

European Day of Disabled People 2000

Social security & social integration

**Combating discrimination
against disabled people
in the labour market**

Conference report
Brussels, 5 December 2000

Employment & social affairs



European Commission

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European Commission
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Table of Contents

<u>Opening Session</u>	4
Odile Quintin , Director-General of Directorate General for Employment and Social Affairs, European Commission	4
Richard Howitt , Member of the European Parliament, President of the Disability Intergroup	8
Yannis Vardakastanis , President of the European Disability Forum	12
<u>Panel Discussion : Implementation of anti-discrimination legislation : lessons to be learned</u>	15
Gabrielle Clotuche , Director for Social Security and Social Integration, Directorate General for Employment and Social Affairs, European Commission	15
Susan Scott Parker , Director, Employers' Forum on Disability, UK	15
Torbjorn Andersson , Legal Advisor, Office of the Disability Ombudsman, Sweden	18
Frank Mulcahy , Kildare Network of People with Disabilities, Ireland	21
Paula Carey , Irish Congress of Trade Unions, Ireland	23
Patricia Bregman , Policy Planning and Mental Health Services, Canadian Mental Health Association, Canada	26
<u>Questions and Answers – open discussion</u>	28
<u>Afternoon Discussion Fora</u>	31
Discussion Forum 1 – Implications of the Council Directive	31
Discussion Forum 2 – Need for « positive action » to complement « non-discrimination » action	50
Discussion Forum 3 – Impact of Discrimination in other areas of life on disabled people's ability to secure and/or retain employment	70
<u>Closing Session</u>	89
Anna Diamantopoulou , EC Commissioner for Employment and Social Affairs, European Commission	89
Feedback from Discussion Fora	94
Discussion Forum 1	94
Discussion Forum 2	95
Discussion Forum 3	96
Concluding Speeches	99
Gilbert Huybrechts, Vice-President, European Disability Forum	99
Bartho Pronk, MEP, Disability Intergroup	100

Opening session

Chair Gabrielle Clotuche, Director for Social Security and Social Integration, Directorate General for Employment and Social Affairs, European Commission

Odile Quintin, Director-General of Directorate General for Employment and Social Affairs, European Commission

May I say what a pleasure it is to welcome everybody to this Conference on combating discrimination against people in the labour market. May I also underline the importance that the Commission attaches to this annual day which is organised in very close co-operation with the European Disability Forum and the European Parliament. This clearly illustrates the partnership that has been developed and which, indeed, is essential to make progress on such an important matter – the inclusion of disabled people in working and social life.

We are just a few hours away from the opening of the European Council in Nice where the European charter will be adopted. This means there will be a single visible list of rights for all citizens that were previously scattered around various treaties. It is also the first time that political and social rights have all been brought together. It was not an easy job to tackle. Some people in the Commission and the Parliament would have liked the end result to go further. However, it is, nevertheless, an important milestone. Progress has been made for all those who are concerned with upholding and respecting fundamental rights.

The European Council will also endorse the Social Agenda for the next five years. This is very strongly based on the communication prepared by the Commission last year, and disabled people have their place in it. The objective is participation in economic and social life, and to strongly combat any form of discrimination. I think these are essential parts of a respectful society that upholds human dignity.

The Social Agenda, which was adopted by the Employment and Social Affairs Council last week and which will be formally adopted by the Nice Council includes the designation of 2003 as the European Year of Disabled People. I think it is very important that this political decision has been taken. It is something we have all been working towards. That is why this year's European Day of Disabled People is of particular importance both to remind us of what has been accomplished and also to look at future prospects. In terms of progress, well, the adoption, last week, by Council of the Directive 'Establishing a General Framework for Equal Treatment in Employment and Occupation' laid down the general framework for equal opportunities for employment, and it does figure very high on the list of achievements. I am very pleased that disabled people have now given us an opportunity to debate all the implications of the Directive so that we can improve

employment opportunities for disabled people in Europe. I think this positive outcome involves more than the Directive. I think there are other points that allow us to see that we have made significant progress over the past year in taking Europe forward for disabled people.

Last year on the same occasion, Ms Diamantopoulou, our Commissioner, took the floor and she announced her intention to develop an action to assist disabled people focusing on the following major points: the Directive for equal treatment in the labour market; the Community action programme to combat discrimination; the Community initiative "Equal" to promote mainstreaming in community policies; and the proposal to declare 2003 as the 'European Year of disabled people'. I will not dwell on the Directive, because we will be discussing it throughout the day. I would just underline the enormous step forward that its adoption represents for European policy regarding disabled people, and also for the basic concept of respecting fundamental rights and the principle of non-discrimination.

The Council reached a unanimous agreement concerning the proposed Directive which was put forward by the Commission on 25 October 1999. So, it took just eleven months to conclude difficult negotiations, with a final eight hours discussion in Council.

I think the overall results are most important. I do not need to underline here that equal access to employment for disabled people is a right that is taking its time to be felt with in daily life. And if disabled people are under-represented in most areas of work, even though certain functional limitations do not have any implications for their performance, or can be easily overcome by a certain amount of adaptation, then I think this shows how deep-rooted the prejudices and stereotypes are. So I think a very strong message has been given to employers - people with disabilities are assumed to be workers and are assumed to be equally competent.

If adaptations are necessary to enable them to participate to the same extent as other workers, then employers must make those adaptations. The Directive says that unless it causes an undue burden for the employer, adaptation is a right for people with disabilities and not a privilege.

Obviously, the result is a compromise, and taking into account the difficulties experienced by certain Member States that is why there are two derogations concerning disabled people. Member States do not have to transpose the provisions of the Directive for the armed forces; and secondly, they can have an additional transposition period of three years. As I have already mentioned, there were eight hours of negotiation in the Council and these were important points for the final compromise.

It is important to underline the fact that these are optional derogations, so the Member States do not have to implement the points, and indeed most of them did not say during the negotiations that this is what they are planning. The Directive says that any Member State using the additional three years transposition period must report annually to the Commission on the measures

they have taken to ensure that action against discrimination on the basis of age and disability is subject to real progress. So, now the ball is in the court of the national legislators. They have to flesh out some of the notions that I have just mentioned to adapt the Directive to national conditions. So this Conference is most welcome as a means of starting that particular ball rolling.

The programme to combat discrimination was formally adopted at the Employment and Social affairs Council last week at the same time as the Directive. It is very important to underline the fact that the programme and the Directive must be seen as two complementary elements each reinforcing the other as part of a consistent strategy to combat discrimination. The programme will help us to better understand how discrimination works in practice and to promote public debate. It is important that trade unions, associations, employer's organisations, and researchers tell us about their experiences so that we can, together with them, effectively combat discrimination.

The prizes awarded yesterday showed how enterprises are able to be innovative, and demonstrated actions that can mark the difference between inclusion and exclusion. The EQUAL Community Initiative will be an important instrument to strengthen equal opportunities at local level and raise the profile of what discrimination means. Member States are working on national programmes to implement EQUAL and they will be launching their first call for proposals in the first quarter of 2001.

During the negotiations on EQUAL, the Commission reminded the Member States that, in line with the guidelines, every project must be open to all target groups. So the development partnerships must pay particular attention to the accessibility of meeting places, work places and modes of transport.

The third element mentioned, and this was also mentioned by the Commissioner is 'mainstreaming'. Mainstreaming is an issue of consistency; and, if we do not deal with it effectively at Community level, we will not remove the restrictions on disabled people. There was a Communication last year on 'a barrier-free Europe'. I would like particularly to stress the following objectives. We want to improve access for disabled people to European Union programmes and initiatives. We want to set up a vast pool of knowledge on disabilities enabling us to draw up a complete profile of trends and policies. We want to improve access to the information society and to technology, to ensure the participation of disabled people in the new knowledge based economy – this links with the Conclusions of the Lisbon European Council. We want to improve access to transport systems, by regulation, by carrying out research into accessible transport and by encouraging an exchange of good practice. We also want to examine how the European Union can use its structural financial instruments to promote the use of accessible goods and services.

We would also like to encourage the use of universal standards so that all products, services and environments are designed to be accessible including for disabled people. Finally, we would like to amend our own personnel policy

to give concrete expression to the principle of non-discrimination and equality of opportunity.

I would like to take this opportunity to thank the Rapporteur of the Parliament for her extremely encouraging report on the Communication. This was debated yesterday by the Social Affairs Committee in the Parliament. It seems to me that both the Commission and the Parliament consider the implementation of the Communication as an innovative approach that covers all issues related to disabled people.

I would like to come briefly to the final point mentioned last year by Ms Diamantopoulou – that is 2003 as the European Year of Disabled Citizens. Here too, we have made a lot of progress because the principle of this year has been adopted by all Commissioners. It now figures in the Commission's work programme; and is very firmly part of the Social Agenda to be approved by the European Council in Nice, France.

I would like to say something about combating social exclusion. This is one of the major developments to be agreed by the European Council in Nice. Once again the European Union has chosen an open co-ordination method to combat social exclusion. In October, the Council adopted objectives for combating social exclusion. It indicated a multi-dimensional integrated fight against social exclusion. Member States will have to submit their first national action plans by June 2001, and the Commission will draw up its first report on these plans before the end of 2001.

It seems to me extremely important when preparing these action plans, and we will tell the Member States this very clearly, that all relevant players should be involved. This includes the social partners and non-governmental organisations. Since the Member States are going to be implementing these national plans I can only encourage you as the NGO sector to lobby your governments and to make them aware of your concerns and the way in which you would like to see disabled people included, and social exclusion avoided. I think this is an extremely important tool for developing community action that makes it possible to include disabled people in social and economic life.

In conclusion, I would like to stress that one must appreciate the progress achieved by the European Union on equal opportunities for disabled people. This has been achieved not only through the Directive but also through all the initiatives I have just mentioned, and which illustrate a consistent and significant commitment by the European institutions to combat discrimination on grounds of disability. However neither the Commissioner nor I have the intention to rest on this. A lot of progress still has to be achieved to promote the social equality, which is the 'leitmotiv' of the Social Agenda for the next five years. This is based on two very relevant objectives - ensuring that more people are able to participate fully in social life, and developing a new form of European governance which will show more concern for involving all social actors and developing a partnership with civil society.

During the speeches today you will be able to identify what are considered the main rights of disabled people, and in particular how they should be protected at European Community level. I think the holding of this conference constitutes another step forward towards achieving our shared objectives, and I hope your exchanges during the discussion fora will be fruitful and inspired. We very much look forward to hearing the outcome of your discussions and setting up this partnership.

Richard Howitt, Member of the European Parliament, President of the Disability Intergroup

I do want to say at the outset that this is only one of many areas that we are involved with in the European Parliament in working with our colleagues in the Commission. For example - recently we secured an amendment to the First Reading report on access to public documents in the EU which is going to require European documentation to be available in accessible formats, not just the odd document, but all the documents - in Braille, large print and tape. Another example – we have also secured important amendments during the course of the last year to mainstream issues, not just in the social policy field but also in culture, education, development and human rights. Odile Quintin has talked about the very important work on the ‘barrier free Europe’ Communication and we are right in the middle of that. Next year too we will be working on a telecommunications Directive that is fundamental to disability rights. I hope that we will also come to the conclusion of the very long fight that we have been engaged in on the buses and coaches Directive to try to ensure, that at least in urban areas, buses and coaches are fully accessible for disabled people. We are not quite there yet - but we are very near to achieving it.

In making my comments about the equal treatment Directive at the beginning of today's Conference, I want to say one thing immediately - we have met together many times over the years and talked about what Europe might do. I think you should be very pleased that we can now talk, for the first time, about binding rules and compulsory legislation establishing rights for disabled people in the European Union. You have campaigned for that for many years. We are no longer talking about the need for legislation. We are talking about what the legislation says. We are not talking about why it is needed, but about how it will be delivered. We are not talking about starting down the road of action, but about what we can do as the next step - because we are actually on our way. So I am very, very pleased we can say that this year in a way that we have never been able to say it on any previous European Day of Disabled People.

It is right that, at the beginning of the Conference, we should remind ourselves why this Directive was needed. The statistics and the personal experiences are well known to you. But for employer representatives and for other observers here today, let us remind ourselves that disabled people are six times more likely to be unemployed than non-disabled people, and that disabled graduates are four times more likely to be unable to find a job than non-disabled graduates. Seventy per cent of disabled people are in manual or

unskilled jobs, and only one in four of people of working age with more severe disabilities are in work. We have still got a hell of a long way to go.

I congratulate those involved in organising the award ceremony last night and the successful nominees - particularly our Finnish colleagues I think these events have a role to play in providing role models and in inspiring us all. But I have some reservations about that approach. It does tend to single out the individual struggles and the individuals being able to overcome the struggle rather than focusing on changes that society needs to make and making sure that the blame lies where it is properly due, which is on society as a whole. I think that we should also give some awards to the many disabled people who have been unable to find jobs and been unable to get on. Because that is the reality, the everyday reality for disabled people across the EU.

Like Patrick in Sweden. He was someone who had a brain injury that made him intellectually disabled. He had work experience for five years in a bakery and when this training and work experience came to an end he applied for a job and was not given it. The employment advisor said "people like him could not expect to get anything". So, that bakery was quite happy to employ Patrick for five years when it was a cheap work experience job for him. But when they actually had to give him full employment rights and a wage, they said, 'no, thank you very much'. Let us give an award to Patrick!

Let us give an award to Jeremy. He graduated from the University of West England with a Degree in marketing. This is dynamic. He was optimistic about getting a job. But, after several months, he has still not found work. He regularly gets through to the second and third interview; but when he gets to the final stage the employers cannot get past the fact that Jeremy is profoundly deaf. Even though he could use fax and E-mail as a good substitute for the telephone, he has not succeeded in getting a job. So an award for Jeremy!

What about an award for one of our Spanish colleagues? He applied for a job here, in this very building, in the European Commission, and he went through everything you have to do. That is quite hard because there are written and oral exams. He is a blind person, and for the written exam, it was necessary to read through three volumes of legal texts on a particular Directive concerning the liberalisation of the electricity market. As a qualified lawyer he could do that more than adequately; but he was given these three volumes in Braille. It is quite impossible to read that amount of Braille for an exam in a short period of time, because we are talking about something that is several metres thick. Furthermore, although he was given a personal assistant during the examination, this person was not legally qualified. They were unable therefore to scan through the text, as anybody reading visually would be able to do to find the most important points to answer the exam questions. A talented lawyer from Spain would bring great skill and great experience to the European Commission, and we need him here in this building. But he failed the test by 6 marks, because he was unable to compete equally in that exam. So, an award to him as well!

So let us remember these individuals, and many of you and the people you work with during our discussions today. It is because members of the European Parliament come across such examples within our Member States on a daily basis that, when the equal treatment Directive came before us, we were determined to amend and strengthen it so it could combat really effectively the problems of discrimination against disabled people in the labour market. It is thanks to the European Parliament that harassment is recognised in the Directive, and is recognised as discrimination. It is thanks to the European Parliament that there has been a strengthening of the monitoring procedure in the implementation of the Directive, and that there has to be regular reporting by the Member States to the European Parliament and the Commission regarding progress in implementing the Directive.

It is also thanks to the European Parliament that there is strengthened wording in relation to the article on defence of rights, and how people can make complaints when they have been discriminated against. We have also ensured that a disabled person can be represented (if he or she so wishes) by an NGO, an association or other legal entity when fighting a discrimination case. That empowers disabled people who are complainants because they can be accompanied by their peers in claiming their rights under this Directive.

And linked to that – it is thanks to the European Parliament and our pressure that a specific article on civil dialogue requires full consultation with NGOs on the implementation of the Directive. I hope this will empower you in each of the Member States to make sure that this Directive is implemented strongly, powerfully and quickly. There were tough and controversial negotiations. And some of employers, but I am sure none of those who are represented here today, said, "We do not need this at all, we have European Health and Safety rules and we will just deal with it under that". They showed no recognition of the people who do not even get to the starting gate. But I am pleased that we won the arguments. Although, there were some that we struggled to win as strongly as we wished to.

Take the issue of 'reasonable accommodation'. Many of you have heard me refer previously to the fact that there was so little understanding of the principle of 'reasonable accommodation' in the European Parliament that interpreters used to interpret it (and I hope this is not happening today) as 'reasonable housing' for people. So we had to explain this every time that we talked about adaptations, because only in the UK, Sweden and Ireland, is the principle of 'reasonable accommodation' already recognised in the principle of law. Then we had negotiations on whether you can require 'reasonable accommodation' whilst, at the same time, including the concept of 'indirect discrimination'.

The final agreement is one that we still regard as ambiguous because there is ambiguity between Articles 2 and 5; and, depending on the interpretation of the way an employer has implemented 'reasonable accommodation' measures, they cannot be held to have discriminated indirectly in cases regarding disabled people. What that means is that, if a blind person applying

for a job as a social worker is told they must have a driving licence, they can be denied that job even though they can get around by public transport. This is nonsense, and it should not be included when the Directive is transposed into national legislation.

Odille Quintin has talked about the issue of the extra three years for implementing the provisions of the Directive on disability and age. We are totally opposed to that. The non-discrimination package deals with the different discriminated grounds on which people encounter discrimination - age, sexual orientation, ethnic origin and disability. And we have said for many years, and I have said to you, work with the other groups involved and do not regard them as a threat. There are many common issues in dealing with discrimination. Make others 'disability aware' and let us become aware of their issues. Let us also recognise that there are many black disabled people who face multiple discrimination, and disabled women who face sexual discrimination. Let us work together on that basis - it will make us all stronger. There is no hierarchy of oppression; all discrimination is bad. It is utterly wrong for Member States to say "we will get rid of some these discriminations in three years, but others will take a further three years ". It sends exactly the wrong signal out to all of us who are fighting discrimination in the Member States. So, I urge you, as the Commission already has, whether you are employers or disability activists or public officials or other representatives - go back to your Member States, forget the fact that six years is a maximum and actually talk about bringing this legislation in as quickly as possible, and as strongly as possible.

Can I finish by making just one more point. I know Yannis Vardakastanis will talk about this in a little more detail, but there is no point, there is no point in having a disability discrimination Directive on employment to give equal rights to disabled people in employment, if a disabled child has not been given the education they need to get the job in the first place. There is no point in having a disability discrimination Directive on employment, if transport is not available so that a disabled job applicant who is perfectly able to do the job is then unable to physically to get from home to the work place. There is no point in having a disability discrimination Directive on employment, if health and social care services segregate disabled people in residential institutions.. That is why we need comprehensive civil rights for disabled people. That is why we need a fully-fledged horizontal disability discrimination Directive at European level. And, that is why those of us in the Disability Intergroup in the European Parliament believe that we should not only have a European Year of Disabled people in 2003, but that, during the course of that year, the Commission should publish a proposal for a Directive to create a political momentum so that fully fledged rights can be secured at that time. They have done it in the States with the Americans with Disabilities Act. We are going to get a European one. We hope it will come as soon as the year 2003.

Yannis Vardakastanis, President of the European Disability Forum

In my country in ancient times there was a super state. In that state there was the Acropolis and around the Acropolis there were walls erected to protect the Acropolis and the people inside - the free citizens. These people had the social, economic and political power. The people who lived outside the walls were the first to meet the barbarians, the invaders. They were the victims - the first victims of any kind.

Today we have walls of social exclusion, walls of discrimination; and disabled people, most of the time, are outside the walls; they are not protected. They are faced with discrimination, with social and economic poverty, with social and economic exclusion.

I have had the opportunity over the last fifteen days to travel throughout my country to speak about the rights of disabled people – in small cities and big cities, in conferences, and in radio and TV broadcasts. I know exactly how the people at the grass roots feel; and think. I know exactly how the people in institutions feel. These are the modern walls. We have to break them down.

The 3rd of December is not a day either to celebrate or to cry. It is a day devoted to the rights of disabled people, to the human, social, economic and civil rights of the thirty seven million disabled citizens in the European Union. And the disability movement all over the European Union, and outside the European Union understands, and behaves the same way around the European Day.

Therefore, if that is so, the 3rd of December is a day to use as a climax for the campaign of the previous year; and the beginning of the new campaign for the year to come – to set goals, to plan, to campaign.

This 3rd of December is a very historic one. It is linked to the breaking down of a small part of the discrimination wall in Europe. The adoption of the Directive has been a great progress, a great success. But this came about because the European disability movement, the national movements, other NGOs, the Commission, the Parliament and the Council all agreed to the inclusion of Article 13 in the Amsterdam Treaty. And I have to express to the European Commission and the Parliament and the Council the satisfaction of the European Disability Forum that, three years after the Treaty was adopted, and one and a half years after it entered into force, we now have the first legislation.

This is, as I said, a great step forward. Now, it is up to us, - the national disability movements, and the European disability movement - to make sure that the Directive is well and appropriately implemented at national levels. For this reason, the European Disability Forum is preparing recommendations and guidelines to all National Councils and NGOs so that we exert the most possible personal influence on our own national governments, not only to implement the Directive as it is, but to try to go beyond combating discrimination in the field of employment at a national level. This can only happen if the national movements are strong enough.

You will be talking about non-discrimination legislation in employment today. But, it is not the only policy that we can follow to raise the levels of the employment of disabled people. It must be complemented by positive action; and you will speak about this also in this Conference. It is very important that the Directive also allows for positive action to be taken at national level.

Mr Howitt mentioned the problem of raising the level of employment of disabled people if there is exclusion from the education system, or the transport system, or from many other spheres of activity.

It would not be doing ourselves a service to say that we have not come a long way. We have come a long way, and we have created a new socio-economic and political alignment. But, a journalist in a small city in Greece recently told me that a disabled person was thrown out of a restaurant because the owner of the restaurant felt that disabled people could create problems for other customers. Now, if we have events like this - and I am sure they occur all over the European Union - then, no matter what we do in relation to employment, we are failing, because the fulfilment of a person's life is in employment and in society in culture, and in politics. It is everywhere.

The European disability movement and the national movements strive for full and equal participation in all spheres of activity.

This year has been a very important year. Mme. Quintin referred to important issues; we have talked about the Directive, the non-discrimination action programme, "Equal", the Social Agenda. We have made plans for the coming years. It is necessary that we now look at how the European Union can offer concrete protection to the citizens of Europe. The disability specific Directive is not a dream, it is a necessity. It is a necessary part of building a social Europe. If we want to build a Europe that belongs to its citizens, then the citizens must be protected from discrimination, and they must enjoy equal rights and be given the same possibility to fulfil their potential. They must be visible everywhere in the EU. While we are talking about the European year and preparing the Resolution etc., we must speak about the political agenda for the year. The year must not only be a massive campaign to inform and to educate throughout the EU, but it must also be a year to legislate. In this way, we can make the first part of this century, the first part of this Millennium, an era of great social and economic progress for disabled people.

We owe it to those who have struggled before us. We owe it to those who are struggling now. But, mostly we owe it to those who will come after us. If we fail to establish a society that is free from discrimination and social exclusion, then we are not offering a good service for the building of a social Europe. This conference today is a positive step towards creating, at least in the field of employment, a road to work without obstacles, but also with means to combat discrimination and to break down walls. As long as there are walls of discrimination, walls of social exclusion and social poverty; as long as there are people in institutions, women with disabilities facing double discrimination, and people from different ethnic origins facing multiple discrimination; as long as there are people with disabilities that are invisible; we must continue to

celebrate the successes, whilst also fighting for the future. That is the message we must take all over Europe.

Panel discussion – ‘Implementation of anti-discrimination legislation: lessons to be learned’

Chair Gabrielle Clotuche, Director for Social Security and Social Integration, Directorate General for Employment and Social Affairs, European Commission

Facilitator Claudio Balestra, Legal adviser, Belgium.

