

European Disability Forum Guide to the Amsterdam Treaty



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1 Introduction

A Preface

The Treaty of Amsterdam marks a new departure for disabled citizens in Europe. As a result of extensive campaign work by disability NGOs, disabled people are now visible in the Treaties. The non-discrimination clause, the provisions on social policy, the title on employment, the declaration on internal market legislation will all have practical consequences for disabled people throughout the Union. But how can we use the Treaty to the greatest effect at European and national level to advance the human rights of disabled people? How can we inform peers and allies about the scope of the Treaty, its potential and its limitations for disabled citizens?

This guide provides a valuable insight into the Treaty. As such, it forms a pivotal part of a training pack designed to inform and empower our membership and also stimulate reflection on our goals for future campaign work and indeed the next intergovernmental

conference.

I would like to congratulate the Legal Rights Working Group for providing such a clear and comprehensive overview of the Treaty from a disability perspective. I know it will be a key resource for us in our mission to ensure disabled people are equal and visible in today's Europe.

Johan Weseman, Chair

B Acknowledgements

The European Disability Forum would like to acknowledge the sterling work of the members of the Legal Rights Working Group in the preparation of this Guide. We greatly appreciated the support of Angel Ballesteros, John Wall, Gerard Quinn, Aart Hendriks, and Helga Stevens. Particular thanks go to Lisa Waddington, Chair of the working group, for her invaluable additional role as coordinator and legal editor.

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We are grateful to Barry Lynham for additional editing, and to John O'Gorman, Barbara McLaughlin and Diana Sutton for their comments.

C How to use this guide

This guide contains a number of different sections. Whilst the section "Analysis on campaign work" can be read independently from the rest of the text, we would recommend that readers begin by reading the initial chapter "Setting the scene: the Maastricht Treaty" before embarking on the main section "Explaining the Amsterdam Treaty", where individual aspects of the new Treaty are analysed in detail.

When this guide went to press in February 1998, the ratification process had not yet started in the Member States. We have therefore included a section on the scope of the Treaty before ratification, which discusses its immediate impact. The following section outlines suggestions on where the disability movement may want to see the next Treaty revision lead.

With the Amsterdam Treaty coming into force, the numbering of articles will change. We use the old numbering in the first two sections, and switch to the new numbering as of the section on "Explaining the Amsterdam Treaty". Readers are advised to use full texts or extracts of the Treaty in conjunction with this guide.

The text does not cover all areas of the Treaties changed in Amsterdam. Nor does it give a full explanation of issues such as the functioning of the EU political process, or a full reference list or suggested reading. Readers who would like further information are advised to read the various official EU publications available from the European Commission offices in all Member States.

This Guide is published in English, French, German and Spanish. A summary of the text in Danish, Greek, Finnish, Italian, Dutch, Portuguese and Swedish is also available from the EDF Secretariat.

The Editorial team

2 Setting the scene: the Maastricht Treaty

The Maastricht Treaty (or the Treaty on European Union as it is formally known) provided the starting point for negotiations at the recent intergovernmental conference (IGC). This conference culminated with the adoption of a new Treaty at Amsterdam in June 1997. However, the Maastricht Treaty will remain in force until the Amsterdam Treaty has been ratified (or officially approved) in all fifteen Member States, and will therefore provide the basis for Community action for some time to come. The purpose of this introductory chapter is to examine some of the important areas covered by the Maastricht Treaty, and to put the subsequent analysis of the measures adopted at Amsterdam in perspective.

A References to disability in the Treaty

The Maastricht Treaty contains no mention of disability and provides no clear legal basis for specific action in this field. It has therefore been difficult for the Community to adopt legislation and policy promoting the interest of disabled Europeans, since all such action must be based on the Treaty (i.e. have an appropriate legal basis). Instead the Community institutions (the Commission, the European Parliament and the Council) have had to work with inadequate legal bases which fail to recognise the disability dimension of the numerous Community policies such as free movement of persons, harmonisation of national legislation to achieve the internal market etc.. Examples of the problems that have arisen are amply demonstrated by the "Invisible Citizens" report (in particular Chapter 1, "Disabled People are Invisible in the Treaties"). Furthermore, the absence of a reference to disability in the Treaty means that much of the disability policy developed is non-binding (i.e. of a recommendatory nature), and therefore not legally enforceable. The Commission communication and Council resolution on equality of opportunity for people with disabilities are examples of such non-binding texts, and, irrespective of the undoubted quality of these two instruments, their impact would have been far greater if they had been based on the Treaty and taken the form of legislation. The existence of legal bases clearly providing for action in the field of disability will consequently be one of the criteria against which the Amsterdam Treaty will be judged.

B Dealing with discrimination

The existing Treaty addresses discrimination on the grounds of nationality and sex only. With regard to nationality, Article 6 of the Treaty reads:

'Within the scope of the application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

This measure does have some significance for disabled people. It means, for example, that a disabled person who is seeking work in a Member State other than his or her own,

is entitled to all the benefits available to a national who has a similar disability. The disabled migrant will be eligible for protection under any quota scheme that may exist in the host State, where a similarly placed national would also be covered. The disabled migrant can also claim equal protection under any national anti-discrimination provision that may be in force. Once in open employment, the disabled migrant has the same rights as a national to claim subsidies to cover the cost of, for example, reasonable accommodation. In addition, migrant workers who are accompanied by a disabled family member are entitled to claim disability benefits, assistance with education and training etc., just as any similarly placed national would be. Where eligible, the disabled family member can also make such claims.

To deny a disabled person such benefits would amount to discrimination; not on grounds of disability, but on grounds of nationality. Thus where an employer can lawfully discriminate against disabled nationals, where disabled children who are nationals are denied access to integrated education, where disabled nationals are denied assistance with personal care, then disabled migrants can also be so treated. Article 6 provides protection only for disabled migrants and that protection is only as good as that which is available in the host country to a disabled national. It provides no scope for obliging Member States to adapt national laws to eliminate discrimination directed at all disabled people.

Article 119 is the only article in the main body of the Treaty which deals with sex discrimination. The article is concerned exclusively with achieving "equal pay for equal work", although some of the legislation which was inspired by this provision covers broader areas, such as equal treatment. These measures are also of some relevance for disabled people, since they should ensure, for example, that disabled women have the same entitlement to social security payments as disabled men, and that female assistants receive the same benefits as male assistants. However, where levels of income support are inadequate for both men and women, and where no provision is made for independent living assistance, then Article 119 and its associated legislation are irrelevant. Like Article 6, there has to be an initial level of protection, which is determined exclusively by Member States, before Article 119 can be relied upon.

Whilst Article 6 and Article 119 will be of use to some disabled people, they fail to give the Community any competence to address the recognised problem of disability discrimination. The adoption of a Treaty amendment giving this power has been the focus of a lengthy campaign by the disability movement, and many disabled people expected the representatives of the Member States to incorporate such a clause in the new Treaty.

C Community social policy

Community social policy is in a somewhat confused state under the Maastricht Treaty. At the Maastricht intergovernmental conference, it was proposed that the Treaty be amended so as to give the Community greater powers in the field of social policy. At that time, the UK government vehemently opposed the creation of any additional Community powers in this field. Since Treaty amendments need to be approved by all Member States, it proved impossible to adopt the proposed set of amendments. The remaining Member States (in 1992 there were 11 remaining Member States, there are now 14) still wished to develop a more ambitious social policy. They therefore adopted a Protocol and Agreement on Social Policy which allowed them to take further steps to develop a "Community" social policy, which would not apply in the United Kingdom.

The Agreement on Social Policy allowed the 14 Member States to adopt Community legislation in a much broader area, and to make more use of qualified majority voting. The agreement also gave a legislative and formal consultative role to the social partners (European-level representatives of workers and employers or labour and management).

Up until now, relatively little use has been made of the agreement. Only three pieces of legislation have been adopted (on consultation of workers in certain European firms, parental leave and part-time work). This may well be because the 14 Member States do not wish to further emphasise differences between the United Kingdom and the rest of the Community with regard to social policy. An additional challenge for the Amsterdam Treaty is therefore to bring about a legal basis for a more ambitious Community social policy, covering all 15 Member States.

It should also be noted that under the Maastricht Treaty, neither the main body of the Treaty, nor the Agreement on Social Policy, provide a clear legal basis for Community action programmes in the field of disability.

D The internal market and harmonisation

It has already been noted that the absence of a reference to disability in the Treaty has limited the Community's ability to introduce measures specifically for disabled people, and at times, has resulted in inadequate consideration of the position of disabled people when producing more general legislation and policy. The result has been proposals for legislation, and adopted legislation, which indirectly discriminate against certain groups of disabled people.

One area where this has occurred is the harmonisation of national legislation to complete the internal market. Under Article 100a the Community is empowered to set common design standards for goods and to guarantee free movement throughout the Member States for goods which meet these standards. When such standards are proposed or set, the needs of disabled consumers are sometimes overlooked. For example, the 1991 directive on the mutual recognition of telecommunication terminal equipment sets certain minimum standards which must be met by producers of such equipment in order to achieve free movement within the European Union. These standards do not include the requirement that the equipment be accessible for use by people with a visual impairment, and the result has been to undermine national legislation, such as that in the United Kingdom, which does include this requirement. Numerous other proposals for (single market harmonisation) legislation have also failed to take the (access) needs of disabled people into account. For instance, the lifts directive and the draft buses and coaches directive did not initially require that new lifts and buses be accessible to people who use a wheelchair, or who have certain other disabilities, wherever possible. It was only comprehensive campaigning by disability non-governmental organisations (NGOs) and members of the European Parliament which rectified this situation.

Consequently, there has been a campaign calling for an amendment to the Treaty which specifically requires the Community to take account of the needs of disabled people when adopting internal market legislation under Article 100a.

E The adoption of Community legislation

The procedure under which Community legislation is adopted has changed over the years as a result of Treaty amendments. However, the basic pattern remains the same. First, the Commission proposes legislation. This is a power reserved exclusively to the Commission. That proposal is then examined by the European Parliament (usually in two readings). Parliament can approve or reject the proposal, or propose amendments. The Council of the European Union, consisting of government ministers representing the 15 Member States, votes on the amended proposal (also usually in two readings). It can also approve or reject the proposal, or, in some cases, adopt an amended text.

Whilst this is the general framework, there are in fact a number of different adoption

procedures, each giving more or less power to the European Parliament, and making it easier or more difficult to achieve the necessary majority within the Council. The Treaty specifies which procedure is to be followed in individual cases. The main adoption procedures are the following.

E 1. Involvement of the European Parliament:

a) The assent procedure

The European Parliament and the Council are truly equal legislators, and the approval of both institutions is needed for a measure to be adopted. This procedure is in fact rarely used, and applies, for example, to decisions to allow new Member States to join the European Union.

b) The codecision procedure

The European Parliament is given an important role in the adoption of legislation. It can cause a proposal which it does not approve of to be rejected outright, force the Council to adopt a Commission proposal which it approves of, and negotiate with the Council in order to secure the incorporation of its amendments. This procedure is used regularly.

c) The cooperation procedure

The European Parliament is given a much weaker role under this procedure. It can still propose amendments and recommend rejection of a proposal, but can be overruled by the Council. This procedure is also used regularly.

