

Fact sheet on the European Constitution

# Equality and the EU Constitution



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Platform Article 13, The Netherlands

## Fact sheet Equality and the EU Constitution

This fact sheet contains information about the consequences of the implementation of the European Constitution regarding equal treatment.

The organizations, responsible for this fact sheet, want to bring the principle of equal treatment into the debate about the Treaty establishing a Constitution for Europe.

This fact sheet describes the role which equal treatment and the fight against discrimination play in the treaties that at this moment form the basis of the European Union.

The text limits itself to the grounds of sex, race, ethnicity, disability, age and sexual orientation. These are the grounds of discrimination in which the participating organizations are active. Furthermore, these are the grounds that are mentioned in article 13 of the Treaty Establishing the European Community, the EC-Treaty.<sup>1</sup> Article 13 was of importance in the drafting of policy and legislation offering protection to victims of discrimination in Europe. The text was composed by Dick Houtzager, legal policy adviser to the LBR, under the responsibility of the 'Platform Artikel 13'

In the 'Platform Artikel 13', five Dutch organisations work together on issues relating to equal treatment in a European context. The name is derived from the non-discrimination provision in the EC-Treaty, Article 13. The Platform comprises of members of the Chronically Ill and Disabled council (*Chronisch Zieken en Gehandicapten Raad*), E-Quality (*Kenniscentrum op het gebied van emancipatie in de multiculturele samenleving*), Expertise centre for lesbian and gay emancipation policy (*Kenniscentrum lesbisch en homo-emancipatiebeleid*), expertise centre for age and society (*Expertisecentrum leeftijd en maatschappij*) and the National Bureau against Racial Discrimination (*LBR*).

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<sup>1</sup> Article 13, para 1, states that: "Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

## 1. Equal treatment in Europe

An important topic in Europe is the prevention and the fight against discrimination and the achievement of equal treatment.

In the Treaties wherein the rules of the European Union are currently laid down a number of issues concerning equal treatment are regulated. In this fact sheet the current regulations are compared with the proposed text of the European Constitution.

All European Union Member States are of the view that people in equal circumstances should be treated equally. Most constitutional provisions include the basic civil right to equal treatment, also known as the principle of equal treatment. These rules of are intended principally to indicate how the government should treat citizens. However, these provisions are also important in the normal intercourse between citizens.

### *From economical necessity to basic civil right*

In the beginning of the European co-operation, attention was already paid to equal treatment. This equal treatment was mostly seen in economic terms, because the unification of Europe in the sixties and seventies was principally focused on economic aspects. Thus a prohibition on discrimination between men and women was introduced, in order to ensure that one country could not produce more cheaply because women received lower remuneration than in another country, where the principle of equal pay for men and women had been established. Furthermore it was prohibited to discriminate against workers from other Member States of the European Community. The objective of this prohibition was to facilitate the free movement of workers throughout the community.

Later on, besides the economic incentives, other, more principle reasons played a role to give equal treatment more importance. In a lot of Member States the basic civil right to equal treatment on a number of grounds developed. Discrimination on the grounds of sex and race or ethnic origin was forbidden; in a number of countries a prohibition on discrimination on the grounds of sexual orientation was also introduced. Discussions on age and disability discrimination started to gain influence in national politics. The attention to this subject was adopted on European level. Decisions of the highest judicial body of the Union, the European Court of Justice, indicated that the Treaties on which the European Community was based, did not only confer rights on an economic, but also on a general and human rights level. In 1992 in the Treaty of Maastricht, European leaders decided that the European Union, which followed the European Community, should also be based on principal and fundamental values.

This started a process of development, in which the EU drafted several regulations concerning the environment, consumer protection and cultural and social policies.

In 1997 the EU took an important step and by means of the Treaty of Amsterdam introduced article 13 into the EC-Treaty. This article empowered Europe to take measures to promote equal treatment on the grounds of sex, race or ethnic origin, religion or belief, disability, age or sexual orientation.

Shortly after the Treaty of Amsterdam came into force, the European Commission came up with proposals for legislation.

This legislation, in the form of Directives, obliged Member States of the EU to introduce a number of measures into their national legislation that would prohibit discrimination in regard to labour and vocational training. In a separate Directive, the EU went further regarding the non-discrimination ground of race or ethnic origin than for the grounds of sex, religion or belief, disability age or sexual orientation. For race or ethnic origin, a separate prohibition on discrimination regarding consumer affairs was introduced, alongside the prohibition of discrimination on the labour market.

