

Age discrimination

against older workers

in the European Community

EUROLINK AGE

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The conclusions and recommendations of the report are those of the author and the national contributors and do not necessarily represent the views of either the EC Commission or Eurolink Age.

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A comparative analysis

Elizabeth Drury

Eurolink Age 1993

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Executive summary

Age discrimination against older workers in employment exists in various forms in all European Community (EC) countries, although it is not yet recognised as 'discrimination' by the majority of countries.

This is the first EC study to analyse age discriminatory measures affecting older workers' access to employment. It focuses on statutory national provisions, with some consideration of employers' practices.

Age discrimination among older workers is not new, although in the light of economic recessions which many EC member states have faced in recent years, practices which discriminate against older workers are more commonplace. Clearly there is a need to address this imbalance, and this report – as a first step – has sought to identify both positive and negative practices.

The study was initiated and coordinated by Eurolink Age as part of the European Year of Older People 1993. It is based on national reports from 11 EC countries and from the USA.

The main findings

- Increasing numbers of workers aged over 55, or 50, are obliged or 'persuaded' to leave work early – between 5 and 15 years before official retirement age.
- Their early exit is usually decided on grounds of age, regardless of individual abilities or health.
- Once out of work, it is almost impossible to re-enter the labour market. They remain in enforced inactivity until pensionable age.
- Age discrimination in recruitment policies starts from age 40 in most countries.
- No country, except France, provides targeted assistance to help the older unemployed find new employment. They are sometimes specifically excluded by age from re-training or employment promotion schemes and are hardly ever targeted for special measures.
- For the minority still working at retirement age, there is the risk of mandatory retirement or loss of protection against dismissal.
- Raising retirement ages, without changing employers' practice of targeting older workers for job losses, will increase discrimination by extending the period between loss of employment and retirement age, and by reducing pensions.

The main recommendations for action at EC and national levels:

- Public authorities to act to outlaw the most blatant forms of discrimination:
 - a European-wide ban on age limits in recruitment advertisements
 - abolish age limits which exclude older workers from training or employment promotion measures
 - remove any obligation to take early retirement, so that all schemes are voluntary
 - ensure final pensions are not disproportionately affected by early loss of employment and guarantee minimum social benefits for all older unemployed until pensionable age.

- **Public authorities to introduce measures aimed at changing attitudes towards employment of older workers:**
 - incentives to recruit and employ older unemployed and discouragement of redundancies among older workers
 - dialogue at national and European level with employers and trade unions to promote positive attitudes and employment initiatives
- **Public authorities to provide targeted assistance for training of older workers, both at work and in unemployment, and for employment promotion measures for the older unemployed.**
- **A programme of measures to combat age discrimination at work should draw on good practice from across the Community.**

Part 1: Analysis of findings

The main findings of the report are contained in Part 1, which analyses the age discriminatory measures identified in five different chapters and makes recommendations accordingly:

Chapter 1: Early loss of employment

- Workers over 55, or earlier, are targeted by employers for job losses in all countries.
- They can be obliged to leave work through compulsory redundancies or early retirement schemes.
- 'Voluntary' early retirement or redundancy offers, are in practice often obligatory under social pressure and employers' persuasive tactics.
- Older workers appear to be over-represented in redundancies, although very few age-related figures exist.
- In southern Europe (Greece, Spain, Portugal and Italy) and the former GDR, the older unemployed suffer severe loss of income and in some cases large reductions in final pensions.
- Older unemployed women are a particular income risk group in all countries, due to shorter working lives and lower entitlements to benefits and pensions.

Chapter 2: No return to employment: discrimination in recruitment

- Age discrimination in recruitment starts from age 40 in most countries.
- The unemployed over 50 have very little chance of finding another permanent job.
- In France, legislation bans the use of age limits in job advertisements in the private sector – but is not enforced.
- The use of age limits in advertisements is only a small indicator of widespread age barriers during recruitment procedures.

Chapter 3: The older unemployed: hidden and forgotten

- Unemployment in itself is not age discriminatory, but the absence of assistance for the older unemployed, compared with other age groups, is discriminatory.
- 3 countries exclude older workers by age from employment measures for the unemployed.
- Almost no government measures are targeted on the older unemployed, with the exception of France (Belgium, Germany and Spain each have one marginal scheme).

- 7 countries exclude the older unemployed from age 55 onwards from unemployment statistics by granting automatic benefits and exempting them from the need to register for work.

Chapter 4: Exclusion from training

- Older workers are significantly under-represented in training schemes both in methods work and for the unemployed.
- Training schemes which are available for older workers often use teaching designed for young people, and unsuited to those with years of work experience.
- Older workers self-discriminate by not taking up opportunities for training which do exist.

Public sector training for unemployed:

- No EC country provides targeted training schemes for the older unemployed, despite their special needs for re-training.
- 5 countries set age limits which exclude older people from general training schemes for adult unemployed: Denmark, Greece, Ireland, Italy, and UK. The training schemes which *are* open to older unemployed.

Employers' training at work:

- Participation in company training decreases sharply after the age of 40 or 45, but these general trends have not yet been statistically proven.

Chapter 5: Discrimination at retirement age

- Reaching retirement age can mean an automatic end to the working life, or can result in the loss of workers' rights, such as the minimum wage, for those still working.
- Existing policies which raise retirement ages usually impose a longer working life and/or reduced pensions.

Part 2: Positive measures to combat age – Europe and the United States

A summary of measures to assist or protect older workers, and consideration of the scope and impact of anti-age discrimination legislation in the USA.

Chapter 6: Positive measures in Europe

- Spain is the only country to have specific protection against age discrimination in labour law.
- Some constitutional protection against age discrimination exists in other countries and has led to national court rulings in favour of older workers.
- Only France has introduced systematic legislative measures to discourage loss of employment and promote a longer working life for older workers. But these have had little effect, due to difficulty of changing the 'early retirement culture'.
- Some positive measures exist as exceptions in other countries.
- Examples of good practice by employers and trade unions are evident, but systematic information is needed to establish real trends in this area.

Chapter 7: Anti Age Discrimination legislation in the USA

- The American Age Discrimination in Employment Act (ADEA) (1967) has
 - succeeded in protecting older workers' rights in employment and in eliminating blatant forms of discrimination;
 - not improved general employment opportunities for older workers, nor changed the majority of employers' underlying attitudes towards older workers.
- Its comprehensive legislative approach is not a suitable model for Europe, but partial legislation, based on some aspects of the ADEA, could be used to combat direct discrimination in Europe.

Part 3: The European context and the potential for future action

Age discrimination has so far been analysed in terms of its impact on individual older workers. This section considers age discrimination in today's European context and the potential for future action to combat discriminatory practices.

Chapter 8: The key actors: governments, social partners, older workers and society

- At present, age discriminatory practices appear to be accepted by all the key actors, including older workers themselves.
- Governments have a potential economic incentive to promote employment of older workers, as their numbers increase and social security costs escalate.
- Employers, however, will need to reduce their workforce in the recession and are likely to continue targeting older workers for job losses.
- An active approach by trade unions in defending older workers' rights at work could help to change employers' attitudes.
- Older workers themselves also need to be aware of how to improve their work prospects in the future.

Chapter 9: The potential for European action

- Comprehensive legislation to protect older workers' rights, as in the USA, is not suited to European needs.
- Economic and demographic factors could persuade European governments to promote increased employment opportunities for older workers – and so help to combat age discrimination.
- Partial legislative action by governments could clearly indicate a change of policy towards older workers and promote public debate.
- But legislation alone will not change employment practices, since employers' current interests appear to be opposed to employing older workers.
- A long-term educational approach, backed by financial incentives and partial legislation, is needed to change attitudes among employers, trade unions and society in general.

Part 4: Conclusions and recommendations for action

The final part puts forward a series of more detailed recommendations, based on the findings of the author and of the national correspondents.

Introduction

There are nearly 60 million people aged between 50 and 64 in the EC, representing about one quarter of the working age population.¹ Yet increasing numbers of them stop work well before retirement age, and in most EC countries less than half of those aged 50 to 64 are working or actively seeking work.²

This report raises the question of whether older people, now living longer and healthier lives than ever before, are losing their 'right to work' in later life simply on grounds of age.

This is the first European study to focus directly on age discrimination against older workers in employment. The situation of older workers is considered in the context of an individual's right to work: measures which unfairly restrict their choice to work – on grounds of age – are defined as discriminatory.

The study provides a preliminary analysis of discriminatory measures in EC countries and aims to promote awareness across Europe of the concept of age discrimination in employment. It also calls for action by the European Community and national governments to outlaw such age discrimination with the aim of establishing more equality of opportunity for older workers in the labour market. These same principles of equal opportunities and citizens' rights form the basis for existing sex and race discrimination measures in Europe.

Eurolink Age initiated this report against a background of growing concern in European political circles about discrimination against older workers and of increasing awareness of the issue among the European public. A clear majority of all ages across the EC believe that older workers are discriminated against in employment and supports government action to stop age discrimination.³

1 Definitions

The term 'age discrimination' is not yet widely used across Europe, although it is a recognised legal concept in other countries such as the USA, Canada and Australia. This report deals only with discrimination against older workers in employment, although age discrimination occurs in other fields, such as health care or insurance, and can also be directed against young people.

1.1 Age discrimination in employment

Age discrimination in employment removes or restricts the individual's freedom to exercise his right to work. Discriminatory measures can oblige workers at a set age to leave work early, or exclude them from applying for jobs or from training and employment promotion schemes after a certain age.

Older workers are broadly defined as those aged over 50. Discrimination starts at different ages, however, and specific ages are quoted wherever possible. For example, discrimination in recruitment starts from around 40, whereas early exit from work affects large numbers from 55 onwards.

The main focus is on workers below the official retirement age – which is 65 in most EC countries (see Table 1). Some consideration is, however, given to those who are still working at and beyond retirement age.

Two main types of discrimination have been identified:

- **Direct discrimination:** measures targeted at older workers based solely on grounds of age, and on no other factors, such as abilities or health. These measures use specific age limits to exclude older workers from, for example, training and employment schemes, or from applying for jobs.
- **Indirect discrimination:** measures which are not directly age-specific, but which have a disproportionately negative impact on older workers, compared with other age groups. This hidden discrimination usually has the most widespread negative impact on older workers in employment.

In some cases, the measures might appear neutral, or even favourable for older workers, but in practice are used to their disadvantage. For example, 'voluntary' redundancy offers are often targeted on older workers and become obligatory in practice due to social pressures.

There is also evidence of self-discrimination by older workers who do not apply for certain measures, such as company training programmes.

2 Scope

The study identifies statutory measures and some employers' practices in EC countries which discriminate on grounds of age against older workers in employment. It also highlights existing positive measures in Europe which are specifically designed to help older workers in employment, and describes the anti-age discrimination legislation of the United States. Finally, it examines the potential and makes recommendations for future action to combat age discrimination in the EC in the context of prevailing economic and employment conditions.

The impact of employers' and trade unions' practices in relation to discrimination against older workers has been considered only superficially in this preliminary study, due to lack of detailed information. These important areas need separate investigation.

The employment practices examined are those which apply to the majority of workers; special measures taken on health or public safety grounds in specific professions or industry sectors have not been investigated, although it is acknowledged that these have provoked debate in some countries.

Other European studies⁴ have analysed the overall employment problems of older workers in the context of public policies and labour market trends. This report aims to complement, rather than repeat such studies, by its focus on age discrimination. Nevertheless, many of its conclusions for further action within the general labour market context are the same as those proposed elsewhere.

3 Methodology

The report was compiled on the basis of 12 national reports: 11 from EC countries⁵ and one from the USA. Information provided on individual countries is taken from the national reports and comments by the correspondents, unless otherwise indicated. The national correspondents are listed in Annex 1.

As part of the study, two working meetings of correspondents were organised, to discuss the scope of the study in the preparatory stages, and to identify common and isolated practices of direct and indirect discrimination. This report is based on the findings of these meetings and on the national reports commissioned by Eurolink Age on age discrimination and older workers.

Notes

1. Eurostat population figures.
2. EUROSTAT: *development of the activity rate in the 50-64 age group, 1991.*
3. Eurobarometer survey: *'Age and Attitudes'*, commissioned for the European Year of Older People, 1993.
4. OECD (1992) and Institute of Personnel Management, UK (1993), among others.
5. Luxembourg is not included.

Background: older workers and employment in the EC

Brief information on the current situation of older workers in employment is provided in this section, as background for the analysis of discriminatory measures which follows.

1 The European context

1.1 Demography

[The participation of older people in the workforce has begun to feature on the European political agenda, largely due to demographic trends.] Almost all EC countries will have significantly increased numbers of workers over 50 in the first two decades of the next century, although the timing will vary between countries. By 2005, the OECD estimates that half of all workers will be over 40.

1.2 Trend towards early exit

Although many workers begin to leave work after 50, participation in the labour market decreases sharply after 55 in several countries, with only just over one half of those aged 55 to 59 in the EC remaining economically active, and only one quarter of those aged 60 to 64 (see Annex 1).

Activity and employment rates for male workers⁶ over 55 have steadily declined across Europe since the oil crisis and high unemployment of the late 70s. Until then, older workers were virtually [protected and privileged on seniority principles, and] guaranteed lifelong employment. But from the 1970s and throughout the 1980s, increasing numbers were encouraged to take early retirement. These schemes were developed both by public authorities and companies, with the agreement of trade unions, in response to rising unemployment in this period.

1.3 Economic factors:

The predicted negative GDP growth in most countries and a rise in the EC unemployment rate to 12% in 1994⁷ will inevitably provoke further job losses as recession spreads across the Community.

The costs of supporting early exit from work fall mainly on governments – either through subsidies for early exit schemes or unemployment benefits. They have already risen significantly and as numbers of older workers increase, all governments will face escalating costs unless the current early exit trend is reversed.

The chances of reversing the trend are not good in the short-term, however, due to the recession. Restructuring of traditional manufacturing industries such as steel, mining, and textiles is likely to continue and service industries, such as the retail sector, will also contract.

2 Types of early exit

Older workers leave work early in two main ways:

- early or pre-retirement schemes or
- redundancy or dismissal.

2.1 Early and pre-retirement schemes

There are two main types of scheme:

- early retirement, giving early access to the state pension, as in Germany; and
- pre-retirement, paying special allowances until (early) pensionable age, as in France.

Invalidity pensions are also commonly used as early retirement schemes in some countries, such as the Netherlands.

Entry into early or pre-retirement schemes can be direct from employment, or after a period of unemployment. Either way, the older worker has a guaranteed income until official retirement age.

These schemes are widely developed and provide good financial benefits in northern Europe in: Belgium, Germany, Denmark, France and the Netherlands. They also exist to some extent, providing far less generous benefits, in: former East Germany, Spain, Italy and Portugal.

Redundancy or dismissals

Redundancy or dismissals are the main or only means of ensuring early exit in: former East Germany, Greece, Spain, Ireland, Italy, Portugal and the UK. But they are also widely used in countries with well-developed early retirement schemes.

Workers made redundant or dismissed usually receive a compensatory payment and then become unemployed, very often long-term. They depend on unemployment benefits and/or social assistance until retirement age.

3 Pension and benefit levels

Pension levels and unemployment benefits vary substantially between EC countries, and also between groups within a country. Varying income levels both before and after official retirement age affect the financial needs of individuals to work.

3.1 Early pensions and pre-retirement allowances

The income provided by early and pre-retirement schemes varies across Europe. In northern Europe, such schemes pay between 60% and 100% or more of the former salary, whereas in southern Europe, an early pension or pre-retirement allowance often imposes a large reduction in income compared with previous earnings.

3.2 Unemployment after redundancy or dismissal

Unemployment benefits and other forms of social assistance represent the least secure income for workers before pensionable age. Redundancy payments vary between countries and types of companies. Larger companies usually provide the most generous terms, which are sometimes equivalent to the favourable pre-retirement schemes. Smaller companies tend to pay the minimum legal requirement and leave their former employees dependent on state benefits.

In northern Europe, the older unemployed who are not covered by early exit schemes or generous redundancy packages are at the lower end of income scales. In southern European countries the low levels or absence⁸ of social assistance after unemployment benefits run out force many older unemployed into poverty.

3.3 Retirement pensions

Final pension levels at retirement age vary across the EC and within countries and closely affect the individual worker's need or wish to continue working.

Average national levels hide big inequalities in pension income between different groups of pensioners, especially between those in receipt of occupational pensions and those dependent on state old age pensions alone. Workers who have had long terms of unemployment before reaching retirement age (including a disproportionate number of women) may receive lower pensions under a contributory scheme.

4 Factors affecting employment opportunities

Workers over 50 are not a homogenous group and their employment prospects vary according to sex, skills and sector of employment.

For example, managers and highly skilled workers are more likely to remain at work for longer than lower skilled workers. In several countries, the employment prospects and conditions of public sector employees are significantly better than those in the private sector.

4.1 Common factors

A number of common factors can be identified which affect employment opportunities for older workers, in addition to the age discriminatory practices analysed later:

4.1.1 Personnel costs of older workers

The seniority system of increasing wages with age still operates in most EC countries, making older employees more expensive to employ. Various special privileges and benefits, such as increased holidays and reduced working hours, also contribute to higher overall personnel costs.

4.1.2 Education and qualifications

Today's workers over 50 have lower educational levels than their younger colleagues. They are less likely to have had vocational training before starting work and tend to have fewer qualifications as a result. This affects their aptitude for ongoing training during their working lives. However, these disadvantages may be reduced with future generations.

