



The European Older People's Platform  
La Plate-forme européenne des Personnes âgées

**AGE REPORT**  
**ON THE TRANSPOSITION AND IMPLEMENTATION**  
**OF THE EMPLOYMENT EQUALITY DIRECTIVE 2000/78/EC**

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## Introduction

This report presents the AGE assessment of the current state of transposition and implementation of the Employment Equality Directive (2000/78/EC)<sup>1</sup> by EU Member States. It updates our previous reports to include observations on developments gathered during 2006 and 2007. This report is published as part of AGE's contribution to the 2007 European Year of Equal Opportunities for All.

In this report we draw heavily on contributions submitted by AGE members<sup>2</sup> and we highlight the main trends, problems and positive developments which they have identified. An ongoing focus for our work has been an assessment of the approach taken by Member States to the differences of treatment allowed by Articles 6 and 8 of the Directive. In particular, we present our members' perceptions of the adequacy of the implementation of the Directive in their respective Member States and consider how this can be made more effective in combating age discrimination in employment, learning from the experiences in other Member States.

The European Commission announced in its Communication on the demographic future of Europe<sup>3</sup> that it will undertake a "Review of the state of implementation of the Employment Directive with regard to age discrimination in 2007". AGE warmly welcomes this initiative. AGE worked with the Co-Presidents of the Parliamentary Intergroup on Ageing to set up the meeting held on 13 November 2007 which provided an opportunity for MEPs to contribute to this review.

The report concludes with concrete recommendations for future action at European and national level. It discusses how the implementation of the Employment Equality Directive can be improved beyond the 2007 European Year of Equal Opportunities for All.

Our position has been developed in close consultation with our Anti-Discrimination and Employment Expert Groups. We would like to thank in particular our experts from Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Malta, The Netherlands, Slovenia, Sweden and the UK who have each made extensive contributions to this report. We also extend our thanks to the European Anti-Discrimination Council and in particular to Dr. Klaus Alenfelder for his useful contributions on the new German anti-discrimination law.

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1 Council Directive 2000/78/Ec of 27 November 2000 establishing a general framework for equal treatment in employment and occupation: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legisl/2000\\_78\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisl/2000_78_en.pdf)

2 Contributions to the AGE questionnaire on the transposition of the Employment Directive in 2006 were received from its members associations in Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Lithuania, Malta, Netherlands, Slovenia, Sweden and UK.

3 Commission Communication "The demographic future of Europe – from challenge to opportunity" COM (2006) 571 final

## AGE vision

AGE is committed to combating age discrimination as one of its main priorities. AGE's policy statement '*Towards a European Society of All Ages*'<sup>4</sup> identifies the key concerns of AGE member organisations about the detrimental effects of age discrimination both to those individuals who face it and to society as a whole. Our concerns range across all areas of life, including in the area of employment.

In the field of employment, age discrimination leads to the lost productivity of workers who become or remain unemployed and inactive. In the workplace, age discrimination and age related harassment demeans older people's dignity and damages their self-esteem, leading in turn to low work morale and reduced productivity.

The impact of ageist attitudes can be seen in the low levels of employment of older people. Despite a certain degree of progress in improving the rate of employment of people from older age groups, primarily due to the increased participation of older women in the labour market, the employment rate for people over 55 years of age is still far below the European objective of the 50% which was set in the Lisbon Strategy (2000) for people aged 55-64.

AGE fully supports the Lisbon objectives of maximising the employment rate of older people and calls for measures to be adopted to help those who want to remain in the labour market. AGE believes that this requires a fully integrated and comprehensive strategy which pulls a range of policy levers, combining actions to provide incentives and support individuals to be available for work with changing the attitudes of potential employers to ensure they engage and value older people and remove discriminatory barriers. We recognise that social protection systems need to be adapted to enable older workers to remain at work for longer but we are clear that this should not be done by reducing the rights of older workers as advocated by some Member States who cut pensions rights and limit unemployment benefits for the long term unemployed. Furthermore in their reforms to postpone the age at which workers will be entitled to claim a pension, Member States should keep in mind that the age at which people entered the labour market, the total number of years worked and the nature of their work strongly influence their capacity and willingness to continue working. Such approaches ignore the reality of the labour market and will have a detrimental effect on the most vulnerable rather than help keep people actively involved in the labour market for longer. What is needed to raise the employment rate of older workers is the introduction of more flexibility into employment contracts to suit the changing lives of older people, high quality working conditions which enable older workers to reconcile work and family duties and help maintain their physical and mental health, skills development through opportunities for life-long learning and the promotion of a positive approach

