

FOCUS



Shifting perceptions: towards a rights-based approach to ageing



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Introduction

This focus explores the slow but inexorable shift from thinking about old age in terms of ‘deficits’ that create ‘needs’ to a more comprehensive one encompassing a ‘rights-based’ approach towards ageing. This gradually evolving paradigm shift strives to respect the fundamental right to equal treatment of all individuals, regardless of age – without neglecting protecting and providing support to those who need it. A human rights approach does not contradict the reality of age-specific needs; on the contrary, a rights-based approach enables one to better meet needs, as required, while framing them in a human rights-based narrative.

All individuals have an inherent right to human dignity, which is inviolable and must be protected and respected. Fundamental rights, whether civil and political or social and economic, as enshrined in the Charter of Fundamental Rights of the European Union, and all other international human rights instruments, do not carry an expiry date. Rights do not change as we grow old, and their full respect on equal terms is an essential precondition for living a dignified life, defined by choice and control, autonomy and participation, whatever one’s age.

In modern societies, however, ‘old’ age has come to bear negative connotations and ‘old people’ are often thought of as a burden, especially those who need the support of social protection systems. Ageing appears more in public discourse in connection to a progressive loss of physical and mental capabilities than to positive aspects, such as the accumulation of experience. This understanding of ageing is confirmed by policy responses focusing primarily on the physical or mental ‘deficits’ individuals accumulate as they age and on how their ‘needs’ should be met by state and society, neglecting older people’s contribution to society.

In addition to broader negative attitudes towards ageing affecting day-to-day experiences of older people, there is evidence of discriminatory practices, to which older people might be more exposed. These range from discrimination when looking for a job to structurally embedded ageist practices. The latter include discriminatory age limits in accessing goods and services, as well as low policy attention to issues such as exposure to poverty and the increased risk of violence and abuse for those in care. The 2015 Eurobarometer survey on discrimination shows that discrimination or harassment because of old age is the most frequently mentioned type of discrimination: 42 % of Europeans perceive discrimination due to old age (being over 55 years old) as “very” or “fairly” widespread in their country.

Moreover, aspects such as gender, health condition, income and financial means to support an independent living, the broader socio-economic environment or a person’s place of residence (e.g. urban or rural), as well as his or her self-perception, may increase or decrease the risk of fundamental rights violations. As such, focusing on a single ground of discrimination – age – fails to capture the various forms in which unequal treatment and exclusion can manifest themselves. Older women, older migrants, older people with disabilities and older people living in poverty face compound and aggravated challenges and a higher risk of experiencing human rights violations.

“[A]lthough the Universal Declaration on Human Rights proclaims that all human beings are born free and equal, it is evident that the enjoyment of all human rights diminishes with age, owing to the negative notion that older persons are somehow less productive, less valuable to society and a burden to the economy and to younger generations.”

Report from the Eighth working session of the UN Open-ended Working Group on Ageing, 28 July 2017

Ageist and deficit-based approaches and perceptions also affect how older people are treated as a social group. Stereotypes of ageing and old age lead to ageist rhetoric. This portrays older people as a ‘silver tsunami’ curtailing economic growth and being a ‘burden’ to society. Older people are characterised as unproductive, frail and incapable, especially in the context of an ageing society facing challenges regarding its demographic future and the sustainability of its pensions and social protection systems.

At a societal level, such ageist perceptions can reinforce exclusion, discrimination and marginalisation and affect intergenerational solidarity by pitting younger people against older people.

Such one-sided views fail to recognise the valuable contributions older people make to their families, communities and wider society in many ways. Many older people are unpaid, informal carers of grandchildren and family members, participate in volunteer activities in their communities and act as mentors.

Building on selected illustrative data, this Focus addresses the effects of ageism by adopting a multileveled approach which focuses on, respectively, the individual, older people as a social group and the society as a whole. It sheds light on distinct challenges older people face and examines their experiences, taking into account other characteristics, such as gender, immigrant or minority status, disability or living in rural areas. Second, this Focus briefly reflects on legal and policy developments in the EU by examining how selected legal and policy instruments affect the rights and experiences of older people. Noting the move

towards a human rights-based approach to ageing in the EU, the section identifies opportunities to strengthen that shift. Set against developments on the international and broader European level, the Focus calls for further development and implementation of a comprehensive human rights-based approach to ageing, to ensure that life in old age is defined just as much by choice, control and autonomy as in other stages of life.

Who is 'old'?

Referring to 'old people' and to 'ageism', one should consider how society views the concept of being 'old' and how it treats 'older people'. This is not only related to a person's 'chronological age' (for example, being over 55, 60, 65 or 70 years) and the biological process of getting older. Being 'old' and treated as an 'old person' is also a social construction linked to social realities and perceptions about age that change over time and differ across societies within Europe and globally.

Individuals also have different perceptions of what age means depending on where they are on the age continuum, as they experience throughout their life cycle what it means to be 'young', 'middle-aged' or 'old'.¹ Moreover, defining an age group under a common denominator 'older people' is not possible, and varies depending on the policy field. For example, an older adult may find it harder to get a job as early as at 50 years. Access to the old age benefits of social security systems is tied with pensionable age – commonly around 65 years in the EU. Very old age is often associated with the use of long-term care, commonly concentrated in the last years of a person's life – late 70s with the average life expectancy in the 28 EU Member States (EU-28) at 80.6 years.²

Age and ageing are usually discussed and addressed from four distinct but intersecting perspectives:

- chronological age, based on the date of birth;
- biological age, linked to physical changes;
- psychological age, referring to mental and personality changes during the life cycle;
- social age, which defines the change of an individual's roles and relationships as they age.³

These four aspects of ageing can develop at different speeds and affect individual experiences as well as social reaction differently, influenced also by the social, historical and cultural environment. This affects not only how society views older people, but also how older people perceive themselves.⁴

Every (older) person is different

We all experience ageing in a different, individual, way. Understanding and addressing older people as a social group – defined by chronological age – leads to generalised views. Experiences in old age are not determined by simply reaching a certain age or only by individual characteristics, such as health condition, but are largely determined by various structural, social and cultural contexts throughout an individual's life-course. Individuals have diverse life experiences which accumulate over a life-time and determine old age outcomes – both in terms of opportunities as well as challenges. If people have not enjoyed equal rights and opportunities in earlier stages of life, these disadvantages will accumulate and also affect the enjoyment of rights in later stages of life.⁵

Younger generations face greater risks of inequality in old age

A report by the Organisation for Economic Co-operation and Development (OECD) stresses that rising inequality will hit young generations hard and calls for preventing inequality throughout the life course which cumulates over time and materialises in old age.

The report highlights that demographic changes combined with entrenched inequalities lead to changing balances in society, and that a risk of increasing inequality among future retirees is building up in many countries. For now, current generations of retirees experience higher incomes and a lower risk of poverty than other age groups. However, inequalities in education, health, employment and earnings will dramatically change how younger generations will experience old age.

For more information, see OECD (2017), [Preventing ageing unequally](#).

However, societal perceptions and policy responses are often based on a conception of older people as a homogenous 'group' with common needs and experiences. This has led to polarised and distorted views of older people, affecting their human rights. One view sees older people as 'dependent and vulnerable', associating old age with a withdrawal from economic activity and increased illness and disability. This view influences policy approaches aimed at compensating deficits and meeting needs. The other view sees older people as active contributors to economic and social life. This view calls for policies that focus on active ageing and increasing opportunities for participation. Such polarised views, "portraying later life as common experience", fail to capture the distinct experiences of individuals with different life courses, incomes or genders, which affect their later life.⁶

Ageism

Ageism, commonly defined as a negative social construct of a particular age group, can affect people at any life stage. 'Old' age, however, bears a particular negative connotation and 'old people' are often viewed as carrying no value to society. In contrast with other forms of discrimination, such as racism or sexism, it often tends to be 'normalised', with age stereotypes accepted and going unchallenged.⁷ It is not uncommon that age in itself is a valid justification for differential treatment, setting age limits, or excluding people from treatments or services – all undermining older people's right "to lead a life of dignity and independence and to participate in social and cultural life", as enshrined in Article 25 of the EU Charter of Fundamental Rights.

What is ageism?

Ageism is the stereotyping of, prejudice or discrimination against individuals or groups based on their age. Although ageism can target young people, most studies in this area focus on the unfair treatment of older people.

