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## EU Legal Framework for Equality

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## Treaty on European Union

### PREAMBLE

"DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal **values** of the inviolable and inalienable rights of the human person, freedom, democracy, **equality** and the rule of law," [..]

HAVE DECIDED to establish a European Union [..]

have agreed as follows:

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## Treaty on European Union

Article 2:

**The Union is founded on the values** of respect for human dignity, freedom, democracy, **equality**, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, **non-discrimination**, tolerance, justice, solidarity and **equality between women and men** prevail.

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**Equality** as:  
inherent to everybody, respectable and  
protected  
**value**

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## EU legal framework for protection of equality

- ✓EU Charter of Fundamental Rights and EU Treaties;
- ✓EU Directives on equal treatment;
- ✓International instruments:
  - Council of Europe;
  - UN;
  - International Labour Organisation.

## EU Charter of Fundamental Rights and EU Treaties

## EU Treaties

- **European Union is based on the rule of law.** It means that everything done by the EU is based on treaties voluntarily and democratically signed by all the EU Member States. For instance, if any policy area is not referred to in treaties, the European Commission may not propose draft legislation applicable to this area;
- **EU Treaties are legally binding agreements between all the EU Member States.** They define the EU goals, the principles of operation of EU institutions, procedures of adoption of decisions and relations between the EU and its Member States.

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## Equality and EU agreements

### ➤ **Treaty on European Union**

Preamble, Articles 2, 3 (3), 9, 21 (1), 26th Protocol Article (3);

### ➤ **Treaty on Functioning of European Union**

Articles 8, 10, 53, 157 (3), (4), 26th Protocol Article 1 (3);

### **Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community**

Equality = 16 x !!!

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## **EU Charter of Fundamental Rights: history, content, place and meaning in the EU law system:**

➤ one of the most modern and powerful instruments for protection of human rights and equality;

➤ **On 7 December 2000** at the Nice European Council meeting on 7, 8 and 9 December 2000 the Presidents of the European Parliament, Council and Commission adopted the EU Charter of Fundamental Rights;

➤ **Initially it was not legally binding.** Its goal - combining the fundamental rights applicable on the EU level in a single document;

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➤ for the first time, in a written, comprehensive and clear form **within a single supranational document the fundamental rights in force on the EU level are presented**, arising as general core principles of the law from the European Convention on Human Rights and the rights taken over from the constitutions of Member States;

➤ The Charter not only combines all the EU protected fundamental rights in a single document, but also **provides guidelines for understanding their scope by explanations, thus eventually making them clearly understandable and applicable;**

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- There are 54 Articles in the Charter grouped in seven Chapters. The fundamental rights are summarised in the first six chapters of the Charter (dignity, freedoms, equality, solidarity, citizens' rights and legal rights): general human rights, citizens' rights, economic and social rights;
- the last Chapter defines horizontal issues which govern the interpretation and application of the Charter;
- **the 3rd Chapter "Equality"** contains rights to equality before the law, the prohibition of all types of discrimination, including on grounds of gender, race, ethnic or social origin and political or any other opinion.. "Equality" also includes the rights of a child and elderly people.

- along with the entry into force of the Treaty of Lisbon in **December 2009**, the Charter became a binding summary of fundamental rights. **The Treaty of Lisbon changed its status to legally binding by setting its value equal to that of EU Treaties**;
- Within the EU legal framework the Charter has **higher regulatory status** than EU law adopted in compliance with the Treaties and national laws implementing the EU law. Now it has the **same status as the Treaties**;
- as the Charter now is a part of the EU primary legislation, therefore the legal regulation provided by EU law or national laws implementing EU law is not in force if it breaches the Charter;

- in compliance with Article 51.1 of the Charter **it is only applicable to EU institutions and Member States when they are implementing EU law**;
- The European Court of Justice has made the words "implementation of EU law" equal to the words "included in the scope of EU law". This means that the Charter is only applicable in cases when EU law is applicable;
- **The Charter ensures** that EU law and national law of the Member States implementing EU law is interpreted in compliance with the fundamental rights and the general principles of the EU legal order.