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<sup>4</sup> Towards a European Society of All Ages, November 2006: <http://www.age-platform.org/EN/>

among employers to older workers. In addition to helping to maintain a diverse and vibrant labour market, the extension of working lives which this would realise is important both in terms of financing social protection systems in general and in preventing poverty in old age.

The European labour market is ageing rapidly and employers are faced with increasing difficulties to find and retain the skilled workforce they need to remain competitive. Employers therefore urgently need to change their attitude toward older workers and to stop discriminating against them. AGE considers that the real gains are to be made not by forcing people to wait longer (often in unemployment) before receiving their pensions, but in enabling people to work productively as long as they wish.

Combating age-based discrimination in the workforce is unfortunately not at the heart of most Member States employment strategies. This would require action to remove age discrimination from policy and organisational procedures throughout working life - in recruitment, training, reward, and retirement. In addition, the use of age as a proxy for health or competence is still widespread across the EU. Such practice is questionable and needs to be eliminated from the culture which underpins the labour market and human resources practice. Furthermore, it should be the duty of public authorities as well as social partners to promote a more positive image of older workers and to challenge ageist assumptions. Evidence shows that workers' productivity does not decrease with age as declining physical capacity is easily compensated for by qualities and skills acquired through experience.<sup>5</sup> Employers need to be made aware of this and it should be ensured that this understanding applies beyond the traditional boundaries of the 'working age' population so that those who wish and need to work beyond pension age are enabled to do so and inflexible policies which restrict such choices<sup>6</sup> are removed.

## **Main findings of AGE survey on the transposition and implementation of the Directive**

Based on the concerns and comments sent by our experts, AGE developed the following remarks on the way Member States have transposed or are implementing the Employment Equality Directive. Our purpose is not to do an extensive review of the transposition and implementation process in each Member State as this is done in a very well documented comparative review<sup>7</sup> by Equinet, the European network of legal experts. In our report we summarise the

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5 'Live longer, Work Longer' (2006), Organisation for Economic Co-operation and Development (OECD), Paris, p.69.

6 AGE message to the European Spring Summit 2006:

[http://www.age-platform.org/EN/spip.php?article358&var\\_recherche=spring%20summit](http://www.age-platform.org/EN/spip.php?article358&var_recherche=spring%20summit)

7 <http://www.migpolgroup.com/documents/3640.html>

main comments expressed by our members and experts regarding the transposition and implementation of some articles of the Directive which seem problematic with regard to the “age” ground.

- **Recital 14**

Recital 14 of the Preamble states that “The Directive shall be without prejudice to national provisions laying down retirement ages.” In terms of retirement ages, national practice varies greatly, ranging from no compulsory retirement age to compulsory retirement for public and private employees at a specific age.

Notwithstanding this recital, an increasing number of individuals or groups are challenging the compliance of compulsory retirement ages with the Employment Directive. Here are a few examples:

In Germany, following the adoption of the new anti-discrimination law (Allgemeines Gleichbehandlungsgesetz: AGG), a group of three pilots filed a claim against Lufthansa, the German airliner, because they felt discriminated against by the upper age limit set at 60 by collective bargaining agreement despite the fact that federal law allow pilots to fly until the age of 65. On 14 March 2007, however, the Frankfurt Labour Court decided that the age limit imposed by Lufthansa was justified by a legitimate purpose, i.e. the safety of air traffic and passengers<sup>8</sup>. This decision was all the more surprising because pilots employed by other airline companies in Germany and elsewhere in the EU are allowed to fly over Germany until they turn 65.