Ageism is deeply structural, "find[ing] expression in institutional systems, individual attitudes and inter-generational relationships."^{**} All manifestations of ageism – at the individual, group or societal level – gravely undermine older people's right to human dignity and reduce their potential to contribute actively to society.

For a definition of ageism, see World Health Organisation (WHO) (2016), Valuing older people: time for a global campaign to combat ageism; read more at: Swift, H. J., Abrams, D., Lamont, R. A., Drury, L. (2017), 'The risks of ageism model: how ageism and negative attitudes toward age can be a barrier to active ageing', Social Issues and Policy Review, 13 January 2017; Trusínová, R. (2013), 'No two ageism are the same: testing measurement invariance in ageism experience across Europe', International Journal of Social Research Methodology, 17 (6), pp. 659-675.

** Equinet Secretariat (2011), Tackling ageism and discrimination, p. 7, Brussels; see also: Levy, S. R., Macdonald, J. L. (2016), 'Progress on Understanding Ageism', p. 14, Journal of Social Issues, 72 (1), pp. 5-25.*

1

Ageism and its effects on the individual, the group and society as a whole



“Older persons have exactly the same rights as everyone else, but when it comes to the implementation of these rights, they face a number of specific challenges. For example, they often face age discrimination, particular forms of social exclusion, economic marginalisation due to inadequate pensions, or are more vulnerable to exploitation and abuse, including from family members.”

Nils Muižnieks, former Commissioner for Human Rights, Human rights comment, Strasbourg, Council of Europe, 18 January 2018

Demographic changes in Europe and other highly developed countries have placed the growing number of older people at the centre of public debate on the allocation of social and public resources. The increasing number of older persons has also prompted an evolving discussion around better protection of individuals’ fundamental rights in older age. While the universality of rights is one of the basic principles of the human rights framework, and rights do not change or diminish as we grow older, evidence points to

a number of barriers older people face in the exercise of their fundamental rights.

This section explores distinctive barriers and situations which could result in violating older people’s fundamental rights and undermine their ability to contribute and participate in society on an equal footing. It aims to highlight how stereotypes, prejudice and discrimination on the ground of age may affect:

- each individual rights holder, albeit differently depending on an individual’s life course, social status, gender and other characteristics (Section 1.1);
- older people as a social group who could experience increased barriers and be exposed to more vulnerable situations (Section 1.2);
- eventually, society as a whole (Section 1.3).

Population ageing in the 28 EU Member States

The EU population’s age structure will continue to change due to increasing life expectancy accompanied by decreasing or stable fertility rates. This change is also quickened by people born during the ‘baby boom’ years (1950-1960) now reaching retirement age.

By 2080, Eurostat projects that those aged 65 years or over will account for 29.1 % of the EU-28 population, compared with 19.2 % in 2016. This will result in a sharp increase of the old-age dependency ratio, from 29.3 % in 2016 to 52.3 % by 2080.*

This puts a heavier burden on a diminishing population of workers to provide for the social expenditure required for a range of public services.** In 2016, more than three persons of working age (15 to 64 years) were supporting one older person. In 2080, this will drop to fewer than two persons. This can spur ageist rhetoric, undermining intergenerational solidarity.

* Old-age dependency ratio is the ratio between people aged 65 or above (typically in retirement) relative to those typically in the labour force (aged 15-64). The value is expressed per 100 persons of working age (15-64). For more information, see Eurostat, [Population structure and ageing](#).

** Eurofound (2017), [Working conditions of workers of different ages](#), Research Report, Luxembourg, Publications Office of the European Union.



1.1 Individual level: older people’s experiences of discrimination, risk of poverty and violence

“Ageism remains a form of abuse that is largely ignored by society although it is a very common phenomenon [...]. The worst is that many people are not even aware of their ageist attitudes as they have subconsciously internalized stereotypes about older persons.”

Rosa Kornfeld-Matte, Independent Expert on the enjoyment of all human rights by older persons, ‘Ageism should not be downplayed: it is an infringement of older person’s human rights’, Press release, 1 October 2016

Enabling older people’s equal participation in society requires fighting discrimination and the differential treatment of individuals because of their old age. This involves countering often structurally and societally accepted practices. This section provides data illustrating some distinct barriers older people face, addressing discrimination in employment, access to healthcare, poverty, and the risk of abuse and violence against older people in need of support. These areas are not exhaustive. Age-related barriers may also limit older people’s participation in other aspects of life, ranging from renting a car or accessing bank credit, to being a member of a jury service or an association. However, in light of the limited scope of this Focus and a lack of statistical data, it is not possible to provide an overview of all challenges that affect and undermine older peoples’ right to dignity, autonomy, independence and participation.

Eurobarometer: Discrimination against older people perceived to be widespread

The 2015 Eurobarometer survey on discrimination finds that 42 % of the respondents in the EU-28 perceived discrimination due to old age (being over 55 years old) as “very” or “fairly” widespread in their country. This perception varies widely among Member States, ranging from 22 % in Denmark to close to 60 % in Bulgaria, the Czech Republic, Hungary and Romania. With 5 % of all respondents reporting to have personally felt discriminated against or harassed because of old age, this becomes the most frequently mentioned type of discrimination.

See European Commission (2015), Discrimination in the EU in 2015, Special Eurobarometer 437, pp. 16, 70, 71, Brussels.

Employment

The Eurobarometer survey shows that 56 % of the respondents consider being over 55 years to be a disadvantage when looking for work, while 16 % consider this to be the case for those under the age of 30.⁸ Older people also face negative stereotyping and ageist attitudes at work.⁹ While 80 % of Eurobarometer survey respondents reported being comfortable working with someone over 60 years,¹⁰ the European Working Conditions Survey shows that 7 % of employees aged 50 or above experienced age discrimination in the 12 months before the survey.¹¹

The European Commission’s 2018 Ageing Report projects an increase in labour force participation by older workers due to implemented pension reforms.¹² While some may wish to work longer, others might be burdened by increases in the pension age or the financial need to continue working. These preferences and experiences are strictly individual and depend on the individual life course and working conditions. Therefore, optimising opportunities for, and combating discrimination against, older people who can and wish to remain in work for longer should be complemented with sufficient instruments addressing the support needs of older people.

Access to healthcare

The concept of ‘active ageing’ was introduced by the World Health Organisation (WHO), and is widely used to frame current policy discourse at the international and EU levels. It refers to a “process of optimizing opportunities for health, participation and security [...] allow[ing] people to realize their potential for physical, social, and mental well-being throughout the life course and to participate in society, while providing them with adequate protection, security and care when they need”.¹³

Therefore, measures to safeguard older persons’ independence and dignity – also ensuring active ageing – include addressing discriminatory practices and barriers in accessing health and care services. Growing old is associated with an increased risk of health deterioration and limitation in daily activities, making it necessary to call upon different types of health and support services.

In 2016, one third of persons (35 %) aged 50 to 64 in the EU indicated that they have at least one chronic physical or mental health problem or disability, compared to 49 % of those aged 65 or over.¹⁴ There are significant differences between Member States. For example, 73 % of persons aged 65 or over in Estonia declared that they have a chronic physical or mental health problem or disability, compared to 31 % in Ireland.¹⁵

There are different reasons for difficulties in accessing health services. For instance, in 2016, one out of four persons (26 %) aged 65 or over in the EU reported having at least some difficulties reaching a doctor's office because of the distance. Additionally, one out of five (20 %) had difficulties accessing health care because of the costs related to the medical visit.¹⁶ Furthermore, across the EU, one third of persons (36 %) aged 65 or over had at least some difficulties accessing long-term care due to the related costs. The figures are diverse and show great disparities across the EU Member States. While 60 % of older persons in Greece reported great difficulties in accessing long-term care because of the costs, in Denmark, the Netherlands and Sweden, 90 % of persons aged 65 or above declared no cost-related difficulties.¹⁷ Distance and costs are not the only barriers. Although statistical data are limited, evidence suggests that old age can limit access to surgical treatment or rehabilitation services. This can be because of age screening, prejudicial attitudes towards older patients, or limited access to health insurance due to age limits or prohibitively higher premiums.¹⁸

Risk of poverty

The EU average risk of poverty for those 65 or older is lower than that for the total population – 14.6 % and 17.3 %, respectively. However, the situation varies significantly across countries. In Latvia and Estonia, for example, the proportion of people aged 65 and above at risk of poverty is 16 to 19 percentage points higher than that for the population as a whole. In contrast, in Spain and Greece, the proportion of older persons at risk of poverty is around nine percentage points lower than that of the total population.¹⁹ These variations reflect differences in the pension and social protection systems in the Member States and in the kind and extent of support provided by families and the state. In most EU Member States, the majority of older people are at least in general at lower risk of poverty and are better off than the general population. However, evidence suggests that this will not be the case for future generations.