## EU equal treatment directives - review and scope

- **Directives are:**

- EU legal acts intended for coordinating the legal acts of Member States;
- binding for the Member States to which they are addressed as regards the result these Member States are obliged to attain;

- **Directives are not** directly applicable, their provisions only become binding when they are implemented by the legal acts of the Member State;

- **Implementation of Directives:**

- Institutions of the Member State enjoy a certain degree of discretion to choose a form and methods to be applied for attaining the defined result;
- Member States have a term for implementation of Directives according to provisions in the text of the Directive.

## EU Directives on equal treatment

Council Directives: 79/7/EEC, 97/80/EC, 92/85/EEC, 2000/43/EC, 2000/78/EC, 2004/83, EC, 2004/113/EC and 2010/18/EU

Directives of the European Parliament and Council: 2002/73/EC, 2006/54/EC, 2010/41/EU



- Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (adopted on 9 February 1976);
- Directive 2002/73/EC of the European Parliament and of the Council amending Council Directive 76/207/EEC (adopted on 23 September 2002);
- Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (adopted on 7 July 2010 );
- Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (adopted on 8 March 2010);

- Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (adopted on 19 December 1978 ); )=.
- Council Directive 97/80/EC on the burden of proof in cases of discrimination based on sex (adopted on of 15 December 1997);
- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (adopted on 29 June 2000);
- Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (adopted on 29 April 2004).

**Council Directive 2004/113/EC implementing the  
principle of equal treatment between men and  
women in the access to and supply of goods and  
services (adopted on 13 December 2004)**

- **The Directive prohibits** any direct or indirect discrimination on grounds of the gender (including a reference to the family status, less favourable treatment of women in relation to pregnancy or maternity leave, prohibits harassment irrespective of whether it is sexual or other, instructions to discriminate);
- uses legal definitions of direct and indirect discrimination, harassment, victimisation, positive action, split of the burden of proof, the right to complain and sanctions equal to the Directive on Racial Equality;
- do not provide for prohibition of more favourable regulations regarding protection of women in relation to pregnancy and maternity.

- **this Directive is applied in relation to:** all the persons who deliver goods and provide services, the access to which is public and is not dependent on the involved entity both in the public and private sector, including state authorities, and which are offered outside the scope of private and family life, as well as transactions performed within this context;
- **this Directive does not affect:** an individual's right to choose a contract partner, except if the choice of the contracting partner by this individual is based on the gender of the particular person;
- **this Directive is not applicable to:** the content of mass media and advertisements or to education.
- **this Directive is not applied:**
  - in the fields of employment and professional activity;
  - regarding matters of self-employment as far as other Community laws are applicable to these matters.

**Council Directive 2000/78/EC establishing a general framework for  
equal treatment in employment and occupation (adopted on 27  
November 2000)**

✓ **this Directive is applied** to all entities in both the public and private sector regarding to:

- **conditions for obtaining a job, self-employment and profession**, including selection criteria and conditions for employment irrespective of the field of operation and on all professional hierarchy levels, including promotion;
- **access to all types and all levels of professional information, vocational education, additional vocational education and re-qualification opportunities**, including the practical work experience;
- **employment and work conditions**, including termination of employment and remuneration;
- **participation and involvement** in any employees' or employers' organisation or any organisation whose members are employed in a particular profession, including to benefits granted by such organisations.

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**This Directive is not applicable to:**

- different treatment due to citizenship which does not restrict regulations and conditions regarding entry and stay of third country nationals and stateless persons in Member States and any treatment based on the legal status of the relevant third country nationals and stateless persons;
- any payments made in relation to state or similar systems, including the state social insurance or social security systems;

**Member States may provide that** this Directive is not applicable to armed forces as far as it relates to discrimination on grounds of disability and age.

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**Directive of the European Parliament and the Council  
2006/54/EC on the implementation of the principle of  
equal opportunities and equal treatment of men and  
women in matters of employment and occupation (recast)  
(adopted on 5 July 2006)**

**Scope of the Directive in matters of equality:**

- Equal pay;
- Equal treatment in employment social insurance systems;
- Equal treatment in relation to work opportunities, vocational training and promotion, as well as working conditions.

