



## **Promoting Equality and Combating Disability Discrimination: The Need for a Disability Specific Non-Discrimination Directive Going Beyond Employment**

**October 2007**

"States should recognise the rights of organisations of persons with disabilities to represent persons with disabilities at national, regional and local levels. States should also recognise the advisory role of organisations of persons with disabilities in decision-making on disability matters."

### **Rule 18 of the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities**

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### **Promoting Equality and Combating Disability Discrimination: The Need for a Disability Specific Non-Discrimination Directive Going Beyond Employment**

The document is available in English, and in alternative format upon demand from the EDF Secretariat, and on the EDF Website at: [www.edf-feph.org](http://www.edf-feph.org)

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## 1. Introduction

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The problem of discrimination against disabled people is not the problem of a small minority. 50 million people in the EU are disabled, i.e. 10% of the population. Discrimination, in its many forms, is a daily reality for most disabled people and their families. It is not limited to any particular country or any particular part of society, but is a widespread phenomenon that prevents disabled people from fulfilling their potential.

Up until recently attempts to address the problem of discrimination have typically focused on awareness raising measures and voluntary codes of practice, as well as legislation relating to specific areas. However, despite these attempts, the situation has changed little.

As a result, there is growing recognition that voluntary measures need to be supplemented by non-discrimination legislation that allows individuals to use legal action to enforce their rights. The adoption, in 2000, of the EC Framework Employment Directive illustrates this new rights-based approach.

The adoption of the Framework Employment Directive was a major step forward in the combating of disability discrimination within the European Union. EDF warmly welcomed the adoption of this Directive, whilst, at the same time, recognising that it was restricted to the area of employment. EDF acknowledges that the implementation and transposition of (the disability) provisions of this Directive have been challenging for some Member States, and that time has been needed to ensure the proper bedding down of the new legislation.

Disabled people should have the opportunity to participate in all areas of life. Whether in the fields of employment, the provision of goods and services, transport, education, the rental of accommodation or telecommunications, disabled people have a right to equal access and non-discrimination that needs to be recognised in the legislation. Furthermore, it does not make sense to outlaw discrimination in one area whilst allowing it in another. A disabled person may find it easier to get a job because of relevant non-discrimination legislation, but that will be of little use if he or she is unable to get to work because of a lack of accessible transport. Hence, the objective should be for non-discrimination legislation to be as comprehensive as possible.

Furthermore, the recent Eurobarometer survey published by the European Commission on 23 January 2007 has shown the urgent need, and strong support from EU citizens, for further action to tackle discrimination faced by

people with disabilities. In particular 91 % of respondents agreed that further action was needed to remove barriers and 79% considered that being disabled was the most disadvantageous condition for men and women.

As a consequence of all these factors, EDF feels that the time is ripe to reflect on the need for further EC legislative measures designed to combat disability discrimination beyond the area of employment. December 2006 saw the end of the extended deadline for transposition of the disability provisions of the Framework Employment Directive. However, the vast majority of Member States were obliged to transpose the relevant provisions by the end of 2003, and should have already built up some experience with regard to disability discrimination. In addition the end of 2006 saw the adoption of the UN Convention on the Rights of Persons with Disabilities. If, as expected, the EC and the 27 Members States ratify the Convention, it will be necessary to consider what additional Community (legal) instruments need to be adopted in order to comply with the Convention.

## **2. We promised to deliver and we will deliver on our promises**

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The European Disability Forum is currently coordinating a vast campaign to raise awareness of the need for further legislative action at EU level through the collection of one million signatures across Europe ([www.1million4disability.eu](http://www.1million4disability.eu)). The collected signatures were handed over to the Vice President of the European Commission on 4 October in Brussels on Rond Point Schuman through a symbolic cheque, representing the 1.230.771 signatures collected to that date. The signatures were handed over at an outdoor demonstration attended by 2000 persons from 30 different European countries which received media attention. In addition to the Vice President of the Commission, Mr. Pöttering, President of the European Parliament, and Mrs Idalia Moniz; Secretary of state on disability representing the Portuguese Presidency, were at the event. The fact that over one million citizens across the European Union have signed in favour of 'the adoption of a European legislation protecting rights of disabled people, fighting all forms of discrimination against them, ensuring equal opportunities and full inclusion' in less than nine months is a strong signal to the EU institutions. Moreover the Reform Treaty, once in force, will confer a formal legal status on such citizens' initiatives which attract 1 million or more supporters. While a high number of signatures were collected through a dedicated website which was constantly referenced to, with over 40 000 links daily, the vast majority of signatures were

collected on paper, involving a very proactive approach of organisations and individuals with disabilities. In some cities and villages, vast mobilisation took place involving everyone from decision-makers to common citizens. This was the first Europe wide disability civil rights campaign, and is in contrast to mass media messages on disability which are often confined to prevention or charity.