Violence, abuse and neglect

The manner in which support is provided can put older people in need of support in situations of vulnerability to inhuman or degrading treatment, violence, abuse and neglect. In 2011, the WHO estimated that, in the

European region, every year “at least 4 million people aged 60 years and older experience elder maltreatment in the form of physical abuse, 1 million sexual abuse, 6 million financial abuse and 29 million mental abuse.”²⁰ Violence and abuse may also result from neglect and failure to provide care to persons in need; it can be both physical and psychological. Such abuse can be a single occurrence or repeated and can target an individual or be part of institutional practices.²¹ WHO evidence shows that women were slightly less likely than men to be victims of physical abuse (2.6 % versus 2.8 %), psychological abuse (18.9 % versus 20.0 %), and financial abuse (3.7 % versus 4.1 %), but more women than men were victims of sexual abuse (1.0 % versus 0.3 %) and suffered injuries (0.9 % versus 0.4 %).²²

The settings vary. Violence and abuse can take place in the home, by family members, friends or professional care workers; or in institutional settings by professional staff. A recent study by the European Network of National Human Rights Institutions (ENNHRI) found that “although there were no clear signs of torture or deliberate abuse or ill treatment, several practices witnessed in all six countries [covered in the study] raised concerns, particularly in upholding dignity, the right to privacy, autonomy, participation, and access to justice”. This points to a need for a human rights-based approach in all aspects of service planning, policy and practice.²³

1.2 Group level: inequalities and intersectional discrimination affecting specific groups

Little research, and none across all EU Member States, addresses the complex aspects of multiple and intersectional discrimination affecting older persons depending on their gender, disability, sexual orientation²⁴ or minority and migrant status. Older people are a widely heterogeneous group with quite diverse needs, possibilities and preferences. Understanding intersecting forms of discrimination and how they affect older people is therefore key to crafting effective policies across a range of issues to safeguard the dignity of all older people. The following examples serve as an illustration of some challenges some groups face, undermining their fundamental rights.

Older women

Gender creates particular inequalities and discrimination in old age, as life-course inequalities accumulate and inevitably undermine the full enjoyment of rights. In 2015, the EU average gender pension gap – the average difference between a man's and a woman's pension

– was 37.6 % for those 65 and over.²⁵ In contrast, the 2015 gender pay gap was 16.3 %.²⁶ While there are variations across Member States, women receive lower pensions in all countries.²⁷ Reasons for these differences include the principles on which pension benefits are calculated; these “generally privilege men, as women’s life course often involve periods of unpaid care work and an average of five years shorter working lives than men”.²⁸

At birth, life expectancy differs according to gender, and women generally outlive men. In the EU-28, life expectancy was estimated at 83.3 years for women and 77.9 years for men in 2015.²⁹ In 2015, Eurostat data show life expectancy at age 65 to be estimated at 21.2 years for women and 17.9 years for men. Therefore, the proportion of older women among older people increases with age.

Older people with immigrant or ethnic minority background

Older people with migrant backgrounds are not a homogenous group, and their experiences and needs in older age may differ. However, evidence points that life trajectories of migrants are affected by “lower income, poorer working and housing conditions, including their concentration in low-income neighbourhoods”.³⁰ Such situations might place them at a disadvantage compared to those without migrant backgrounds. This results in social exclusion and worse socio-economic and health status.

As an illustration, FRA’s second European Union Minorities and Discrimination Survey (EU-MIDIS II)³¹ collected information on the socio-economic conditions

of 34,000 Roma household members in nine EU Member States. The results show that, when compared to the general population, “on average only 16 % of Roma aged between 55 and 64 years are in paid work, compared

with, on average, 53 % of the same age group in the EU-28. Only in Portugal (46 %) and Greece (39 %) are the paid work rates for Roma older than 55 close to employment rates in the general population, but for all groups the rates are far below the Europe 2020 target of 75 % in employment”.³² These results suggest that being part of an ethnic minority increases the difficulties older people face in the area of employment.

Older people with disabilities

In the EU-28, an estimated 49 % of people aged 65 years and over reported long-standing limitations in usual activities due to health conditions in 2016. The results also show that more women than men experience long-standing limitations (51.5 % versus 44.4 %), which is likely because the proportion of older women among older people increases as age increases.³³ This number

can be seen as a proxy for older people in need of some sort of support.

While old age *per se* does not mean disability and not all old people have an impairment, the probability of developing a disability or requiring support increases with age. As older people make up an increasing proportion of the EU’s population, the number of people who might face cumulative challenges both because of their age and disability, and at the intersection of the two, also rises.

Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD), to which the EU acceded in 2010 and which is ratified by all 28 EU Member States, applies to all people with disabilities. While not all old people have a disability, developing an impairment with age is more likely. The convention does not provide any special rights to people with disabilities, young or old, nor does it single out older people for special protection.

However, it does reiterate the principle of universality of human rights and sets out some key concepts that are especially tailored. The CRPD sets out the right to dignity, autonomy and non-discrimination, full participation and equal recognition before the law. Beyond this, its conceptual frame puts the individual at the center, focusing on self-determination, autonomy and choice and control over one’s life.

For more on the CRPD and developments across the EU in 2017, see Chapter 10 of the Fundamental Rights Report 2018.

Regardless of whether people age with existing disabilities or they develop disabilities in old age, all older people in the EU should have equal access to quality health care or long-term care support. However, evidence points to a number of barriers contributing to inequalities. These include age requirements for access to support services that enable older people to live independently and unmet care needs across the EU.

“All too often double standards apply in law and practice, excluding older people from some benefits, applying different eligibility criteria or giving less support when disability occurs in old age. Moreover, when ageism interferes with disability assessments, older people are not offered the same level, quality or ranges of support as younger people with disabilities.”

AGE Platform Europe submission to Draft General Comment in Article 5, CRPD, 30 June 2017

The World Health Organisation (WHO) estimates that roughly 5 % of the world population are affected by dementia. Increased longevity contributes to its growing prevalence. Dementia is “an umbrella term for several diseases that are mostly progressive, affecting memory, other cognitive abilities and behaviour, and that interfere



significantly with a person's ability to maintain the activities of daily living. Women are more often affected than men".³⁴ Especially in its later stages, dementia is a major cause of disability and dependency, gravely affecting a person's memory and cognitive abilities. This means that older people with dementia need the necessary support to avoid the risk of having their legal capacity (their ability to autonomously hold and exercise their rights before the law) restricted.

The capacity to make one's own decisions is a precondition to individual autonomy. Depriving an individual of legal capacity – be it partially, regarding certain decisions, or fully restricting their right to make any legally binding decisions – results in a clear denial of legal personality to people under guardianship. Equality before the law is one of the key provisions provided for in Article 12 of the CRPD, affirming people with disabilities', including older people with disabilities', right to exercise their legal capacity by providing necessary support.³⁵

Older people living in rural areas

According to Eurostat data based on a 2011 population and housing census, a higher proportion of the older population lived in rural areas; the majority of regions with high numbers of older people (over 65) were also rural and sometimes quite remote.³⁶ Living in rural areas can entail additional challenges for older people, especially in the enjoyment of their right to health. This is particularly relevant for remote regions or regions and Member States with poor health and social service infrastructure.³⁷ Particular challenges include availability and accessibility of public transport, home- and community-based services and long-term care.³⁸

1.3 Societal level: ageism's effects on society as a whole

"Longevity offers an enormous potential for the economy and society, which has not been fully realized. Older persons contribute to the generation of wealth as entrepreneurs and employees. As consumers they stimulate innovation and contribute to developing new markets in the 'silver economy'. They volunteer in civil society organizations and in their communities. They provide unpaid care and support for their families."