E 2. Voting within the Council.

There are two basic voting procedures within the Council:

a) Unanimity

Such a high degree of support is clearly difficult to achieve at times. It should be noted that an abstention by a Member State does not prevent the Council from adopting a proposal unanimously.

b) Qualified majority voting

Under this procedure each Member State is given a number of votes, based loosely on the size of its population. For instance, Luxembourg has two votes whilst Germany, Italy, the United Kingdom and France have 10 each. A qualified majority consists of at least 62 out of a possible 87 votes. It is therefore much easier to adopt legislation under this procedure, particularly when the larger Member States support the proposal.

F Additional important terms and concepts

F 1. The concept of direct effect

Certain provisions of the Treaty are capable of having what is called direct effect. This means that they confer rights on individuals which can be relied upon before national courts. Only provisions which are clear, are capable of conferring rights on individuals, and require no further action by the Community or by the Member States, are capable of having direct effect. It is the European Court of Justice which decides whether a specific provision meets these criteria.

When individuals feel that they have been a victim of a breach of a Treaty provision which has direct effect, they can bring the matter before a local court, and rely on Community law in exactly the same way as it is possible to rely on national law. Both Article 6 (discrimination on grounds of nationality) and Article 119 (equal pay for men and women) have direct effect, and many individuals have relied on these provisions before their national courts.

Disabled people who campaigned for the inclusion of a disability non-discrimination clause in the Treaty, also called for it to have direct effect.

F 2. The principle of subsidiarity

Further to the Maastricht Treaty, all Community policies and legislation have to comply with the principle of subsidiarity. This principle is based on the idea that, where competences are shared between the Community and the Member States, decisions should be taken at the lowest level. Thus, wherever possible it is the Member States which should act, and the Community should become involved only when decisions can be better taken at this higher level and the Member States cannot achieve the objectives by acting alone.

G Conclusion

There are clearly many ways in which the disability (and social) dimension could be given a higher profile in the Treaty. The inclusion of a disability non-discrimination clause, an amendment to Article 100a (internal market legislation) and the clear power to adopt a disability action programme are obvious examples. However, other areas, such as a greater prominence for human rights, more involvement for NGOs, increased initiatives in the field of employment, improved access to information and a more prominent public health policy are also potentially very significant. The impact of the Amsterdam Treaty in these areas, as well as other areas referred to in this chapter, are therefore examined in more detail in this guide.

3 Analysis of the Campaign Work

The outcome of the Amsterdam Summit has been heralded as the greatest achievement of the European Disability Forum and its membership to date, not just because of the result - a significant political breakthrough - but also because of how it was achieved.

It marked an important precedent - the first time that strategic, collective campaign work has taken place involving all EDF members over a sustained period. The tenacity and commitment bodes well for future campaigns, and illustrates the richness and diversity of the NGOs involved, as well as our solidarity as active players in a civil rights movement

The following chapter gives an overview of the campaign strategy and a chronological account of the work undertaken, illustrating the crucial lessons we have reamed, which could be applied to future initiatives undertaken by the EDF. It is not an exhaustive analysis; much further work was undertaken by many NGOs and individuals behind the scenes over a sustained period, but it emphasises the decisive elements of the campaign.

A Origins of the campaign: up to 31 December 1995

A 1. The *raison d'être*

Calls for an amendment to the Treaty establishing the European Community (TEC) to incorporate a disability non-discrimination clause date back to pre-1993. In the context of the first European Day of Disabled Persons that year, there was a call by the European Disabled People's Parliament for a "general anti-discrimination provision" to be included in the Treaty, in a resolution adopted by the 518 disabled representatives present.

Thanks to opportunities presented during the EC action programmes promoting equality of opportunity for people with disabilities, particularly HELIOS I and II, the European NGOs and national disability umbrella structures became more politicised. The beginnings of a powerful European disability movement emerged, demanding a human rights/equal opportunities approach to recognition of disabled people as full citizens. Disabled people's organisations recognised that a pre-requisite for this was explicit reference in the EC Treaty to disability and non-discrimination.

This vision was also shared by the European Union institutions. For example, the European Commission's white paper on social policy (1994) stated that serious consideration should be given to the inclusion of a non-discrimination clause at the forthcoming review of the Treaties.

The first decisive action in the campaign at European level was a meeting between the EDF and Carlos Westendorp, the Chair of the Reflection Group. This group was set up under the Spanish presidency (July - December 1995) to prepare the intergovernmental conference, and was made up of representatives from each national government, the European Parliament and the European Commission. This fruitful exchange contributed towards an acknowledgement, in the Reflection Group report, that the Treaty should provide a 'general clause prohibiting discrimination on the grounds of, amongst others, disability'. Further, it should show special consideration for disabled people both by referring to them in the general non-discrimination clause in Article 6 and by adding a provision in one of the subsequent chapters. The report highlighted the need to examine carefully the economic consequences of Treaty revision in this respect. The Spanish National Council of Disabled People played a key role in facilitating the meeting and ensuring ongoing discussion under the Spanish presidency.

A 2. Invisible citizens - disabled people's status in the Treaty

No mention of disabilities appeared in the Treaties, and it could be said that in relation to the EU, disabled citizens were invisible citizens. This view led to the preparation, of the European Day of Disabled Persons (1995), of the "Invisible Citizens" report. The document, which marked an important step in the campaign, examines the status of disabled people in the Treaties from a legal perspective. Compiled by renowned human rights and disabled lawyers from throughout the Member States, working in cooperation with political experts, this report played a fundamental role in influencing opinions within the institutions, substantiating arguments in favour of a non-discrimination clause with sound legal analysis. The report moreover acted as a vital awareness-raising tool within disabled people's organisations. It rendered EU policy both accessible and relevant to disabled people across the Union, and put them on the centre stage. And it described in very tacit terms the discrimination encountered by disabled people on a daily basis. Finally, the report explored and justified detailed proposals for Treaty amendments.

A 3. The Italian presidency: 1 January 1996 - 31 July 1996

in early 1996 both the European Parliament and the European Commission published their respective final positions in relation to the IGC. Both reports expressed commitment

to a reference within the Treaty to discrimination on grounds of disability. As the intergovernmental conference is a conference of Member States' governments, and the final outcome requires unanimity, the main targets for the campaign were national governments, and particularly those ministers and officials involved in the IGC negotiations.

The end of March 1996, marked the opening of the intergovernmental conference under the Italian presidency in Turin, Italy. The Italian National Council played a central role in the campaign at this stage, to ensure the disability dimension received sufficient focus and key players in the Italian government understood our agenda.

B Strategic coordinated campaign work

B 1. The IGC Coordination Group

A major factor in the campaign's success was strategic planning and coordination. This was undertaken from the early stages of the campaign by an IGC Coordination Group made up of elected representatives and staff, particularly from the Member States holding the presidency during this period, the European Parliament Disability Intergroup secretariat, legal experts and the EDF secretariat. In the early stages of the campaign, in the absence of an independent EDF secretariat, much of the work took place under the auspices of the European Day of Disabled Persons.

The coordination group had a mandate from the broader EDF membership to analyse proposed Treaty texts, monitor political developments in each of the Member States and relevant IGC meetings, and liaise with other social policy NGOs working on the Treaty revision on behalf of their respective constituent groups.

The group recommended strategy, coordinated developments and briefed EDF members on measures to take and rationale to use in making the case for Treaty revision. This included the organisation of two important training sessions. Notwithstanding the significance of other aspects of Treaty revision such as the new title on employment, fundamental social rights and the role of NGOs, a political decision was taken at a very early stage that our campaign would focus primarily on three major issues: reference to disability in the non-discrimination clause, reference to disability in relation to single market standardisation and a legal base for a new disability programme.

With regard to press strategy, it was agreed that the press campaign should take a low profile initially, in an attempt to minimise government fears of the cost of a non-discrimination reference. It was felt that much media coverage at this stage would be detrimental to the objective of the campaign. Once commitment had been expressed in this sphere, a more conspicuous media campaign was undertaken, particularly during the latter stages, when it was linked to "direct action" events.

The group met on an ongoing basis until the final summit and also met afterwards for a preliminary examination of the follow-up work required regarding the implications of the final text.

B 2. IGC Update

The IGC Update newsletter was published on a regular basis during the course of the campaign. This proved to be an essential communication tool, providing readers with the latest information on the work undertaken, the meetings held, the progress achieved, and also the problem areas encountered. It also gave a comprehensive overview of the positions of the various Member States, several of which vacillated considerably during

the course of campaign, identified appropriate action and essential campaign and lobbying tips. It motivated campaigners at national level by recording the success of others and outlining outstanding measures to take based on a collective strategy. IGC Update was published in English, French, German and Spanish, made available on alternate media, and widely distributed across the EDF membership. The publication was supplemented by regular correspondence from the EDF Chair to encourage continued commitment and sustained efforts.

B 3. Ad hoc briefings on individual issues

An important dimension to the campaign work was the EDF's access to human rights lawyers with appropriate experience in the field of disability and EC law, political experts and economists. They were able to provide timely briefings for specific meetings and also respond to queries from members arising from negotiations with their respective government contacts.

C The Irish presidency: 1 July 1996 - 31 December 1996

The Irish government's White Paper on Foreign Policy published prior to the IGC identified the non-discrimination clause as a priority. Disability organisations in Ireland played a pivotal role during the IGC campaign, securing commitments from relevant ministers at a very early stage by drawing parallels with work on national equal status legislation. They worked very closely with other social policy organisations also battling for references for their specific constituent groups. During the presidency, they ensured that the reference was kept very high on the Irish government's agenda, and was not traded off against other issues at this stage in the IGC process.

C 1. A second report: "How can disabled persons in the European Union achieve equal rights as citizens?"

A further report was published during the Irish presidency, as part of the 1996 European Day of Disabled Persons. It was designed as a tool to support NGO representatives in negotiations with their respective government representative. This report responded to the concerns most frequently expressed by statutory authorities at all levels in relation to Treaty revision. Significantly, it also addressed the economic consequences of Treaty revision, firmly identifying disabled citizens as consumers and workers in the Union.

The impact of both this report and that on the "Invisible Citizens" was enhanced by targeted training sessions to develop interactive lobbying skills for both national council elected representatives and staff members.

C 2. Dublin EDF Board meeting

The interim Board meeting of the European Disability Forum held in Dublin in November 1996 provided a timely opportunity to reiterate the importance of the disability reference, to exchange ideas on national campaign strategy and to galvanise organisations' efforts into 1997. Gay Mitchell, the Irish Minister for European Affairs, addressed an enthusiastic membership, expressing strong commitment to a reference to disability.

The Dublin Summit proposed the inclusion of Article 6a on non-discrimination in the new draft Treaty. The original proposal for an amendment to Article 6 did not find any substantial political support amongst the Member States, as these were unwilling to accept the direct effect of such an amendment which would allow individuals to bring cases before the European Court of Justice.

