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## Combating discrimination against older persons on the labour market

### Report<sup>1</sup>

Committee on Equality and Non-Discrimination

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### Summary

Age discrimination is one of the most widespread forms of discrimination in Europe. In the current European context of the economic crisis and an ageing population, older workers face increased difficulties relating to all aspects of employment: they still have to contend with inequality and stereotyping,

As age discrimination goes hand in hand with the more general phenomenon of “ageism”, driven by a negative view of ageing in society, it is vital to strive to change mentalities in order to do away with stereotypes and build a positive and true image of all age brackets.

In order to tackle age discrimination, the member States of the Council of Europe should establish effective legal provisions to include age among the criteria of non-discrimination and to ensure the implementation of non-discrimination legislation. They should also introduce positive action for older persons wishing to enter or re-enter the labour market, as well as for older employees, while duly taking into account the particularly vulnerable position of certain groups affected by multiple forms of discrimination, owing to their age as well as other criteria.

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1. Reference to committee: [Doc 12947](#), Reference 3883 of 29 June 2012.



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## A. Draft resolution<sup>2</sup>

1. Age discrimination is one of the most widespread forms of discrimination, although there are substantial differences between Council of Europe member States in terms of awareness of the problem and the scale of efforts to combat it. In the sphere of employment, discrimination against older people is reflected in differences in treatment that are neither justified nor necessary, especially where access to recruitment and further training is concerned.
2. In the current European context of economic crisis and the ageing of the population, older workers face increased difficulties relating to all aspects of employment: they still have to contend with inequality and stereotyping, while competition is fiercer; in several countries the retirement age is being raised while many older staff are being pushed into early retirement.
3. The Parliamentary Assembly believes it necessary to establish effective legal provisions to tackle age discrimination and also to introduce positive action for older persons wishing to enter or re-enter the labour market as well as for older employees. In this context, the Assembly stresses that the particularly vulnerable position of certain groups, affected by multiple forms of discrimination owing to their age as well as other criteria, should be duly taken into account within the framework of legislative and political measures in this area.
4. Moreover, age discrimination goes hand-in-hand with the more general phenomenon of “ageism”, driven by a negative view of ageing in society. The Assembly considers it vital to strive to change mentalities in order to eliminate stereotypes and build a positive and true image of all age brackets.
5. In the light of these considerations, the Assembly invites the member States of the Council of Europe to:
  - 5.1. ensure that their national legislation includes age among the criteria of non-discrimination and takes account of the phenomenon of multiple discrimination;
  - 5.2. ensure that anti-discrimination legislation is implemented effectively, including through the introduction of monitoring arrangements and an effective system of incentives and sanctions where applicable;
  - 5.3. introduce positive measures aimed at facilitating access to employment for older people, taking into account the situation of particularly vulnerable groups;
  - 5.4. make it easier for older workers who have had long periods of unemployment or gaps in their employment to re-enter the labour market;
  - 5.5. develop access to further training for older persons who are in employment or unemployed so that they can update their knowledge, perfect their skills and adapt to new technologies and technological developments in their professional field;
  - 5.6. support information campaigns aimed at changing mentalities regarding ageing and raising public awareness of the issue of ageism and its ramifications for everyday life;
  - 5.7. encourage mentoring programmes to facilitate inter-generational dialogue and promote exchanges of experience with a view to eliminating the stereotyping of older people.

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2. Draft resolution adopted unanimously by the committee on 25 June 2013.