Gabrielle Clotuche, Director for Social Security and Social Integration, Directorate General for Employment and Social Affairs, European Commission

This panel discussion is about the implementation of anti-discrimination legislation. The speakers are from EU countries that have already adopted such legislation. So it will be interesting to hear the opinions of people who are already familiar with this kind of legislation on a day-to-day basis. The countries concerned are the UK, Ireland and Sweden. All of these countries have adopted anti-discrimination legislation. We also thought it would be interesting to have a presentation from a non-EU country. The three countries I have already mentioned have had five years experience. But, Canada has longer experience with this type of legislation, so we also have a speaker from Canada. All the speakers will tell us about their experience with the legislation, and what they think are its strengths and weaknesses. They will also be telling us how we should be lobbying legislators to ensure that the new laws are the best possible laws are introduced in all EU countries. They will also be looking at the question from other angles, from the points of view of employers, disabled people, ombudsman, trade unions.

The facilitator for the session is Claudio Balestra, who is a legal adviser in Belgium.

Susan Scott Parker, Director, Employers’ Forum on Disability, UK

I want to begin with a quick word about my organisation so as to put my observations in context; and then to focus on what we have learned, as an employers organisation that promotes best practice in employing disabled people, about what needs to happen if legislation is going to have maximum effect.

The Forum is an employers’ organisation founded by five companies in 1986. I stress this because that was long before we had anti-discrimination legislation in the UK. We now have 380 employer members who, between them, employ about 22% of the UK workforce. Our job is to make it easier for them to employ disabled people and to serve disabled customers. We were set up because the unemployment rate for disabled people is unspeakably high in the UK, as it is throughout Europe. It makes good business sense to employ disabled people on the strength of their contribution to the business,

and to meet the needs and expectations of a significant sector of your customer markets – disabled people, and their families and allies.

Our job is to promote practical change through helping members to change behaviour, cultures and policies. It must be significant to any review of our anti-discrimination legislation that it was employers who actively lobbied in favour of that legislation when it was going through in the early 1990s. The Forum and the Confederation of British Industry encouraged the government to put in place a framework to help employers manage disability as an equal opportunities priority. My remarks need to be taken against the background of the UK experience. We see, as a result of the legislation and the work that business to business communication has increased understanding that equal opportunities for disabled people is good for business. There is no inherent conflict of interest.

We are also seeing that, although a solid legislative framework is vital, much more than legislation is needed. UK legislation already protected people on grounds of race and gender. We wanted legislation that would position disability alongside other diversity priorities.

We wanted to send a clear message to top management teams that would also be reflected in top government circles, that disability is on a par with other diversity issues. We said disability legislation must be credible in the eyes of the only two stakeholders who really count - employers and disabled people. In order for the legislation to have credibility, it needed to be enforceable and manageable; and it needed to deliver a framework that both employers and disabled people could count on as rigorous and fair. I would go as far as to say, as we look across Europe now, that if the new Directive results in legislation which becomes discredited in the eyes of employers or disabled people, then we will have failed. When I look at what has happened in the States, the legislation there has been managed in such a way that there is now a very strong adversarial climate. As a result, employers generally do as little as they possibly can in order to comply with the law, because that fear that to do otherwise might lead to many disabled people pursuing lawsuits. I was in Australia last week. As far as I could tell, their legislation has been managed in such a way that the employer community barely knows it exists. So, it does not have that much impact at all.

Back to the UK situation, the Disability Discrimination Act is not perfect. But, it has been groundbreaking in generating the demand for information and for guidance. .

To look at some of the omissions - the DDA fails to deliver comprehensive civil rights. For example, small firms are excluded, and there are no provisions for education, and transport. The provisions relating to the rights of disabled people as customers are a very useful and important part of the legislation. But, these provisions are not clear enough, and the definitions are inadequate when it comes to people with mental health difficulties. However, in general, the thrust and the purpose of the legislation do enjoy a wide measure of confidence from the informed employer community.

At the very least, there has been no strong backlash, and there is some support from disabled people themselves. There is also strong commitment from the government to improvement in all the areas I have mentioned.

"Reasonable" means reasonable to our tribunals. The concept of 'reasonable adjustment' is providing a powerful communication tool for capturing the interest of business, and helping them make to make change. Disabled people are exercising their rights and 5000 of them have taken their employers to court. We continue to develop productive partnerships between employers and the UK government. Together we seek to make this work in both our interests. And employers are beginning to understand slowly. But, please do not think every employer is a paragon of virtue. The message is starting to get across that they need to change the way they do business.

The legislation has triggered a need for information, guidance and support. Our members have invested in purchasing 1.3 million of our publications. This has helped them to raise awareness, and to get some basic facts on the employability of disabled people in their organisations. We have learned some important things. When you look at what you describe today as a campaign or encouraging your governments to move into this territory, you will, I think, find you are talking to people who share many of these views.

Most people do not know who we are talking about. The word "disability" means so many different things to different people, and the definition we use in law confuses, challenges and its meaning is difficult to convey. It is clear that some disabled people are seen as more worthy of protection than others, and there is a need to take that into account. Most people do not believe that they personally or their organisations actually treat disabled people unfairly. They are more likely to say something about destiny having treated them badly – 'he had bad luck; a bad break - but actually it's not my fault he has multiple sclerosis, how on earth can legislation change that?' So, the need for this kind of legislation escapes them completely and they do not see it connecting to their world. Most people do not know what to do about it, or how to make adjustments for people with different kinds of disabilities.

What kind of reforms should I introduce to change my organisation? It is fairly difficult to understand what to do as a lack of skill and experience reinforces the age-old view that will equate the cost and time required to implement this legislation and the cost and time involved in employing disabled people with 'burden' rather than 'investment in human potential' Everything we communicate over the next five years has to make the shift from 'burden' to 'investment in human potential'. So what needs to be done?

What I am going to say needs to be done in the UK as well as elsewhere in Europe. We are a long way from having cracked this. But, with this legislation, and if we get the communications right, we have a tremendous opportunity, to change the way employers and society at large perceive disability, relate to it and understand it. I want to stress that it is about changing society. Employers do not have completely different attitudes from everyone else

around them. Employers do not go home at the weekend to discover they have a completely different view to the rest of their family. We start with a considerable amount of good will. But, we also start with people who do not understand that disability is a discrimination issue; with people who do not already define disability even as an equal opportunities or diversity issue, never mind a human rights issue. The communication challenge is enormous. So, over the next few years we need an approach that combines the right messages with the right tone – and, tone will be critical. Messages have to come through the right messengers, and to be backed up by expert and practical advice which gets rid of all the excuses that may be put forward not to make change because it is too difficult. It will not be enough to tell employers what the law says. We will need to tell them what it means, why it is needed and why it is in their interests. The message will need to persuade employers that what is proposed is sensible and manageable; and that will only come across if employers are actively involved in helping to shape the message. We need to back it up with messages from three the government - the Prime Minister must tell chief executives, that ‘yes, it really matters to us’; and business leaders must tell other business leaders that ‘we can manage it by working in partnership with disabled people. It is only then that the need and potential for the legislation will become self-evident.

Torbjorn Andersson, Legal Advisor, Office of the Disability Ombudsman, Sweden

I have been working as a legal advisor at the Office of the Disability Ombudsman for three years; and since March this year have been specialising in labour law; and, mostly, handling complaints concerning discrimination in working life on account of disability.

The disability ombudsman is a national authority, but it is also a person. The disability ombudsman is appointed by the government for a six-year term with a possible three year extension. The current Ombudsman was appointed in 1999. The office today is a small organisation with a staff of only 11 people. Most of us are trained lawyers.

In Sweden, people with impairments are primarily thought of as objects of care and concern, not as human beings with rights and obligations. Parallel to, and as an important cause of the development, which has been taking place, Sweden has experienced a steep growth in prosperity. This has also been a benefit to people with disabilities. It means that Sweden today, by international standards, has a relatively efficient system of medical care, rehabilitation, support and service; or, in the terms of the ‘Standard Rules’, good prospects of ‘participation and equality’.

In 1992, a parliamentary committee proposed constitutional and other statutory safeguards against discrimination’ and stricter provisions on building legislation. In order to monitor compliance with this new legislation, it recommended setting up the Office of the Disability Ombudsman. Sweden was not ready, at that time, for legislation prohibiting discrimination on grounds of disability, and nothing came of the committee's proposals. There

were several reasons for this, one of them being the worst economic recession in over fifty years. But I do not believe that was the main problem. The main trouble was a failure to understand that discrimination is something that happens in Sweden, and that discrimination has something to do with functional impairment.

In 1993, the UN General Assembly adopted the Standard Rules on full participation and equality of people with disabilities. I propose now to consider not the results themselves, but what they led to in Sweden. What happened was that the government as a means of implementing the standard rules in Sweden revived the notion of the disability ombudsman.

It is perhaps not so very strange that the ideas survived other rejected proposals. Sweden has a long tradition of ombudsman activities and, today, there are several Ombudsmen charged with specific issues concerning society. In 1994 the parliament of Sweden passed an act requiring the government to establish the disability ombudsman whose task is to supervise, the rights and interests of people with functional impairment, with a view to full participation and equality in the community. The disability ombudsman is accountable to the government, but the tasks and annual budget of the office are mainly decided by parliament. The disability ombudsman's broad mandate means that questions of every kind and from everywhere in society can end up on the ombudsman's table if they effect the rights and interests of people with a functional impairment. In many such cases the main task of the disability ombudsman is, in various ways, to try to ensure that the responsible authorities really do what is necessary.

There is one field, however, in which, since May last year, the disability ombudsman has had a specific task that has strengthened our statutory possibilities - supervising compliance with new legislation prohibiting discrimination in the working life of people with disabilities.

The purpose of this law is to counteract discrimination against disabled people in working life. The term 'disability' means a permanent physical or mental limitation related to the person's ability to function as a result of an illness or accident that occurred at birth or later, or which can be expected to arise in the future. Both job seekers and people in employment are covered by the legislation. The law separates 'direct discrimination' from 'indirect discrimination'. 'Direct discrimination' exists when an employer unfairly treats employees less favourably than the employer would have treated someone without a disability in a similar situation unless the employer can demonstrate that the less favourable treatment has no link with the disability. 'Indirect discrimination' exists when an employer treats an employee with a disability less favourably by using a rule or procedure that seems to be neutral, but which in practice is particularly unfavourable to persons with a particular disability. This does not apply if the purpose of the rule, requirement or procedure can be justified for rational reasons, and the measure is suitable and necessary for achieving the purpose at issue

The disability ombudsman should try to convince employers to voluntarily follow the law. How do we address this task? First, we deal with individual cases referred to us by people with functional impairments. These cases can be divided into two groups. There are advisory cases in which the disability ombudsman tries, mainly through providing legal advice, to strengthen the position of individuals by advising them on the rules and on ways of obtaining their rights. The other type of case is complaints. If a complaint concerns discrimination at work and the person's trade union does not press the matter, the disability ombudsman has extensive powers of investigation; and, as a last resort, the possibility of suing an employer in the labour court.

In complaints of other kinds, the disability ombudsman has certain powers of investigation, but no powers at all to compel anyone to comply with our findings. Instead, these cases end with the disability ombudsman making an official statement on the matter. The disability ombudsman is also charged in more general terms with following up and analysing the living conditions of people with function impairments. We do this mainly by carrying out our own investigations. For example, we have investigated the accessibility of both national and local authorities. We have also investigated the conditions in the labour market of people with functional impairments. This aspect has been judged by the government to be so important that the National Labour Market Board has now been instructed to carry out such an investigation every two years. The latest such investigation concerning the conditions in the last quarter of 1998 showed more than seventy per cent of the people of the total population were in employment, compared with only sixty per cent of people who with a functional impairment.

How is the law implemented? Even though the disability ombudsman must ensure that the law is followed, trade unions have an even more important role to play. When a trade union has the right to bring a lawsuit on behalf of an individual, the disability ombudsman may bring a lawsuit only if the Union refrains from doing so. The Office of the Disability Ombudsman has recently issued a questionnaire to all major trade unions in Sweden to find out to what extent the unions have undertaken measures since the new law came into force. It is clear that some unions are taking these issues seriously. Since the law came into force there have been more than a few cases of voluntary agreement between employers and trade unions that have acted on behalf of individuals with disabilities.

Cases concerning discrimination against people with disabilities in working life are decided by the Swedish labour court. The court has, however, so far not decided any cases concerning these issues. Why is this? Let me remind you that the legislation only came into force some eighteen months ago. The law has been in effect for a relatively short time. There has been at least one case when a voluntary agreement was achieved after a trade union had filed a lawsuit. The disability ombudsman has not yet filed any lawsuits. This is by no means a failure. Remember that the purpose of the law is to counteract discrimination, not produce court cases. A voluntary agreement is often more favourable for all parties involved.

What is the future for anti-discrimination legislation in Sweden? Partly as a result of consistent efforts on the part of the disability ombudsman, we can now see interesting signs of a necessary change of perspective in Sweden. The national plan of action concerning disability policy was adopted by parliament in May. The plan contains several important observations; the plan states that disability policy is ultimately a question of democracy and that one of the concerns of disability policy for the future must be to combat discrimination. When this fundamental vision starts to impact on practical policies, a number of very interesting things will start to happen in Sweden.

Frank Mulcahy, Kildare Network of People with Disabilities, Ireland

I am looking at the situation in Ireland from the disabled person's perspective and I feel it is essential to fill in some background detail as to how the legislation came about. In 1996, we introduced two pieces of legislation - the Equal Status Bill, which covers goods and services, and the Employment Equality Bill. There were some concerns expressed about the contents of these bills particularly those aspects relating to religion. So, after they had passed through parliament, the President asked the Supreme Court to ensure that the bills were constitutional. The parts of the acts about which concerns had been expressed were found to be constitutional. But, in a major landmark decision for disabled people, the Supreme Court found that it would put a disproportionate burden on property owners to provide access for disabled people.

The new government arrived with a promise to reintroduce the legislation; and the redraft took, in my view, the least possible resistance to the Supreme Court decision. It introduced the whole concept of 'nominal cost' and deleted the concept of 'reasonable accommodation'. 'Nominal cost' was not quantified and up to now there is no case law saying what it is. But it could mean that an employer who would have to adapt premises or machinery, or buy in new software could very easily state that it involved more than a nominal cost and, therefore, not do it.

The other major change in the redrafted legislation was that the onus was put very firmly on the individual to prove that the employer was discriminating against them, rather than on the employer proving that they did not discriminate against the individual. And, for people coming from where the vast majority of disabled people come from – i.e. situations where they have received care for most of their lives – to actually have to prove something in a court situation could be extremely difficult.

As you will probably have gathered, I am not a great supporter of the Employment Equality Act. However, it is in position and we must attempt to use it to the best possible advantage of people seeking employment. Discrimination is outlawed on nine different grounds. However, one of the major problems we have is the definition of 'disability'. This is a definition taken from the Australian legislation, and it is rejected by the disability movement as being medicalised. It looks at the entire aspect of the negativity of disability and totally ignores the environmental and attitudinal barriers we

face, almost every hour. However, the Act does covers direct and indirect discrimination. That is positive.

A new authority, the Equality Authority, was established two years ago. This body ensures that people have an agency to go to if they feel they have been discriminated against. However, one worrying aspect is that all claims (except those relating to equal pay), must be made within six months of the discrimination having occurred. Also, exemptions are written into the Irish legislation so that the Irish police and prison forces are all exempted from the Act. Why? - I do not know. I think probably the prison service because there is no accessible prison in Ireland. But other than that, we are probably seen as a security risk as well.

I believe that the greatest barrier we have to overcome is the attitude barrier. As disabled people, we have been the object of charity and pity and not seen as equal citizens. However, even with good legislation, and I believe the Directive recently adopted by the Council is good, that does not legislate against the attitudes based on very negative stereotyping that are inherent in most countries in respect of disabled people. In fact, I believe Europe is quite racist in respect of disabled people. We, ourselves, are the only ones who can break the stereotype. We owe it to future generations of disabled people to at least attempt to do that. Sessions such as we are having now can help, but they are not the answer. We have to continue to lobby. The Irish Supreme Court decision is probably indicative of the attitudes that we have to break.

Yes, we in Ireland have the employment equality legislation; and yes, it is in force; and yes, it is a step forward. But, no, there has not been a huge take up of employment of disabled people.

We have a quota system in the Irish public service that was introduced in 1981. The quota of three per cent was probably set too high. After twenty years, it has yet to be achieved. The lack of any proper monitoring service is one of the main reasons for this. The future is one that we, and only we, as disabled people must make our mark on. We must forget and ignore the professionals. They do not speak for us any more. But we must enter into dialogue with them; and, indeed, with all interested parties; and ensure that disability is taken seriously. We must acknowledge our own failures because we have failed in the past to do this. But, from here on we must ensure that equal opportunities within employment and all other areas of life are not just for the able bodied population, but for all citizens.

Paula Carey, Irish Congress of Trade Unions, Ireland

I am a trade union official, and also the sister of a young man with severe disabilities. So I have personal experience of living with someone with disabilities.

I have a slightly different perspective from Frank as we are coming from different angles on this question. I am very excited about what has happened in Ireland over the past decade. It has happened because people like Frank participated in a Commission on the status of people with disabilities and raising their profile in Ireland. It is possibly not felt by people like Frank who have disabilities as much because they would like to experience a real change. But, we can see from recent legislation that disability awareness is increasingly a feature of Irish policies. This is a time of great hope for people with disabilities. It is tinged with frustration as all of these issues are. Also, in my work, I have a brief that goes beyond disability into other areas of equality. My own view is that any legislation is better than none. We have to get something on the statute books, and then try to improve it. We are never likely to get a perfect piece of legislation from the outset.

The legislation is a very, very powerful tool for determining the environment that we move forward in. We have tried to operate in a voluntary environment without much success. We badly need legislation to try and make some positive moves in the area of employment for people with disabilities.

The contents and approach of the Irish legislation are very similar to the EU Directive. We have the Employment Equality Act which deals with all areas of employment and training - including access and promotion; as well as areas such as equal status on goods and services, banking and insurance, and travel and transport.

Parliament has also recently passed an Education Act. This deals with provision for children with special needs. There are plenty of criticisms of each of these pieces of legislation. There is also disability specific legislation on its way in Ireland. It was part of the report by the Commission that Frank participated in to bring forward disability specific legislation. That is still on the books, and we are obviously at a very early consultation stage about what should be in that Act. Looking at the other three acts, one could question what there is left to put in legislation. But there are serious and justifiable criticisms about the approach adopted in those Acts. One of the most serious points to be made is that, if you align disability with nine other grounds for discrimination, it is difficult to achieve a legislative framework for disabled people in that context. For most of the grounds on which discrimination takes place, the legislation provides that the difference should not make a difference to employment. In other words, if you are woman, this fact should not be the determining factor in getting a job, or in being discriminated against. For people with disabilities the difference is important and we must accommodate that. Union officials are going in and negotiating on the basis of how people can do jobs differently; not that they are the same as everybody

else and do like work for equal value etc. There are different principles that we need to assume when we are talking about people with disabilities. Arriving at legislation that accommodates that difference is a difficult, but nevertheless very worthwhile task.

Putting people with disabilities into that legislation is a worthwhile aim. It is a mainstream thing to do. And providing we can get the context right, which I believe we will do, I think it is worthwhile.

Finally, the context in which the legislation was introduced is also very positive in that there is a whole process of mainstreaming government services in respect of employment, training and education for people with disabilities which had previously been segregated. So it is a very different and exciting environment; and one in which a lot of positive actions can be taken by a range of partners across the disability, trade union, employer and government sectors.

On the key concepts, Frank's point in relation to 'nominal cost' is a very big issue in the context of the Irish legislation. The EU Directive will supersede our constitution, and we must therefore now change the 'nominal cost' provisions to the provision provided for in the EU Directive, which is that the cost will be limited on the basis of it being a 'disproportionate burden' on employers. So I think that is huge for us. Frank mentioned the Supreme Court case. I do not think that will be a unique situation for Ireland. The balancing of property rights and equality rights for people with disabilities and indeed other groups, is one that I think will prevail in a lot of other countries. We have a constitution that protects property rights. But the attitudes that lie behind that are very serious – attitudes regarding making accommodations and the need to make accommodations, and I think that is a challenge for any country transposing this Directive into their national legislation. You might not have to overcome a constitutional barrier, but the attitudinal barriers are there. And the wording in the EU Directive is invaluable to all of us in setting the framework to move forward on that. There is no doubt that, whatever country you are talking about, the costs will have to be limited in some way; and this issue of 'disproportionate burden' on employers can go a long way beyond 'nominal costs' which is what Ireland has. So, the challenge for us in Ireland is to transpose this Directive as much as possible. Most of it is in place already, we have to deal with this 'nominal cost' issue, and for the first time we have a new Directive that will supersede our constitution. That is great step forward for us.

In relation to the legislation and the unique situation we are in from a trade union point of view, unions are both employers and service providers. As well as looking for change and for legislation to be put in place we are now at the receiving end. What are we going to do to actively accommodate membership participation by disabled people; to promote their agendas; and how can they get services from union officials? Our Swedish colleague has commented on this with respect to the role of an ombudsman.

On implementation, there are a number of structures already in place in Ireland. There is the national Equality Authority with the role of overseeing this. It is an important body with an important function as a mediation service. Taking up a point made earlier, the role of legislation is to tackle discrimination, not to build up a case law. So, if there is a mediation service in place to overcome problems without employers being taken to court that is a great development. There is a national disability authority on which employers and unions are represented, together with people with disabilities. There is a human rights Commission on its way. And, finally, there is the organisation Frank is a member of - people with disabilities in Ireland have put together a representative organisation of people with disabilities in Ireland. This organisation has a key role to play in monitoring the effectiveness of, and bringing forward the problems associated with the legislation.

I have mentioned a range of committees here because we have a social partnership in Ireland. Over the past decade, This has resulted in a series of agreements. These are three year agreements mainly relating to pay, but a lot of social aspects are included; and, certainly for our part in the trade Union movement, we have successfully set out to ensure that the disability agenda is included in each one.

The Employment Equality Act has resulted so far in 3000 queries and 25 legal cases. None of the latter has been finalised yet. But only two have been about 'reasonable accommodation'. The equal status legislation was only enacted in October, and there is no information about that.

We hope, within the next twelve months, to set up, together with employer organisations, a countrywide network of consultation bodies which incorporate employers, Unions, service providers and people with disabilities to discuss how to implement this legislation and 'reasonable accommodation'. What is it? What kinds of accommodations are relevant to particular disabilities? I think the promotion of good practice among employers is really the only way through. The current situation will only be improved when people see how it is done, and when people with disabilities go and talk to employers and tell them how they have been sorted out with jobs and accommodation and those employers tell other employers. Also, I hope we can use partnership structures to develop partnership infrastructure. One of our main unions which is represented here today has been involved in a successful project that we are hoping can be expanded countrywide over the next year or two to implement this legislation.

Patricia Bregman, Policy Planning and Mental Health Services, Canadian Mental Health Association, Canada

I worked for a number of years at a legal clinic in Canada dealing solely with disability rights issues from the perspective of people with disabilities. That meant we represented individuals in court – usually at the highest level. There was a lot of work on law reform. Over those twenty years, we learnt that, in order for any law to be effective, you need to have a system in place that enables people to have access to justice, and allows employers and others to develop expertise on how to interpret the law and how to make it work in a practical sense. If I have one message today, it is that no one law will solve all the problems. Canada still has a very high rate of unemployment among people with disabilities. In terms of the Canadian law, it is like a whole other language, and we are a Common Law jurisdiction. What we have in common with the EU is that we are a federal state, and we have a federal constitution that says you cannot discriminate on the basis of disability; and then we have in each Province human rights codes that must conform to the Charter of rights and freedoms.

