

2	Equality and non-discrimination	59
2.1.	Progress on proposed Equal Treatment Directive remains slow in 2015	59
2.2.	Promoting equal treatment by supporting the ageing population and tackling youth unemployment	60
2.3.	Multiple court decisions clarify Employment Equality Directive's provisions on age discrimination	64
2.4.	EU and Member States take action to counter discrimination	66
2.4.1.	Tackling discrimination on the ground of sex, including gender reassignment	66
2.4.2.	Confronting discrimination on the ground of religion or belief	67
2.4.3.	Targeting discrimination on the ground of disability	68
2.4.4.	Countering discrimination on the grounds of sexual orientation and gender identity	69
	FRA opinions	70

UN & CoE

January

February

March

April

May

10 June – In *Y. Y. v. Turkey* (14793/08), the European Court of Human Rights (ECtHR) rules that denying the applicant the possibility of undergoing gender reassignment surgery for many years because the applicant is fertile is in violation of the right to respect for private life (Article 8 of the ECHR)

21 June – In *Oliari and Others v. Italy* (18766/11 & 36030/11), the ECtHR rules that Italy failed to ensure to same-sex couples a specific legal framework providing for the recognition and protection of their union, breaching the applicants' right to respect for private and family life (Article 8 of the ECHR)

June

July

August

September

October

November

December

EU

21 January – In *Georg Felber v. Bundesministerin für Unterricht, Kunst und Kultur* (C-529/13), the Court of Justice of the European Union (CJEU) rules that allowing civil servants to contribute to the pension scheme only from the age of 18 onwards does not amount to age discrimination under the Employment Equality Directive (2000/78/EC)

28 January – In *ÖBB Personenverkehr AG v. Gotthard Starjakob* (C-417/13), the CJEU holds that budgetary considerations cannot in themselves justify age discrimination and do not constitute a legitimate aim within the meaning of Article 6 (1) of the Employment Equality Directive

January

26 February – In *Ingeniørforeningen i Danmark v. Teknik* (C-515/13), the CJEU finds that refusing to pay a severance allowance to an employee who exceeded the retirement age at the time of dismissal is both objectively and reasonably justified and therefore in accordance with the Employment Equality Directive

February

March

29 April – In *Geoffrey Léger v. Ministre des Affaires sociales, de la Santé et des Droits des femmes and Établissement français du sang* (C-528/13), the CJEU holds that men who have had sex with other men may be prevented from donating blood, if the referring court determines that there is a high risk of acquiring severe infectious diseases and that no effective detection techniques or less onerous methods are available to ensure a high level of health protection for recipients

April

May

June

July

August

9 September – In *Daniel Unland v. Land Berlin* (C-20/13), the CJEU rules that allocating a basic pay grade to civil servants according to their age constitutes a difference in treatment on the ground of age that may be justified by the aim of protecting acquired rights in light of Article 6 (1) of the Employment Equality Directive

September

October

November

December

2

Equality and non-discrimination



The EU's commitment to countering discrimination, promoting equal treatment and fostering social inclusion is evidenced in legal developments, policy measures and actions taken by its institutions and Member States in 2015. The proposed Equal Treatment Directive, however, had still not been adopted by the year's end. As a result, the protection offered by EU legislation remained disparate depending on the area of life and the protected characteristic, perpetuating a hierarchy of grounds of protection against discrimination.

2.1. Progress on proposed Equal Treatment Directive remains slow in 2015

The EU benefits from an advanced legal and policy framework promoting equality and non-discrimination. The Lisbon Treaty¹ makes non-discrimination a cross-cutting principle that guides the Union in defining and implementing its policies and activities. Taken together, the directives on gender equality² and the Racial Equality Directive (2000/43/EC)³ offer comprehensive protection against discrimination on the grounds of sex and racial or ethnic origin, and the Employment Equality Directive (2000/78/EC)⁴ prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation in the areas of employment, occupation and vocational training.

Furthermore, the Audiovisual Media Services Directive prohibits commercial communications from including or promoting discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. In addition, the EU and nearly all of its Member States are parties to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). FRA is a member of the EU framework to promote, protect and monitor the convention.

Negotiations on the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (the Equal Treatment Directive) entered their seventh year in 2015. Adopting this directive would put an end to the so-called hierarchy of grounds by ensuring that the EU and its Member States offer comprehensive protection against discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation on an equal footing.

At the end of 2014, the Council of the European Union affirmed that it would continue working towards unanimity in the Council rather than proceeding via enhanced co-operation. In 2015, the Latvian and Luxembourgian Presidencies focused their attention on clarifying the directive's scope, as it relates to social protection, education and access to goods and services for persons with disabilities. The unanimity required to adopt the Equal Treatment Directive was not reached by the year's end.

The Luxembourg Presidency's progress report on the directive, released in November, noted that, "[w]hile emphasising the importance of the fight against discrimination, certain delegations have, in the past, questioned the need for the Commission's proposal, which they have seen as infringing on national competence for certain issues and as conflicting with the principles of subsidiarity and proportionality." The

report adds that one delegation has maintained a general reservation, and that “[c]ertain other delegations continue to question the inclusion of social protection and education within the scope”.⁵

Another stumbling block involves proposed obligations relating to the accessibility of goods and services, and of new and existing buildings, facilities, transport services and infrastructure. The Commission’s adoption of the proposal for a European Accessibility Act could clarify the nature of these accessibility obligations and facilitate discussions in the Council, which will continue under the Dutch Presidency.