The Irish presidency also saw the adoption of several key instruments at European level which reflected substantial progress in the non-discrimination agenda within the institutions and provided an excellent illustration of the sea change towards a rights based approach to disability. These documents were the Banotti report on the rights of disabled people, the Commission communication and Council resolution on equality of opportunity for people with disabilities.

D The Dutch presidency: 1 January 1997 - 31 July 1997

D 1. The EDF Founding General Meeting

The Founding General Meeting held in March 1997 in Brussels provided an excellent backdrop to engage more disability activists in a campaign which was by now gaining momentum. At this stage, it was clear that the Dutch presidency had dropped the reference to disability proposed in the Irish draft text. A stirring speech by several MEPs active in the Intergroup gave a renewed boost to the work, identified as the top priority for the EDF in 1997.

Dutch NGOs worked vigorously to secure a meeting between EDF representatives and Michiel Patijn, Dutch minister for foreign affairs. A delegation composed of members of the Dutch National Council and the EDF met Mr Patijn on 17 April. This extremely constructive meeting focused on the three key areas previously identified: the non-discrimination clause, a reference to disability in Article 100a on internal market legislation, and the inclusion of a clause to provide a satisfactory legal base for European social action programmes. Mr Patijn, agreeing that current legislation setting EU-wide design standards for goods can fail to take into consideration the needs of disabled consumer, welcomed arguments which favoured including a disability clause into Article 100a. Without this reference, the principle of "inclusion of disabled people" could be undermined at all levels.

The EDF Board meeting, organised near Amsterdam in April, again provided the opportunity for EDF representatives to discuss the Treaty revision from the disability movement's perspective with key politicians at national and European level in the Netherlands. In addition, it ensured that members were fully briefed on the current climate as the campaign entered its eleventh hour.

At this stage there was also a rumour that the IGC negotiations might have to be extended to the Luxembourg presidency, because of the pending French and UK elections which would have a crucial implication on the outcome. The European Union was one of the most controversial election campaign issues. On 6 March, Labour's spokesman on foreign affairs in the UK, Robin Cook, stated clearly that the position of a Labour government would be inclusion of the social protocol in the Treaty together with a chapter on employment, and protection of disabled people, among other groups.

D 2. Concerted action with key target groups

During the course of the campaign many individual meetings took place to address potentially contentious issues head on.

- The work of the Danish National Council (DSI) was crucial in this respect. Danish NGOs were sufficiently committed to the non-discrimination clause to temporarily mute their national policy stance on mainstreaming, and promote neutrality, if not active support, among their government representatives on the issue.
- In the very last stages of the campaign, national organisations in the UK exploited

the new government's manifesto commitments through tenacious lobbying on a one-to-one basis with relevant ministers. This contributed extensively to the inclusion of a declaration on the need to take account of disabled people, attached to Article 100a, which the new government championed in the final negotiations.

- In May, a specific training session took place in Germany to muster further support among German disability organisations. This was in response to rumoured ambivalence by the German national government to the non-discrimination clause, as it was no longer able to hide behind the much more vocal opposition expressed by the previous Conservative government in the UK.

D 3. Direct action

Immediately prior to the Amsterdam Summit, two "direct action" events took place in the Netherlands. The first was a disability "rave" led by the Dutch disability movement, which swept the streets of the Hague on 5 June during the IGC meeting of foreign ministers to celebrate the explicit reference to disability in the Article 6a added by the draft Treaty, and to reinforce demands for a reference in Article 100a on single market legislation.

Disability activists from throughout the EU were joined by their allies on the eve of the European Employment Summit to unveil a statue at Leidesplein in Amsterdam. This event - "Visible Citizens - Our Vision for the Future" - was staged to encourage a last minute rethink on Article 100a as the IGC negotiations were being finalised, arguing that this was consistent with wider IGC debates such as inclusive measures for all EU citizens, design for all at minimal cost, and the creation of larger European and worldwide markets.

D 4. Work with other structures and organisations.

EDF representatives were encouraged to join forces with other groups fighting for Treaty revision. This took several forms.

- One very good example was the EDF's participation in the European Summit of Regions and Cities which also focused on Treaty revision from the perspective of European Union citizens.
- The EDF also undertook much cooperative work with other members of the Platform of European Social Policy NGOs in relation to joint work on the reference to non-discrimination to protect the whole spectrum of our diverse constituent groups. We made the case for a legal base for social policy programmes, the inclusion of fundamental social rights in the Treaty, and equal status within the Treaty for civil dialogue with NGOs alongside social dialogue. The EDF was part of a delegation, which met key civil servants working on the IGC process under the Dutch presidency.
- Specific efforts were undertaken together with Eurolink Age, an association representing older people, on arguments for a legal base for "incentive" measures for social policy actions. Joint letters and meetings made the case for retaining an explicit reference to disabled people and older people alongside social exclusion in the text submitted by the Irish government which would have provided an unequivocal legal base for future action programmes focused specifically on older people and disabled people respectively.

Unfortunately, the explicit reference to our target groups, although present in the penultimate draft revised Treaty text, was removed during the final discussions in Amsterdam and replaced by a single more generic reference to social exclusion.

This well illustrates the dynamic of the IGC campaign. Even at the very last stages, key references to us can be used as bargaining tools between governments for what they perceive as more important issues.

In retrospect, cynics could describe this outcome as evidence of an Achilles' heel in what was otherwise an extremely powerful and effective campaign. The implications of this failure are yet to be discovered as the disability movement in Europe moves into another major campaign to fight for a new European disability programme.

Nevertheless, much has been achieved, not least an emerging solidarity between organisations working within the European disability movement on common issues. These allegiances will be crucial for future campaign work. And equally important are the growing alliances with other civil rights movements.

4 Explaining the Amsterdam Treaty

The following chapter aims to put a spotlight on the provisions of the Amsterdam Treaty which are of relevance to disabled people and their allies. A number of areas in which the Treaty has been amended or where new articles have been added are discussed in detail with comments on their relevance to the disability field.

It should be noted that due to the complex numbering system of articles in the previous Treaty, a new numbering system has been adopted in the Treaty of Amsterdam. In the analysis below, reference will be made mainly to the new renumbered Treaty articles, but also to the existing articles or the new Amsterdam Treaty articles. In addition, a crossreference table on changed article numbers is provided in section H. It should be noted that old Treaty articles refer to the Treaty establishing the European Community (TEC) if not specified.

A Non-discrimination - Article 13 (formerly Article 6a)

From the disability point of view, probably the most significant change brought about by the Amsterdam Treaty is the inclusion of a general non-discrimination article which specifically mentions disability. The new provision was included in Article 6a of the Amsterdam Treaty, and will become Article 13 in the renumbered Treaty. It reads:

"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."

This amendment is significant in that it will expressly give the Community competence in the disability field for the first time and, moreover, recognises the problem of disability discrimination. However, the new article will not have any direct impact and will not confer any extra rights on disabled European citizens. This is because Article 13 will merely give the Community "permission" to take action to combat disability

discrimination if it so wishes - it does not amount to any such action itself.

If the Community does wish to take action, including possibly legislative action, there are a number of procedural barriers to be overcome. Firstly, any measure must be approved unanimously by the Council. If only one Member State actively opposes such action then the proposed measure will be blocked, and remain unadopted. Since there is currently no consensus amongst the Member States on the desirability of binding Community action to combat disability discrimination, it is very unlikely that action or legislation will be adopted in the short term. Secondly the European Parliament which has often actively supported disabled people's rights, is given only a relatively weak role in the adoption of legislation based on Article 13. Parliament must be consulted, but any opinion or recommendation which it offers can be overruled by the Council.

It should also be noted that Article 13 does not allow the Community to adopt measures in all areas related to (disability) discrimination - the article covers only those areas where the Community has competence, as defined in the Treaty. Therefore, whilst the Community has some competence in important areas, such as employment and safety standards for goods, many other areas, such as children's education and housing are (almost) completely excluded.

Since Article 13 requires that further action be taken by the Community to implement the measures needed to combat disability discrimination, it cannot have direct effect and will not confer rights directly on individuals. As noted, this is in contrast to the Treaty provisions dealing with discrimination on grounds of nationality and equal pay for men and women, which are not dependent on further action being taken, and which do have direct effect.

In these significant respects, concerning the procedure used when adopting action and the absence of direct effect, Article 13 falls short of what was demanded by disabled campaigners.

However, these problems do not mean that Article 13 will have no practical effect. In the longer term, the article may provide the legal basis for new legislation and action. Furthermore, the broad reference to non-discrimination in the Treaty may result in the European Court of Justice recognising that the right not to be discriminated against applies to disabled people, as it has already recognised with regard to men and women (see chapter on general principles of Community law). Finally, the reference to disability in Article 13 may encourage the Community to take more notice of the needs of disabled people when producing legislation in other fields, such as social policy or human rights issues.

B Internal market legislation - Article 95 + declaration (formerly Article 100a)

It was noted earlier that a number of problems have arisen with regard to Article 95, which provides for the adoption of Community legislation to complete the internal market. On occasion, product standardisation legislation adopted on the basis of this article has failed to take account of the needs of disabled people, and so created difficulties. Article 100a has been renumbered Article 95 under the Amsterdam Treaty, and although there is still no reference to disability in the article itself, a declaration annexed to the Treaty does address the issue. The declaration reads:

"The Conference agrees that, in drawing up measures under Article 95 of the Treaty establishing the European Community, the institutions of the Community shall take account of the needs of persons with a disability."

The declaration is not legally binding, in that it cannot be enforced by the European Court of Justice, and internal market legislation adopted on the basis of Article 95 which does not take account of the needs of disabled people will nevertheless be valid. Individuals or organisations which feel that internal market legislation is discriminatory cannot, therefore, bring any legal challenge before their national court or the Court of Justice in Luxembourg.

However, if a directive adopted on the basis of Article 95 does need to be interpreted by national courts or the European Court of Justice, the declaration could be referred to, to assist in that interpretation.

The declaration furthermore imposes a moral obligation on the Community institutions to consider the needs of disabled people. This should make the adoption of internal market legislation which discriminates against disabled people much more unlikely in the future, and should make it much easier to force change to legislative proposals which do, as a result of an oversight, discriminate in some way.

It could now be argued, on the basis of the declaration, that the Commission, as the body which proposes Community legislation, should establish some mechanism to ensure that its proposals do not discriminate against disabled people. This point will be considered in more detail in Charter 5, where we discuss the immediate significance of the Amsterdam Treaty prior to ratification.

C The chapter on social provisions - Articles 136-45 (formerly Articles 117-120)

C 1. Background

The European institutions have been involved in social policy ever since the Treaty of Rome came into force. However, it was not until the Single European Act (1986), that the Community was given a specific legal base for legislation and then only in the field of health and safety at work (Article 118a). Under this article, the Community is able to adopt, by means of directives, minimum requirements for gradual implementation of measures to improve and harmonise legislation in order to protect the health and safety of workers.

Since the incorporation of this article in the Treaty, the Community has adopted numerous legislative acts in this field. These include the working time directive, which set minimum requirements for daily rest, weekly rest, and annual leave as well a maximum weekly working time. The directive is of particular interest, since the UK challenged the suitability of Article 118a as a legal basis for the measures, thus allowing the European Court of Justice to interpret Article 118a.