Like the European Community, we have Provinces with very different cultures and levels of expertise and economic development. We have wealthy provinces like Ontario, where I come from. But, we also have poor provinces like the Maritimes. We have no disability specific legislation yet. That is one of our big problems. Ours is part of a broad human rights code. But what is very positive about our legislation is that it covers everything. It covers housing, transport, goods and services, and all state legislation and government services, as well as employment. I think that is critical because, if you cannot get a bus to get to your job, you cannot work, no matter how good your employer is. If you cannot get education you will not get a job. If you cannot, in these days of networking, go to the restaurant where your colleagues are meeting to discuss something, you will have a harder time advancing in the work place. So I think that has had an impact.

Another difference is the definition of disability. Interestingly enough we do not really have one. Our legislation says you cannot discriminate on the basis of mental or physical disability. Over the last ten years, our courts have made significant progress in moving away from a medical model of disability where we look at impairment. We do not have to categorise, or say does this disability fit in or not. They have gone towards a functional approach. They consider whether there is some physical characteristic that creates a disability. They will say is the environment disabling that person? I think this is the approach we are all trying to take in this day and age. An example is a recent case in the Supreme Court in the city of Montreal. Three people had crones' disease. They had no functional limitations for doing gardening. But, the city authority had said that they could not do this work because of their disease. The Supreme Court said this was discrimination. Even though there was no functional limitation caused by the disease, there had been a prejudice against, and a demeaning of the people concerned, and this was judged to have been a discriminatory act. So, we have moved in Canada from

looking at the person to looking at where the barrier is being created. We have had very good court decisions concerning, for example, sign language interpreter services in a health care setting; and insurance in the work place and employee benefits. These came about because we had a legal system that both funded our court challenges and allowed us to become experts. Basically, for every disability case that has gone to our highest court, I or someone else from my office was there so that we could develop a comprehensive system.

The law is good. However, what we do not have in Canada is what I see you developing here - a collaborative approach. We are lobbying for disability specific legislation, but it is not necessarily the ADA. We have discovered that if you have a Commission that covers race, gender, disability etc, the level of expertise necessary for disability discrimination complaints is really not very good, and you are down the list of priorities. I am going back to Canada to meet with the Commission to talk about their priorities for next year. For the last three years there has been sexual orientation, race, gender etc but disability is nowhere on the radar screen. That is problem number one.

The second problem is that legislation does not allow really proactive standard setting. The idea of setting uniform standards for everything ranging from housing to transport is a positive approach. Doing litigation is fine and it is great to litigate one or two cases. But employers do not want to be in court. They want to be around the table working out solutions. So, legislation that has the ability to develop standards and to make them enforceable will go a long way towards improving access to employment. At the same time, we need to develop this collaborative relationship; and I think that, in a sense, and government is currently pitting both sides against each other.

The government promised to enact this legislation in response to a lobbying campaign. However, it is now saying that it is too difficult, or that employers do not want it, or that we do not need it; and that they will simply lead by example. But, the only example we see is the government saying we do not need the legislation. The structure you have established invites the collaboration of people with disabilities, and it has enormous potential. On a practical level, we are trying to do it through a human rights case where we are entering into a settlement with a company that includes collaboration. If we look to the future we have a lot to offer you in terms of what our case law has shown; and what has worked and what has not. I hope over the years we can work together, and we can learn from you about the structures and the way to develop the collaborative relationship and the standards. As we move towards globalisation we really are going to be one society; and if we can find ways to link our different approaches and come up with standards that work for everybody, in the end we will all win.

Questions and answers - open discussion

Does Mrs Scott Parker think that overall legislation is preferable to a quota system for integration of the disabled people into the work place, and why?

Susan Scott Parker, Director, Employers' Forum on Disability, UK

In the UK, we had a quota system that was completely discredited in the eyes of employers and disabled people. You could argue that this was because it was not enforced. But, our experience was that companies respond best if you say to them – 'employ disabled people because they contribute to your business and you are getting talent and so on - in effect you are making money from hiring this person'. The message around quota systems is very different, especially if it only applies to disabled people. If only disabled people are included in the quota, the message to the company is that they must hire people with disabilities despite the fact that they can not do the job. This is a message about incapacity and about being compelled to hire people regardless of merit. I am aware that this is very a contentious view and would be happy to talk about it over lunch or whatever. However, the key thing is that the business case for hiring disabled people and positioning it as equal opportunities in the eyes of a business or a person is undermined by a quota that says you are compelled to hire people regardless of merit.

Penny Bould, Wild Woman on & Off Wheels, UK

I would like to put it to the panel that although it is wonderful that we are all here today, most disabled people in most of our countries are completely unaware of, and are not involved in the battles that are going on; and my great concern is that we really need to build a mass movement. There is still too much of an elite. We need to transform attitudes in the way that my colleague from the employment federation was talking about. But we need to get the message to disabled people in general, not just those in the professions. We must build a mass movement and then, when demonstrations and protest and lobbies of parliament are held, we must get much larger numbers. I have a disease and we had a big lobby of parliament but when people are sick as well as disabled, it is very difficult to get them out on the streets and they do not have the money to be there to protest.

Comment from the floor

I would first like to take this opportunity to congratulate Frank and indeed Paula for their presentation here today – one presented a kind of a negative aspect and the other a more positive aspect. Some place in the middle is, I believe, where people with disabilities in Ireland generally see things going. To reflect on what the last speaker said, there is a huge battle to be fought, because in Ireland and in the rest of Europe we have four models of disability. We have the medical and the charity model, and the new social model. But, the model that most people with disabilities subscribe to is the rights based

model. There is a great fear among us, among people with disability that the medical model is re-emerging.

Claudio Balestra, Legal adviser, Belgium

Well from a strictly logical point of view, quite a lot of problems are caused when a model geared to a certain environment is used in a different environment where that model cannot be presented positively.

Comment from the floor, France

I have heard people talk about various kinds of European model. Nobody has talked about the French model yet and I think we can be proud of ourselves in France because our legislation includes requirements for companies to employ a quota of disabled people. When I was listening to people talking about experiences in other countries, I wondered whether there should not have been a French speaker on the panel talking about progress on disabled people's rights in France. With all due respect, I got the impression we were hearing about third world countries, whereas in France disabled people are protected by laws. There is a very forward-looking state of mind in France, and it would have been nice to have a French speaker on today's panel.

Jean-Luc Simon, Disabled People International, France

I would like to know the consequences of the law that was due to be adopted in 1992 - the law that forced the public authority to have a quota for disabled people. What have the effects of that law been? We found it to be very innovative in comparison with France because the state was imposing the obligation on itself before imposing an obligation on the private sector. So the state was leading the way.

I do not think we can really be proud of ourselves in France. We have a law that protects disabled people. But, that is exactly the problem with the law – it protects disabled people; it does not enable disabled people to become independent. So, it is this concept of protecting or looking after disabled people that is the problem. We have a generous system; a system of collective responsibility in France. That has many good points. But, we have to develop the notion of individual's rights and responsibilities; and there, I think, the EU intervention will help us.

Gabrielle Clotuche, Director for Social Security and Social Integration, Directorate General for Employment and Social Affairs, European Commission

Just to explain why we did not take on board the French legislation. This is because the non-discrimination focus does not underpin the implementation of the French law, but rather as you said the basic idea was that of protection. So we wanted a new approach based on non-discrimination and individual rights; and that is what we wanted to focus on in the new Directive that is now awaiting transposition in all the Member States.

The workshops will be a good place to discuss the implications of this legislation. So, yes, we wanted to strike a different tone when drafting this legislation.

Claudio Balestra, Legal adviser, Belgium

There is something that we can all take on board from this morning's session – the strength of non-discrimination policy can be measured in the minds of the people concerned. You will see this in a few years time when people with disabilities think about their career and their job and will say that they can take exactly the same path as somebody who does not have a disability. So that will be the yardstick by which we can measure the success of anti-discrimination legislation.

Afternoon Discussion Fora

Discussion Forum 1 – Implications of the Council Directive

Chair: Regine Prunzel, Eurocommunale

Rapporteur: Richard Whittle, Middlesex University, UK

Introductory remarks

Aart Hendriks, Zorg Onderzoek Nederland, Netherlands

I work for the “Health Research and Development Council” in The Hague. I am also a member of the Board of Advisors of the Dutch Federation of People with Disabilities and of the so-called legal think-tank of the European Disability Forum. I will give my personal views on the questions we have been asked to answer this afternoon. But I have slightly turned the questions around. I have regrouped them around three themes. First, general comments on the Directive. Secondly, the relationship between the need to make accommodations and the concept of discrimination. And, third, if time allows, the question of whether or not we need a definition of disability.

First of all, I think we have to congratulate the European Union, particularly the Commission, Council and the European Parliament for their swift action in adopting this Directive. I do not want to repeat what has already been said this morning. However, it is very important that, on a European level, we now do have a legal framework, which obliges national governments to implement this Directive into national action, and national legislation.

We should remind ourselves that this civil rights approach, this non-discrimination approach, does not come instead of the social security policies and the social welfare policies that we have had so far in Europe. This approach complements the social welfare policy that will make the European approach rather unique. The US has, as you all know, almost a one-sided non-discrimination approach, whereas most European countries tend to have a one-sided welfare approach. What we need in Europe, and, in fact, throughout the world, is to combine these two approaches.

As said before, we do not just need legislation, but we also need a great deal of education, information and all kinds of efforts to try to change attitudes, as this is probably the biggest barrier to overcome.

As for the Directive, I will not go into every detail. But, it is important to recall that it lays down minimum requirements. ‘Minimum’ means that all countries are entitled, and, are in fact implicitly encouraged to impose higher standards. The minimum standards acceptable at European level are in the Directive, but all countries can do more. This is important because the Directive has a number of exceptions which are facultative, and which do not need to be followed.

Secondly, the Directive is confined to the labour market. But Member States are very welcome to expand its scope to include such areas as accessibility, transportation and education. I would very much welcome countries to take up this challenge.

There are more things that are striking. We have a framework Directive on almost all of the grounds covered by Article 13 of the EC Treaty. But there is also a specific Directive combating racism and discrimination on grounds of people's ethnic origin. And this Directive is much broader than the Directive we are discussing today. Governments should try to adopt a similar broad approach when implementing this framework Directive within their national legislation. It is very important to convey to the public the message that all forms of discrimination are equally unwelcome.

The second issue, which I would like to address, is the relationship between the prohibition of discrimination and the duty to provide reasonable accommodation. And here the text of the Directive is not very clear. If I read the preamble, paragraph 16 says that the provision with respect to reasonable accommodation – the provision of measures to accommodate the needs of disabled people in the workplace – plays an important role in combating discrimination on grounds of disability.

Article 5 phrases it differently. It is to guarantee compliance with the principle of equal treatment. So according to the preamble, it is a means of combating discrimination, and according to article 5, it is to guarantee compliance with the principle of equal treatment. This is not the same.

But before that, one can question why such a duty to provide 'reasonable accommodation' has only been recognised with respect to people with disabilities. If you look into the legal history of other countries like the U.S., Canada, and Australia, the duty to provide 'reasonable accommodation' was first recognised with respect to religious minorities. And I think there are many groups that, at times, will need an accommodation to meet and to cater for their specific needs. In my view, it is probably an unintended way of separating disability from other grounds covered by the Directive.

And, why only 'reasonable accommodation' in respect to the workplace? I do not know. But the most crucial question which I would like to pose here, and which we may wish to explore later on, is how does the duty to provide 'reasonable accommodation' relate to the concept of discrimination? Is the denial to provide reasonable or effective accommodation a form of 'direct discrimination', as, for example, in Sweden? Is it a form of 'indirect discrimination'? Can it be 'direct' or 'indirect discrimination' depending on the circumstances? Or, is it as in the United States, a third form of discrimination which requires special forms of proof of compliance, and which also allows for specific justifications not to comply with this duty?

This question has to be clarified because it will be crucially important in court cases. When should you say you have been directly rather than indirectly

discriminated against and vice versa? And, we have to consider where this very concept fits in. Under the umbrella of one or both of them, or are we talking about a third form of discrimination. The Directive as such is not clear. And I think that this has to be clarified when implementing the Directive on a national level.

If we read the Directive carefully, it gives the impression that by providing 'reasonable accommodation' you cannot indirectly discriminate against people with disabilities. The issue is clear – we have to make a further effort to clarify this.

I think that the very concept of 'reasonable accommodation' as in the Directive is confusing. I think we should try to speak on a national level of 'effective accommodations'. You need an accommodation to meet, to bridge, to overcome a specific barrier. You can call it a shortcoming or a gap, or whatever you wish to call it. And it is up to the respondent to prove that it is unreasonable to make the necessary accommodation.

If you introduce the term 'reasonable accommodation' as the Directive does, and then, further on, say that the respondent can claim that it is a 'disproportionate burden' for him or for her to do so, then you give the respondent two chances of challenging the accommodation. First, they can say it is 'unreasonable'; and, at a second stage, they can say it is a disproportionate burden. This is very unfair towards people with disabilities. I think people with disabilities should just have to prove that their functional limitation could be overcome by making a specific effective accommodation. And then it should be for the other party to demonstrate that it would impose a disproportionate burden on him or her, or their business. This has to be clarified at national level. If not, this will just be a token provision that does not help people with disabilities at all.

Finally, there is no definition of 'disability' in the Directive. I welcome this approach because we cannot define disabilities in the way that we define such issues as sex, religion and race. Whether you are disabled very much depends on the environment you live in, or you find yourself in. We should try to resist the pressure from others to define disability. In fact, my personal view would be to skip the very term "disabilities", and start using a neutral term which would cover everyone as race covers both black and white people; sex covers men and women; sexual orientation covers heterosexual, homosexual, bisexual, you name it. But, when we are talking about disability, we are talking about a specific group, also excluding others. And you will always then end up with the question "Do you belong to the protected class or not?" It is very important to resist the temptation of talking about people who were covered by non-discrimination legislation and those who are not. We can avoid this by either not mentioning disabilities or by using a neutral term which would cover everyone.

Leif Alm, Samhall AB, Sweden

Samhall is a governmental company with the operational aim of creating meaningful employment for people with disabilities. I have worked for the company for 20 years since we started in 1980. I will now give you a view based on our experience in providing work for people with disabilities.

In Sweden we have a long tradition of many different measures and programmes for people with disabilities within the labour market and in different sectors of society. As you heard this morning, the Swedish legislation on non-discrimination is very new. In my opinion, we have had a lot of positive experience of the different special programmes and measures for people with disabilities. But a negative effect is that we still have a lot to do to make the whole society accessible for people with disabilities, including the labour market.

As an example, I just heard last week about a terrible accident on the subway in Stockholm, where a blind person was killed. This was related to the accessibility of the subway. The introduction of non-discrimination legislation is an important step towards making society accessible. Our company has about 30,000 employees of whom about 27,000 have disabilities. In addition to programmes, we have wage subsidies in Sweden for about 50,000 employees. Samhall is one of the biggest elements in the Swedish labour market policy to improve employment opportunities for people with disabilities. We employ people with all different kinds of disabilities, but we do not have special workplaces for particular categories of people with disabilities. This has been our policy for many years.

One important part of employment in Samhall is personal development, and preparing and motivating employees to take the step on to employment with another employer. This means that for some employees Samhall is the stepping stone and they leave after a rather short period of employment. Other employees work with us for a longer time, and for some of these it is a real alternative to other employment. This year, about 1,300 employees or 5% of the total number of employees will leave Samhall for another job. For many years now, we have been gradually developing our methods and measures to increase the number of transitions, or "progressions" to other employment.

Not so many years ago, Samhall only offered a range of different kinds of industrial work. Today about 60% of our employees work on the production of goods, while 40% work in the growing service sector. In the industrial sector, Samhall is a big subcontractor for well-known Swedish companies like Ericsson and Ikea. One important area of growth is what we call "staffing". This means that we have small work teams of five to ten employees working within another company's production services. These work teams contribute to the integration between Samhall, and other companies and also facilitate transitions from Samhall to other employers.

One of the most important things is that employment in Samhall is based on production of products and services, for which there is a real demand. This leads to the development of important human values such as self-esteem, self-confidence and pride; and is, therefore, an important basis for personal development and employment rehabilitation. But, the fact that we as a company compete and co-operate with other companies on the market, also in the long run is a way to influence and change attitudes to the possibilities of employment for people with disabilities. This is a way to focus on abilities and opportunities, rather than difficulties and limitations in working life.

In recent years, we have seen a lot of changes in the labour market. These changes involve both threats and possibilities for people with disabilities. Today we have a growing shortage of workers in many sectors of our economy. This can provide a real opportunity for many people with disabilities, and I hope that this will also strengthen the recognition of the contribution to society and to the labour market that everyone can make. But at the same time, it is important not to treat people with disabilities as a kind of reserve team that will be called on only when need arises.

Other important changes in the labour market relate to the increasing demands for flexibility, competence and social skills. Many people think that this is a real threat. But our experience is that these increasing demands can and must be met by new methods and ways of organising work. One possibility is putting together employees with different skills and different requirements in small work teams, and to do it this in a way that members of the work team can support each other. This is a way to use the power of diversity. In my opinion, diversity will become more and more important in working life in the future. The companies and organisations that will survive in the long run will have to look for diversity.

Other changes and trends in the labour market are related to the use of new and changing technologies. There is also a growing demand for life-long learning, to be able to keep up with all the changes. Here again, I think you find both opportunities and threats. The use of new techniques and new training methods is of course a real possibility for improving employment for people with disabilities. But, it is important to remember that people with disabilities, like people generally, form a very heterogeneous group with different skills, different needs, different aspirations etc.

So an individual perspective is necessary in meeting different individual needs. It is also important to improve the possibility for individual choices. There is a need for a broad spectrum of support and measures for personal development in work to be able to meet different individual needs. But at the same time, I will underline that both individual and general measures are needed to make working life accessible for people with disabilities. An important experience from our company is that a lot of those individual measures for a workplace accommodation for a disabled employee improve the workplace for all other employees. On the other hand, you can say that a good working environment for all also makes the workplace more accessible for employees with disabilities.

The introduction of non-discrimination legislation is an important and necessary step to improve the employment of people with disabilities. It focuses on equal opportunities and makes the situation of people with disabilities more visible, but it is not enough in itself. There is still a need for a broad diversity of different labour market programmes - training programmes, support programmes, support from employers, specially organised workplaces etc. – so as to improve, and guarantee employment opportunities for people with disabilities.

Invited presentations from the floor

Penny Bould, Wild Woman on & Off Wheels, UK (replacing Ann Pridmore, Chair of the UK Disability Forum for Europe)

I am a disability civil rights campaigner in various roles, but I spent much of my life as a journalist, and broadcaster. It staggers me the extent to which images about disabled people are hardly ever seen except in a very patronising – ‘pat you on the top of the head’ – way. We need to see much more positive images in the media, and I think my profession of journalist, as well as being an entertainer, needs to change that.

Discrimination of course is a very serious business. If anybody has a weak heart, I do not want you to be afraid about what I am now going to do. Are you ready? Sometimes if you feel a bit angry about disability, you want to change people’s attitudes. I feel like getting a special gun out and going ‘bang’. You know, to change attitudes as well as legislation. There is so much to do. But anyway, in the meanwhile, in the UK we have the Disability Discrimination Act.

We certainly hope that our legislation is going to be improved and strengthened by the European Directive. The Disability Discrimination Act in the UK was enacted in 1995. But different sections are coming into force at different times. For example, the requirements for changes to buildings where building work has to be done do not come in until 2004. However, the section of the DDA covering employment came into force in 1996. But like many sections of the Disability Discrimination Act, there are problems for disabled people in dealing with definitions.

For example, it includes learning difficulties and mental illness, but the actual definition is really based upon a medical model of disability. So that is quite different. It does not, as we discussed earlier about other legislation in Europe and across the world, take into account the physical, environmental and attitudinal barriers that we face.

An employer must not treat an employee or job applicant less favourably because of an impairment or disability unless such treatment is ‘justified’. An example of justification to discriminate against a person with for example severe facial disfigurement might be when a person’s appearance was a major factor in the purpose of the work, such as selling cosmetics. We do

definitely feel that the new Directive based on article 13 of the Treaty provides a lot of potential against direct and indirect discrimination.

What support can you get in the UK at present? Access to Work is a scheme providing money for the employer or the employee for training, to make physical adjustments to buildings and equipment, and that kind of thing. We have had the scheme for at least six years and there was a noticeable amount of publicity on television when it was launched. But, apparently there has been no real major promotion since then. A recent study which was partly commissioned by the Royal Association for Disability and Rehabilitation revealed that most employers and most disabled people have no idea that this scheme exists. So, although you may have legislation in place, if people do not know that it is there, what is the point?

The government needs to spend not only a lot more money on this scheme overall – it currently invests about £25 million per year – but it also needs to spend more on individual disabled people. The process for getting the money is also very complicated. So, really, I am hoping that this Directive will mean that, in order that the policy on combating discrimination becomes meaningful, this scheme will change.

The other thing, referring back to this morning when my colleague from the Employers' Forum on Disability, Mrs Scott Parker was talking, is about the kind of messages. I am a communicator, a message maker, public relations, marketing person and a journalist. The trouble is that when we have brochures like this one, which is about this scheme, it starts with completely the wrong approach, the wrong feel. It is talking very much on the lines of "well, if you're thinking about recruiting somebody with a disability". But, it is very unusual for an employer to sit down and say "hey, we want to recruit disabled people for this job" rather than "we need a good person for this job". It is taking this kind of patronising attitude that is going to interfere with the reality in terms of not discriminating.

One thing that worries me is who decides what is 'reasonable'. This is clearly an issue for us with our specific legislation of the Disability Discrimination Act, and also across Europe. Speaking personally, I feel that if this kind of definition applied to sex discrimination, and to racial discrimination, there would be a major public outcry.

Now let me give an example. As it is nearly Christmas, I have a picture of Santa Claus here. He is at the top of the chimney and he has got a disability. What is he going to do? And he is asking his helper who is a short person with a walking stick "would it be reasonable if I go to the front door?" What do you think? Do you think we should let him go to the front door? Yes, I think so.

So the problem is going to be about how we define what is 'reasonable'. Article 5 of the Directive also refers to training. Many of our educational premises could be used for training. Education is not covered by our Disability Discrimination Act. This is something that could be affected by the Directive,

because, although it does not cover education, it does cover more vocational training.

What about the concept of a 'disproportionate burden'? The DDA in the UK looks at 'reasonable accommodation' in terms of cost, but the American's Disability Act looks at it in terms of benefits, such as investment in people. So there is concern about what 'disproportionate' is going to mean; and whether public funds are going to be available.

In this picture we can see little people jumping through hoops. And that is how it feels when you go to the law. At the moment, in the UK, you have no right to financial support for legal representation at industrial tribunals. To me, if you are to have a real right to use the legislation, then it must mean that you have got to have access to money to be able to use this kind of legalistic process.

The Directive requires that Member States abolish laws, regulations or administrative provisions contrary to the principle of equal treatment. For example, in the UK, small employers with less than 15 employees are completely exempt from the provisions of the DDA. It looks like individual courageous disabled people will have to battle to win.

It is a bit like a game of snakes and ladders. You know the game where you go up the ladders and down the snakes. You seem to win some and then you lose some. It is a little bit like that. And, we hear about many frightening cases.

But let us hope that the Directive is going to make some real practical improvements soon. I would like to suggest that maybe we need a super person to come to our aid. You know that there are completely unsubstantiated reports coming in that Superman has changed his identity to Supercrip. He uses a wheelchair now. You know Christopher Reeves. And the people in the telephone exchange say "We hear that he is coming, he is coming to help us, but there is a problem. The telephone boxes are not wheelchair-accessible". Let us hope that they will be in future and that the Directive is going to help us.