During her speech at the 4<sup>th</sup> October event Margot Wallström, Vice-President of the European Commission said *"I am not proud or able to say that Europe and its institutions have made everything possible. We have not! We have failed and we have a lot more work to do"* said today. *"You are such an important pressure on us that continues to remind us about the work that we still have to do and you are an important collaborator for the European Commission to prepare legislative proposal. I know that work is going on for a legislative proposal, hopefully for next year. We promised to deliver and we will deliver also on these promises"*.

The campaign will continue at national and European level until the promise is met.

## **2. A comprehensive Disability Specific Directive**

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The current paper is a follow-up to an earlier proposal of EDF. In 2003 after an extensive consultation procedure with its members and legal experts that lasted 24 months, EDF argued that a disability specific non-discrimination Directive which went beyond employment should be proposed by the Commission, and presented a text which it felt should be the model for that proposal. The goal of the current paper is to further reflect on that proposal and to set out cogent arguments on the need for further Community legislation to combat disability discrimination.

EDF believes that a future Directive implementing the principle of equal treatment for persons with disabilities must be a broad and comprehensive document. The Directive will have to prohibit direct discrimination, indirect discrimination, and discrimination in the form of an unjustified failure to make a reasonable accommodation. In addition harassment and an instruction to discriminate against persons on the grounds of disability should also be deemed to be discrimination. The material scope of the directive must be broad, covering 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. The Directive must 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.

A revised version of the EDF proposal, in line with the new international human rights framework on persons with disabilities, and policy and legislative developments at EU level, will be presented at the end of 2007.

### **3. Arguments in favour of a Directive implementing the principle of equal treatment for persons with disabilities**

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#### **3.1. Protection of Fundamental Rights**

The European Union is committed to protecting and promoting respect for fundamental rights. A key fundamental right is equality, and this has been reiterated many times by all the institutions of the EU and the EC, as well as by the Member States. This is naturally reflected in the EU Charter of Fundamental Rights, as well as in the Treaties and case law of the European Court of Justice. Article 6 EU states that the European 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. Article 21 of the Charter prohibits any discrimination on any grounds including, explicitly, disability and genetic features. In addition Article 26 of the Charter requires that the Union recognises and respects the rights of disabled people to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

The adoption of a broad and wide ranging disability specific non-discrimination Directive would complement the Charter (which should become binding under the Reform Treaty) and serve to protect the fundamental rights to equality and non-discrimination of disabled citizens and residents. The Directive would achieve a level of specificity which cannot be reached by the Charter, as well as conferring legally enforceable rights on disabled people. The Directive would put "flesh on the bones" of Article 21 of the Charter and complement that Article by spelling out exactly what is meant by the prohibition of discrimination. In the absence of the Directive a situation of legal uncertainty and lack of clarity could arise, as the exact scope of this Article would remain

uncertain. In addition, a disability specific Directive could make a valuable contribution to achieving the goals set out in Article 26, as well as reflecting the broad range of areas covered in that Article, and to meeting the requirements of the new UN Convention, which addresses discrimination in the exercise of all civil, political, economic, social and cultural rights.

### **3.2. Complying with the UN Convention on the Rights of Persons with a Disability**

On 13 December 2006 the United Nations General Assembly adopted the Convention on the Rights of Persons with a Disability. The Convention covers the civil, political, economic, social and cultural rights of people with disabilities, and requires, in Article 5, that all States Parties “prohibit all discrimination on the basis of disability”. This includes taking “all appropriate steps to ensure that reasonable accommodation is provided”. The Convention, in other Articles, addresses further areas which are also covered in the Directive proposed by EDF, including (but not restricted to) accessibility (Art. 9), living independently and being included in the community (Art. 19), access to information (Art. 21), education (Art. 24), and participation in cultural life, recreation, leisure and sport (Art. 30). It is anticipated that the EC, along with the 27 Member States, will ratify the Convention. As a consequence they will be bound to adopt the necessary measures and legislation to effectively protect the rights found in the Convention.