## B. Explanatory memorandum by Ms Gafarova, rapporteur

### 1. Introduction

1. This report originated in a motion for a resolution on “Addressing age discrimination on the labour market”.<sup>3</sup>
2. Age discrimination is characterised by differential treatment and denial of rights or opportunities unjustified on any other grounds. This form of discrimination has become a sociological concept in its own right known as ageism.<sup>4</sup> Like racism and sexism, ageism concerns prejudices on the part of one group against other groups.
3. In the context of economic crisis, access to the labour market is difficult for everyone. The population groups which suffer discrimination are the hardest hit. Furthermore, the most disturbing manifestations of contemporary ageism include discrimination in the employment field (30-year-olds deemed “too young” and 40-year-olds dismissed as “too old!”), in access to further training (which is more difficult from 40 onwards) or in access to certain types of assistance or treatment.
4. Even though many types of ageism also affect young people, this report will not address the issue of discrimination against young people on the labour market, since the Parliamentary Assembly has already dealt with this subject in its report on “Reversing the sharp decline in youth employment”.<sup>5</sup> The Assembly considers that youth unemployment and under-employment are mainly due to the mismatch between youth qualifications and labour market needs, rapid changes in labour market conditions, structural changes in the economy and the erosion of public expenditure on integrated strategies to promote employment.
5. My report therefore concentrates on the issue of age discrimination against elderly people on the labour market. As part of the preparation of this report, the Committee on Equality and Non-Discrimination held a hearing with Ms Anne Sonnet<sup>6</sup> from the Organisation for Economic Co-operation and Development (OECD), in Strasbourg on 25 April 2013.

### 2. Demographic changes and the labour market

6. Our society is multi-generational, and demographic trends show that it is increasingly so. At the present time, increasing life expectancy means that people of retirement age and above account for a large proportion of the population, and in fact our societies now comprise three, four or even five generations.
7. “By 2050, the world population of those over the age of 60 is projected to triple, reaching 2 billion people. Europe has the highest proportion of older people and this will remain so for decades – more than one third of Europe’s population is expected to be over 60 by 2050. This will require major policy and a shift in attitudes towards age”.<sup>7</sup> In this connection, [Resolution 1864 \(2012\)](#) “Demographic Trends in Europe: turning challenges into opportunities”<sup>8</sup> provides valuable detailed information on demographic change in Europe.
8. Moreover, according to various authors,<sup>9</sup> the emergence of the industrial society brought about major changes which lowered the respected status and role of elderly persons. Much greater importance came to be attached to technological skills than to experience, which increasingly eroded older people’s traditional status in society. Compulsory retirement was a further product of the industrial revolution. Elderly workers were taken

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3. [Doc. 12947](#).

4. When the term “ageism” was first introduced (in 1969 in the United States by the gerontologist Robert Butler), it mainly referred to discrimination against elderly persons, but today it applies to all persons suffering such discrimination regardless of their age.

5. [Resolution 1828 \(2011\)](#) and [Doc. 12626](#), report by the Committee on Economic Affairs and Development (Rapporteur Ms Marija Pejčinović-Burić); and [Doc. 12665](#), opinion of the Committee on Social Affairs, Health and Family (Rapporteur: Ms Marietta Karamanli).

6. Ms Sonnet is a Principal Analyst for Youth and Older Workers Policies in the Employment Analysis and Policy Division, Directorate for Employment, Labour and Social Affairs, OECD.

7. See [Doc. 12817](#), report by the Committee on Migration, Refugees and Displaced Persons (Rapporteur: Ms Nursuna Memecan).

8. *Ibid.*

9. See Opinion on ageism against the elderly: the current situation, Québec Council of Elders, March 2010, [www.conseil-des-aines.qc.ca](http://www.conseil-des-aines.qc.ca).

out of the production chain on grounds of age rather than skills. This had major consequences in terms of the social representation of “old age” in the 20th century, because elderly people came to be considered as less competent and productive.

9. The ageing of the population is a challenge which must be tackled by all European regions. The hitherto marginal problem of what to do with elderly workers is becoming more pressing, and in particular it has taken on a different perspective. The question now is how to preserve elderly workers’ competences and know-how within businesses: keeping workers aged 55 or over in employment and young retirees returning to work are now topical issues.