4.1.3 Physical condition and health

Health and strength can deteriorate both as a result of age and of past working conditions. Special concessions are made for older workers on night and shift working, or job transfers to less physically demanding tasks. The introduction of new technologies are reducing these physical disadvantages.

4.2 The positive aspects of older staff should not be ignored or forgotten:

4.2.1 Productivity

Although it appears to be widely assumed that productivity declines with age, an OECD study¹⁰ concludes, on the basis of various studies, that productivity at work varies more within age groups than between them. Experience shows that productivity of older workers can be effectively increased by training.¹⁰

4.2.2 Advantages of older workers

Experienced older workers can be a valuable resource for employers. They are less likely to change employer, and they tend to have higher levels of loyalty to a company after long service, so enhancing stability in the workforce.

Notes

6. *Those for women have varied due to increases in labour force participation for female workers in some countries.*

7. *European Commission economic forecast for 1994.*

8. *In Greece.*

9. *Maguire, Maria (1988).*

10. *See Part 2, Positive measures by companies in Greece and the Netherlands for examples.*

Part 1

Age discrimination in employment – analysis of findings

The main findings of the report are contained in this section, which analyses the age discriminatory measures identified in five different chapters.

The discriminatory measures against older workers in employment, as identified by the national reports, are analysed below in five different chapters:

- early loss of employment
- no return to employment: discrimination in recruitment
- the older unemployed: hidden and forgotten
- exclusion from training
- retirement age.

Within each sector, measures of direct and indirect discrimination are identified (See page 13). Indications of positive measures are also given, where they exist, and these are more fully described in Part 2. Specific recommendations for action are proposed at the end of each sector.

Consequences for the individual worker

In assessing the consequences of each type of age discrimination for the individual, three main aspects are considered:

- access to employment
- income
- free choice.

Access to employment

Access to employment can be denied both by the loss of a job and by problems in re-entering the labour market after a certain age.

Loss of employment does not automatically constitute age discrimination, however. Discrimination occurs where older workers are targeted for job losses solely on grounds of age, regardless of their abilities.

In terms of re-entering the labour market, discrimination takes place where age excludes a job-seeker from applying or being considered for a job, or from re-training opportunities.

Income

Employment is primarily an economic activity, providing an income for a worker and his family. Where early loss of employment leads to significant income reductions, the negative impact of discrimination is increased.

The income consequences of early job loss vary between different EC countries and are examined where appropriate. Substantial and permanent reductions in income are highlighted as a form of 'income discrimination' in certain countries.

Principle of free choice

The choice or 'right' to work is available to ever fewer older workers today. Increasing numbers are excluded from employment, against their will; they may need or wish to work for financial, personal or social reasons.

Chapter 1 – Early loss of employment

Early loss of employment on grounds of age is the most serious form of age discrimination in Europe, since most older workers have little chance of re-entering the labour market. Targeting older workers effectively means an end to their working life and exclusion from the workforce for 10 or more years before official retirement age.

It is true that many workers in northern Europe welcome the opportunity to retire early with good financial benefits; yet for many others, a premature end to working life is not freely chosen and results in financial and social disadvantages. This analysis of discrimination focuses on the latter group.

Direct discrimination occurs where statutory provisions allow employers to oblige workers to leave work early at a set age. Indirect discrimination happens when workers are 'encouraged' to leave work at a set age through offers of redundancy or early retirement schemes; the 'voluntary' nature of these measures is often in practice only theoretical. Indirect discrimination also occurs when older workers are over-represented in mass compulsory redundancies, which should theoretically affect all age groups.

Early exit has been divided into two types for the purpose of analysing discrimination:

- redundancy or dismissal leading to unemployment; and
- early or pre-retirement schemes.

Both types include examples of direct and indirect discrimination.

Exceptionally in this chapter, the serious loss of income after early exit in some countries has been treated in a separate section.

1 Redundancy or dismissal

Older workers most frequently become unemployed through compulsory redundancy or dismissal, or acceptance of 'voluntary' redundancy offers. In practice, the distinction between voluntary and compulsory exit is blurred as many workers accept voluntary redundancy under pressure or threat of future compulsory measures.

Redundancy and dismissals are widely used in all countries, especially in countries without well-developed early and pre-retirement schemes; in other countries, significant numbers of workers do not qualify for them and remain long-term unemployed. This applies particularly to employees of small and medium-sized companies which do not participate in pre-retirement schemes.

Since no public policies allow direct selection of older workers for compulsory redundancy there is no blatant discrimination by age. All countries report that older workers suffer particularly from these measures, but very few age-related statistics exist to prove this trend.

1.1 Direct discrimination: obligatory exit

Older workers are over-represented in traditional industries such as textiles, steel, mining, and car industries. In southern European countries and the former GDR, industries are undergoing large-scale restructuring. In the former GDR, mass redundancies are in practice targeted on workers aged 55 or younger, with the effect that in some industry sectors almost no workers over 55 remain.

Greece reports that many small and medium-sized companies systematically dismiss workers after 35 and replace them with younger, cheaper labour to avoid paying higher

Early exit from work: early or pre-retirement schemes

| Country | Direct discrimination | Age | Measures | Indirect discrimination | Age | Measures |
|---------|-----------------------|----------------|--|-------------------------|---------|---|
| B | NO | | – | YES | 55 | 'Voluntary' ER schemes |
| DK | NO | | – | YES | 60 | 'Voluntary' ER, but socially 'expected' |
| D | NO | | – | YES | 58/60 | Effective ER at 58 for unemployed; 60 for women; 63 for men |
| ex-GDR | YES | 55 | Obligatory ER in practice. ER benefits are only 'option' after compulsory redundancy | YES | 60/63 | Early pensions for women, unemployed and men |
| GR | YES | 55/62 | Dismissal with early pension for working mothers at 55; or men at 62 | NO | | – |
| E | YES | 60 | Obligatory early pension for unemployed (with 40% pension reduction) | | | – |
| | YES | | Obligatory ER schemes | YES | | Voluntary ER schemes |
| F | YES | 50/55 | Obligatory ER schemes | YES | 50/55 | Voluntary ER schemes |
| IRL | NO | | | NO | | |
| I | YES | 50/55 45/47 | Obligatory ER for men Obligatory ER for women | YES | | Voluntary ER schemes |
| L | – | – | – | – | – | – |
| NL | NO | | | YES | 57.5/60 | Voluntary ER schemes |
| P | YES | 55/60 | Obligatory ER schemes | YES | | Voluntary ER schemes |
| UK | NO | | – | NO | | – |

'ER' is used as an abbreviation to cover both early access to state pension, as well as pre-retirement allowances paid until pensionable age. Both types of measure remove workers from the labour force.

Table A

salaries limited to length of service. In large, non-profitable textile, metal and mining companies in Greece workers over 40 have been targeted on cost grounds for job losses, as well as in public enterprises undergoing privatisation.

The absence of protection against unfair dismissal or redundancy on grounds of age in several countries (Belgium, Denmark, Greece, Ireland¹¹, Portugal, UK) allows employers greater potential to select older workers in practice. Yet where legal protection exists, it does not always work in practice: in Spain, for example, employers can use two 'objective clauses' for legal dismissal of older workers, based on inability to adapt to technical modifications; and inability to perform a job satisfactorily.

It appears difficult to discourage employers from targeting older workers. In France, the financial penalties imposed on companies, equivalent to 6 months' salary for each worker made redundant at 50, have had little practical effect and it is felt the financial disincentive is insufficient.

1.2 Indirect discrimination: 'voluntary' redundancy

Older workers may accept so-called 'voluntary' redundancies as better financial alternatives to mass compulsory redundancy terms. Their effect is to oblige older workers to leave work against their will, they constitute a form of direct but hidden discrimination.

Due to the lack of comparable age-based statistics, only individual examples can be quoted on the basis of the national reports: for example, Fiat in Turin offered 'voluntary' redundancy to 25% of its workforce in 1992 and most of the 5,000 who accepted were aged 50-55.

Trade unions often appear to condone these practices, on the basis that redundancy and unemployment is more acceptable for older than for younger workers. In the UK, for example, trade unions sometimes campaign for 'voluntary' redundancy measures, in practice targeted at older workers, in order to avoid compulsory redundancies spread across all age-groups.

1.3 Positive measures

Some protection against dismissal or redundancy on grounds of age exists in several countries. There are laws in Spain, Italy and the Netherlands; and soon possibly in Ireland. Collective agreements protect many older workers in Germany. Greek case law provides protection in principle. In France, the law discourages selection of older workers and financial penalties are imposed on employers making workers redundant at 50.

2 Early or pre-retirement schemes

Early and pre-retirement schemes set specific age targets for leaving work, regardless of health or ability. These are usually around the age of 55, but can be earlier. Many schemes were designed as positive measures to protect older workers or allow them to retire early after a long working life. However, the financial incentives provided, combined with the need for workforce reductions, have encouraged employers to use or abuse the schemes in order to oblige older workers to leave work as soon as they are entitled to the benefits.

Direct discrimination occurs where such schemes are compulsory. Most are voluntary, however, and therefore constitute hidden, or indirect discrimination, even if persuasive pressures on older workers often make them obligatory in practice.

However, in the context of high unemployment, many older workers and trade unions in northern Europe see early and pre-retirement schemes as an acquired right to be

defended, in preference to unemployment. Indeed, older workers in southern Europe would welcome similar schemes.

Yet, workers in early or pre-retirement effectively give up their right to work. Other paid employment is either prohibited, or strictly limited until official retirement age. Enforced inactivity¹² from 55 or earlier for 25-30 remaining years of life is against the inclination and abilities of many older people. The right to retire early is becoming opposed to the right to work¹³.

2.1 Direct discrimination: obligatory exit

2.1.1 Pre-retirement schemes

Obligatory early or pre-retirement schemes exist in the former GDR, Spain, France, Italy, and Portugal. They usually involve redundancy and immediate access to an early pension or pre-retirement allowances. In some cases, the older unemployed are obliged to join the schemes.

In France there is widespread acceptance of these longstanding, well-financed schemes, and of an 'early retirement' culture.

In Spain, Italy and Portugal, the schemes are more limited and have only been introduced in recent years. Early retirement very often means a substantial loss of income. It is seen as another form of redundancy, specifically targeted by age, and the obligation to leave is almost always against the older worker's will.

In the former GDR, after German reunification, pre-retirement allowances were offered to large numbers of older workers made redundant between 1989 and 1993¹⁴. from 55 until an early pension at 60. Over 1 million older workers are now covered by these schemes. Although notionally 'voluntary', they were in practice obligatory. The very low limits of earned income allowed during the pre-retirement period increase East German workers' opposition to these measures.

2.1.2 Early pensions

In Germany, Greece, Spain and Italy workers can be obliged to take an early pension up to 5 years before the standard retirement age.

In Greece, maternity provisions allow working mothers to claim their pension at 55, 5 years before the official retirement age for women. In practice this positive measure has been used by employers to cut costs since they are legally allowed to dismiss workers with paying only 50% of redundancy compensation as soon as they become eligible for a full pension. Men eligible for an early pension at 62 can also be dismissed on the same grounds.

In Spain, all those unemployed at age 60 are obliged to take early retirement and to accept a 40% permanent reduction in their state pension (see below: Loss of income).

In Italy, workers in certain industries, such as steel and ship building, undergoing restructuring or in economic crisis can be obliged to retire with an early state pension at 50 or 55 for men and 45 or 47 for women.

In Germany, until 1992, employment contracts could oblige workers to leave when they were entitled to an early state pension. This mainly affected women and disabled workers at the age of 60.

2.2 Indirect discrimination: 'voluntary' exit

2.2.1 Early pensions

In Germany, the option of an early full pension at 60 for unemployed and disabled people and all women, and at 63 for men has become institutionalised as the 'normal'

Redundancy or dismissals leading to unemployment

This table analyses redundancies or dismissals which result in unemployment, without access to early or pre-retirement schemes.

Direct targeting by age for redundancy or dismissal does not officially exist. In practice, indirect discrimination through selection of older workers is widespread.

| Country | Direct discrimination: Official targeting by age | Indirect discrimination: Targeting by age in practice |
|---------|---|--|
| B | NO | YES |
| DK | NO | YES |
| D | NO (positive measures) | YES |
| ex-GDR | NO | YES* |
| GR | NO (positive measures) | YES |
| E | NO (positive measures) | YES |
| F | NO (positive measures) | YES |
| IRL | NO (positive measures) | YES |
| I | NO (positive measures) | YES |
| NL | NO (positive measures) | YES |
| P | NO (positive measures) | YES |
| UK | NO | YES |

Main factors applicable in all countries

- 1 Companies needing to reduce workforce target older workers for redundancy.
- 2 Mass redundancies mainly in traditional industries with high numbers of older workers.
- 3 'Voluntary' redundancy offers to older workers are linked with social pressures and fear of alternative mass redundancy with lower financial benefits.
- 4 Higher personnel costs of older workers leads to targeting on cost.
- 5 State provision of automatic unemployment benefits to older unemployed** encourages employers to target them.

* In ex-GDR mass redundancies have affected large numbers of workers from 55 and earlier.

** not applicable in Greece.

Table B

retirement age and only a small minority work until 65¹⁵. For women in particular, the age of 60 acts as an effective upper limit, due to social expectations. Workers unemployed for 18 months or more qualify. In practice, employers use the early pension to get rid of workers at age 58 or before.

In Portugal, the unemployed at 60 who have exhausted their entitlement to unemployment benefits, extended until age 60, may claim an early old age pension. In practice, the majority do so for financial reasons, despite the low level of the state pension.

2.2.2 Pre-retirement and invalidity schemes

Voluntary pre-retirement schemes are common in Belgium, Denmark, France, and the Netherlands. They exist to a limited extent in Spain, Italy and Portugal. Private sector redundancy schemes which act like pre-retirement schemes, are increasingly common in the UK.

The social pressure on older workers from employers, trade unions and work colleagues to accept these schemes is often intense and makes the schemes in practice obligatory. This is particularly noticeable where schemes are devised on the grounds of 'solidarity' with younger workers, as in Belgium, Spain, Italy and Portugal and formerly in West Germany¹⁶.

In some countries, such as Denmark, Greece¹⁷ and the Netherlands, early invalidity pensions are a major means of early exit. Older workers with low levels of disability may qualify for full invalidity benefits with the support of the examining doctors. Older workers are actively encouraged by trade unions and employers to apply for these schemes in the same way as for pre-retirement measures.

2.3 Positive measures

In Germany a 1992 law¹⁸ effectively outlaws employers' contracts which oblige workers to retire with an early pension.

Some obligatory pre-retirement schemes in the Netherlands were successfully challenged and prohibited by a court ruling in 1982¹⁹.

Action has been taken in Belgium, Denmark and Germany to reduce employer incentives to use the schemes by transferring costs of early retirement to industry; the scope of their schemes has also been restricted, in France as well. In Germany, except for disabled workers, the early retirement ages will be phased out.

3 Loss of income: the poverty risk

At any time of life loss of employment usually means loss of income. In southern European countries and the former GDR many older workers suffer a serious loss of income as a result of early exit. Where older workers and their families risk absolute or relative poverty, they can be considered to suffer age discrimination related to income.

3.1 Direct discrimination: reduction in final pension

In Spain and Greece, early loss of employment for older workers removes their rights to a full pension, regardless of the number of years' contributions paid during their previous working lives.

Their state pensions are calculated on income during the last five years before retirement age. If workers are unemployed for part or all of this period, they receive only the minimum pension on reaching retirement age.

In Spain, those who are already unemployed at 60 are obliged to take an early pension at that age. This results in a 40% permanent reduction in their final pension, based on

a reduction coefficient of 8% per year. 12.5% of the total population aged 60-64 were affected by this in 1990²⁰.

In former East Germany, the final pension for workers made redundant at 55, related to their contribution record, is reduced by two factors: by receiving an early pension at 60, and for paying lower contributions between 55 and 60, based on low pre-retirement allowance rates. Severely restricted in terms of alternative earned income²¹, they are not able to increase their pension contributions during this period.

These pension reductions contrast with other countries, such as Italy, where obligatory early retirement schemes include cover to make up the missing years of pension contributions.

3.2 Indirect discrimination: severe financial hardship in unemployment

In Greece, unemployed workers receive no other social benefits, once unemployment benefits run out after up to 12 months. For older unemployed unlikely to find other employment, this severe financial hardship can last for 10 or more years until retirement age. Even then, they receive only a minimum pension, due to their period of unemployment.

In other southern European countries – Spain, Italy and Portugal – unemployment and related benefits are relatively low, imposing substantial loss of income on the older unemployed, although some benefits are paid until pensionable age.

Many older unemployed in these countries are forced into the black economy or into marginal part-time jobs and temporary agricultural work in order to earn some income until retirement age. These jobs are low paid and without social protection, so imposing a double discrimination on the older worker.

3.2.1 Older women unemployed

Unemployment for older women, especially unmarried older women, is even more likely to result in poverty. Generally lower pay and shorter employment contribution records to earn entitlement to pension or unemployment benefits mean that older women need to work and can be hardest hit by an obligation to leave work early.

4 Consequences, conclusions and recommendations

4.1 Consequences

4.1.1 Access to employment

- dismissal or redundancy of workers over 50 means, for the vast majority, exclusion from employment until retirement age.
- early or pre-retirement almost always excludes any other paid employment and imposes enforced inactivity.

4.1.2 Income

- income is reduced for almost all older unemployed.
- in southern Europe, substantial loss of income can result in poverty: this constitutes 'income discrimination' against the older unemployed.
- early and pre-retirement schemes provide different income levels:
- in northern Europe the financial benefits are good and income is protected.
- in southern Europe and the former GDR, there is often a substantial loss of income.