Economic Commission for Europe, Synthesis Report on the implementation of the Madrid International Plan of Action on Ageing in the ECE region between 2012 and 2017, p. 5

A recurrent stereotype linked to ageism is that older persons are a burden. Such negative societal attitudes affect policy responses relating to old age, which can undermine the potential positive contribution of older people to economic, social and cultural life.

Scientific evidence contradicts these stereotypes, showing the valuable and important contribution of older people to their families and community. For example, a recent European Quality of Life Survey finds that, in 2016, persons aged 65 or above spent at least several days a week caring for grandchildren (23 %), children (14 %) and disabled or sick relatives or friends (7 %). They also spent a significant part of their time volunteering in the community and social services (8 % at least every month), or participating in social activities in a club, society or association (17 % at least once a week).³⁹

Furthermore, intergenerational learning – the transfer of knowledge and experience between generations by, for example, older workers mentoring and coaching younger generations or taking up apprenticeships – spreads benefits across a number of areas. It fosters innovation and "can also strengthen intergenerational relations and help to break down negative stereotypes and attitudes".⁴⁰

Still, public debate is often dominated by issues related to the inter-generational distribution of costs and risks,⁴¹ instead of encouraging measures to bridge the gap between younger and older persons to restore fairness and equity across generations.⁴² In the context of fiscal consolidation, structural ageism⁴³ targets old people as a burden for the younger generation to bear, instead of pointing out opportunities of older people to participate and contribute equally to society. One aspect, for instance, is that older people may choose to stop working and care for the grandchildren to "ease the pressure on their children and enhance the work-ability of this intermediate generation".⁴⁴ This is why attempts to curb age-related expenditures should not ignore the potential of older persons to contribute positively to different aspects of economic, social and cultural life.⁴⁵

Moving away from viewing old age merely in terms of burden or losses⁴⁶ and towards acknowledging the positive role of older persons in the community can reinforce the respect of their human rights and dignity.

Need for more and better data

Developing effective policies to promote active ageing and older people's potential to live independently and contribute to their communities requires robust and reliable data. Such policies should promote the 2030 Agenda for Sustainable Development, which seeks to realise the human rights of all people by "leaving no one behind", regardless of age. Some goals are of particular importance to older people, including: Goal 3 on ensuring healthy lives and promoting well-being for all at all ages; Goal 1 on poverty; Goal 5 on gender equality; Goal 8 on decent work; and Goal 10 aiming to reduce inequalities.



Many Sustainable Development Goal (SDG) indicators specifically call for data to be presented by age. While UN member states agree on specific age groups for each indicator, it would be important to collect sufficient data relating to the situation of older people.

The indicators for the goals mentioned above should be populated with data disaggregated by sex and other important characteristics, such as ethnic origin, religion or belief, sexual orientation and gender identity or place of residence (for example urban or rural areas). Ageing cuts across all goals. Collecting and using good quality data would not only improve the monitoring of the SDGs, but also assist policymakers in defining and implementing policy initiatives to address ageing.

It remains to be seen, however, if and what data will be collected and how they will be presented. Lumping the evidence into one single group, such as 55 years and over or 60 years and over (the age group usually used for UN statistical practices when addressing older people) would fail to reflect distinct experiences of a very heterogeneous target group. Old age spans 40 years; not breaking it down into smaller clusters will fail to capture a true and clear picture of the situation of older people. In addition, it would also be essential to capture and reflect on experiences of older individuals with intersecting characteristics, such as being an older woman, an older immigrant or an older person with a disability.

Collecting data and understanding how exclusion and intersectional discrimination affect achieving the 2030 Agenda is important. However, affirming the contributions of older people to their communities and society, and not just focusing on addressing needs and challenges of a group often perceived as 'vulnerable', is essential to "achieve truly transformative, inclusive and sustainable development outcomes" and realise the fundamental rights of all people.⁴⁷

Including older people in large-scale surveys

Older persons are included in the large EU-wide surveys that build, among others, the basis for Eurostat's social database. These surveys mostly set only lower, and no upper, age limits, covering all persons from 15 or 16 years onwards, as long as they fulfil the eligibility criteria. Some EU Member States, nonetheless, have introduced an upper age limit of 74 years for the EU labour force survey. Results for older persons are often presented for large, open-ended age groups, as the sample sizes of surveys include too few respondents in older age groups to allow for detailed analysis. One solution to this problem is increasing the sample sizes or ensuring targeted oversampling. Both practices, however, lead to increased survey costs.

The Survey of Health, Ageing and Retirement in Europe (SHARE) targets particularly older persons aged 50 years or over, collecting information on health, ageing and retirement. By concentrating on a specific age group, statistically significant conclusions can be drawn regarding the living conditions of older persons.

An additional challenge for the representative coverage of older people is that surveys generally only target people in private households. This excludes all persons living in institutions or residential care settings, where older residents make up a considerable proportion. Some national surveys in the European Health Interview Survey (EHIS) included people living in institutions, and SHARE as a longitudinal survey follows persons even if they move into institutionalised care. However, as part of the Synergies for Europe's Research Infrastructures in the Social Sciences (SERISS) project, possibilities and existing practices for including persons in institutions in social surveys are examined.

For more information, see: EU labour force survey: Methodology; SHARE website, Survey of Health, Ageing and Retirement in Europe and Europe's Research Infrastructures in the Social Sciences (2017), 'Report on sampling practices for the institutionalized population in social surveys.'



2

EU's increasing focus on rights of older people



Societal and demographic transformation calls for policy and legislative responses in many different fields. These range from respecting fundamental civil, political and social rights regardless of age and combatting discrimination against older people to addressing concerns about pensions and the old-age dependency ratio. At the EU level it has led to EU policies relating to older people evolving from a welfare care-orientated approach, based on needs and protection, to a more participative one revolving around rights and the concept of active ageing. The EU's increasing efforts towards a human rights-approach to ageing are reflected in both the EU legal framework and the design and implementation of its policies.

2.1 From the Community Charter of Fundamental Social Rights of Workers to the EU Charter of Fundamental Rights

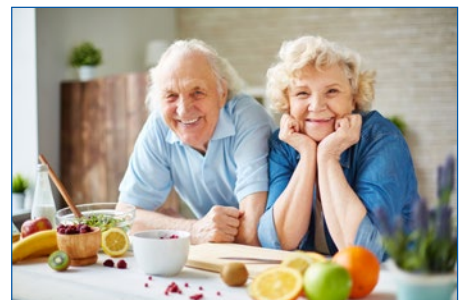
The first attempt to establish a protective framework for older people at the EU level dates back to the 1989 political Declaration of the Community Charter of Fundamental Social Rights of Workers. The approach is narrow and addresses older people under their capacity and status as 'workers' or former workers, focusing on access to "resources affording [...] a decent standard of living" or to "sufficient resources" for those without any means of subsistence, as well as access to medical and social assistance "specifically suited to [their] needs".⁴⁸ This narrow approach reflects a deficits- and needs-based standpoint addressing older people as people "in retirement", recipients of old-age benefits and in need of protection.

Since 1989, developments have marked a slowly evolving paradigm shift towards a new and more

encompassing rights-based approach to older people. However, in the EU's primary legal framework, explicit fundamental rights references to older people are rather scarce and, from a normative point of view, weak. A closer and fairer overview of the EU primary rules, as adopted by the Treaty of Lisbon, suggests that there is a significant untapped normative potential. EU primary law does provide the basis for developing comprehensive policies at the EU and national level that implement a rights-based approach towards older people by ensuring a life in dignity for all persons, independent of age. In this respect, recognising the binding nature of the EU Charter of Fundamental Rights and making it an integral part of primary EU law was a decisive step forward.

The most promising provision for changing perceptions about people in older age and their rights in the context of primary EU law is the non-discrimination clause, introduced in EU primary law by the Treaty of Amsterdam in 1999. It is currently enshrined in Article 19 of the TFEU. It provides a legal basis for the EU to establish and implement policies addressing discrimination based on age. Furthermore, non-discrimination is not the only legal basis for EU action. It is true that most of the competences regarding issues such as social policies, employment or public health lie primarily with Member States. Nevertheless, the EU does have the competence to support and complement Member States' activities in these fields.⁴⁹ Moreover, the EU is competent

to take initiatives to ensure cooperation and coordination between national states. Processes such as the European Semester monitor policies implemented in all the areas of as social policies, employment or public



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health. Furthermore, EU funding instruments, particularly European Structural and Investment Funds (ESIF), can drastically affect national policies in accordance with EU policies (see Section 2.2).