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**Directive:**

✓ **provides protection** against discrimination of men and women regarding access to work (including selection criteria), self-employment, profession, vocational training, career growth and working conditions (including termination of employment);

✓ **prohibits** any direct or indirect discrimination on grounds of the gender, including a reference to the family status, less favourable treatment of women in relation to pregnancy or maternity leave, prohibits harassment irrespective of whether it is sexual or other, instructions on discrimination;

✓ **uses** legal definitions of direct and indirect discrimination, harassment, victimisation, positive action, split of the burden of proof, the right to complain and sanctions equal to the Directive on Racial Equality.

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**Proposal of a horizontal directive against discrimination on grounds of age, disability, sexual orientation and religion or opinion outside the work place:**

➤ The European Commission submitted the proposal in 2008 and the EU legislator is still discussing it:

➤ **By this Directive it is envisaged:** to provide equal treatment in the areas of social protection, including social security and health care, education and access to commercially available goods and services, including housing, for the society.

**International instruments:**

- ✓ **Council of Europe**
- ✓ **UN**
- ✓ **International Labour Organisation**

## Council of Europe (CoE):

- **the principle of non-discrimination** is the leading principle in a range of the CoE documents;
- this principle is referred to as the “**influencer**” in developing the CoE standards;
- it is considered a **fundamental right** to be duly protected.

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- **European Convention for the Protection of Human Rights and Fundamental Freedoms [European Charter on Human Rights]**

- **Signed on 4 November 1950** in Rome, entered into force on 3 September 1953;
- **an international treaty** which can only be joined by the Member States of the CoE;
- initially it was signed by 12 states, not it has been **ratified by 47 European states**, all the EU Member States being among them;
- the Convention has several Protocols (currently: No.1, 4, 6, 7, 12, 13 and 16) Each Protocol is an international treaty which has to be ratified by a member state in order to assume obligations provided therein;
- **legally binding**, imposes an obligation for a member state to provide all the rights and freedoms it has admitted as binding for itself not only to the residents of this country or residents of the other member states, but to every person within the jurisdiction of the member state;

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- if a member state violates any rights protected by this Convention, the victim has the **right to compensation**;
- in case of any breach of rights the "defaulting state" has to provide the right to an individual to apply to state institutions and to achieve effective solution of the case;
- if states do not comply with this obligation or a person considers that a member state has not provided an opportunity to effectively defend his/ her rights at domestic institutions, the person may submit a complaint regarding a breach of the Convention to the European Court of Human Rights at Strasbourg;
- **The European Court of Human Rights is not the "fourth court instance"** which should continue hearing a case in substance when a person has exhausted all the 3 national court instances. The court only and exclusively controls implementation of the Convention by member states.

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### Article 14 of the European Convention on Human Rights stipulates:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured **without discrimination on any grounds** such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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- **Protocol No. 12 to the European Convention on Human Rights** introduces **general prohibition of discrimination in any area of life also based on the national law**. However, it has been ratified by fewer than 50% of the Member States until now:

Article 1 of Protocol No. 12 (**General prohibition of discrimination**)

1. The enjoyment of any right set forth by law shall be secured **without discrimination on any ground** such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. **No one shall be discriminated against** by any public authority on any ground such as those mentioned in paragraph 1.

• **European Social Charter and European Social Charter (Revised)**

- **Agreement of the Council of Europe, which guarantees social and economic fundamental rights and which is related to the European Charter on Human Rights from the content point of view**;
- The initial Charter was opened for signing on 18 October 1961 in Turin (Italy). The revised Charter was open for signing on 3 May 1996 in Strasbourg.
- **guarantees** a broad range of daily human rights in relation to employment, housing, health, education, social protection and welfare.
- **The Charter focuses in particular** to providing protection of vulnerable persons, such as elderly people, children, disabled persons and migrants.



- The revised European Social Charter, different from the initial text, there is a special provision on non-discrimination, thus emphasising the important of this prohibition:

#### Article E - Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

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- States have been given a **possibility to ratify individual provisions (parts of Articles)** instead of the whole Charter at once. Reason - states may need time to align national provisions with the Charter provisions and to be able to submit implementation reports thereof
- The **European Committee of Social Rights** is in charge of supervising compliance with the Charter. **Supervision is done by:**
- ✓ country reports
  - ✓ collective complaints from social partners and other non-governmental organisations against states having ratified the Charter regarding failures to comply with its provisions.