In its judgement, the Court of Justice gave a wide interpretation to Article 118a. This included giving a broad interpretation to the meaning of the terms "health and safety" and "working environment". When examining the scope of Article 118a, the Court concluded that directives could have objectives other than merely improving the health and safety of workers, though improving health and safety must be the main or essential objective of any directive based on this article. The Court of Justice also ruled that the term "minimum requirements" does no more than emphasise that Member States are free to adopt more stringent measures than those included in directives based on this article.

The wide interpretation that the Court gave to Article 118a may encourage the European Commission to propose further directives under this article. Because of the similarity of wording between Article 118a, in the unamended Treaty, and the new provisions in the chapter on social provisions, the Court of Justice is likely to continue to interpret the

provisions on health and safety widely.

C 2. The chapter on social provisions

In the run-up to the Maastricht Treaty, many Member States wanted to see the European Community take on a greater role in social policy. However, at the time the UK government objected to any increase in Community powers in this field. It is for this reason that the social provisions agreed at Maastricht did not become part of the main body of the Treaty but remained incorporated as a protocol and an annexed agreement which applied to all Member States except the UK. Because the new UK government decided to end the British opt-out from the Agreement on Social Policy, it became possible to incorporate the agreement into the main text of the Amsterdam Treaty.

According to Article 136, the objectives of the Community include:

"the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion".

Article 136 sets out the objectives which will underpin Community social policy. The most important objective for disabled people is undoubtedly "the combating of exclusion", since there is strong evidence that disabled people are excluded from the employment market. However, other objectives set down in this article will also be important for disabled people.

The chapter on social provisions not only defines Community social policy but also sets out the powers that the Community has been given to act in this field. In general terms, the Community is empowered to support and complement the activities of the Member States. This can include the adoption of directives, as well as the obligation to encourage cooperation between Member States and between the social partners.

According to Article 137, the Community shall support and complement the activities of Member States in the following fields:

- improvement in particular of the working environment to protect workers' health and safety;
- working conditions;
- the information and consultation of workers;
- the integration of persons excluded from the labour market;
- equality between men and women with regard to labour market;
- opportunities and treatment at work.

To help and complement the activities of the Member States the European Council may adopt "minimum requirements for gradual implementation having regard to the conditions and technical rules" existing in the Member States (NB: the term "minimum requirements" has a specific meaning according to the European Court of Justice). This will be done by means of directives, which must avoid imposing administrative, financial and legal restraints in a way which would curb the establishment and development of small and medium-sized undertakings. If the Community uses this right to create legislation with energy and sensitivity then it is quite possible that disabled people could benefit, especially since areas such as health and safety are in some ways more important to the disabled worker.

It is also good to note that in adopting directives based on this chapter the Council will be able to use qualified majority voting and the decision-making process will be based on codecision. However, in the following limited areas of social policy the Council will have to use the unanimity voting procedure (Article 137(3)):

- social security and social protection of workers;
- protection of workers where their employment contract is terminated;
- representation and collective defence of the interests of workers and employers;
- conditions of employment for third country nationals legally residing in Community territory;
- financial contributions for promotion of employment and job creation.

Not only can the Community now adopt legislation in the field of social policy but when the Commission proposes new legislation, both management and labour must be consulted (Article 136(2)). It is at this point that disability organisations must ensure that their voice is heard on any legislation which will directly or indirectly affect disabled people. It should also be noted that Member States have the right to maintain legislation which is more stringent than Community provisions as long as the national legislation is compatible with the Treaty. European legislation should thus not be an excuse for reducing protection.

As previously mentioned, the new chapter also imposes an obligation on the Community to increase dialogue between management and labour and between Member States. Under Article 139, if management and labour agree, dialogue between them at Community level may lead to legally enforceable collective agreements. In addition, Member States may entrust representatives of management and labour, at their joint request, with the implementation of directives (Article 137(4)). Most significantly, management and labour can request that the Commission forward the European-level collective agreements to the Council, where the agreements can be transformed into binding Community legislation (directives) under Articles 137-139.

Regarding the promotion of cooperation between Member States, the role of the Community is set out in Article 140. According to this article the Commission must encourage cooperation between the Member States and facilitate coordination of their action in all social policy fields under this chapter, particularly in matters relating to:

- employment;
- labour law and working conditions;
- basic and advanced vocational training;
- social security;
- prevention of occupational accidents and diseases;
- occupational hygiene;
- the right of association and collective bargaining between employers and workers.

The Commission must act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to national organisations.

It would seem that the chapter on social provisions provides a good opportunity to improve conditions for disabled people. However, although the Community is obliged to encourage cooperation, it has been given only the right, not the obligation, to enact legislation in this field. For this reason, it is important that organisations that work on behalf of disabled people lobby the Commission to propose legislation in this field.

D The employment title - Articles 125-130 (formerly Articles 109n-109s)

D 1. Introduction

The Amsterdam Treaty contains a new title on employment, which gives the Community significant additional competences in this field, although the main responsibility for employment policy remains with the Member States. In adopting this title, the Heads of State or Government agreed that they should work to coordinate their employment policies, so as to create an environment conducive to job creation. In recognition of the concern over unemployment, the governments of the European Union, acting unanimously, also agreed that this title should come into force immediately and not have to await ratification of the whole Treaty.

The main objective of the Employment title is set out in Article 125 which states:

"Member States and the Community shall, according to this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change..."

To achieve this goal, the Community has been given new competences and Member States have agreed to coordinate their employment policies.

D 2. New European competences

The new competences of the Community are set out in Article 127 and 129. According to Article 127(1):

"the Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action... "

Henceforth, the European Community shall have a role to play which is not limited to the coordination of Member States' policies in this area, but which may also include support for national measures. However, in accordance with the subsidiarity principle, the Community, in doing so, will have to respect the competences of the Member States.

In addition, the Community must from now on take account of the objective of high employment when formulating other policies, as stated in Article 127(2):

"the objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities".

Finally, Article 129 authorises the Council to adopt:

"incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects".

This is an additional competence granted to the European Union authorities to enable them to propose innovative initiatives in the field of employment. The Treaty, under the

chapter on social provisions, sets as the objective for both the Member States and the Community the promotion of employment, improved living and working conditions, the development of human resources with a view to lasting high employment and the combating of exclusion. The Community will support and complement the activities of the Member States. It could be argued that the Council, under Article 129, should propose innovative initiatives to encourage disabled people to enter the labour market. However, it should be understood that measures under this article cannot include harmonisation of the laws and regulations of the Member States, and this may limit the scope of any possible action.

D 3. Coordination of employment policies

To achieve a better coordination of employment policies across Europe, the employment chapter on the one hand obliges the Community to set up an Employment Committee, and on the other sets out the procedure whereby the Member States will, with the help of the Community, coordinate their activities.

The Employment Committee will be composed of two members from each Member State and two members from the Commission. Its tasks will be to monitor the employment situation and employment policies in the Member States and the Community, as well as to formulate opinions at the request of either the Council or the Commission, or on its own initiative, and to contribute to the Council's task of coordinating employment policy. It should also be noted that in the accomplishment of its mandate, the Employment Committee will be expected to consult the social partners. The term 'social partners' has been given a narrow scope, however, including only Community-level representatives of workers (ETUC) and employers' organisations (UNICE and CEEP). An area for action by organisations which represent disabled people is to ensure that this new committee will extend its consultations and take account of their views.

The obligations created for Member States in terms of coordination are set out in Article 126(1):

"Member States through their employment policies, shall contribute to the achievement of the objectives referred to in Article 125 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Community..."

Consequently, Member States must now elaborate a coordinated strategy in their action relating to employment. They are also now obliged to work with the Council to create a coordinated approach. The procedure for this cooperation between Member States and the Council is set out in Article 128.

Article 128 details a complex procedure to achieve this coordination, which has now been complemented by agreements reached during the special European Employment Summit in Luxembourg on 20 and 21 November 1997. In general terms the procedure is as follows. Each year, the Council must consider the employment situation and, in the light of its findings, adopt guidelines which Member States will have to incorporate into national action plans on employment. To monitor the implementation of these guidelines, Member States must provide the Commission and the Council with a report on the measures taken to implement the guidelines. Following this, the Council, acting on a recommendation from the Commission, can make specific recommendations to some or all Member States. Finally, the Council and the Commission will report to the European Council (all 15 Heads of State and/or Government meeting together), which will annually adopt new guidelines to further improve the coordination of employment policy.

The title on employment is the result of a strong political will to provide a common response aimed at improving the employment situation in the Community. The establishment of an Employment Committee, the new competences of the Council and of the Commission, as well as the new role to be played by the European Council in this field, should at least constitute a renewed opportunity to depart from the current critical situation affecting millions of unemployed European citizens.

E Health - Article 152 (formerly Article 129)

E 1. Background

Until the Treaty on European Union signed in Maastricht (1992), the Community did not have any explicit competence in the field of health. In fact, apart from the Article 118a incorporated by the Single European Act (1986), which gave the Community competence to approximate legislation in the field of working conditions and adopt directives to improve the health and safety of workers, scant reference had been made to health at all. However, Article 129 TEC did establish a base for European action on health, stating that:

'1. The Community shall contribute towards ensuring a high level of human health protection by encouraging cooperation between the Member States and, if necessary, lending support to their action. Community action shall be directed towards the prevention of diseases, in particular the major health scourges, including drug dependence, by promoting research into their causes and their transmission, as well as health information and education

Health protection requirements shall form a constituent part of the Community's other policies.'

In addition, Article 129 also encouraged Member States to cooperate and coordinate their activities in this field. However, as becomes clear from the wording of this provision, the competences transferred to the Community are rather limited in nature and scope. The article is exclusively focused on health promotion, significantly leaving out the issue of healthcare. With respect to the issue of health promotion, the Community must respect the principle of subsidiarity.

Over the course of the last few years, the Community has, despite its confined spheres of competence, taken a number of noteworthy initiatives in the field of health, including the adoption of directives on the mutual recognition of diplomas of medical doctors, health and safety at work and blood products. The Community has, in addition, started a number of health-related action programmes, including programmes on cancer, AIDS, communicable diseases, drug dependence, and health promotion and disease prevention.

Reference should also be made to the formulation of an EC code of good clinical practice (1990), which was recently amended to allow, under exceptional circumstances, non-therapeutic medical research with "legally incapacitated persons, such as minors and people with severe mental disabilities".

E 2. The new health provisions

Under the Amsterdam Treaty, Article 129 (new Article 152) underwent a number of changes. The new provisions of Article 152 state that:

'1. A high level of human health protection shall be ensured in the definition and implementation of an Community policies and activities.

Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

The Community shall complement the Member States' action in reducing drug related health damage, including information and prevention.'

In addition, to this the Community continues to have a role in coordinating Member States' policies in this area. Furthermore, due to the problems encountered with BSE (mad cow disease), the Community is given new competence in the field of veterinary health.