Paula Carey, Irish Congress of Trade Unions, Ireland

I have been asked to make an intervention on behalf of the ETUC as I was involved in some of their discussions in the run-up to this Directive.

Just looking at the questions of improving labour market opportunities for people with disabilities, there are a number of aspects to that from the ETUC point of view. The trade union movement has been involved for many years in negotiating equal opportunities policies, and parts of those policies have been looking at recruitment processes and procedures. There is quite clearly an opportunity with this Directive to re-examine recruitment procedures from the perspective of a potential employee with a disability. There is a lot involved in this. We are talking about retraining interview boards, and we are talking about the language used around employing people with a disability. There are a lot of issues which would need to be resolved for a real improvement to be made in access to the labour market for people with disabilities.

The other side of the coin is the potential in the Directive for positive action programmes to be included when it is transposed into each Member State's legislation. We have already discussed the quota system to some extent. The ETUC is in favour of that. But, there are ways around targeted employment programmes. If we say, for instance, that we have a 3% quota, some people will say, "Oh, we don't like quota systems". If you turn that into "we are going to create 1000 places under an employment subsidy scheme" and positively invite tenders from people to participate in schemes like that, that is another way of achieving a target. And, that is all a quota ever set out to do.

So these two issues in relation to the labour market opportunities programme would certainly enhance the potential of people with disabilities. Another issue which has been raised already, is 'reasonable accommodation', and its interpretation and clarification. If we are looking at making a real difference in labour market opportunities, and ensuring a real potential for people to use this particular phrase to help them access the labour market, the transposition of it into Member States' legislation should look at trying to clarify what the term means.

An example of this is the introduction of a term such as the 'essential functions of a job'. Perhaps somebody with a disability who cannot do 100% of a job can complete the essential functions of the job. And I think these kinds of issues should be raised and should be introduced on a legal basis in clarifying what is meant by 'reasonable accommodation'.

We missed the ball on this when it came to the Irish legislation. But the ETUC is very anxious that the term 'reasonable accommodation' should be extended and should be clarified in legislation applying in the Member States.

There is a very big challenge for trade unions here. And, we know there is a very low level of participation among people with disabilities in the trade union movement. I have personal experience of that. There is a lack of confidence.

Presumably, the experience of discrimination persists, even within the trade union movement. Also, trade unions have fallen short in highlighting this agenda over the years in various Member States and at ETUC level. Hopefully this Directive can drive this process forward now. The whole area of negotiating and representing the interests of people with disabilities has to be very high on the agenda of national associations of trade unions and individual unions.

How do we do that? The Directive challenges us in terms of the education and awareness of union officials. There is some experience in relation to representing gender or women, and the terms 'direct' and 'indirect discrimination' in that context. But, for the trade union movement we need to explore what these terms mean. Possibly, legal advice is needed on this, and certainly a very prolific programme of education and training among our officials so that they are empowered and in a position to bring cases on behalf of their membership. The corollary of that is, of course, the need for an active membership - because trade union officials react to pressure from their membership.

So this is a two-sided coin. If people with disabilities do not use the trade union movement to process their claims, to process the problems they experience in the workplace – if they do not raise these issues at their branch meetings, their local level meetings, and put them high on their agenda – you can be guaranteed that we will be back here in five years' time saying what must be done rather than discussing exactly how to do it. I would certainly like to see, in the transposition of this Directive, resources coming through whatever programmes are possible – perhaps EU programmes, or national programmes, or through the utilisation of the national employment action plans. Resources need to be dedicated to education and awareness of the contents of this Directive, because, as I said this morning, it requires the education of the trade union movement right across Europe. There are many common areas, various areas of consensus on which one could even engage with employers – such as joint training programmes. There is no reason why not. But, there is certainly a body of work to be done. But overall, if I could just say that the ETUC warmly welcomes this Directive and looks forward to its implementation; and to being involved in its implementation in the best way possible.

Open Discussion

Werner Feldes, IG Metal, Germany

I represent the German metalworkers' union. With 2.6 million members, we are one of the biggest trade unions in Europe. 115,000 of our members are disabled; and for many years we have had a large disabled membership – both physical and mental disabilities. We feel that we represent disabled people quite well because we have made ETUC and, through European Works Councils, companies aware of the European dimensions of this issue.

I would like to take up what Aart Hendriks said. I do not really have a question but I have a supportive comment. I have flicked through the draft of the Directive, and I think IG Metal would basically welcome the idea of a European Directive. But, the greater detail I go into, and the more I look at individual articles, the more doubts I have in my mind. Aart has already made some points, which I think we have to think over very carefully. I do not think the Directive is very comprehensible at the moment. It takes an anti-discrimination line but at the same time, in article 2, it talks about the principle of equal treatment. These are two quite different things. And, thirdly, we have to strengthen the individual rights of disabled people in the workplace or in access to the workplace.

Also, the validity and the scope of this Directive has to be clarified – Which areas of employment does it apply to? Which people does it apply to? Does it apply to the whole of the labour market? There are a lot of things that have not yet been cleared up as to the exact scope, the exact reach of this Directive. If the Directive wants to strengthen the rights of disabled employees, then it should say so. In my view it does not currently do this.

I think it should set a framework for improvement of national laws. In Germany, since October of this year, we have had very clear individual rights for every employee in Germany vis-à-vis his or her employer. We used to have an equal treatment principle in Germany, as in France, whereby employers were called upon to do certain things. But they did a lot less than they were required to do. We have now turned things the other way round so that disabled people have the right to demand their employer creates a workplace adjusted to their needs.

There should be possibilities for part-time work. There should be technical adjustments made. Dialysis patients and diabetics, for example, very often need part-time work or flexible hours. So we have now established these practical individual rights which means that disabled people have been empowered to achieve their own entitlements.

So this is where I have a problem with the European Directive. I think it falls short of national laws in many areas because it fails to be practical enough. Whenever trade unions have fought and secured rights, we then of course have to defend those rights. Often those rights are not fully embedded in national laws.

Second point: What do we mean by reasonable accommodation? What do we mean by economically reasonable accommodation? This concept is not very manageable. It may not do a lot to combat discrimination. We do not have much experience with this concept of reasonableness. Most of the technical adjustments are relatively cheap. They go from a few hundred DM to maybe 50 or 60,000 DM.

In Germany and Italy, much of the financing can be found for a lot of these adjustments. But the question of what is a reasonable amount of money to pay for an accommodation is going to be a key issue. And, what is missing in

this Directive is a clear statement that employers have a social duty to offer training and employment for disabled people. This would be a big step forward for many European countries to take.

My last point is: Who can make use of this Directive? Aart says he is happy that there is no definition of 'disabilities' or 'disabled people'. That may be so. But in individual countries we do have definitions of 'disability'. This means that the European Directive covers people who have not gone through a special assessment procedure for their disability. These people are going to derive rights from the new Directive. In Germany, a lot of people have actually been recognised as disabled. There are also very many other people who have not been officially recognised as disabled, but who, nonetheless, suffer discrimination, can not find a job. For those people who have not been officially recognised, there is a danger that the Directive could not be used to help them. Because the Directives have to be transposed into national law, and the national law often acts as a sort of filter, it filters out bits of the scope of the European Directive. We have seen with the lifting and carrying Directive that Directives are not always totally transposed into national laws.

This is where we need some very tough talking. We have to ask, "how do we define the people to whom this Directive applies?" Is it going to apply to all 37 million? I think that, in reality, considerably fewer people will be covered by it, and will benefit from it than we would like.

In the descriptions I have heard of the Directive up till now, there are no references to other corner stones of Commission policy. Since 1998 we've had employment policy guidelines which have influenced national employment policies. There should be a link between the anti-discrimination Directive and those employment guidelines. Also, the other Directives relating to the workplace, which have been created since 1995-96, and, in particular, the Directives on health and safety at work, have only been so successful in Member States because they were so practical, and so down-to-earth. They have ensured that danger, and risk analyses have to be carried out at every workplace.

In France and in other countries now, we have debates on concluding contracts at company level. I think there are already over a hundred such contracts concluded in France. And Germany and Italy are starting to conclude practical contracts on adapting jobs and using training to reduce risk; and on agreements such as how many disabled people in a given region, in a given age group, should receive training over the next two years. These kinds of issues have to be negotiated. That is where the Commission has to be a lot more practical, and down-to-earth; and not to restrict itself to general objectives, whilst leaving the detail to the Member States. The Commission has to be more practical.

Penny Bould, Wild Woman on & Off Wheels, UK

In response to our friend from Germany – Most of the legal cases in the United Kingdom to do with disability and employment involve the employer

questioning whether the person is disabled. We have found that something like 70% of disabled people become disabled during their working lives and it is particularly people who have variable conditions who are being told “no, you are not really disabled, are you”. So you are very right, and this is a great worry.

Frank Mulcahy, Kildare Network of People with Disabilities, Ireland

Firstly, the EDF as a group would generally disagree with the view that there is no need for a definition. We are very strongly of the view that a strong definition of disability is required, looking at the social aspects and the barriers and the attitudinal barriers that we face, and we accept that the medical impairments have to play a small part in it. But that that is as far as it goes. Could I just look at some of the comments that were made, particularly on the basis of the Health and Safety Directive being utilised by many employers to actively discriminate against disabled people on the basis of the way that it has been phrased and worded.

So the EDF is extremely glad of the wording on the Employment Directive, as it has come out at the moment. We are extremely supportive of it and have said so to the Commission and will say again quite openly that we want to see this Directive. But this should be seen only as a minimum standard. If individual countries wish to go beyond it, then that is their prerogative to do so. Also, I know many disabled people in Germany and they would not agree with the comments by the gentleman from the German trade union.

Just looking at the first question that has been asked here, one of the problems is that we are treating employment in isolation from other areas. There will be problems with the transposition. But one area that is not covered within the Directive is people who are in workshops run in the main by charitable organisations. It is a pity that they are not covered.

In looking at employment in general, we have to take into consideration the environment, transport and many other issues. This group here should welcome the publication of the Communication on a ‘barrier-free Europe’, welcome the amendments that were made at the Social Affairs Committee in Parliament yesterday, and hope that it will lead to a Directive by the year 2003 which will ensure that the majority of environmental barriers are taken out of the system.

Lydia Zijdel, Chair of the Women’s Group, European Disability Forum

I have a question for Aart Hendriks. Maybe it is not a real question but more a kind of academic debate. The difficulty is that it has to do with language; and I know I am skating on very thin ice, because I am sure that our words are likely to be misinterpreted. You said that maybe we should use other wording instead of “disability”. Frank already has argued on that. I think we have to be careful with categorical approaches to identity.

If I looked at Article 13 of the Treaty, you see already that it says “sexual orientation”, “ethnic origin”. From a framework of feminism, for instance, sex is separate from gender, and places gender at its centre. However, in gay and lesbian studies they put sex at the centre and distinguish it from sexuality.

Because we have used the word “disability” in Article 13, I wonder whether that is that not intrinsically already linked with oppression if we link it to the social model of disability. I know that, today, we have talked about all kinds of models, but, coming from a social science background, I make a distinction on the one hand, between the social approaches to the model and the sociological approaches to this model or any other models that have been developed on employment or whatever.

So, maybe, if we use the word “impairment” in this article, we might tend to go towards the medical model. But, and I ask you this as a lawyer, would this not have made the article clearer? And, not thinking in terms of models at this moment, would it not have what we are meaning and what we are referring to more specific. I fear that the word “disability” is being interpreted already in most of the languages that I can read or listen to – like German, Dutch or Spanish. I already translate it as a completely different word from what is meant under the social model of disability. But it is what we are also meaning when we refer to discrimination on the grounds of impairment.

Aart Hendriks, Zorg Onderzoek Nederland, Netherlands

Thank you very much for a critical question. I think it is very good to have a debate on such fundamental issues, because if there is no clarity amongst ourselves we cannot convey a message to the world. Personally, I do not think that there was a specific model of disability in the minds of the founding fathers and mothers of this Directive. There was a very blurred view on what they were talking about. And, as a result of the very many compromises they made, it is a very confusing text. I think this reflects the reality of the political momentum. All the Member States were in a hurry to get this Directive adopted. This is why we have now ended up with a Directive that is far from perfect. But, we can correct it when implementing at national level.

Coming back to the specific question of the definition of ‘disability’ and the model, which lies at heart of this definition, or whether we should use instead the term “impairment”. I am not in favour of the term “impairment” because the term as it stands in the Treaty and in the Directive would cover people who are only perceived as being disabled or having impairments. If we start using the term “impairment”, We might miss out groups such as people with a past disability, or who may have a disability in the future due to their genetic constitution.

Some countries do have definitions of ‘disability’. And the core of all those definitions is that some groups are excluded. In the UK you have to be disabled or have an impairment which lasts for at least a year. Meaning that those who have a disability for less than a year are excluded. I would argue that this Directive does not exclude anyone. We have to make sure that, at

national level, everyone is included so that we do not end up, as in the UK, US and other countries, with the main barrier in getting your rights through the court system being that you first have to argue that you are disabled. This is my main concern. Let us please forget about a definition of disability. It has to be applied in a symmetric way coming back to what we have learned from gender studies, gay studies etc.

‘Symmetric’ means that it should also cover those people who are not disabled and feel that they have been discriminated against, because they have not been hired by an organisation of or for people with disabilities. Cases like these may come up in the future. I think that, in such cases, courts have to be less critical than if it was a disabled person being refused employment by a non-disabled employer. Things like these have to be taken into account – Who are we talking about? What are the power relations to society? Our legal system in Europe has to protect the non-dominant groups against the dominant groups. That is the bottom line.

Lydia Zijdel, Chair of the Women’s Group, European Disability Forum

Honestly, even with all the good intentions and examples we saw in all the films yesterday, the percentages are very minor small, and I think that we are not shifting thinking on employment drastically. I do not envisage that, within the near future, there will be a big improvement. If I looked, for instance, at all the initiatives taking place in my own country, the Netherlands, I do not see that all the legislative measurements have really increased the number of disabled employees on either the government employment market or in the private sector.

One of my concerns is that if we are talking about improving the position of disabled people on the labour market, so should we also we also talk about how much we want them to work? Are we thinking of 100% performance, or are we thinking of 50% performance? How will their income be guaranteed?

If we look back, for instance, and, being a member of the Women’s Committee, I cannot stop looking also at the long tradition of feminism and the way women have come into the labour market. We have seen that the changes that are necessary for women to enter the labour market are still not being carried out in many Member States. For instance, in some Member States, adequate provision for child care or for career moves has not yet been made. And, women are still underpaid in most Member States in comparison to their male employed colleagues.

Do we really think that - although I always tend to be positive - do we really think that the employment market will make the same changes for a group they are more afraid of because they are not members of their close family circles like women are? Are we really thinking this will make a tremendous difference within ten years? Is this Directive not selling us out at the moment? Is something happening that will give a positive push to employment? I think, and this is something I am working on at the moment, the only way this could change is through a very big shift in the paradigm how we think about

employment in this century. If we do not really start remodelling our complete employment market so that everyone can fit in, I do not see this happening.

Nathalie Moyersoen, Mental Health Europe

There is something else that we need to mention – the need to improve awareness and the need for information campaigns for both employers and employees on what it means to work with disabled people.

I am thinking, in particular, about the mental health sector. If you mention that somebody has a mental health disorder, people are very scared, and there is probably the stigma and exclusion. In this sector, I think it is very important to explain what is involved and explain that mental illness is not a constant. There are moments when people are fine, as well as moments when they have certain needs. This is rarely taken into account. But we do represent a part of the population with a disability.

Paula Carey, Irish Congress of Trade Unions

I want to respond to our colleague who was talking about the positive and the negative sides of this Directive on disability. It is absolutely important to get a balance in the room about positive and negative sides to this. I presume that was the purpose of this workshop. We can all come in here and say that it is absolutely marvellous that this Directive is in place and then leave again. But I think it will be more fruitful to talk about particular aspects of it – both positive and negative. There has been a good voice given to the negative. But, there are a lot of aspects of the positive side that have yet to be put forward.

The other comment that I would just like to take up is the one about the membership of people with disabilities in unions. That was supposed to be a constructive comment. It was a genuine plea for people to become involved in structures. The idea is that you have your Directive, now go and get your members. I can just give you, maybe, an informative example of the problem that does exist. We carried out a survey of the Irish trade union movement by asking the individual unions, to do a survey of their membership with respect to disability issues. We asked them not to identify the medical conditions of the people in their membership but to construct the survey in such a way that they would identify the workplace barriers that exist either in terms of their access to employment or their experiences in employment.

Now I have to say that there was a very low response to that survey. In some cases there were only five responses from unions of 10-20,000 members. Now, this can only indicate that people are experiencing serious discrimination; and obviously highlights the need for a Directive and legislation such as this. But although I highlighted the trade union movement, there is a need for increased participation by disabled people in all organisations and partnerships. We all know activists. We all know the activists who have brought about this Council Directive and many congratulations are due to them for their interventions at European level. But, it is very important to recognise that there is a huge job to be done in relation

to structures, not only in the trade union movement, but also across the board, regarding the participation of people with disabilities. I agree with the person who raised the point about getting involved in negotiations. Yes, I am sure that only when people with disabilities are sitting at the table, and saying “this is what we need”, will they realise some effects and benefits of legislation such as this.

I would like to refer again to the issue of training and education in this area. It is a complex piece of legislation. The EU Directive covers 4-5 grounds on which discrimination may occur. There are other grounds in other Directives. The interplay between them is important. We cannot isolate discrimination on grounds of disability. There are women with disabilities, there are various other combinations of these discriminatory grounds and a very serious education process needs to be put in place now, to inform not only employers but also unions, and to bring the voice of people with disabilities into that information debate.

Comment from the floor

If I look at the action points we could undertake, in many Member States trade unions are very powerful instruments. We have seen over the past years that they have been able to negotiate with their respective governments. Also, at European level, trade unions have been communicating with the European Commission. If we look at Directives, there is a Directive relating to ethnic minorities which is much broader. And although the European Disability Forum, and the Parliamentary Intergroup have fought to get this Directive much wider than only employment, we have failed there. I think there is a big task for the trade unions. They can go to their governments, they can go to the European Commission and say “OK, we will do our utmost, together with employers, to find employment for disabled people; but then you, as governments, must solve the problems, for example, of transportation, and of benefits so that people can come to work with benefits to pay for a sign language interpreter, a Braille machine, or adaptations to the workplace.” And, I am not only thinking of the adaptations that need to be made to the environment, and to the building itself.

Especially, how do we get to the employment market? This is covered in the Directive on ethnic minorities, but it is not mentioned in the Directive for people with disabilities. I think there is a task here for trade unions. They should make a large push as they have done in the past for other excluded groups. Now is the time to declare our hand on this.

Penny Bould, Wild Woman on & Off Wheels, UK

I used to be the Vice-chair of the National Union of Journalists' Equality Committee. There has been a real sea change in the UK where disability was not on the agenda for trade unions very much in my experience until the last decade. Certainly in the 1980s and early 1990s, it was not very strong.

I think one of the problems for trade unions, and I speak particularly from England, is that they are so worried about surviving. Many trade unions are having big arguments amongst themselves about their loss of power.

The other problem is that we do not have enough statistics about disability. We do not know who is disabled; we do not know where these people are – particularly those who have impairments which are gradually coming on rather than the result of a sudden event like an accident. Because of the prevailing attitudes, a lot of people who are trade union members are afraid to identify themselves as disabled, even to their representatives. I do really hope that we can get a lot more disability awareness training for trade union representatives, and trade union officers, because at the moment it is still really very bad.

Comment from the floor

With respect to our target groups for further action, I think that one important group is missing even at this very conference – the people who are responsible for our social security benefits. There are many institutions which people with disabilities depend on for allowing them to work or not, or which make decisions on whether an adjustment or an accommodation can be funded. We have just heard from our German friends, that, in many of our countries, it takes a while before you find out who to ask in those institutions and then it takes quite a while before they make a decision. When an employer wants to employ someone, they usually want to do it today or tomorrow. An employer is not willing to wait for months, and sometimes years, before they get an answer on whether they can employ someone or whether an adaptation is being paid for or not. So it is really important that we also involve those who are responsible for the benefits and social security services.

Klaus Pieter Wegge, C-lab, Germany

We have talked a lot about disabled people, the workplace and making products useable for everybody. Let me make some rather provocative comments.

First, the current job situation. Imagine a situation where a manager has to choose between one disabled and 10 non-disabled applicants. What reason has he for choosing to look after what he sees as a problem case, a disabled person? So I think we need to enlighten people using practical examples. And I would recommend you to do this in the form of the kind of films we saw yesterday. These films should be published as teaching material for employers. I think many more ideas of that kind could be tried out.

The second point is something, which nobody has talked about so far. There are new technical and technological challenges in the world of work. This means that disabled people are losing their jobs as they become more technical, or more computer-related. They are also losing jobs because several simple jobs may be replaced by a single job with technological

assistance. For example, telephone exchanges were often operated by blind people.

The next point is that disabled people need not live and work only in one country. There are qualified disabled people who move from one country to another. Mobility for disabled people does actually exist. What I would like to hear, and what I have not yet heard yet, is that there should be a degree of uniformity throughout Europe. I have a disabled pass that I can use in Germany. I would like to be able to use it to get the same rights in other countries.

Comment from the floor

I think that the most vital question facing us is the role, which disabled people or their organisations could play in monitoring the implementation of the Directive at national level. Our experience with the National Action Plans on employment have shown that all of the wording is from a government and a civil service perspective and does not take in a wider societal perspective. So it is my belief, and I would also suggest that it is the belief of the EDF, that there must be a role for civil society in the implementation and monitoring of the Employment Directive. It is essential that that is a strong role and not just commenting on government explanations, because if we were to believe every report that governments have written, we would all be living in a perfect world. The harsh reality is quite different. So we have to have a role for civil society written in there, and this can be quite easily accommodated within the outline of the Directive as it stands at present.

Discussion Forum 2 – Need for ‘positive action’ to complement ‘non-discrimination’ action

Chair: Hartmut Haines, Bundesministerium fur Arbeit, Germany
Rapporteur: Sophie Beaumont, European Disability Forum

Hartmut Haines, Bundesministerium fur Arbeit, Germany

The topic today leads to a certain tension: on the one hand you have the non-discrimination legislation and, on the other hand, you have the need to do something positive to really fully implement the non-discrimination legislation so as to make it really effective.

You have the background paper for this discussion forum. I did not draft the text myself, but I think it was an excellent text. The author took exactly the same view as I do.

I would like to draw your attention to the recently adopted Council Directive on the general framework for equal treatment in employment and occupation. This Directive has a whole development process behind it. It is something of a horizontal Directive and includes a component on disability. It was also subject to the usual procedures. Article 5 refers to the interplay of non-discrimination and positive measures in a new and, I feel, intelligent way. So I would very much welcome it if in our presentations and discussions today, we do not simply pick up those topics which are on our programme but perhaps broaden it, and include those positive actions which would be appropriate to really flesh out Article 5.

Introductory remarks

Patricia Thornton, Social Policy Research Unit, York University, UK

I am a social policy researcher. I am interested in ideas and concepts and how they are put into practice in relation to the employment of disabled people, internationally and in the UK; and I have done quite a lot of comparative research in this field.

I first began this research about eight years ago; and, at that time, anti-discrimination measures and positive action were regarded as alternatives. They seemed mutually exclusive and in opposition to each other, and a booklet a colleague and I produced in 1993 came out very strongly against the idea of having a system in which you might have complementary positive action and anti-discrimination legislation. I think things have changed since then and I will explain in some ways why that is. At that time, we tended to characterise the anti-discrimination approach based on a concept of equal rights as being found mainly in the English speaking countries of the New

World. Whereas the approach found in Europe tended to be a top-down rather than a bottom-up approach that might be associated with equal rights.

