discrimination increases again.

Between the ages of 55 and 64, around **one in five** respondents experienced age discrimination “at least sometimes”, and by the age of 79 this proportion rises to **over a quarter** of the respondents (27%). In the oldest age group (80+) the number of people affected increases drastically, with **55%** of respondents reporting that they had been discriminated against “at least sometimes” because of their age.

The **Irish** case is considerably different, because apparently younger respondents are particularly affected by age discrimination. In the two youngest age groups about every second person reports being discriminated against based on age. From the age of 35 onwards there is comparatively little change in frequency. Here the proportion of people who have experienced age discrimination “at least sometimes” varies between **8%** (50-54 years) and **16%** (80+). Thus, the results clearly differ from the QNHS (Quarterly National Household Survey) Special Module on Equality 2014 result presented in the “Positive Ageing Report 2016”, where **45%** of people aged 50+ were found to have been exposed to age discrimination (see page 103)⁶. Regardless of the considerable differences, the results of the ESS data should not be underestimated. After all, in the group of people over the age of **80**, for example, about **every 6th person** indicated that she or he was affected by age discrimination at least sometimes.

Part III - National Law on Age Discrimination

Ireland

Ireland is a forerunner in anti-discrimination legislation. In **1998** Ireland issued the so-called Employment Equality Act (EEA) which – among other grounds – outlawed age discrimination in a wide range of employment and employment-related areas. With the enactment of the **Equal Status Act (ESA)** in **2000** protection was extended to areas outside the labour market. Primarily, the ESA prohibits discrimination based on gender, civil and family status, sexual orientation, religion, race, disability, belonging to the Traveller community and **age** in the public as well as in the private sector regarding:

- i. buying and using goods and services⁷ available to the public or section of the public,
- ii. the use and provision of accommodation,
- iii. attending/applying for educational programs.
- iv. Furthermore, the ESA includes some restriction for clubs, e.g. sport clubs etc.

However, there are also exemptions, notably Part II, Section 5 (2d) ESA. This allows for differences in treatment in relation to services, that are associated with risk assessment, if:

- v. The difference is reasoned by actuarial or statically calculation,
- vi. or an “**other** relevant underwriting or commercial factors”,
- vii. and is “reasonable having regard to the data or **other** relevant factors.”

In practice this regulation enables discrimination not only, but especially in the financial services sector (credit, instalment, leasing and instalment contracts). Also, insurance companies who provide e.g. travel, health, pension or car insurances, are allowed to discriminate based on chronological age, often charging higher premiums for older consumers.

It is important to note that this kind of discrimination is by no means inevitable or even favourable due to risk and actuarial reasons. Just like in the case of gender which was outlawed as an actuarial category by the European Court of Justice in 2011 (Test-Achats Case) different non-discriminatory pricing calculations may could be used instead of age.

Regarding legal protection it is necessary to bear in mind that although protective provisions exist, in practice they can still have little effect for multiple reasons (see next page). In the case of age discrimination of older people, a review of the cases submitted to the Work Place Tribunal (formerly the Equality Tribunal) shows that between 2001 and 2019 only **26 cases** concerning age discrimination of older people have been issued under the ESA.

Table 1

Cases per Year (total:26)		Topics	
2001	3	insurance/financial service	5
2003	2	housing/rental	4
2004	1	bar/pub entrance	3
2005	1	other facilities	2
2008	1	education	2
2009	5	shopping goods	2
2010	1	Others	8
2011	2		
2012	1		
2014	1		
2015	2		
2016	1		
2017	3		
2018	1		
2019	1		
		Decision	
		in favour of complainant	11
		in favour our defendant	15

Most often cases concerned **financial services** (19%) and discrimination related to housing or renting an accommodation (15%). Combined denied entrances to pubs/bars or other public facilities also account for 19%. Complaints related to education and shopping goods make up 8% each. The remaining 31% are distributed among other cases, e.g. age-based medical test for voluntary work. In the case of financial services 3 out of 5 claims were decided in favour of the complainant (the potential victim), this was only the case in 1 out of the 4 housing issues. With 4 out of 5 decisions confirming the discrimination appeals of complainants, most rulings in favour of the complainant are found in the case of denied entrances to pubs/bars or other facilities. Overall **58%** of all cases were decided in favour of the defendant.

Reasons for the low reporting can only be presumed here and should by no means be entirely attributed to the legal situation. For instance, low reporting numbers may also indicate a high effectiveness of protection, a lack of knowledge regarding the existence the protective provisions or little awareness of age discrimination. However, certain procedural provisions, such as the duty to inform the " defendant " and the comparatively small " compensation amounts " probably also act as barriers.

Austria

In Austria on the national level the so called Gleichbehandlungsgesetz from 2004 (Equal Treatment Law) only includes protection from age discrimination in employment and employment-related areas. Consequently, in the entire scope of private law discrimination based on age is possible. In practice this implies that for example bars or clubs, private providers of accommodation, transport, educational or financial services, cultural or leisure activities may not only use age-based price schemes but can also completely exclude certain age groups from access and use.