2.2. Promoting equal treatment by supporting the ageing population and tackling youth unemployment

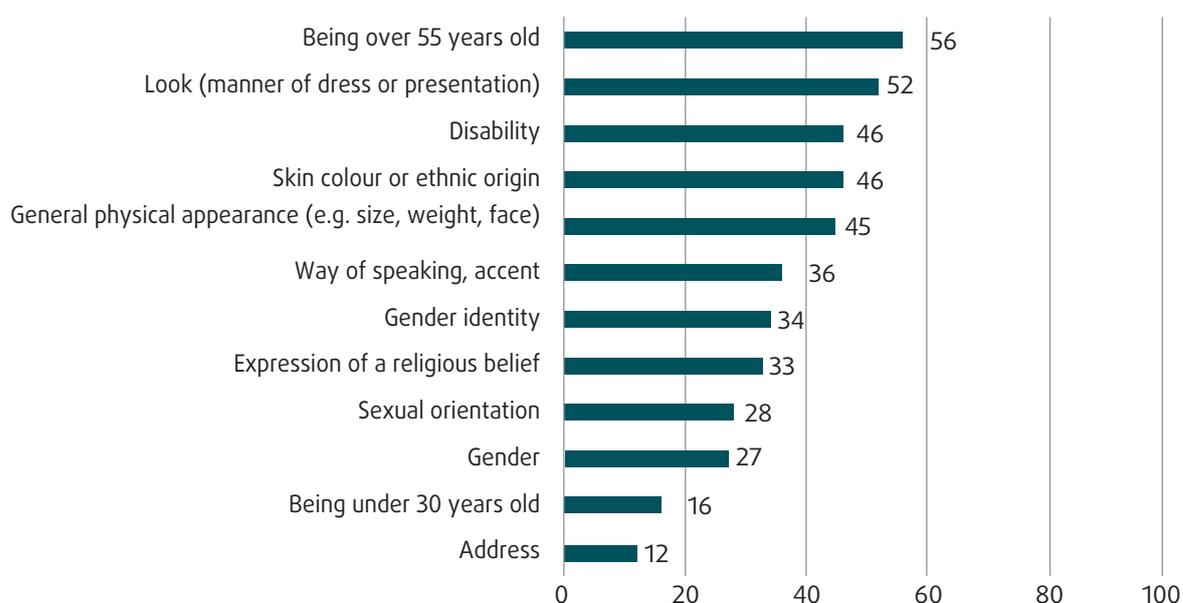
Older people make up an increasing proportion of the EU’s population, a phenomenon driven by declining fertility rates and a higher life expectancy. Based on the latest available data, Eurostat estimates that about 64.5 million people in the EU were aged between 55 and 64 years in 2014.⁶ People over the age of 55

are at a serious disadvantage when trying to access the labour market; hiring rates for that group are below 10 %.⁷ Older people also face negative stereotyping and ageist attitudes at work.⁸ Findings from the 2015 Eurobarometer on discrimination show, for example, that 56 % of those living in the EU consider being over 55 to be a disadvantage when looking for work, while 16 % consider this to be the case for those under 30, as Figure 2.1 shows.

The effects of an ageing population on society as a whole are of increasing concern to policy actors at the international, European and national levels. The United Nations (UN) General Assembly, for example, recommended in November 2015 “that States parties to existing international human rights instruments, where appropriate, address the situation of older persons more explicitly in their reports”.⁹

This recommendation relates to five principles that States parties should seek to follow when implementing national programmes relating to older persons: independence, participation, care, self-fulfilment, and dignity. In relation to independence, the UN calls upon governments to ensure that “older persons [...] have the opportunity to work or to have access to other income-generating opportunities [and] be able to participate in determining when and at what pace withdrawal from the labour force takes place.”¹⁰

Figure 2.1: Characteristics perceived as disadvantageous when looking for work in the EU-28 in 2015 (%)



Question: Q3 In (our country) when a company wants to hire someone and has the choice between two candidates with equal skills and qualifications, which of the following criteria may, in your opinion, put one candidate at a disadvantage? (Multiple answers possible)

Source: European Commission, Special Eurobarometer 437: Discrimination in the EU in 2015

“Age discrimination towards older people in employment is becoming increasingly relevant due to the demographic changes in Europe which are at the root of most of the recent age-related legislation such as the abolition of or increase in mandatory retirement ages, disincentives for early retirement and other measures to keep older workers in the labour market.”

European Commission (2015), Joint Report on the application of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC)

At the other end of the age spectrum, youth unemployment remains high across the EU. Being excluded from the labour market or having a low quality of employment¹¹ affects young people’s eligibility for social and/or unemployment benefits, sickness and maternity leave, healthcare and access to pension schemes. The International Labour Organization highlights that:

“Providing opportunities for young people to access decent jobs means more than just earning a living. It means getting youth into decent and productive work in which rights are protected, an adequate income is generated and adequate social protection is provided. Scaling up investments in decent jobs for youth is the best way to ensure that young people can realise their aspirations, improve their living conditions and actively participate in society.”¹²

The Employment Equality Directive introduced the prohibition of discrimination on the ground of age into Union law, and the CJEU’s holding in *Mangold* (C-144/04) established non-discrimination in respect of age as a general principle of EU law (see [Section 2.3](#) for information on 2015 CJEU case law). In its [report](#) on the application of the Employment Equality Directive, the European Commission notes, however, that “legislation alone is not enough to ensure full equality, so it needs to be combined with appropriate policy action”.¹³

Accordingly, this chapter examines how the EU promotes non-discrimination on the ground of age through measures to allow older people who wish to remain in active employment do so and measures to facilitate younger people’s access to the labour market. This commitment is reflected in the preamble of the Employment Equality Directive when it refers to the Community Charter of the Fundamental Social Rights of Workers, which “recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly [...] people”. Article 151 of the Treaty on the Functioning of the EU explicitly refers to the provisions of the community charter, and these were also taken up by the EU Charter of Fundamental Rights.

Recital 9 of the Employment Equality Directive stresses that employment and occupation are key

elements in guaranteeing equal opportunities for all, and contribute to the full participation of citizens in economic, cultural and social life and to realising their potential. Recital 25 further states that prohibiting age discrimination is an essential part of meeting the aims set out in the Employment Guidelines proposed by the European Commission and approved by the Council of the European Union.

These guidelines were updated in March 2015, when the European Commission “adopted a proposal for a new package of integrated policy guidelines to support the achievement of smart, sustainable and inclusive growth [i.e. the Europe 2020 strategy], and the aims of the European Semester of economic policy coordination.”¹⁴ These frame the scope and direction of policy coordination among Member States, and provide the basis for country-specific recommendations.

The updated guidelines outline four key domains of intervention, one of which relates to promoting equal opportunities.

“The Union is to combat social exclusion and discrimination and promote social justice and protection, as well as equality between women and men. In defining and implementing its policies and activities, the Union is to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education and training.”

Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policies of the Member States for 2015

Some measures to address the social and economic consequences of an ageing population and persisting youth unemployment were proposed in the context of the European Semester. This is the yearly cycle of economic policy coordination in the EU to meet the targets of the Europe 2020 strategy. In 2014, the European Parliament had called for employment and social indicators to “have a real influence on the whole European Semester process”.¹⁵

In response, the European Commission introduced three labour market indicators to the scoreboard of the Macroeconomic Imbalance Procedure in 2015, enabling a deeper analysis of the social consequences of macroeconomic imbalances: activity rate, long-term unemployment rate and youth unemployment rate. Country-specific recommendations made to Member States in 2015 reflect concern over such social consequences, as regards youth unemployment, the participation of older people in the labour market and vulnerability to discrimination on more than one ground.¹⁶

More specifically, recommendations for **Belgium, Bulgaria, Croatia, Ireland, Italy, Poland, Portugal, Romania, Spain** and the **United Kingdom** point to

a mismatch between the skills young people have and the needs of the labour market, which lessens their employability. The recommendations for **Bulgaria** and **Italy** address the situation of young people not in education, employment or training. The recommendations for **Romania** are the only ones to address the implementation of the Youth Guarantee established by the EU in 2013. Under Youth Guarantee schemes, Member States should ensure that people under 25 years of age have a good-quality job offer, are in continued education, or have an apprenticeship or traineeship within four months of leaving school or becoming unemployed.

Some recommendations encouraged governments to address the impact of an ageing population on the labour market. Recommendations included keeping older people in work for longer periods by increasing the age of retirement (**Austria, Bulgaria, Croatia**); increasing the participation of older workers in the labour market (**Luxembourg, Romania, Slovenia**); providing incentives to support the employability of older workers (**Belgium**); or addressing the lack of a comprehensive active ageing strategy at national level (**Lithuania**). It must be noted that many people in the EU are not in favour of increasing the retirement age, as data from the 2006 wave of the European Social Survey in 23 Member States show.¹⁷

People vulnerable to discrimination on more than one ground also figured in country-specific recommendations. Young people with migrant backgrounds were shown to be in particular danger of remaining at the margins of the labour market in **Austria, Belgium, the Czech Republic, Denmark** and **Slovakia**. The recommendations for **Bulgaria, the Czech Republic, Romania** and **Slovakia** addressed high levels of inactivity among Roma youth.

Civil society organisations recognise the importance of the European Semester, and many joined the EU Alliance for a democratic, social and sustainable European Semester (EU Semester Alliance), an EU-wide coalition of civil society organisations and trade unions. But the EU Semester Alliance was critical of the 2015 recommendations, mainly because it does not see these recommendations as fulfilling their potential to address social inequalities. In its 2015 position paper, the alliance held that:

“The EU has so far failed in implementing its legal obligations – as enshrined in the Treaties and the European Charter of Fundamental Rights – to ensure people’s right to live in dignity. The pressure on public budgets through the European Semester is increasing the risk of human rights violations for many population groups. Refocusing the Semester through a limited number of recommendations to only cover key priority issues is detrimental

to the development of policies that will address the persistent social inequalities within and among Member States.”¹⁸

Measures that improve the employment situation of older and young people and foster social inclusion could be framed in a rights-based context to ensure that fundamental rights considerations are embedded in the design and implementation of such measures. This would contribute to solidifying the new European Pillar of Social Rights proposed by the European Commission in its annual work programme for 2016, entitled *No time for business as usual*, which was released in October 2015.

Continuing efforts from previous years, the EU and its Member States took significant steps in 2015 to foster social inclusion by focusing on the ageing population and youth unemployment. Measures implemented address three categories of individuals: older people; young people and those not in employment, education or training; and the long-term unemployed.

Measures addressing older people

EU-level measures mainly focus on keeping older people at work by promoting healthy and active ageing. One such measure is the European Innovation Partnership on Active and Healthy Ageing, which falls under the Europe 2020 strategy.¹⁹ This partnership aims “to add an average of two years of healthy life for everyone in Europe”.²⁰

Another relevant measure is the Active Ageing Index (AAI),²¹ for which data on outcomes were released in 2015. This index measures the extent to which older people can live independently and participate in paid employment and in social activities. EU Labour Force Survey (EU-LFS) data have been used to populate the employment domain of the AAI. The European Commission, together with the United Nations Economic Commission for Europe and the European Centre for Social Welfare Policy and Research, developed the AAI in the framework of the 2012 European Year for Active Ageing and Solidarity between Generations.

AAI outcomes show that more than half of the Member States should increase the rate of employment of older men and women if they are to foster social inclusion:²² **Austria, Bulgaria, Croatia, the Czech Republic, Finland, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Poland, Slovakia, Slovenia** and **Spain**. Four EU Member States should particularly address unemployment among older women: the **Czech Republic, Italy, Malta** and the **Netherlands**. Three Member States should address unemployment among people above 60 years of age: **Belgium, France** and **Hungary**.



Member State-level measures addressing the employment of older people tend to focus on keeping older people in work. Means to achieve this include restricting access to early retirement or raising the retirement age. Data published in 2015 show that eight Member States link postponing the retirement age to increased life expectancy: **Cyprus, Denmark, Greece, Italy, the Netherlands, Slovakia, Portugal** and the **United Kingdom**.²³

Austria²⁴ introduced the possibility of working part-time for people approaching the age of retirement, and a bill to that effect is under discussion in **Luxembourg**.²⁵ Such schemes enable people to receive their pensions at retirement age despite working fewer hours, as they pay full pension contributions.

In **Denmark**, an amendment to the Act on Prohibition of Differential Treatment in the Labour Market abolished the 70-year age limit, enabling those above that age to continue working or seek employment. Being laid off or not being offered a job because of their age would constitute direct age discrimination.²⁶

Member States also made financial incentives available to employers if they hire older workers, as happened in **Bulgaria**,²⁷ **Croatia**²⁸ and the **Netherlands**.²⁹ The Bulgarian scheme, for example, aims to facilitate employing people who lack the required age or length of service to obtain a pension. The government will reimburse the salary and social security costs incurred by employers who hire unemployed persons who are within 24 months of reaching the age to be eligible for a pension or of reaching the required length of service.

Measures addressing youth unemployment and people not in employment, education or training

Member States also introduced financial incentives to address youth unemployment in 2015. This was the case, for example, in **Belgium**³⁰ and **Estonia**,³¹ where employers receive subsidies if they hire young workers or those for whom it is their first job, as in **Slovakia**.³²

The EU developed a range of measures to tackle youth unemployment, partly as a response to the economic crisis. Foremost among these is the Youth Guarantee – established in 2013 – which Member States continued to implement in 2015. **Hungary**, for example, launched its Youth Guarantee Scheme in 2015.³³

As mentioned above, under Youth Guarantee schemes, Member States should ensure that people under 25 years of age have a good-quality job offer, are in continued education, or have an apprenticeship or traineeship within four months of leaving school or becoming unemployed. The Youth Employment Initiative complements the Youth Guarantee and

targets regions where the rate of youth unemployment reached 25 % in 2012.

