

Attachment I:

Absolute demands of the European Disability Forum regarding the future European non-discrimination directive

The due respect for **specificities of disability** discrimination is crucial to the effectiveness of the forthcoming non-discrimination directive. These specificities are also enshrined in the UN Convention on the Rights of Persons with Disabilities and derive, among other things, from the issue physical/structural barriers, unique to disability.

The directive must protect all people perceived as disabled, including everybody who currently has a disability; people associated with a person with a disability through a family or other relationship people perceived as disabled; people who had a disability in the past; people who have a genetic predisposition to become disabled and people who may have a disability in the future. The Directive must provide guidance, based on the social model of disability, on when the person shall be regarded as disabled for the purposes of the directive.

The definition of discrimination must be in line with the definitions of the UN Convention. Article 2 of the Convention defines 'discrimination' as *"any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."*

From this definition, it derives that both direct and indirect discrimination, as well as failure to make a reasonable accommodation or to ensure accessibility, harassment and an instruction to discriminate must be considered discrimination.

Services must be interpreted broadly and cover economic activities provided (directly or indirectly) for remuneration, including culture, leisure and sports, insurance, transportation, the communications environment, the built environment, housing, and manufactured and designed products.

Services which impede independence, social or occupational integration and participation in the life of the community (such as the provision of institutionalised accommodation for people with disabilities) must be regarded as a form of discrimination, unless justified in exceptional circumstances.

The new proposal must have a wide scope (at the very minimum as wide as that of the Race Directive) and cover a wide range of fields including: social protection and social security; health care; social advantages; education; access to and supply of services, facilities and goods which are available to the public; access to information and procedures; access to buildings, telecommunication, transport modes and other public spaces and facilities; education; and images of persons with disabilities

in the media. These fields would only be covered insofar as they fall within the scope of Community law.

Issues of physical accessibility, including issues relating to accessible information, are unique to disabled people, and justify specific attention being paid to this topic within the Directive. The inspiration on what ‘accessibility’ is must be drawn from the UN Convention. **The requirement to provide accessibility is anticipatory** (in that covered parties are expected to have anticipated the needs of disabled consumers/users and made their services etc.. accessible in advance). In anticipating the adaptations to be made, the service provider should aim to eliminate the barriers that may impede participation to persons with a particular kind of disability. Such approach already exists in the UK under the DDA and has been interpreted to apply to persons with a particular kind of disability ‘as a class’. **Such an anticipatory duty also applies to reasonable accommodation.**

Prohibition of discrimination in education would have as an objective maximising the social and academic development of people with disabilities.

‘Inclusive education’ means the inclusion within the general education system of persons with disabilities and ensures that each individual receives the support required to facilitate their effective education. At the same time, it does not mean “one size fits all and envisages reasonable accommodation and effective individualised support measures to help and individual to achieve their maximum academic performance.

The obligation to provide inclusive education does not deny the possibility of offering special education, but in line with requirements within the general education system, and based on the choice of persons with disabilities themselves or .their parents in the case of persons unable to represent themselves.

Positive action must complete and must be compatible with non discrimination legislation, in order to ensure full equality in practice. Special attention must be paid to women with disabilities, people with severe and multiple disabilities and their families, and people facing multiple discrimination. The directive must recognise that these groups may have a particular need for targeted positive action measures. A comprehensive strategy will have to be developed at EU level on the development of these measures, which must be consistent with obligations under the Convention on the Rights of Persons with Disabilities.

The Directive should also address remedies and enforcement, and provide for the establishment of a body or bodies for the promotion of equal treatment with regard to disability. Accessibility of remedies to people with disabilities and an independent right of associations to take action to enforce non-discrimination law must be provided. Such right must exist where the challenged act is alleged to discrimination against “more than a nominal number of persons with disabilities.”

Multiple discrimination must be addressed. The test for both direct and indirect discrimination under EC law involves a comparison between the person alleging discrimination and a (hypothetical) person who does not have the relevant

characteristics of the complainant. The directive must ensure that where an individual alleges that **direct multiple discrimination** has occurred on the grounds of disability in combination with another ground, a comparator is selected who has none of the relevant characteristics of the complainant. The provision is in conformity with EC law, as only those characteristics which are referred to in Article 13 EC are regarded as relevant.

In order to ensure that **indirect multiple discrimination** covered by the new Directive, it must prohibit any seemingly neutral practice or criterion that puts the person with a disability in combination with any other Article 13 ground (or grounds) at a particular disadvantage.

The test to establish whether **harassment** or **an instruction to discriminate** must be based on proscribed behaviour that is motivated by disability, in combination with one or more of the other Article 13 characteristics.

17 June 2008