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EU Age Discrimination Law and EU Policies: Opportunities and Barriers for Regulation Targeted at Younger and Older Workers

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Introduction

- A discussion of EU age discrimination law and EU policies for younger and older workers and the interaction of law and policies
- A discussion of the ways in which EU law and policies hinder or enable intergenerational bargaining and age-related regulation and measures targeted at younger and older workers
- *Intergenerational bargaining*: the integration of policies and strategies for younger and older workers through collective bargaining and social dialogue
- The concept of *younger* and *older workers*
- Report written by Beryl ter Haar and Mia Rönömar



Treaty Provisions and EU Charter of Fundamental Rights

- Art. 3(3) TFEU: social market economy; solidarity between generations
- Art. 8 and 10 TFEU: mainstreaming approach in relation to equality and non-discrimination
- Art. 152, 154-155 TFEU: European Social Dialogue
- Art. 6 TEU: EU Charter of Fundamental Rights primary law; equality before the law (Art. 20); non-discrimination (Art. 21); equality between men and women (Art. 23); rights of the elderly (Art. 25) and right to collective bargaining (Art. 28)



Age in EU Social Policies

- Europe 2020 Strategy; the European Employment Strategy; and the Social Investment Package – and the open method of coordination; European funds; policy recommendations and guiding resolutions
- EU policies for younger workers and persons (such as the EU Youth Strategy, Youth on the Move)
- EU policies for older workers and persons (such as the EU Active Ageing Strategy; the European Year for Active Ageing and Solidarity between Generations 2012)
- European social partners and intergenerational bargaining



EU Age Discrimination Law I

- The rationale for EU non-discrimination law, and the role of age in labour law and labour markets
- The (2000/78/EC) Employment Equality Directive
- Article 6 and justification of differences of treatment on grounds of age
- The social partners and collective bargaining – a broad margin of appreciation



EU Age Discrimination Law II

- (Extensive) CJEU case law on older workers: more general systems of mandatory retirement; mandatory retirement for specific professional groups or premature retirement; collective dismissals, specific employment protection for older workers and seniority rules
- (Limited) CJEU case law on younger workers
- Different standards of justification: 'control' standard for more general systems of mandatory retirement; stricter standard for mandatory retirement for specific professional groups or premature retirement; stricter standard for collective dismissals and age discrimination of younger workers



Conclusions

- EU Treaties: strong legal basis for age discrimination law, weak legal basis for policies for younger and older workers
- EU policies: mostly specific age-related regulation and measures, a lack of intergenerational approaches, an ambiguous role for social partners
- EU age discrimination law: expanding, different standards of justification, a broad margin of appreciation for Member States and social partners, enables intergenerational bargaining and collective bargaining on age-related measures for younger and older workers
- Limited interaction between EU law and policies
- CJEU case law on mandatory retirement – and its complex relation to the ban on age discrimination, active ageing, employment protection and the 'lump of labour fallacy'





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