The proportion of people aged 15 to 24 not in employment, education or training decreased from 13 % in 2013 to 12.5 % in 2014, the latest Eurostat data show.³⁴ This means that many young people in the EU face disengagement and social exclusion, particularly those with disabilities or with a migrant background, Eurofound notes.³⁵

In September 2015, the European Commission prioritised empowering “more and more diverse young people, especially those at risk of exclusion” in the 2016–2018 work cycle of the cooperation framework for youth. This includes young people not in employment, education or training.³⁶

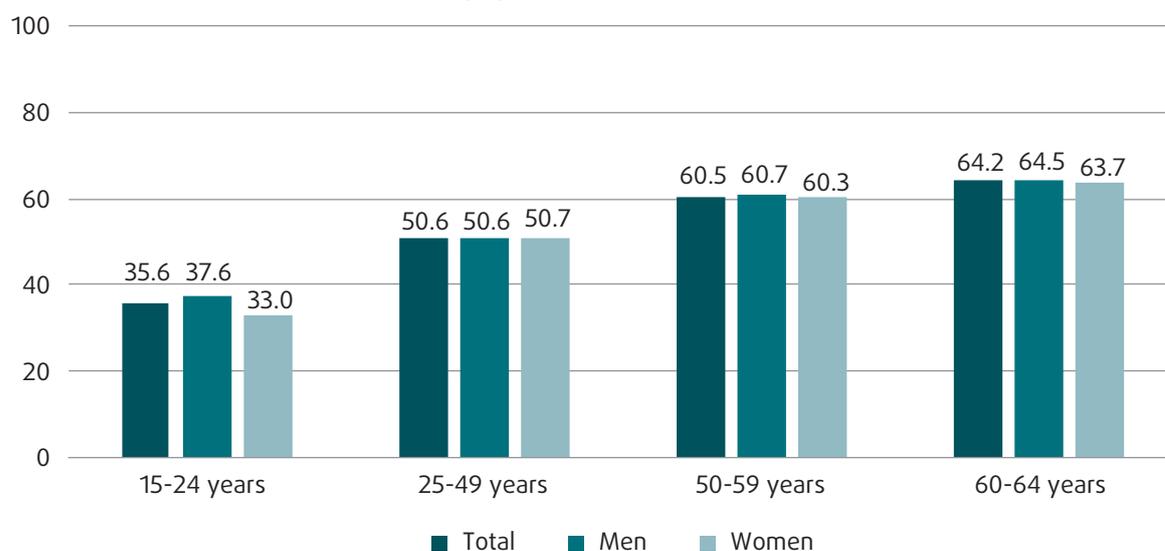
The commitment to tackle exclusion is also evidenced in the €6.4 billion available for 2014–2018 under the Youth Employment Initiative to support people not in employment, education or training. In February 2015, the European Commission advanced around €1 billion to support Member State efforts to get young people back into work, to return to education or get a traineeship. As the Commission noted, this allows young people not only “to contribute to the economy and society through their skills and dynamism, but they also regain their dignity”.³⁷

Member States implemented different types of measures to bolster young people’s access to employment, education and training in 2015. Examples include reforming legislation to improve vocational training or apprenticeships (**Italy**,³⁸ the **Netherlands**,³⁹ the **United Kingdom**⁴⁰) or developing skills through providing financial support, training or personalised guidance to any or all of the following: young persons with disabilities, parents, single parents, women, early school leavers, recent graduates and those in long-term unemployment (**Austria**,⁴¹ **Cyprus**,⁴² **Greece**⁴³). **Spain** took measures to reduce social security contributions for companies that hire unemployed young people under thirty years of age.⁴⁴

Measures addressing long-term unemployment

According to Eurostat’s latest available data, 5.1 % of the labour force in the EU-28 had been unemployed for more than one year in 2014, and more than half of these – 3.1 % of the labour force – had been unemployed for more than two years.⁴⁵ Long-term unemployment is most prevalent among third-country nationals, people with disabilities and members of disadvantaged minorities, such as the Roma. The share of unemployed people who are in long-term unemployment increases with age in the EU, as [Figure 2.2](#) shows. For example, 63.7 % of unemployed women

Figure 2.2: Long-term unemployment by age group and gender in the EU-28 in 2014, as share of total number of unemployed people in that age group (%)



Source: Eurostat (2016), Long-term unemployment (12 months or more) as a percentage of the total unemployment, by sex, age and citizenship (%) [*lfsa_upgan*], accessed on 25 January 2016

aged between 60 and 64 were long-term unemployed in 2014, compared with 33 % among women aged between 15 and 24.

Long-term unemployment is a major concern for policymakers – not only does it have both financial and social effects on people’s personal lives, but it also negatively affects social cohesion. The EU has made tackling long-term unemployment a priority, and, in September 2015, the European Commission tabled a proposal for a Council recommendation on the integration of the long-term unemployed. The proposal “helps combat poverty and social exclusion and ultimately reinforces human dignity”.⁴⁶ It also reinforces rights enshrined in the EU Charter of Fundamental Rights, particularly in Article 29 (access to placement services) and Article 34 (social security and social assistance).

2.3. Multiple court decisions clarify Employment Equality Directive’s provisions on age discrimination

With the ageing population bringing with it a higher likelihood of age discrimination in employment, court cases addressing the Employment Equality Directive’s provisions on age discrimination are particularly relevant. The CJEU and national courts issued several such judgments in 2015.

The CJEU handed down five significant judgments relating to Article 6 of the Employment Equality Directive, which allows differences of treatment on the ground of age where these are justified by a legitimate aim pursued by appropriate and necessary means.⁴⁷ Article 6(1) specifies that legitimate differences of treatment “may include, among others: the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection”.⁴⁸

In *ÖBB Personenverkehr AG v. Gotthard Starjakob* (C-417/13),⁴⁹ the CJEU considered whether budgetary considerations constitute a legitimate aim in accordance with Article 6(1). The Austrian Law on Federal Railways was amended with the aim of ending discrimination against employees who began their service with an apprenticeship before the age of 18. Prior to this amendment, periods of service completed before the age of 18 were not taken into account when calculating advancement to the next salary level. While the amendment repealed this provision, it extended the period required for moving up a salary level by another year. The CJEU found that budgetary considerations alone do not constitute a legitimate aim justifying different treatment based on age, and so held that this practice amounted to discrimination under Article 6(1) of the directive.