Broadly speaking the European approach was for the state to impose obligations on employers to behave in a particular way towards disabled people who were protected as a group. But in the New World approach, individuals had a right not to be discriminated against on the grounds of disability. There the right is not handed down by the state but something claimed by the individual.

It was also pointed out that the concepts of disability underlying the two approaches are different. In the anti-discrimination legislation approach, and certainly in relation to employment, disability is a much more fluid concept.

Sitting here now, eight years later, it is quite astonishing that we are talking about a European wide non-discrimination Directive and the whole notion of positive action complementing non-discrimination approaches. It just shows how much things have changed in eight years.

In the intervening eight years we have learnt more about some of the possible weaknesses of the non-discrimination approach. There has been some movement in the thinking about it. Even some very strong advocates of non-discrimination legislation are beginning to recognise that it is not enough on its own. We all know it is a reactive, complaints based, and individualised approach. The point was made very strongly this morning that the individual who feels discriminated against needs smooth and easy access to justice.

One of the difficulties so far in the UK and USA type approaches is that the individual has needed personal resources, albeit backed by commissions to declare or claim that right. The other difficulty is that the reasonable accommodation approach involves changes being made for the individual, not for the work force as a whole. Accommodations are made in reaction to individual requirements. Anti-discrimination legislation can provide a legal incentive for change. The fact that the legislation exists can prompt firms to behave differently, perhaps because they are fearful that a complaint will be brought against them. But that is a spin-off. If it happens, it will happen gradually and it will happen inconsistently so that it leads to inequity depending on the circumstances within which someone is working. Some firms are more willing than others to make changes, and some positively resist.

Another weakness, perhaps, is that the non-discrimination legislation that we know in the UK, US and elsewhere impacts very much on retention and keeping people in work rather than on recruitment. So it was interesting to see those figures from Ireland this morning which did show that there were a larger number of cases relating to access. But it is early days. From the account of the Swedish approach, I would be interested to hear more about what is happening there. But I think people generally feel discriminated against at work rather than in trying to enter work.

Finally, the problem about the anti-discrimination legislation approach is that it ignores the whole legacy of historical exclusion, and the fact that for some disabled people there is a different starting point because of institutional discrimination. In other words, equal treatment at the point of applying for work or progressing in work does not necessarily achieve equal outcomes.

I want now to think about positive action and what it means; and to look at some possible ways in which positive action can complement the anti-discrimination approach.

'Positive action' is a phrase that is used a lot, but often left undefined. In the briefing document we were given a long list of actions that possibly fell into the category of positive action. I think we need to think about why we have positive action and I think we might distinguish between positive action for disabled people as a group, and positive action for identified individuals.

Thinking first about positive action for disabled people as a group, we might distinguish three rational purposes: first of all to address the historic disadvantages that disabled people have faced because they have missed out in the past. The argument is that policy should compensate for that past disadvantage, in other words an extra effort should be put in to ensuring that disabled people have the opportunities that they have been denied in the past.

The second purpose might be to overcome the systemic disadvantages that disabled people might face at the moment. Systemic disadvantage might of course be linked to historic disadvantage but not necessarily so.

The third kind of rationale is about compensating for disability: the idea that disabled people as a group are owed or deserve some compensation that should be delivered through employment. I am not talking about financial compensation through benefits. That is a different matter. The idea is that the state or the employer on behalf of the state has a duty to disabled people because of some kind of harm done by society. Now, if you think of the purpose as being to address the historic disadvantage, you might think that positive action is necessary on a temporary basis, albeit perhaps over a relatively long term, until equal representation of disabled people is achieved. Also, if you think the purpose is to overcome systemic disadvantage, depending on your stand-point here, you might think it is something that is temporary, or that it may take a long time to overcome. However, other people argue that the barriers are always there and, although they may move around, disadvantage is systemic. If you think that disabled people are owed compensatory measures because of their disability then you might want to argue that positive action has to be a permanent feature or measure.

The second type of positive action that I mentioned is that which is directed at individuals as the result of recognising that some disabled people are at a greater disadvantage in the labour market than others. This may be because of the nature of their impairment, or because they have fewer qualifications or poorer qualifications. For them, positive action means additional support or

opportunities. Typically, they are people who are deemed to be less productive.

We find some kind of special programme for disabled people who need additional help in almost all countries. In some countries they may be more mainstream than others. That is another debate, and one of the issues is how far people who fall into special categories have equal rights as others. I do not think the question of complementary non-discrimination legislation with positive action for individuals who need extra help is an issue that we want to argue about. I think if you look at all countries you are going to see some kind of special schemes and programmes, I do not think that is what the problem is.

I want to look at different ways in which non-discrimination legislation and some kinds of positive action can complement each other. Looking outside Europe to countries that have established non-discrimination legislation – for example in the US, we have affirmative action. Affirmative action refers to strategies for active recruitment from minority groups that have been disadvantaged in the past and under-represented in employment. So it is a tool to reach the goal of fair employment and to eliminate the effects of past discrimination; and the employer has to develop strategies. Not strategies looking at the proportion of minorities within the workforce overall. It is more precise than that. They look at under-utilised areas like occupational groups where there are smaller proportions of minorities in relation to their overall representation in the labour market; and then direct outreach and recruitment to these areas. This is not about meeting quotas or setting aside jobs for minorities. It is about reviewing how the organisation works. One way of making this tool work is through contract compliance. This has been around in the USA since before the Rehabilitation Act of 1973. Employers doing business with the Federal Government have to draw up affirmative action programmes and plans, which then have to be reviewed.

Another example is Canada. There, employment equity plans are like affirmative action in that they apply to women and minority groups including people with disabilities. The plans involve identifying and removing these systemic barriers that adversely affect woman and minority groups. This is tied to federally regulated employers and people with contracts bidding for federal contracts. It is also tied to the concept of 'reasonable accommodation'. Once again, they are not concerned about under-representation overall but under-representation in particular occupations. So the advantage is that it deals with the problem of occupational segregation – of how disabled people are concentrated in lower professions or occupations, which require fewer qualifications and so on.

It is different, but it is not a quota approach. The problem with the quota, of course, is that it does not address this question of occupational segregation. It is only interested in the level of representation in the workforce overall. So employment equity is interesting; companies have to draw up plans, and publish annual reports. The Human Rights Commission can investigate, and it is also a way of generating good practice. Employers are subject to on-site

compliance checks, and sanctions. It can be run as a voluntary programme within the Canadian human rights statute.

The important point to note about affirmative action and employment equity is that the focus is on removal of barriers, and the assumption is that barriers lie with the employing organisation and not with the disabled person. It is not an individualised approach. But, it does complement the individual rights legislation. It does not mean that the individual gets special treatment because they are disabled. It is proactive. It does not depend on the existence of a disabled person or employee. We do not have this in the UK, and some critics think our legislation would be strengthened a great deal if we did.

To sum-up, I think we probably can move forward on a combination of approaches – non-discrimination legislation and some sort of employment equity or another approach that removes barriers. But how will we know whether this is successful? How can we measure the effectiveness of these two different approaches? You can look at the effectiveness of removing the barriers that cause disability. If you think of disability as the relationship between the individual with an impairment and the environment, and you reduce the environmental barriers that cause the disability, then one measure of success could be fewer people feeling disadvantaged at work because of something to do with disability or impairment. As a result, fewer people should declare themselves as disabled.

On the other approach, where we are looking for targets and representatives of the population at large, we might have to think about counting disabled people according to people's impairments or some other similar type of measure. If we try to monitor the effectiveness of some new approach that brings together non-discrimination and positive action measures, this will pose quite a big problem.

Rafael De Lorenzo, Fundacion ONCE, Spain

I would like to give you some slightly different thoughts. First of all – an introduction on the need for complementing non-discrimination legislation with positive action measures on employment. Then – some information about the situation in Spain and some specific examples of where it is possible to combine non-discrimination legislation with positive action measures.

Article 6 of the Directive on non-discrimination in the field of employment says that Member States may adopt measures, which include positive action measures or may maintain or improve the measures they currently have. So from a legal point of view the principle is admitted in this new legislation. But I think there is a problem of approach here; sometimes it seems to be enough that a general principle is established that prohibits discrimination in relation to any of the groups referred to in Article 13, particularly in relation to employment.

It is as though that prohibition were enough to meet the objective that there should not be any discrimination. But there should be genuine integration of the people and groups concerned, into the economic life and firms i.e. full social integration. I would like to take a line on this point – the existence of non-discrimination legislation is a necessary but not a sufficient requirement. I want to stress this point. Of course there has to be a general principle and an umbrella framework rule which establishes that it is not permissible to discriminate against people because of their personal circumstances.

Article 13 of the Treaty refers to the groups and persons involved. But if we do not adopt positive action measures, the general principle remains a dead letter, and it remains purely academic but does not trickle down to the grass roots level. For example, from a conceptual approach, there is a general legally accepted principle that there should be genuine equality not just formal equality. You cannot treat everybody in the same way. People are different, and if we give the same treatment to all citizens irrespective of their personal circumstances, that is a brutal way of generating injustice.

There are people and groups of people who, because of race or sex or disability, are in an inferior position compared to the standard position in society. For example, when there is a gap, if we do not apply measures which try to offset that difference, those groups will always be below those standards, below the indicators which we might call indicators of an acceptable quality of life or integration or full exercise of citizens rights. The gap is not simply maintained, but it is even increased because society changes. The situation changes and the risk of these gaps increasing is enormous. That is the first principle then.

A practical example – I apologise for this being simple. We have organised a meeting, and according to the principle of non-discrimination, all citizens or all people registered for the meeting have the right to participate, and we cannot discriminate against anybody because, for example, they are Spanish or from a particular race or have particular beliefs. That is non-discrimination legislation in principle. That would say we can all enter the meeting. But if one of our colleagues in a wheelchair comes along to the meeting place and there is no access then perhaps he or she might not be able to enter. This colleague is then encountering discrimination because he or she is prevented from exercising his or her rights equally with others, or is put in the humiliating position of being picked up and carried upstairs like a suitcase. If there is a deaf person and no sign language interpreter then that person might as well not have been at the meeting. So, if there is no positive action, although theoretically disabled people can come to the meeting and sit down, disabled people would be absolutely excluded.

That is a very simple example. In the meeting this afternoon, three languages are being interpreted. I do not speak any of them. If I did not have my interpreter here, I would not be able to participate in the meeting. I would speak Spanish and you would not understand what I am talking about. It is not enough to have general principles but they have to be supplemented with specific measures. You can not say all citizens have the right to move freely

through the city if there is no adapted transport, because then they cannot do so. So the transport system would have to be adapted or as a result of the principle 'design for all', public transport should be designed for all citizens right from the outset.

I think these practical examples highlight the difference between the principle of non-discrimination and the need for positive action. We also have a practical example in the USA. After many years of non-discrimination legislation, there was no noticeable increase in the job creation rates. It was only when they adopted specific programmes – grants to firms, tax credits and so on – that the difference and the change was noted.

In 1996, CERMI, the Spanish council for disabled people, of which I am Secretary General, agreed a very substantial plan with the government for training and employment; and over the past four years the implementation of this plan has led to a lot of regulations, a large increase in public budgets, and the establishment of plans and operational programmes which have genuinely produced a transformation in the figures. These positive action measures are provided for in the Spanish Constitution alongside the principle of formal equality that is set out in Article 14. Article 9 says that, "Measures have to be taken to allow people and groups to exercise, in an effective and genuine way, the rights which the constitution gives them". So we have both principles - we have formal and genuine equality. This non-discrimination Directive is welcomed but will not improve our basic rules because they are superior and will not really affect the positive action on employment –

1. There have been increases in grants to ordinary firms, private or public or socio-economic firms who employ disabled people.
2. There has been an improvement to grants to special firms or protected jobs for people with disabilities.
3. There has been a strengthening of the quota system by establishing a new guideline, called alternative measures in order to make it more flexible and to allow or make it easier for businessmen to meet their quotas.
4. There has been promotion of employment for disabled people in the social economy, essentially co-operatives.
5. There is promotion of self-employment of disabled people
6. There are changes in tax legislation in order to promote the inclusion and maintenance of disabled people in the world of work.
7. There have been changes in the social protection system, in particular pensions, in order to avoid disincentives to incorporating or integrating disabled people into the labour market. For example, you have to make people move, or take people from a passive to an active position.
8. There has been the establishment and development of a network of work agencies specialised in disabled people that facilitates matching of supply and demand in the labour market.

The implementation of the non-discrimination Directive will certainly not affect the establishment of these measures that I have just listed. In real terms, how have these actions affected employment over the last few years. Let me give you a few examples:

For example, the number of permanent contracts for disabled people has risen from 4800 in 1996 to 9850 in 1999. So in three years the number has more or less doubled.

Employment of disabled people in special employment centres that are very protected in Spain has risen from 8,300 to 16,200 over the three years, and the number of jobs created by my organisation, Fundacion ONCE, has gone from 2,608 to 6,800.

Fundacion ONCE has signed an agreement with the Spanish government to create 20,000 new jobs for disabled people and to train 40,000 disabled people over ten years.

Also, I want to give you some ideas on combining non-discrimination legislation with positive action measures. For example, grants to firms who make reasonable accommodation for jobs should prevent firms refusing to employ a disabled person because they believe the cost will be excessive. The Directive on non-discrimination also provides for dissemination of these sorts of measures; and, of course, once we disseminate the Directive then we also do the same to the measures we are talking about. For example, the community Directive on public procurement is being revised, and we are going to try to get a social clause in order to promote job creation.

To finish - it is not enough, to have the principle of non-discrimination if it is not accompanied by positive action measures which make this principle real and genuine from day-to-day, and which take account of the needs of people, groups and the cultural realities in a country.

Invited presentations from the floor

Pedro Grillo, Portuguese National Council of Disabled People (CNOD), Portugal

I disagree with Patricia Thornton when she said it was an issue that we do not need to agree about because it can be taken for granted that there is a need for positive action. I would say that I do not agree, and I will try to explain, with some examples in Portugal. We would like to find out what is happening in other countries at the moment. We do really need to think very objectively. We have to talk and debate around the need for positive action so that disabled people in the EU are not taken for granted.

In Portugal, at the moment, the government, finally after two years of discussions, has introduced a quota system for employing 5% of disabled people in the public administration. They came to disabled people in Portugal who are represented within a consultative council for the integration of disabled people, and asked for some suggestions on their proposal. We did this on time, and in the right place. But, the government took no account of our advice. They propose to implement the quota of five per cent only in the public administration. On some public applications that means more than ten posts. For this, we went to check during two months of this year to see in

reality what was the percentage of public organisations with more than ten posts occupied by disabled people. Out of 258 cases, there were only 11. So, the quota exists formally but it is not implemented in reality. What lessons can we draw from this? We have a quota system, but it does not apply in practice.

90-95% of people outside the movement have heard through the media that there is positive discrimination in favour of disabled people. They ask 'what more do they want? They already have too many privileges.' Also, nothing is planned or proposed in terms of penalties for the public institutions that are not fulfilling the law. That is different in Canada and the USA. As we were told this morning, disabled people there are increasingly gaining access to the justice system; and the private companies, the public institutions, and people in general who discriminate against them are penalised for their actions. Since the media raises awareness about these penalties, others are encouraged not to do the same thing. This has to be considered within the European Directive in the future and especially for people with disabilities in Portugal.

The other point is to understand that in order to talk about positive discrimination we must consider what really lies behind the fact that people are discriminated against and have not had access to equal opportunities for a long time. For instance, people who did not have rights and access to education. How can we talk about the employability of these people? It is really difficult; and you can probably understand that, in this global and very competitive economy, private companies are not interested in hiring unqualified people. But all society is seeing this as a whole. So this is a failure of the market, and certainly the state has a role to play in this area. That is the need for positive discrimination, complementing the non-discrimination laws. But once again we have to look for what is written in the law and what is going on concretely in practice because, as I have shown you in the case of the Portuguese quota system, positive discrimination legislation is of no consequence if it is not properly applied and does not lead to a significant improvement in the quality of the lives of disabled people.

Certainly we need very quickly a clear Directive on accessible transport (not just at local level, but universally); and standardisation of lifts and many other things. This is clearly not a technical issue; this is a political issue. We have to have a clear position like Hitler had a few years ago. He did not want disabled people. Which positions do our politicians at national and European level want to assume? That is the question.

Thibault Lambert, AGEFIPH, France

There is a body of legislation in place in France to deal with the problems faced by disabled people. But that is not sufficient if it is not complemented by positive action. The aim is to ensure that we improve the situation for disabled people by increasing access to the labour market and preventing people from leaving companies because of the situation there. So if people are hesitant to present themselves on the labour market they need to be encouraged. But, once people are in companies we have to continue to help them to develop their position and their activities.

We have to help disabled people to cope with the problems they face. Studies have shown that the situation has deteriorated recently for disabled people in work. So we have to ensure that disabled people are hired and maintained in work.

So we need to prepare disabled people to make themselves more employable; and, once that has been achieved, we need to link them with the world of enterprise, and companies. My organisation tries to achieve these aims, and I would like to give you a few examples of our work.

Positive discrimination practices can take various forms. We can help overcome problems by providing technical or financial support. We also need career guidance services for disabled people, and the career guidance officers need special skills and experience to complement the services provided for disabled people by the general recruitment services.

We need to facilitate access to these services and ensure that there is no discrimination. There are placement services serving only disabled people; and there is also funding available to compensate for problems caused by disability and for training and home help, and technical aspects of home help. There are also measures to compensate for salary when disabled workers have a lower level of salary because of their disability. We encourage the use of financial incentives to companies to employ disabled people.

There are also measures focussed on the disabled person. We try and work together with large companies, with the government, and with trade unions to conclude agreements or conventions where the parties involved undertake certain commitments to both employ and train disabled people. So our services tend to run generally parallel to the services available to the wider public.

This type of parallel approach is necessary. But it is also important to provide information and provide guidance. Even if there is no discrimination, disabled people need extra information. Disabled people need to be more aware of the structures and services which are available to help them, and the information and the guidance has to be improved both in quantitative and qualitative terms to compensate for their disabilities.

We have parallel recruitment services throughout France, and 40,000 people have been placed in this way. We also have maintenance services to keep people in work across the entire country again broken down by economic sector. There are also measures to help disabled people create their own jobs. The placement services are specialised in placing severely disabled people, for example, people with severe learning disability or who are profoundly deaf or who have other types of severe disability. But we also work on mainstreaming so that the services available to the wider public are also available to disabled people. Part of AGEFIPH's role is to ensure that general vocational training centres are accessible, both physically and in terms of the courses on offer, to disabled people.

There are a number of different types of discrimination, and if we are to counter them there is a need for special skills and for special funding. We also need a clear framework for the key players involved and a core of professionals, specialised in placing and keeping disabled people in jobs.

The funding available comes partly from AGEFIPH and also from the government. Under the French system, it is not up to either the company or the disabled employee to bear the financial burden of any extra costs involved but they are picked up by the public sector. It is important that the key players are brought together so that as much synergy as possible can be derived from this collaboration. So, at the "département" level in France, there are bodies that bring together all the key players.

On positive action, and how to optimise this in order to counter discrimination, we have rules and regulations on quotas, including provisions that can be implemented on a voluntary basis; and, there is a fund to help in cases where discrimination is being fought.

In some cases, there can be a reluctance to invoke the right of appeal that is available under legislation. In 1990, anti-discrimination legislation was introduced. This was not talked about this morning, but I think it is a fairly limited piece of legislation. On the other hand, I think the area of positive action is very dynamic and could serve as a model for more general actions to try to promote employment for other minority groups. It could even perhaps be broadened and applied to the general job-seeker population.

Open discussion

Pirkko Mahlamäki, Finnish Disability Forum, Finland

I would just like to come back on Mr Grillo's disagreement with Ms Thornton's view. I wonder whether the issue really is what Mrs Thornton was emphasising – i.e. that all of us in this room take it for granted that anti-discrimination on its own cannot deliver what we want. So, we need positive action measures in order to have a full and effective way forward. I understood the man from Portugal was saying that this is all very well because, even if we have positive action measures, if they are not realised in the concrete daily work, then it is not worth talking of the mix of legislation and action. Is that a proper reading of what you were saying?

Pedro Grillo, Portuguese National Council of Disabled People (CNOD), Portugal

What I meant to say is that you cannot take it for granted that because some actions and some laws are labelled as positive, they will necessarily have a positive effect.

Pirkko Mahlamäki, Finnish Disability Forum, Finland

I was actually asking whether you disagree with the basic principle in this workshop that we need legislation and active measures. Do you agree with the basic principle that we need both of them?

Pedro Grillo, Portuguese National Council of Disabled People (CNOD), Portugal

Certainly I do. The issue here is about non-discrimination legislation and the need for to complement it with positive action. This is a two-fold presentation, and we need to talk during a third stage about what is truly positive action.

Claudio Balestra, Legal adviser, Belgium

Something I have heard here that is very interesting is that we want equal treatment so we can get equal results. That is, I think, what everybody here agrees. We have legislation, but to try to have equal outcomes, we need additional positive actions.

Christy Lynch, European Union of Supported Employment, Ireland

I agree with the principle that we are discussing here that we need both non-discrimination legislation, and positive action. But, it is interesting that the legislation in countries like the USA and Canada has been referred to in terms of their non-discrimination legislation. We have not talked about the other laws like the disabilities education Act that mandates and requires each of the States in the USA to put certain provision in place for people with disabilities. Also, there is the new technology Act that requires States to establish a legal protection and advocacy service. So, if you feel you are being discriminated against you can take your case to professional lawyers.

We talk about the ADA; and it is a good law. But, one top advocate has called it the 'icing on the cake'. So we need to look at proactive legislative measures as well as non-discrimination measures.

Hartmut Haines, Bundesministerium fur Arbeit, Germany

I suggest we bring the discussion back to Europe and that, in particular, we come back to Article 5 of the new Directive where in a very pragmatic way discrimination is related to the principle of equal treatment in relation to people with disabilities. The requirement for needs for a 'reasonable accommodation' to be met means that employers shall take appropriate

measures in order to enable a person with a disability to have access to and participate or advance in employment, or to undertake training unless such measures would impose a disproportionate burden on the employer. That is a classical idea in the case of discrimination, before we come to positive action. The final sentence says that 'this burden shall not be disproportionate when it is sufficiently remedied within the disability policy of the Member State concerned'. So, in this final sentence, the avenue is opened for positive action in the form of help for employers. This can be government help or help from a fund such as Mr. Lambert represents. If you have such a measure, you do not need to deal with positive measures from a theoretical point of view. But you can devise a pragmatic method that can encourage employers to get into a situation where they can no longer discriminate because they can see that this is a neutral position for them.

John Steger, IBM Corporation, USA

At IBM we have been developing technologies for people with disabilities, and I have worked in that area for 15 years. Several of the issues that have been brought up are very important. The anti-discrimination legislation in the USA sets a stage for making sure that people who have employment can be given equal opportunity. The problem that we face when we talk about affirmative action is that you want to make sure you get qualified people. No employer is interested in hiring an unqualified person. When we hire a good person with the necessary technical skills, it means they must have had the opportunity for education. If the educational system has provided them with the skills they need, then they can be hired. We just hired somebody who is blind and for whom we had to compete because of the skills that he had acquired through his university training. He was hired for a very large sum of money, and that is the model that we would like to see.

We get to that model through affirmative action. We do not tell employers they should hire a certain quota of disabled people. Instead, we remove the barriers early in a person's life so that they can acquire the necessary skills and education, and do the things that everybody else does. Then from an employment point of view they will be qualified equally with everybody else. In our case, at IBM, we want every one of those people because there are not enough technical people. Those are skills that are needed in all European countries as well.