In France, a group of 93 pilots from various airlines have set up an association called PNT65 and are suing the French government for violation of the principle of equal treatment enshrined in the EU Employment Directive. According to the claimants, this age limit was introduced by law in 1995 when Air France and Air Inter merged. Its purpose was to prevent Air Inter pilots from holding all the top positions in their joint seniority list<sup>9</sup>, a situation which would have been unacceptable for Air France pilots. The PNT65 group argues that pilots from companies established elsewhere in the EU have the right to fly over and land in France until the age of 65. In their view, the age limit imposed by law to airlines established in France therefore has nothing to do with the safety of air traffic and passengers and is not justified by a legitimate aim.

In France, Guy Roux, a famous football coach made the news when he was refused a contract as coach because of his age (he is 68). The legal committee

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<sup>8</sup> Arbeitsgericht Frankfurt, Urteil vom 14.03.2007, Az. 6 Ca 7405/06

<sup>9</sup> [http://www.aeromorning.com/chroniques.php?ch\\_id=266](http://www.aeromorning.com/chroniques.php?ch_id=266)

of the French Professional Football League (LPF) argued that he was over the age limit according to the professional football charter. This prompted President Sarkozy to declare that older people should be allowed to work for as long as they wish and are fit to. Will this lead to a ban on the compulsory retirement age in France?

In the UK, on 6 December 2006, the High Court heard a Judicial Review brought by Heyday, part of Age Concern, on the grounds that the UK Employment Equality (Age) Regulations 2006 fails to comply with the Directive in several respects. One part of this legal challenge relates to the 'default retirement age' which allows the mandatory retirement of employees over age 65. The judge agreed to refer the case to the European Court of Justice (ECJ). The ECJ Decision is expected during the second half of 2008. If the ECJ agrees with Heyday's interpretation of European law, what impact will this decision have on retirement provisions in other Member States?

The recent Palacios de la Villa case<sup>10</sup> is bringing some indication on the way the ECJ interprets the right of employers to terminate the employment of a worker who has reached the official retirement age. Our members feel, however, that many Member States need to engage in a thorough analysis of the justification for compulsory retirement ages.

AGE call on the European Commission to coordinate and facilitate an exchange of information on the debates and case law developing at European and national level on the issue of compulsory retirement ages.

- **Article 3: Scope**

In theory, all Member States have now transposed the Employment Directive including those who asked for an extension of the deadline allowed by the Directive with regard to the "age" ground. Some Member States have gone through quite an extensive reflection on what the Directive implies. Others have just copied and pasted the Directive.

More worryingly, it seems that the public authorities in some countries have not fully transposed all provisions of the Directive. In Germany, for example, the new equality legislation Allgemeines Gleichbehandlungsgesetz (AGG) does not cover termination of contracts. According to Dr Klaus Alenfelder, Permanent Representative of the European Anti-Discrimination Council to the Federal Government in Germany<sup>11</sup>, the AGG also contravenes the Directive with regard

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<sup>10</sup> <http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=en&num=79928983C19050411&doc=>

T&ouvert=T&seance=ARRET

<sup>11</sup> <http://www.eacih.org/>

to material and immaterial damages, the burden of proof and methods to substantiate this. These flaws in the law's fabric are being aggravated by the reluctant attitude of many judges and lawyers towards it. Courts for instance refuse to allow statistics as substantiation or they try to keep damages at an extremely low level.

More positively, a few Member States have gone beyond the minimum standards set out in the Directive to extend protection into the area of goods and services or to mandate an Equality Body to work on age issues. Neither of these provisions were required by the text of the Directive and AGE members welcome these initiatives.

AGE calls on the European Commission to assess carefully the way Member States have transposed the Directive to ensure that Article 3 is properly transposed in all national legislations.

- **Article 6**

We have noted that, for many governments, age discrimination is a relatively new concept and that some have failed to understand the complexities of the issues involved. The interpretation of Article 6 of the Directive which permits justification of differences of treatment on the ground of age varies greatly from one country to the other. Very similar provisions are banned in some countries and yet deemed justified in others. For example, the extra days of holiday that older workers enjoy above a certain age are justified as positive action in Belgium but banned in the Netherlands as a form of age discrimination.