In *Georg Felber v. Bundesministerium für Unterricht, Kunst und Kultur* (C-529/13),⁵⁰ the CJEU found a difference

in treatment based on age to be in accordance with Article 6(1). The court held that Austrian law enabling civil servants to contribute to their pension scheme only once they are above the age of 18 is not contrary to EU law, because adopting an employment policy that enables all civil servants to begin contributing to the pension scheme at the same age and therefore have equal chances in acquiring the right to receive full retirement pensions constitutes a legitimate aim pursued by necessary and appropriate means under the directive, guaranteeing the equal treatment of all civil servants.

In *Ingeniørforeningen i Danmark v. Tekniq* (C-515/13),⁵¹ the CJEU held that the Danish law on salaried employees complies with EU legislation. According to that law, employees who work for a company for periods of 12, 15 or 18 years are entitled, upon dismissal, to a severance allowance worth one, two or three months of salary, respectively. The applicant, who was dismissed after reaching the legal retirement age, did not receive such an allowance and claimed age discrimination under Article 6 of the Employment Equality Directive. The CJEU disagreed, stressing that severance allowances aim to support employees in coping with labour market conditions after being dismissed from a long-term employment relationship. Since the applicant had reached the legal retirement age and was entitled to a state pension, not granting the severance allowance was objectively and reasonably justified.

The CJEU addressed a similar issue in *O v. Bio Philippe Auguste SARLS* (C-432/14).⁵² In that case, a severance allowance was not paid to a student who had been employed during his university vacation. At the end of his fixed-term employment contract, the applicant was not granted an end-of-contract allowance, in contrast to other employees whose fixed-term contracts expired without subsequent renewal.⁵³ The applicant's employer refused such a payment based on an exception in the French Labour Code, according to which young persons who work during their university vacations are excluded from receiving such an allowance.⁵⁴ In line with the reasoning in *Ingeniørforeningen i Danmark v. Tekniq*,⁵⁵ the CJEU held that exempting pupils and students from receiving such an allowance does not violate the Employment Equality Directive, because the purpose of the allowance is to compensate for the insecurity of needing to face labour market conditions. Since pupils and students do not experience such insecurities to the same extent as adults, the CJEU held that the difference of treatment did not amount to age discrimination.

In *Daniel Unland v. Land Berlin* (C-561/2015),⁵⁶ the CJEU held that rules governing the reclassification and career progression of judges under a new remuneration system are not contrary to EU law. Whereas the old remuneration system grouped the salaries of judges according to age, the new remuneration system calculates the pay according to experience, though the initial pay step

allocated to judges under the new system is based on the basic pay received under the old system. The applicant thus complained in domestic proceedings that he was discriminated against on the grounds of his young age when becoming a judge. The CJEU found that the different treatment of judges under the new system can be justified by the aim of protecting acquired rights.

At national level, the Supreme Court in **Cyprus** ruled on the legality of using age seniority as a criterion for promotion.⁵⁷ The applicant applied for a promotion that was eventually awarded to an older candidate. The applicant argued that the Civil Service Law, which allows seniority to be taken into account in such cases, contradicts the Employment Equality Directive and constitutes age discrimination. The Supreme Court disagreed, holding that the Civil Service Law is not discriminatory because it applies to all employees in the same position in the same way.

The **French** *Conseil d'État* ruled that Law 421-9 of the Code for Civil Aviation, which sets the age limit for pilots at 60, does not pursue a legitimate aim within the meaning of the Employment Equality Directive's Article 2(5) on public safety and Article 6(1) on employment policy.⁵⁸ Similarly, the *Cour de Cassation* ruled that setting the maximum age limit for ski instructors at 62 violates national law and Article 6(1) of the Employment Equality Directive, since this limit merely serves client satisfaction.⁵⁹

The Athens Administrative Court of Appeals in **Greece** ruled on the mandatory retirement age for civil servants.⁶⁰ The applicant was a diplomatic official of the Foreign Ministry for 33 years when he reached the mandatory retirement age of 65. Employees are only entitled to full pension rights after being in service for 35 years. Since the mandatory retirement age is not set at 65 for other officials and civil servants, the applicant argued that he was discriminated against on the ground of age. The court disagreed, holding that the difference in treatment of diplomatic officials pursues a legitimate aim and is appropriate and necessary and does not contradict either domestic law or the Employment Equality Directive. The Administrative Regional Court in **Latvia** took a similar decision, holding that the discontinuation of civil service upon reaching retirement age complies with national and EU law.⁶¹

The **Danish** High Court also ruled on a case relating to the mandatory retirement age.⁶² The applicant was a member of the Unemployment Insurance Fund. He was notified that his fund membership would be terminated once he reached the age of 65 and that he would instead receive a state pension. The applicant did not want to retire and argued that terminating his membership was contrary to Article 6(1) of the Employment Equality Directive and constituted unjustified age discrimination. The court held that Section 43

of the Act on Unemployment Insurance, on which the membership termination was based, complies with the Employment Equality Directive.

2.4. EU and Member States take action to counter discrimination

The year 2015 also saw developments relating to countering discrimination on the grounds of sex (including gender reassignment), religion or belief, disability, sexual orientation and gender identity. For developments relating to racial or ethnic discrimination and to national equality bodies, see Chapter 3 of this report. For developments concerning the implementation of the CRPD, see Chapter 8. For additional information on discrimination on the ground of sex, consult the work of the European Institute for Gender Equality (EIGE).

