



AGE Platform Europe submission to the call for contributions by the UN Independent Expert on Ageism and Age-Discrimination

15th April 2021

Forms and manifestations of ageism and age-discrimination

1. What forms does age discrimination affecting older persons take and which ones are the most prevalent? Where available, please provide concrete examples and collected data including in employment, education, social protection, and health, financial and social services.

According to the European Social Survey (www.eurage.com) ageism is the most prevalent type of discrimination reported by almost 35 per cent of all participants over the age of 18. The 2019 Eurobarometer Report on Discrimination in the EU¹ reveals that 40 % of individuals in the EU believe that age discrimination is widespread in their country. Age discrimination, alongside gender discrimination, is still one of the most pervasive forms of discrimination in the EU based on personal experience. Individuals surveyed perceive discrimination arising not only in the employment context but also as occurring frequently in public spaces (23 %) including cafes, restaurants, bars and nightclubs (8 %), shops or banks (7 %), in healthcare (6 %), or by school or university personnel (6 %). 4 % of respondents identified discrimination in buying or renting an apartment or house and 4 % also reported discrimination or harassment by social service personnel.

In 2016, we have published our [position paper on structural ageism](#), which includes several examples and data in terms of how ageism is experienced in terms of access to financial services, social and civic participation, employment, social security, health and long-term care.

In 2018, together with partners from all over the world, we have launched a campaign against ageism (www.ageing-equal.org), where we have gathered lived experiences and information about the manifestation of ageism in different spheres of life and in intersection with other forms of prejudice in discrimination. The campaign archives includes information and testimonies on the following themes: [ageism and gender](#); [ageism and social rights](#); [ageism and migration](#); [ageism and intergenerational solidarity](#); [ageism and sexuality](#); [ageism and race](#); [ageism and abuse](#); [ageism and participation](#); [ageism and disability](#).

Our [report on COVID-19](#) also includes concrete examples of how ageism has impacted lived experiences of older people during the pandemic and led to rights violations.

2. Please provide information and data collected about the causes and manifestations of ageism in society, both for younger and older generations, and how it translates into discriminatory practices.

Ageism is deeply ingrained in the legal system, the media, health care provision and the economy, among many other areas. It takes the form of upper age limits, the inadequate provision of services for the needs of older people, the failure to take situations, experiences or aspirations of individuals into account when making decisions or allocating resources, or the segregation of people in later life due to a lack of real choice to remain active in their communities.

When we label a group of individuals as ‘vulnerable’ or ‘dependent’, we wrap them with caution tape. Despite being paved with good intentions, this thinking will inevitably backfire. Such labels

¹ European Commission, Special Eurobarometer Report 493 (2019)





make it more likely to impose limits and ignore individual agency, autonomy and the right to flourishing and participation. Precisely because they consider that older people are inherently ‘frail’ or ‘in need of protection’, these labels fail to interrogate the deficits of our systems and services. They therefore cannot come up with the necessary ambition to change the laws, policies and services that create disadvantage in the first place.

It is also common for older persons not to be appropriately represented in surveys or studies, which very often group everybody together into one homogeneous ‘older’ age range (i.e. 60+), or exclude older people beyond a certain age, allowing for little nuance in information presented publicly about older generation.

Ageism has serious consequences both for older people and society at large. [Research](#) shows that older people with negative attitudes about ageing may live 7.5 years less than those with positive attitudes. Ageism has also been shown to cause cardiovascular stress, lowered levels of self-efficacy and decreased productivity. Ageism is also a major barrier to developing good policies. Problematizing older people as ‘vulnerable’ or equalizing ill-health with old age does not permit the enactment of policies that tap on older people’s potential. COVID-19 exposed in sharp ways how ageism can lead to segregation, neglect, abuse, and even death. Seeing older people as a burden also devalues the work of people who care for them. Ageism therefore makes it difficult to invest in care and improve the status and working conditions of caregivers.

3. From an intersectional perspective, are there specific factors that aggravate ageism and age discrimination and how? Please provide concrete examples and collected data where available.

Ageism intersects with all forms of discrimination aggravating inequalities. The intersection of ageism and gender is addressed in our other contribution on older women. In our [contribution to the UN Special rapporteur on Disability](#) we have highlighted some of the concrete ways in which ageism and ableism intersect creating distinct challenges for older people with disabilities. In our [recent AGE Barometer Survey](#), we also include information about the situation of older Roma and older LGBTI across the EU. Our [report on COVID-19](#) includes concrete examples of how ageism has impacted older people with disabilities, older women, older Roma and older LGBTI.