Adoption of a broad disability specific non-discrimination Directive would be a key step in complying with the requirements set out in the UN Convention – indeed, EDF believes that ratifying the Convention will place the EC and the Member States under a legal obligation to adopt such an instrument. In addition, the adoption of such broad ranging non-discrimination legislation could set an example to other countries (bound by the Convention) and mark the EC out as a world leader in the respect of the rights of people with disabilities.

### **3.3. Complementing and Securing the Goals of the Framework Employment Directive<sup>1</sup>**

This Directive already prohibits discrimination on grounds of disability in the areas of employment and vocational training. However, disabled people face discrimination in many other areas. Indeed, unless discrimination in fields such as education and transport is addressed, many disabled people will not be in a position to use the opportunities presented by the Framework Employment Directives. It is therefore necessary to adopt a holistic approach and to seek to combat disability discrimination in all the areas in which it arises. It is only by taking this approach that all people with disabilities will be able to fully integrate into society, and make an economic and social contribution thereto. A broad disability non-discrimination Directive would therefore complement and reinforce the Framework Employment Directive.

### **3.4. Achieving the Internal Market**

Whilst the main justification for the adoption of a broad disability specific non-discrimination Directive must be that it will promote the fundamental rights of disabled people, one should also recognise that such a directive would contribute to achieving the internal market within the European Union and promote free movement of goods and services. Article 3 EC specifies, amongst others, that the activities of the Community shall include an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital; a system ensuring that competition in the internal market is not distorted; and the approximation of the laws of Member States to the extent required for the functioning of the common market. These principles are reiterated in other sections of the Treaty.

A broad disability non-discrimination Directive would contribute to the achievement of the internal market, including providing for a free market in goods and services, and promote the free movement of providers and consumers. At present different legal standards exist throughout the EU. Some Member States require that providers of goods and services comply with high disability non-discrimination standards. In those States, goods and services must be accessible to individuals with a disability and those providing the goods and services must comply with non-discrimination law and, where

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<sup>1</sup> Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, O.J. L303/16.

necessary, provide reasonable accommodations. In contrast, in other Member States no such requirements exist.

The broad disability non-discrimination Directive should also result in accessibility features being included in the design and manufacture of EU products from the beginning, and mean that expensive adaptations are not required at a later stage, and that the market for European goods is not artificially restricted through the effective exclusion of (some) disabled consumers. In contrast, US legislation already requires that telecommunication services and products be designed and manufactured so as to be accessible (Telecommunication Act), and that other ICT goods and services purchased by federal entities are accessible (section 508 Rehabilitation Act), thereby encouraging European (and other) consumers to buy American-made products.

### **3.5. Responding to the Commission's Mapping Study on Existing National Legislative Measures<sup>2</sup> and the Study on Non-discrimination mainstreaming<sup>3</sup>**

In December 2006 a report, which provided a comparative analysis of national measures to combat discrimination outside employment and occupation within the EU Member States, was published. This report was commissioned by the European Commission to help it determine whether further Article 13 EC non-discrimination directives should be proposed. The report reveals that there exists a patchwork of national measures that prohibit disability discrimination across the 27 Member States. In some States protection is widespread, covering, for example, social protection, social advantages, and access to goods and services including housing, whilst in other States, protection is far more limited and only confined to employment. Similarly, some States confine the right to claim a reasonable accommodation to employment, whilst others extend it to additional areas, such as access to goods and services or education. Unfortunately the report reveals that there are still many States where protection from disability discrimination in many areas is notably lacking.

It is also worth noting that the report reveals that far more Member States have disability non-discrimination legislation that applies to goods and services

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<sup>2</sup> Available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm#stud](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud)

<sup>3</sup> Available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/stud/mainstr07\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mainstr07_en.pdf)

than was the case with regard to disability employment non-discrimination legislation prior to the adoption of the Framework Employment Directive. Prior to 2000, only three Member States (the United Kingdom, Ireland and Sweden) prohibited disability employment discrimination. Today, to mention but a few, the United Kingdom, Ireland, Germany, Spain, Portugal and Belgium, all have disability non-discrimination legislation which applies to goods and/or services (although the exact scope of the various legislation differs). However, other Member States, such as the Netherlands, have only taken the minimum action needed to comply with the Framework Employment Directive, and disability discrimination with regard to goods and services is completely unregulated.<sup>4</sup> The adoption of a Community-wide disability non-discrimination Directive, such as that proposed by EDF, would establish a level playing field for producers and providers of goods and services in the EU. In doing so, it would both promote the free movement of goods and services and consumers, as well as eliminating any possible distortions to competition that exist under the current multiple differing national legal regimes. The latter statement is also true for the many other areas covered by the EDF directive. The “mapping study” therefore reinforces the need – from both a fundamental rights perspective, and an economic perspective – for further Community disability non-discrimination legislation.