Representative from the National Council for Disabled People (CERMI), Spain

If there is a high rate of unemployment, it is more difficult to get a really genuine situation for entering the labour market. There is another point linked to this, which will allow us to take a holistic approach to try to resolve the problem.

I think we can develop a whole set of positive action measures, which are similar to non-discrimination legislation. I have been thinking of four different types:

First, access. There has to be universal guaranteed access to transport, education and goods and services etc. Why? Because disabled people and their families pay the same taxes as everybody else.

Now, let's talk about public assistance and grants or positive action directly from the State. These are very important. Also, it is very difficult to increase rates of assistance when there is a crisis in social protection and the welfare state. I am now referring to the latest Eurostat data on the establishment or reduction of growth of social protection expenditure in Europe.

Thirdly, contributions from businesses. These are also very important; and could be direct contributions through making a reasonable accommodation for a disabled person's job. Or, they could be indirect contributions as is the case in France as represented by Mr Lambert's organisation. There can also be alternative measures as in Spain where companies who do not employ disabled people may sub-contract their services to firms who do employ disabled people, or make a donation to organisations of disabled people, or to charitable organisations who provide employment for them. In this way, you can get a similar effect as in France without increasing the indirect costs that impact on labour charges for employers.

Fourth, the issue of tax. We should not ignore this possibility. We all pay taxes. The fact that the state might give certain tax credits or breaks could be a very important bridge to trying to get concessions or help in positive actions. Let me look at the case of Spain where the National Council has worked very hard with the government and achieved a certain amount of success because the government has now pushed these changes through parliament. There could be tax credits on income tax which we all pay. For example, disabled people who are working could pay less tax than an able-bodied person. That means that if, for example, the disabled person has higher transport costs, they should pay less taxes. That could also have an impact on corporation tax, business tax. Businesses might pay less tax if they hire a disabled person and give them a permanent job in their workforce even though it might be a 'one-off'. What I mean by this is that a deduction will not be made every year, but that a substantial deduction will be made in the first year. We are still fighting for something else - a reduction in corporation tax for firms who make jobs available for disabled persons. So they will pay less tax if they contract disabled people, and also make accommodations in the firm so that the disabled people can actually do their job.

So the issue of taxation is very important. I think we need to look at that as well. I do not know if we can add something on complementing positive action measures with non-discrimination measures; or, to counteract the impact of high levels of unemployment on access to the labour market by disabled people. We need to define positive measures with some degree of imagination so as to have the best possible success, without depending on governments providing more money. The government has to provide more money. But we have to use our imagination to make the most of public and private contributions.

Comment from the floor

If I look at how the quota system works in Germany, with certain sanctions, for example, once a company gets to a certain size then a certain number of employees have to be disabled. I think it is 6% at the moment. Otherwise, I think a small percentage has to be paid into a fund, which then finances workshops and training activities. It is a small element, but we do protect our disabled people in other ways as well. They have more advantageous annual leave provisions and other advantages when they are in work. But, in our discussions here, and in what we are working for as part of that discussion, we have to realise that we have a different perspective to the general public. Employers for example see this as a burden. It means that they will have to do more or it will cost them more. Other sectors of the population do not fully understand our position. So, in addition to these positive measures we need awareness raising and we need to make it clear that what we are dealing with is, in fact, human rights.

In Germany there is a recent law - I think it has now passed through parliament - which changes this quota and moves towards more positive action measures to be taken with a view to increasing employment of disabled people. We will have to wait and see whether that works.

But I think the crucial point is - and here I would differ from the USA - in Europe, education and vocational training systems are very different in each of the Member States; and this is an area in which the EU has very little impact on policy. Education and training for disabled people also differs widely across the Member States. So, as long as we do not work on that, there will be a problem. Obviously people need skills, and employers need people with skills to do their work. And, if an applicant does not have the skills then the employer will not employ him or her.

Furthermore I think access to employment is important and access to transport is important so we have to work on the obstacles that are still in place. We need to work on the obstacles that prevent disabled people from getting to work and having access to jobs and then physically getting to jobs when they have them. Barriers exist for disabled people that do not exist for other people - we have to work on that.

Caroline Millous, Air France, France

In France, companies can also conclude an agreement and implement positive action. And, to respond to the man from the USA, if an employee was skilled then there would be no need for quotas. Following that rationale, we would not need any legislation. But unfortunately that is not the case. If you are disabled, even though you may have the skills, that does not mean you will get the job that you are applying for. Mr Lambert's fund is a public organisation, but I would like to specify something. You mentioned recruitment actions, and that if disabled and non-disabled applicants have equal skills then in those circumstances some form of positive action measure could be appropriate to ensure equal opportunities for the disabled person.

But, there are many other aspects as well, and we have to talk about accessibility and transport.

I am also in favour of anything that can be done for maintaining people in work, and also from the particular aspect of people who have a job. We are committed to people remaining in employment when they become disabled. It may not be the same job because of their disability. For example, an airhostess who becomes paraplegic will not be able to carry out that job. But the company could re-train her, and give her a different position in the company to suit her newly acquired skills. That would require external partnerships as well. No-one is working on their own on this.

Mention has been made of the need for skills. But, we have the problem of training across Europe. We find in Europe that there is a skills shortage. When we are trying to recruit people, we do not find people with the required skills on the job market. We need to work closely with organisations working for disabled people, so that in tomorrow's world there are disabled applicants with the skills needed by the labour market.

Invited presentation from the floor

Ann Dinnigan, Equality Development Manager, Aer Rianta, Ireland

Air Rianta manages the three main airports in Ireland. It is also an international company.

I want to talk about Aer Rianta as a case study for the employment of people with disabilities. We started a programme some years before equality legislation was introduced in Ireland. This programme adopted the concept of disability as an equality issue like gender.

Employers will comply with legislation to employ disabled people. However, if a business is to operate and to succeed, and if people with disabilities are to be part of the future of an organisation it is only when you enshrine the case for employing them within a business case that you confirm that future. The reason behind the business case for employing people with disabilities is that it enhances competitiveness. If you looked at the strategic success of an organisation today, it is achieved by developing to the maximum each and every individual in that organisation. If you create a positive environment for people with disabilities, they will achieve their maximum capabilities. Customer care is firmly part of the business case. If you are a service organisation like we are, the employment community should reflect the business community you are serving. It helps you to serve customers better when the internal organisation is more reflective of the external environment. That is the value to an organisation of adopting these ethics and values so as to create an equitable and fair environment. It is part of your management skills to manage all your people including employees with disabilities and job applicants with disabilities; and to treat fairly the personal expectations of each and every individual within the organisation.

So, our starting point was equality. But, equality in the context of diversity that recognises difference, and a view of diversity that is founded on the premise that through harnessing people's differences we can create a productive environment. People with disabilities do not have to become the same as everybody else. But we do try to create an environment where people with differences can compete equally within the organisation and when seeking to join the organisation.

We did some research a few years ago because not much research is carried out in Ireland. The research included conferring with people with disabilities with regards to their needs, and looking at experiences in the USA and the UK. Our first subsequent action was to develop an 'access action plan' because access is the opposite of barriers to employment.

The areas we identified were:

1. Awareness - You need awareness within the organisation of the capability of people
2. Developing a culture of change, and recognising customers with disabilities
3. Supporting people within employment
4. Developing standards through discussions with other organisations; and, most importantly, people with disabilities themselves.

So, to focus on two aspects of our programme. First, disability awareness training. We, as an organisation, identified a massive attitude barrier within the organisation. No matter what legislation there is, or what quota you have to fill, if you have attitudes that create barriers you will never succeed. Second, we developed an integrated approach to training. First of all starting with senior and line managers to gain their support. If you talk with organisations it must start with support at the management level. Human resources people, all interviewers, personnel people - you need to ensure they are all sufficiently aware. The existing climate is a continuing part of all our interviewing and equality training; disability awareness training; mainstream training, and all induction courses. All our staff undertake induction training, which includes disability awareness training. We have also produced our own customer training video for our front line staff. It is a twelve-minute video on how to deal with customers with disabilities. We use this in our training courses.

For recruitment, we have engaged in targeted advertising, and we have developed a work experience programme. Work experience can provide a huge awareness experience. For example, one person who came to us on work experience was blind. People had some doubts about how she would cope with getting around, and were surprised when they saw what she was capable of doing. What is interesting is as a result of purchasing her adaptations and voice synthesiser, we learnt about her disability. In the architect's office where she worked, they changed their work patterns to accommodate her because she is an extremely capable person. She uses the dictaphone for preparing letters, and a reader came in every morning for her.

Objective and fair recruitment practices. We engage in competency-based recruitment, with job descriptions, and person specifications. But people with disabilities that we become aware of, are given a preliminary test whenever they fulfil the basic criteria. We also provide interpreters. And, with deaf candidates who have never used an interpreter before, we have facilitated a mock interview prior to the real interview. We provide accommodations and, if an employee develops a disability we have used the work experience programme to help them move into a new career in the organisation.

I want to end by showing you what I call the mosaic model. This is a model of diversity taken from another organisation within which you can include disability. It is part of our mission and values to ensure that we have recruitment practices that accommodate people of all abilities. You will have seen that the Directive covers harassment and victimisation. We offer various work patterns, reduced hours, and flexible working for people with disabilities. There is also tele-working.

As an organisation, if you present a positive action programme focussing on the individual and their development, this can be managed and developed in a positive work place environment. That ensures a culture that empowers disabled people.

Pedro Grillo, CNOD, Portugal

I have already heard today about specialists. What is a specialist? Who knows more about our needs than we do? People with disabilities are specialists. I am a professional as well. I am an economist. I could be here talking about models, techniques and figures. I am a University professor. I am an advisor on rural planning. But nothing can replace my experience as a disabled person. What I have learnt from people with disabilities from the grass roots and with no qualifications is that they have the experience. They are the true representatives. They are really the specialists because they know better than anyone, what they need.

So talking about strategies regarding employment for people with disabilities, I would like to ask the non-disabled professionals, do governmental and other organisations in European countries give disabled people the opportunity to be part of the process of planning, implementing, and monitoring?

For instance, Rafael De Lorenzo was talking about Spain. Something that is really very important is to match supply with demand. Are disabled people involved in this? For instance, why not in Portugal for the government organisations which are responsible for the intermediary structures?. First of all, 92% of them are not accessible. What kind of strategies are they talking about? Employment for people with disabilities while 92% of that structure is not accessible.

How many disabled people sit behind a desk receiving other people, disabled and non-disabled? None. Those are just a few things to think about.

Comment from the floor

I am British, but for nine and a half years I worked in Belgium for a good company and with a high profile position. It was not a nine to five job. I have been reassured today by the comments I have heard that show an in-depth wisdom on the need for positive measures that do not turn non-discrimination into discrimination against the disabled person. There are instances where equal treatment is cruel. Equal treatment and non-discrimination should not result in physical or mental harm or stress to the disabled person. I have the same set of skills as I had before my rare disorder of the spine was diagnosed. I need flexibility from the working world. There are examples of positive action that could apply equally to non-disabled people as to disabled people. I am thinking specifically of flexi-time, responsibility sharing and changing working methods. In the working world, we see the drive for faster, longer, and harder work; with people doing jobs that require 100% capacity of a normal person. If you add a disability to that, you feel that even if you are 75% disabled person you are being asked for 100-120%, and that is still discrimination. Some companies would perhaps say that there are opportunities to work at home. That is also a form of social exclusion. I know disabled people who would willingly take a cut in their disability pension to be part of a working environment. I have met hundreds of people at work.

I have found the flexibility that suits me in the world of voluntary work. I do it at my own pace as a person wishing to contribute fully to society. I wish that the working world could take some good examples from the voluntary world where there is co-operation through e-mail, and so on. But I think it is definitely very wrong to try to make people who are not equal go through the same physical challenge on an equal par. It might take somebody two hours to get dressed and leave the house; it may tire somebody to do a seven-hour shift. If you can combine flexibility in the work you can bring in equality, very positive attitudes and motivated people. I wish to remain that way regardless of my own disability.

Comment from the floor

What you have said is a very good example of what 'reasonable accommodation' might be under non-discrimination legislation. It is your right to have your work organised in such a way that you are then equal to other people; and that is the premise behind reasonable accommodation and the rights based approach. It has been very interesting listening to this conversation where in a number of instances people have used examples of what might be called reasonable accommodation as opposed to positive action. So we are seeing a convergence there.

Hartmut Haines, Bundesministerium fur Arbeit, Germany

I thought this was a very interesting discussion with a lot of interesting facets, and points of view. I will try and summarise what, in my view, might be the message that we could take to the plenary.

I think the first point has to be linked to what has just be said - first of all the Directive and the possibilities of preventing discrimination in the workplace should be fully exploited as a legal principle or basis which we now have in our Member States, and which we have to firmly implement and use.

The second point is that a lot of people in this room take the view that, in addition to the principle of non-discrimination, positive action measures are also necessary from different perspectives - individually orientated, as well as changes to the overall conditions for the creation of job possibilities.

We should also, perhaps, pick up the idea expressed in Article 5 of the Directive that positive action can broaden the field in which we can talk meaningfully of non-discrimination. For example, circumstances can be generated through positive action which mean that employers are able to take account of the principles and the Directive.

Natalia Nico-Fazio, Dipartimento per gli Affari Sociali, Italy

A few days ago in Italy an implementing regulation on employment of disabled people was introduced. I do not have time to go into detail, but I do not think there is necessarily discrimination here. If somebody does not have the capability of moving round, then perhaps they could work at home. In Italy we have regulated distance working in the public service. It is not discrimination.

Discussion Forum 3 – Impact of discrimination in other areas of life on disabled people’s ability to secure and/or retain employment

Chair: Thérèse Kempeneers, Inclusion Europe
Rapporteur: Inmaculada Placencia Porrero, Information Society DG, European Commission

Introductory remarks

Gerla Voorbraak, Constitutional and Legal Affairs Division, Ministry of the Interior and Kingdom Relations, Netherlands

My main task at the Ministry is to prepare legislation and advise public and private persons about non-discrimination matters. This implies that I have to provide information on all the non-discrimination grounds, explicitly and non-explicitly mentioned in the UN and EU treaties, the Dutch Constitution and national legislation. For this reason, I was a member of the group of legal experts formed by the European Commission after the conclusion of the Treaty of Amsterdam. The main task of this group, under the presidency of the EU Commission, was to discuss the possibilities of non-discrimination issues according to Article 13. As you all know the final result of this work are the two EU directives on non-discrimination.

This discussion forum will deal with the impact of discrimination in areas of the lives of disabled people other than the ability to secure and/or retain employment. I will give my personal opinion on this topic, bearing in mind the questions that are in the paper prepared for this Forum.

But first I would like to make a remark concerning the discussion on the need for a separate Directive on discrimination on grounds of disability, similar to the separate directive on race and ethnic origin. I think that, from a legal point of view, there is no need for separate Directives. All the non-discrimination grounds could have been dealt with in one Directive, including the existing Directives on gender. Making a distinction between the different grounds on which discrimination occurs in different non-discrimination Directives will lead to more discussion and more confusion. For discrimination on grounds of disability, it will be very difficult to specify and cover all the different disabilities and needs. National legislation would be more appropriate to specify and define the term “discrimination” on different grounds and stipulate sanctions in different situations. That is my opinion. However, the fact is that the EU Commission and the Council have decided to maintain the existing provisions on gender, and introduce two new Directives: one especially on race and one a general Directive. For the future, a non-discrimination Directive on all the grounds in the field of goods and services would be worth considering. This could mean that a separate Directive on race could be partially incorporated in the general Directive on employment and partially in the new Directive on goods and services.

I think that we should first make the distinction between what is needed now and what will be needed in the future. Secondly, but directly linked with the first point, is the difference between subjects that are of direct importance for employment of disabled people and subjects that are of indirect importance for their employment, but directly important for integration and participation in society.

I would like to give some examples. Dealing with the present will mean that our point of departure will be the number of people that already have the skills to perform a job in the public or private sector, but who never got a real chance to work because they encountered discrimination. For this group, it will be of primary importance to have the right information about the implications the non-discrimination legislation for the individual. Depending on their personal skills, people will also need information about the possibilities to find a job that fits them, and information about the conditions to keep the job and to make progress. For this, personal consultation and feedback in the workflow will be needed. The reason for my approach is that the Directive focuses on the external conditions. So the employers, trade unions and NGOs will be dealing with measures needed to make employment possible for disabled people. But statistics have shown that 1/3 of employees in the public and private sector are on sick leave because of burn-outs, bad working conditions and work-related stress.

So, if one loves oneself, one should take care of oneself; and as the external conditions are being met in the Directive, I think it is now very important for individuals to take care of themselves. This brings me to the conclusion that, for the present, personal guidance for disabled people is needed, and maybe we should consider starting a specialised employment office for people with disabilities in the different Member States. I think that the results for this group in the employment field in the coming years will be of primary importance for the short-term evaluation of the Directive in the Member States.

Regarding the future, I think that education and training, social services, integration in society etc. will have an impact on people that have to find a job in the near future, but are not fit to accept a job at this moment. And, now to come to the differences in subjects that are of direct importance for employment of disabled people and subjects that are of indirect importance. Of direct importance for employment, I consider, for example: transport to the office, access to buildings and accommodation facilities in the workplace; personal guidance where needed; training on the job; communication with colleagues and superiors; and insurance matters.

Of indirect importance for employment, I consider: access to goods and services in general; a guarantee of social and cultural participation in society - including transport facilities, access to buildings other than the workplace, access to education and training programmes, information and communication facilities, sport facilities, entertainment programmes.

On the specific questions that we have been asked, in the paper, to answer, the paper itself suggests education and training, social services, transport, the built environment, and information technology as the areas in relation to which further action is necessary. I would like to add sport and entertainment programmes, and standardisation of EU facilities for disabled people. And, under social services, we could bring in communication facilities. This could include consultation and feedback on an individual basis.

For action points, I propose a general non-discrimination EU Directive for all the grounds on which discrimination occurs in the fields of goods and services. This will oblige Member States to prepare legislation in the areas of goods and services, and make separate provisions for different situations concerning the different non-discrimination grounds. I also propose a specialised employment office for disabled people - an ombudsman.

**Patricia S. Bregman, Policy Planning and Mental Health Services,
Canadian Mental Health Association, Canada**

I have a slightly different view on this. Coming from a jurisdiction that does not distinguish between them, I do not think you can easily separate out discrimination in employment and discrimination anywhere else. And I would ask you to just think about your own lives, and what it took for you to get a job. It took education, so discrimination in education will keep people from employment. It took social networking, the kind that happens on the football field in America, or at baseball games or through getting to know other people – and, more importantly, how they interact. This is particularly important with some disabilities, which are much more difficult to accommodate. So, discrimination that keeps people from gaining access to social life is critical. You need to be able to live near your job. If you can not get housing that you can afford and that is accessible, you can not take a job. It is as simple as that. Let us say your whole office goes out after work, because that is when important decisions are made about promotions, and they all decide to go to somewhere that is not accessible and there is no cab to take you and you get left behind. Think about the computers that people can use to work at home. Can disabled people afford them? Are they accessible? Can they access really essential information? The use of overheads and PowerPoint, which is now so prevalent, if you do not read out the PowerPoint presentation, people who are blind can not benefit from the training. Or, perhaps you send somebody to a training course and they do not accommodate people who are deaf. It is the same for things that other employees would benefit from that are not necessarily strictly work-related. Travel for participating in conferences like this - is not simply showing up at the hotel. It is how do you get to the airport? How do you get from the airport to the hotel? Is the hotel accessible? For people with mental health problems and intellectual disabilities, there are all kinds of attitudinal barriers that we need to conquer in the schools, and in various fora outside the workplace.

So, I think that if you look at your own experience and think about the things you did to get a job, or to keep a job or get a promotion, a lot of them do not relate directly to working in the office and sitting at your desk. And in fact if

that is what you do, you are probably less likely to get the promotion or to get a job, or even to know that a job exists. Much of the employment market is based on what goes on in informal discussions.

The question is 'what to do?' – I think there are a couple of answers. One is to have comprehensive legislation. But I also think we can be creatively subversive. There is no reason, for example, why you can not put out policy guidelines that employers, for example, should not hold any functions in places that are not accessible. And that includes social functions. We have negotiated this with employers and they are willing to accept it. They could also pay the cost of extra transportation if you need to go to the office party such as the wheelchair accessible taxi, because you can not take public transport. And, they could pay for the adaptation of the computer that you need, maybe not to do your actual work, but to learn how to do the things other people do on the Internet. They could give you tickets for the ball game. I would say that these are all things that are part of employment. Most employers would probably not agree. But I think they can be accomplished without legislation, within the framework of what you have got now if you are very creative about it. I think ultimately that you do need to look at setting up some kind of a barrier removal plan that covers not just the workplace. And once you start to do that and once you start to look at where the barriers are and ask people with disabilities to identify them, I think the answer has become pretty clear - you need to have a sort of comprehensive act. I am not quite sure whether it should be general or disability-specific. One constraint is that in general legislation you can only get so far. It may not accommodate people with disabilities as dealing with discrimination on grounds of disability really is different. You are dealing with very different issues. You could do it in the context of a general Directive, but it would take a lot of work. Because that is, at the end of the day, what we are trying to achieve in Canada now. If you really want to be proactive in developing standards, the worst thing for a person with a disability to have to do is to file a complaint. We can have the best enforcement mechanisms in the world, but if you want a job somewhere, the last thing you want to do is say to the employer 'Give me a job or I am going to file a complaint against you'. And so I think we need to look at legislative schemes that are more proactive, that lead to a kind of standardisation, that really create what we can call barrier free workplaces. Barrier-free environments, that are not dependent on a specific kind of enforcement.

Finally, I like the ombudsman idea. I think it gives people a way to conciliate or mediate. It is interesting that in our human race commission, the group who make the largest number of complaints – and we have 12 groups covered within our legislation – are disabled people. The largest area of complaint is employment. And a lot of that has to do with getting employment or being fired once you have been injured on the job.

What is then interesting is that they have got a new settlement mediation process. And 75% of the complaints are settled in that mediation process. I think that is encouraging for the future. Maybe we can come up with strategies that will allow for more collaborative processes to move forward so as litigation is left on one side. You need to have the ability to sue because there are things that are absolutely appalling, that just cannot be tolerated. But, that further kind of approach may be interesting.

Invited presentations from the floor

John Evans, Disability Consultant, and Chair of European Network for Independent Living, UK

My work involves advising local and national government on policies around discrimination and employment and independent living.

What I would like to do today is to paint a picture of what it is like to be a disabled person in Europe today. I would like you to recognise that I am a wheelchair user. There are many types of disabled people with different impairments - including people with mental health problems, people with HIV and aids, physically disabled people, and people with sensory impairments. I cannot represent all these people. But the ones we are talking about, are those disabled people who are in some way discriminated against.

What is the situation today? I don't think I need to tell you that the situation in Europe is quite clear - discrimination is rife in every country. There is not one country within the European 15 member states that does not have discrimination. In many countries, that discrimination is still blatant. And, it is very blatant in terms of disabled people wanting employment.

What do disabled people want? We want what everybody else has got. We want jobs. We want equal access to education. We want to be able to move around in our communities like everybody else. But there are problems. There are horrendous problems. Disabled people cannot even begin to think about working, because some of them do not even have access to transport to get to work. Or they do not have the support to be able to use it.