4.1.3 Principle of choice

- older workers have little or no real choice regarding early exit. Both obligatory and voluntary schemes are used to oblige the worker to leave against his will.

4.2 Conclusions

Enforced early loss of employment is the most widespread form of discrimination against older workers. In view of the difficulties for older workers to re-enter the labour market, measures to reduce the numbers of those losing employment would be the most helpful to older workers.

However, restrictions on existing early and pre-retirement schemes will not on their own reduce job losses, since redundancy measures can be used in their place, which are financially less favourable. Employers need to be persuaded to change their workforce reduction policies and to consider spreading necessary job losses across all age groups of the workforce, instead of targeting older workers first.

4.3 Recommendations for action

4.3.1 Redundancy and dismissals

- i) Age-related statistics on redundancies, broken down by sex and industrial sector, should be collected and published in all countries in order to raise awareness of employers' targeting of older workers.
- ii) Employers should be discouraged from targeting workers for redundancy solely on grounds of age.

4.3.2 Early and pre-retirement schemes

- i) Early and pre-retirement schemes should always be voluntary not obligatory. Obligatory schemes which impose a substantial loss of income should be abolished first.
- ii) Transfer of costs of early and pre-retirement onto companies should be used to discourage their widespread use in northern Europe.

4.3.3 Loss of income

- i) Methods of pension calculation should be changed to avoid penalising older workers who leave the workforce early with substantial pension reductions.
- ii) No worker should be obliged to take early retirement where this results in large and permanent pension reductions.
- iii) Adequate social benefits should be provided for all long-term unemployed until pensionable age.

Notes

11. *a draft law is now under consideration to change this – see 'Positive measures'.*
12. *At one stage in France even voluntary activities were forbidden in certain regionally-managed state (ASSEDIC) schemes.*
13. *X Gaullier, 1993.*
14. *'Vorruhestand' early retirement option 1989-1990, replaced by old age transition benefit 1990-1993. Redundant workers now have no pre-retirement option and remain long-term unemployed.*
15. *The situation will change in the next decade, when German pension reforms come into force, effectively raising the real retirement age to 65.*
16. *the 'Vorruhestand' scheme stopped in 1988.*
17. *access to disability pensions has been restricted from 1990.*
18. *Law: SGB VI, Article 41.4.*
19. *Ktg Amsterdam, 30/11/82, Prg. 1983/8 p.233-238.*
20. *OECD 1992.*
21. *The income limit is one seventh of the monthly payment: DM390 per month in East Germany.*

Chapter 2 – No return to employment: discrimination in recruitment

**“Please read this: especially if you are a manager
or employer of over 45 years of age.**

I am a Consulting Engineer in company organisation and administration. I received my diploma from the EEC 24 years ago. During that time I have worked as Managing Director and Financial and Administrative Director in 4 different companies.

A few months ago, for totally justifiable reasons, I had to leave the company I was working for. You can imagine my surprise when, instead of finding another job straight away, as I had on previous occasions, I had to spend three months looking for a post similar to my previous one. But, because of the fact that, four months ago, I committed the terrible sin of reaching my 46th birthday, it appears that my chances of finding another job are extremely limited. The various companies I have visited, or to which I have sent my curriculum in response to their advertisements, have told me – off the record, of course – that almost nobody employs people of over 45.

From these pages I wish to appeal to the good nature of employers and managers and to remind them that, although they may not yet have reached 45, they will one day, and when they do they will discover that they are in fine physical and mental shape, with a great deal of experience to draw on.

Therefore, if anyone is looking for a Financial and Administrative Director with over 20 years of experience, who is still optimistic and keen to carry on working, please call me ...”

Personal advertisement in: ‘EL PAIS’, 6 October 1992.

This sector examines two types of employers’ discrimination against older workers in recruitment:

- direct discrimination in setting age limits in recruitment advertisements;
- indirect discrimination through prejudice during the recruitment process.

Older workers who become unemployed have very little chance of re-entering the labour market in a permanent job. In Spain only 14% of unemployed workers over 55 found a new permanent contract in 1990²². In France, the unemployed over 50 have only a 12% chance of finding another job²³. Workers over 40 are affected in many countries.

Economic considerations of higher wage costs, outdated work skills and possible health problems all reduce incentives for employers to recruit older workers in times of high unemployment and large labour supply. Other types of age discrimination, such as lack of specific training provisions and the absence of targeted employment promotion measures for the older unemployed (see Chapters 3 and 4), reduce their chances of re-employment. Together with widespread acceptance of early exit from work from 50 onwards, many employers are prejudiced against workers in their mid-forties onwards. The advertisement from ‘El Pais’ quoted above appears representative of off-the-record attitudes of many employers across Europe and reflects the frustration felt by well-qualified older people at their automatic rejection because of age.

1 Direct discrimination: age limits set in recruitment advertisements

The setting of maximum age limits for recruitment, regardless of qualifications, experience or ability, is an arbitrary use of age. It is the clearest example of direct discrimination against older workers which is common to all²⁴ Member States.

1.1 Private sector

Maximum age limits from 35 onwards are commonly used in job advertisements in almost all countries, except France where legislation prohibits this. West Germany and Italy report relatively low levels of use and in Denmark the practice is becoming less common. Other countries, including Spain, Greece and the UK, report significant proportions of around 40% of job advertisements containing upper age limits. Studies in this field appear to be most advanced in the UK²⁵.

Most age limits apply to posts with career prospects and affect well-qualified managerial-level workers. Unskilled manual vacancies are the least likely to set age limits²⁶.

Although employers and personnel managers are responsible for the decision to set age limits for specific posts, the newspapers and publications which carry the job advertisements, state and private sector employment agencies, specialised employment consultants and professional personnel bodies are also involved. There are few exceptions to the widespread acceptance of this discriminatory practice (see below: Positive measures).

In order for change to occur, all those involved in employment and recruitment processes need to be persuaded of the need for change. Legislation to outlaw the specific use of age limits in advertisements could be the most effective direct action, providing an impetus for persuasive actions to influence the recruitment process as a whole.

1.2 Public sector

The public sector and national civil services in six out of twelve Member States set maximum age limits for recruitment at all grades. These are typically between 32 and 40. (See Table C)

The six exceptions are: Denmark, the Netherlands and Portugal with no age limits up to retirement age; the UK, Belgium and Ireland with maximum limits of 50.

It should be noted that the French legislation banning age limits applies only to the private sector; public sector employers are exempt.

The European Community institutions also apply maximum age limits, usually 35, for recruitment to all grades of post.

Whereas in the private sector, age limits are most closely linked to career jobs, in the public sector they often apply to all grades of post, including unskilled jobs. For example, the European Parliament last year advertised for 'attendants and removals men' with a maximum age of 25. It is difficult to justify these low age limits where career prospects are so limited.

In general, age limits in the public sector are associated with cumulative pension rights, which are often more favourable than private sector pensions. However, international institutions such as the United Nations and those national public sectors which do not set age limits have clearly overcome any problems with pension calculations.

1.3 Positive measures

Legislation has existed in France²⁷ for many years to prohibit private sector employers stating age limits in their recruitment advertisements. In practice, this measure is not enforced and largely ignored by employers.

The Netherlands is now considering introducing similar legislation. The UK government has condemned the use of age limits, but is opposed to legislation. There is increasing public debate on the issue in both countries, which has led to various positive initiatives: for example, the UK national newspaper, *The Guardian*, has stopped publishing job advertisements stating age limits.

In recent years, two national civil services, the UK and Ireland, have raised age limits for recruitment to 50.

The European Community Council of Ministers raised its age limits to 50 for recruitment advertisements in late 1992, as an experimental policy. The three major EC institutions are currently reviewing their policy on age limits in recruitment.

2 Indirect discrimination: age barriers in the recruitment process

In practice, indirect age discrimination during the recruitment process is more widespread than the number of job advertisements setting age limits. It affects much greater numbers of older job-seekers as a result.

All countries report widespread reluctance by employers to recruit workers from age 40-45 onwards, although there are no systematic studies to support these observations. Rare exceptions to this general trend occur when there is a shortage of specific skills in an industry sector or in certain regions.

Prejudice in recruitment of older workers does not appear to be confined to well-qualified posts. For example, in Greece²⁸ individual interviews confirmed that, in some regions, manual workers over 45 are not even recruited for temporary work on construction sites, picking olives, or as street-sweepers, due to de facto discrimination by employers on grounds of age.

Non age-specific requirements used in advertisements in order to discourage or disqualify older workers also constitute indirect discrimination. These typically include phrases such as: 'dynamic', 'open to new ideas' or 'educationally well-qualified'. Again, no studies have been carried out in this field.

In practice, it appears that, even without specific use of age limits, many employers across Europe use age as a 'cut-off' point for recruitment and do not even read applications quoting an age of 45 or over. This prejudice may often be based on negative stereotypes of the older worker. However, the systematic departure of over-50s from the workforce has encouraged employers to develop personnel policies geared towards shedding older workers, not recruiting them, and the resulting 'young' workforce presents a further potential obstacle to recruitment of older colleagues.

Older women are particularly disadvantaged by age discrimination in recruitment since they are more likely than men to be returning to work in their 40s and 50s after family commitments.

2.1 Self-discrimination

The stereotypes widely applied to older job-seekers often undermine their confidence in the possibility of returning to work. As a result they are discouraged from applying for jobs at all.

Legislation prohibiting the age limits in job descriptions would not by itself prevent discrimination in recruitment procedures. Even in the USA, where the Age Discrimination in Employment Act specifically covers the recruitment process, there are indications that discrimination in recruitment still persists, alongside negative attitudes towards older workers.

Detailed personnel procedures need to be in place – and actively implemented by managers – to stop the automatic ‘binning’ of applications from older people throughout the process of recruitment to final appointment. For example, if there are doubts about the health of older workers, individual medical examinations for all recruits can be used to check physical fitness.

Changes in recruitment procedures also imply a change of attitude throughout the company, not just a policy imposed from the top. Studies in France, for example, have shown that chairmen and managing directors are sometimes willing to accept older recruits, but their personnel managers fear potential problems and prefer not to risk changing their recruitment policies.

2.2 Positive measures

There are individual examples of employers who willingly recruit older staff, for example the B&Q company in the UK.

The UK Institute of Personnel Management has a Code of Practice to encourage recruitment and employment of older workers²⁹. A 1991 UK survey³⁰ found that 33% of employers were raising maximum recruitment ages in order to promote employment of older staff.

3 Consequences, conclusions and recommendations

3.1 Consequences

3.1.1 Access to employment

- Access is denied on grounds of age for older workers in all types of jobs, in both private and public sectors. Women returning to work can be particularly affected.

3.1.2 Income

- Reduced through lack of employment opportunities and enforced dependence on social benefits.

3.1.3 Principle of choice

- The choice to work is effectively denied.

3.2 Conclusions

Employers discriminate both directly and indirectly, in practice, against older workers in recruitment. Their prejudice is both the most significant single factor stopping older workers from returning to work, and at the same time the most difficult to combat.

Legislation by itself is not the answer. Employers' fundamental attitudes towards the value of older workers need to change.

Measures to encourage recruitment of older staff need, nevertheless, to be accompanied or preceded by measures to discourage systematic early exit from the workforce.

Legislation to stop the direct discrimination of setting age limits in recruitment advertisements could be an important symbolic signal from governments to employers about the need to change attitudes. Exemplary practice by governments in raising or abolishing age limits in recruitment for national and European public sectors would set an example for private sector employers to follow.

Age discrimination in recruitment

Direct discrimination occurs where employers set specific age limits in recruitment conditions. Indirect discrimination where employers *in practice* reject applications from older workers.

| Country | Direct discrimination | Common features | Indirect discrimination | Common practices |
|---------|-----------------------|--|-------------------------|--|
| B | YES | Common to set age limits | – | (no information) |
| DK | YES | Common to set age limits | YES | 'Invisible' age limit age limits of 45-50 |
| D | YES | 15–20% of adverts set limits | YES | Reluctance to recruit from 40 onwards |
| GR | YES | 40+% of skilled job adverts set upper limit of 35/40 | YES | 'Invisible' age limit of 35/40 for both manual and skilled workers |
| E | YES | 43% of adverts set upper limit of 35 | YES | 'Invisible' upper limit of 45 |
| F | NO | None in theory. Legislation bans | YES | 'Invisible' age limits on older worker |
| IRL | YES | Common to set age limits | YES | Reluctance to recruit older workers |
| I | – | (no information) | YES | 'Invisible' age limit of 45/50 |
| L | YES | Common to set age limits | YES | Reluctance to recruit over 50 |
| NL | YES | 30–50% of adverts set age limits of around 35 | YES | Reluctance to recruit older workers |
| P | – | Common to set age limits around 35 | YES | Reluctance to recruit older workers |
| UK | YES | 40+% of adverts set upper limits of 35/40 | YES | 'Invisible' age limit of 45 |

Table C

3.3 Recommendations for action

3.3.1 Age limits in recruitment advertisements

- i) Binding legislation at national or European level should prohibit age limits in recruitment advertisements, in both private and public sectors.
- ii) National and European public sectors should establish exemplary practice by lifting their own age limits in recruitment.

3.3.2 Discrimination in the recruitment process

Measures to outlaw direct discrimination should be supported by other actions to influence the recruitment process as a whole:

- i) Persuasive actions with personnel organisations, employment agencies and consultants and advertisers to eliminate age discrimination throughout the recruitment process;
- ii) Creation at national and European level of 'good practice' networks of employers, personnel managers and trade unions in recruitment of older staff. Dissemination of information from the networks via employers' and trade union organisations.
- iii) Provision of financial incentives to employers for recruitment of older unemployed workers.

Notes

22. national report for Spain .

23. national report for France .

24. France prohibits the use of age limits in the private sector only.

25. see Institute of Manpower Studies (1991), *Study of Paid Employment: Labour Demand*; Naylor, P (1987), *In praise of older workers. Personnel Management*, 19, No 11, 44-48; Jolly J et al (1998), *Age as a factor in employment, DE Research Papers 11 and 12*.

26. One rare example is quoted in *The Netherlands of an advertisement for a lorry driver over 65. The employer gave two reasons: lower employer contributions and the tendency for older workers to be more readily available. See national report for The Netherlands, section 2.1.4.*

27. Code du travail, 311-4 .

28. Greek national report, section II.B.ii .

29. Institute of Personnel Management, 1993 .

30. Institute of Manpower Studies (1991), *Study of Paid Employment: Labour Demand*.

Chapter 3 – The older unemployed: hidden and forgotten

Older workers' unemployment is not in itself discrimination. All ages and social groups are affected in the current recession. Discrimination occurs where the older unemployed are treated differently from other age groups. Three forms have been identified, which contribute to making this older group the 'hidden and forgotten' unemployed.

- direct discrimination, by excluding older unemployed at a set age from:
- employment promotion and other measures for unemployed; and
- unemployment statistics.
- indirect discrimination by lack of targeted employment measures directed at older unemployed.

The over-50s are over-represented among long-term unemployed in almost all EC countries and significant numbers remain unemployed for three years or more. For example, in Ireland in 1990, over 86% of unemployed aged 55 to 64 were long-term unemployed and over 60% had been out of work for over 3 years³¹.

Unemployment rates among older workers remain relatively low, however, due to the large numbers excluded from labour force statistics by early retirement or by specific measures affecting the older unemployed. This disguised unemployment has no doubt contributed to the lack of targeted measures to help older jobseekers return to work.

1 Direct discrimination: exclusion of the older unemployed

1.1 Exclusion from employment promotion and other³² measures

In three countries – Denmark, Greece and the Netherlands – upper age limits, several years below official retirement age, are set for state measures to assist the unemployed. These constitute direct discrimination on grounds of age – and reflect the deliberate choice of governments to exclude older unemployed, as well as the assumption that older unemployed will not re-enter employment before retirement age.

In Denmark, the upper age limit for eligibility for two schemes is 60 – seven years before official retirement age. This applies both to start-up funds to assist self-employment and to the 'job offer' scheme for the unemployed, where those over 60 have no rights to job offers.

In Greece, assistance for the unemployed to enter self-employment stops at 50 – 15 years before retirement age.

State subsidies to employers for recruitment of long-term unemployed stop when the unemployed person reaches 57.5 years in the Netherlands, and 60 in Greece – between 5 and 7.5 years before retirement age.

Older unemployed are also excluded from beneficial early retirement schemes in France and Denmark if they are unfortunate enough to become unemployed too early. They must then depend on lower social security benefits until retirement, once their unemployment benefits run out. In France, if workers become unemployed at or soon after 50, they fail to qualify for the early retirement schemes offered at 55 by the unemployment fund.³³ In Denmark, workers becoming unemployed between 55 and 59 receive 'transitional allowances' until retirement at 67; they fail to qualify for the financially advantageous early retirement scheme at 60.

1.2 Exclusion from unemployment statistics

Government measures in several countries remove the older unemployed at 55 or later from unemployment statistics, by granting automatic benefits until retirement age and exempting them from the need to register for work. Early and pre-retirement schemes, where workers pass directly from employment into early retirement, and invalidity pensions are not included in the measures described below, although both also exclude older workers from labour force statistics.

Automatic unemployment or related social benefits, or 'pre-retirement' allowances are paid to older unemployed at a certain age in the following countries:

from age 55: Belgium, Denmark, former East Germany, France, Ireland, the Netherlands³⁴

from age 58: West Germany³⁵;

from age 60: the UK.

In addition, early pensions are awarded to the unemployed at 60 in Spain and Portugal.