EU Charter of Fundamental Rights and rights of older people

When EU institutions exercise their competences and when Member States implement EU law, they are bound by the EU Charter of Fundamental Rights. The Charter constitutes primary EU law and encompasses a very broad spectrum of rights. It does not distinguish or limit the enjoyment of rights on the basis of age. Human dignity, the integrity of the person and the prohibition of torture and inhuman or degrading treatment or punishment, the right to private and family life, freedom of expression, the right to property, the right to access vocational training, to engage in work and to have access in placement services, social assistance and health care and all other civil, political and socio-economic rights listed in the Charter are universally valid fundamental rights unequivocally applied to everyone, regardless of age. To dispel any doubts, Article 21 on non-discrimination provides explicit and clear protection from age discrimination. Moreover, under Article 10 of the TFEU, the EU is explicitly and horizontally obliged to actively “combat discrimination based on [...] age” in “defining and implementing [any of] its policies and activities”.

Most importantly, the Charter goes beyond generally applicable fundamental rights clauses to include in Article 25 one of the first legally binding human rights provisions addressing particularly the rights and principles regarding the treatment of older people, stipulating that: “[t]he Union recognises and respects the rights of the elderly [older people] to lead a life of *dignity and independence* and to *participate* in social and cultural life” (emphasis added).

With this, the Charter is signalling acceptance and respect for the fundamental rights of older people. It aims to ensure their equal participation in society and their independence, which is pivotal in shifting perceptions about people’s agency in older age. Meanwhile, Article 34 recognises older people’s right to a social protection safety net. It leaves space for duty bearers to re-design social support systems into more personalised social services. The scope of these provisions is not restricted to persons in the work environment (as was the case for the Community Charter), and hence can be far-reaching. When acting within the scope of EU law, the EU and its Member States are under the obligation to respect rights and observe principles deriving from the Charter, in particular those enshrined in Article 25, in view of promoting older people living an independent life in dignity. EU policies and relevant legislative measures need to be designed and implemented in light of these

rights and principles, whereas adopted EU secondary legislation should be interpreted accordingly.

The emphasis on acceptance, respect and inclusion of older people enshrined in the Charter reflects a broader equal opportunities philosophy focusing on ‘personhood’, autonomy and active citizenship. This philosophy also characterises other international human rights instruments, in particular the Convention on the Rights of Persons with Disabilities (CRPD), to which the EU acceded in 2010, making it an integral part of the EU legal order (see Chapter 10 of the *Fundamental Rights Report 2018* on CRPD developments). The CRPD is clearly applicable to older people with disabilities, and even though not all old people have a disability, developing an impairment with age is likely.⁵⁰ More importantly, it marks a shift from a traditional narrowed welfare state approach, based on needs to compensate for ‘deficits’, to a more comprehensive participatory approach based on dignity, autonomy and rights. Among others, it introduces the concept of “reasonable accommodation” that entails necessary and appropriate modifications in the physical environment, public transport, schools and universities or workplaces to ensure that persons with disabilities enjoy or exercise on an equal basis with others all fundamental rights.⁵¹

To summarise, from the Declaration of the Community Charter of Fundamental Social Rights of Workers in 1989, to the adoption of the Treaty of Lisbon making the Charter of Fundamental Rights a legally binding instrument, there has been a shift towards adopting a more comprehensive and rights-based approach towards older people. Older people are no longer perceived solely as ‘retired’ former workers, nor as a homogenous, vulnerable group. On the contrary, they are considered largely as ‘persons’ with rights, who deserve equal treatment and recognition of their potential to participate and contribute actively in all aspects of life, in spite of their age, and to enjoy their right to live independently and be included in the community.

2.2 EU legislative measures and policies: mainstreaming a rights-based approach to ageing?

EU legislative measures

Transforming the new rights-based approach reflected in the Charter of Fundamental Rights into concrete EU legislative measures and policy actions has been a slow process. The EU has not yet succeeded in delivering a comprehensive secondary legal framework ensuring substantive equality for older people. The only exception



is the Employment Equality Directive.⁵² This directive, although limited to employment-related issues, was ground-breaking when adopted, since it introduced the criterion of age as a prohibited ground for discrimination in a legally binding text for the first time.

However, the prohibition of discrimination on the ground of age is far from absolute. Article 6 of the directive allows for differential treatment on the basis of age, providing for a “broader range of exceptions to the principle of equal treatment than is permitted in connection with any other protection characteristic” in so far as this is “objectively and reasonably justified by a legitimate aim” (e.g. legitimate employment policies or labour market objectives) and the means used are “appropriate and necessary” (proportionality principle). In this context, differential treatment may also include measures that promote young or old people in the labour market to fight unemployment, particularly long-term unemployment, or to promote better distribution of work among generations.⁵³

Despite its narrow scope and broad range of exceptions, the Employment Equality Directive has been a useful tool for embedding fundamental rights in legal and policy instruments in this area. First of all, it has led to very interesting and rights-promoting case law by the Court of Justice of the European Union. The *Mangold* case remains emblematic, recognising that non-discrimination on grounds of age is a general principle of EU law.⁵⁴ This ruling has since been constantly reaffirmed by the court, which additionally invokes Article 21 of the Charter in its more recent judgments.⁵⁵

FRA ACTIVITY

2018 edition of the *Handbook on European non-discrimination law*

A specific section in the *Handbook on European non-discrimination law* looks at the developments in jurisprudence on age discrimination. It highlights the different scope of and approach to age as a ground of discrimination in international instruments. In so doing, the handbook illustrates the differences in the application of non-discrimination law by the relevant bodies, including the European Committee of Social Rights.

FRA, together with the Council of Europe and the European Court of Human Rights (ECtHR), published in March 2018 an update of the *Handbook on European non-discrimination law*. The handbook is designed to assist legal practitioners – such as judges, prosecutors and lawyers, as well as law-enforcement officers – and improve knowledge of relevant EU and Council of Europe standards, particularly through case law of the Court of Justice of the EU (CJEU) and the ECtHR.

For more information, see FRA (2018), *Handbook on European non-discrimination law*, Publications Office, Luxembourg.

At the national level, the directive resulted in the introduction of legislation prohibiting age discrimination in employment throughout all Member States. In addition, although it does not provide explicitly for the setting up of equality bodies – as is the case in the EU anti-discrimination directives on the grounds of gender or race – it contributed to establishing equality bodies and/or attributing to them relevant competences. However, not all equality bodies have competences on age discrimination.⁵⁶

The directive has also raised awareness on the rights of older people in the area of employment and contributed to changing attitudes of state authorities and private employers on a range of issues. These issues range from formulating job vacancy notes to debates on extending working life. For example, since the adoption of the directive, “more attention is paid to avoiding stereotype ‘age requirements’ (like looking for a ‘young and dynamic’ colleague) in job vacancy notes”, which could also be seen as stereotyping gender or family situation.⁵⁷ Moreover, in relation to the sustainability of pension systems, the directive has triggered controversial debates relating to extending working life and postponing retirement. This could be achieved by abolishing mandatory retirement ages or encouraging people receiving pensions to continue working, so as to earn some income without losing their pension entitlement.⁵⁸

Outside the scope of the Employment Equality Directive, areas of particular importance for older people – such as social protection, health care, access to goods and services or housing – are not covered by EU legislation as regards the ground of age, in contrast with the Race Equality Directive.⁵⁹ The proposal for an Equal Treatment Directive (ETD)⁶⁰ – presented by the Commission in 2008 – could fill this gap. It provides for extending the principle of non-discrimination horizontally, on the basis of various grounds, including age, to these areas of importance for older people.⁶¹

However, its adoption is still pending – even though, following the model of the Employment Equality Directive, it leaves a large margin of discretion to Member States, which is even broader regarding acts differentiating the treatment of older people. The EU Council has not yet reached the necessary unanimity, which reveals the reluctance and difficulties in moving forward faster. Major issues of concern remain, necessitating further political discussions. These include the directive’s scope, with certain delegations opposing the inclusion of social protection and education. The division of competences and the principle of subsidiarity also remain issues, as does legal certainty regarding the obligations that the directive would entail.⁶²

Furthermore, given that older people, especially those in need for support, may more often be exposed to

the risk of suffering neglect, abuse or violence, the Victims' Rights Directive is also particularly relevant for their well-being.⁶³ In accordance with the directive, older people who are victims of crime should benefit from all rights enshrined therein on an equal basis with any other victim. Moreover, age is among the personal characteristics to be taken into account in the context of an individual assessment,⁶⁴ when identifying specific protection needs and special measures for victims in criminal proceedings. The directive also underlines that special attention should be paid to victims whose relationship to and/or dependence on the offender puts them into particularly vulnerable situations.