In April 2007 a second study was published on *Non-discrimination mainstreaming – instruments, case studies and ways forward*. This study revealed the many advantages which flow from the mainstreaming of non-discrimination concerns in policy instruments and activities at all levels. EDF believes that the adoption of a broad disability non-discrimination Directive could support and further stimulate efforts to promote disability non-discrimination mainstreaming at the national level by creating a climate in which such actions are easier to undertake and more likely to succeed.

### 3.6. Complementing Existing Community Instruments

*Commission Communication, Towards a barrier free Europe for people with disabilities,<sup>5</sup> and Commission Communication, Equal opportunities for people with disabilities: A European Action Plan<sup>6</sup>*

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<sup>4</sup> Although certain provisions of the criminal law may apply in the Netherlands.

<sup>5</sup> COM(2000) 284 final of 15.5.2000.

<sup>6</sup> COM (2003) 650 final of 30.10.2003. This Communication has been supplemented with a second Communication, Situation of disabled people in the enlarged European Union: the European Action Plan 2006-2007 COM (2005) 604 final of 28.11.2005.

A disability specific non-discrimination Directive would contribute to achieving some of the key goals set out in these two important Communications. The 2003 Action Plan introduced a multi-annual action plan running through to 2010 and had three central objectives: to implement fully the Framework Employment Directive with regard to disability; to reinforce mainstreaming of disability issues in relevant Community policies (e.g. European strategies for employment and social inclusion); and to improve accessibility for all. This last goal built on the earlier Commission Communication of May 2000 "Towards a barrier free Europe for people with disabilities", which stressed the need to remove the environmental barriers in society that prevent the full participation of people with disabilities.

Both Communications therefore recognise that accessibility is of vital importance for disabled people. The 2003 Communication states: "Accessibility to goods, services and the built environment is a central issue for people with disabilities which is also of concern to all EU citizens." (p.13), whilst the 2000 Communication states "The approach endorsed by the European Union acknowledges that environmental barriers are a greater impediment to participation in society than functional limitations. Barrier removal through legislation, provision of accommodations, universal design and other means, has been identified as the key to equal opportunities for people with disabilities." EDF strongly endorses these statements, and submits that the best way of achieving this goal would be to adopt a disability specific non-discrimination Directive covering these areas. The EDF proposal contains extensive measures and seeks to set high standards in these areas. Such a directive would therefore complement existing instruments dealing with Community disability policy, and support the Commission in achieving its stated aims.

### **3.7. Opening Access for Disabled People to other areas of Community Policies**

A broad disability non-discrimination Directive would have positive knock-on effects with regard to ensuring access for disabled people to the benefits of other areas of Community policy. As such it would serve the same goals as the mainstreaming of disability within Community policies, as provided for in the Action Plan. For example, it can already be expected that the Framework Employment Directive, which prohibits employment and training related disability discrimination, will help to ensure that disabled people are better able to benefit from national projects funded through the European Social Fund or Regional Development Fund. This development will naturally only be reinforced by the amendment made to the General Regulation on the

Structural Funds<sup>7</sup> covering the programming period 2007-2013, which now includes the principles of non-discrimination and full accessibility and full participation of disabled people and organisations of disabled people. A broader prohibition of disability discrimination at the European level can be expected to have additional (and perhaps unforeseen) benefits. This is true both with regard to disabled people being entitled to claim equal access to and benefit from national projects funded through EC money e.g the many cultural and education projects which benefit from EC funding, but also with regard to EC legislation. The case of access to the benefits of the internal market, including free movement of disability accessible goods and services, is an example of the latter.

### **3.8. Bringing Disability Non-Discrimination into line with Community Legislation on Race and Gender Non-Discrimination Legislation**

European legislation already prohibits discrimination with regard to access to goods and services in the case of three of the grounds covered by Article 13 EC (race, ethnic origin<sup>8</sup> and gender<sup>9</sup>). This demonstrates that both the Community institutions and the Member States have recognised the existence of this form of discrimination and the need to take action to combat it with regard to certain grounds. Disabled people are also disadvantaged by such discrimination and there can be no justification for the EC to maintain a legislative silence in this area in the long run. In order to achieve a degree of coherence in EC law, whilst at the same time recognising the peculiarities particular to disability discrimination, a broad disability specific non-discrimination Directive is needed. The necessity for such non-discrimination legislation has already been recognised by a number of Member States, as noted above, and an EC initiative could bring coherence and harmonisation across the Union.