In most countries, except France³⁶ and Germany³⁷, the economic situation of the worker remains much the same as if he were registered unemployed; the only change is in his status: excluded from statistics.

These measures discriminate against the older unemployed in two key ways.

First, by removing the older unemployed in large numbers from the register of unemployed, the unemployment figures are kept artificially low, although it is impossible to quantify this exactly due to the lack of statistics available. For example, in former East Germany, over 1 million unemployed workers have received pre-retirement allowances since 1989 and do not appear in unemployment figures. In Ireland, the 'Pre-Retirement Allowance Scheme' (PRETA) for the unemployed over 55 had an immediate impact on long-term unemployment figures in the 45-64 age group from its introduction in 1990. Whereas in 1987 there were more long-term unemployed than retired in this age group, by 1990 this was reversed and figures showed more retired than long-term unemployed³⁸.

Second, from the individual's point of view, the removal of the need to register for work – up to 10 years before retirement age – indicates the hopelessness of obtaining further employment and actively discourages the older unemployed from seeking work. Where pre-retirement allowances are paid, for example in Belgium, Germany and France, the unemployed are specifically prevented from taking other paid employment, or have strict limits on earned income.

Some of these measures were originally intended as protection for the older unemployed who had no chance of finding employment in the last years before retirement age; but in practice they have in certain countries, such as Belgium, Germany, France and the Netherlands, further encouraged companies to target older workers for redundancy at the set age knowing that these older unemployed will receive automatic cover until retirement.

The combined effect is to compound exclusion from the workforce of older workers. A reserve of 'hidden' unemployed between 55 and retirement age has been created, most of whom would prefer to be in work. Their removal from the unemployment register leaves them as 'non-status' workers: neither retired, nor unemployed.

2 Indirect discrimination: lack of targeted employment measures

There is discrimination by omission in almost all EC countries by the lack of measures designed to help older unemployed reenter the labour market. This contrasts with a battery of measures to help young job-seekers. Disguised unemployment among the older age group no doubt contributes to the low priority accorded by governments to the older unemployed, particularly since unemployment rates among young workers are consistently high.

No EC country except France has developed a programme of targeted employment measures for the older unemployed, although Germany and Spain each have one marginal scheme (see Positive measures).

There are very few employment promotion schemes for the adult unemployed for which older workers are eligible. Those which exist are either open to all long-term unemployed over 25, or are specifically targeted on groups such as women returners, immigrants or disabled workers. None appear to cater adequately for the needs of older unemployed.

The European Community's European Social Fund, which subsidises national job-creation initiatives, reflects the existing bias towards young workers by its heavy emphasis on funding for those under 25 and absence of any targeted funding for those over 40 or 50.

It is clear that many public authorities have made a deliberate choice. The former Belgian minister of employment, Luc Van den Brande, recognised this in 1990, stating, in the context of restricting pre-retirement schemes: "...when we put in place the arsenal of anti-unemployment measures, we made a choice between the young and the over-50s... now we must correct that choice and find solutions more appropriate to those in their 50s..."³⁹.

The older unemployed in practice need more specific help to find alternative employment than other age groups. This is due to the difficulties in adapting to different jobs or learning new skills after 30 years in one type of employment, and to age-based prejudice against recruitment of older staff. The absence of targeted measures to assist this group, compared with the provisions for other groups with special needs, therefore constitutes a double discrimination against them.

2.1 Positive measures

In France, employers are exempt from social security contributions if they recruit unemployed workers aged 50 or over. A similar scheme in Spain provides 50% reduction in social security contributions and an initial subsidy to employers for recruitment of the long-term unemployed over 45⁴⁰. In Germany subsidies of up to 75% of wage costs are paid for recruitment and employment of long-term unemployed over age 50. One Belgian employment promotion scheme⁴¹ includes the unemployed over 50 as a target group.

In France, state employment agencies provide special and personalised assistance to help the older unemployed find new employment. Some individual employment agencies in Germany and the UK also give attention to this group.

Older unemployed: hidden or forgotten

This table includes early and pre-retirement schemes which apply to unemployed workers who have already left employment; it does not include schemes which act as a direct route from employment into early retirement.

| Country | Direct discrimination | Age | Exclusion from employment measures or statistics | Indirect discrimination | Lack of special schemes |
|---------|-----------------------|-----------------|--|-------------------------|-------------------------------|
| B | YES | 55 | Exclusion from statistics (pre-retirement allowances) | NO | 1 scheme exists |
| DK | YES | 55 | Exclusion from statistics (transitional allowances) | YES | No specific scheme |
| | YES | 60 | No further rights to job-offers or assistance for self-employment | | |
| D | YES | 58 | Exclusion from statistics (automatic benefits if choose early pension) | NO | 1 scheme exists |
| GR | YES | 50/60 | No further rights to assistance for self-employment/ subsidies for recruitment of long-term unemployed cease | YES | No specific scheme |
| E | YES | 60 | Exclusion from statistics (obligatory early pension) | NO | 1 scheme exists |
| F | YES | 55 | Exclusion from statistics (pre-retirement allowances) | NO | Several special schemes exist |
| IRL | YES | 55 | Exclusion from statistics (pre-retirement allowances) | YES | No specific scheme |
| I | NO | – | But many discouraged unemployed do not register and work in 'black' economy | YES | No specific scheme |
| NL | YES YES | 55/57.5 57.5 | Exclusion from statistics (pre-retirement allowances) Subsidies for recruitment of long-term unemployed cease | YES | No specific scheme |
| P | YES | 60 | Exclusion from statistics (early pension) | YES | No specific scheme |
| UK | YES | 60 | Exclusion from statistics (automatic benefits) | YES | No specific scheme |

Table D

3 Consequences, conclusions and recommendations

3.1 Consequences

3.1.1 Access to employment

Access is denied to the majority of older unemployed, since their limited chances of re-entry into the labour market are further reduced by exclusion from employment promotion measures, and by the absence of targeted measures to meet their special needs. The award of automatic benefits further discourages the older unemployed from actively seeking work.

3.1.2 Income

Long-term unemployment, or alternative forms of low-paid, marginal jobs, leave older workers in most countries on substantially reduced incomes compared with their previous working wage. (see also Chapter 1: Severe loss of income.)

3.1.3 Principle of choice

The choice or right to work is denied. Most older unemployed would prefer to be in work, if only for financial reasons.

3.2 Conclusions

Older unemployed workers are treated differently from other age groups of unemployed. They receive hardly any assistance to reenter the labour market, in contrast to the many measures in favour of the young unemployed, who also have high rates of long-term unemployment. They are almost never targeted as a special needs group, unlike other groups of unemployed.

The combined effect of the absence of targeted assistance, exclusion by age from some employment schemes, and removal from the unemployment statistics, makes them a 'forgotten' group among the unemployed. Many are condemned to long-term unemployment for 5 to 10 years or more until retirement age.

3.3 Recommendations

3.3.1 Assistance for older unemployed

- i) Age limits excluding the older unemployed from employment promotion measures or other assistance should be outlawed.
- ii) New job-creation measures likely to be developed in the recession should specifically include older workers and public authorities should provide some targeted assistance for all unemployed over 50. This could include:
 - financial incentives for job-creation for or recruitment of the over-50s up to retirement age
 - special measures by state employment agencies to assist older job-seekers find work and to encourage employers to consider older applicants.
- iii) The EC European Social Fund should make older unemployed one of its target groups for funding of job-creation measures.
- iv) A European network of employment agencies (state and private sector) which specialise in or cater specifically for older unemployed job-seekers should be created to disseminate good practice in assisting the older unemployed.

3.3.2 Exclusion from unemployment statistics

- i) The older unemployed receiving automatic benefits should not be removed from unemployment statistics, unless they are in a formal early retirement scheme.

ii) Eurostat should require EC countries to collect and publish figures of older unemployed receiving automatic benefits in order to help assess real unemployment levels among older workers.

Notes

31. *Source adapted from Ronayne and Duggan (1993).*
32. *Exclusion from training is discussed separately in Chapter 4.*
33. *Financial penalties are now imposed on companies making workers redundant at 50, with the aim of discouraging early redundancies. See Part 2.*
34. *for unemployed aged 55 as a result of collective redundancies; for other unemployed, from 57.5.*
35. *if the unemployed worker, after one year's unemployment, chooses to claim an early state pension at 60.*
36. *The pre-retirement allowances are more generous than long-term unemployment benefits.*
37. *The early state pension at 60 is higher than long-term unemployment benefits.*
38. *see Irish report, section II*
39. *"...quand on a mis en place l'arsenal anti-chomage, on a fait un choix entre les jeunes et ceux qui avaient plus de cinquante ans (...). Aujourd'hui... il faut corriger ce choix et trouver des solutions qui conviennent aux cinquantenaires". Belgian report, section C.2.*
40. *Royal Decree 3239/83 of 28/12/83, amended by Law 22/92 of 30/7/92.*
41. *Arrete Royal of 2/02/89.*

Chapter 4 – Exclusion from training

Two types of training are considered in this chapter:

- government schemes for the unemployed
- and employers' provision of in-service training.

Direct discrimination occurs where older people (below retirement age) are excluded from training schemes on grounds of age; this applies mainly to government programmes for the unemployed. The impact of indirect discrimination is more significant, however, in discouraging older workers from participating in training throughout their working lives. Self-discrimination may also prevent older workers do not take up training opportunities.

Older workers, from 40 onwards, appear to be significantly under-represented in both types of training in all countries. However, the lack of age-based statistics and systematic information in this field excludes a full analysis of participation rates, or of the reasons for under-representation⁴². The comments below are based on indications given by the national correspondents from small-scale national studies or their own knowledge. There is a need for more systematic information in this field.

Since training at work tends to be targeted on better qualified personnel, age factors for today's generation of older workers are compounded by their lack of initial education and vocational qualifications. Lack of training at work means older workers are more likely to fall behind in terms of new work methods and use of new technologies. This in turn discourages employers from keeping or recruiting them. Once unemployed, their outdated skills are an obstacle to re-entering working life, but age and educational factors often exclude them from re-training.

The cost of non-training is potentially high in terms of reduced productivity and costs of redundancies for older staff and retraining of others. For governments, the cost of unemployment benefits and rising long-term unemployment is no doubt more expensive than provision of targeted training courses resulting in jobs for the older unemployed.

1 Direct discrimination: maximum age limits for training schemes

1.1 Public sector training for the unemployed

Older workers who become unemployed, often after leaving traditional industries in decline, need to update their skills in order to improve their chances of re-employment. This group of unemployed is probably the most in need of specific training or re-training.

Yet direct discrimination is evident in six countries in excluding the older unemployed from training above a certain age. Where eligibility stops at retirement age, this has not been defined as age discrimination.

Direct discrimination has been identified in two stages:

1.1.1 *Total exclusion above a set age*

In four countries – Denmark, Greece, Italy and the UK – upper age limits, below retirement age, exclude the older unemployed from any training schemes.

In Greece, an upper age of 46 is applied – 19 years before retirement age – beyond which there is no access to state training programmes.

In Denmark, the unemployed over 50 – 17 years before retirement age – have no rights to training or education provision.

In Italy, there are no provisions for any government training of unemployed people aged over 29.

In the UK, government training programmes officially set age 60 as the upper limit – 5 years before the male retirement age. However, no priority for places is given to those over 50, which in practice excludes most unemployed from that age – 10 to 15 years before retirement age.

1.1.2 Exclusion by age from the large majority of measures

In two other countries, Spain and Ireland, upper age limits of less than 30 apply to the great majority of training schemes, targeted at the young unemployed. The number of schemes which are theoretically open to the older unemployed is so small as to be insignificant. Such schemes are usually targeted at other special needs groups, such as women or disabled workers.

In Ireland, 70% or more participants in skills training are under 25; whereas just over 1% are aged 55-64. In Spain, there is just one general scheme open to adult long-term unemployed. Agerelated statistics available for students who were positively evaluated after training show that just over 1% were over 55.

The older male unemployed suffer more than women from age-based exclusion, since some training measures are targeted at women returning to work.

1.2 Employers' provision of training at work

No direct discrimination has been identified from existing information. Companies do not appear to set official age targets for their training provisions.

In Belgium a former age limit of 40 for eligibility for paid training or educational leave was removed in 1985⁴³, but to date only 9% of those using this scheme were over 40.

It is worth noting that even in the USA, where anti-age discrimination legislation protects older workers in most training provisions, employers and trade unions may legally exclude workers over 40 from apprenticeship training⁴⁴.

2 Indirect discrimination: lack of specific training measures

Indirect discrimination is apparent in all EC countries by the absence of specific training measures adapted to the needs of older workers or the older unemployed.

Training material tends to be pedagogically designed for young participants, who have only recently finished schooling, whereas older workers with over 20 years' work experience behind them need a different approach. This applies in both public and private sector training schemes.

There also appear to be high levels of self-discrimination by older workers with regard to training opportunities, both at work and in unemployment. They apparently accept stereotypical attitudes that they are 'too old' to learn new skills later in life and their initial lack of education increases their reluctance to 'return to school'.

2.1 Public sector training for the unemployed

No training scheme has been reported which specifically addresses the needs of the older unemployed. It appears that the emphasis on government training for the young unemployed is at the direct expense of training opportunities for older age groups.

The EC's European Social Fund has been criticised, especially by correspondents in

Exclusion from training

Direct discrimination has been identified only in government schemes setting an upper age limit excluding the older unemployed. Indirect discrimination occurs in both government and company training schemes through under-representation of older workers.

| Country | Direct discrim. | Age | Government schemes | Indirect discrimination | Government or company schemes |
|---------|-----------------|-------|---|-------------------------|--|
| B | NO | – | – | YES | Under-representation in government and company schemes. |
| DK | YES | 50 | Excluded from training schemes | YES | Under-representation in company schemes |
| D | NO | – | In theory no age limit | YES YES | In practice, unemployed over 60 are not accepted for government training Under-representation from 40+ in company schemes |
| GR | YES | 46 | Excluded from training schemes | YES | Under-representation in company schemes |
| E | YES | 30 | Almost all schemes are for under 30s. 1% of evaluated students 55+. | YES | Under-representation in company schemes |
| F | NO | | (positive measures) | YES | Under-representation in government and company schemes |
| IRL | YES | | Vast majority of schemes are for under-25s. 1% of participants 55+ | YES | Under-representation in company training |
| I | YES | 29 | No training for unemployed over 29 | YES | Under-representation in company training |
| NL | NO | – | – | YES | Under-representation in government and company schemes. |
| P | NO | – | – | YES | Under-representation in government and company schemes |
| UK | YES | 50/60 | Training schemes exclude over 60's and give no priority to over 50's. | YES | Under-representation in company training |

Table E

southern Europe, for its over-emphasis on subsidies for training of unemployed aged under 25. The proportion of funding available for the 'long-term un-employed over 25' is much smaller and this has negatively affected government schemes for adult unemployed. There has been no provision to date for targeting the special needs of older unemployed⁴⁵.

Where the older unemployed do participate in general training programmes, the effectiveness can be reduced by their unsuitable teaching methods. In Greece, for example, 90% of redundant workers leaving industries in crisis, mainly aged over 45, chose to participate in training when age limits were exceptionally waived for this group. But it proved ineffective in helping this age group to find new jobs, because the training had been designed for younger workers.

Many older unemployed, discouraged in various ways from trying to re-enter the labour market, suffer from a lack of motivation. Studies in France have shown that they find it difficult to accept the concept of re-training and would only accept if they felt it would guarantee another job.

There is therefore a need both for targeted training measures and for social and pedagogical support for those who undertake retraining. In Germany this need for support during the training period has been recognised and is one of two conditions laid down for older unemployed who participate in government training. The second condition, significantly, is that there must be the prospect of another job after training.

2.2 Employers' provision of in-service training

Participation in training at work appears to decrease sharply after 40 or 45 according to the national studies which have been undertaken. For example, in Germany, studies of participation in company training show a sharp fall for workers over 40, compared to those aged 35 to 39; and after 50 only a tiny minority participate.

Several countries reported emphasis of gender inequalities with age, usually in favour of men. In France and Germany, for example, older men were more likely to receive training than older women – in Germany over 3.5 times more men than women are in training after 40. Yet in the UK, over 2.5 times more women than men received training at work in the five years before pensionable age (60 for women; 65 for men).

Within companies, the marked decline in participation after 40 can be at least partly attributed to self-discrimination by older workers and studies confirm this. In Denmark, a survey of 50-54 year olds, mainly in active employment, found only 25% wishing to receive further training. In the UK, a 1989 study⁴⁶ found that among workers aged 35-59, 53% of women and 44% of men could not envisage having any kind of training. In Germany, applications for training leave from employers are made almost entirely by workers under 40.

Employers' personnel policies do not prioritise training older staff. Employers also quote economic reasons for the lack of training provisions: older workers are too expensive to train because of their high salaries and the short period of return for the company after the training investment.

These economic arguments may be refuted by the reduced mobility of older staff, so decreasing the risk of them leaving after training, and the increasing need for regular re-training of all workers in new technologies, whereby training to last for a 5 year period is just as valid for workers of 50 as for younger staff. Dutch studies⁴⁷ have also shown the effectiveness of training older workers, and revealed that their productivity increases four times as much after training as by income incentives.

2.2.1 Positive measures

Individual company examples can be found and some are described in Part II. A German trade union, IG-Metall, has negotiated specific training rights for older workers. In France special aid is given for company training of workers over 45.

No systematic trends were identified by national reports, but a recent survey of 30 large companies in five EC countries by CEDEFOP, the European Centre for the Development of Vocational Training, showed a large majority of these companies adopting more positive attitudes towards training of older staff. Another, larger study in nine Member States is currently under way⁴⁸.