A number of more recent EU legislative initiatives could also contribute to mainstreaming a rights-based approach to ageing. These include the draft European Accessibility Act, the draft Directive on work-life balance for parents and carers, and the draft Regulation on a Pan-European Personal Pension Product (PEPP).⁶⁵ For instance, the European Accessibility Act could lead in providing people with disabilities and older people facing 'functional limitations' with more accessible, affordable and quality goods and services. This would foster independent living and inclusion in the community. For more information, see Chapter 10 of the *Fundamental Rights Report 2018* on the CRPD.

For its part, the adoption of the Work-life Balance Directive could improve intergenerational solidarity, resulting in better and more respectful tailor-made and home-centred caring services for older people. However, this does not mean and should not result in exempting states from their care responsibilities in the context of a modern welfare state. At the same time, the Work-life Balance Directive would be the first step in recognising and supporting the contribution of family members in informal unpaid assistance to older people in need of care.

As regards the Pan-European Personal Pension Product Regulation, it is expected to offer more options to people who want to invest financial resources in view of supplementing their future retirement income, thus enhancing their independence and, by extension, their participation.

EU policies fostering a human rights-based approach to older people

The slow transition towards a human rights approach concerning the treatment and rights of older people is not limited to the EU legislative level. A whole spectrum of different efforts and EU policy initiatives address challenges faced by older people. These efforts strive to promote the new human rights approach, linked closely to the concept of active ageing.

Ageing societies and the role of older people has thus become a key issue for the EU 2020 Strategy.⁶⁶ It

focuses on the need to develop technologies allowing older people to live independently and in dignity, as active members of society. This focus is reflected in the European Innovation Partnership on Active and Healthy Ageing (EIPAH), which seeks to promote the perception of ageing as "an opportunity [more] than a burden" and to replace reactive and hospital-based care with proactive and home-based services and health care.⁶⁷

Active ageing and intergenerational solidarity has also been the topic of the 2012 European Year for Active Ageing and Solidarity between Generations, which resulted in a relevant Council Declaration and guiding principles,⁶⁸ as well as in the development of the Active Ageing Index (AAI). The AAI aims to provide comparative data and evidence among EU Member States regarding the contribution and potential of older people in various aspects of life and to help identify challenges, priorities and possible policy developments in the future. The AAI toolkit is comprised of 22 statistical indicators grouped in four domains: employment; social participation; independent living, and capacity for active ageing. The latest data are from 2014, but further activities are foreseen.⁶⁹

The implementation of policies promoting a human rights paradigm towards older people also requires appropriate funding both at EU and national levels. In this respect, the European Structural and Investment Funds (ESIF)⁷⁰ are crucial, since for many Member States they are the key source of funding to introduce and support reforms and innovative policies. The ESIF Regulation⁷¹ acknowledges demographic ageing as a challenge and calls on Member States to use ESIF "to create growth linked to an ageing society". It therefore sets out active and healthy ageing as an investment priority under thematic objective eight concerning the promotion of sustainable and equality employment and the support of labour mobility.

Other ESIF thematic objectives are also relevant for the rights of older people. For example, objective nine on promoting social inclusion, combating poverty and any discrimination defines active inclusion, equal opportunities and improving employability as investment priorities. This is in addition to investing in health and social infrastructure to reduce inequalities, improve social, cultural and recreational services, and assist the transition from institutional to community-based services. These investment priorities apply to everyone, including people in older age in so far as they count among the target groups of each investment priority.

More importantly, the regulations that govern the 2014-2020 funding period introduce new measures aiming to ensure that ESIF funding complies with the EU's fundamental rights obligations. Chief



among these are the *ex-ante* conditionalities, which set sector-specific and horizontal conditions to be met by Member States. These include: a) *ex-ante* conditionality 8.4, which addresses active and healthy ageing, requiring the development of active ageing policies retaining older people in the labour market and reducing early retirement; and b) *ex-ante* conditionality 9.1 on poverty reduction and inclusion of people excluded from the labour market, which calls on Member States, depending on the identified needs, to develop measures for the shift from institutional to community-based care to all people in need of such care, including older persons.⁷² In this way, EU legislation compels Member States to develop comprehensive rights-promoting policies for older people and links EU funding to the effective implementation of these policies. This strong preference for independent and community living for older people in the ESIF is reflected in the EU Social Pillar, which states that “everyone has the right to long term care services of good quality, in particular home care and community based services” (Principle 18).

The monitoring and coordination process of the European Semester is also a major EU tool for affecting national reform policies, especially through the Country Specific Recommendations (CSRs) to the Member States. In response, Member States adopt the appropriate policy decisions. An analysis prepared for the European Parliament in 2016⁷³ shows that the CSRs continue to focus more on employment issues such as facilitating the access to labour market and reducing early retirement, rather than issues linked to a more comprehensive rights approach, such as social policies, financial resources or health care.

However, the European Commission, in its 2017 Communication on the European Semester’s CSRs,⁷⁴ refers explicitly to the concept of active ageing when defining the key objectives of its recommendations. It underlines that “a combination of pension reforms, labour market policies, lifelong learning and health policies is required to support a more active older population”.

Meanwhile, the Commission’s Annual Growth Survey⁷⁵ for the 2018 European Semester notes that to ensure the sustainability and adequacy of pension systems for all, Member States should go beyond ensuring the sustainability of public pension systems, even under adverse conditions. In addition, they should boost retirement incomes by extending working lives, linking retirement age to life expectancy, avoiding early exit from the labour market, etc. Moreover, taking into consideration the ageing population, it underlines the need for health care reforms and long-term care systems. This is to enhance their cost-effectiveness and ensure their

fiscal sustainability and affordable access to quality preventive and curative healthcare.

2.3. Potential of the European Pillar of Social Rights

The joint proclamation of the European Pillar of Social Rights, adopted by the EU institutions on 17 November 2017 in Gothenburg, is the most recent and promising development in the field of social rights. It is undoubtedly a step forward and an opportunity for a more “social Europe”, for a Europe with stronger social rights protection both at the EU and the national level. In particular for older people, the proclamation of the European Pillar of Social Rights could be the occasion to renew and intensify efforts to promote the implementation of the human rights approach enshrined in the Charter of Fundamental Rights. The political will and commitment of all stakeholders is a *sine qua non* condition. But now, it should be translated into concrete actions in terms of legislative measures and policy initiatives at both the EU and the national level.

“This should be a landmark moment – with the proclamation of the European Pillar of Social Rights, we are showing our joint commitment to protect and uphold the rights of equality, fairness and opportunity that we all stand for and that all citizens are entitled to. And it must also be the first step of many in this direction.”

European Commission President Juncker, Press release, 16 November 2017

The weakness of the European Pillar of Social Rights – similarly to the 1989 Community Charter on the fundamental social right of the workers – is its nature as a legally non-binding text of rights and principles. In the Preamble, Member States point out that the Pillar “does not entail an extension of the Union’s powers and tasks as conferred by the Treaties” and “does not affect the right of Member States to define the fundamental principles of their social security systems and manage their public finances”. It is hence unequivocally stipulated that for the rights and principles enshrined in the text to be legally enforceable, it would “first require dedicated measures or legislation to be adopted at the appropriate level”.

However, the common political will and commitment expressed in the European Pillar of Social Rights should not be underestimated. As stated again in the Preamble, all Member States agree that “economic and social insecurity needs to be addressed as a matter of priority” in view to “safeguard[ing] of our way of life”. It calls for Member States to acknowledge that, in an era of globalisation, digital revolution, changing work patterns and societal and demographic developments, “challenges, such as significant inequality, long-term and youth unemployment or intergenerational solidarity, are often similar across

Member States although in varying degrees". Besides, some of the rights and principles enshrined in the Pillar are "already present in the Union acquis".