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<sup>7</sup> Article 14.

<sup>8</sup> Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, O.J. L 180/22, 19.7.2000 (the Race Directive).

<sup>9</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principal of equal treatment between women and men in the access to and supply of goods and services, O.J. L373/37 21.12.2004.

### **3.9. Respect for the Principles of Proportionality and Subsidiarity**

All instruments of EC law must respect the principles of subsidiarity and proportionality. The disability non-discrimination Directive proposed by EDF fully respects these principles and notes in the Preamble (recital. 45):

“In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objectives of this Directive, namely ensuring a common high level of protection against disability discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the impact of the proposed action, be better achieved by the Community. This Directive does not go beyond what is necessary in order to achieve those objectives.”

### **3.10. Enforceability of existing instruments**

Enforcement procedures are vital if non-discrimination measures are to be successful. There is a whole range of European declarations, international conventions, national guidelines and voluntary codes of conduct relating to the non-discrimination of disabled people that have not changed the pervasive nature of disability discrimination. The main reason seems to be a lack of enforceability.

Only legislation, and legislation that allows for sanctions and redress, will indeed create rights for disabled people and help to remove the barriers currently existing in society.

## **4. Why the arguments against a Directive implementing the principle of equal treatment for persons with disabilities are unconvincing**

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### **4.1. Such a Directive is not needed now that the UN Convention on the Rights of Persons with Disabilities has been adopted**

EDF rightly celebrates the adoption of the UN Convention as a major landmark. However, this event does not eliminate the need for a broad disability specific non-discrimination Directive. Firstly, the legal impact of a UN Convention within the States which will ratify it, and for disabled people living within those States, is significantly different from the legal impact of an EC

directive. Whilst it is true that States and regional organisations, such as the EC, are legally bound to take action to comply with the UN Convention once ratified, the effect of the Convention is still largely dependent on the domestic law of the States concerned. Some States may allow the Convention to be relied on directly by individuals before national courts – however, many will decide that the Convention only has legal effect if the relevant national law is adopted. In addition the enforcement mechanism associated with the Convention, and the system of sanctions applied if compliance does not occur, are unfortunately rather weak. In essence the system consists of reports drawn up by States, which are then commented on (and, if necessary, criticised) by an expert committee. States may also allow individuals to submit complaints of violations to the expert committee, but this is only provided for in an optional protocol. Furthermore this is a long and drawn out procedure, and may well not provide a remedy for the individual complainant. Lastly, as yet, the EC has not ratified the Convention and only one EC Member State, Hungary, has done so. EDF hopes that the EC and the remaining 26 Member States will ratify quickly.

Directives, in contrast, have a very different effect in the national legal systems. EC Member States are obliged, within a set time limit, to adopt national legislation to achieve all of the goals set out in the Directives, and therefore to confer enforceable rights on individuals. Failure to do so results in prosecution before the European Court of Justice, and, as a result, States always comply (sometimes only following prosecution). In addition, where Member States are late in adopting the relevant national legislation, or fail to adopt legislation which covers all areas of the directive, frequently individuals can still rely on the directive directly before their own national courts, or obtain compensation from the government for the damage they have suffered as a result of the absence of proper legislation.

In conclusion, the adoption of a broad disability specific Directive is all the more necessary now that the Convention has been agreed upon. By adopting such a directive, the EC and the Member States would be taking an important step to comply with their obligations under the new Convention.

## **4.2 A general non-discrimination Directive, covering all Article 13 EC grounds would be more appropriate**

In proposing a broad disability specific non-discrimination Directive, EDF is only following the precedent set by the Community institutions, which have already adopted separate non-discrimination directives, going beyond employment, in the areas of race and ethnic origin, and gender. The existence of these two directives means that a broad non-discrimination Directive, covering all Article

13 EC grounds, is no longer an option. In addition, EDF believes that the issues arising with regard to disability discrimination are sufficiently specific and complex that a separate directive is needed to do justice to them. This is the case, for example, for access to information, access to buildings, telecommunication, transport modes and public spaces and facilities, and access to education. Comparable issues do not arise with regard to other Article 13 EC grounds, which themselves may also present ground specific non-discrimination issues.