The need for continuing training at work has been recognised by the European Community in order for workers to update their skills in line with rapidly changing technologies⁴⁹.

The current reform of the EC European Social Fund proposes a new emphasis on ongoing training at work to prevent loss of employment.

3 Consequences, conclusions and recommendations

3.1 Consequences

3.1.1 Access to employment

Lack of access to training at work results in outdated skills and the risk of loss of employment. Once unemployed, lack of re-training minimises the chance of finding another job.

3.1.2 Income

Lack of training reduces earning potential at work, and may result in unemployment and significant income loss.

3.1.3 Principle of choice

Freedom to choose a new career or to learn new skills is restricted by lack of access to training. Self-discrimination reflects the individual's perception of his own lack of choice.

3.2 Conclusions

Older workers are excluded from training opportunities both at work and as unemployed job-seekers from 40 onwards. Where opportunities do exist, there are no specific provisions to meet the needs of older age-groups and effectiveness is therefore reduced.

Yet if older workers are to remain productive, motivated and flexible they will need continuing training until the end of career. This will no doubt be a key factor in assisting older people to remain in work.

There is therefore an urgent need to target today's workers of 35 and over for ongoing training at work in order to improve their long-term job prospects and flexibility of employment in later life.

3.3 Recommendations for action

3.3.1 Public sector training for the unemployed

1) Upper age limits on training schemes for the adult unemployed should be abolished. Age-based criteria for priority in awarding places should also be removed.

- ii) All older unemployed workers should have access to some public sector training provision.
- iii) Specific, targeted schemes should be designed for retraining of workers over 45, with teaching methods adapted to their needs and individual support for participants.

3.3.2 Employers' provision of in-service training

- i) Financial incentives should be provided to companies for continuing training of workers over 40 until the end of their career.
- ii) Public authorities or state employment agencies should advise companies, especially SMEs, on the need for skills updating and best methods to use with older workers.
- iii) Employers and trade unions should ensure that older workers are specifically included in training and further education provision.
- iv) Older workers should be informed of and encouraged to take up training opportunities. This should be a combined responsibility of public authorities and employers.

Notes

42. See also ILO study 1990.

43. Law of 22/01/85; Royal Decree of 23/07/85.

44. See Part 2, Chapter 2.

45. The European Social Fund is now under review and the new proposals reduce the emphasis on young unemployed under 25, while increasing measures to assist long-term unemployed in general. However, there is still no proposed targeting of older groups of unemployed.

46. 'Training for Britain (1989)'.

47. A. Gelderblom and J. de Koning (1992).

48. Reday-Mulvey, Genevieve (1993).

49. Council Decision of 29th May 1990: Development of Continuing training. EC 'FORCE' programme for continuing training.

Chapter 5 – Retirement age

This sector examines the position for those who are still working at retirement age. The imposition of a specific age for retirement constitutes age discrimination, since it denies free choice for those who wish or need to continue working.

Direct discrimination occurs where the standard retirement age is used as a limit beyond which it is either impossible or financially unattractive to work, or at which workers' rights or benefits are removed for those continuing in work. Indirect discrimination is evident in the obligation to work longer imposed by raising retirement ages, and the lack of partial retirement options available.

However, retirement ages are increasingly irrelevant as an indicator of an end to working life. 75% of those reaching retirement age in the EC are already retired or inactive.⁵⁰ The discriminatory measures analysed below therefore apply to a small minority of today's older workers.

All EC governments agreed in 1982 that flexible retirement is their common goal⁵¹, with flexibility in upwards as well as downwards directions. However, to date little progress has been made in providing real flexibility of choice for workers.

1: Direct discrimination: loss of employment rights at retirement age

1.1 Loss of employment protection or mandatory retirement at the standard age

Workers can be obliged to leave work at retirement age by the loss of statutory protection against dismissal or by mandatory retirement clauses in employment contracts. Both measures are discriminatory in using age as the sole factor, without regard for the individual's ability or wish to continue work.

1.1.1 *Loss of protection against dismissal*

Statutory provisions allow employers to dismiss employees at or after retirement age in Greece, Italy and the UK⁵² on grounds of age. In France, employers may oblige workers to take retirement at 60 – the 'mise à la retraite' – but have to make a special retirement payment; this is thus legally separate from dismissal, although it has an almost identical effect.

In Greece, France and Italy these dismissals, or the French 'mise a la retraite', are permitted only on condition that the worker is eligible for a full old age pension under the contributory pension system. If the contribution record is insufficient, the worker's employment protection remains. Both France and Italy have anomalous legal provisions which, on the one hand, specifically provide for continued protection of workers' rights beyond retirement age, yet on the other hand allow eligibility for a pension to undermine the protection against dismissal.

It has been noted that, at least in France, the protection of full pension rights does not work in practice since employers can legally make a 60-year old worker redundant, whether or not he qualifies for a full pension. Although the redundancy payment is higher than for retirement, the worker is nevertheless obliged to retire on a reduced pension.

In the Netherlands, agreements in some industry sectors, such as hotel and catering or meat-products, specifically provide for easier dismissal of workers over 65.

1.1.2 Mandatory retirement

Mandatory retirement, usually at the statutory retirement age, is widely used in employment contracts and collective agreements to impose an automatic termination of the work contract. There are notable exceptions in France, Germany and Greece, where such agreements are restricted (see below). Mandatory retirement is also common in the public sector.

In Spain, mandatory retirement was specifically prohibited until the 1980s, when amendments to labour legislation⁵³ allowed a maximum working age to be set, either by government or by collective agreement, in order to release jobs for the unemployed.

In The Netherlands the upper age limits of 65 has been legally challenged, on grounds of age discrimination, but without success⁵⁴. The Courts ruled that an upper age⁵⁵ was justified to allow employment opportunities for younger workers.

The abolition of mandatory retirement does not mean that all workers will wish to continue working after retirement age. In the USA, for example, where workers have full employment protection at any age, 75% of workers retire at the earliest possible date.

1.1.3 Positive measures

In France and Germany employment contracts containing mandatory retirement clauses have been prohibited. In Greece, collective agreements are not allowed to cover pension schemes and usually do not set an age for automatic termination of the work contract.

1.2 Loss of workers' rights

The loss of workers' rights and benefits, including the right to take paid employment, after retirement age, constitutes another form of direct discrimination.

1.2.1 No combination of earnings with pension

In Spain, the pension is suspended as soon as any paid work is undertaken. However, contributions paid from such work do increase the final pension paid.

In Greece the former generous earnings allowance for working pensioners has been removed for those entering the pension insurance system after January 1993⁵⁶. Their pension will be automatically reduced by one-third as soon as they start any paid work.

Three other countries – Belgium, Denmark⁵⁷, and Italy – set an earnings ceiling above which pensions may be reduced or suspended.

1.2.2 Rights and benefits

The Netherlands reports various examples of loss of workers' rights and benefits, which are not apparent in other countries.

The minimum wage does not apply to workers over 65. As a result, some industry sectors, for example steel, bakeries and shoe manufacturing, pay workers over 65 lower wages. In certain industries, other negotiated rights are lost or reduced at 65, such as sick pay entitlement, time off through seniority, and longer periods of notice before dismissal.

Dutch law also removes fiscal allowances for self-employed people after retirement age, preventing the offsetting of business losses against tax. The Dutch courts have dismissed legal challenges on the grounds that those over 65 have no need to work, since they receive the basic pension, and that they need less income for savings, so can afford higher taxes⁵⁸!

Retirement age

Direct discrimination occurs where either the state or employers use the retirement age as a limit beyond which it is not possible to work, or at which for those working certain rights are lost. Indirect discrimination is evident in raising of retirement ages and lack of partial retirement options.

| Country | Direct discrimination | Loss of workers' rights or mandatory retirement | Indirect discrimination | Lack of partial retirement/ higher retirement ages |
|---------|-----------------------|---|-------------------------|--|
| B | YES | Mandatory retirement by collective agreement | NO | (positive measures) |
| DK | YES | Mandatory retirement, loss of some workers' rights by collective agreement | NO | (positive measures) |
| D | NO | (positive measures) | YES NO | Raised retirement age imposes longer working life or reduced pensions (positive measures) |
| GR | NO YES | Collective agreements may not set pension schemes and do not usually impose mandatory retirement Loss of protection against dismissal at pensionable age | YES YES | Raised retirement ages imposes longer working life for women and/or reduced pensions Lack of partial retirement options |
| E | YES | Mandatory retirement by collective agreement | NO | (positive measures) |
| F | NO YES | Mandatory retirement by collective agreement prohibited Loss of protection against dismissal at pensionable age | YES NO | Proposed longer working life for pension (40 yrs) (positive measures) |
| IRL | YES | Mandatory retirement under some collective agreements | NO | (positive measures) |
| I | YES YES | Mandatory retirement under collective agreement Loss of protection against dismissal at pensionable age | NO YES | Raised retirement age does not increase contribution period for state pension Lack of partial retirement options |
| NL | YES YES | Mandatory retirement under collective agreements Loss of various workers' rights, eg. minimum wage, tax allowances | YES | Lack of partial retirement options |
| P | YES | Mandatory retirement under collective agreements | YES | Lack of partial retirement options |
| UK | YES YES | Mandatory retirement under collective agreements Loss of protection against dismissal after retirement age | YES YES | Proposed longer working life for women's pension Lack of partial retirement options |

Table F

1.3 Positive measures

In the UK and Ireland tax allowances are increased for working pensioners, as a form of positive discrimination and UK workers above retirement age are exempt from employees' contributions.

Since the EC Recommendation on flexible retirement of 1982⁵⁹, some countries, including France and the UK, have relaxed previous restrictions on combining earnings with a pension.

2 Indirect discrimination

2.1 Raising retirement ages

The emerging trend towards raising retirement ages and extending the working life, in response to pension financing problems, risks increasing discrimination against older workers in two ways.

First, raising the state pensionable age, without reversing the early exit culture and increasing work opportunities, will increase the gap between early loss of employment from 50 or 55 and official retirement age. The older unemployed will suffer most through longer periods of unemployment.

Second, an obligation to work longer in order to earn the same pension income, particularly for women, is contained in most pension reforms implemented or under consideration. Retirement earlier than the new official ages will almost always attract financial penalties.

Germany, Greece and Italy have already implemented pension reforms; France and the UK are debating proposed measures.

In Germany, the retirement reforms passed in 1992⁶⁰ impose a longer working life by abolishing the option of a full early pension at 60 for women and the unemployed and at 63 for men. The reforms will raise the 'real' retirement age, in steps, to 65 by early next century. Early retirement will in future be possible up to three years in advance, imposing pension reductions of up to 10.8%. The unemployed are likely to suffer most from these measures.

The remaining option of a full early pension at 60 for disabled German workers may also be restricted in future.

In Greece, pension reforms⁶¹ will establish equal retirement ages for men and women at 65 in the private sector for those insured after 1st January 1993. Women insured after this date will have to work 5 years longer before claiming a pension. Workers in the public sector, and particularly women, are also affected by the reforms which impose a longer working life and pension reductions.

In Italy the official retirement age will be raised to 60 for women and 65 for men over the next decade, and in practice these will become the official ages from 1994.

However, there is no obligatory extension of the working life to qualify for the basic state pension: workers still become eligible after 35 years of contributions.

In France proposals under discussion would increase the contributory period for a full pension from 37.5 to 40 years, without changing the retirement age of 60. These increased contribution periods would particularly affect pension income for women with interrupted work careers.

In the UK, the equalisation of retirement ages for men and women (65 and 60 respectively) is under debate. Proposals include raising the retirement age for women to 65

which would impose five extra years' work before eligibility for the state pension.

In all cases, except Italy, women workers will suffer most from the obligation to work longer for pension entitlement.

2.2 Lack of partial retirement options

Despite an agreement at EC level to promote phased retirement⁶², governments have introduced very few schemes. Those which have been set up to allow transitional retirement before the official age, are sometimes poorly designed and have failed to attract significant numbers of participants.

In France the part-time early retirement scheme provides no financial incentive to workers: they gain only 10% in income, compared with full early retirement. The scheme has attracted only minimal support as a result. In Denmark, Germany and Italy, the partial retirement schemes are only available by negotiation with the employer for terms; they are not an automatic right like full-time early retirement in Denmark or Germany. Since trade unions have been opposed to partial employment, there has been little take-up so far.

As long as phased retirement schemes are presented as second-best options, workers will not be encouraged to accept them. In addition, companies have not been prepared to make arrangements to allow part-time work for those approaching retirement⁶³ and this has discouraged participation in government schemes.

2.3 Positive measures

The combination of earnings with pensions in almost all EC countries has allowed the possibility of part-time working after retirement age. Some governments, such as Denmark and France, have specific schemes which allow part-time employment to be combined with a proportion of the full pension. Others, such as the UK and Germany, allow pensions to be deferred while working past retirement age and incremental increases to be paid when they are finally claimed.

Belgium has introduced some flexibility of retirement between 60 and 65.

3 Consequences, conclusions and recommendations

3.1 Consequences

3.1.1 Access to employment: is denied solely on grounds of age under mandatory retirement or loss of employment protection at retirement age.

3.1.2 Income

- Enforced transfer to a pension usually reduces total income and many workers need to continue work for financial reasons.
- Loss of rights to a minimum wage results in lower wages for working pensioners in the Netherlands.
- Pension reforms will mean reduced pensions for the same number of working years.

3.1.3 Principle of choice

Choice of retirement age is denied, both through mandatory retirement or dismissal at retirement age, and through retirement measures which oblige workers to continue working longer in order to earn the same pension.

3.2 Conclusions

EC governments have made no significant moves to increase workers' choice of retirement; their policies continue to impose a set age for retirement. The new trend towards raising retirement ages will inevitably increase problems of age discrimination, as the gap between early loss of employment in the 50s and official retirement age increases to 10 or 15 years.

Flexible retirement – either within a period of years, or above or below a set age – is the non-discriminatory alternative to existing retirement policies, provided the choice of retirement age remains financially neutral. This allows individual factors to be taken into account for those wishing to work longer, such as personal financial obligations, the need to complete pension contributions or the dependence on work for social contact for those living alone.

3.3 Recommendations

- i) Workers should be allowed the principle of free choice in their retirement age. The proposals on flexible retirement in the 1982 EC Recommendation should be implemented.
- ii) The official retirement age should not be used as a mandatory retirement age against a worker's will.
- iii) Those who continue working after retirement age should have the same workers' rights as other workers. In particular, they should not receive less pay for the same work.

Notes

50. Source: Eurostat.

51. EC Recommendation 1982.

52. *Employment protection remains for women until 65, despite the current differences in pensionable age, due to EC provisions on equal treatment for men and women under Article 119 of the EC Treaty.*

53. *Fifth Amendment of Law 8/1980 of the Workers' Statute and Ruling 22/1981 of 2/7/81 of the Constitutional Tribunal.*

54. *The case of university law professor H. van Maarseveen: Ambtenarengerecht Rotterdam, 13/4/92, AW 1991/597. 3/4/92, AW 1991/597.*

56. Law 2084/92.

57. *The old age pension is regulated from 67-69; from 70 onwards, only the small supplement is regulated.*

58. HR 6/6/90, BNB 1990, 212.

59. *EC Council Recommendation of 10 December 1982 on the principles of Community policy with regard to retirement age.*

60. *Pension Reform Act (Rentenreformgesetz) of 1992.*

61. *Laws 1902/90, 1976/91 and 2084/92.*

62. 1982 EC Recommendation.

63. *The exception in Europe as a whole is in Sweden, where companies have adapted to older workers' needs for part-time work to overcome labour shortages.*

Part 2

Positive measures to combat age discrimination: Europe and the United States

This section summarises the positive measures which exist in EC countries to assist or protect older workers. It then examines the scope and impact of the anti-age discrimination legislation in the USA.

Chapter 6 – Positive measures in Europe

Positive measures at national level have been briefly mentioned in Part One. They are described more fully in this section to provide an overview of existing constitutional protection and statutory measures which could help to combat age discrimination. Some examples of existing good practice by employers and trade unions are also highlighted.

The special benefits and privileges awarded to older workers under collective agreements or other provisions are not covered here. These typically include seniority principle in wage scales; earnings protection in the event of job transfer or downgrading; favourable conditions for working hours, time off, night working, etc. Although they benefit those in work, their overall effect does not combat age discrimination, since they tend to increase employers' reluctance to recruit older jobseekers.

1 Constitutional protection for older workers

1.1. Several countries make direct or indirect reference to the protection of older workers' rights in their Constitution or in basic labour laws. In practice, such provisions have not prevented discrimination against older workers in employment. However, they could provide a legal basis for future statutory actions by national authorities.

1.1.1 Spain

Spanish labour law provides the most specific protection in the EC against discrimination on grounds of age:

A law of 1980⁶⁴ states that: "workers have the right not to be discriminated against in their application for employment or once employed on grounds of sex, marital status or age, within the limits set out in this Law...".

Another article⁶⁵ is even more specific: "any regulations, clauses of collective agreements, individual agreements or unilateral decisions of employers which contain an element of discrimination on grounds of age will be considered null and void...".

In addition, the Spanish Constitution (1978) includes an openly phrased anti-discrimination clause, from which age can be directly inferred: "none shall suffer any discrimination whatsoever on grounds of birth, ... or any other personal or social condition or circumstance". It also includes the principle of the right to work.