2.4.1. Tackling discrimination on the ground of sex, including gender reassignment

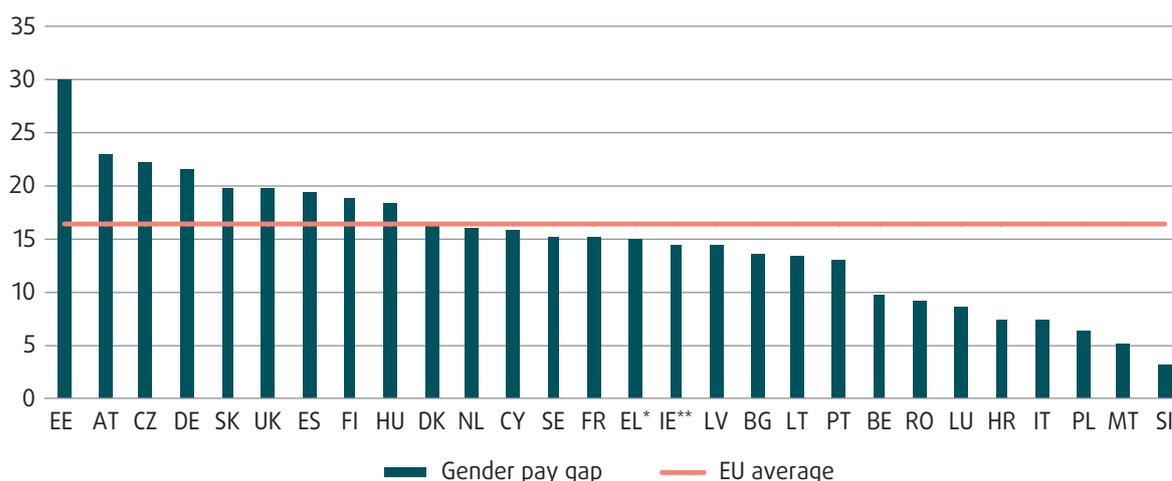
In December 2015, the European Commission published its [Strategic engagement for gender equality 2016–2019](#). This strategy identifies more than 30 actions in five priority areas to promote equality between women and men. These areas are: increasing

female labour-market participation and the equal economic independence of women and men; reducing the gender pay, earnings and pension gaps and thus fighting poverty among women; promoting equality between women and men in decision-making; combating gender-based violence and protecting and supporting victims; and promoting gender equality and women’s rights across the world.

Concerning the gender pay gap, which has been covered in previous FRA Annual reports, the latest available estimates from Eurostat show that women in the EU on average earn 16 % less than men per hour worked (see Figure 2.3). The largest gap is found in **Estonia**, where women’s gross hourly earnings are on average 30 % below those of men, and the smallest gap is observed in **Slovenia**, where the gross hourly earnings of women are on average 3 % below those of men. As Eurostat explains:

“There are various reasons for the existence and size of a gender pay gap and they may differ strongly between Member States, e.g. kind of jobs held by women, consequences of breaks in career or part-time work due to childbearing, decisions in favour of family life, etc. Moreover, the proportion of women working and their characteristics differ significantly between countries, particularly because of institutions and attitudes governing the balance between private and work life which impact on the careers and thus the pay of women.”⁶³

Figure 2.3: Unadjusted gender pay gap, by EU Member State, 2013 (%)



Notes: The figure shows the difference between average gross hourly earnings of male and female employees as a percentage of male gross earnings. ‘Unadjusted’ means that the gender pay gap is calculated “without correcting for national differences in individual characteristics of employed men and women - the main reason is that, at this stage, there is neither consensus nor scientific evidence on which adjustment method should be used”, Eurostat (2016), [Glossary: Gender pay gap \(GPG\)](#).
* Data for Greece are current up to 2010.
** Data for Ireland are current up to 2012.

Source: Eurostat, [Gender pay gap statistics](#)

EU Member States took a number of initiatives to address the gender pay gap. The **German** Federal Anti-Discrimination Agency, for example, published a report by an independent commission with recommendations for measures against gender discrimination.⁶⁴ The commission supports the federal government's plans for an equal pay act, but calls for businesses of all sizes to fall under the act. The government's coalition agreement currently plans to require only companies with more than 500 employees to issue reports on pay gaps.

The **German** Act for the Equal Participation of Women and Men in Management Positions in the Private Sector and in Public Service came into force. The law aims to increase the ratio of women in higher management positions in the private and public sectors. For the private sector, all shareholder companies that fall under the Workers' Participation Act are obliged to reach a 30 % ratio of women in their supervisory boards as of 1 January 2016. For the public sector, all layers of the federal administration have to define targets and implementation measures for equal gender representation in management positions.⁶⁵

Some Member States marked Equal Pay Day 2015 with initiatives to raise awareness on the gender pay gap. A European Commission report notes that **Estonia** marked Equal Pay Day on 21 April 2015, with activities focusing on young parents and how to reconcile career and family life. In addition, given that the gender pay gap reached 29.9 % in the country, restaurants offered dishes with special ingredients for prices 29.9 % higher than those for dishes without these ingredients. Some restaurants also served 'soup for working women', and shops offered a 29.9 % discount to women.⁶⁶

Also on Equal Pay Day, a [self-diagnosis gender pay gap tool](#) was launched in **Spain**, enabling companies to identify wage inequalities between women and men, in accordance with measures foreseen in the Strategic Plan for Equal Opportunities 2014–2016 to combat the gender pay gap. Similarly, **Portugal's** Commission for Equality in Labour and Employment launched a [gender pay gap calculator](#) in 2015.

The **Lithuanian** national programme on equal opportunities for women and men 2015–2021⁶⁷ aims to promote equal opportunities in occupation and employment. The programme sets three goals: reduce wage differences; reduce sectoral and professional segregation in the labour market; and increase opportunities for women, especially those living in rural areas, to launch and develop businesses. Similarly, in **Spain**, a plan for the promotion of women in rural areas covering the period 2015–2018 was approved in October 2015.

Luxembourg's Ministry for Equal Opportunities outlined⁶⁸ the main points included in a draft bill amending

the Labour Code:⁶⁹ simplification of the procedure to obtain benefits when recruiting staff from the under-represented sex; clarification of the conditions for obtaining financial assistance in the framework of a specific programme targeting equal salaries between men and women; and inclusion of the principle of equal pay in the legislation.

The **United Kingdom** government introduced "an obligation for every company with more than 250 employees to publish the difference between the average pay of their male and female employees" to increase pay transparency in large companies.⁷⁰

In **Luxembourg**, the legislature also began discussing a bill to amend the labour and criminal codes so that the principle of non-discrimination would apply to gender reassignment.⁷¹

Promising practice

Fostering an inclusive workplace for transgender persons

The Government Equalities Office in the **United Kingdom** published guidance for employers on recruiting and retaining transgender staff, which could be applied to other population groups vulnerable to discrimination. The guidance identifies good practices in a number of employment-related areas. It suggests, for example, that an employer's website should make clear that it values having a diverse workforce by including a statement of values and by giving access to inclusion plans in its human resources policy. To retain transgender staff, employers are advised to foster and promote an organisation-wide culture of dignity and respect. The guide identifies providing diversity and equality training for all staff members and having accessible role models and mentors as good practices for achieving this objective.