In Austria there is currently no protection at national level against age discrimination in the area of services and goods (e.g. in the case of insurance, car rentals, public transport, housing, gastronomy, etc.), since the relevant federal laws (in particular the "Gleichbehandlungsgesetz" - Equal Treatment Act) do not provide protection against age discrimination in access to services. Therefore, only the provincial equal treatment and anti-discrimination laws currently offer protection against age discrimination. In general, these concern both sovereign and commercial actions of the organs as well as corporate actions by private entities, but only in matters regulated by provincial law. For all these cases there is anti-discrimination protection based on age in Austria as well.

However, this protection is extensively limited by the regulation-competence distribution between the Federal Government and the provinces. Legal protection exists - as already mentioned - only for matters that are to be regulated by provincial law (e.g. certain forms of social security, protection of minors, kindergartens, after-school care, cultural events, nursing homes, etc.).

A special case is the provision of the Styrian Equal Treatment Act. Here only bodies of the Styrian province are obliged to not discriminate based on age. The private sector, even in the field of provincial competence, is not included here. Even outsourced institutions are therefore not subject to the Styrian Equal Treatment Act.

Part IV - Expertise on age discrimination in Austria & Ireland

As part of the first project task expert interviews have been conducted. Table 2 provides an overview of the first ten interviews. In Ireland two additional interviews are pending. These are not included below. The aim of the interviews is to gain an overview of the most important legal regulations in Austria and Ireland, to discuss their practical implementation and effectivity and to investigate how experts from different fields describe and assess age discrimination as a social problem within the respective countries. For the purpose of this chapter only the expert's description and assessment of age discrimination as a social problem is of interest.

Table 2

	Austria		Ireland	
Expertise	European constitutional law and Equality legislation	2	Human Rights and Equality	1
	Anti-Discrimination Law and Practice	2	National ageing policy	1
	Human Rights	1	Safeguarding and anti-discrimination	1
	Ageing in Austria & national ageing policy	2		
Total	7		3	

The analysis revealed **three central issues** in the expert's assessment:

- i. The societal approach towards age discrimination
- ii. The societal awareness of age discrimination
- iii. The social and legal "nature" of age as discrimination ground

The societal approach in both countries is characterized by its *fragmentation*. Basically, this label indicates that age discrimination is not understood as a problem that pervades all areas of society but is commonly only addressed with a very specific context. In the words of one of the respondents:

“I think the few things where we discuss age discrimination are, I would say, rather special cases, [...] actually, if it came up it has always been discussed in the context of other discriminations [...] So what we have discussed so far, if I may say so, in legal terms were rather [...] certain hotspots, but what is missing from my point of view is the overall view.” (Legal Expert AT)

The main consequence of this fragmentation is a lack in the ability to recognize age discrimination in all its manifestations, as a phenomenon “...*that spreads across all sectors*” (Policy expert IE). This also forms the basis for the second central aspects that emerged in the analysis and refers to the societal awareness for age discrimination, which is characterized by only really recognizing a few very specific topics, like discrimination in employment and job hunting. Consequently, in the societal awareness there are certain *highlights* and *blind spots*

“Age discrimination, I believe, is not an image that politicians now have in their minds in a broader understanding that goes beyond pension and labour market and such things.”
(Expert Human Rights AUT)

This focus on only certain topics can potentially have severe consequences, which should not be underestimated. For example, age discrimination at the labour market predominantly affects a certain age group, namely primarily those who have not yet reached pension age, while the problems of other age cohorts are in danger of being side-lined. A striking example of this problem is the ongoing exclusion of older adults from clinical trials. A variety of research proves⁸ that there is still a systematic exclusion of older people, especially of those over 75 years, from clinical trials in general, and even from those testing precisely such kind of treatments which in practice often concern the excluded group.

The last aspect concerns the question of the social and legal “kernel” of age as a social category, which certainly needs clarification before issues of discrimination can be adequately discussed. The following two quotes represent the two opposing positions.

Wherever you find age limits, it's an issue and [...] age limits are always a signal of discrimination. Why a certain age limit? People aren't defined by their age. [...] Age limits point to age as the determining factor, which it never is.” (Human Rights Expert IE)

*”Not every reference to age is suspect. The fact that you retire at 65 is not problematic at all. That is not problematic at all, but it is reference to age. [...] retirement age is completely free from objection under equality law.”
(Legal Expert AT)*

These two opposing perspectives indicate the challenges in the discussion about “age” as a ground for discrimination. Compared to race or gender, chronological age is still extensively used as legal criterion in form of various “age limits”. These limits fulfil multiple social functions⁹: Legal capacity age for example (i) protects children from the diverse challenges of the commercial realm and thereby reduces the risk of early debt and dependence. Age limits also (ii) structure careers, indicating transitions and succession. (iii) In addition, age limits can have a "relieving" function since they "depersonalise" decisions and legitimise them - if they are legally stipulated - independently of individual sensitivities. Finally, they also have (iv) a disciplining/motivating function. Children have to be patient until they reach an age limit (e.g. to watch some movies), but the time is foreseeable and therefore tangible. For older workers, the fact that they will soon reach retirement age can have a motivating effect on their willingness to continue these last years and not throw in the towel.

