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## EU Equality Law as the ‘First’ Fundamental Rights *Policy* of the EU’

Roundtables, 4 April 2017, Maastricht

(Organised by Elise Muir)

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### 1. Introduction to the Research Agenda

This event is an invitation to reflect on the constitutional challenges raised by efforts to shape fundamental right *policies* at European Union level. A selected yet increasing number of EU competences indeed allow for decision-making by EU political institutions - and therefore politicization of the debate - on EU intervention on fundamental right matters. The increasing use of such competences triggers a set of questions on the interplay between primary and secondary law making as well as European and national law making in matters of fundamental right protection. The economic, financial, migration and security agenda as well as burning questions on the legitimacy of the EU in the past few years intensify the need to engage in a deep reflection on the system of check and balances at hand when shaping fundamental right protection at EU level.

In this series of roundtables, EU equality law is taken as a case study to investigate such challenges. EU equality law will be examined both as a uniquely ancient and a remarkably advanced set of legal rules explicitly designed to protect fundamental rights at the EU level. A few years after the entry into force of the Lisbon Treaty that gave binding force to the Charter of Fundamental Rights of the EU, both the EU’s political fundamental rights agenda and related case law of the Court of Justice of the European Union (CJEU) on fundamental rights are growing in importance as well as complexity. In the meantime, just over a decade after the expiry of the transposition periods of the Racial Equality Directive<sup>1</sup> and Framework Employment Directive<sup>2</sup> (which prohibits discrimination on grounds of religion or belief, sexual orientation, disability and age), EU equality law offers a unique set of legal tools developed, implemented and monitored beyond the State level *specifically* to enhance and promote fundamental rights.

The latest developments suggest that the principle of equal treatment is at the forefront of the process of law-making to protect fundamental rights in the European Union. One can compare for instance the ruling in *Küçükdeveci*<sup>3</sup> in which the CJEU adopts a robust approach to the applicability of the fundamental right to equal treatment with the ruling in *AMS*,<sup>4</sup> where the same institution appears reluctant to transpose its reasoning to other (social) fundamental values. Similarly, the new Directive 2014/54<sup>5</sup> points at the relevance of sophisticated

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1 Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22.

2 Directive 2000/78 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

3 CJEU, *Seda Küçükdeveci v Swedex GmbH & Co. KG.*, Case C-555/07, ECR 2010 I-365.

4 CJEU, *Association de médiation sociale v Union locale des syndicats CGT and Others*, Case C-176/12, ECR not yet reported.

5 Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8–14).

mechanisms for the enforcement of the fundamental right to the free movement of EU workers and their families and in particular their right to equal treatment.

After setting out the delicate constitutional context in which fundamental right policies may shape up (I), the specificities of the right to equal treatment in EU law will be explored (II) and compared to other policies that are also closely connected to fundamental rights (III). A final roundtable will be devoted to the strengths and weaknesses of mechanisms for the enforcement of EU equality law understood as a fundamental right policy (IV).

## 2. Background & Format of the Event

The research agenda thereby introduced is the object of a book project to be finalized in the coming months. The author, Elise Muir, would be most grateful to share thoughts on the topic with experts in the field and to receive input on preliminary findings.

To that effect, the event will be divided in four roundtables. All of them will start with a presentation by the author of the book project of a first set of reflections, followed up by two short presentations by experts in the field who have been invited to elaborate on the suggested theme as well as to comment on the first presentation (a draft paper having been submitted to them ahead of the event). There will then be time for further discussion with all those present.

The event is open to all. There will be regular breaks so that those interested may join in at any stage. All participants to the workshop will be invited for lunch as well as drinks and tapas after the event.

## 3. Programme

09:00 Coffee and registration

09:15 Welcome

**Chair:** *Bruno de Witte* (Maastricht University)

09:30 **Roundtable I**

**‘Checks and balances in the process of fundamental rights’ law-making in the EU’**

*Monica Claes* (Maastricht University)

*Diane Fromage* (Maastricht University)

*Elise Muir* (Maastricht University)

Coffee break

11:00 **Roundtable II**

**‘EU equality law-making at a constitutional cross-roads’**

*Anne Pieter van der Mei* (Maastricht University)

*Gillian More* (European Commission, DG Employment)  
*Elise Muir* (Maastricht University)

12:30 Lunch (for all registered participants)

**Chair:** *Ellen Vos* (Maastricht University)

14:00 **Roundtable III**

**‘The tension between secondary and primary law on equal treatment: Lessons for and from other EU policies’**

*Maja Brkan* (Maastricht University)  
*Irene Wieczorek* (University of Cambridge/Université Libre de Bruxelles)  
*Elise Muir* (Maastricht University)

Coffee break

15:30 **Roundtable IV**

**‘EU law supporting the enforcement of the fundamental right to equal treatment at domestic level: challenges’**

*Mariolina Eliantonio* (Maastricht University)  
*Lisa Waddington* (Maastricht University)  
*Elise Muir* (Maastricht University)

16:45 Closing

Drinks & tapas

#### 4. Organisation

This event is organised by the Maastricht Centre for European Law (Maastricht University, Faculty of law) with the financial support of the Veni programme of the Dutch Research Council (Nederlandse Organisatie voor Wetenschappelijk Onderzoek).

Speakers/discussants will be reimbursed on the basis of a second class plane or train ticket. Accommodation for up to two nights nearby can also be arranged (deadline for confirmation is 2<sup>nd</sup> March 2017).

The person in charge of organisational matters is Yleen Simonis (yleen.simonis@maastrichtuniversity.nl).