Overall, however we still lack adequate information about inequalities in old age and how ageism interacts with other forms of discrimination. As flagged by the United Nations Independent Expert, “longitudinal surveys often fail to include older age groups, leading to significant data gaps on the specific challenges at the intersection of older age with other dimensions”. Our own research demonstrates that:

- On older persons with disabilities: we lack recent and regular data that would help to capture trends.
- On older Roma people: no specific data exist about older Roma in national statistics, and therefore in EU statistics.
- On older LGBTI people: in the second EU LGBTI Survey of the Fundamental Rights Agency², it is striking to note how little visibility there was on older LGBTI people. This is likely explained by the low number of older respondents: only 4 % of respondents were 55 or older. The first generations of people who transitioned are now becoming older and are likely to face

² <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>



unique health needs. Data are also inexistent regarding the situation of older intersex people. Research is needed to better understand the experiences and needs of the first generations of older trans and intersex people.

Legal, policy and institutional frameworks related to ageism and age-discrimination

4. What international, regional and national legal instruments are in place to combat ageism and age discrimination?

The EU Charter of Fundamental Rights prohibits discrimination on the basis of age (article 21) and includes a specific article on ‘the rights of the elderly’ under its Equality chapter (article 25), where equality in old age is understood as the right to live in dignity and independence and to participate in all aspects of life. However, EU’s secondary legislation only covers prohibition of age discrimination in employment and occupation and to date does not extend to other areas of life, despite a proposal for a new directive which has been blocked in negotiations since 2008. Neither does EU law include an equality duty in terms of preventing age discrimination, making necessary institutional changes, taking positive action and mainstreaming age, whereas this is the case for gender discrimination.

A recent [report](#), authored by Elaine Dewhurst from the European network of legal experts on non-discrimination and gender equality, examines the state of the art in protection against age discrimination beyond employment at European and national level. This report concludes that alone, the Charter of Fundamental Rights – which includes a provision prohibiting age discrimination – is not sufficient to protect individuals beyond the labour market context. Therefore, **the adoption of the so-called horizontal non-discrimination directive is considered essential to fill this gap**

Discrimination on the basis of age is also prohibited under the European Convention on human rights (ECHR) which bounds all member states of the Council of Europe. However, according to the report, this protection remains limited in scope and application. Even if the European Convention on human rights is not limited in scope to the labour market, the non-discrimination provision (article 14) can only be used in relation to one of the other articles of the convention, such as the right to liberty or privacy. In addition, the European Court of Human Rights has not accepted age as an equally severe ground of discrimination. This means that cases of age discrimination are more likely to be found as proportionate, reasonable or justifiable because they serve a legitimate aim.

The 2014 Council of Europe recommendation on the promotion of human rights of older persons, affirms that older persons shall enjoy their rights and freedoms without discrimination on any grounds, including age. It calls on Member States to make explicit reference to “age” in their national anti-discrimination legislation and to take effective measures to prevent multiple discrimination of older persons. However, our [assessment](#) demonstrates that this recommendation remains largely unknown and **has not triggered any serious governmental action to fight age discrimination on the ground.**

At national level, protection from age discrimination varies from one European country to another. Overall, despite the general intention to protect against age discrimination, **in most countries, protection remains uneven and incomplete.** Often certain fields and services are excluded, only some regions of federal countries offer protection, or only public services are covered.

In some countries, protection is not based on specific national legislation, but rather on general constitutional guarantees or on the interpretation of the European Convention on Human Rights.



But according to the report, this can result in gaps and discrepancies. Moreover, as is the case with the EU Employment Directive, under national law, differences in treatment on grounds of age can be justified by a number of legitimate aims and exceptions. Such exceptions are particularly prevalent in the field of financial services, which allow for the unfavourable treatment on the basis of age in access to insurance and credit for instance. In other cases, there are no explicit exceptions in law, but **age-based categorisations are generally accepted**.

In our view, many inconsistencies and gaps can be found across EU countries in terms of:

- Specificity: Explicit protection of age/older people
- Source: Whether age discrimination is prohibited by constitution, national, federal or regional law
- Material scope: Protection beyond the field of employment, areas of life where age discrimination is prohibited and whether prohibition applies only to public provision or also in the private sector
- Legal status of special measures/differential treatment: whether they are considered exceptions to the rule of equality, necessary for its achievement or forms of discrimination
- Scope of equality duties: including obligation for positive action, the extent/areas to which they apply, whether they target both the public and private sector and sanctions in case of non-compliance
- Extent of exceptions: in which areas they apply and whether they are specific to age or apply to all/more grounds; whether they are provided in specific statutory exemptions or through a general justification defence
- Mandate of national equality bodies: whether they cover age discrimination and in which areas
- Extending reasonable accommodation on grounds of age (ex. Bulgaria)
- Extent of protection from indirect discrimination
- Coverage of multiple discrimination on age and other grounds

The above-mentioned report however notes a welcome trend to move away from generalisations towards more individualised assessments of differential age-based treatment, which could help tackle age stereotypes.