Comparing Article 129 with the new Article 152 shows that certain important changes have been made. The sphere of Community competence has been expanded to include not only 'prevention of disease' but also 'improving public health, preventing human illness, and diseases, and obviating sources of danger to human health.' In addition, the new Article 152 explicitly states that health concerns need to be taken care of in the definition and implementation of all Community policies and activities.

In spite of all these changes, it should be noted that the Community competences remain complementary in nature (principle of subsidiarity) and focused on health prevention and not on healthcare. Article 152 does not have direct effect, meaning that it does not confer enforceable rights on individuals. Despite these limitations, Article 152 does provide disability rights groups with a tool to build up a dialogue with national government and EU representatives to ensure its full implementation. In this respect, it is of particular importance that this provision explicitly states that all Community programmes and activities should uphold a high level of human health protection. Programmes and activities that contribute to the segregate, instead of include disabled people are unlikely to meet this self-imposed standard.

F Access to information - Article 255 (formerly Article 191a)

One of the objectives of the intergovernmental conference was to make the Community more open and accessible to the citizens of the European Union. For this reason the issue of "transparency, meaning open decision-making and access to Community documents, was addressed, and a number of reforms were introduced to this end.

With regard to open-decision making, the new Article 1 TEU reads:

"This Treaty marks a new stage in the process of creating an ever closer Union among the peoples of Europe, in which decisions are taken as openly and as closely as possible to the citizen".

With regard to access to information, the new Article 255 TEC (formerly Article 191a in the Maastricht Treaty) reads:

"1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of

access to European Parliament, Council and Commission documents, subject to the principles and conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on the grounds of public or private interest governing the right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of this Treaty.

3. Each institution referred to above shall elaborate in its own rules of procedure specific provisions regarding access to documents".

In addition Point 9 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality (see chapter 2 and 4G for more information on subsidiarity) states that:

"... the Commission should, except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents".

These amendments mark a move towards allowing citizens greater information about how decisions are taken, and the actual content of those decisions. Furthermore, the amendments seem to require that the Community institutions allow access to their documents unless there is a good reason for not doing so. Once the Amsterdam Treaty comes into force the Community shall be obliged to adopt legislation establishing general principles on access and determine limits on the right to access on grounds of public or private interest (new Article 255(2)). Furthermore, the European Parliament, the Council and the Commission must develop internal rules of procedure regarding access to documents (new Article 255(3)).

These Treaty amendments do not refer to the need to provide documents in forms which are accessible to all disabled people, e.g., in Braille, in large print or on diskette for people with a visual impairment, and on tape or in an easy-to-read format for people with a learning disability. The assumption seems to be that citizens have a right to obtain access to documents, but this right extends only to obtaining documents in a conventional form. However, the access needs of disabled people could be elaborated on in the Community legislation and the internal rules of procedure which must be adopted under Article 255. The new Treaty has therefore opened up possibilities; the follow-up measures which need to be taken by the institutions will determine whether disabled people are able to gain equal access to the documentation, or whether they will be excluded.

G Subsidiarity - Article 5 (formerly Article 3b)

The Treaty article which specifies that the Community shall act in accordance with the principle of subsidiarity will remain unchanged as a result of the Amsterdam Treaty. It will now be contained in Article 5 (previously Article 3b).

However the Member States have clarified the concept of subsidiarity and adopted a protocol (which is binding and part of the Treaty) "with a view to defining more precisely the criteria for applying [the principle of subsidiarity] and to ensure ... strict observance and consistent implementation by all institutions." (Protocol on the Application of the Principles of Subsidiarity and Proportionality, preamble)

This protocol specifies that:

".. the Commission should:

except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents." (Point 9)

The protocol does not specify with whom the Commission should consult; however, it could be argued that where measures directly concern disabled people, consultation should occur with their representatives. Furthermore, it could be argued that such consultation should also occur where measures indirectly concern disabled people. If interpreted in this way, the protocol will reinforce the declaration concerning Article 95 on the internal market and the requirement that the needs of disabled people be taken into account when legislating in this field, by requiring consultation.

The consultation requirement applies only in areas covered by the subsidiarity principle, i.e. areas where competence is shared between the Community and the Member States. In a few fields, such as monetary union, the Community has exclusive competence and the protocol shall not apply (although the Commission may still wish to consult).

H Human rights - Articles 6 and 7 (formerly Article F TEU)

Historically the European Union has not paid much attention to the human rights and fundamental rights of its citizens. This oversight was mostly due to the economic objectives underpinning the establishment of the European Communities. Moreover, the protection of human rights in Europe was guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the European Court of Human Rights in Strasbourg.

Over the years, the European Union has become increasingly concerned with the issue of fundamental rights(iii). This is demonstrated by the fact that currently in the European Union there is no doubt that the Community legal order should guarantee an adequate protection of fundamental human rights, which are at the core of Europe's democratic society (iv). Initially, fundamental human rights gained recognition in Community law in the case law of the European Court of Justice which stressed that these rights were part of the general principles of law which the Court is bound to apply pursuant to the then Article 164 (now Article 220) of the Treaty of Rome.

However, with the advent of the Single European Act (1987), protection of human rights found its way into Community legislation (v). Article F of the Maastricht Treaty contains a reference to fundamental rights in its second paragraph. This is left unchanged in the Amsterdam Treaty and states:

"2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States as general principles of Community law."

The first paragraph of this article, now renumbered Article 6, was amended in the Amsterdam Treaty as follows:

"1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."

Previously the first paragraph only stated:

"1. The Union shall respect the national identities of the Member States, whose systems of government are founded on the principle of democracy."

Nevertheless, it is clear that in the Amsterdam Treaty the fundamental rights of EU citizens are more firmly reasserted. It reaffirms the fundamental principles on which the Union is founded and strengthens the Union's commitment to fundamental rights.

More importantly and significantly, the new Article 7 TEU enables the Council to take action in the event of serious and persistent breaches of fundamental rights occurring in any Member State:

"2. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State."

However, Article 7(1) contains some procedural barriers which may make it (politically) difficult for the Council to determine the existence of a serious and persistent breach of the principles mentioned in Article 6(1). Firstly, a proposal must be submitted by one third of the Member States or by the Commission. It is unlikely that Member States will want to accuse each other of breaches of human rights. Furthermore, the Member State(s) behind the proposal need to find the support of one-third of the Member States to be able to submit it to the Council. In effect, this may mean that most proposals for the Council to determine a breach of fundamental or human rights will come from the Commission. European and national disability NGOs should therefore focus on lobbying the European Commission if they want to obtain a condemnation of a Member State's breach of fundamental principles.

Secondly, the proposal must be approved unanimously by the Council, excluding the vote of the representative of the Member State involved. Thus if only one Member State, other than the Member State in which the breach is alleged, actively opposes the proposal, then it will be blocked and remain unadopted. Add to this the psychological and political fact that the Members of the Council - i.e. the Member States themselves - would be judge and party to such a decision. This will cause most Member States to be cautious. Moreover, prior to taking any decision, the Council must obtain the assent of a two-thirds majority within the European Parliament, with a majority of the MEPs present. In addition, the government of the Member State in question must be invited to submit its observations.

It should be noted that this article does not have direct effect and will not confer any new or extra rights on citizens. Like Article 13, this article merely gives the Union power to take action to stop breaches of fundamental rights by suspending some of the rights deriving from the application of the Amsterdam Treaty to the Member State involved, including the voting rights of the representative of the government of that Member State in the Council. It should be noted that if the Council succeeds in determining a breach under Article 7 (1), this does not automatically lead to a suspension of the rights of the Member State against which finding was made. In order to suspend any rights, the Council will need to take a new decision, acting by a qualified majority.

To conclude, the question remains as to how Article 6 (1) should be interpreted, as it is of a general nature. Does the concept of human rights and fundamental freedoms also include non-discrimination on the basis of disability? This question is significant, since the European Convention for the Protection of Human Rights and Fundamental Freedoms currently contains no reference to disability. Also, could it be read together with Article 13, which encourages the Council to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation?

H 1. Human rights benchmarks - entry requirements for new Member States

A new opening clause was added to Article 6 TEU (formerly Article F) by the Amsterdam Treaty. It states:

"The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States".

States wishing to join the European Union must respect these principles. This is specified in an amended Article 49 TEU (formerly Article O). Similar criteria are required for entry into the Council of Europe.

These changes are a natural follow-up to the political criteria for membership of the Union set by the European Council meeting in Copenhagen in 1993 (the so-called "Copenhagen criterion"). To be eligible under the Copenhagen criteria an applicant State must have

"achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."

The new Article 6 TEU reflects the Copenhagen criteria, with the exception that the protection of minorities is omitted and an extra reference to liberty is included.

It is one thing to require compliance with human rights standards to qualify for entry, it is quite another to specify which standards apply and how they are to be interpreted.

Doubtless the Universal Declaration of Human Rights (1948) and the UN Bill of Rights (composed of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) are authoritative at a general level. In this regard, it should be borne in mind that UN General Assembly Resolution 3447 (1975) stressed that people with disabilities enjoy exactly the same civil and political rights as all others. It should also be stressed that General Comment No.4 under the Covenant on Economic, Social and Cultural Rights deals specifically with the meaning of these rights in the context of disability. Economic and social rights can be said to be authoritative because of the indivisibility of both sets of rights, as enunciated repeatedly at international level.

Closer to home, the European Convention on Human Rights is an obviously authoritative source of relevant human rights standards. Some disability test cases are beginning to reach the European Commission on Human Rights under the convention but have met with little success so far.

It is significant that the new fourth paragraph in the preamble to the Treaty on European Union makes explicit reference to the Council of Europe Social Charter of 1961 and the 1989 Community Charter of the Fundamental Social Rights of Workers. The 1961 Social Charter has recently been revised substantially and is quite explicit on the rights of people with disabilities. It has yet to come to force and, strictly speaking, the reference in the

preamble to the 1961 Charter probably does not encompass the revised version.

A strong case might also be made that minority rights should be respected by the applicant States. Member States have stated their commitment to minority rights in various international and regional declarations.

The actual procedure for admission is the same under new Article 49 - that is, unanimous approval is needed from the Council and the European Parliament must support the measure by an absolute majority.

I General principles of Community law

The European Court of Justice, which has the task of interpreting Community law, has developed a number of general principles to assist it in its interpretative task. These general principles are not listed in the Treaty (vi). Rather, they are based on constitutional principles shared by the Member States and on the nature, structure and objectives of the Community (vii). Respect for fundamental rights is explicitly stated by the European Court of Justice to "form an integral part of the general principles of Community law" (viii).

The Court of Justice developed these principles partly in order to make the idea of supremacy of Community law acceptable to national (constitutional) courts. Since Community law is of a higher legal order than all sources of national law, including provisions on human rights in national Constitutions, it was feared that it might develop to the point of eroding such rights. In order to reassure national courts, the European Court of Justice stressed that Community law is not boundless, and is subject to the limitations imposed by general principles (ix). Evidence of these principles is to be found in the international treaties - including those on human rights - to which the Member States are parties (x).