### **4.3 There already exists a directive prohibiting disability discrimination in the area of employment, and various other legal measures providing for accessibility, non-discrimination in structural funds etc. – this Directive is not needed**

This statement in fact contains two arguments, namely:

- that no further EC legislation is needed at all; or in the alternative
- further legislation is needed, but that this should be adopted in very specific sectors, and a general non-discriminatory approach is not required.

With regard to the first point, it is simply a fact that no European measures to combat disability discrimination exist in most of the areas falling within the competence of the EC. Yet disability discrimination does arise in these areas, in fields as diverse as access to goods and services and access to information. This directive would meet this need.

With regard to the second point, such a sector specific approach would be extremely time consuming, and would take years to complete. This is because disability issues arise with regard to every single policy area which falls within the competence of the EC. EDF naturally believes that disability proofing of all EC instruments should occur prior to adoption, but the adoption of a broad non-discrimination Directive would not eliminate the need for such an approach. However, the adoption of a broad directive would have a significant effect in combating discrimination at the Member State level, and could always be supplemented by more precise Community instruments which include a disability specific dimension where needed. The two approaches therefore complement each other.

## **5. Equality bodies**

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In order to ensure effective protection and full implementation of the rights enshrined in current and future legislation, independent, staffed and resourced equality bodies must be put in place.

Moreover, the UN Convention requires the establishment of 'independent mechanisms' to promote, protect, and monitor implementation' of the Convention, including, but not confined to, the many non-discrimination provisions.

Although disability is covered by the remit of equality bodies in several EU countries, it is often just a 'portfolio' that has been added to the tasks of the bodies, which previously only dealt with race or gender discrimination. The complexity of discrimination on the ground of disability, further intensified by diversity of disability itself, means that such an approach provides insufficient protection or response. There is also lack of understanding amongst equality bodies of key concepts, such as 'reasonable accommodation', and disability is just perceived as an additional ground, similar to those which were previously covered. While it is important for equality bodies to be aware of and address intersectional or multiple discrimination, unless there is a good and equal understanding of all forms of discrimination, this objective can only be a myth or empty words.

Even in European countries where there is a relatively long history of legislative action to combat disability discrimination, the merging of previously separate and ground specific equality bodies paradoxically is leading to cutting of resources and political action. This is occurring at a time when the upcoming entry into force of the UN Convention requires, on the contrary, a stronger investment in equality bodies addressing disability discrimination.

## **6. Non-legislative measure in support of disability-specific legislation**

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At the time of writing (October 2007), the European Commission was conducting a review and impact assessment of its anti-discrimination 'initiatives' and considering whether to propose further initiatives. The review will attempt to determine, whether (a) no action is required, (b) non-legislative measures should be proposed, or (c) legislation should be adopted in the future.

Clearly 'no action', as outlined above, is not an option. Instead, EDF sees the adoption of disability-specific legislation as the only viable means of combating discrimination against people with disabilities in all areas of life.

Nevertheless, EDF would support a proposal for non-legislative measures, which would complement (but not replace!) legislation. Moreover, non-discrimination legislation would not remove the need for specific legislative initiatives or provisions that might be needed in specific areas (along the lines of the Regulation concerning the rights of disabled persons when traveling by air adopted last year).

The need for 'affirmative measures' to promote the integration of persons with disabilities is recognised in Article 26 of the Charter of Fundamental Rights and in the UN Convention on the Rights of Persons with Disabilities. According to Article 26 of the Charter, 'the Union recognizes and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community'.

Such complementary non-legislative measures could include the following:

## 6.1 An EU Pact on disability

At the Informal ministerial conference on disability in June 2007, Commissioner Špidla called on the EU Ministers to use the conference "to reach an agreement on the political priorities that will guide EU's activities in the future" and called on the Member States to launch a European strategy for the effective implementation of the UN Convention on the Rights of Persons with Disabilities. Such a strategy cannot, however, be confined to a simple exchange of good practice, and must involve Governments at the highest level. For this reason, EDF explicitly called for a European pact to coordinate the ratification of the UN Convention and implementation of its provisions.

## 6.2 Positive action measures

As underlined above, non-discrimination legislation needs to be complemented and reinforced by specific provisions facilitating the integration of people with disabilities. In addition, it is necessary to bring coherence in structural funding and other community initiatives such as those in employment, education, regional funding, development cooperation, human rights, research, etc... While theoretically the equal right to education and employment is fundamental and inalienable, it can only be fully enjoyed by

people with disabilities if accompanied with adequate support measures, which are necessary for achieving equal opportunities in practice. Furthermore, some disabled people will always need a higher level support. It is critical that all disabled people can benefit equally from equality rights.