This means that anyone who offers goods or services, including education and housing, may not discriminate on the grounds of race or ethnic origin.

To comply with these Directives Member States had to introduce new legislation, or to change existing national laws. The deadline for this transposition of the EU Directive, 19 July 2003, was met by a number of Member States.

The existing provisions on equal treatment have been adopted by the European Constitution and expanded in certain areas.

#### *Constitutional rights firmly laid down*

The developments in the EU led to fundamental rights being given a fully fledged place in the EU legislation. In 2000, the heads of government took an important step towards achieving this by adopting a solemn declaration on constitutional rights. This declaration, the Charter of Fundamental Rights of the European Union, is a summing up of fundamental rights. The EU promises to respect these rights. The Charter comprises of articles which, amongst others, lay down rights of human dignity, freedoms, equality and rights pertaining to citizenship. The Charter also lays down the right to equal treatment and the text contains a prohibition of discrimination on a large number of grounds. Because it is only a declaration, the Charter is not legally binding. The highest European court, the Court of Justice, has not acknowledged the Charter as a source of law.

Under the Constitution this will change. The Charter has been incorporated as a separate chapter. EU-citizens who find that the EU, or the Member States who are carrying out EU-legislation, discriminate against them, currently cannot use the Charter as a basis for an appeal in legal proceedings. If the Constitution is adopted, then courts of law can base a judgement on the Charter, because such institutions will be bound to it.

## **2. What will the Constitution change regarding equal treatment?**

An important objective of the Constitution is the replacement of the Treaties which now form the basis of the European Union. These Treaties, the EC-Treaty (hereafter: TEC) and the EU-Treaty (hereafter: TEU) contain a number of provisions for equal treatment. In the next section, the regulations on equal treatment that are in the TEC and the TEU will be compared with the regulations as laid down in the Constitution.

### ***Union Values***

*TEC and TEU:* In the current treaties, a provision for equal treatment is not incorporated as a value of the Union. However, in the introduction to the TEU it is stated that Member States founded the Union on 'the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.' Equal treatment forms an integral part of human rights and fundamental freedoms.

*Constitution:* In the second article of the Constitution respect for human dignity, freedom, democracy, equality and the constitutional state are named as the underlying values on which the Union is based. The Member States have these values in common in societies characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality of men and women (article 1-2).

### ***Objectives of the Community and the Union***

*TEC:* According to the text of this Treaty, the objective of the Community is 'to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women and economic and social cohesion and solidarity among Member States'

(article 2 TEC). To attain this goal the Community shall 'aim to eliminate inequalities, and to promote equality, between men and women in all activities (article 3, subsection 2 TEC). This incorporates the so-called *mainstreaming* of gender equality. This means that the EU, in the drafting of policy and regulations in all areas, from agriculture to asylum policy, will have to promote equality between men and women. In the TEC *mainstreaming* is limited to equality between men and women. The Treaty does not mention other discriminatory grounds.

*TEU*: The first articles of the Treaty describe the objectives of the Union as being, amongst others, 'to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion' (article 2 TEU). An explicit reference to non-discrimination or equal treatment is not incorporated.

*Constitution*: The combating of social exclusion and discrimination is among the objectives of the Union as are also the promotion of social justice and protection, the equality of men and women, the solidarity between generations and the protection of the rights of the child.

*Mainstreaming* of equality between men and women, which is also seen in the TEC, is incorporated in article III-116: 'In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.' Besides this, the EU-leaders have adopted a declaration with this article, which calls on the Union to combat domestic violence.

The Constitution contains a new article on *mainstreaming* for general non-discrimination policy. Article III-118 provides: 'In defining and implementing the policies and activities referred to in this Part, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

### **Constitutional rights**

*TEC and TEU*: The Treaties do not sum up fundamental rights. There is, however, a chapter dedicated to equality in the Charter of Fundamental Rights of the European Union of 2000. However, this Charter is not yet legally binding.

*Constitution*: The Charter of Fundamental Rights forms part of the Constitution in its entirety and is therefore legally binding for the EU institutions and the Member States, in so far as they apply EU-regulations. Chapter II of the Charter is dedicated to equality and contains a provision prohibiting discrimination on a series of grounds: sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation (article II-81). The equality of men and women must be ensured in all areas, whereby the possibility exists to maintain or adopt measures providing for specific advantages in favour of the under-represented sex (article II-83).

The rights of the elderly are mentioned specifically (article II-85) and this document respects the right to measures which promote the independence and integration of people with a disability (article II-86).