Some statistics:

- by 2050 the number of persons above the age of 60 is expected to triple worldwide, totalling 2 000 million individuals;
- Europe is the only continent which will have a negative population growth rate over the next fifty years;
- in Europe, by the middle of this century, the European Union should have 48 million fewer persons aged between 15 and 64 and 58 million more persons aged over 65.<sup>10</sup> Over the next thirty or so years, the working population is set to decline at a rate of 1 to 1.5 million persons per year. Concurrently, the number of persons aged 60 and over should increase at a rate of 2 million per year.<sup>11</sup>

### 3. Discrimination on the labour market

#### 3.1. Dimension

10. In its assessment of the implementation of the 2011 recommendations in matters of combating age discrimination, the OECD notes that although there is no objective way of measuring age discrimination, studies show that in 2010, in the 27 European Union countries, between 2% and 9% of all workers aged 50 and over report instances of age discrimination at their workplace.

11. The data diverge from country to country: in Denmark and Luxembourg, discrimination has decreased over the last decade, while in Greece and Sweden it has intensified. Discrimination against workers over the age of 50 may take a variety of forms, for example a lower level of replies to their job applications or fewer training opportunities.

#### 3.2. Difference between distinctions based on age and discrimination

12. There are situations in which distinctions based on age are justified because they have a legitimate aim and the means of achieving this aim are appropriate and necessary. This applies to such positive measures as facilitating access to specific services or benefits. Also in this labour market context, there may be cases where distinctions based on age are justified (for example recruiting a young actor to play the part of a young person).

13. These cases are fairly rare, however. In France, on the other hand, statistics from the Discrimination Monitoring Centre show that age is the main factor of discrimination in employment. It is more important than ethnic origin, sex or disability in applicants for a job which does not stipulate age criteria, and this also applies to many other countries.

14. Ageism in respect of employment is reflected in discriminatory language, attitudes and practices based on age. These conscious or unconscious phenomena are guided by the various stereotypes attaching to workers.

15. The prejudices pertaining to ageing population groups are as follows:

- physical difficulties: elderly workers are considered as being slow, requiring rest periods and being physically incapable of carrying out their work;

10. Demography, active ageing and pensions, Social Europe Guide, Volume 3, European Commission Directorate General of Employment, Social Affairs and Inclusion, May 2012.

11. For an in depth statistical study of the development of the population and the labour market in European Union countries, see the study by the Directorate-General of Internal Union Policies, Employment Policy Department, “Combining the entry of young people in the labour market with retaining older workers”, April 2013.

- mental and cognitive difficulties, suggesting that elderly workers deal poorly with emergency situations, are unsure of themselves, are prone to mistakes, find it difficult to concentrate, take a long time dealing with new operations, are mentally incapable of keeping up with the pace of work, have limited skills and lack creativity or capacity for innovation;
- elderly workers have more accidents and occupational illnesses and recover more slowly. Elderly workers are also associated with extra costs, particularly in terms of insurance;
- elderly workers are too old for training or are reluctant to engage in it, have a higher rate of absenteeism, lack ambition and are simply waiting for retirement age;
- they have difficulties in relations with young people, are resistant to change, etc.

16. As is the case with any type of discrimination based on prejudices, the danger lies in generalisation.

17. In fact, no sociological study has ever identified a link between work performance and age. There are also many other criteria to be considered. There is no systematic, universally applicable crucial age at which capacities begin to decline: a person's capacities at the end of his/her career vary from one individual to another and are closely linked to working conditions over the whole past career. In order to retain their work performance, elderly workers use various strategies based on their occupational experience.

### **3.3. Discrimination in recruitment**

18. Discrimination can occur at any stage in an employment relationship. However, given the competition on the labour market, older persons suffer greater discrimination in recruitment than other workers.

19. In fact, age is the personal (differentiating) criterion for recruitment least often acknowledged by employers, after the applicant's external appearance (dress sense, mode of speech, general physical appearance).

20. The argument used by employers to justify age distinction in the workplace is economic cost-effectiveness. Worker cost-effectiveness has a central place in the present-day labour market, placing older workers in a separate category. When they seek employment, they are in competition with both younger workers and persons on early retirement, or even pensioners seeking supplementary employment (see below).