1.1.2 Italy

The Italian Constitution specifically allows for an individual's choice to work and infers no discrimination based on age: "the duty of every citizen to take part in some activity, according to their own potential and choice, that contributes to the material progress of society". It recognises the right to work for all and calls for legislation to "promote the conditions for the exercise of that right".

These provisions led the Constitutional Court to rule that workers over 65: "should enjoy the same rights accorded to other workers"⁶⁶.

1.1.3 Germany

The new Constitution of unified Germany does not include the right to work principle which existed in the former GDR's Constitution.

Labour law on workers' cooperative rights⁶⁷ specifically provides that workers' committees must ensure "that workers are not disadvantaged because they have passed certain

Positive measures helping to combat age discrimination in EC countries

The measures summarised below all target older workers specifically.

| Country | 1 Constitutional protection | 2 Protection against redundancy/dismissal | 3 Employment/recruitment incentives |
|---------|--|--|---|
| B | – | – | Unemployed 50+ targetted in one employment scheme. |
| DK | – | – | – |
| D | Labour law mentions OW | Special protection under many collective agreements | Limited scheme pays 75% wage subsidy for <8 years for unemployed 50+ |
| GR | Equality & right work in constitution. Protection via jurisprudence | Case law protects in principle | – |
| E | Direct protection against age discrimination in Workers' Statute. Open discrimination clause in constitution | Labour law prohibits age discrimination | 50% social security reductions & initial subsidy for unemployed 45+ |
| F | Right to work established | Law and financial penalties discourage redundancies for 50+ | 100% social security exemption for <10 years for unemployed aged 50+. Priority to 50+ in employment Measures and help for job-seekers |
| IRL | – | Draft law will set age as criterion for unfair dismissal 50+ | – |
| I | Rights & choice to work in constitution. Protection via jurisprudence | Case law sets age as criterion for unfair dismissal | – |
| NL | Open discrimination clause in constitution. Protection via jurisprudence | Redundancy schemes targeting workers 55+ prohibited | – |
| P | Open discrimination clause in constitution. Right to work | Redundancy criteria give some protection | – |
| UK | – | – | – |

Table G

Positive measures helping to combat age discrimination in EC countries

The measures summarised below all target older workers specifically.

| Country | 4 Training or other measures | 5 Age limits in recruitment | 6 Mandatory retirement | 7 Partial retirement options |
|---------|---|---|---|---|
| B | — | — | — | Flexible retirement between 60 & 65 but women are disadvantaged |
| DK | — | — | — | Part-time retirement option before and after pensionable age |
| D | Some trade union training provisions | — | Prohibited in work contracts from 1992 | New partial retirement options |
| GR | — | — | Pensionable age prohibited in collective agreements | |
| ES | — | — | — | Part-time retirement option |
| F | Subsidies for employer training of workers 45+ and for 'tutorage' schemes. Government working group & research centre | Law prohibits in private sector job adverts | Prohibited in work contracts | Part-time retirement options |
| IRL | — | — | — | |
| I | — | — | — | — |
| NL | — | Legislation to prohibit under discussion | | |
| P | — | — | — | — |
| UK | Government working group & dialogue with employers | Use of age limits actively discouraged | — | — |

Table H

age limits". It also expressly provides for the promotion of employment of older workers in companies⁶⁸.

1.1.4 The Netherlands

The Constitution includes an openly phrased 'non-discrimination' clause: discrimination is forbidden on specific grounds and also for "any other reason". Dutch courts have interpreted this as including age discrimination in certain cases⁶⁹, but other legal challenges of age discrimination have failed.

1.1.6 Greece

The Constitution establishes the principles of equality, social justice and human dignity⁷⁰ and provides for the right to work⁷¹. This legal framework led the courts to outlaw the setting of an age limit for obligatory exit from work.

1.1.7 Portugal

The Constitution states that no-one shall be discriminated against or deprived of rights on grounds of "... economic situation or social condition". It also establishes the principle of the right to work.

1.1.8 France

The French constitution provides for a general right to work. Although France has taken the most comprehensive initiatives in Europe to promote older workers' employment, there is no legal framework behind this.

Other EC countries have nothing of relevance in this field.

1.2 European Community: sex discrimination

Sex discrimination is specifically prohibited in all EC countries, based on Article 119 of the EC Treaty of Rome. Where age discriminatory measures particularly affect older women workers, such as age limits in recruitment or retirement ages, these could be legally challenged under sex discrimination provisions. To illustrate this, a European Court of Justice ruling was made in favour of a woman employee of a UK health authority who had been compulsorily retired at the age of 60, whereas her male counterparts were permitted to work until age 65.

The potential use of these common equal opportunities measures in Europe to combat certain forms of age discrimination could usefully be explored in detail.

2 Legislative measures

Legislative measures to assist older workers in employment are described below. There is a separate section on France, in view of the range of initiatives taken there. Examples of positive measures in other countries are far less systematic.

2.1 France: a series of positive measures

Between 1987 and 1990 the French public authorities introduced a series of measures to limit job losses and promote longer working life. Their willingness to act stemmed mainly from the soaring public cost of early retirement measures and from improved economic conditions.

To date these measures have had little effect: most employers and trade unions still give priority to early exit for older workers. The early retirement culture has proved difficult to change, without a national consensus between public authorities and the social partners.

One piece of anti-age discrimination legislation pre-dates the employment measures:

2.1.1 Ban on age limits in job advertisements in private sector French Labour Law approved well before the 1980s⁷² forbids the use of upper age limits in private sector job advertisements. This legislation is largely ignored inside France and has never been enforced.

Since it only applies to advertisements, and not to the recruitment process, it would have little direct impact on employers' real behaviour. Nevertheless it has symbolic importance and other EC countries, notably the UK and the Netherlands, are debating the introduction of similar provisions.

2.1.2 Employment promotion measures⁷³

Various measures have been passed in order to:

(i) Discourage early exit:

- impose financial penalties on companies using pre-retirement schemes funded by the Unemployment Fund, equivalent to an extra 6 months' salary payable to the Fund.
- discourage employers' selection of older workers for redundancy. The 1989 law⁷⁴ on prevention of redundancy introduced the term older worker (*salarie âgé*) for the first time in a legal text, but without any definition.
- protect workers aged 50-54 from redundancy: companies using state-funded pre-retirement schemes for workers from age 55 may not make workers aged 50-54 redundant.
- restrict the criteria for pre-retirement schemes;
- provide state aid for positive company measures to prevent early exit or to improve flexibility of working time for older workers.
- encourage companies to spread redundancies among all age groups; to consider job transfers within the company; and to assist with finding new employment where necessary.

(ii) Promote a longer working life:

- by introducing progressive retirement schemes⁷⁵ for pensioners over 60 allowing part-time work to be combined with pensions.

(iii) Assist re-integration into the labour market:

- provide 100% exemption from employers' social security contributions for recruitment of unemployed age 50 and over, until pensionable age. In 1991: 18,000 workers benefitted from this scheme.
- give special priority to the over 50s in employment measures for the long-term unemployed.
- provide targeted assistance by state employment agencies for the unemployed over 50, including individual analysis of their potential for re-entering employment and personal support in retraining courses.
- extend half-time contracts in the public sector and with associations from 12 to 24 months for the older unemployed.
- increase part-time earnings allowances for the unemployed over 50.

(iv) Support training initiatives

State subsidies were introduced for:

- long-term company training for workers of 45 and over.

• 'tutorage' schemes where older workers train and work with young recruits.

(v) Government initiatives

In 1990 the Employment Ministry set up a working group with the social partners to discuss ways of assisting older workers, which reported conclusions in December 1990.

In 1991 a research centre for study on age and the workforce⁷⁶ was created with the aim proposing measures to encourage workers to remain in the workforce.

2.2 Other positive measures

2.2.1 Protection against redundancy/dismissals

Some form of protection exists in Germany, Greece, Spain, France (see above), Italy and the Netherlands, and in a draft law in Ireland.

Statutory provisions in Spain, Italy and the Netherlands protect against dismissal or redundancy on grounds of age. In Spain, this is contained in the Workers' Statute of 1980 (see above). In Italy, the Constitutional court has ruled that dismissals or redundancies on grounds of age constitute unfair dismissal⁷⁷.

In the Netherlands, redundancy schemes targeting workers aged 55 and over as 'first out' candidates have recently been prohibited⁷⁸. In cases of mass redundancies, checks are now made by employment offices to ensure no over-representation of older workers⁷⁹. Dutch case law also protects workers from dismissal on grounds of age alone⁸⁰.

Ireland is currently debating a proposed amendment to existing legislation on unfair dismissals⁸¹, to include age as a criterion for unfair dismissal for workers aged over 50. This is likely to become law by end 1993.

In Greece, case law 82 has established that in cases of mass dismissals on economic grounds, employers should retain older workers, provided they have the same skills and productivity as other workers, in order to avoid prejudicing their financial situation. Unfair dismissal can be claimed by older workers as a result.

In Germany, special protection against dismissal is provided by many collective agreements, negotiated by trade unions, covering 30-40% of the total workforce, and an estimated 60% of workers employed under collective agreements. They do not provide general protection for all older workers, but only take effect after long service with the employer and at a set age, usually 55. This type of special protection can discourage employers from recruiting older workers.

In Portugal, the official criteria for redundancies due to restructuring or economic crisis follow the last in first out principle, which favours older workers with longer service. However, this is not always strictly applied in practice.

2.2.2 Employment/recruitment measures

Belgium, Germany and Spain, in addition to France, each have one employment scheme targeted at older workers:

In Germany, wage subsidies of up to 75% and lasting up to eight years are paid for recruitment of the long-term unemployed over 50 on permanent contracts. But funds for this scheme are limited and applications always exceed available funds.

In Spain, employers recruiting the long-term unemployed over 45 receive a one-off state subsidy for each worker, plus a 50% reduction in social security contributions for the length of the contract⁸³.

A Belgian employment promotion scheme⁸⁴ levies employer contributions to help specific risk groups. The target groups agreed by the social partners include the unem-

ployed over 50.

In Greece, a one-year scheme⁸⁵ paying higher subsidies for recruitment of unemployed aged 56 to 60 was not repeated for economic reasons.

2.2.3 Protecting income of older unemployed

In Germany, Greece, Spain, France and the Netherlands, unemployment benefits are paid to the older unemployed for longer periods or under more favourable conditions. This helps to protect their income. For example, in Germany, the unemployed over 54 may claim unemployment benefits for up to 30 months.

Pre-retirement allowances and early pensions available to the unemployed in several countries also protect their income, even if their practical effect has been to institutionalise early exit.

2.2.4 Age discrimination in recruitment

The Netherlands government is currently considering the option of legislation to ban the use of age limits in retirement advertisements with the aim of encouraging employers to use more objective evaluation criteria. The public sector has no official age limits for recruitment, with some specific exceptions.

There is a national campaign in the UK for legislation to ban age limits in recruitment advertisements⁸⁶. The UK government is opposed to legislation, but has condemned the use of age limits in recruitment⁸⁷. State employment agencies have been instructed to query the use of age limits in vacancies advertised with them; surveys have indicated a recent reduction in the use of age limits with these agencies. One national newspaper, 'The Guardian' refuses to publish job advertisements quoting age limits.

Both the UK and Irish Civil Services have abolished age limits in recruitment to all grades in recent years.

2.2.5 Prohibition of mandatory retirement

In France and Germany, employment agreements which automatically terminate work contracts at a specific age have been prohibited.

In France a 1987 law⁸⁸ prohibits 'guillotine' clauses which automatically terminate work contracts at retirement age. It nevertheless permits employers to impose retirement at 60 or over, once employees qualify for a full pension.

Germany changed its law in 1992⁸⁹ to ensure that contracts setting a specific age for termination were only valid with the express approval of the employee. Previously, work contracts terminated automatically at 65 and had to be renegotiated with the employer and many collective agreements terminated contracts at the early pension age of 60 for women and disabled workers.

2.2.6 Changing retirement ages

(i) Flexible retirement

Belgium has established a 5-year flexible retirement period between 60 and 65 for men and women. However, flexibility above 60, is restricted for unemployed women. Both the UK and the Netherlands have considered flexible retirement options.

Denmark, Germany and France have part-time working schemes both below and above normal retirement age, which combine with reduced pensions. In Germany since 1992 working pensioners over 65 may defer their state pension and increase its final amount indefinitely; the previous limit of 67 years has been abolished.

All EC governments agreed on the principle of flexible retirement in upwards as well as downwards directions in 1982⁹⁰.

(ii) Raising the retirement age: Positive or negative?

Germany, Greece and Italy have recently increased retirement ages, and proposals are under discussion in France and the UK. However, a higher retirement age is only positive if it changes the 'early retirement culture' and permits a longer working life for those who wish or need it.

Most of the existing or proposed measures will have negative effects on older workers and their pensions, as discussed in Part 1, Chapter 5. In Italy, however, the increased retirement age does not affect the state pension, which can still be claimed after 35 years of contributions.

2.2.7 Internal Government Initiatives

The UK Government stated in 1992⁹¹ that it would discourage employers from using age barriers in employment of older workers⁹². It has established a special Advisory Group on older workers, including representatives of the social partners, with the aim of "encouraging and disseminating good employment practice with regard to older workers" and educating employers in this field.

3 Employers' and trade unions' good practice

Brief descriptions of individual good practices by companies, trade unions and their organisations in several countries are given below, based on information provided. Other examples certainly exist, but more detailed studies are needed to identify these.

The good practices quoted relate to policies which combat age discrimination, such as specific recruitment of older workers or special training provisions for older personnel.

In many cases, trade union support for employers' good practice is vital, but their role has not been analysed fully in this preliminary report.

3.1 France

Examples of good practice in French companies have been well documented in recent years. A small selection is quoted here; more comprehensive information is provided in the French report. Most examples focus on discouraging early retirement, which is the norm in many French companies.

Société Générale Sucrière: It developed a special part-time retirement scheme for employees aged 55 to 60 to provide 5 months' employment each year, instead of retirement at 55, in order to use their expertise during the beet sugar harvest.

OTIS (Lift manufacturer): A collective agreement of 1991 encourages workers to stay at work until 60 by providing improved job and promotion prospects for those over 50, including training and re-skilling, and sharing experience with younger workers. It also provides for reduced working hours between ages 57 and 60.

Aérospatiale: Faced with an ageing workforce structure and systematic loss of experienced staff from 55, a specific personnel policy has been developed to encourage staff to remain until 60. Each employee has an individual career plan lasting until 60; and there is a special training programme for all staff over 50.

Thomson (electronics) and Phildar (wool manufacturer): Both companies need to reduce their workforce, but have developed policies to avoid redundancies among work-

ers aged 50 to 55, before their entitlement to pre-retirement schemes. They provide special training to help workers over 50 find short-term jobs elsewhere, but if this fails, they guarantee to keep the over-50s in employment until 55.

3.2 UK

Employers' representatives: The UK Institute of Personnel Management (IPM) updated its statement on 'Age and Employment' in 1993. This proposes a code of good practice for employers on employment, recruitment and evaluation of older workers. A survey of personnel managers⁹³ showed high awareness of the IPM statement, in both public and private sectors. Another survey⁹⁴ found 42% of organisations questioned were encouraging managers to recruit older workers.

B&Q (do-it-yourself chainstore): has opened several stores with staff exclusively over 50 to take advantage of their experience and better responses to customers. The staff received special eight weeks training in advance, with individual support from supervisors in other stores. Both flexible hours and flexible retirement are available.

Sainsburys and Tesco (two supermarket chains): have recently recruited staff up to the age of 69, due to perceived labour shortages.

British Rail and British Telecom have changed their recruitment and training policies to allow older candidates to participate in training.

3.3 Germany

There are exceptional examples of companies which promote employment of older workers but such policies are almost never designed as standard offers, and are linked to special company requirements or to specific employees.

Trade unions and employee representatives: Strong employees' councils defending older workers' rights are often found in companies with positive practices.

The major iron and steel industry union, IG-Metall, is now working on a new bargaining policy with special emphasis in favour of older workers. This will include measures to improve qualifications, to introduce flexible working time and to improve wage policies. The same union has recently negotiated collective bargaining agreements in Baden-Wurttemberg which ensure older workers are specifically included in provisions for training and further education.

Employers' associations: The Federal Association of German Employers is currently updating, in conjunction with trade union organisations, its guidelines and recommendations on employment of older workers, originally issued in the late 1970s.

Bayer: (pharmaceuticals) finds older employees more objective and reliable, particularly in monitoring of chemical procedures. It uses training programmes to update all workers, regardless of age and runs voluntary evening classes in computer skills, which are popular with older workers as they allow them to learn at their own pace.

3.4 The Netherlands

There is increasing debate between employers and trade unions on the position of older workers as part of collective bargaining. More employers are consciously developing a special policy for older workers, but this is often used as a bargaining tool, for example to agree less costly early retirement conditions.

IBM-Netherlands: developed specific training programmes for manual workers aged around 50, in response to a high drop-out rate among older manual workers. It has found it cost-effective to offer job transfers through retraining, rather than pay high disability allowances or early retirement benefits to older workers⁹⁵.

3.5 Greece

DELTA (food industry): provides specific training for older workers. It has found this cost-effective, even if workers leave after one or two years. 18% of participants in computer and data processing training are currently over 50.

In developing these policies, the management was influenced by the results of an Anglo-American study, demonstrating that workers over 50 were often more easily trained than younger staff.

3.6 Belgium

Glaverbel (glass industry): has developed a specific training policy to keep its older workers at work, in response to a lack of young qualified workers. It also aims to change management attitudes towards older employees.