In Italy, Lavoro 40+, an NGO representing workers aged 40+ excluded from the labour market, asked the Italian government to justify the upper age limit set at the age of 40 for the recruitment of judges. The Italian government has not provided any explanation yet. AGE and its member Lavoro 40+ are eager to hear what the legitimate aim is behind this upper age limit.

The Heyday case is challenging the UK Government's transposition of Article 6, on the basis that the domestic legislation has introduced an open-ended test for justifying direct discrimination on grounds of age, rather than defining the types of differences that may be justified as in the Directive. The same case has questioned whether there is a significant practical difference between the test for justification set out in Article 2(2) of the Directive in relation to indirect discrimination, and the test for justification set out in relation to direct age discrimination in Article 6(1) of the Directive. Both these points are now being considered by the ECJ.

As a consequence, there remains very substantial uncertainty across the Member States as to which age based differences of treatment should be justified and which ones should be banned. More needs to be done to harmonise

the interpretation of Article 6 to ensure equal protection against age discrimination to everyone across the EU. AGE therefore calls on the Commission to initiate a debate on Article 6.

- **Article 7: Positive action**

Some Member States do not seem to understand the concept of positive action when adopting measures which are aimed at improving the employability of some age groups by offering more flexibility for employers.

The problem with such measures is that they do not always deliver the expected results and they may be in violation of Article 8. Poorly designed positive action measures can result in stigmatising the target group or discriminating against other age groups. For example, in France, the government adopted in 2006 a law enabling employers to hire older workers under limited contracts for a longer period than younger workers. Eighteen months later the French government has just announced that this new measure has not delivered any result and is abandoned.

Observation from our members suggests that it is more effective to give positive incentives to older jobseekers as well as targeted support which responds to the needs of older workers such as ongoing training and actions to support the maintenance of health, rather than to reduce their social protection or to focus on financial penalties.

National governments need to develop comprehensive active ageing strategies which take into account the different facets impacting on the employment of older workers including occupational health, training and lifelong learning, information and advice for individuals and employers, enabling pension and social protection systems and a positive culture towards the productive contribution of older people. The main aim of active ageing policies should be to make the labour market “age neutral” or “age friendly”. Encouraging and training employment offices and counsellors to develop active labour market measures for older workers are also useful positive action measures.

- **Article 8: Minimum requirements**

As is the case for Article 6, Member States also seem to have difficulties understanding what Article 8 means and we were surprised to see that even European case law in that field does not seem to influence decisions made by other Member States. For example the Mangold v Helm ECJ case did not prevent France from adopting a very similar law in 2006 on limited contracts for seniors (see previous paragraph). Similarly the French “Contrat première

embauche (CPE)” which aimed at encouraging employers to hire young people by lowering the required social protection was a form of age discrimination and, in our view, a violation of Article 8. Eventually the French Government also had to withdraw their CPE proposal due to social unrest but no one questioned whether it was contravening Article 8 of the Directive.

Following the Mangold v Helm ECJ case, Germany has reviewed their legislative proposal and made a new proposal in the framework of their “Initiative 50 plus package”. The new law, which came into force in May 2007, allows employers to hire workers aged 52+ under fixed-term contracts for up to five years. To get around the Directive and the ECJ decision, the new German law will only apply to specific groups of older workers considered more “vulnerable” and in need of special support such as those who have either been unemployed, have received transfer benefits or have taken part in an employment programme run by the Federal Labour Agency for a minimum of four months. According to Dr Martin Trayer<sup>12</sup> (CODEX on line) *“it is doubtful, however, whether the new law is reasonable for several reasons. The time period of four months unemployment is relatively short. Moreover, the term “unemployment” is construed widely including times of garden leave or release during the notice period. The new law will therefore also cover employees in a transition period who have never actually been registered as unemployed. Unlike the previous provisions, the new § 14 (3) TzBfG does not contain any limitations on contracts with the previous employer. This may open floodgates for circumvention unless the courts narrow the scope of the new provision. “*

AGE feels that the European Commission could play a useful role in providing information and training to policy makers, lawyers, judges, equality bodies, NGOs, employers and trade unions to explain what Article 6 and Article 8 mean in concrete terms.