### **6.3 Funding instruments**

All funding instruments must be made disability-friendly. This means that all actions supported by the European Union must benefit disabled people at least as much as other citizens. As a consequence, the EU cannot engage in development cooperation or regional projects which finance the construction of inaccessible schools or media initiatives that portray disabled people as objects of pity or contempt. Non-discrimination and accessibility requirements should be therefore inserted into legislative instruments which govern the allocation of funding.

Furthermore, the European Commission must take the lead in supervising and monitoring the implementation of these funding instruments. It should prepare, in consultation with disability organisations, toolkits advising on how successful implementation can provide for the full inclusion of disabled people. Similar toolkits have been produced before, but always at the initiative of disability organisations.

### **6.4 Impact assessment (disability proofing) of new legislative and policy initiatives**

Non-discrimination cannot be addressed in a vacuum and confined to specific initiatives. It is a fundamental right provided for in the EU Treaties.

The UN Convention on the Rights of Persons with Disabilities, which the European Community is expected to ratify, requires not only specific action, but general proofing of all past, current, and future initiatives in the light of disability rights. Such disability proofing is an overall responsibility of the European Community, and goes well beyond social policies. The EC must dedicate consistent resources and establish an appropriate structure within its institutions and decision-making system to ensure full implementation of non discrimination and human rights.

The current college of Commissioners has the ambitious programme to develop a Europe free of discrimination. It must give itself the necessary

means to achieve that goal, as it will be judged by the legacy it will leave to its successors.

## 6.5 Structured consultation with organisations of disabled people

None of the steps outlined above will be achieved unless the principle ‘nothing about us without us’ is applied and respected fully. This means that no decisions that have impact on disabled people can be taken without the involvement of disabled people. Organisations of disabled people will continue to have a key role to play in ensuring that policies are really effective in fighting discrimination, and this involvement should become even greater as the EC engages on new initiatives and ratifies the UN Convention.

EDF would welcome the opportunity to further discuss how this consultation can be reinforced and believes this would be a very useful exercise.

## 7. Conclusion

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EDF believes that the arguments presented above – covering the need to protect fundamental rights, respecting the new UN Convention on disability, complementing the Framework Employment Directive, contributing to the achievement of the internal market, responding to the recently published “mapping study” and contributing to the goal of non-discrimination mainstreaming, complementing existing EC instruments, bringing disability legislation into line with other EC non-discrimination legislation, opening access to disabled people of other areas of Community policy and respecting the key principles of proportionality and subsidiarity - establish a strong case for the need for a new Community directive designed to combat disability discrimination. Furthermore, any arguments which could be raised against adoption of such a directive are unconvincing. The directive could be EC’s most significant contribution to date towards improving the lives of the millions of disabled citizens and residents of the EU.

EDF hopes that the proposal that it will produce will make a constructive contribution to the drafting process of such a directive, and is keen to work with the Commission, Member State, and other EU institutions to achieve the adoption of this key legislation.

## ANNEX I - Examples of discrimination in areas beyond employment and training

This annex provides examples of the kinds of discrimination – which disabled people face on a daily basis in Europe – which a disability specific non-discrimination Directive could help to combat.

### 1. **Discrimination with regard to goods and services**

Problems with access to goods and services often start at the design stage. For example:

- Cash machines that are installed at too high a level, and so cannot be accessed by people who use wheelchairs, or which only provide touch screens that cannot be used by people with sight problems,
- aisles in shops that are too narrow for wheelchair users,
- remote controls for TVs or video recorders with tiny buttons that require good manual dexterity,
- bills that come with minute writing at the back telling customers how to make a complaint.

The list is endless.

A particularly relevant example in today's Information Society is webpage design. Access to the Internet can be of immense benefit to disabled people who are keen to enjoy the benefits of online shopping and banking, timetable information, sports results, news, TV and radio listings, etc. Unfortunately, even if disabled people have the adaptive equipment that allows them to use a computer, they are often faced with inaccessible websites. Blind and partially sighted people rely on websites with good website coding that allows them to use technology that reads the screen out aloud to them, or to change fonts or background colouring, or read an alternative text where images are provided that they cannot see. If the coding used falls below an acceptable standard the website becomes inaccessible.