4 Conclusions and recommendations

4.1 Conclusions

Since a change in employers' and trade union attitudes towards older workers will be essential in combating age discrimination at work, systematic information is needed in this area so that examples of successful measures taken by employers and unions can be highlighted.

4.2 Recommendations

An EC-wide exchange of experience between employers, personnel managers and trade unions which have developed positive policies for older workers could disseminate information on good practice and provide new ideas for personnel management in different EC countries.

Notes

64. Law passed as part of the Workers' Statute on 10th March 1980 (8\1980): Article 4.2.c.

65. *Idem*, Article 17.1.

66. Constitutional Court Decision no. 176, July 1986.

67. Labour-Management Relations Act (*Betriebsverfassungsgesetz*), Article 75.1.

68. *Idem*: Article 80.1 sub-section 6.

69. *Ambtenarengerecht Den Haag*, 19th April 1989, nr. MAW 1988/21 703.

70. Constitution Article 4, sections 1.2, 1.7, section 2, and Article 106, section 2.

71. *Idem*, Article 22, section 1.

72. *Marshall v Southampton and SW Hants Area Health Authority* [1986] ECR 723.

73. *Code du Travail*, Art. 311-4.

74. Summarised with legal references in Employment Ministry paper of 24/8/92.

75. Law of 2/8/89 Art. L321-1-1.

76. Law of 5/1/88.

77. "Centre de recherches et d'études sur l'âge et les populations au travail (CREAPT)".

78. *Decisions of the Constitutional Court: no. 174, 14 July 1971; and no. 176, 7 July 1986.*
79. *Department of Social Affairs and Employment decision, taking effect from April 1993.*
80. *Source: Institute of Personnel Management, 1993.*
81. *Rb. Roermond, 1/12/1986, Prg. 1987 2631.*
82. *Unfair Dismissals Act 1977.*
83. *Greek Supreme Court of Appeal 272/74, 1273/74, 453/83,567/83.*
84. *Royal Decree 3239/83 of 28/12/83, amended by Law 22/92 of 30/7/92.*
85. *Arrete Royal of 2/02/89.*
86. *Dec. 34152/91 of Ministry of Labour.*
87. *Alliance Against Ageism: a representative group of UK organisations, serviced by Age Concern England.*
88. *1992 White Paper "People, Jobs and Opportunity".*
89. *Law of 30/7/87.*
90. *Law SGB VI, Article 41.4.*
91. *EC Recommendation of 1982.*
92. *Idem.*
93. *Idem.*
94. *ARP (1992).*
95. *Institute of Manpower Services (1991).*

Chapter 7 – Anti-age discrimination legislation in the USA

The American Age Discrimination in Employment Act (ADEA) has been in force since 1967. Together with related legislation, it provides the most comprehensive legal protection against age discrimination in the world⁹⁶. Yet the US Congress has concluded that age discrimination is still an obstacle to employment for older workers and that “statutory provisions against age discrimination remain incomplete and somewhat ineffective”⁹⁷.

1 The scope of the ADEA

The ADEA became law in 1967. Its original legislative aim was restricted to tackling the specific problem of age limits applied in recruitment, which had been identified in a report to the US congress. However, the growing US civil rights movement in the 1960s, combined with the constitutional guarantee of equal protection for US citizens led to the development of more comprehensive legal protection for older workers.

The ADEA's stated aims are to:

- promote employment of older persons based on ability rather than age;
- prohibit arbitrary age discrimination in employment;
- help employers and workers to overcome problems arising from the impact of age on employment.

It outlaws age discrimination in a wide range of employment practices: recruitment; dismissals; payment of compensation and other benefits; terms and conditions of employment, including promotion; job descriptions and job referrals; provision of privileges; union membership, etc. It applies to employers with 20 workers or more, including state and local governments; to employment agencies; to labour organisations with 25 or more members and to the Federal Government.

It originally covered workers between 40 and 65, mainly in the private sector. A series of amendments have extended the cover to most workers over 40, without an upper age limit, in both public and private sectors. Mandatory retirement has thus been effectively abolished. The Act also outlaws discrimination between different groups of older workers, i.e. an employer may not favour a 50-year old over a 65-year old on grounds of age.

Various provisions of the ADEA, and notably a related Act, the Older Workers Benefit Protection Act (OWBPA) of 1990, aim to prohibit discrimination in terms of employee benefits for older workers, except when costs to the employer are disproportionately high. The Act is based on the principle of equal benefits or equal cost to the employer: where the cost of certain benefits, such as life insurance, increases with age, the employer must make equal amounts of contributions for older and younger workers, even though the older worker may receive a lower entitlement or coverage as a result. The Act thereby aims to ensure employers are not discouraged from hiring or retaining older workers due to increased employee costs, while preserving the principle of non-discrimination against older employees.

In addition, the OWBPA regulates early retirement incentives to ensure that they are voluntary and it establishes stringent standards for the widespread employer practice of encouraging employees to sign waivers of their ADEA rights when leaving work. These waivers are only valid provided strict conditions are met regarding the understanding and acceptance of the waivers.

2 Exceptions

Among various exceptions to the coverage of ADEA, the following are noteworthy.

Workers over 40 may be excluded from apprenticeship training programmes, although older workers' rights in other types of training are protected. The resulting exclusion of workers over 40 from employer and trade union training schemes was condemned by the US Congress report of 1993⁹⁸.

Employers may apply age limits if it can be proved that there is a legitimate reason for using age as a qualification for the job, for example in public safety posts or teenage modelling. In addition, it is legitimate for employers to take actions based upon criteria which apply to all workers, regardless of age. For example, the ADEA does not protect against mass redundancies or dismissals based on poor performance. However, eligibility for a pension is based on age and cannot therefore be used as a good reason in deciding redundancies or benefits.

3 Implementation of the legislation

The original aim of the legislators was to encourage conciliation between employers and older workers and to avoid litigation. In practice, only a very small number of ADEA cases go to court, since employers tend to make advance settlements in cases they believe they will lose. Success rates of court actions are low, but similar to actions taken under other Civil Rights employment discrimination legislation.

Overall, nearly half the complaints involve unlawful dismissal, about 1 in 7 concern recruitment and only 1 in 20 are related to promotion. Of those which become court cases, however, over 75% are related to dismissal; followed by 9% involving recruitment.

The legislation is enforced by the federal Equal Employment Opportunities Commission (EEOC) in conjunction with the state Fair Employment Practices Agencies (FEPAs), where they exist. Complaints of age discrimination have been the fastest growing field of charges filed under equal employment opportunity legislation and made up a quarter of all discrimination charges received by EEOC in 1991.

However, the administration and enforcement of the legislation has been subject to extensive criticism for delays, inadequate investigation and the modest litigation record.

4 The impact of the ADEA

Contrary to the assumptions of the legislators in the 1960s, age discrimination still appears prevalent in today's US workplace. Surveys⁹⁹ show that 80% of Americans believe most employers discriminate against older workers – the same proportion as in Europe.¹⁰⁰

4.1 Employers' attitudes

Surveys of US employers show that most recognise there is widespread age discrimination and also reveal that negative attitudes towards older workers persist, particularly regarding their productivity, flexibility and capacity to use new technology. There are some good examples of training for older workers, but the practices are not widespread.

Underlying employers' attitudes have changed little, despite improvements in objective employment assessment. Most employers do the minimum to avoid liability under the ADEA. They frequently use early retirement plans and only rarely take initiatives to extend the working life.

4.2 Employment situation for older US workers

One of the main goals of the ADEA was to promote employment of older workers, although originally only up to age 65.

Yet the employment to population ratio for all workers aged 55 and over has fallen from 37.7% in 1967 to 29.1% in 1990, and for male workers from 53.2% to 37%¹⁰¹. The unemployment rate for the 55-64 age group rose from 3.3% in 1990 to 3.9% in 1991, representing a 19% increase in total numbers. Nevertheless, this rate is lower than in EC countries.

Despite the abolition of mandatory retirement, about threequarters of workers draw their state pension at 62 and a wide range of voluntary retirement incentives are offered by employers to those below 65. As in Europe, most economic incentives are directed towards older workers leaving the work force. So the average working life has not been extended; but, although numbers are relatively small, labour force participation of those over 65 is significantly higher in the US than in Europe.

4.3 Positive achievements

The ADEA has stopped blatant discrimination in job advertisements and it appears to help older workers seeking another job. Although the average time spent finding a new job for unemployed 55-64 years olds has increased in recent years, it was still only 21 weeks in 1991.

The existence of legal protection has also encouraged some employers to introduce more objective evaluation procedures (of older workers) in recruitment and employment. In cases where employers have demonstrated good practice in using objective criteria to assess workers' performance, regardless of age, their prospects for successfully defending age discrimination charges have improved.

The specific safeguards against dismissal on grounds of age also appear to have protected older workers from over-representation in the redundancies of the 1980s. More recently older workers appear to have been increasingly exposed to lay-offs, but this seems to be a feature of their concentration in certain industry sectors more than a product of their age as such.

5 Conclusions

The ADEA provides protection of older workers' rights in employment and has prevented the most blatant forms of age discrimination. It has not, however, increased employment opportunities for older workers, nor extended the working life of the majority.

The ADEA was based on protection of civil rights; it was not designed as a comprehensive employment plan for older workers. This approach has, overall, provided disincentives rather than encouragement to employers to develop the potential of the ageing workforce. The mere existence of legislation has clearly failed to change employers' attitudes and prejudices towards older workers, as the original legislators had hoped.

European priorities are likely to focus on employment and jobcreation for older workers, in view of the economic implications of demographic trends, rather than the protection of workers' rights.

The US model of comprehensive protective legislation is therefore not suited to European needs or traditions. However, its success in eliminating direct age discrimination in recruitment and training, for example, could be reproduced with partial legislation in Europe and would provide a potential recourse in the courts for older workers.

Notes

96. *Source: ILO 1990.*

97. *Age discrimination legislation also exists in other countries: for example in Canada since 1976; and in New Zealand (for those aged 15-61) since 1992.*

98. *US Congress (1993), p81: Developments in Aging, 1992: a report of the Special Committee on Aging, United States Senate.*

99. *Idem, p. 97.*

100. *Quoted in US Congress report 1993.*

101. *Eurobarometer (1992).*

Part 3

The European context and the potential for future action

Age discrimination has so far been analysed in terms of its impact on individual older workers. This section considers age discrimination in today's European context and the potential for future action to combat discriminatory practices.

Chapter 8 – The key actors: governments, the social partners, older workers and society

Governments, employers and trade unions are the key actors in combating discrimination at the workplace. Yet older workers themselves also need to play an active role in improving their work prospects and in overcoming self-discrimination.

Many other actors are also involved in shaping attitudes towards older workers, including younger work colleagues, employment agencies, publishers of job advertisements, etc. Their behaviour reflects the views of society in general.

To date, very little information exists on the attitudes of the key actors towards older workers or the concept of age discrimination. The indications below are therefore based on anecdotal comments, rather than systematic evidence. More detailed studies are needed in this field.

1 Governments

Older workers have so far been low on government policy priorities. Faced with rising unemployment, most have deliberately given priority to creating jobs for young workers. However, increases in numbers of older workers are likely to push them up the policy agenda and there are already some signs of government action.

Moves taken so far to restrict early retirement or raise retirement ages have, however, been cost-driven, in response to the problems of financing social security systems. They have not been inspired by the ideal of improving opportunities for older workers.

All EC governments have condemned sex and race discrimination, but none has yet formally recognised age discrimination – at work or in other fields – as an equal opportunities issue. Nevertheless, a public debate about age discrimination has started in both the UK and the Netherlands.

1.1 Reducing costs

The costs of supporting systematic early exit are rising and some northern European governments have already moved to restrict the scope of early retirement schemes and/or to transfer more of the costs onto companies. The debate about closing the early invalidity pension loophole has also started in several countries. In Greece the levels of disability needed for an invalidity pension have already been increased¹⁰².

Several governments have implemented or are debating pension reforms which will raise the pensionable age, extend the working life, and/or reduce state pension levels.

Unemployment, redundancy and other social security costs will keep rising, however, if early exit continues and workers remain dependent on social protection for long periods until retirement age. Unemployment costs for the over-50s are particularly high where benefits are calculated on the last salary and are paid for longer periods to older workers. In France, for example, studies show that the unemployed over 50 cost on average nearly 5 times more than those under 50.

In view of the need to reduce social spending, there is a risk that governments may move to reduce further the costs of supporting older inactive workers without ensuring more employment opportunities for this group. Reductions in social security cover, possibly combined with longer periods of inactivity before retirement age would result in greater discrimination against older workers.

1.2 Promoting employment for older workers

No government except France has introduced specific measures to discourage early exit of older workers and improve their work opportunities.

The French initiatives have so far had little positive impact on increasing employment among older workers, because there is no national consensus with employers and trade unions. The early exit culture has proved difficult to change.

Other governments might be encouraged to consider introducing targeted measures for older workers, if the cost- effectiveness of these actions were established, as well as the potential productivity of older workers.

1.3 Promoting debate

The public debate about older workers in employment has begun in some countries, such as Belgium, the Netherlands and the UK, but has yet to produce concrete actions.

Both the UK and France have initiated a dialogue with the social partners on older workers' issues and in the UK in particular this is directed at persuading employers to employ and recruit more older staff.

1.4 Conclusions

Governments are only likely to review their policies on older workers in terms of reducing costs. However, if promotion of employment and training for older workers proves cost-effective, this could also benefit older workers, provided there is support from the social partners.

2 Employers

For one reason or another, most employers across Europe appear to target older workers for job-shedding. These practices are probably due to a combination of economic incentives to let older workers go, a lack of training leading to outdated skills and negative stereotypes regarding older workers' abilities.

2.1 Early exit culture: the economic factors

Certain economic factors encourage employers to select older workers for job losses, related to higher costs of wages and other special benefits, and reduced productivity due to outdated work skills or falling health. Greece in particular has reported systematic dismissal of workers from 35 onwards on cost grounds.

However, the financial incentive provided to employers in northern Europe by state subsidies for early and pre- retirement has made it profitable for them to concentrate the great majority of job losses on older workers. In addition, the subsidised schemes have been used, for example in France, to replace more costly older workers with lower paid younger staff.

Companies have been reluctant to abandon these incentives where public authorities have tried to reduce the scope for early retirement. In Belgium, after eligibility criteria were tightened up, the multi-national firm Caterpillar declared large financial losses and qualified for pre- retirement subsidies; but it was later found the losses had been fabricated by transferring money to a sister company. In Germany, and no doubt in other countries, companies are keen to take advantage of exceptions allowed for 'economic circumstances'.

In countries without state-subsidised early exit, many large companies nevertheless operate their own version of the schemes by providing generous redundancy settlements to older employees, while others target older workers for dismissal or redundancy with only minimum compensation.

Incentives to reverse this early exit culture among employers will need to take account of their different economic interests. Studies show that big companies are keen to use tax incentives and state subsidies, whereas small and medium-sized companies are more interested in well-trained and productive staff.

2.2 Re-organisation of working time

There are indications of employers' reluctance to allow parttime or flexible working time for older workers, where public policies offer such options. This could be due to a combination of economic factors and trade union opposition. It is an aspect needing further investigation in view of its potential benefits for older employees.

2.3 Stereotypes

Negative assumptions of the productivity, adaptability and motivation of older workers appear widespread among many employers. These prejudices may be used partly to justify economic considerations. Studies in France and the UK have shown employers' attitudes changing in different economic climates. In the 1960s, during economic growth and labour shortages, employers felt older workers were dependable, experienced and efficient workers to be kept at work. Whereas in recent times of high unemployment, older workers are considered the opposite and employers say they must go¹⁰³.

These stereotypes no doubt contribute significantly to the general lack of training provision or personnel planning for older employees.

Individual companies have seen beyond the stereotypes and introduced positive measures to train or adapt working conditions for older workers. But they remain the exception to the rule.

2.4 Changing perspectives

Widespread early exit, combined with lack of recruitment of younger workers, has already distorted the workforce age structures in many companies. These companies, notably in France, are beginning to recognise the personnel management problems of a workforce aged almost exclusively between 30 and 50 and to take positive actions with workers over 50.

A few larger companies with long-term planning departments, for example in Germany and the UK, are now considering the role of older workers in the future in the context of demographic trends.

2.5 Conclusions

The potential for changing employers' attitudes towards early exit in the current European recession is limited.

More information is needed on employer attitudes across Europe in order to determine the prospects for a change of approach. The economic interests of employers certainly need to be engaged and financial incentives may be part of the solution, but better training and evidence of older workers' productivity will no doubt play an important part in any long-term change of attitudes.

3 Trade unions

From the limited information available, it appears that to date many trade unions have not actively supported policies to keep older workers at work and have accepted the early exit culture.

3.1 Acceptance of early exit

In Italy trade unions apparently give priority to defending the rights of those who still have jobs and tacitly accept that older workers will lose out. But they are also pressing for 'social buffers' to protect the older unemployed from financial hardship. In Spain and Greece unions reported concern over the targeting of older workers for job losses, but appeared unable to take effective action to defend them.

In the UK, trade unions have sometimes put pressure on employers to use 'voluntary' redundancy packages targeted at older workers in order to avoid compulsory redundancies which could be spread across the entire workforce.

Several countries report that trade unions have defended younger workers' jobs at the expense of older staff on the grounds of 'solidarity between generations'. In Denmark and Germany, there are examples of unions encouraging older workers to accept early retirement in order to release jobs for younger workers. A recent survey of Danish employers found that some were discouraged from trying to retain older workers, due to the pressures on them to take early retirement from trade unions and work colleagues.