Most of the general principles actually recognised by the Court of Justice have to do with the functioning of the internal market. This is not surprising given the (initially) economic dimension of the European Community. Hence, the general principles "recognise" property rights, and, with regard to economic rights, the requirement of proportionality and the principle of equality or non-discrimination (xi). The general principle of equality, as developed by the Court of Justice in this "economic" context sits apart from - but overlaps with - the concept of equality as a fundamental right.

From the perspective of market rationality it is clear that some notion of non-discrimination is needed to produce rationality as well as fairness. While the Treaty articles addressing non-discrimination on grounds of nationality (xii) and equal pay for men and women (xiii) reflect this fact, they are not necessarily exhaustive.

With the steady expansion of Community powers into non-economic areas it might be expected that a broader notion of fundamental rights could be built into the Court of Justice's general principles. This expansion has been reinforced by the Amsterdam Treaty. There are in fact recent signs that the Court of Justice may be willing to expand the scope of the general principle of equality or non-discrimination, and to move towards the notion of equality as a fundamental right. In a case before the Court, Advocate General Elmer (xiv) stated:

"There is nothing in either the EU Treaty or the EC Treaty to indicate that the rights and duties which result from the EC Treaty, including the right not to be discriminated against on the basis of gender, should not apply to homosexuals, to the handicapped Equality before the law is a

fundamental principle in every community governed by the rule of law and accordingly in the Community as well. The rights and duties which result from Community law apply to all without discrimination"(xv)

This opinion by the Advocate-General reveals the possibility of arguing for a general principle of non-discrimination - one that includes people with disabilities. This line of argument is becoming more difficult to resist since, for example, the new general non-discrimination article (Article 13) amounts to a concession that discrimination does exist with respect to people with disabilities, and concepts of discrimination are beginning to expand to include disability.

J Institutional changes and the adoption of Community legislation

Institutional reform, and the simplification of the procedures for adopting Community legislation, were key objectives for the Amsterdam intergovernmental conference. There was a need to reform the Council's unanimity voting procedure and to reallocate the votes with regard to qualified majority voting in order to prepare the Union for expansion into eastern Europe. With five or more additional Member States, it would become even more difficult to reach unanimous agreement on legislation, and the disproportionate number of votes given to smaller Member States under the qualified majority voting procedure would become more problematic. In addition, there was a need to impose a limit on the number of Commissioners.

A further challenge which needed to be addressed at the intergovernmental conference was the lack of democratic control within the Union. The European Parliament is the only European body elected directly by the citizens, and the complicated decision-making and legislative procedure can mean that at times it has only a limited say. This is particularly so with regard to the cooperation procedure and, to a lesser extent, in relation to the codecision procedure (see chapter B).

J 1. Reform of the unanimity voting procedures and voting rights/qualified majority voting in the Council

No agreement proved possible in this area. Although all Member States recognised the need for reform, some (larger) States were reluctant to move away from the unanimous voting procedure, as this would have opened up the possibility of their being overruled, and some smaller Member States did not wish to see their position weakened under the qualified majority voting procedure by a reduction in their number of votes.

J 2. The European Commission

It is generally agreed that the Commission, with its present membership of 20, is too large. As a result, problems of coordination arise and portfolios are divided up amongst a number of Commissioners. However, the Member States could not agree on how to resolve this situation. Many of the smaller Member States were unwilling to give up their Commissioner, and the larger Member States responded by refusing to sacrifice one of their two Commissioners.

Instead a protocol has been prepared whereby the Commission, as from the date of the first enlargement, may not contain more than one Commissioner having the nationality of a particular Member State. However, this is conditional upon a future agreement on the redistribution of voting rights in the Council in favour of the larger Member States, which would give up one of their two Commissioners in return.

J 3. Decision-making and the involvement of the European Parliament

In a number of cases the cooperation procedure has been replaced by the codecision procedure, under which the Parliament has a much greater say. This applies to exceptions to the free movement of persons, employment, research and development, public health, sex equality, discrimination on grounds of nationality, establishment, social security, education, various elements of social policy and transparency. In addition, the codecision procedure will apply to environmental policy, transport, infrastructure, expenditure on social and regional policy and the combating of fraud. It is interesting to note that these are areas which are of direct interest for the citizen. The codecision procedure has also been simplified.

Furthermore, a number of Council decisions require the assent of the European Parliament, including the determination of a serious and persistent breach of human rights and certain international agreements. This procedure continues to apply with regard to the accession of new Member States.

The position of the European Parliament will therefore be considerably strengthened by the Amsterdam Treaty.

5 Scope of the unratified Treaty

To complement the previous sections, this section outlines political reflections and developments made since the Amsterdam Treaty was agreed in June 1997, and gives examples of early use of the unratified Treaty. Whilst some observations made in this section are relevant at the time of writing only, they will be a useful historical reference for understanding the dynamics of the European integration process.

First, some of the sections of the new Amsterdam Treaty already have more or less legal effect, such as the chapter on social provisions and the employment title. The declaration on the new Article 95 also has potential impact before ratification. These aspects are expanded upon below.

The publication of Agenda 2000 and subsequent European Employment Summit in Luxembourg are both landmarks in the framework of the Treaty revision. Together with other sections in this chapter, they provide good illustrations of the political process(xv).

Finally, the European Parliament's views on the Treaty and its aspirations for future institutional change along with some views of the European Commission as expressed in various press releases, give examples of implications for the main EU institutions.

A Moral force of the declaration on internal market legislation (Article 95)

The Amsterdam Treaty must be ratified in each Member State before it comes into force (see table in section H). Whilst most sections of the Amsterdam Treaty cannot be put to any practical use until the Treaty is ratified, some provisions have already opened up opportunities.

As noted above, the declaration on Article 95 specifies that the needs of disabled people shall be taken into account when internal market legislation is adopted. This text is not legally binding and confers no legal rights.

Nevertheless, on the basis of this declaration, it could be argued that the Commission, as the body which proposes legislation, is obliged to set up some mechanism whereby all internal market proposals are "disability-proofed", i.e. tested to see whether they have any negative impact on disabled people, and amended if this is the case. It could also be argued that the Commission should consult disabled people when drafting its proposals.

It is generally admitted that the Commission could take action immediately to achieve the objective set out in the declaration if it so wished. This is because the declaration is nonbinding and its legal effect will not be greatly altered by the ratification of the new Treaty. At the very least, the Commission should already be considering how it can ensure that the needs of disabled people are taken into account when internal market legislation is proposed following the ratification of the Amsterdam Treaty.

B The chapter on social provisions - also for the UK

Fourteen of the fifteen Member States signed up to the Agreement on Social Policy under the Maastricht Treaty, and are legally bound by this. Once the Amsterdam Treaty is ratified, the Agreement on Social Policy will be incorporated into the main body of the Treaty, and will legally bind all fifteen Member States. However, legal and political changes resulting from the new chapter on Social Provisions can already be noted, even before the Amsterdam Treaty comes into force.

The fourteen Member States have adopted three directives under the Maastricht Agreement on Social Policy. These cover parental leave, consultation of workers in certain undertakings, and, most recently, part-time work.

Now that the UK government has committed itself to take part in the Agreement on Social Policy, these directives can also be extended to cover the United Kingdom. This is made legally possible by the use of other Treaty articles which do apply to the United Kingdom, such as Article 100 (internal market legislation) or Article 118a in the existing chapter on social provisions. These Treaty articles can provide the legal basis for a directive which covers the United Kingdom, and which is identical in nature and scope to that already applying to the other Member States as a result of the Maastricht Agreement on Social Policy. Accordingly, the directives on parental leave and consultation of workers were extended to cover the United Kingdom in December 1997, and the Commission is proposing a measure which will extend the effect of the part-time work directive.

Therefore, even before the Amsterdam Treaty is ratified, it will be possible for the fourteen Member States to continue to adopt social policy legislation on the basis of the Maastricht Agreement on Social Policy, and for this to be extended to the fifteenth Member State using other Treaty articles. Once the Amsterdam Treaty has been ratified, the new chapter on social provisions will provide the legal basis for the legislation which will cover all Member States.

C The Luxembourg Summit and the employment title

In Amsterdam, it was agreed that the provisions of the employment title will be made effective immediately, in advance of ratification. The Luxembourg presidency was asked to organise an extraordinary Employment Summit.

On 20 and 21 November 1997, EU leaders met in Luxembourg to agree on common guidelines for job creation and to substantiate the Employment chapter of the Amsterdam Treaty. The measures that were agreed centre around a set of employment guidelines, which will be transferred into national action plans in each country.

The guidelines concentrate on four areas: improving employability, increasing entrepreneurship, improving adaptability in businesses and employees, and strengthening equal opportunities. Under this last heading, the European Disability Forum, through a great deal of campaigning, was able to achieve a specific reference to disability. Paragraph 79 of the Job Summit conclusions states:

"Promoting the integration of people with disabilities (sic) into working life

The Member States will

- Give special attention to the problems people with disabilities may encounter in participating in working life."

This explicit commitment is of prime importance, particularly as it has been included in the section relating to the strengthening of policies for equal opportunities.

Returning to the national action plans, which must be submitted to the Council and Commission by 15 April 1998, it is vital that they be drawn up in consultation with NGOs, and specifically with NGOs of disabled people and parents of disabled people unable to represent themselves. The political impetus of Paragraph 79 must be maximised and the disability movement must continue to voice its ambivalence about the new buzzword - employability. The employment chapter and the outcome of the summit will of course have repercussions on the long awaited Commission communication on a new employment strategy for disabled people. It is of paramount importance that this should be adopted as soon as possible. Without it, an ad hoc, piecemeal approach to the critical employment situation of disabled people will continue. The paper must also provide a sound frame of reference regarding disabled workers and potential workers for the 1999 guidelines and national actions plans.

The EDF also urges that the resources which are to be made available via the European Investment Bank and the European Employment Initiative agreed by the European Parliament for small and medium enterprises should also include a ring-fenced amount for actions to promote the employment opportunities of disabled people.

D Agenda 2000

Agenda 2000 was presented by the European Commission shortly after the Amsterdam Treaty was agreed, and sets out the Commission's detailed strategy for enlarging and strengthening the Union for the 21 st century.

The EU faces significant challenges on the road to enlargement and related reforms. Progress in one direction is inextricably linked to advances in the other. All European citizens will be affected. This article looks at several issues raised in Agenda 2000 -issues which the disability movement must consider if it is to take an active part in the new agenda's implementation.

Disabled people should ensure the disability perspective is taken on board in the "mainstream" debate. The EDF will follow this area carefully and a working group has been formed to lead the work.

D 1. Strengthening...

Agenda 2000 suggests strategies for achieving growth, as well as improving employment

and quality of life. Related aspects include:

- new impetus for education and training programmes that promote transnational mobility for young people;
- making social protection systems more employment-friendly;
- reforming pensions and healthcare;
- promoting a more cohesive and inclusive society by giving more attention to public health and the enforcement of environmental regulations;
- the progressive establishment of an area of freedom, security and justice.

Other proposals extend to the strengthening of a citizens' Europe and the organisation of a new IGC shortly after 2000. The latter would continue the institutional reform not completed in Amsterdam. Disability organisations need to monitor their role in civil dialogue and the impact of any changes in voting procedures for disability-related affairs.