### **Policy and measures**

*TEC and TEU*: Discrimination on grounds of nationality is prohibited. This measure (article 12 TEC) is incorporated in the treaty as a consequence of the freedom of movement of persons between EU Member States.

Since the Treaty of Amsterdam the Union may 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (article 13 TEC). In developing these measures the European Parliament only has an advisory right. In 2000, the EU adopted two directives that oblige the Member States to take legal measures to combat discrimination. The member States are still negotiating a third directive, on equal treatment between men and women in the provision of goods and services.

Also, a provision has been incorporated (article 13, second subsection TEC) that makes it possible to adopt incentive measures. Hereby one should think of projects paid for by EU subsidies.

*Constitution:* The current article 13 has been adopted in the Constitution (article III-124) in an altered form. The most important change concerns the role of the European Parliament. In the proposed article the EP will have the right of consent, instead of only a right to be consulted. This will enhance the democratic control.

### ***Equal treatment M/W***

*TEC and TEU:* A separate measure in the TEC determines the right to equal pay and equal treatment of men and women (article 141 TEC). If men and women do work of equal value, the remuneration for it should be equal. Furthermore, the EU should take measures to ensure equal treatment and equal opportunities between men and women in matters of employment and occupation. To comply with this duty, the Union has issued a number of directives that establish equal pay and equal treatment in matters of employment, occupation and social security. Furthermore, the Member States are allowed to take positive action measures in favour of the 'under-represented sex'.

*Constitution:* article 141 TEC has been adopted into the Constitution, in a slightly altered form (article III-214). No changes have been made to its content, but the language has been modernized.

### ***Racism and xenophobia***

*TEC and TEU:* The EU is responsible for the creation of an area of freedom, security and justice. Combating racism and xenophobia is part of that policy area. The EU has agreed that the police and the judiciary of the member States will co-operate in the prevention and combating of racism and xenophobia (article 29 TEU). In 2000, the Commission submitted a proposal to bring the legislation of the Member States more in line with each other. According to the proposal, incitement to racial hatred, the denial of the Holocaust and other racist crimes should be punishable in all countries. However, the Member States were not able to agree yet on the precise wording of the final text.

*Constitution:* In the article which declares the Union to be an area of freedom, security and justice, the prevention and combating of racism and xenophobia is maintained and for that purpose the Union shall take measures (article III-257). This article lays a heavier duty on the Union than the call for co-operation, laid down in the present TEU.

## **3. Conclusions**

The proposed Constitution for Europe offers more possibilities to attain equal treatment in the European Union in comparison to the treaties currently in force.

The principle of equal treatment is specifically mentioned as one of the core values for which Europe stands. The attainment of equal treatment and the combating of discrimination are mentioned as objectives of the EU.

The development of these principles in various articles of the Constitution lay down a duty on the EU and on the Member States that is more strict than the obligations under the current treaties.

The duty to ensure that discrimination is combated in all EU policy areas is important. The fact that the European Parliament will have more influence in the drafting of measures that are specifically aimed at combating discrimination is a step ahead.

However, paper is patient.

The Constitution for Europe is a coercive guideline for European Union institutions and for the governments of the Member States in applying EU-policy. Just as in the current situation, this fine wording of the texts will have to be converted into legislation and policy that directly affect European citizens.

Citizens and organizations will have to remind their governments and members of national and the European Parliament to keep the promises incorporated into the Constitution.

**More information on combating discrimination:**

Chronisch Zieken- en Gehandicaptenraad: [www.cg-raad.nl](http://www.cg-raad.nl)

E-Quality, kenniscentrum op het gebied van emancipatie in de multiculturele samenleving: [www.e-quality.nl](http://www.e-quality.nl)

Kenniscentrum lesbisch en homo-emancipatiebeleid: [www.homo-emancipatie.nl](http://www.homo-emancipatie.nl)

Expertisecentrum leeftijd en maatschappij: [www.leeftijd.nl](http://www.leeftijd.nl)

Landelijk Bureau ter bestrijding van Rassendiscriminatie: [www.lbr.nl](http://www.lbr.nl)

**More information on the Constitution for Europe:**

[http://europa.eu.int/constitution/index\\_nl.htm](http://europa.eu.int/constitution/index_nl.htm)

More information on this fact sheet or on Platform Artikel 13 is available from Dick Houtzager, [info@lbr.nl](mailto:info@lbr.nl) or (+31) 10 2010201.