



The EU legal framework on antidiscrimination and the work of the European Commission to prevent age discrimination

Intergenerational Bargaining in Europa
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Principle of non-discrimination in the Treaties

Article 2 TEU

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, *non-discrimination*, tolerance, justice, solidarity and equality between women and men prevail.

Article 19 TFEU

Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them on the Union, *the Council* acting unanimously in accordance with a special legislative provision and after obtaining the consent of the European Parliament, *may take appropriate action to combat discrimination* based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.



Charter of fundamental rights of the EU

- **Title III: 'Equality'** with Articles on equality before the law, principle of non-discrimination, cultural, religious and linguistic diversity, equality between women and men, the rights of the child, the rights of the elderly and integration of people with disabilities.
- **Article 21: 'Non-discrimination'**: 1. Any discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, **age** or sexual orientation shall be prohibited.
- **The scope of application the Charter**: 'addressed to institutions, bodies, offices and agencies of the union with due regard for the principle of subsidiarity, and to the Member States only when they are implementing Union law' (Art. 51)



The anti-discrimination Directives

- ✓ Racial Equality Directive 2000/43 – race / ethnic origin
- ✓ Employment Equality Directive 2000/78 – religion, disability, age and sexual orientation

Scope of application

Material scope

The field of employment and occupation

- ✓ **Access to employment + promotion**
- ✓ **Working conditions (incl. pay and dismissal)**
- ✓ **Vocational training**
- ✓ **Membership of organisations**

Race Equality Directive also covers

- ✓ **Education**
- ✓ **Social advantages**
- ✓ **Social protection and healthcare**
- ✓ **Goods and services, incl. housing**

The concept of discrimination

Article 2:

- **Direct discrimination**
- **Indirect discrimination**
- **Harassment**
- **Instruction to discriminate**



Direct discrimination

...occurs, where one person is treated less favourably than another is, has been or would be treated in a comparable situation on any of the grounds covered by the directive (racial or ethnic origin, religion or belief, disability, age, sexual orientation)

Indirect discrimination

...occurs, where an apparently neutral provision, criterion or practice would put persons having a particular racial or ethnic origin, religion or belief, disability, age, or sexual orientation at a particular disadvantage compared with other people.

Justification: This treatment is not considered discrimination if the provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.



Harassment

When an unwanted conduct related to any of the grounds of the Directives (sex, race or ethnic origin, religion or belief, disability, age, or sexual orientation) takes place

with the purpose or effect

- of violating a person's dignity
- and of creating an intimidating, hostile, degrading, humiliating or offensive environment.



Exceptions

NOT all differences of treatment automatically constitute discrimination. Different treatment based on:

- **nationality**
- **positive action**
- **age and age requirements**
- **genuine and determining occupational requirement**
- **religion when a specific ethos is required**
- **“reasonable accommodation” for disabled persons might be justified.**



Age requirements

Differences of treatment on grounds of age shall may objectively and reasonably justified by a legitimate aim (e.g. legitimate employment policy, labour market and vocational training objectives), and if the means of achieving that aim are appropriate and necessary.

Examples (non-exhaustive):

- *the setting of special conditions on access to employment and vocational training for young people or older workers to promote their integration;
- *the fixing of minimum conditions of age, professional experience or seniority for certain professions;
- *the fixing of a maximum age for recruitment based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.



Landmark judgments of the Court of Justice of the EU (CJEU)

Mangold (C-144/04) – age as general principle of EU law setting aside provisions of national law and applying even before the deadline for transposition expired

Pallacios de la Villa (C-411/05)- the setting of compulsory retirement at the age 65 agreed in a collective agreement of was justified as a social policy objective(intergenerational equality), broad margin of discretion for Member States.



Further CJEU judgments on age

Many cases on pensionable age & retirement:

(C-447/09, Prigge (incoherent retirement provisions for pilots);

C-159/10, Fuchs (pension to be taken between 65 and 68);

C-250/09, Georgiev (retirement of university professor at 68);

C-45/09, Rosenblatt, automatic termination at the age of 65 years);

C-341/08, Petersen (panel dentist authorisation ending at the age of 68 was inconsistent as dentist outside the panel system could go on working);

C-388/07, Age concern (right of employers to dismiss employees at the age of 65).

Further age-related judgments

Judgments on age-related grading:

C-297/10 Hennings (grading and pay, rectification of an age-discriminating system)

C-501/12 Specht (age discriminating grading and its correction)

Judgment on age limit of 30 for fire fighters:

C-229/08 Wolf (justified because of high physical demands)



Judgments on the protection of younger workers against age discrimination

C-555/07, Küçükdeveci (working times before the age of 25 are not taken into account for calculating the notice period; inconsistent)

C-88/08, Hütter (apprenticeship time completed before the age of 18 is not taken into account for grading is inconsistent)



Scope and protection

of the EU Directives

Grounds/ Field covered	Race 2000/43/ EC	Religion 2000/78/ EC	Disability 2000/78/EC	Age 2000/78/ EC	Sexual orientation 2000/78/EC	Gender 2004/113 /EC & 2006/54 /EC
Employment & Vocational training	Yes + Equality body	Yes	Yes	Yes	Yes	Yes
Education	Yes + Equality body	No	No	No	No	No
Goods and Services	Yes + Equality body	No	No	No	No	Yes + Equality body
S o c i a l protection & Health	Yes + Equality body	No	No	No	No	Yes + Equality body



New proposal for a Directive

Presented in July 2008 in order to close the gap:

Prohibits discrimination on grounds of disability, age, religion & belief and sexual orientation outside employment:

- Social protection (social security, health care)
- Social advantages
- Education
- Access to goods & services, including housing



Monitoring work on the two anti-discrimination directives

In 2014, a Commission report on the implementation of the two anti-discrimination directives was published:

http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf

In its annex to this report the Commission has published guidelines on how to support victims of discrimination, important case law and material about the most important national provisions related to age:

http://ec.europa.eu/justice/discrimination/files/swd_2014_5_en.pdf



Infringement procedures

In case of non-compliance of national provisions with EU-law , the Commission will start an infringement procedure (two stages: Letter of formal notice and Reasoned opinion).

After completion of this two stage procedure, the case is referred to the CJEU (which may also rule on monetary sanctions against Member States)



Thank you for your attention !

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