



PARLIAMENTARIANS FOR EQUALITY

An appeal for safeguarding - and enhancing - the achievement of the Convention

To : Members of the national parliaments of EU member states and accession states

Brussels, 8 October 2003

Dear colleagues,

This month the Intergovernmental Conference has started in Rome aiming to finalise the process of making a European Constitution before the end of this year.

The European Parliament has issued a strong appeal to endorse the outcome of the Convention and not to reopen the delicate institutional balance as contained in the draft Constitution negotiated this summer. Many insiders and onlookers will agree, however, that elements of the draft constitution will leave room for improvement and have begun to voice their views in this respect.¹

You as national parliamentarians will hold your respective governments accountable on the strategies they will deploy at the IGC. If they 'rock the boat' too much, they will risk failure, chaos and set back. But if they ignore the political demands of their constituencies they run the risk of losing support for the European project.

Within this context we ask your attention for the issue of equality and the fight against discrimination. Social change in Europe in the last decades has highlighted the diversity of the population, the modernization of family life and the debunking of the monopoly of vested behaviour. All the more reason for safeguarding equal treatment regardless of sex, race, ethnic background, religion or belief, age, disability or sexual orientation, and entrench it appropriately in the Constitution. The draft Constitution has given this policy area an important boost, building upon progress realised earlier at the Amsterdam Treaty.²

It is important that the Constitution for Europe will keep these gains, and - in so far as circumstances would allow - try to improve them. In the annex to this letter you will find a short overview of the relevant provisions in the draft Constitution as well as some comments as to their importance, possible use and possible improvement. We hope this information is of some help to you when holding your governments accountable at the IGC.

Yours sincerely,

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¹ The European Commission has already launched its ideas in this respect and calls for a decrease in the amount of unanimity voting, especially in the field of combating discrimination.

² In May 2003, the Equality Coalition, made up by both MEPs and EU wide NGO's active in the fight against discrimination urged the Convention not to allow a roll back on equality matters and to entrench it more firmly in the Constitution.



Annex

Overview of the equality provisions in the draft constitution

Equality and non-discrimination, mentioned as values and objectives of the Union, underpin their place at Europe's political agenda. They function as stepping stone to policy-making and yardstick for assessing (new) membership.

Part I

Article I - 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

Article I - 3: The Union's objectives

§ 3. The Union shall work for the sustainable development of Europe based on balanced economic growth, a social market economy, highly competitive and aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

The paragraphs on equality and non-discrimination of the Charter of Fundamental Rights - incorporated as such as Part II of the draft Constitution - guarantee equal treatment by the institutions of the Union and by the member states, in as far as they implement community law. These provisions can become important instruments for European citizens seeking their rights.

Part II

Title III: EQUALITY

Article II - 20: Equality before the law

Everyone is equal before the law.

Article II - 21: Non-discrimination

1. Any discrimination based on any ground such as 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 shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article II - 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article II - 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article II - 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private Institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II - 25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.



Article II - 26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Mainstreaming sex equality and non-discrimination on other grounds is prescribed in Part III, where the various concrete policy areas of the Union are set out. The place of artt. 2 and 3 at the very beginning of this Chapter highlights the obligation to take equality and non-discrimination into account in all policy areas, including Justice and Home Affairs and Common Foreign and Security Policy.

Part III

Article III - 2

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Article III - 3

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.

Basic anti-discrimination legislation is still subject to unanimity, although the Parliament gains the new power of consent in place of consultation. This is a powerful instrument. Also, the revised clause on incentive measures widens the scope of the legislation to which QMV plus co-decision is to be applied to include not only the measures themselves but also their 'basic principles'. This can be exploited. While not expecting any substantive changes at the IGC, we should urge the European Council to deploy the famous passerelle clause (Article I - 24.4)¹ as soon as possible in order to extend the use of the ordinary legislative procedure in this area

Article III - 8

1. Without prejudice to the other provisions of the Constitution and within the limits of the powers conferred by it upon the Union, a European law or framework law of the Council of Ministers may establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council of Ministers shall act unanimously after obtaining the consent of the European Parliament.
2. European laws or framework laws may establish basic principles for Union incentive measures and define such incentive measures, to support action taken by Member States, excluding any harmonisation of their laws and regulations.

Only the fight against sex discrimination at the labour market has a legal base permitting the normal decision-making procedure. A coherent approach of equal treatment legislation in Europe would suppose the same legal base for all non-discrimination grounds and for all areas of daily life.

Article III - 108

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means:
 - (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
 - (b) that pay for work at time rates shall be the same for the same job.
3. European laws or framework laws shall establish measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. They shall be adopted after consultation of the Economic and Social Committee.
4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

¹ Where the Constitution provides in Part III for European laws and framework laws to be adopted by the Council of Ministers according to a special legislative procedure, the European Council can adopt, on its own initiative and by unanimity, after a period of consideration of at least six months, a decision allowing for the adoption of such European laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament and informing the national Parliaments.