Given that the income per capita of the applicant countries is only a third of the Union average, cohesion and structural policies will become increasingly significant. There is potential scope to improve the disability-related aspects of these policies, thanks to the greater importance attached to social and employment affairs at EU level. The new agenda also highlights EU proposals to reform the common agricultural policy, and fresh priorities for rural development.

D 2. ... and enlargement

In the framework of Agenda 2000, the Commission analyses each applicant State in more depth than during previous application negotiations. The so-called Copenhagen criteria are now taken into account, extending analysis to future prospects of compliance. An applicant State must have "achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." The EDF will seek to ensure that the disability dimension has been successfully taken into account in the Commission's annual reports on applicant countries and fulfilment criteria.

Accession partnerships with applicant States are being established, bringing together all forms of EU assistance to support the applicants' preparation. Disability organisations in the current EU Member States should support partner organisations in the relevant countries, thus ensuring that some of these resources are spent on improving the situation for disabled people.

E EU institutions on the Treaty outcomes - reinforcing institutional change

E 1. European Parliament

During the intergovernmental conference on the Treaty on European Union, the European Parliament was keen to extend, as far as possible, the powers and competence of the EU. As an institution the European Parliament was, of course, most interested in extending the codecision procedure to cover all categories of legislation. This would greatly enhance the powers of the Parliament within the EU decision-making and legislative process.

The European Parliament was a key supporter of the inclusion of a general principle of non-discrimination in the Treaty text, successfully achieved in the chapter on principles of the EU. Parliament was also a vigorous supporter of the incorporation of fundamental social rights into the Treaty - and reference to fundamental social rights was made in the Treaty text under the chapter on common provisions. While the non-discrimination clause was inserted into the existing Treaty structure, the Parliament also pushed strongly for the creation of a new chapter in the Treaty dedicated to employment policy and a separate

chapter on social policy. The Social Affairs Committee played a leading role in developing the ideas of Parliament, on the revised Treaty, in the field of social policy.

The European Parliament adopted its Resolution on the Amsterdam Treaty in Strasbourg on 19 November 1997. The Parliament regrets that one of the main aims of the Treaty revision was not achieved, namely to put in place the institutional reforms needed to ensure that an enlarged Union would be effective and would function democratically.

The European Parliament recognises that the opportunities provided by the new Treaty can lead to tangible results only if the political will is there. It recognises that the Amsterdam Treaty is, in many ways, of greater significance as a political than as a legal tool. The European Parliament is keen to execute, as far as possible politically, the terms of the Amsterdam Treaty prior to its ratification. In this, it differs from the other EU institutions, in particular the European Commission, which is less willing to recognise and adhere to the terms of the Amsterdam Treaty prior to its ratification.

While welcoming the extension of the codecision procedure, the European Parliament would like to see its own powers increased to make any amendment to the constituent Treaties subject to parliamentary approval, and is also calling for a new method to be introduced for preparing and adopting Treaty amendments. The European Parliament would like the codecision procedure to be extended to the areas of legislation not yet covered and regrets that qualified majority voting has not been broadened either.

The European Parliament welcomes the enhanced powers provided in the Treaty in a number of policy areas, as in the areas of employment, social policy and health. In the area of social policy the European Parliament has asked to be kept informed of negotiations between management and labour, and where agreements between the latter are implemented by a Council decision they should be subject to Parliament's approval. On the matter of transparency, the European Parliament calls for improved public access to EU information. Despite its requests for further improvements, overall the European Parliament welcomes the new Treaty and calls for its ratification by all Member States.

E 2. The European Commission

The Commission objectives for the IGC centred on institutional reform, which it regarded as essential to ensure that the structures of decision-making were consistent with the needs of an enlarged Union with over 20 Member States, and to achieve the goal of a strong Europe, able to fulfil the expectations of its citizens. The changes were perceived as necessary on account of both future enlargement and economic and monetary union. However, institutional changes require unanimity, which is difficult to achieve in the absence of sufficient political will. Still, the Commission recognised the result as a positive one, especially as it brought important areas, such as the chapter on social provisions, more clearly into the ambit of Community decision-making.

The results of the IGC, and the Treaty - including the extension of majority voting to new areas -, were regarded as a positive step forward. While welcoming the progress made, it was recognised that a new intergovernmental conference would be necessary for a complete examination of institutional structures.

6 Looking to the future: the next intergovernmental conference

The Amsterdam Treaty specifies that before the European Union numbers 20 Member States, a new intergovernmental conference to revise the Treaty must be held. With five or six eastern European countries already actively preparing for membership, it is expected that a new conference will be convened in 2001/2002. Therefore, even though the ink of the Amsterdam Treaty has hardly had time to dry, it is appropriate to consider what amendments should be made to the Treaty on European Union. Policy makers and civil servants are already working on this, and NGOs also need to turn their thoughts to the matter.

To a certain extent, the proposals for a revised Treaty will depend on how the new Treaty actually works in practice. Some provisions of the Amsterdam Treaty may prove more effective and useful than expected and will need few additions or amendments, whilst others will be less valuable than anticipated, and will require improvement.

However, even at this early stage it is possible to identify a number of areas where amendments may well be desirable:

A The general non-discrimination article

From an NGO point of view it would be useful for the next intergovernmental conference to address the following points concerning the non-discrimination article:

- Ensuring the general non-discrimination article has direct effect - meaning that it is capable of conferring a right not to be discriminated against in areas covered by the Treaty. Individuals could rely on this right before their national courts. This would put the general non-discrimination article on a par with the provisions prohibiting discrimination on grounds of nationality and providing for equal pay and equal treatment for men and women.
- Amending the general non-discrimination article so that it gives a positive right to equal treatment. At present the general non-discrimination article is framed in a reactive rather than a pro-active way. It allows the Community to take action to "combat" discrimination, but does not give a positive right to equal treatment.
- Allowing the adoption of Community legislation to implement the non-discrimination article by qualified majority vote in the Council, and giving the European Parliament a greater say through the codecision procedure.

B Integration of the declaration on the internal market (Article 95) into the main body of the Treaty

It has been noted that this declaration, which requires the Community to take account of the needs of disabled people when adopting internal market legislation, is non-binding, and measures which fail to consider the disability perspective cannot yet be challenged before the European Court of Justice.

It remains to be seen how seriously the Community institutions will take the declaration, and whether a consultative body involving representatives of disabled people will be established. However, even if this is the case, the status of the declaration would be further strengthened by its incorporation in the main body of the Treaty. This would place a legal obligation on the Community institutions and mean that internal market legislation which did not take account of the needs of disabled people could be declared invalid by the Court of Justice.

C A clear legal base for a disability social action programme in the Treaty

It was noted above that the new Article 137 allows the Community to adopt action programmes to "combat social exclusion". Once the Amsterdam Treaty has been ratified it will become clearer how the term "social exclusion" will be interpreted; up until now, however, the Commission has not generally viewed this term as encompassing disabled people.

If this provision is not seen as providing a suitable legal basis for action programmes targeted at disabled people, or if other problems arise, NGOs will want to see this issue returned to at the next intergovernmental conference. The addition of a specific reference to disability action programmes in Article 137, or elsewhere, will then be desirable.

D Reference to NGO civil dialogue

One of the general demands made by social NGOs prior to the Amsterdam intergovernmental conference was that the Treaty should provide for a greater consultative role for social NGOs. The Maastricht Agreement on Social Policy, which will be incorporated in the main body of the Treaty by virtue of the Amsterdam text, already gives a significant role to the social partners (European level representatives of workers and employers). These social partners must be consulted when the Commission is considering proposing certain kinds of social legislation, they must be given the opportunity to submit an opinion on the proposals made, and they are allowed to propose Community social legislation. Two such proposals from the social partners have already become Community law (the directives on parental leave and the rights of part-time workers.)

It was never likely that such an elevated status would be given to the social NGOs under the Amsterdam Treaty - however it was hoped that the role of social NGOs would be recognised, and that some reference to the need for, or desirability of, consultation would be made.

In fact the only reference to NGOs is found in a non-binding declaration which reads:

"The Conference recognises the important contribution made by voluntary service activities to developing social solidarity.

The Community will encourage the European dimension of voluntary organisations with particular emphasis on the exchange of information and experiences as well as on the participation of the young and the elderly in voluntary work." (Declaration 38)

This falls far short of giving (social) NGOs a formal consultative status.

A further priority for the next intergovernmental conference must therefore be an express reference to the role of (social) NGOs, and specifically the requirement that they be consulted when social legislation and policy is adopted. Their position would then be more akin to that of the social partners.

7 Postscript on campaigning

In addition to the areas identified as possible aims for the next intergovernmental

conference, the EDF has agreed a number of campaign objectives in its short-term strategy programme. The outcome of Amsterdam and the areas explored in this Guide will greatly influence the dynamics of the work, and create an unprecedented new political and legal impetus.

Little, however, can be pursued formally prior to ratification, with the exception of the title on employment. At the time of publication, the ratification process is going smoothly in all the Member States, and it seems that the aftermath of Maastricht will be avoided. Yet, as history demonstrates, an unexpected political event may trigger serious reservations. Should this occur, the disability movement must be vigilant, and be ready to work with their relevant government representatives to ensure that the commitments made during the Amsterdam Summit are not jeopardised.

The disability movement is also concerned to reflect on the best way to exert a positive influence on the forthcoming European Parliamentary elections. This guide has explored a number of areas which might usefully be addressed in local manifestos, and disabled people's organisations at all levels have a major responsibility in discussing these with prospective MEP candidates.

The EDF 1998/1999 work programme has identified a number of campaign issues in which the new provisions in the Amsterdam Treaty as identified in this Guide will play a fundamental role. Perhaps the most important of these are discussions around the new European disability programme. The evaluation report of the HELIOS II Programme was adopted by the Commission in January 1998. This clearly highlighted the value of a new venture focusing on the participation of disabled people as key stakeholders.

The question of an appropriate legal base for such a programme remains, and as this Guide demonstrates, the Amsterdam Treaty did not provide an unequivocal legal base, but rather a number of possible options, which require definition and are largely dependent on political will among all Member States. The EDF and its members must continue to campaign to ensure a political climate which is conducive to the adoption of a new disability programme.

The Guide also pinpoints other campaign actions which should be pursued by EDF members and are seen by them as key priorities for the foreseeable future. Particular emphasis will be placed on the follow-up to the employment guidelines, and the scrutiny role which the EDF must play in monitoring national action plans and shaping next year's guidelines.

On the threshold of an enlarged European Union, another major area of work must be rigorous proofing of the human rights criteria to ensure that the human rights of disabled people within the applicant States are also a vital benchmark. In this connection, the EDF will be encouraging existing or emerging organisations in the new Member States to prepare their membership for active involvement in the work of the EDF. Again, this guide will prove to be an invaluable resource and ongoing reference tool.

8 Further explanations

Please note that this section is still to be finalised.