For more information, see: UK, HM Government (2015), Recruiting and retaining transgender staff: A guide for employers, 26 November 2015, pp. 17–18

2.4.2. Confronting discrimination on the ground of religion or belief

National courts referred preliminary questions relating to discrimination on the ground of religion and belief to the CJEU for the first time in 2015. Both cases involved women whose employment contracts were terminated because they wore Islamic headscarves at work. The cases originated in Belgium and France, and were still to be decided upon by the CJEU at the time of writing.

The **Belgian** case concerned an employee of a security company, who, after three years of service,

informed her employer that she had decided to wear an Islamic headscarf to work.⁷² Based on a policy of neutrality, the employer prohibited wearing signs that mark adherence to religious, political or philosophical beliefs. When the applicant refused to continue working without her veil, the employer terminated her employment contract, stating that this violated the neutrality policy. The applicant argued that her dismissal was counter to Belgium's anti-discrimination laws and violated Article 2(2) of the Employment Equality Directive relating to the concept of discrimination. After the court of first instance found in favour of the employer, the applicant appealed to the Supreme Court, which stayed proceedings and referred the case to the CJEU for a preliminary ruling.

The case in **France**⁷³ concerned an employer who received complaints from customers and asked the applicant to take off her veil. The employer reminded her of the duty to dress in a neutral fashion when dealing with clients, but the applicant refused to take off her veil and was subsequently dismissed. The applicant alleged that her dismissal was unjustified and contrary to Article 2(2) of the Employment Equality Directive. Proceedings at national level were stayed and the case was referred to the CJEU to ask if the dismissal can be justified in light of Article 4(1) of the Employment Equality Directive, relating to legitimate and justified occupational requirements.

2.4.3. Targeting discrimination on the ground of disability

Cyprus, Malta, the Netherlands, Slovakia, Spain and the United Kingdom took action to counter discrimination based on disability. More specifically, in Slovakia, the government adopted a strategy on the implementation and protection of human rights, which contains a chapter on the rights of persons with disabilities.⁷⁴ The strategy defines the following priorities: ensure that persons with disabilities are not discriminated against when exercising their right to engage in work; support enforcement of legislation relating to employing persons with disabilities; and provide assistance when anti-discrimination laws have been violated against persons with disabilities accessing employment and in employment.

The Slovak parliament elected a commissioner for persons with disabilities, whose role is to monitor and assess observance of the rights of persons with disabilities, based on individual petitions or on her or his own initiative. The commissioner is also tasked with assessing Slovakia's fulfilment of its commitments ensuing from international agreements.⁷⁵ In a similar development, the United Kingdom saw the creation of a House of Lords Committee on the Equality Act 2010 and Disability.⁷⁶ This committee is tasked with considering the impact of the Equality Act 2010 on people

with disabilities, with a first reporting deadline of 23 March 2016.⁷⁷

The Ombudsman in Cyprus – in its capacity of independent authority for the rights of persons with disabilities – found that requiring persons with intellectual disabilities to present a court order appointing someone as their legal representative to manage their affairs is an obstacle to equal access to the minimum guaranteed income. The Ombudsman equated the duty to provide support to persons with disabilities to exercise their legal capacity with the duty to provide reasonable accommodation, the breach of which amounts to unlawful discrimination.⁷⁸ The law governing the minimal guaranteed income has since been amended, removing the requirement for a court-ordered legal authorisation of the applicant's representative.⁷⁹

In a case involving teachers whose appointment to posts in public schools were passed up in favour of teachers with disabilities, the Supreme Court in Cyprus affirmed the lawfulness of quotas in employment for persons with disabilities, in accordance with national legislation on hiring persons with disabilities in the public sector.⁸⁰ The Maltese Parliament adopted legislation imposing a quota of persons with disabilities in a number of public entities/authorities, including the national equality body.⁸¹ Should any such entity not hire at least one person with a disability or a representative thereof, the entity will not be considered to be legally constituted.

The Netherlands adopted a law that could benefit persons with disabilities. The Participation Act, which came into force on 1 January 2015, introduces wage subsidies and job coaching for employers who hire persons with disabilities and other persons who have difficulty gaining access to the job market.⁸² In addition, the Quota Act took effect on 1 May 2015.⁸³ It requires employers with 25 or more employees to hire a percentage of people who fall under the remit of the Participation Act. Employers in both the private and public sectors that not meet their targets will incur fines.

A number of developments relating to persons with disabilities took place in Spain in 2015. A comprehensive [plan](#) to support people with disabilities in the armed forces was adopted, and legal protection and social support for persons with disabilities as victims of certain serious crimes was strengthened.⁸⁴ An inclusive approach for people with disabilities was adopted in the national system of civil protection,⁸⁵ and accessibility and participation of people with disabilities in education was increased.⁸⁶ In addition, legal provisions were introduced that provide deaf and deaf-blind citizens in criminal proceedings with the tools they need, such as sign language interpreters or other support for oral communication.⁸⁷

2.4.4. Countering discrimination on the grounds of sexual orientation and gender identity

The European Commission published a list of actions to advance equality for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in December 2015. This list highlights areas in which the European Commission will take action: anti-discrimination policy, freedom of movement for LGBTI families, workplace diversity, enlargement and foreign policy. The European Commission will cooperate with FRA, EIGE and other EU agencies in implementing actions in these areas.

Any efforts pursued to advance equality under this list of actions will be able to draw on data collected by FRA, such as the EU LGBT survey (which the European Commission invites the agency to repeat); an updated comparative legal analysis of protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU, published in December 2015; and an analysis of the views and experiences of public officials and professionals in 19 EU Member States with regard to respecting, protecting, promoting and fulfilling the fundamental rights of LGBT people, to be published in 2016.



Meanwhile, the Supreme Court in **Finland** adjudicated a case relating to discrimination based on sexual orientation.⁸⁸ The applicant was asked during her job interview if she or her spouse were politically engaged, which she denied without any further explanation. After being hired, the applicant's employer discovered that the applicant was living in a legally registered partnership and that her partner was politically engaged. The employer terminated the employment relationship with the applicant on that basis. The Supreme Court held that the termination was not justified, since neither the gender nor the political engagement of the applicant's partner was relevant to her employment.