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- **Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**

- ✓ **Istanbul Convention is based on the understanding that:** violence against women is a type of discrimination of women and it is performed against women because they are women;
- ✓ **State duty:** to stand against all types of violence against women and to implement measures for preventing it, defending victims and bringing to liability offenders;
- ✓ **One of the major goals of Istanbul Convention:** to promote elimination of any form of discrimination of women and to encourage equality of women and men.

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- **Framework Convention for the Protection of National Minorities (1995)**
- **Convention on Human Rights and Biomedicine (1997)**
- **Protocol to Convention on Cybercrime (2003)**
- **Convention on Action against Trafficking in Human Beings (2005)**
- **Convention on Access to Official Documents (2009)**

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## AND:

### Article 55 (c) of the UN Charter:

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, **the United Nations shall promote:**

[..]

**universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."**

➤ **Rights to equality and non-discrimination are the only rights defined by all nine major UN agreements on human rights.**

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## • Universal Declaration of Human Rights

- Adopted and declared in Paris by Resolution 217 A (III) of the UN General Assembly (10 December 1948) as a **uniform set of standards of human rights for all people and nations;**
- **for the first time the fundamental human rights which need to be generally recognised and protected are defined;**
- the first document where it was possible to reconcile the often contradicting understanding of human rights by states;

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- The Declaration **is not formally legally valid**, however, the importance of the rights to be protected and the general practice of the states to protect the rights defined by the Declaration provide the basis to consider that the Declaration or at least a part of the rights protected by it have become **international customary legal provisions** and thus have become legally binding for all the global states;
- 56 states participated in the voting for the Declaration in 1948, at present there are approximately 200 states in the world. However, the evidence that at least some rights have become customary legal provisions can be also found in the practice of the states not participating in the voting, for instance, the right to life, prohibition of torturing, prohibition of discrimination, etc.
- Due to its **simplicity and universal nature** the Declaration still is an **important set of fundamental rights**, although these rights are detailed and defined also in the below international or other treaties.

- The importance of equality of people is emphasised in the Declaration Preamble in its Article 1 generally and in Article 2, in particular:

#### Preamble

Whereas recognition of the inherent dignity and of the **equal** and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

[..]

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the **equal rights of men and women** and have determined to promote social progress and better standards of life in larger freedom;

[..]

### Article 1

All human beings are born free and **equal** in dignity and rights. [..]

### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, **without distinction of any kind**, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, **no distinction shall be made** on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

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## International Covenant on Economic, Social and Cultural Rights

- adopted by the UN General Assembly on 16 December 1966 in New York;
- a part of the International Charter of Human Rights;
- the Covenant mainly refers to the Articles of the Universal Declaration of Human Rights defining an individual's rights to satisfaction of daily needs (the right to food, housing and health care provided by the state to its residents according to the amount it is able to provide);
- **the State should guarantee the rights defined by the Covenant according to the maximum available resources** - contrary to other international agreements whose obligations are assumed by the state in full scope and is therefore fully liable for provision of the rights included therein;

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- **declares the fundamental human rights of the "second generation"**, for example, the right to work and to found or unite in trade unions, protection of the family, including mothers, prior and post birth, as well as the right to relevant level of living and education;
- in compliance with Article 2, **the States Parties are obliged to guarantee that the enunciated rights will be exercised without "discrimination of any kind"**, and in compliance with Article 3, they **"to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights"**;
- the Covenant provides to establish **Committee on Economic, Social and Cultural Rights**, which is a group of 18 independent experts who supervise implementation of the Covenant in its States Parties;
- the Covenant comprises articles which define supervision and reporting procedures as to how the States Parties, governments who have ratified this document, ensure its implementation.

### **International Covenant on Civil and Political Rights**

- it was adopted simultaneously with the International Covenant on Economic, Social and Cultural Rights on 16 December 1966 in New York;
- along with two additional protocols, it is a constituent part of the International Convention on Human Rights;
- **the Covenant provides specific rights focused on freedom** - the right to life, prohibition of torture, slavery, forced labour and arbitrary arrest, as well as protects the rights to freedom, freedom of speech and opinion and the freedom of meetings, etc.;
- **recognises the rights of all persons to equality** at courts and tribunals (Article 14) and before the law (Article 26);
- **recognises** also the fundamental rights of the persons who belong to ethnic, religious or linguistic minorities (Article 27);

- the states which have recognised this document as legally binding for them have an **obligation**:
  - ✓ not to interfere with enjoying civil and political rights (to refrain from interfering);
  - ✓ to create environment/ conditions where they can be enjoyed;
- the Covenant comprises articles which define **supervision and reporting procedures** as to how the States Parties, governments who have ratified this document, ensure its implementation.
- the Covenant provides for establishing the **Human Rights Committee**, which is a group of independent experts who control performance of the state's obligations, in particular, supervises implementation of the Covenant on Civil and Political Rights in its States Parties.