A Europe - 15 ratification process in dates

In January 1998 most Member States were planning to adopt the Amsterdam Treaty by parliamentary (P) approval only, but referendums (R) are scheduled for 1998 in three Member States, as shown in the table below.

Member State	Planned procedure	Probable completion date	Probable date of next legislative elections
Belgium	P	Mid-June 1998	1999 July
Denmark	R (28 May) and P	End of May 1998	1998 March
Germany	P	Government aims for 3 May	1998 September
Greece	P	September/October 1998	2000 September
Spain	P	Spring/summer 1998	2000 March
France	P	Uncertain - Probably autumn '98	2002 February /March
Ireland	R (April) and P	April/May 1998	2002 June
Italy	P	Spring 1998	2001 March
Luxembourg	P	Spring 1998	1999 June
Netherlands	P	Before elections on 6 May 1998	1998 May
Austria	P	July 1998	1998 October
Portugal	R (autumn) and P	Autumn '98, depending on date of ref.	1999 October
Finland	P	May/June 1998	1999 March
Sweden	P	June 1998	1998 September
United Kingdom	P	Easter 1998	Before 31 May 2002

B Referring to the correct Treaty - a brief overview

Referring to an EU or EC Treaty article is not always straightforward. This annex aims at clarifying the situation for readers. Readers are advised to have a copy of the Amsterdam Treaty (available on the Europa server <http://europa.eu.int/>) at hand whilst reading this Guide.

There are four relevant treaties

- the Treaty on European Union (Maastricht, 1992)
- the Treaty establishing the European Community - TEC (Rome, 1957)
- the Treaty establishing the Coal and Steel Community - ECSC (Paris, 1951)
- the Treaty establishing the Atomic Energy Community - Euratom (Rome, 1957)

The Treaty on European Union (TEU) includes the other treaties. The Treaty on European Union (TEU) for instance was created by the Maastricht Treaty (1992) and amended by the Amsterdam Treaty (1997). This distinction is important for readers of this guide, since it is the changes brought in by Amsterdam Treaty that are in focus.

The Maastricht Treaty included seven titles:

- Title I - Common provisions (Articles A-F)
- Title II - Provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community (Articles

- 1-248 + protocols)
- Title III - Provisions amending the Treaty establishing the European Coal and Steel Community
- Title IV - Provisions amending the Treaty establishing the European Atomic Energy Community
- Title V - Provisions on a common foreign and security policy (Article J)
- Title VI - Provisions on cooperation in the field of justice affairs (Article K)
- Title VII - Final provisions (Articles L-S)

In addition a number of protocols/declarations were added.

These seven titles are referred to as the Treaty on European Union and include the Treaty establishing the European Community as amended by the Maastricht Treaty (Title II). Title II is also popularly (not in the legal text) known as the first pillar of the TEU along with Titles III and IV. Pillar II (Title V) and pillar III (Title VI) make out the other two. To add to the image of a "Greek temple", the roof on these pillars are Title I and VII.

The Amsterdam Treaty itself contains 15 articles, mostly concerned with amendments to the four existing EU treaties. Basically, it brought about four types of change:

- amended some articles
- added some articles
- removed lapsed provisions
- renumbered all the articles

Because the Treaty article numbering was becoming increasingly complicated, one thing the Amsterdam Treaty did was to suggest renumbering of articles. Where the Amsterdam Treaty actually added articles to the TEC or TEU, rather than amended them, these were given article numbers following the old Treaty numbering. Also these new articles are to be renumbered when the Amsterdam Treaty is ratified.

When the Amsterdam Treaty is ratified, the articles will have the following structure:

- Title I - Article 1-7
- Title II - Article 8
- Title III - Article 9
- Title IV - Article 10
- Title V - Article 11-28
- Title VI - Article 29-42
- Title VII - Article 43-53

Title II, including Article 8 in the TEU as amended by the Amsterdam Treaty contains the TEC. The TEC has also been renumbered and now contains Articles 1-314.

This means that there will for instance be four Articles 13 when the Amsterdam Treaty is ratified. Art 13 TEU deals with the role of the European Council in Common Foreign and Security Policy. Article 13 TEC deals with non-discrimination (previously Article 6a TEC as added by the Amsterdam Treaty).

In this Guide, we have tried to be consistent by referring to the TEC if nothing else is mentioned, and specifying it with TEU when it refers to this, and we have used new article numbers to familiarise people with the new numbers.

C Table of cross-references of renumbered articles with previous articles, relevant to the EDF guide

Article numbers refer to TEC if nothing else is specified.

Treaty title	Previous article	Renumbered article
Non-discrimination	6a *	13
Single market legislation	100a	95
Chapter on social provisions	117	136
	118	137
	118a	138
	118b	139
	118c*	140
	119	141
	119a	142
	120	143
	121	144
	122	145
General principles and human rights	F TEU	6 TEU
	F.1 TEU	7 TEU
Access to information		1
		251
	191a	255
Subsidiarity	3b + protocol	5+ protocol
Health	129	152
Employment	109n	125
	109o	126
	109p	127
	109q	128
	109r	129
	109s	130

* Added by the Amsterdam Treaty

D References

D 1. European Union institutions documents

a) Council of the European Union

- Council Resolution on the Equality of Opportunity for people with disabilities. 20 December 1996. Official Journal C 12,13.01.1997.

b) European Commission

- Commission Communication on Equality of Opportunity for Persons with Disabilities: A new European disability strategy. COM (96) 406
- European Social Policy - A way forward for the Union. A White Paper COM

(94) 333

- Evaluation report of the HELIOS II Programme

c) European Parliament

- Report on the intergovernmental conference
- Report on the Treaty of Amsterdam. A4-034/97.
- Report on the equality of opportunities for people with disabilities. A40044-97 (Barbara Schmidbauer report).
- Report on the rights of disabled people A40391-96. (Mary Banotti report).
- Resolution on the equality of opportunities for

d) Other

- The Report of the Reflection Group on the IGC: A Strategy for Europe. 6 December 1995. SN 520/95

e) Treaty texts

- Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts.
- Single European Act

f) Directives

- Council Directive 94/45/EC on the establishment of a European Works Council or a procedure for information and consultation of employees in undertakings
- Council Directive 93/104/EC concerning certain aspects of the organisation of working time
- Council Directive 91/236/EC on the approximation of laws of Member States concerning telecommunications terminal equipment including mutual recognition of conformity.
- The European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of laws of the Member States relating to lifts.
- Council Directive 97/81/EC, concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC.
- Council Directive 96/34/EC on parental leaves

D 2. Other sources

- Resolution from the European Disabled People's Parliament on 3 December 1993.
- European Day of Disabled Persons 1995. Disabled persons' status in the European Treaties: Invisible citizens.
- European Day of Disabled Persons 1996. How can disabled persons in the European Union achieve equal rights as citizens? The legal and economic implications of a non-discrimination clause in the Treaty of European Union. A report by the legal and economic expert working group: Lisa Waddington, Aart Hendriks, Tom McCarthy and John Wall.
- Invisible Citizens - The IGC Update Newsletter May 96-March 97

E Abbreviations

CEEP	Centre européen des Entreprises publiques
CMLR	Common Market Law Review
DSI	De Samvirkende Invalideorganisationer (DK)
EC	European Community
ECJ	European Court of Justice
ECR	European Court Reports
EDF	European Disability Forum
EIB	European Investment Bank
EP	European Parliament
ETUC	European Trade Union Confederation
HELIOS	Community Action Programme 'Handicapped Europeans living independently in an open society'
IGC	intergovernmental conference
NGO	Non-governmental organisation
QMV	Qualified majority voting
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
UNICE	Union of Industrial and Employers' Confederations of Europe

F Biographies of contributors

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Angel Ballesteros holds a masters of Law from Harvard Law School and a Master of European Community Law from Université de la Sorbonne. He currently works as adviser in European legal matters at ADB Consulting, and has undertaken academic research in USA civil rights law and European intellectual property law, along with writing of reports for various international organisation.

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Aart Hendriks is lecturer in health law at the University of Amsterdam and research associate, attached to the Netherlands Institute of Human Rights at Utrecht University. He is a member of the Board of Advisors of the Dutch Council of People with Disabilities.

c) Stevens, Helga

Helga Stevens holds a Master of Law from University of California at Berkley, California, USA and a Licenciat in Law from the Faculty of Law, Catholic University of Leuven. She is currently Attorney at Claes and Partners and has, as project leader, recently finalised a Europe-wide project on Sign Language at the European Union of the Deaf (EUD) and has long experience of various activities in the Deaf movement.

d) Wall, John

John A. Wall, CBE, MA (Oxon). Totally blind since age eight. Qualified as Solicitor in England in 1954. First blind person to be appointed to judiciary (Deputy Chancery Master) in 1990. Chairman Royal National Institute for the Blind since 1990. President European Blind Union since 1996. Chairman UK Disability Forum for Europe since 1993.

e) Waddington, Lisa

Lisa Waddington (1966) graduated in Law and Politics from the University of Birmingham (1989) and holds a Ph.D. in law from the European University Institute in

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f) Quinn. Gerard

Gerard Quinn is a graduate of the National University of Ireland and Harvard Law School. He has been on long-term leave of absence from his university in Ireland since 1995. He spent 1996 working with the European Commission (DGV, E/3) and is presently the Director of Research at the Irish Law Reform Commission.

G Notes

i Article 2 of the Agreement on Social Policy also addresses equality between men and women with regard to labour market opportunities and treatment at work.

ii Revised international Code of Good Clinical Practice (1997), published in International Digest of Health Legislation 1997; 48 (2): 231-234.

iii Michael O'Neill, Fundamental Rights and the European Union, in Irish Human Rights Yearbook 1995, Gerard Quinn (ed.), Round Hall, p. 67.

iv Alain Van Hamme, Human Rights and the Treaty of Rome, in Human rights, A European Perspective, Liz Heffernan, ed., Round Hall Press, p. 70.

v Alain van Hamme, op. cit., p. 70.

vi Textual windows, of sorts, onto general principles are contained in Articles 164, 175 and 215.

vii Case 11/70 Internationale Handelsgesellschaft v Einfuhr und Vorratstelle für Getreide und Futtermittel [1970] ECR 1125. CMLR 255.

viii Id. at para 4

ix Case 29/69 Stauder v City of Ulm [1970] ECR 419. CMLR 112.

x Case 4/72, Nold v Commission [1974] 2 CMLR 338.

xi See e.g. Case 152 etc./81, Ferrario [1983] ECR 2357 at 2367.

xii Article 6 - to become Article 12 in new Treaty.

xiii Article 119 - to become Article 141 in new Treaty.

xiv Advocate-Generals have the task of advising the Court on the judgment it should reach. Advocate-Generals' opinions are frequently (but not always) followed.

xv Opinion of Advocate-General Elmar in Case C-249/96 Lisa Jacqueline Grant v South West Trains Ltd. Although the Court of Justice did not follow the Advocate General's opinion, and did not find in favour of Lisa Grant, the Court did refer to Article 13 in the new Treaty in its judgement.

xvi The sections on Agenda 2000 and the Employment Title can be found in full in

EQUATE No. 2 - March 1998.