- **Article 9: Defence of rights**

AGE regrets that a few Member States have not yet properly transposed Article 9 (2) and have no legal provisions to allow associations to engage in discrimination procedures on behalf of victims. In some countries NGOs representing older people are faced with an additional problem. They are not considered by their public authorities as “having a legitimate interest in ensuring that the provisions of the Directive are complied with”, a condition, according to the Directive, to be allowed to engage in proceedings on behalf of victims.

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<sup>12</sup> <http://www.codex-online.com/codex/contents.nsf/WPrintArticles/D8D52EC496A00B92C2257308003326CB>

Although the defence of rights by NGOs is transposed in most Member States, it is practiced only sporadically. A lot remains to be done to remove legal barriers and provide support to NGOs to enable them to play their advocacy role.

On a more positive note, although the Directive does not impose on Member States the obligation to set up an equality body dealing with age discrimination, AGE members welcome the fact that some Member States have included the “age” ground in the remit of their Equality Body. The experience of AGE members shows that equality bodies can play a key role in providing information and advice on legal compliance, and the absence of a body of this nature represents a real gap and is detrimental to the defence of rights.

Age discrimination in employment is a new legal concept almost everywhere in the EU. For that reason, there is a lack of expertise at EU and national level. Judges, lawyers and other interested parties do not know where to find information on national verdicts on age discrimination. An independent European database centre would be very useful to provide updated and easily accessible information on EU and national age discrimination case law to all interested parties. The European Commission should continue to provide legal training for judges, lawyers, trade unions and NGOs to improve the long term impact of the Directive.

#### ***Article 10: Burden of proof***

Unfortunately several Member States have not transposed the burden of proof provision fully in line with the Directive. Some have weaker provisions than the Directive or put greater demands on the victims who are asked not only to prove that they experienced discrimination but also that they suffered disadvantage. Others such as Germany have decided that the provisions on the burden of proof do not apply to age discrimination cases.

With regard to the age ground, it is too early to evaluate the effectiveness of the shift in the burden of proof as case law is only starting to build up.

It should also be considered that it is often difficult - sometimes even impossible - for a worker or injured party to prove that s/he has suffered age discrimination. We receive quite regularly complaints from older workers who consider that they have been victims of age discrimination and report that they face huge difficulties in establishing the fact. Only very few manage to build their case and present it to court.

A lot needs to be done to enable victims to seek redress and to build the capacity of NGOs to provide information and support to victims. AGE therefore calls on the Commission to monitor the transposition and implementation of this Article carefully as this is a key provision of the Directive and a pre-requisite for its long term effectiveness.

○ **Article 11 Victimisation**

Member States have transposed this provision in very diverse ways giving the task of protecting victims from victimisation to equality bodies, ombudsmans, trade unions, NGOs, etc. In some countries, however, this provision has been transposed in too narrow a way and individuals are protected only from disciplinary action or dismissal by the employer rather than from any adverse treatment or consequences as the Directive states.

More worryingly, it seems that this provision is not preventing private initiatives such as the website<sup>13</sup> established in Germany by a group of lawyers<sup>14</sup> on which employers can post information, including name and address, of employees who have complained or filed a claim against their employer for discriminatory attitude. Such initiatives in our view contravene the spirit of the Directive and should be banned in application of Article 11.

Peer reviews on provisions set up by Member States to protect employees from victimisation can be very helpful to discuss examples of good practice and learn from the experiences of other Member States. The Commission should include this in its on-going monitoring exercise.