However, age limits are in principle artificial and form the basis of many age group differences. This is because age limits indent the continuous biological and chronological aging process, which does not “naturally” take place in life stages. These age limits are usually linked to certain rights and obligations and certain resource allocations, which results in the attribution of symbolic meaning and value to certain “ages”.

Since resources and opportunity allocation are - at least in most western societies – greatest in the middle age the symbolic value of this "life stage" is also greatest. Consequently, age limits can be described as one aspect of the hierarchal power structures within western societies. Another essential aspect when comparing age limits, is that can be divided into two types: (a) "I'm not *yet* allowed" and (b) "I'm not allowed *anymore*". While the former result in "only" temporary exclusion, the later constitute final exclusion and is therefore more severe in its consequences. At last, it is important to note that age groups, which are constituted by age limits, do not meet the needs of the increasing individualization and diverse life situations - especially in the upper age segments.

The purpose of pointing out and exploring these different perspectives is not to prioritise one of the two positions or to find a "compromise", but to illustrate the complexity of the problem. Only by pointing out the multi-faceted character, and not by reducing it to a single dimension, an adequate solution can be found in the end.

Part V - Summary

1. Age Discrimination Prevalence in Austria and Ireland

Age discrimination can be found in both Austria and Ireland. In Austria - based on the **preliminary results** presented here - the number of older people experiencing age discrimination is more than doubling the rate for Ireland. Based on ESS data from 2010/2011:

- i. **30%** of Austrian and **11%** of Irish people aged 65+ “at least sometimes” experienced age discrimination
- ii. **15%** of Austrian and **5%** of Irish people aged 65+ “sometimes” experienced age discrimination
- iii. **14%** of Austrian and **6%** of Irish people aged 65+ “frequently” experienced age discrimination

II. Legal regulations in Austria and Ireland

Regarding protective measures Austria lags behind Ireland. While in Ireland the access to and use of goods, services, housing, education, etc. is legally protected, Austrians who experience age discrimination in private business in many cases find themselves exposed without protection. The mere existence of legal protective measures may not, however, guarantee effective protection, as a review of the cases submitted to the Workplace Commission (WRC) demonstrates.

- i. During a period of 19 years (2001-2019) only **26** cases have been submitted to the WRC.
- ii. **42%** of the cases issued to the WRC have been resolved in favour of the complainant.

III. Expert perspectives on age discrimination

The initial analysis of the expert interviews revealed three key aspects that should be addressed in the future discussion on age discrimination:

- i. The **fragmentation** of the societal approach on age discrimination
- ii. The **blind spots** within the societal awareness of age discrimination
- iii. The **complex** social and legal “kernel” of age as discrimination ground

Endnotes

¹ Eurostat (2019). Population structure and ageing.

² Calculation based on figures from national statistical bodies.

³ van den Heuvel, W. J. A., & van Santvoort, M. M. (2011). Experienced discrimination amongst European old citizens. *European Journal of Ageing*, 8(4), 291-299.

⁴ Three questions were used to measure age discrimination:

- Tell me how often in the past year, anyone has shown prejudice against you or treated you unfairly because of your age?
- How often, if at all, in the past year have you felt someone has shown you a lack of respect because of your age, for instance by ignoring or patronising you?
- In particular, how often in the past year has someone treated you bad because of your age, for example by insulting you, abusing you, or refusing you a service.

⁵ Central Statistics Office (2015). Statistical release QNHS Equality Quarter 3, 2014. Cork.

⁶ Department of Health (2016). Positive Ageing 2016. National Indicators Report. Dublin.

⁷ Regarding services the ESA covers for example: entertainment or recreation services, cultural activities, transport or travel services, professional trades or services.

⁸ See for an overview: Cherubini, A., Signore, S. D., Ouslander, J., Semla, T., & Michel, J.-P. (2010). Fighting Against Age Discrimination in Clinical Trials. *Journal of the American Geriatrics Society*, 58(9), 1791–1796.

⁹ See comprehensively: Künemund, H., & Vogel, C. (2018). Altersgrenzen – theoretische Überlegungen und empirische Befunde zur Beendigung von Erwerbsarbeit und Ehrenamt. In: Scherger, S., & Vogel, C. (Hrsg.). *Arbeit im Alter, Altern & Gesellschaft*. Wiesbaden, Springer.