The linkage between the rights enshrined in the European Social Charter of the Council of Europe and the rights and principles of the Pillar is not clearly articulated, which arguably limits the Social Charter's relevance in terms of using it to interpret and implement the Pillar. Nonetheless, as stated by the Commission, the Pillar also builds on existing international law, including the European Social Charter of 1961, as well as its revised version of 1996.⁷⁶

In view of the above, the proclamation of the European Pillar of Social Rights signals the opportunity for EU institutions and Member States to make full use of existing tools. These include the EU primary legal framework and the competences already conferred to the Union by the Treaties in a wide range of areas related to social rights of particular significance for the well-being of older people. Such areas include social policy, employment and vocational training, health or non-discrimination. It is an opportunity to try to "give more weight" to these "less well-known rights enshrined in the EU legislation", as already pointed out in FRA's *Fundamental Rights Report 2017*.⁷⁷

In addition to the key principles set out in the European Pillar of Social Rights referring directly to older people, most of the rights and principles in the Pillar are recognised on equal terms, regardless of any differentiating ground, including age. This is the case, for example, regarding the right of "everyone" to:

1. life-long learning (Principle 1);
2. adequate minimum income benefits ensuring a life in dignity at all stages of life (Principle 14);

3. affordable, preventive and curative health care of good quality (Principle 16);
4. access to social housing or housing assistance of good quality (Principle 19);
5. access to essential services of good quality (Principle 20).

Proclaiming all these social rights and principles on equal terms to everyone, the Pillar reaffirms the importance of older people exercising their rights, and participating in all aspects of life equally, as already enshrined in the Charter of Fundamental Rights. At the same time, the European Pillar of Social Rights' special provision on issues such as old-age income and pensions or housing assistance for vulnerable people (Principle 19) shows that the EU and Member States recognise the need to elaborate and maintain a protective framework for older people. This is done keeping the balance between independence, participation and protection under the common denominator of "dignity".

In conclusion, the European Pillar of Social Rights reaffirms and builds on the concept of "active ageing" already enshrined in the EU legal order as reflected in the Charter of Fundamental Rights, particularly in Article 25. It is a positive development towards a more social and respectful EU for older people. However, given its non-binding nature, it is up to EU institutions and Member States to transform their expressed political commitment into concrete legal action and policies. Adopting legislative proposals already presented by the Commission, in particular the proposal for the Equal Treatment Directive, and introducing considerations regarding the rights of older people in the European Semester, would mark significant progress.

European Pillar of Social Rights – selected key principles relevant to older people

3. Equal opportunities. Regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered.

9. Work-life balance. Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way.

15. Old age income and pensions. Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights.

17. Inclusion of people with disabilities. People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.

18. Long-term care. Everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services.



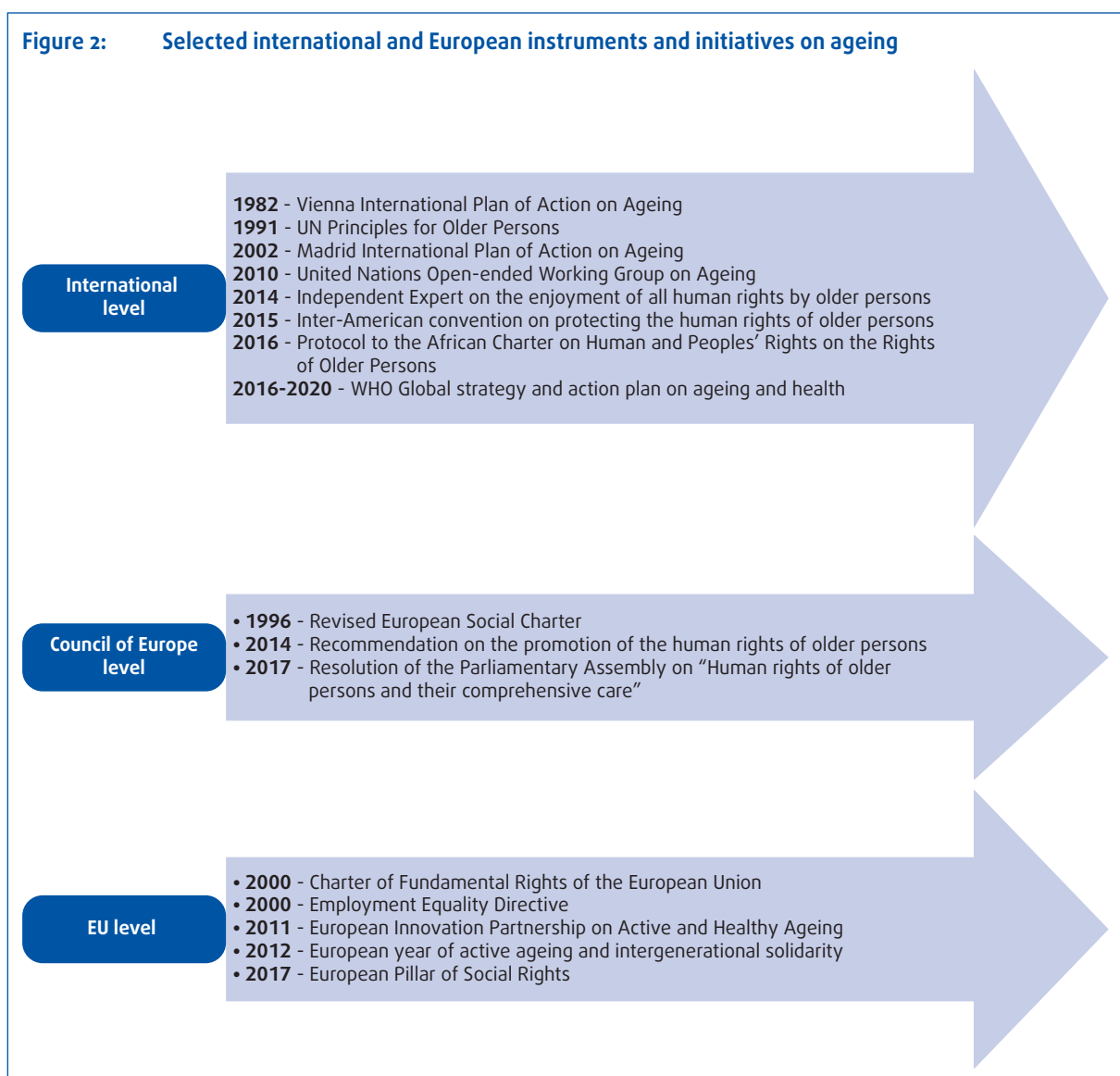
2.4. EU policy responses reflecting global developments

Legal and policy developments at the EU level signal a slow but clear shift towards a human rights-based approach to older people. This is reflected in ongoing debates and actions at the broader European and international level. With the exception of South America and Africa, where dedicated legal instruments were recently signed,⁷⁸ there are no legally binding instruments specifically addressing the human rights of older people. Nevertheless, important non-binding instruments and policy responses have been developed over the last 30 years. This points to the growing attention paid by international stakeholders to increasing efforts towards fulfilling all universal rights for people of all ages.

In 2002, 20 years after the first World Assembly on Ageing in 1982, 159 UN member states adopted the most recent instrument on ageing, the Madrid International Plan of Action on Ageing (MIPAA). This marked a turning point in promoting a “society for all ages”.⁷⁹ In this context, the European regional strategy (MIPAA/RIS) sets a focus on “securing gender-sensitive and evidence-based co-ordinated and integrated policies to bring societies and economies into harmony with demographic change”. The European regional strategy makes 10 commitments covering different facets of population and individual ageing.⁸⁰ More recently, the 2017 Lisbon Ministerial Declaration outlines the three policy goals for European states to work towards for 2022. These are:

- recognising the potential of older persons;
- encouraging longer working life and ability to work;
- ensuring ageing with dignity.⁸¹

Figure 2: Selected international and European instruments and initiatives on ageing



The MIPAA is also relevant to Sustainable Development Goals that address the needs of older persons, in particular those related to social protection, health, reducing inequalities and ending poverty (Goals 1, 3, 10, and 11). Older persons are also mentioned under targets related to nutrition, resource use, healthcare, accessibility, safety and age-specific data collection and analysis.⁸²

All the policies outlined above are, however, soft-law instruments. While commitments are wide ranging and MIPAA addresses more aspects of older people's lives than its predecessors, it "was not drafted as a human rights instrument; [but] a series of recommendations to achieve socio-economic objectives."⁸³ To respond to these shortcomings and ensure that older people can fully enjoy their human rights, the UN General Assembly has recently established two additional processes.