Let us try and look at some of the problems. We live in the European Union? Where there is freedom of movement from one Member State to another. In fact we can all move from one country to another, and we can go and live in another one. We can move from England and go to live and work in Germany. That situation is not real for disabled people. There is no freedom of mobility. Even in our own countries. If we are disabled, we cannot even move around our own country. I work to earn my living. If I want to move from where I live now to another part of the UK, there are many factors that will inhibit me from doing so. Even the factor of appropriate housing in most areas. The fact that I might need to use the transport system. And to me personally, and, even more important, is the fact that I am a personal assistance user. This means that I need support. I need support in everything

I do in my life. From the moment I get up in the morning to the moment I go to bed at night. I need that support at work. How many countries in the European Union have the support available for someone like me to be able to work in the workplace? We are probably lucky to have about three or four different countries that will, in some form or another – and I can assure you, it will be extremely limited – provide support in the workplace for someone who is unable physically to manage things by themselves. That is what we are talking about. We are talking about support for individuals; and the fact that support is not available is another form of discrimination.

If we can look at another problem: benefits. There is a real benefits trap in every European Union country. It is very, very hard for a disabled person to move from benefits to fully paid-up employment because, half of the time, it is not worth their while. They lose so much benefit that, unless they receive high incomes when they get those jobs, they are not going to be able to do it. They - are not going to be able to move over that threshold. This is one of the important things that every country within the European Union needs to address. They need to address ways to overcome this problem so that people are not caught and imprisoned within the benefit system of their own country. They need some form of tax credit, or they need some form of infra-structural, financial incentive on behalf of each of the governments to be able to do that. There are many things that need changing in Europe today. Not in our own countries, but on a European Union level. Until they are changed, most disabled people - and I am not sure what the exact figures are in different countries, but I know in my own country 70% of disabled people are on benefits – will remain unemployed. Then there is also the problem for those people like myself who are personal assistance users – because the need to make a contribution towards the cost depends on which area in the United Kingdom I live and on what support I am getting from my assistant. In other words, I am asked to make a contribution from the money I receive as state benefits. And that contribution is not a small amount of money. We have to try and ensure that disabled people like myself can remain at, or can even get to the workplace. These are some of the points that are worth highlighting for the discussion later. I am aware that there are other problems. The fact that, in many respects, employers have negative attitudes. Changing attitudes is a big, big issue. How do we do it? We talk about education, and training. But how do we do it? There are an amazing number of employers in the Employers' Forum on Disability, yet still there are bad attitudes. There are negative attitudes where people are not prepared to take on disabled people - they think they will take more time off work, because they will be sick more often. But there are statistics that disprove this, as well as showing that disabled people are better employees than many non-disabled people in terms of the number of hours they work, and their attendance record.

What other kinds of things can we look at? We need to look at the infrastructure – things like inaccessible transport, inappropriate housing, the workplace. The workplace needs to be adjusted. We talk about 'reasonable accommodation'. But how many employers are seriously taking that on board and looking at their place of employment with a view to doing something

about it? Some people like me will need support at work. Are employers going to do that or should the State do it?

The tendency for disabled people to be unemployed for long periods of time is exacerbated by the benefits trap, but they also have to develop the work skills to be in the workplace. And when they are not there, they do not develop the interactive skills that people need for working. To acquire networking skills takes time and training. And, that is why, in my own country, there is probably not enough support for the voluntary sector. The voluntary sector in a lot of countries actually starts disabled people on the road to getting into work. It starts developing their skills. It starts to get them used to working with others, whether they get paid for it or not. That is a very important role. I also think it is important that governments should support the voluntary sector more in its efforts to enable disabled people to develop skills; and not, as in some countries, actually stop disabled people working on a voluntary basis, because of concern that they are getting some money that is extra to their benefits. So, all these negative things are going against disabled people. I think there is also insufficient funding for disability organisations. I think some of the organisations that are probably most proactive in enabling disabled people are our disability organisations. And if the governments, perhaps, funded those organisations more to set up some job recruitment, and job finding and job securing skills programmes, that would help a lot more in getting more disabled people - not just a minority but hopefully in the future a majority - back to work.

We need some form of comprehensive civil rights legislation. But there are other things that can be done in the meantime to overcome some of the infrastructure barriers that we face in the built environment and also the attitudinal ones. The other thing we all need to do in our own countries is to encourage our own governments to put more priority and more effort into disability issues; and particularly to put employment high on the political agenda. It is very fashionable at the moment. Many European governments are coming up with new types of work schemes to get disabled people back to work. In my country, Tony Blair says 'we are going to get every disabled person in this country back to work'. Oh yes! Good! High thinking! Good ideas! But what are you going to do about it? How are you going to change the benefit system, the benefits trap? That is what needs addressing. Disabled people and our organisations must be encouraged to work with governments and to work with the policymakers so as to change what is happening. I do not think there is going to be great progress on this, but I do think that over the past 5 years we have seen quite considerable progress throughout Europe. In 1995, the report 'Invisible citizens' was published. Who are the invisible citizens? It is us the disabled people. We were the invisible citizens of Europe in 1995, because there were no laws really protecting our rights and protecting us against discrimination until, eventually, we got Article 13 - the non-discrimination article - in the Amsterdam Treaty. Big deal. When was that? 1997. Three years ago. And where are we today? What has happened? The discrimination clause is not fully implemented and, therefore, we have yet to see its effects. That is the reality of the situation. And that is what we are going to be working at together, all of us, whether we are in

disability organisations, the voluntary sector, business or the public sector. By working together we can try and change that. We have a long way to go and some of us are working on it every day of our lives. But, I am sure that together we can just push a little further down the road.

Clemens Huitink, European Network of Ex-users and Survivors of Psychiatry, Mental Health Europe, Netherlands

Research by the World Bank shows us that one out of every five citizens in Europe is facing mental health problems. From that you should expect many representatives of users, ex-users and survivors of psychiatry in the forums where there is discussion about discrimination. That is not the case. Although they are a huge group, users of mental health services tend to organise amongst themselves. This is because there is a lot of work to be done amongst themselves. In our network, we act against any kind of discrimination in society. Both inside and outside the mental health care system for people who have been subject to the psychiatric system. We support the development of ex-user survivor groups throughout Europe with a particular emphasis on the countries in Eastern Europe. We create and support new alternatives to the psychiatric system and we collect and share information on the existing ones. We try to influence and to change present treatments in psychiatry.

But there is another reason why users and survivors organise amongst themselves. Today we are talking a lot about legislation. And we, the users and survivors, have learned to be very suspicious about legislation. In our case, much legislation about mental health, especially for those who are placed in involuntary treatment is not meant to be protective but to exclude people from society. The aim of leaving psychiatry and entering society is to retain citizenship with all its intrinsic basic rights. This means that every European, including people with mental health problems, should be able to claim any right as laid down in laws and regulations, irrespective of psychiatric labels. We plead as users' organisations for sound financing of our own organisations. We plead for an immediate and extensive action to take away all prejudices about the psychiatric patients, especially when it comes to employment issues. Prejudice is still the main obstacle to leaving psychiatry and re-entering society.

One out of five people is disabled. Let those 20% rise and show their faces!

Open Discussion

Jean-Luc Simon, Disabled People International

I would like to comment on two points. First, I very much support the conclusions of Patricia Bregmann and Gerla Voorbraak. But, there is one thing - a formula -, which I did not like. It is very general, but you see it everywhere. And I am becoming more and more aware of it and cross about it. This is the constant care to identify the needs of disabled people. But I will put it the other way round. What society needs to do is to integrate us. It is society's deficiency that we should be highlighting. Deficiencies in society prevent us from integrating in the way we should, and prevent society from interacting with us. It is a very basic comment. Do not make it seem that we are the people who are causing the problems, the difficulties and deficiencies. But try to identify the social deficiencies that impeding our integration. I think that is a very essential point. It is simply a matter of sharing the burden. Do not dump it all on us. I think everybody in society, as a whole should share the load.

My second point is that I very much support what John Evans had to say about discrimination in relation to the various pensions systems and so on that lock us into problems. There are two reasons for this: first, perhaps we should identify more precisely which populations are concerned. Who is disabled in the face of the labour market? In France, for example, there are many people who recognise us as disabled workers. The only recognition as being disabled, is because the job itself is not accommodating them. They could be allergic to flowers, have broken legs, or be unable to carry weights. It is an independence problem. The measures taken to deal with employment for disabled people in France work for people with those kinds of problems. But they work very badly for people who are 80%+ disabled and who have real problems with independence. And there is another problem – like John Evans mentioned – that of the reduction in allowances when you go back to work. The result is very simple. There is no financial benefit for disabled people in going back to work. So, there is discrimination, because disabled people do not have the right to earn money, to have their own income and to gain more from their work. And I go even further, very often when we work, we need more help because in the morning we have to get up more quickly, because we have got less time to get things done. We need more help. But, in the final analysis, we end up with less. We have less money available to pay for the increased help that we need. So, there is very fundamental discrimination there; and, as always, that has not been dealt with. And that has to be paid for. And it is not just disabled people. It is everybody who is being supported: the unemployed or people with other difficulties. But I do not think we are going to make any progress in this area unless we make progress on this essential point of benefits continuing to be available to cover additional costs.

Comment from the floor

The point about not seeing the person as a problem, but seeing the barrier as the problem is quite a good one. You can carry that forward to people who are labelled as having mental health problems in the workplace. We are hoping to get funding to start a 3-year project. But one of the things that we have learned over time and through doing our research is that, if you create mentally healthy workplaces, barrier-free workplaces, everybody benefits, two things happen - you have happier and more productive employees, because it is to everybody's benefit to have a stress-free workplace and to have a workplace where people are respected and utilised to their fullest. Also, you do then begin to see a lot more integration of people with disabilities. It becomes no longer an issue of accommodation. And it then becomes a much more positive message to employers. It would be much more successful. Not only with employers, but with other employees, if your message was that improving the workplace is better for everybody. It is not about making special arrangements for this person who has just come back from stress leave. This is about making a workplace in which everybody is respected, everybody is treated well, and given the working conditions to work to their maximum level of achievement. If we view it in that way, it becomes a win-win situation for everybody. Because often dealing with mental people or mental illness or people labelled this way, the problem is not the employer. It may be the co-workers. So it is a question of how to eradicate the fear, eradicate the sense that people get special treatment. It is important to start thinking about the workplace overall and not isolating people because of their labels.

Andre Gubbels, DG Employment and Social Affairs, European Commission

Briefly to refer to what the speaker from France said about the Directive on discrimination. During the discussions with Member States in Cannes, we were told that we should include a definition of 'disabled person' in the Directive. One Member State suggested that a disabled person is somebody who is not capable of working. So, that is the problem. If on the one hand we are told that people are not able to work, of course, you are not going to try and find work for them. If then they do not find work, it is not because they were discriminated against, but because a priori, by definition, they are not capable of working. So, there is conflict with the kind of idea we want to put across in the Directive of disabled people, not being defined as people who cannot work, but who work differently. And because they work differently, there may be obstacles and so forth. In the light of what is happening in the Member States, we have got to be very aware of the potential for major conflicts with a social security regime that punishes disabled persons for working.

The Directive is providing assistance above and beyond the concept in French law of what support disabled people need. There are Member States without non-discrimination legislation and this needs to be addressed.

The Commission is particularly interested in this discussion forum because we take note of the criticism being levelled at us, that all factors can affect access to employment. But we did take the idea of employment in a broad sense and we said that everything including on-the-job training is included. So, we have taken a very broad concept of employment in the Directive. It does not just cover payment for work. It also includes social indemnity, such as pensions linked to the salary. So if you read the Directive, it is broader, than you might think.

We are interested in what you have to say, because we are interested in problems linked to education, and transport. Education, for example, is a very important area. We might have difficulty in legislating at European level, because the approach on education is different from one Member State to the next. We are interested in your impressions and your experiences. Would it be possible to have a directive on non-discrimination in the area of education? That is a question I would put here. There is also the question of accessibility as well. That has already been mentioned and there are two different approaches. At the moment, all Member States know that there is legislation on accessibility, not based on non-discrimination, but based on the definition of certain standards. So which is the better approach? Should we give priority to a Directive requiring all buildings to be accessible; or is that something that exists in Member States already? Or should we ensure that each individual person has a right to appeal to the courts? We are not going to change everything in all buildings. However, if ideas of this kind are forthcoming, we would certainly be interested; and that was, to a certain extent, the purpose of this forum.

Thérèse Kempeneers, Inclusion Europe

Slipping out of my role as Chair for a moment – you talked about barriers to access to employment. I would identify others apart from the ones you mentioned. The members of Inclusion International in Europe are people with intellectual deficiencies, and their families. For these people, access to employment is a genuine problem - there are barriers that arise first of all in the school, because the education they receive is not adapted. It does not allow them to develop into citizens who are capable of asserting their rights, respecting rules, or to becoming involved in the economic system. So, the initial barriers are found in schools. Children tend to spend 15-18 years at school. That is a quarter of their lives. That period will be partially lost if they are not given the means they need to become fully active citizens. So, I would take up what Mr. Gubbels has suggested. Should we also legislate for non-discrimination in education and access to education? Also, you talked about accessibility, and I am struck by the fact that it refers to buildings and transport. But you do not talk about, for example, accessibility to documents. For some documents we receive you need 10-years' education at university to be able to dare to read them. Not a lot of people understand what is in them. So, when you talk about accessibility, perhaps you could take a look at the NGOs, who represent disabled people, and take the concept of accessibility of texts in its broadest sense. I am sure that will be one of their claims as well.

Comment from the floor - DG Education & Culture, European Commission

I would like to react to the call that has been made regarding education. Clearly, education has a major role to play. Even in the family before school, education may clearly be a problem. I think it is important to condition the attitudes of everybody with regard to the child as early as possible. There is one principle applied at a European level to education and that is the principle of subsidiarity, which means that the Member States alone are responsible for the organisation and content of educational systems. It is not easy for us to intervene at a Community level. In our programmes for education and training, the Community funds projects or pilot actions proposed by schools, or NGOs, which can then serve as examples. But moving from that to legislation is up to Member States. The Council of Ministers would have to request some kind of proposal on that. The Commission can only make use of the instruments it has got at its disposal. Within Socrates for example, doors have already been opened. There is specific funding provision for certain types of project.

Comment from the floor

There is a lot of concern. I think you are right in what you said about education. I have been considered incapable of working, so I am retired. But at the same time, I am being told: go to work and you will receive an benefit. There is a contradiction in there somewhere. The idea of removing a notion of inaptitude for work is something we should include. We have got to clearly distinguish assistance to become independent, from the need to live and for increased comfort. If we do not make this distinction, it will be difficult to get any further on education. Europe has a major role to play here. I am struck by the fact that the Hippocratic oath taken by doctors implies certain commitments. In other words, to care for any patient whatever their origins, sex, and so on. What about educators? Why do they not have the same kind of obligation? They could be obliged by law to educate people, whatever their disability, whatever the situation and so on. For example, in France, we have teachers, who for what they may consider to be good reasons, refuse disabled people access to schools. That is as bad as refusing medical care to them, in my view. So, that is the kind of initiative we need – a kind of a charter relating to the functions of people in education. That is a mindset that needs changing.

Comment from the floor

It is really necessary to have all these measures and obligations, and all kinds of rules to help our disabled co-workers in their work and to be included in our society. All of us here are very aware of these kinds of things. But I would like to bring it down to the level of the average person. We can develop very good measures. We can give each other very good examples and rules and everything. We know what is necessary, but we, together with the men or people in the street have to apply them. And there is no one law, no one

measure that works without the support of the ordinary people of the European Union. Today, we have heard a lot about attitudes. I think it is 99% a matter of attitude and 1% a matter of examples and measures and laws.

What can we do to change the attitudes of people in the European Union - the normal people like we are when we are at home? I think we have to give them the feeling that people with disabilities are also people like them. We have to bring people closer together. We have to help them to become acquainted with each other. Perhaps we need PR campaigns. We need television, we need life stories, but we have to bring disabled people into the houses and the living rooms of people in the street.

Secondly, the people in the street and us - we must be fully aware that people are worth doing things for. People – that is we who are here, people in the street, all the people in the world – are worth doing things for. So, also, are disabled people worth doing things for. We have to look differently at people. Not only we who are here, because we do as a result of our experience, but everybody in society has to look differently at people.

The third thing is that we must be fully aware then – and they also – that we are people ourselves. So, a disability could have happened to me. I could have been the one who is disabled. I could have been my colleague. And if we do not succeed in creating this attitude throughout the world, we will not overcome discrimination.

Comment from the floor

I agree with what you have said. In fact this is the starting-point for the topic of non-discrimination in general. So, I think you have a point there. One of the articles in the EU Directive obliges Member States to increase awareness in the employment field, but you cannot achieve this if you are not talking directly to the people concerned. So, there is a task for the Member States to provide information about the different kinds of problems that people with disabilities meet in the working place. I think this is dealt with in the Directive. It is not precisely mentioned like that, but it is part of the awareness programme.

I have already mentioned that the Directive focuses on the external situation. The Directive focuses on employment. What is really sad is that although Member States are free to make legislation that goes further than that mentioned in the Directive, there is no obligation to do this. This Directive is a starting-point and I think in the EU there was agreement about having this starting-point; and then to look at where it brings the Member States to, and whether another instrument is needed. So, I think it is very important that everyone here in the room gives their opinion on the need to go further at EU level to prepare a Directive on goods and services. Or do the Member States have enough possibilities to regulate this in their own territory?

Gombos Gabor, European Network Users of Psychiatry, Hungary.

My first comment is about the question whether we need a general anti-discrimination law or would we prefer a special anti-discrimination law for disability-based discrimination. I think that we need both. In the mental health sector, they are very suspicious about mental health acts. Because most of the mental health acts around the world are discriminative and, as Clemens said, instead of protecting the person who is vulnerable, they imply extra coercion on that person. But at the same time, I think that in the case of discrimination, the problem is that if there is no specific disability anti-discrimination legislation, then technically it is really extremely difficult to enforce. For us, general anti-discrimination legislation is extremely important because, only if we have general anti-discrimination legislation can we really show that there is no discrimination against discriminated groups.

My second comment is: I come from Hungary, and in Hungary now we are living in a period, which is basically about joining the European Union. In our everyday life, every aspect of our life is influenced by this process. One of the things we experience is an enormous, sometimes crazy rush to create quality assurance mechanisms. There is legislation in Hungary for quality assurance in education. That is good. We must also have quality assurance in social services, and in health services. But, we do not have to have quality assurance in the workplace. This can be a problem and maybe it can have some European implications as well. What is a workplace? Obviously the workplace is somewhere to produce something or to offer or deliver services. But at the same time, the workers spend quite a large part of their lives in their workplace. So, I think that it is quite reasonable to have quality assurance in the workplace for the workers. And in that respect, it is really important that the workplace is a healthy, barrier-free and mentally healthy workplace. Quality assurance in education services? Even if we decide we need special legislation about anti-discrimination in education, I still think we need to try to put some element of anti-discrimination in the quality assurance. So, an educational service can be a quality service only if it tries to eliminate any kind of discrimination or, as a first step, to reveal what kinds of discrimination exist in an educational system.

**Patricia S. Bregman, Policy Planning and Mental Health Services,
Canadian Mental Health Association, Canada**

There have been a number of interesting comments. I like the issue of quality assurance, because it is the language that so much of business uses and there is no reason why you could not include a 'non-discriminatory workplace' as one of the criteria for quality assurance. I actually think that fits in very well with our notion. But I have been thinking about the issue of attitudinal change, and why disability discrimination may be different to discrimination on other grounds? One of the things I have been thinking about a lot is that you very rarely find somebody who says 'I don't like you because you have a disability'. That is not true of gender. It is not true of race certainly. It is not true of sexual orientation. People are usually not afraid to say 'I don't like somebody because of X'. With disability, our problem is that it is often seen as a charitable thing – 'I am going to pat you on the head and be nice to you. It is not that I do not like you. I am not giving you the job because it is too hard for

you, and I do not want you to be frustrated. So, it is in your best interest.' That whole notion of this difference in why we discriminate may be an underlying reason why simply having a general anti-discrimination framework does not work. The kinds of analyses that any organisation responsible for enforcement would have to do in respect of the other kinds of discrimination is really quite different. It is a different kind of understanding of a culture and a nature. That may be part of it.

The other thing that we are seeing in terms of cultures is that there are many different kinds of disabilities and that people with disabilities have many different attitudes. We must not make the mistake of believing that we know what every person with a disability wants. One of the cultural things we are seeing in Canada and in the US now – and I think it is because of the age of our law – is that we now have a generation in University that did not grow up in institutions. They grew up and integrated at mainstream school, and have very different expectations. So the older disability activists are responding to the oppression that they experienced in an institution. Not unlike the people who have psychiatric illness or are labelled as such, that still exists. But what we may be seeing in Canada and the US is a cultural transition, in how we deal with the world, because we really are changing attitudes. That almost brings us full circle to the question about the 'man in the street'. It is almost a chicken and egg problem. Laws cannot do everything and I would be the first to say that – and, we have judges who have said the same thing - but the law provides the framework and the impetus. If you do not have the law, people will not do anything. But that does not mean that you can sit back and say 'we have a law, therefore we don't need do anything else'.

I think you really need that comprehensive programme on education and integration. One of the pieces of evidence that we introduced in an education integration case was that integration does not only assist the student, but having that student in the classroom made a difference to their classmates. It was an educational experience for them. So to the extent that we need to educate the 'man in the street', part of that education is going to come when we start seeing people who are different sitting next to each other. And so it is going to take a while. It is not going to happen overnight. We have a judge in our courts who uses a respirator. He was originally told that, because of this and despite the fact that he is mentally capable, he could not be a judge. So he took his case to court and won it. That was 15 years ago. Well now, people look at things quite differently, and people interact with him when they meet him. So the law is needed to enable the barrier to be broken down and to change things. But you also need to pay a lot of attention to changing culture at the same time. That is our challenge. How do we do both, and where is the balance? We need to be really aware of the need to try to keep some kind of balance.

Comment from the floor

I have a proposal to make that might respond directly to what the lady said. We mentioned specialised labour agencies earlier. I think that changing people's attitudes is a very long-term objective. It is not something that one

can expect to wrap up in a few years. Exclusion dates from the dawn of humanity. It often began with putting us in institutions, then looking after us. Now we tolerate it. But, tomorrow we are going to participate. The time scale is enormous. And I think that our society has been undergoing many revolutions, and one of them is that there is a marked willingness now to integrate disabled people. Not that it will be easy and it certainly will not be achieved overnight. What is important is that we should launch a large training programme to train the 'crack troops', of disabled people who will then assist the integration of others. Disabled people are the best possible mediators between employers and society in general, because they have got a footing in society; and because they have already got themselves integrated. They are already taking part. And on the other hand, they can encourage other disabled people to go ahead, to make progress. They can stimulate and encourage all the disabled people, and it is a unique capacity, because they are living in the same situation.

So, we need the possibility of training, and acting as mediators. We share a life-style. We know the difficulties that people have, because we are in that same situation. And these trainers or mediators are part of society because they are involved in social work. There is a bridge between disabled people and society as a whole. I dream of some kind of training programme, a huge workshop, training – as I say – 'crack troops' of disabled people. Maybe I should not talk about 'crack troops' or the elite, but specialists, experts, who have this dual experience, the theoretical which many people have, but also the practical, because they really understand as a result of living in the situation themselves every day. And they know how people can be helped to participate more actively. That to me is the key - get disabled people involved. And of course nothing can be done for us if we are not in there.

Saraswathi Namasivayam, London Oriental Academy, UK

The London Oriental Academy is a small, voluntary organisation where I have been working with disabled people for the past 2 years. The total number of staff is 14, out of which 5 are disabled. 2 are tutors because it is a training and education centre. We have about 12 courses running at present. I would like to share my experience. It is a positive experience which I have had with disabled clients, I mean employees of mine. I work with the Shaw Trust. The Trust has been appointed by the government to act as a form of employment agency for disabled people. Anytime a vacancy arises in the Academy, I contact them, and we sit down and select the best disabled person who is skilled for the job. And my staff, the co-workers of these disabled people who work with us, are fantastic. There is no discrimination, there is nothing negative about working together with them. I enjoy working with them. I identify their training needs. As soon as they come to us, they work with us for at least 2 to 3 weeks on a voluntary basis to get used to the environment, to the other workers, and to everything that is going on there.