"The principle that marriage requirements discriminate indirectly against same-sex couples was concisely stated by the legal report on homophobia published by the European Union's Agency for Fundamental Rights in June 2008."

ECtHR, *Oliari and Others v. Italy* (Nos. 18766/11 and 36030/11), 21 July 2015

Cyprus⁸⁹ and **Greece**⁹⁰ adopted legislation on same-sex civil unions. The Cypriot Civil Cohabitation Act provides that a civil union entered into under this law broadly corresponds to a union under Marriage Law 104(I) of 2003. One main difference is that the Civil Cohabitation Act expressly excludes adoption. Similarly, the law on civil cohabitation passed by the Greek parliament puts same-sex cohabitation on an equal footing with marriage, except for adoption.⁹¹ That law also abolished a provision of the Criminal Code relating to the age of consent for homosexual acts between men (Article 347), effectively equalising the age of consent.

In **Ireland**, the Constitution was amended in August 2015, enabling same-sex couples to marry: "Marriage may be contracted in accordance with law by two persons without distinction as to their sex."⁹²

The autonomous community of Extremadura in **Spain** adopted a law relating to the equal treatment of LGBT persons and public policies on anti-discrimination.⁹³ Next to bringing Extremadura in line with the practice of other autonomous communities, one core aspect of this law is the creation of a monitoring centre against discrimination on the grounds of sexual orientation or gender identity.

In the framework of the "Understanding Discrimination, Recognizing Diversity" (CORE) project, Spain launched a report on [Embracing diversity: proposals for an education free of homophobia and transphobia](#). The report offers a conceptual, legal and incidents-based analysis, selected educational resources, best practices as well as recommendations, indicators and strategies to prevent, identify and intervene in cases of homophobic and transphobic bullying in schools. The document also provides a protocol of five phases to comprehensively intervene in cases of homophobic and transphobic bullying in schools, involving all members of the education community.

Finally, **Portugal** adopted legislation that resulted in gender identity being included among the protected grounds of discrimination in the field of employment and occupation.⁹⁴

FRA opinions

While benefiting from a solid legal basis from which to counter discrimination, the EU effectively still operates a hierarchy of grounds of protection from discrimination. The gender and racial equality directives offer comprehensive protection against discrimination on the grounds of sex and racial or ethnic origin in the EU. Discrimination on the grounds of religion or belief, disability, age or sexual orientation, in contrast, is prohibited only in the areas of employment, occupation and vocational training under the Employment Equality Directive. Negotiations on the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation – the Equal Treatment Directive – entered their seventh year in 2015. By the year's end, the ongoing negotiations had not reached the unanimity required in the Council for the directive to be adopted.

FRA opinion

To guarantee a more equal protection against discrimination across areas of life, it is FRA's opinion that the EU legislator should consider all possible avenues to ensure that the proposed Equal Treatment Directive is adopted without further delay. Adopting this directive would guarantee that the EU and its Member States offer comprehensive protection against discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation on an equal basis.

The year saw a range of developments relevant to protection against discrimination on the grounds of sex, including gender reassignment, religion or belief, disability, sexual orientation and gender identity. These are all protected characteristics under the Gender Equality Directives and the Employment Equality Directive, with the exception of gender identity and gender reassignment. Although gender identity is not explicitly a protected characteristic under EU law, discrimination arising from the gender reassignment of a person is prohibited under Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). Civil unions for same-sex couples in two Member States became largely equivalent to marriage, except as regards adoption, with marriage for same-sex couples legalised in its own right in one Member State. Discrimination on the ground of gender identity was the subject of reforms in other Member States. Some Member States took steps to address the gender pay gap. Preliminary questions relating to discrimination on

the ground of religion and belief were referred to the CJEU for the first time. Some Member States introduced quota for the employment of persons with disabilities.

FRA opinion

To ensure a more equal protection against discrimination, it is FRA's opinion that all EU Member States should consider extending protection against discrimination to different areas of social life, such as those covered by the proposed Equal Treatment Directive. In doing so, they would go beyond minimum standards set by existing EU legislation in the field of equality, such as the Gender Equality Directives, the Employment Equality Directive or the Racial Equality Directive.

In continuing to implement measures that address the social consequences of an ageing population, EU Member States contributed to making people's right to equal treatment under EU law effective. The European Commission's country-specific recommendations to Member States by the European Semester in 2015 reflect the concern of EU institutions for the social consequences of an ageing population. Relevant country-specific recommendations addressed youth unemployment, the participation of older people in the labour market and vulnerability to discrimination on several grounds, which relates to Article 23 on the right of elderly persons to social protection under the European Social Charter (Revised), as well as to a number of provisions of the EU Charter of Fundamental Rights, including Article 15 on the right to engage in work; Article 21 on non-discrimination; Article 29 on access to placement services; Article 31 on fair and just working conditions; Article 32 on the protection of young people at work; and Article 34 on social security and social assistance.

FRA opinion

To ensure that the right to non-discrimination guaranteed by the EU Charter of Fundamental Rights is implemented effectively, it is FRA's opinion that EU institutions should consider referring explicitly to the fundamental right of non-discrimination when proposing structural reforms in the country-specific recommendations by the European Semester, in particular when promoting gender equality and non-discrimination, as well as the rights of the child. FRA is of the opinion that such an approach would strengthen the postulations made and raise awareness about the fundamental rights dimension of fostering social inclusion.

Index of Member State references

EU Member State	Page
AT	62, 63
BE	61, 62, 63, 67, 68
BG	61, 62, 63
CY	63, 65, 68, 69
CZ	62
DE	67
DK	62, 63, 65
EE	63, 67
EL	62, 63, 65, 69
ES	61, 62, 63, 67, 68, 69
FI	62, 69
FR	62, 65, 68
HR	61, 62, 63
HU	62, 63
IE	61, 62, 69
IT	58, 61, 62, 63, 69
LT	62, 67
LU	62, 63, 67
LV	65
MT	62, 68
NL	60, 62, 63, 68
PL	61, 62
PT	61, 63, 67, 69
RO	61, 62
SI	62
SK	62, 63, 68
UK	61, 63, 67, 68

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