### **International Convention on the Elimination of All Forms of Racial Discrimination**

- adopted by the UN General Assembly in 1965;
- **requests** the States Parties **to condemn and to eliminate racial discrimination in all its forms**;
- **allows introduction of positive measures** (special and particular measures) in order to guarantee full and equal enjoyment of human rights and fundamental freedoms;
- prohibits organisations which encourage racial discrimination;
- requires the States Parties to report on **infringements inciting to hatred**;
- **Committee on the Elimination of Racial Discrimination** is a group of independent experts who supervises implementation of the Convention in its States Parties.

## Convention on the Elimination of All Forms of Discrimination against Women

- adopted by the UN General Assembly on 18 December 1979;
- **defines the importance of equality of men and women and defines the ways to reach it;**
- defines a summary of women's rights and the action plan for the states to guarantee enjoyment of these rights;
- Article 2 of the Convention stipulates that the States Parties should **condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women;**
- Implementation of the Convention is supervised by an independent **Experts' Committee of Women's Rights**, which receives regular reports on the condition of women from signatory states.

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## Convention on the Rights of the Child

- adopted by the UN General Assembly on 20 November 1988;
- **defines the main human rights possessed by children;**
- **defines standards** in the areas of health care, education, legal, civil and social services;
- **main principles of the Convention:**
  - ✓ non-discrimination;
  - ✓ the best interests of the child shall be a primary consideration;
  - ✓ the right to life, survival and development;
  - ✓ respect of the child's opinion.
- Article 2 of the Convention obliges its States Parties to ensure that **the rights set forth in the present Convention are applicable "to each child within their jurisdiction without discrimination of any kind";**
- **Committee on the Rights of the Child** is a group of 18 independent experts who supervises implementation of the Convention in its States Parties.

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## Convention on the Rights of Persons with Disabilities

- adopted by the UN General Assembly on 13 December 2006;
- **goal** - to change attitude to persons with disability who should not be considered as subjects of medical treatment, charity and social protection, but rather subjects possessing the rights respecting of which they can claim;
- confirms that **all the persons with disability have the right to enjoy all human rights and fundamental freedoms**;
- **details how these rights should be applied**;
- **defines the areas where adjustments are necessary**;
- **Committee on the Rights of Persons with Disabilities** is a group of independent experts who supervises implementation of the Convention in its States Parties.

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### **International Labour Organisation (ILO):**

- one of the oldest international organisations, founded in 1919;
- since creation of the UN it has become the so referred **UN specialised institution**;
- it has been active by developing **a set of minimum international standards on matters related to the labour law**;
- it has created a serious **mechanism for controlling compliance with the standards defined by its conventions in member states**;
- along with the **procedure of submission of state reports** there are also **procedures of reviewing complaints** of states, employers or employees;
- **ILO process is not available to individuals, but only to associations or organisations of employers or employees, or trade unions.**

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- **ILO goal** is to promote equal opportunities of women and men to have decent work (fairly remunerated productive work which is performed in the conditions of freedom, equality, safety and human dignity),
- ILO considers that the gender equality is the decisive elements for attaining its strategic goals,
- ILO authorities to promote gender equality in the field of work are defined by its Constitution and reflected in the relevant international work standards;

- **Four main ILO conventions on gender equality:**
  - ✓ Equal Remuneration Convention (No.100);
  - ✓ Discrimination (Employment and Occupation) Convention (No.111);
  - ✓ Convention on Workers with Family Responsibilities (No.156)
  - ✓ Maternity Protection Convention (No.183).
- ILO mandate in the area of gender equality is strengthened by relevant resolutions, as adopted by its supreme decisive body - **International Labour Conference**.



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