○ **Article 12: Dissemination of information**

Whilst most Member States seem to have achieved technical compliance with the Directive, most of them are not undertaking the promotional and awareness raising activities required in Article 12. Some progress has been made but many Member States still need to improve their performance with regard to actions to change social attitudes and national cultures. Governments should run national awareness campaigns on age discrimination targeting employers and the public at large to overcome stereotypes and negative attitudes against older workers. Such campaigns should be developed in consultation with trade unions and NGOs to ensure that the essential points are not missed and to guard against the reinforcement of stereotypes about ageing, as was the case of the French campaign on older workers. According to Anne-Marie Guillemard<sup>15</sup>, the French campaign failed because it tried to convince employers that older workers are as productive as younger ones using examples of performance which are not relevant to employers. According to Ms Guillemard, the Finnish awareness campaign was much more successful because it was directly relevant to employers.

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<sup>13</sup> <http://www.agg-hopping.de/>

<sup>14</sup> <http://www.gleisslutz.com>

<sup>15</sup> Prof. Anne-Marie Guillemard, *Prolonger la vie active face au vieillissement: quels leviers d'action? Les enseignements de l'étranger*, ANACT, Lyon, 2007

Unfortunately, older workers are too often pictured in the media as unproductive, costly and reluctant to adapt to change. Job advertisements often still continue to look for “young and dynamic” or “junior” employees including in the list of job openings published for the European Job Day in Brussels in September 2007, an event sponsored by the European Commission (see Euroclear advertisement seeking “young dynamics graduates” at <http://smooz.4your.net/jobdays2007/files/OffreHays.doc>). The media could play a key role by stimulating a constructive debate about demographic change, ageism, and the place of older people in society and in the labour market. They could develop guidelines regarding the image of older people in their communication channels and inform employers when their job advertisements include discriminatory language.

NGOs can also play a useful role by screening the media, including job advertisements, and alerting them whenever discriminatory language has been used. NGOs need to find creative ways to build support among the media and convince governments of the need to address ageist attitudes as part of their response to demographic change.

Finally, European Union campaigns and project funding must be acknowledged for the role they played in many Member States in raising awareness of social partners and the public. According to our members the European Commission campaign ‘For Equality. Against discrimination’ has delivered results in many countries, and the financial support made available to Member States by DG Employment for promoting the implementation of the Directive and the Community Initiative EQUAL were useful. The designation of 2007 as the European Year of Equal Opportunities for All has further helped raise awareness and has placed age discrimination within a debate on the benefits of diversity for European societies. These efforts should be pursued beyond the European Year.

### ***Articles 13 and 14: Dialogue with trade unions and NGOs***

We are not convinced that all Member States have addressed these issues in sufficient detail and we noted that only few of them have sought to involve the social partners or NGOs in the process of transposition or in the delivery of the requirements of Articles 12, 13 and 14.

These Articles are important provisions of the Directive which deserve proper implementation by Member States. NGOs and social partners need to be empowered to provide information and support to victims and to potential discriminators, to help them understand the issue of age discrimination and change their policies and practices. Many organisations of older people across the EU lack the ‘in house’ expertise and financial capacity to assist victims in

defending their rights in court and many organisations representing social partners have failed to prioritise the issue.

The Commission should help NGOs build their capacity to assist victims, including at national level, and should organise peer reviews involving key stakeholders (trade unions and NGOs) on the way Member States implement the provisions of Articles 13 and 14.

### ***Article 16: Compliance***

The implementation of Article 16 with regard to age is obviously going to take a long time as there are age limits in almost all collective agreements, internal rules and work regulations. In most countries the screening of age limits in these legally binding documents is still incomplete. The Commission will need to monitor progress made and make information available to interested parties as this could help other Member States take the necessary measures to ensure full compliance with the Directive.

In AGE's view, Member States need to engage in a thorough analysis of the justification for compulsory retirement ages. As mentioned earlier, there is considerable incoherence in the way compulsory retirement ages are justified. For example the justification used by Lufthansa (air traffic and passengers safety) to justify the upper age limit (60) it imposes on its pilots is not applicable to pilots employed by other companies in Germany or to pilots flying over Germany. Have Lufthansa been able to demonstrate that their older pilots are on average in poorer health and present a higher risk hazard compared to pilots employed by other companies in Germany?