Despite these gaps and discrepancies however, the report demonstrates that **overall Member States agree on key concepts of equality law and how they apply to age discrimination**. Areas of concern include the issues of victimisation, multiple discrimination, exceptions for the financial services sector (including insurance and banking sectors) and lack of case law in the field of education. This is an important finding indicating that there is overall consensus about the need to expand protection on age discrimination, but also where the discussions on the horizontal directive should aim in order to achieve consensus, which is necessary for its adoption.

5. Please also note any action plans or policies to raise awareness and combat ageism (including anti-ageism in school curricula) and to move toward a more age-friendly and inclusive society.

At EU level, there are [Diversity Charters](#), but - unlike for other grounds - there is no specific action to raise awareness of ageism and age discrimination, with the exception of civil-society led campaigns like AgeingEqual mentioned earlier.





6. At the national level, please outline the legal protections available against age discrimination and indicate whether age is explicitly recognised as a ground for discrimination? If so, are there specific areas for which equality is explicitly guaranteed? Are there any areas where differential treatment based on older age is explicitly justified?

In EU law, age is the only ground for which direct discrimination is clearly allowed whilst a wide range of exemptions and justifications exist under the EU Employment Directive (see article 6 of directive 2000/78) and the draft horizontal Equal Treatment Directive (see articles 2§6 and 2§7). All EU countries foresee exceptions on the grounds of age and age limits in access to goods and services (incl. banking and insurance products), social benefits (e.g. disability allowances), preventive health treatment and rehabilitation services, renewal of driving licences, but also mandatory retirement ages are widely accepted as normal practice. Some of these exceptions relate to the limited scope of age discrimination provisions (e.g. insurance products in Sweden) or are specifically permitted by law (e.g. fixing retirement ages in Ireland) whereas others fall under general justifications allowed by law or are merely tolerated and unchallenged, albeit lacking specific justification (e.g. age limits in disability benefits in France). Some forms of differential treatment benefit older people aiming to compensate for specific disadvantages in the form of targeted measures, such as free public transport for people over a certain age/pensioners. On the other hand, there are plenty of paradoxical laws and policies: for example, in Ireland, the most common contractual retirement age is at the age of 65, whereas according to law entitlement to old age pension is only given at the age of 66. During this year older people are eligible for Jobseekers' Allowance but are not allowed to work. In other countries, people of 65+ are considered capable of working but are 'too old' to drive and to receive preventive treatment due to age limits. To avoid such inconsistencies that work against older people and society as whole, cases when differential treatment is necessary and justified by a legitimate aim need to be closely scrutinized.

7. Do the existing legal protections against age discrimination allow for claims based on intersectional discrimination, that is discrimination which is based on the intersection of age and other characteristics such as race, ethnicity, gender, disability, sexual orientation or other status?

The report mentioned above on Age Discrimination Law Beyond the Field of Employment demonstrates that existing protection do not adequately cover multiple and intersectional discrimination. The report also recommends the adoption of further protection against multiple discrimination, which would cover all grounds.

8. What legal and other measures have been taken to address and protect from racism, sexism, ableism or other similar forms of discrimination that might be useful models for addressing ageism?

The EU has adopted Strategies/Action Plans on Disability Rights, Gender Equality, LGBTI+ Equality, Roma, Children, but to date there is no specific policy framework nor priority in the work plan of the European Commission covering actions to promote equality on the basis of AGE. We believe that we need the equivalent level of visibility and coordinated action in order to address systematically and comprehensively ageism.

For AGE, the right to equality and non-discrimination should extend to all areas of life and should not be based on chronological age. Protection should cover discrimination, bias, stereotypes, prejudice, stigma as well as hate speech. Discrimination is not only targeted to single individuals but is often structural, systemic and part of institutional practices. This is why - in addition to the obligation to include an explicit prohibition of all forms of direct and indirect discrimination in old age - States





should moreover have a duty to provide both for formal and substantive equality, including through the adoption of special measures that are necessary to alleviate the adverse effect of ageism that serves to justify discrimination and leads to the exclusion, abuse and neglect of older people. Legal provisions should also extend the duty of reasonable accommodation to age discrimination, protect from multiple discriminations and foresee monitoring mechanisms, such as national equality bodies, with a comprehensive mandate on age discrimination.