### **3.4. Discrimination in access to further training**

21. Older workers also face direct discrimination in access to training. The rapid rate of change in the contemporary economy means that workers must now have advanced skills and must build on them at the same rate in order to maintain their performance. One means of meeting this requirement is worker training. However, because of expanding knowledge and technology, elderly workers usually have fewer advanced technology qualifications than younger workers. In fact, they are often more exposed to exclusion from the labour market and are laid off as soon as any redundancy emerges, as employers often consider it is not worth training someone who will soon retire. Yet research shows that training workers, whatever their age, increases productivity.

22. Furthermore, it must be acknowledged that at the end of their careers some workers may be more reluctant to engage in further training or adapt to new technology on the pretext of nearing retirement. Such elderly workers are themselves promoting prejudices and incorporating into their conduct the notion that they are too old to learn.

23. I am convinced that if they wish to receive training, older workers must be allowed to engage in lifelong learning for professional reasons, for their personal development and satisfaction and also to enable them to continue to participate productively in community life. This is the price for ensuring that the ageing of the population is an asset rather than a social burden.

### **3.5. Redundancies and early retirement**

24. The face of retirement has greatly changed over the last few decades, and it will continue to change with the impressive baby-boomer generation arriving at retirement age. In this connection, I would refer to the report on "Decent pensions for all"<sup>12</sup> and [Resolution 1882 \(2012\)](#).

25. In order to cut wage bills and reduce pressure on employment in a specific economic context, governments and businesses have reacted by introducing programmes to speed up the removal of ageing employees from the working population. However, the incentives for early retirement and golden parachutes are having mass consequences. These practices underestimate the negative effects of the overall reduction of the working population.

26. Such policies bear the imprint of the prejudices against elderly people in general and the ageing working population. The fact is that, today, the ageing of the population is often seen as a social burden.

27. Even though early retirement is often accompanied by financial compensation, it is sometimes in effect a case of unemployment in a different guise. We often hear that an elderly worker should reap the fruit of his hard work and enjoy a well-deserved retirement. Early retirement might thus seem innocuous, or indeed well-intentioned, but it can also turn out to be imposed vis-à-vis persons who wish or need to continue working.

28. In fact, early retirement is less and less a matter of choice and is increasingly being dictated by pressures. Early retirement also enables businesses to bring new blood into their workforce by laying off their ageing employees, who are seen as unproductive. Many employers would like to shed elderly workers, especially trade unionists, because they require higher wages than younger and non-union employees, who are not necessarily in a position to claim their rights.

29. Older workers often experience long periods of unemployment after being made redundant. Workers over the age of 45 remain unemployed longer than their younger colleagues. Those with fewer qualifications who have worked their whole lives in a sector which is currently in decline or exposed to heavy international competition are at particular risk of finding themselves in insecure or unskilled employment, or even permanent unemployment.

30. When such workers do find new employment, the wages are often lower than their previous earnings. Moreover, workers are more liable to feel discouraged after a redundancy and to abandon efforts to find a new job. Losing a job at any age can lead to problems such as poverty, loss of self-esteem, a feeling of insecurity, boredom and isolation, which can affect physical and mental health.

31. Workers aged 55 and over may also be in competition with retirees who wish to supplement their retirement income, but who can accept low wages since they are already in receipt of a pension. In fact, many people who have taken early retirement realise that they cannot survive on the allowances they receive without sliding into poverty. The current severe recession also means that retirees returning to work in order to top up inadequate retirement pensions often have their pensions docked or are more heavily taxed on their additional activity. These forms of discrimination are exacerbated in a labour market under pressure.

32. In our ageing Europe, therefore, with its ever-increasing life expectancy, our aim must be to improve the balance between the duration of working life and that of retirement. In order to achieve this, the European Commission White Paper on retirement issued in February 2012 advocates encouraging the populations of member States to remain longer in employment, and therefore recommends raising the legal retirement age. Nevertheless, the solutions and the age limits cannot be the same for all States because of their differing demographic situations.