In the area of services, accessibility of buildings (restaurants, museums, shops) is one cause of problems, but equally problematic are customer care policies that do not take account of the needs of disabled people. For instance, a restaurant owner who forbids animals as a general rule puts his staff and disabled customers in a difficult position if he does not specify that assistance dogs are an exception and are allowed.

It is in this area where the concept of an anticipatory duty to provide a reasonable accommodation, as exists under UK disability non-discrimination

law, is particularly relevant, as it requires the dismantling of barriers as a pre-emptive measure to avoid discrimination.

## **2. Discrimination with regard to mainstream education**

Disabled people who wish to receive their education in a mainstream setting often face discrimination from the institutions providing the education as well as from their non-disabled peers. As a result, they are unable to develop to their full potential; they achieve lower educational qualifications and are in turn disadvantaged in the labour market. Non-discrimination legislation requires education bodies to provide the necessary aids and make reasonable accommodations to allow disabled people to be educated in a mainstream setting where they have the ability to do so.

Discrimination occurs in many instances, but here are a few concrete examples:

- Unavailability of sign language interpretation for deaf students at lectures or tutorials
- Inaccessibility or lack of support for a person with an intellectual disability for non academic activities in which all students participate
- Inaccessibility of school premises for a wheelchair user

Such examples could also apply to education courses funded by the EU, either through specific actions programmes on education, such as the Jean Monnet programme, or, for example, through the structural funds.

## **3. Discrimination with regard to transport**

Many disabled people rely on public transport because they are unable to drive a car. However, they face a multitude of barriers such as inaccessible buses and stations, inaudible announcements and poor signage. For a wheelchair user identifying stations that are accessible and changing between different modes of transport often turns into a logistical nightmare.

Disabled people rely on accessible transport to participate in all kinds of activities, as citizens with equal rights. Accessible transport cannot be achieved overnight. Non-discrimination legislation recognises this by setting deadlines for achieving accessibility and monitoring progress towards that goal.

Here are a few example of discrimination:

### ***Undignified treatment***

A wheelchair user has to sign a medical declaration stating that his disability is not “contagious” in order to be allowed to fly with an air carrier.

### ***Fare Discrimination***

A wheelchair user trying to book a second class ticket on a train is told that, as only first class carriages are accessible, she will have to pay a supplement on top of the cost of the second class ticket.

### ***Limitation on the carriage of disabled passengers by airlines***

A number of deaf persons are being refused carriage by an airline as the number of disabled persons on board their aircrafts is limited to four persons.

### ***Accessible toilets***

A woman with mobility disabilities, travelling Economy Class on a train, is told that she is not allowed to use the only accessible toilet, since it is located in the First Class carriages.

### ***Travel with assistance dogs***

A woman with epilepsy, a visual impairment and a mobility disability is told that she cannot take her assistance dog onto a train.

### **Connections within airport**

The airport shuttle is not accessible to wheelchair users, and there is no announcement of stops to assist people with visual impairments.

## **4. Discrimination with regard to care in the community**

The institutionalisation of disabled people is a particularly difficult and emotive issue. In the past there was an assumption that it would be better for disabled people to live together in institutions where they could be looked after. This applied in particular to people with mental health problems who were seen as a danger to society. If they were “sheltered” from contact with society they would be protected from discrimination. This approach is gradually changing as institutionalisation itself is now perceived as a form of discrimination. The American with Disabilities Act describes the isolation and segregation of individuals with disabilities as a “serious and pervasive form of discrimination”. A regulation implementing the US legislation establishes that disabled people have a right to be treated in a setting that enables them to interact with non-disabled people to the fullest extent possible.

The UN Convention also stresses, in Article 19 addressing living independently and being included in the community, “the equal right of all persons with disabilities to live in the community, with choices equal to others, and (States Parties) shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs”.

## **APPENDIX – About EDF and other documentation**

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### **1 About EDF**

The European Disability Forum (EDF) is the European umbrella organisation representing the interests of 50 million disabled citizens in Europe. EDF membership includes national umbrella organisations of disabled people from all EU/EEA countries, accession countries and other European countries, as well as European NGOs representing the different types of disabilities. The mission of the European Disability Forum is to ensure disabled people full access to fundamental and human rights through their active involvement in policy development and implementation in Europe.

### **2 Other relevant EDF documents:**

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Should you have any problems in accessing the documentation, please contact the EDF Secretariat. (T: +32-2-282.46.00)