For AGE the prohibition of discrimination and inequality in old age should not in principle entail a wider range of exceptions than what is permitted for other discrimination grounds. States should recognize that age limits, categories and proxies, as well as differential treatment, are not per se acceptable but likely to reflect pervasive prejudices against older people. Therefore, States should have a duty (i) to specifically justify exceptions to equal treatment, (ii) to ensure that differential treatment does not undermine older people's dignity, independence and opportunities for participation and (iii) to assess the differential impact(s) of their decisions/policies on the older population.

In 2018, together with the Regional Office of OHCHR for Europe in Brussels, we organised a seminar, which developed recommendations on the content to equality and non-discrimination in old age drawing from existing standards. The [report](#) of this expert seminar called for the following:

In a first band of core content, the prohibition of discrimination as relates to older persons should include standard definitions derived from existing international law, covering inter alia, direct discrimination, indirect discrimination, multiple or intersectional discrimination, harassment, instruction to discriminate, victimisation, and discrimination by association, as well as other core elements. In a second band, the right to equality and non-discrimination as related to older persons should include – and where relevant adapt – conceptual items included in the CRPD, in particular:

- *An explicit recognition of equality before the law, equal legal capacity.*
- *Denial of reasonable accommodation as a form of discrimination, covering all aspects of life (i.e beyond employment).*
- *A right to accessibility.*

Third, the right to equality and nondiscrimination as related to older persons might develop additional definitions and concepts particular to older persons, for example exploring the meaning of perception of declining capacity, and the threat of unequal treatment arising from these.

- 1. The right should cover systemic discrimination and ageism*
- 2. The right should create the immediate obligation to abolish laws, policies and practices that are discriminatory, including an obligation to review age limits and exceptions to the rule of age equality, in order to evaluate the impact on older people's rights and to challenge ageist assumptions underlying age-based restrictions*
- 3. The right should cover all forms of multiple discrimination, possibly drawing on existing language, such as CRPD*
- 4. The interpretation and implementation of the right should aim at achieving substantive and transformative equality, drawing on CEDAW and CRPD*
- 5. States should have an obligation to provide reasonable accommodation to overcome barriers in the exercise of rights and to adopt positive measures that are necessary to achieve de facto equality*



6. States should have an obligation to assist older people in seeking accountability and ensure access to justice and redress.

It must be recognized that no human rights treaty includes derogations to the rule of equality and nondiscrimination and including general exceptions in a new treaty may weaken the protection on the ground of age. However, the interpretation of this right by treaty bodies allows for differential treatment on the basis of reasonable and objective. A distinction must be made between age-based criteria that are used to facilitate access to rights as opposed to those that are used to restrict access to rights. As a general rule differential treatment on the basis of age should promote the enjoyment of rights and not undermine human rights principles.

In a [joint submission](#) to the OEWG, we also suggested elements of this right.

9. Please indicate if there are institutional or complaints mechanism to address inequalities or grievances related to ageism and age discrimination. If so, please provide statistics on cases and types of cases received?

Not all Equality Bodies in EU countries cover age discrimination and those who do are usually limited to the field of employment. More information about this and the type of cases received by Equality bodies can be found on the website of the European Network of Equality Bodies³.

A key barrier to accessing justice is the fact that the law itself and its interpretation by courts and non-judicial bodies can be biased. A [report](#) by Equinet demonstrates that Courts tend to consider age discrimination as a 'less severe' form of discrimination. They are therefore more 'reluctant to require an individualised approach and seem ready to accept the use of certain generalisations and common perceptions connected with age'.

In our recent [report](#) on the implementation of the EU Employment Framework Directive, we also demonstrate that the directive permits a wide range of practices that restrict older people's right to access or remain in the labour market. National and EU courts still consider age discrimination as less severe compared to other grounds and reflect biases about the ability of older people to work.

Reports related to ageism and age discrimination and other relevant information

10. Please outline any other areas that you deem important in the context of ageism and age discrimination. Thank you for sharing any relevant reports about ageism and age discrimination.

In addition to the reports, resources and studies mentioned above, we wish to refer to the following:

- Evidence – based [Policy Brief on ageism and digital technologies](#)
- EuroAgeism Project: <https://euroageism.eu/>

For more information you may contact Nena Georgantzi, Policy Coordinator on Human Rights & Non-Discrimination, nenageorgantzi@age-platform.eu

³ <https://equineteurope.org/equinet-at-a-glance/areas-of-work/age/>