The UN Open-ended Working Group on Ageing was established in 2010. A mandate for an Independent Expert on the Enjoyment of all Human Rights by Older Persons was created in 2014. Both instruments mark a clear "paradigm shift from a predominant economic and development perspective to ageing to the imperative of a human rights-based approach that views older persons as subjects of law, rather than simply beneficiaries, with specific rights, the enjoyment of which has to be guaranteed by [s]tates."⁸⁴ The Open-ended Working Group on Ageing is the first global process set up to assess existing instruments. If gaps are identified, it seeks to "consider proposals for an international legal instrument to promote and protect the rights and dignity of older persons."⁸⁵ In the context of its work, the independent expert on the enjoyment of all human rights by older persons concluded that the existing policy framework – MIPAA – is "not sufficient to ensure full enjoyment of [...] human rights by older people". It called on states to step up efforts to protect the rights of older people, including by considering the elaboration of a new convention for older people.⁸⁶

The Council of Europe's existing instruments do not address age and age discrimination explicitly, neither under Article 14 of the European Convention on Human Rights (ECHR) or the Protocol No. 12 to the ECHR on anti-discrimination nor in Article E addressing discrimination in the Revised European Social Charter. However, the European Court of Human Rights (ECtHR) has recognised that "age might constitute 'other status' for the purposes of Article 14 of the Convention" and hence discrimination on grounds of age is prohibited by the Court.⁸⁷

The revised European Social Charter (ESC) contributes to the further recognition of the rights of older persons to lead a life of dignity and independence and to participate in social and cultural life.⁸⁸ Interestingly, Article 23 of the revised ESC, setting forth the right of older people to social protection, explicitly links adequate resources, housing and health care – as aspects of the right to social protection – with enabling older people to participate in social life and "lead independent lives in their familiar surroundings". In addition, Article 30 of the revised ESC, establishing a right to protection against poverty and social exclusion, provides that such a right entails the effective access of people living or at risk of living in a situation of poverty or social exclusion to employment, housing, training, education, culture and social and medical assistance.

A review of Council of Europe soft law instruments shows that the Council of Europe Committee of Ministers recommendations addressing older people primarily focus on two aspects:

1. on situations of vulnerability – for example, they address the "protection of incapable adults" or the "organisation of palliative care";⁸⁹
2. they examine aggravating disadvantage from intersecting grounds – for example, by looking at "older people with disability" or "elderly migrants".⁹⁰

However, the Committee of Ministers adopted a dedicated Recommendation on the rights of older people in 2014. It marked the first dedicated European human rights instrument, albeit of non-binding nature.⁹¹ Furthermore, in 2017, the Parliamentary Assembly of the Council of Europe adopted a resolution on 'Human rights of older persons and their comprehensive care', calling on member states to take measures to combat ageism, improve care and prevent social exclusion of older people.⁹² Moreover, a Recommendation was adopted asking the Committee of Ministers to "consider the necessity and feasibility of drawing up a legally binding instrument" devoted to the rights of older persons.⁹³

All these developments – at the EU and broader European and international level – point to a slow but inexorable development towards recognising the need for stronger protection of older persons' rights. This indicates a move towards a human rights-based approach to ageing.



FRA opinions

Labour markets and national social protection systems have already undergone profound transformations to respond to longevity and the challenges an ageing society poses to national economic and social systems. This process has started with a number of initiatives in the EU and the world. These include fighting old age discrimination in the area of employment, promoting active ageing and incentivising longer working lives, as well as introducing reforms in social protection systems addressing old age, namely in pensions, health services and long-term care provision. Reforms are also starting to move away from needs-based approaches aimed at responding to age-related 'deficits', towards shifting the focus to the individual, a human being with fundamental rights and inherent human dignity. According to Article 1 of the EU Charter of Fundamental Rights, human dignity is inviolable and must be protected and respected, regardless of age.

However, this shift should not overlook the age-specific needs of older people, nor downgrade the importance of the state's responsibilities towards individuals – including older people – who may need support. Moreover, older people are a heterogeneous group with quite diverse needs and preferences. Many preferences and experiences in the life course affect outcomes at older age. Gender, immigrant or ethnic minority status, disability as well as socio-economic status and geographical or other aspects can have a compound negative impact on older people. This largely determines to what extent they enjoy their rights.

The civil, political, economic, social and cultural rights enshrined in the EU Charter of Fundamental Rights apply to everyone, regardless of age. Nevertheless, age features specifically under Article 21 as a protected ground for discrimination and under Article 25, which recognises a right for older people "to lead a life of dignity and independence and to participate in social and cultural life".

Non-discrimination and equal opportunities for older people in various areas of life, as well as their living in dignity, are also embedded in the recently proclaimed European Pillar of Social Rights. According to the European Commission, the European Pillar of Social Rights "partially goes beyond the current acquis". The objective is to reflect on how to extend protection against discrimination on the grounds of age to the areas of social protection, including social security and

healthcare, education, and access to goods and services available to the public.

The proclamation of the Social Rights Pillar, albeit a non-legally binding set of principles and rights, signals a strong political will and commitment by EU institutions and Member States to work towards a more social and inclusive Europe – a Europe that makes better and more respectful use of all its human capital without excluding anyone. It is an opportunity for the EU and Member States to deliver concrete results on promoting and implementing the rights of older people, who are an important part of human capital and have the potential to contribute substantially to all aspects of life.

However, setting rules and minimum standards is only the first step in this process. Raising awareness and using coordination and monitoring mechanisms are all equally essential to fulfil fundamental rights of all, including older people, as provided in the Charter. In this effort, the engagement of both the EU institutions and the Member States is more than necessary.

In this respect, FRA's opinions outlined below should be seen as building blocks in support of the shift towards a comprehensive human rights-based approach to ageing.

FRA opinion 1.1

The EU legislator should continue its efforts for the adoption of the Equal Treatment Directive. The directive will extend horizontally protection against discrimination based on various grounds, including age, to areas of particular importance for older people, including access to goods and services, social protection, healthcare and housing.

FRA opinion 1.2

To deliver on stronger social rights protection, the EU legislator should proceed with concrete legal action, further implementing the principles and rights enshrined in the Pillar of Social Rights. In this regard, it should ensure the rapid adoption of the proposed Work-life Balance Directive and accelerate the procedures for the adoption of a comprehensive European Accessibility Act. To ensure coherence with the wider body of EU legislation, the Accessibility Act should include provisions linking it to other relevant acts, such as the regulations covering the European Structural and Investment Funds.

FRA opinion 1.3

EU institutions and Member States should consider using the European Structural and Investment Funds, as well as other EU financial tools, to promote a rights-based approach to ageing. To enhance reforms which promote living in dignity and autonomy, as well as opportunities to participate for older people, EU institutions and Member States should reaffirm and reinforce in the coming programming period (post 2020) ex-ante conditionalities. Such measures should provide for monitoring their implementation, seeking to ensure that EU funding is used in compliance with fundamental rights obligations.

Furthermore, EU institutions and Member States should systematically address challenges older people face in core policy coordination mechanisms, such as the European Semester.



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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

European societies are not getting any younger! It is a simple truth we must face both about ourselves and Europe as a whole. In two generations, by 2080, those aged 65 or above will account for almost 30 % of the European Union's population.

In modern and fast-paced societies, 'older' individuals are often dismissed as burdens and their important contributions – as carers in the family, mentors and volunteers, for example – to society overlooked. But, as this year's focus '*Shifting perceptions: towards a rights-based approach to ageing*' underlines, fundamental rights, whether civil and political or social and economic, do not carry an expiry date.

The focus explores the slow but inexorable shift from thinking about old age in terms of 'deficits' that create 'needs' to a more comprehensive one encompassing a 'rights-based' approach towards ageing. This gradually evolving paradigm shift strives to respect the fundamental right to equal treatment of all individuals, regardless of age – without neglecting protecting and providing support to those who need it.



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