In northern Europe, the trade unions fight for the 'right' to early retirement to be maintained, as the alternative to unemployment for older workers. Such attitudes are likely to encourage employers to continue getting rid of older workers, rather than consider ways of retaining them.

3.2 Re-organisation of working time

Some trade unions have opposed part-time retirement options for older workers, which would have enabled them to continue at work.

3.3 Positive support for older workers

Strong trade union support for older workers has however been a key factor in positive employer initiatives, where they exist. In Germany, some unions such as IG-Metall are starting to negotiate the specific inclusion of older workers in company training provisions and special protection against dismissal is common in collective agreements. In France, unions have supported company schemes to keep older workers at work after 55.

In addition, trade unions in several countries have negotiated various privileges and benefits for older workers, although these can sometimes prejudice their chances of keeping or obtaining employment.

3.4 Conclusions

Positive pressure from trade unions could be particularly helpful in persuading governments and employers to take practical action to combat both direct and indirect discrimination against older workers.

In particular, trade union support for policies to retain older workers in either full or part-time employment could help to promote employment opportunities in the future. This important area needs more detailed investigation.

4 Older workers

Little is known of older workers' own preferences for work in later life, if the financial implications were neutral and they were given a real choice of when to stop work.

At present, overall attitudes towards early exit seem to be governed largely by the financial consequences, with many workers in northern Europe welcoming early retirement schemes, and those in southern Europe and former East Germany who receive relatively low social benefits being most clearly opposed.

4.1 Self-discrimination

There is some evidence that older workers self-discriminate at work by failing to apply for company training after 40 or 45, or by a loss of motivation in the years before expected early retirement. This may be due to their acceptance of negative stereotypes of being 'too old to learn' and of society's devaluation of the ageing process in general. But it is almost certainly also the result of ageist attitudes by younger work colleagues.

Those who want to continue in work need to be informed and encouraged to take positive actions to make this possible, particularly with regard to ongoing training in order to keep work skills updated.

4.2 Conclusions

Systematic information is needed on the preferences and views of older workers themselves regarding potential choices of part-time or full-time work, early retirement or possibilities for work after retirement age.

Awareness needs to be raised now among today's middle-aged workers in order for them to take action to improve their employment prospects in 10 or 20 years' time.

5 Public opinion and society

Industrialised societies appear to devalue the ageing process in general. Indeed, a central aim of this European Year of Older People is to encourage society to recognise the positive potential of older people in general.

Negative views of older workers' potential could be part of the reason for the widespread social acceptance of early exit from work, with notable exceptions in former East Germany, Greece and Portugal.

Attitudes of work colleagues towards older workers are most significant, however, since they put into practice at the workplace the policies decided by governments and employers.

Nevertheless, a recent public opinion survey¹⁰⁴ revealed a clear awareness across Europe of discrimination against older workers. Consistently high majorities – over 70% or 80% – of the public of all ages in all EC countries said they believed age discrimination at work existed and condemned it as unfair. This may reflect a growing sensitivity to the problems of older workers, which could increase as the numbers of those over 40 grow.

5.1 Conclusions

Society's views of ageing may change with the increased numbers of older people. The next generation of older workers will be better educated, more numerous and probably better organised politically than today's over-50s. A potential 'grey' lobby in Europe could mobilise public support and influence attitudes of all the key actors.

6 Recommendations

1) European-wide studies are needed in the following areas:

- views and practices of employers and trade unions towards older workers and job-seekers.
- cost-benefit analysis of employment and training measures for older workers, in relation to social security costs of supporting inactivity until retirement age.
- productivity and training potential of older workers
- preferences and attitudes of older workers themselves.

ii) Pilot demonstration projects on the re-training capacity of older workers should be promoted across Europe. These could be based on existing good practice in individual companies.

iii) A dialogue at both national and European level between governments and social partners should be promoted to raise awareness of older workers' potential.

iv) Education and awareness campaigns need to be directed both at older workers themselves and society as a whole.

v) Targeted employment promotion and training measures for older workers need to be established, including financial incentives for employers.

Notes

102. OECD (1992).

103. Law 1902/90, 11 October 1990.

104. National report for France.

Chapter 9 – The potential for future action

1 The economic and employment context

The potential for action to combat age discrimination in employment will be largely determined by the impact of European economic and employment conditions on governments and the social partners. Current conditions provide both 'push' and 'pull' factors, acting for and against positive action.

1.1 The 'pull' factors: economic and employment trends

The current recession will further reduce employment opportunities and the medium- to long-term prospects are no better. Even when economic growth recovers, there may be only limited creation of new jobs, many of which will be more suited to young, technologically trained workers.

The predicted growth in the lower paid services sectors could provide some opportunities for older workers. However, they will be competing for jobs with other 'new' groups of labour, in particular women and young immigrant workers.

The increased proportion of older workers in the workforce is therefore in practice unlikely to produce an increased need for them in the labour market after the current recession.

1.2 The 'push' factors: economic implications of demographic trends

The effects of demographic ageing combined with high unemployment will, however, have economic implications for governments as ratios of workers to dependent pensioners decrease. In addition, if the current early exit trend continues, the costs of supporting larger numbers of older inactive workers will escalate.

These economic factors have opened the debate about extending the working life in order to help finance social security systems.

Another potential 'push' factor on governments could be the development of an active 'grey' lobby in Europe as numbers of older people grow.

1.3 Conflicting interests: the need for consensus

Governments' recently perceived need to extend the working life is directly opposed to the previous trend of shortening it to reduce unemployment problems. These new priorities are likely to conflict with the economic 'pull' on employers to reduce their workforce.

Older workers themselves will only benefit if measures to increase the working life bring improved employment opportunities, and not only reductions in social security cover.

There may prove to be financial incentives for governments to promote employment for the increasing numbers of older workers – and so help to combat age discrimination – but governments cannot act alone on these issues. There has to be support from employers and trade unions for any change of policy towards older workers.

2 The citizen's rights approach

Unlike the USA, Europe as a whole has no strong civil rights tradition. Comprehensive protective legislation to outlaw age discrimination based on the American model, is therefore not a realistic option in Europe.

This does not, however, exclude some political and legal recognition of age discrimination. A limited approach to outlaw the use of directly discriminatory age limits in employment could be based on the principles of equal opportunities for workers and the European concept of citizen's rights. This partial legislative approach would have a legal basis or precedent in several EC countries which already have relevant legal provisions.

The citizen's rights approach could potentially be more effective in engaging the interests of employers and trade unions than public policies based solely on economic issues. It would also raise awareness among older workers and society as a whole.

3 The role of legislation versus voluntary measures

The European debate about future action to combat age discrimination is likely to centre on the merits of legislation versus voluntary or persuasive measures.

3.1 Legislation: the 'partial' approach

Legislation can be useful in sending clear signals of government policy changes towards older workers and in promoting informed debate. Two types of legislative action have been proposed as ways of combating age discrimination.

First, a partial legislative approach to protect older workers' rights by outlawing discriminatory age limits in employment practices. This would help to stimulate public debate on the role of older workers and to encourage employers to use objective criteria based on skills and experience to evaluate older workers.

Second, statutory measures to discourage early exit from work and to promote employment and training of older workers. These would need to provide financial incentives for employers, since they do not currently share governments' economic interests in promoting employment for older workers.

3.2 Persuasion and voluntary agreements

It is clear that legislation alone cannot change attitudes among employers or society in general, as the French experience has shown. Even 25 years of comprehensive anti-age discrimination legislation in the USA has failed to develop widespread positive attitudes towards older workers.

Persuasive measures aimed at changing attitudes in the workplace will no doubt prove an essential part of any policy to improve older workers' employment prospects and to combat age discrimination. Non-legislative actions could include government dialogue with the social partners, promotion of good practice, and exchange of experience between employers' and trade union representatives at national and European levels.

These have the advantage of lower costs for governments and some have already initiated such actions, with or without legislative measures.

4 Conclusions

In the current European context, governments and employers will consider older workers primarily in terms of their economic implications.

This does not, however, affect the potential for legislative measures in the short-term to provide equal opportunities by outlawing the use of age limits.

The medium-term interests of governments are likely to be served by promoting increased employment for the larger numbers of over 50s. In this case, the interests of

individuals in combating wider forms of age discrimination in employment could coincide with those of governments.

Active measures would then be needed to engage the interests of employers, trade unions and other actors. Legislative and voluntary measures could be used to greatest effect in combination to achieve positive changes in attitude.

Notes

105. *Eurobarometer survey 1992.*

106. *Eurobarometer survey 1992.*

107. *Council Recommendation of June 1992.*

Part 4

Conclusions and recommendations for action

1 General conclusions

In identifying age discriminatory practices, this study has examined older workers' problems from the point of view of citizen's rights and equal opportunities at work. While many of the conclusions reached on the need for positive action are similar to those of other European studies, the justification for action is different; it is based on the principle of citizens' rights which should allow workers a choice to work and of when to stop work.

Age discrimination has been identified in some form in all EC countries, even though the information provided is not always systematic. It is evident in direct forms, where age limits are used to exclude older workers from work, or from training and employment measures; and in indirect forms where older workers are in practice disadvantaged at work or in seeking work on grounds of their age, without specific age limits being set. This covert discrimination has the widest impact on older workers' employment prospects; it will also be the hardest to combat, since it reflects many basic assumptions of our society.

The most significant impact on older workers is their systematic exclusion from work from age 50 onwards – between 10 and 15 years before 'normal' retirement age. Age discrimination works first to exclude them from employment; and once a job is lost, from 45 or earlier, it is often impossible to re-enter employment.

This situation has been implicitly or explicitly encouraged by governments, employers and trade unions, which have given priority to young workers in times of rising unemployment. It has been widely accepted by public opinion in most countries, although there is recent evidence of changing attitudes¹⁰⁵.

Some governments are showing increased awareness of older workers' problems, in the light of demographic trends and their economic implications for social security systems. If they perceive an economic interest in promoting employment for older workers, they could be potential allies in helping to combat age discrimination at work. However, the support of the social partners would be essential in order to change current trends.

2 Recommendations for action in Europe

These recommendations for action are addressed almost exclusively to governments, since the examination of discrimination focussed on statutory measures.

The proposals are for a combination of legislation and persuasive measures. A partial legislative approach is proposed in two parts: to establish equal opportunities for older workers by abolishing discriminatory age limits; and to promote positive employment measures targeted at older workers. These statutory measures should be supported by persuasive actions with the social partners, and with older workers themselves.

The recommendations are presented as short- or medium-term actions, directed at direct or indirect forms of discrimination and for action at European or national levels. They cover the main recommended actions proposed in the report itself.

It is important to take some action immediately, since by the turn of the century, several EC countries will be faced with significant increases in numbers of older workers. The current generation of middle-aged workers need education and preparation now, before they reach the end of their working lives.

3 Short term actions

3.1 Combating direct discrimination

Direct forms of discrimination are the easiest to identify and to address first.

3.1.1 At European level

(i) European-wide ban on age limits in recruitment advertisements Binding European legislation would be a powerful symbolic message to employers to reconsider their use of age limits and to extend the debate about age discrimination in employment. It should apply to both private and public sectors, including the EC institutions, so that governments can demonstrate exemplary good practice.

This measure should eventually be extended to cover the whole recruitment process, but this must be a decision for national authorities, in view of the enforcement implications.

3.1.2 At national level

i) Abolish obligatory early exit at a specific age

Early or pre-retirement schemes which set a specific age for early exit should be voluntary, not obligatory. This should apply to schemes operated by the state or the private sector. This allows individual workers a greater choice.

ii) Abolish upper age limits on employment measures for unemployed Age limits which exclude the older unemployed above a set age from government training schemes, employment promotion measures or assistance from employment agencies should be abolished.

iii) Outlaw mandatory retirement at a set age in collective agreements

Collective agreements imposing a set age for exit from work should be outlawed, as in France and Germany. Such agreements should only be valid by consent of the individual worker.

iv) Provide legal protection against dismissal on grounds of age All countries should introduce legal protection against dismissal or redundancy on grounds of age alone for older workers up to retirement age.

3.2 Combating income discrimination

Income discrimination against the older unemployed is evident in direct and indirect forms where it presents a poverty risk for older workers. Removing this discrimination will have financial implications for governments, particularly in southern Europe. The provisions of the EC Recommendation on minimum social benefits¹⁰⁶ support the principle of a minimum guaranteed income.

i) Change pension calculations to prevent extreme pension penalties for the older unemployed

No disproportionate penalties on final pension income should be imposed on workers who become unemployed before retirement age. Old age pension entitlement should not be calculated solely on income earned during the last years before retirement age.

ii) A minimum guaranteed income for older unemployed

All countries should ensure a reasonable level of support for long-term unemployed, after unemployment benefits run out. This support should continue until official pensionable age for all older unemployed.

3.3 Combating indirect discrimination

Other short-term actions are possible to start the process of combating the wider indirect forms of age discrimination and to establish systematic information as a basis for future action. In particular, specific targeting of older workers in employment and training measures is needed; without it, they will not benefit from general measures and will depend increasingly on social protection systems before retirement.

1.3.1 At European level

i) Target older workers for training and job-creation measures in the European Social Fund

The reformed European Social Fund should identify older workers and older long-term unemployed as specific target groups for training and job-creation measures by governments and private sector employers, to ensure they are properly represented in such schemes.

ii) Create European networks to exchange experience and promote European-wide studies of good practice

EC-wide networks of employers and personnel managers; trade unions; and state or private sector employment agencies should be created with the aim of exchanging experiences of good practice in employment, recruitment and training of older workers. EC studies of such good practice and of the productivity and potential of older workers at work should disseminate information among the key actors in all countries.

iii) Provision of age-related employment market statistics Eurostat, the Community's statistical service, should require Member States to provide age-related statistics, comparable across the Community, on all relevant areas of labour market policies. In particular, statistics should be produced on all older inactive workers below retirement age and full age breakdowns provided in redundancy figures.

3.3.2 At national level

i) Discourage employers from targeting older workers for job losses

In conjunction with employment promotion measures, governments should reduce subsidies which act as incentives for employers to concentrate job losses on older workers. These include early and pre-retirement schemes and redundancy subsidies. More costs of early exit should be transferred to employers.

ii) Provide targeted employment promotion and training measures for older unemployed

Employment promotion and training measures should be targeted at the needs of older unemployed in order to increase their chances of finding alternative employment. Special assistance from state employment agencies should also be provided.

iii) Provide financial incentives to employers for employment of older unemployed

All governments should introduce some incentives to recruit and employ the older unemployed, such as exemptions from social security contributions. This could prove attractive to many employers in a recession.

iv) Set up national dialogues with employers and trade unions All EC governments should create a forum for debate with employers' and trade union organisations on the potential for older workers in employment, age discrimination issues and personnel management of an ageing workforce.

4 Medium-term actions

Several of the proposed short-term actions to combat indirect discrimination will only produce results in the medium- to long-term. The real need is to change employer and trade union attitudes towards employment of older workers and this implies a consistent long-term approach. The self-discriminatory views of many older workers themselves will also need to be addressed.

Employment promotion and measures to safeguard older workers' rights can be further developed from the initial measures to outlaw direct discrimination. However, increased protection of older workers will have economic implications for employers and cannot be implemented in a recession.

The following proposals are for actions in the medium-term to improve the employment prospects for the next generation of older workers.

4.1 At European level

i) European Social Fund aid for targeted training of older employees

The European Social Fund should specifically subsidise employer training of workers over 40 in order to update skills or adapt to new technologies.

4.2 At national level

i) Financial incentives for targeted training of older employees National governments should take complementary measures to promote and advise on employers' investment in specific training of workers over 40.

ii) Statutory measures to oblige employers to assist older redundant workers

An obligation on employers to help re-train older workers made redundant, or to assist them in seeking another job, would ensure employers considered the implications of redundancy policies involving older employees.

iii) Inclusion of the term 'older worker' in national labour laws and constitutions

Specific mention of older workers and age criteria in all relevant labour laws would draw attention to the situation of older workers and provide a basis for measures in their favour.

Inclusion of 'age' in non-discrimination clauses in national constitutions would provide vital legal protection.

iv) Promotion of flexible working time and flexible retirement Flexibility throughout the working life, as well as around retirement age, would allow greater choice for individuals, provided financial implications were neutral. It could also allow retirement to be based on the length of the working career, rather than chronological age. Governments need to take specific actions to promote these options with employers and trade unions.

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Annex 1

Additional tables

Table 1: General legal retirement age for salaried employees, 1991

| | B | DK | D | GRa) | E | F | IRL | Ib) | L | NL | P | UK |
|-------|----|----|----|------|----|----|-----|-------|----|----|----|----|
| Men | 60 | 67 | 65 | 65 | 65 | 60 | 65 | 60/65 | 65 | 65 | 65 | 65 |
| Women | 60 | 67 | 65 | 60 | 65 | 60 | 65 | 55/60 | 65 | 65 | 62 | 60 |

a) In Greece, the retirement age has been standardised at 65 for men and women for all workers entering the insurance system after January 1993.

b) In Italy, the official retirement ages will be 65 for men and 60 for women from 1994.

Table 2: Activity rates by age groups in Eur 12 in percentages

| | ALL | Males | Females |
|-------|------|-------|---------|
| 50-54 | 69.1 | 89.0 | 49.4 |
| 55-59 | 53.4 | 72.4 | 35.3 |
| 60-64 | 25.1 | 37.0 | 14.4 |
| 65-69 | 7.6 | 11.3 | 4.6 |

those in work or actively seeking work as a percentage of total population

Source Eurostat 1992

quoted from IPM Walker chapter on Employment of Older Workers – for editing info only

Annex 2

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