### **3.6. Multiple types of discrimination against older women**

33. In Europe, life expectancy is 76 for men and 82 for women. This difference is a discriminatory factor which must be taken into account in addressing the issue of population ageing. That said, it would appear that the gap between female and male life expectancy is tending to decrease, particularly because of increasingly similar lifestyles. Moreover, the gap between life expectancy in good health of the male and female populations is smaller than that for life expectancy in absolute terms. The gap between male and female life expectancy in good health is now less than one year.

34. The dual discrimination often suffered by older women in our societies stems from the fact that women are the subject of both age and gender discrimination. In fact:

- older women are harder hit by poverty because they have built up smaller retirement pensions than men. The lower level of pensions is broadly linked to wage levels, which are also generally lower than those enjoyed by men;

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12. See [Doc. 12896](#), report of the Committee on Social Affairs, Health and Sustainable Development (Rapporteur: Mr Denis Jacquat).

- the different care functions traditionally carried out by women throughout their working lives, such as maternity leave, childcare and the assistance provided to elderly persons, place women in situations of work discontinuity, which has an impact on their retirement pensions;
- consequently, women often become more dependent than men on public and private services, as well as public health services, whether as care providers or recipients. This places them in a difficult position if such services are unavailable or deficient;
- older migrant women suffer many different types of discrimination, including discrimination based on their age, gender and country of origin.

#### 4. International instruments on age discrimination

35. The reference framework at international level is still International Labour Organization (ILO) Recommendation No. 162 of 1980,<sup>13</sup> which sets out detailed recommendations to States on the development of national policies and legislation. Although Recommendation No. 162 does not define “older workers” as such, it recommends that “employment problems of older workers should be dealt with in the context of an overall and well balanced strategy for full employment and, at the level of the undertaking, of an overall and well balanced social policy, due attention being given to all population groups, thereby ensuring that employment problems are not shifted from one group to another”.

36. At European Union level, reference to age discrimination on the labour market is to be found in Articles 10 and 19 of the Treaty on the Functioning of the European Union. This provision empowers the European Union to combat discrimination based on six criteria, including age. In turn, Council Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation, and includes age as a potential ground for discrimination. The directive prohibits direct and indirect discrimination (including harassment and any instructions to discriminate) and sets up national legal remedies in case of discrimination. With a view to ensuring balance for employers, it introduces the concept of differences of treatment “objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives”.

37. Even though it would be impossible to define a single legislative framework suited to all situations, some parameters can be established.<sup>14</sup> In order to combat effectively discrimination against older workers on the labour market, national legislation can, in particular, make provision for:

- the employability of older workers: restrictions on, or the prohibition of, access by older workers to the labour market must be clearly defined as discriminatory and prohibited;
- employment protection: older workers must be protected against dismissal on the ground of their age, and their working conditions and career progression and advancement must not be affected by their age;
- measures to prevent age discrimination;
- definition of the responsibilities of all actors concerned in the workplace.

#### 5. Promoting positive action to protect groups subject to discrimination

38. Article 7 of Directive 2000/78/EC provides that States may maintain specific measures to prevent or compensate for disadvantages, which means that the proportionate use of age distinctions to compensate for a disadvantage may be regarded as objectively justified as a form of positive discrimination. Promoting the vocational integration and protection of vulnerable groups is accordingly a legitimate objective.

39. European Union member States have started to transpose the directive into national legislation.<sup>15</sup> Some States have established specific employment measures to integrate particular groups into the working population.

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13. [www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:R162](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:R162).

14. See ILO report, Conditions of Work and Employment Series No. 20, “Age discrimination and older workers: Theory and legislation in comparative context”:

[www.ilo.org/travail/whatwedo/publications/WCMS\\_TRAVAIL\\_PUB\\_19/lang--en/index.htm](http://www.ilo.org/travail/whatwedo/publications/WCMS_TRAVAIL_PUB_19/lang--en/index.htm).