The debate on compulsory retirement age is only starting and we expect more cases to deal with this issue in the future. The Commission could play a useful role by pressing Member States to speed up work to ensure compliance with this Article in line with the need to delay retirement age.

### ***Article 17: Sanctions***

In some countries, AGE members report that the sanctions foreseen by law are insufficient, inappropriate or virtually non-existent. Sanctions applicable to age discrimination cases are weaker than sanctions applicable to other grounds. As a result they will not have any deterrent effect on employers who will prefer to pay the small fine rather than change their attitude toward older workers. In a few other Member States, the sanctions foreseen in the legislation appear appropriate on paper. In Ireland, for example, those suffering discrimination or victimisation can be awarded compensation in the form of arrears of earnings for up to 3 years plus compensation for the effects of discrimination of up to two years earnings, together with reinstatement to their jobs. It is too early, however,

to know whether such sanctions will be effective as there is still little or no case law in most countries.

## **Conclusions**

While the Directive has led to many positive changes in the anti-discrimination laws of most Member States, there remain some formidable challenges to be tackled and a question mark remains around the scope of exceptions allowed on the ground of age.

The implementation of the Directive requires a range of mechanisms and strategies including compliance, proactive engagement and enforcement. Governments, specialised agencies, social partners and civil society organisations all have their distinctive roles to play. Litigation is an important tool and one that is being used increasingly. The number of preliminary references to the Court of Justice has steadily increased.

On the national level, most cases reported on age discrimination in employment concern job advertisements, recruitment processes and compulsory retirement ages.

It is important to recognise that anti-discrimination law has its limits and that on its own it does not necessarily reverse the legacy or effects of cumulative discrimination that may have grown over time. Positive action measures are therefore indispensable to securing equal opportunities for all in employment.

## **AGE Recommendations**

Based on the feedback received from our members and experts, AGE would like to address the following recommendations to policy makers and NGOs representing older people.

### ***AGE call on the European Commission to:***

- Carry out an extended review of the implementation of the Directive once every five years to assess the way Member States have:
  - transposed all key provisions of the Directive;
  - interpreted the exemptions allowed under Article 6;
  - interpreted Article 8 on minimum requirements;
  - sought to involve social partners and NGOs in the process of transposition and monitoring of the implementation of the Directive;
  - disseminated information about employee's rights to potential victims.

This review should include an evaluation of the effects of labour law, pension and flexicurity reforms on older workers and their compliance with the Directive's

provisions on age discrimination. This review should be part of the Social Agenda and particular attention should be paid to the impact of the Directive on older workers, older women and older migrants.

- Coordinate and facilitate exchange of information on debates and case law developing at national level on:
  - the justification for compulsory retirement ages;
  - positive action;
  - sanctions.
- Support the establishment of an independent European database centre to provide updated and easily accessible information on EU and national age discrimination case law to all interested parties.
- Support exchange of information and good practice between Member States through peer reviews and information campaigns involving NGOs.

**AGE call on Member States to:**

- Support AGE's call to the European Commission and agree to make the on-going monitoring of the implementation of the Employment Directive an essential part of the Social Agenda.
- Make a clear commitment to fully implementing the Directive with regard to the "age" ground and to ensuring that all exceptions under Article 6 and Article 8 are justified.
- Assess the impact of labour law, pension and flexicurity reforms on older workers and their compliance with the Directive's provisions on age discrimination, in particular Article 6 and Article 8.
- Support trade unions and NGOs to enable them to provide information and support to potential victims of discrimination.
- Develop and run information campaigns on age discrimination in close cooperation with trade unions and NGOs representing older people.

**AGE call on NGOs to:**

- Build capacity to provide information and support to potential victims of age discrimination.
- Raise awareness of the rights conferred to victims of age discrimination by their new national legislation.

- Lobby their government to influence positive action and active ageing policies that suit the needs of older workers.
- Raise awareness of the needs of older women and older migrants in national debates on labour law, pension and flexicurity reforms.
- Develop cooperation with other NGOs representing excluded groups to seek support and synergies.

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