15. See “Age discrimination and European law”, Colm O’Cinneide, Fundamental rights and anti-discrimination, European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, Unit D.3, April 2005: [www.non-discrimination.net/content/media/Age%20discrimination%20and%20European%20Law\\_en.pdf](http://www.non-discrimination.net/content/media/Age%20discrimination%20and%20European%20Law_en.pdf).

40. States may also make provision for special protection for older workers in the case of dismissals. In Slovenia, for instance, Article 100 of the Law on Employment Rights sets out the criteria for dismissal decisions, with age being one of the factors which employers must take into account. This provision is regarded as a good example of positive action insofar as older workers are less likely to find new employment. Higher redundancy payments are also made to older workers in the Netherlands, as well as in the United Kingdom and several other European Union member States.

41. In terms of positive action, however, the mixed results of such measures must also be borne in mind. For instance, the introduction of special protection for certain categories may lead some employers to try and get workers to retire by treating them badly. Measures to change employers' and employees' attitudes must therefore be considered at the same time as the legislative measures needed to protect vulnerable groups.

## 6. Mentoring programmes

42. In addition to the legislative measures needed to combat age discrimination, dialogue and partnership between all the parties concerned must be promoted if stereotypes are to be combated and attitudes are to be changed fundamentally.

43. In this respect, mentoring programmes are a very worthwhile practice for combating age discrimination. Mentoring involves a voluntary, long-term relationship between an experienced "mentor" and a promising younger "mentee" who is able to benefit from the mentor's experience, know-how and network of contacts.

44. Provided that they are drawn up and implemented methodically, mentoring programmes are career and staff management tools which benefit both the mentors and the mentees. In particular, mentors:

- gain in enthusiasm and motivation on account of their role as experts;
- acquire a better understanding of the obstacles encountered lower down in their organisations;
- develop coaching, advisory, listening and role-model skills;
- develop and implement more personal styles of leadership;
- capitalise on their know-how and share their knowledge;
- increase generational awareness and intergenerational solidarity.

45. For their part, mentees:

- receive support from the start of their careers;
- gain quicker access to their companies' expertise and know-how;
- learn to put their ideas and strategies into practice in a safe environment;
- receive support with taking initiatives and seeking out new ideas;
- improve their career prospects and expand their in-house networks;
- also increase generational awareness and intergenerational solidarity.

46. Regardless of its duration or whether it is carried out in groups or individually, mentoring offers the great advantage of capitalising on the skills and potential of both younger and older employees, thereby making intergenerational differences an asset for companies and their staff.

47. I firmly believe that this type of programme must be encouraged so as to change attitudes and combat the stereotypes on which age discrimination is based, while also promoting intergenerational solidarity.

## 7. Conclusions

48. Ageing populations present a challenge which must be faced by all Council of Europe member States. The disparities between different countries necessitate measures tailored to each situation, but in any case all countries must address the issue of older workers' potential.

49. Older workers will inevitably have to remain in work longer on account of demographic shifts and the general economic context: this makes it necessary to change attitudes and support people at the beginning of, during and also at the end of their careers.

50. Ageism in the workplace is currently reflected in discriminatory language, attitudes and practices based on age. These conscious or unconscious phenomena are guided by the various stereotypes attaching to older workers. There is an urgent need to recognise this problem and confront it by establishing effective legal mechanisms to combat discrimination and positive measures to facilitate access to the labour market and training for older workers.

51. Dialogue and partnership are central to an effective policy here, which must involve co-ordination between all players, including older workers and the general public. This means taking measures to encourage employers not to discriminate against older workers and also measures to support older workers directly in terms of access to the labour market, to remove the obstacles to such access and ensuring their professional development.

52. It is just as important and necessary to seek to change attitudes so as to eliminate stereotypes concerning older people and build a realistic and positive image of older workers.