Comment from the floor

So, what we need to do is have legislation and cultural attitude change working alongside each other. Looking to the future, at this stage it does seem to me that Member States have an awful lot of work to do, to make a reality of the existing legislation. Only 3 Member States have any kind of disability non-discrimination laws in place. And I know from my involvement in the UK legislative area, it takes a long time to get it right. So they have to devise laws, set up complaint mechanisms and produce guides, leaflets and codes of practice. I do not underestimate what Susan Scott Parker said this morning about the need to educate employers and businesses and bring them onto our side. I would not like to see a situation where we develop this adversarial culture. If attitudes are not right, employers and business will find a way round the law. So, I think we need to run the two things very much alongside each other. I think disability is different and I think it needs an overarching Directive on goods and services. I think we will cope with problems, and I can not quite see the relevance of goods and services to other aspects of equality. In the UK we have introduced these things in stages. Employment, then goods and services. We are about to launch a new legislative initiative on education. I think some people may be impatient for change. But, I do think we need to look at the change in the culture as well in order to make these laws really effective.

Comment from the floor

I am glad that you underlined what I said. But I do not need to be convinced about it, and I am sure there is no person in this room who needs to be convinced. Perhaps the 'man in the street' needs to be convinced. I say to you: do not wait for 'the man in the street'. He will take a long time to become convinced about what we are saying. And I cannot wait such a long time, because people are dying in hospital. We need urgent action and we need legislation.

Some words about words: mentally handicapped; and mental retardation. I have worked long enough in this field to know that many words are unnecessarily hurtful to people, and that there is also a kind of fashion to use these types of words. I prefer the more neutral wording: people with mental health problems.

Comment from the floor

I would like to react in the first place to the discussion about the difference between discrimination on grounds of disability, and on other grounds. I agree that if you take the definition of disability, you will have a very hard job to specify exactly what is a disability and in what circumstances one can speak of a disability. I imagine that, in the workplace, it will be a different definition to the one used at home. Someone can be fully capable of being a father, but the situation could be different for them in the workplace. But, the fact that we cannot define – well, I cannot define the word ‘disability’ – does not convince me that there is a difference if you encounter discrimination because of your disability; because of your colour; or because of your age or whatever. People face the same problems when they are refused a job because of their colour. People are very well skilled, but do not get the job, because they have been discriminated against. So, that was my starting-point when I said that I do not see a need for making a difference.

And now, what to do next? Do we make different Directives for the different non-discrimination grounds or do we make one Directive on non-discrimination on goods and services, and oblige the member states to fulfil this Directive. They could do this in their own legislation– especially for disabled people, where it is very difficult to define the term and to define the situations – by making an overall specific law, which deals with different situations.

Comment from the floor – European Commission representative

I want to clarify something in our minds or the mind of the Commission. We have a Directive that covers all forms of discrimination. It does not say that Member States all have to have the same laws. We have the example of the UK where there are different laws, and we are not asking the UK to change them. But the debate that you are having at the moment is about whether we need legislation covering all kinds of discrimination. We do not want to get involved in that, because I think that it is up to you. The debate is interesting, but it is not the Commission’s job. The Directive has to be implemented by the Member States, and they are going to pass 15 different laws. We will, of course, look at them and see whether the results are achieved, and whether people in a particular country are given the rights that they should enjoy. But what we are asking is whether disabled people should have a separate Directive. I do not know the answer to this. I think that this is really the underlying debate.

The UK is going to have legislation about discrimination in education. But no other country in Europe has legislation on discrimination in education. Perhaps you will tell me otherwise, but I do not believe there is. And, of course, it is very difficult for the Commission to make proposals on the basis of the experience in only one country in Europe.

Comment from the floor

When you look at teaching in Belgium, there is a prohibition on excluding children. But the concept of disability is not really mentioned. That is a very Belgian compromise. Also, I was in Greece recently and there were children there who did not go to school. I believe this also happens in other countries. If it does, then it is very worrying.

Thérèse Kempeneers, Inclusion Europe

Although I am Belgian, I do not know much about Belgian legislation. But I do know that we can take a child out of school because their behavior is odd or whatever, and without another school having been identified beforehand. So a child can just be put out on the street. There is certainly a legal problem somewhere there, because it happens very often. In France, as well, where education is relatively well developed, there are still cases of children who are not at school, perhaps because they cannot adapt to the school, or it is too far from their home. This often happens because things are so 'sector-organised'. But, it is a scandal that the parents are condemned, for not sending their children to school, because school in France is a legal obligation. These parents are actually taken to court, because they have not sent their children to school. And yet, nobody sues a school that will not take their children. I very much regret this.

Comment from the floor

I wanted to tell you of my own experience, because having heard what has been said, I was saying to myself 'this is a lesson for me'. I am the mother of a 2-year old who is deaf, and I am a European civil servant. I have 4 other children. My disabled child went to the European Community crèche and my great fear was that he would not be accepted and that he would be excluded, because he is not 'normal' like his brothers. To my great surprise, the staff all decided to learn sign language. Now my child is learning sign language, and the teachers and the doctors and the other kids in the crèche are learning sign language. As he is now 2 years old, we are beginning to think about what happens when he goes to school; and we have been approached by the Commission Administration who have asked what we would like to do. Do we want him to go a specialised school for deaf children, or do we want him to carry on at the European school, which is the European comprehensive for children of European civil servants. They said that, if we choose for him to go to the European school, that they would support us, both in offering courses to the teachers but also in giving us help later on when he gets into secondary or higher education. I was delighted. I can tell you that people used to hide their children, hide their disabilities. I am very proud to have a deaf child, and I am very proud to use sign language in public. I do not hide it. I do not hide anything. I just wanted to say that, because not every door is closed, despite what you may think.

Closing Session

Chair: Bartho Pronk, MEP, Disability Intergroup

(Viewing of the Breaking Barriers Award winning entries)

Anna Diamantopoulou, EC Commissioner for Employment and Social Affairs, European Commission

Mr Pronk, ladies and gentleman

It was a very impressive film and you all know the Chinese proverb, saying that one picture is equivalent to one thousand words. When you see these two films – there is no need for words or stories. I am delighted to be here today to join you in such an important conference, the last in a series of events and conferences that have taken place in all Members States. I am confident that these events have achieved their aims: to draw attention to discrimination against disabled people in labour markets, but also to show that in the majority of cases discrimination was a far greater barrier against disabled people than people's actual disabilities.

Because there is one message that has come across loud and clear from the events of the past few days – that message is that disability does not mean inability. And this we have just seen. The nominees of the Breaking Barriers Award demonstrated that and before I go on I would like to offer my congratulations to the winners. I apologise that I could not be here with you and them last night; but I intend to invite them to my office. Switch On, the Belgian SME and Eeva-Riitta Fingerroos from Finland are excellent, but not unique, examples. We can find individuals like them across Europe. And our main responsibility is to focus on them, to highlight their activities, to highlight their presence and to create this benchmarking between all Member States.

Through their various achievements – the nominees have successfully defeated the common preconceptions about what disabled people can and cannot do by using their abilities - in a productive and creative way. They have helped shift the focus of attention towards what disabled people can do.

They are symbols and we all need symbols. Let me also take this occasion to underline the importance of the disability movement in all its diversity, as represented by the European Disability Forum and all the organisations and individuals who have been the real driving force behind all the changes in recent years. Shifts in public policy, new approaches and the drafting of recent legislation. It is true, that politicians have become more aware of the issues and that economic forces have also been working towards a more inclusive approach, but the disability movement has played a pivotal role.

I know this from the great number of meetings that I have had with representatives of the movement since I took office a year ago. It is true that

we have had a continuous consultation, discussion, and cooperation with the Forum; and with the other organisations. They have played an important role not only for the endorsement of the Directive, but for the social agenda as well.

Ladies and gentlemen, the purpose of my speech today is to outline our policy approach, to overcoming the barriers and building bridges. I also want to explain what the European Union is doing and how it can help to underpin national policies. There are still many barriers to be lifted. These barriers are a contributory factor to social exclusion. And by exclusion I mean three things: poverty, discrimination and lack of equal opportunities.

These three elements - poverty, discrimination and lack of equal opportunities – affect all excluded groups of people and have an impact on people with disabilities in a society suffering from other forms of exclusion as well. I will try to explain how policies are devised, what has happened over the past year and how they affect the European Union countries. There are currently 37 million disabled people in Europe. This is equivalent to seven times the population of Denmark. So there is a huge number of people who could be participating, who could be a productive and creative force for Europe. They warrant targeted policies, by virtue of their sheer numbers alone. We have adopted several directives, programmes and strategies with a bearing on disabled people. These include the employment strategy; the Equal initiative, the initiative which concerns the combat against discrimination and the programmes concerning inclusion, the inclusion strategy based on the method of open coordination and the exclusion initiative.

First of all the employment strategy. Employment is the principal response to poverty. That is to say, our response to what I called the first element of exclusion – poverty – is the right to work. And the entire strategy is predicated on implementing human rights. The state has an obligation to ensure that people with a disability enjoy the same human rights as other citizens. The marginalisation of disabled people, their non-participation in the labour market, imposes a huge cost on the economy. Governments may try to tackle the problem through welfare, but not always successfully, and it places a huge financial burden on the budget. It would be much better if people were able to participate in the economy. Clearly access to employment for disabled people is not just a social issue, but an economic one too. We are planning to carry out research to gain a better idea of exactly what the economic costs are. You know that we can always persuade politicians more easily if we can present the economic aspect of the policy. We have an employment rate of 60% in Europe; the employment rate for disabled people is 20-30% lower and disabled people earn less than the average earnings. In fact they get about half of what others get. Most people are in lower level jobs at the bottom of the ladder. So how is the situation being tackled?

Under the employment strategy a set of annual policy guidelines are drawn up that apply to all fifteen Member States. Each country then draws up a national action plan in line with the guidelines and at the end of each year the Commission reviews the progress made and may issue recommendations to

individual Member States and recommend amendments they need to make to their action plans. In order to simplify it, I would compare it with the EMU procedure – what we have done in all Member States, in order to achieve the Maastricht criteria and to have a common level in our economies. We are trying to do something similar with the level of employment.

There are three main areas of the employment strategy of particular relevance to people with disabilities. To start with there are measures to boost employability that is to equip people with the skills they need to find work and to help them look for the right job. The Member States must include disabled people in their plans for this, for instance by setting specific training targets for disabled people. Here we must say that the Parliament had proposed that we include committed targets concerning participation of disabled people in the guidelines. So far, this has not been accepted by the Council but I think we can manage it, and achieve it and make it a main goal for 2003.

Another parameter is adaptability. This is one of the main pillars of the employment strategy. How can we make the labour market more flexible in ways that address the special needs of this section of the population? What do special working hours mean for people with certain problems? What about focusing on tele-working which is a suitable form of working for a large number of disabled people. We are currently in the process of creating a legal framework for teleworking. Between 5 and 6 million people in Europe already work as tele-workers and this figure is expected to rise very quickly. In our view tele-working will provide a solution for a large number of disabled people.

Last but not least is the reconciliation of work and family life. This chiefly affects mothers. I know that parents, and mothers in particular, need special support. Also as regards training and work-related rights and obligations, because they play a major role in the countries' economy, and provide a great deal of support to disabled people.

The employment strategy is financially supported by the ESF and by the Equal initiative. This sets out to assist all Member States in implementing innovative policies to promote employment opportunities for the various groups, which are discriminated against, including disabled people.

The European Disability Forum is well aware of it. We have already discussed and worked together on it. It will be implemented by various organisations, local authorities and also Governments. Our efforts to fight discrimination and integrate disadvantaged groups into the labour market are accompanied by our research, which I have personally made a centrepiece of our policies.

What is this? Just as we have IT, information technology, we now have a new concept of assistive technology and we are trying to promote at the European level the development of publications, new aids and appliances for people with disabilities of every type. We have an interesting study showing that there is a vast market for this amounting to some €10 billion with companies showing a commercial interest. And finally there is the social responsibility of businesses. We have recently put a lot of effort into helping establish a

network of businesses across Europe, encouraging firms to assume their own social responsibilities. This means they should adopt policies on disabled people, on migrants and on equal opportunities and a network at European level is already in place. Some days ago, we agreed on some common guidelines – on a voluntary basis of course – but they were accepted by this network, and we shall have pilot projects in all Member States. We have seen the introduction of European awards and, in many countries, of national awards too for companies pursuing policies of this nature.

So much on the main approaches to employment as our principle response to poverty.

Now I would like to move on to discrimination. Legislative measures also have an important part to play here, and in October we succeeded in getting a Directive adopted on discrimination in the work place with specific reference to disabled people. This Directive will have a tremendous impact and it will change national laws across Europe. It was adopted 20 days ago, after a big fight in the Council and after hours of hard negotiation, because there are different approaches in Member States, there are different mentalities; there are different social and economic balances to take into account. We finally achieved a unanimous agreement and now there is European legislation concerning the fight against discrimination.

The third issue I referred to at the beginning of my speech is the need for equal access, equal opportunities. There is a new programme, one which we also decided on in October, in the last Council of Ministers. It starts in 2001 and it is about fostering inclusion by conducting studies, compiling statistics, raising public awareness, organising exchanges of best practices among Member States and supporting the disabled people's movement. In addition we are beginning a new process of open co-ordination among the Member States which involves the drawing up of National Action Plans on exclusion. We are developing an inclusion strategy, along the lines of the employment strategy I have just explained, with guidelines, national action plans and recommendations.

Each country will be appraised every two years. Our chief priority is to establish a new set of indicators and we have already agreed within the Commission on seven new indicators in the social field, which will form the basis of a new report in the spring. This will be the most important report at European level because it is the first socio-economic report, and not just an economic report. These indicators are very important in order to compare the policies in Member States, and to evaluate their effectiveness. Let me give you an example: access to education. One would hope to see measures in place to ensure that children with disabilities are not left out and to assess - how well they are able to participate; what progress they have made; what schools are doing to facilitate their access; what new methods are being developed.

Ladies and gentlemen, this is really a complex issue and we are currently working on an overall policy. I believe it will be comprehensive because it

takes all the relevant factors into account and we have chosen 2003 as the landmark year to aim for.

2003 will be the European year of disabled people. Disabled people's organisations need to play a very important role. We are awaiting concrete proposals, we must really agree on common ambitious goals. But that is not enough; all must participate in the preparations and all must participate in this procedure – local authorities, other NGOs, civil society as a whole, and the social partners must play a very important role.

What is most important for 2003 is the message for that year. And this must be the starting point of our approach, and is already so. It must be a positive one. In terms of what society gains by having disabled people join in, what it gains in economic terms, what it gains in terms of intellectual resources and as civilised society. This is what we have just seen in the films. We did not see the problems, but we saw the benefit to society and the economy as a whole. Let me conclude by saying that I have great expectations about the positive impact that our policies will have for the integration of disabled people into the labour market and their equal participation in all areas of life. I am also looking forward to the next couple of years leading up to 2003. They will give us an opportunity to take stock of our policies, gather momentum and bring visibility to the enormous contribution of disabled people to our society, to European integration and to social cohesion.

Let me finish by repeating the sentence I used at the beginning of my speech: the message today is that disability does not mean inability.

Thank you.

Bartho Pronk, MEP, Disability Intergroup

Thank you very much, Commissioner. It is very good to hear what you have just said and I would like to recall the earlier annual days for disabled people that we have celebrated here in Brussels. A few years ago we were a lot less optimistic about the possibility of pursuing any policy for disabled people at European level. The only thing that seemed to be open to us was the Social Fund. All other avenues seemed to be closed because of what is called in the terrible jargon of this place, "Lack of a legal base". If there is no legal base it means you cannot do anything.

Since you arrived, you have helped a lot through the changes in the Treaty of Amsterdam and an awful lot has been achieved. Especially I think in Article 13 - the only place in the Treaty, which mentions disabled people explicitly. There is, however, a very big problem with this in that it requires unanimity to do anything. But you were able to bring a proposal with incredible speed through the European Union, and I think that is already quite something. And, also, to get it accepted by the Member States, that is even more of a very big result.

I can add a small point here. I have understood that under the French Presidency's proposals for the Treaty of Nice part of Article 13 will be subject to decisions by majority vote. This means that if money is involved, it would be possible to do this by majority vote and not legislation. This could be very helpful. I also think the Employment Strategy is very important, even though it sometimes appears a little bit distant. It is easier to talk about Article 13 rather than the Employment Strategy. But, in the end, the Employment Strategy could be at least as important as what has been achieved under Article 13.

So we can be more optimistic than a few years ago. But now, of course, it is up to everybody here in this room to make all these new opportunities a reality.

Feedback from Discussion Fora

Discussion Forum 1

Rapporteur - Richard Whittle, Middlesex University, UK

- There is a need to clarify certain legal concepts within the framework Directive - in particular: What do we mean by disability? Who is protected by the Directive, and who is not? What does 'reasonable' mean in 'reasonable accommodation'? What would constitute a 'disproportionate burden'? What is an 'essential function' of a job?
- Representative organisations must be very active in lobbying. This means trade unions and disability NGOs must actively lobby national governments to ensure the framework Directive is fully implemented. It was stressed within the forum that representative organisations need to consult all sectors of disabled people so that the views of different disability groups are taken into account.
- Society needs to rethink the way it perceives disability. The problems associated with disability are not located solely within the individual. They often derive from the social and built environment. By accepting this shift in thinking away from the medical model to the social model, society can then adapt the way it views the employment context in order to accommodate difference.
- Disabled people themselves need to be very active in the use of the Directive. They need to be pro-active in enforcing their rights. But, it was also stressed in the forum that, in order for us to be successful, it is very important to ensure the necessary support structures are put in place. It is here that national governments, the Commission -through establishing a European ombudsman - and the other representative organisations can play a vital role in ensuring that there is full access to justice for people with disabilities.

Discussion Forum 2

Rapporteur - Sophie Beaumont, European Disability Forum

- There is an imperative need for non-discrimination legislation to insure against discrimination, and ensure equal treatment for disabled people.

- Non-discrimination legislation must be supported by complementary measures regarding positive action to offset the many disadvantages and systematic barriers that disabled people face. One person made the comment that equal treatment can have an unequal result and there is a need for positive action to achieve an equal outcome for disabled people. This is particularly relevant, given that the majority of disabled people are socially excluded and therefore come from a very different starting point to that of non-disabled people when they are trying to approach and access the labour market.
- Positive action measures must be individually designed, or designed on a case by case basis that takes account of the need to be sensitive to the diversity and heterogeneity of disabled people. Clearly some disabled people are at a greater disadvantage than others, and as a result may be regarded by employers as less productive. So, special programmes are needed to focus on disabled people who are particularly disadvantaged and who face greater barriers - notably those people with significant and complex disabilities. Also there is a need for recognition of the different situations across the Member States, and how different governments approach employers in introducing these positive action measures.
- Positive action measures must overcome systematic disadvantages, addressing state and social frameworks and legislative systems. A point that was stressed throughout the workshop is that broader measures were needed to break down barriers across all areas of policy and all areas of life and society. Access to education was particularly stressed because many disabled people have received an inferior level of education when compared with non-disabled people; and, employers need to be able to recruit disabled people who have the level of education required to do a job competently. Access to transport and new technologies were also cited as examples.
The need for support measures (in the form of state grants) to enable employers to introduce reasonable accommodations was also mentioned; and favourable comments were made about the system in France for this purpose, and to the Spanish system of tax credits whereby disabled people pay less tax than non-disabled people as compensation for their higher living costs. Rebate on corporate tax for firms who make jobs available for disabled people was also mentioned.
- All positive action measures must be implemented through partnership and consultation between government bodies, disabled people and employers. For positive action measures to be sustainable all groups must be well informed about them, and be able to recognise their benefits.

Discussion Forum 3

Rapporteur - Inmaculada Placencia Porrero, European Commission

- There was an overwhelming agreement not to separate the work from other areas of life. It was evident from the comments from the floor that discrimination in any area will have a certain impact on employment. There is, therefore, a need to ensure accessibility not only to activities related to work, but also, for example, to education, the built environment, and issues like leisure, housing, social activities.

- It was also stressed that there are a lot of people with skills who do not have a job. There is a need to inform these people of their rights and the conditions relating to gaining employment.
- Measures for achieving integration through combating discrimination were mentioned on two levels - legislative measures that would enable barriers to be overcome, and educational measures to change the culture. There is a need to change the attitudes of employers and co-workers, and to change from presenting the need of people with disabilities to be integrated as a burden, to focusing on the inefficiencies of a society that does not integrate all of its members.
- A proactive approach should be taken to developing standards and policy guidelines alongside the legislation in order to create barrier free work places. There is also a need for proper salaries, benefits, tax credits and so on; and for some kind of 'job support office' where people with disabilities can seek help and assessment on how to get a job. The role that peers can play in an organisation is also very important.
- In order to achieve a proper balance, disability issues need to be higher up the political agenda at European and national levels. These issues need to be visible; and legislation must be enforceable and monitored. There was support for the creation of an ombudsman to provide support for disabled people who wish to pursue complaints of discrimination; and for action to ensure that disabled people can benefit from the principle of free movement within the European Union.

Comments

Reiner Plassmann, Secretary General, CEEP

I am representing the CEEP - the Confederation of European Public Sector Employers. Together with UNICE (the private employers organisation), and the European Trade Union Confederation, we conduct the social dialogue at European level. Social dialogue is a structured process that is structured according to the provisions of the EU Treaty.

Last year, the CEEP, together with its social dialogue partners adopted a Declaration on the employment of disabled people. I will just read out the headings from that Declaration to give you an idea of the content - equality of opportunity for disabled people; stressing abilities and not disabilities; employment promotion measures for disabled people - a positive impulse for business. There are also some critical points that you have addressed in the discussion fora as well. These include the fact that disabled people are a very diverse group. This makes integration more difficult than for other groups who may be the victims of discrimination. A second problem for employers is that as companies come in very different sizes, with wide variations in their capital levels, they have different approaches to integration. Finally, in different sectors of the economy there are very different job profiles that must also be taken into account.

I would like to point out that just from the titles of the declaration you can see that the social partners have taken a different approach to discrimination on

the one hand and integration on the other. We have also taken a different approach from the Commission. The Commission's policy takes us away from the protection approach to a more personal approach. For us as employers we have to answer the question, "How can we create jobs for people with disabilities"? Discrimination can always arise, but it must not be tolerated. That is true, of course. But the main problem for us is to create jobs for people with disabilities; and different companies, of course, have different job profiles.

But we find the Commission's approach is a good one because it ensures that - discrimination on the grounds referred to Article 13 will not be tolerated; there are severe sanctions (yet to be defined precisely) for discrimination; and people who are discriminated against can use the courts to enforce their rights. We think this will lead to a change of awareness in the business world and that can only be a positive development.

There is another flanking process, which can have a positive effect - demographic change in our population. Over the next ten to fifteen years, our society will simply not be able to afford to neglect the human resources that are available on the labour market. I would like to wish you every success in your work against discrimination and for integration.

Christine Whyte, National Rehabilitation Board, UNICE

I work for the National Disability Authority in Ireland - the government agency that works to promote disability policy, and to ensure best practice in service provision for people with disabilities. I have worked with public and private employers at both national and European level to promote equal status for people with disabilities, and to develop guidelines on employment for people with disabilities.

UNICE is the voice of business in Europe representing companies of all sizes on cross-sectoral issues of concern to them. It is made up of 33 national federations from 25 European countries. UNICE has always maintained that decisions based on irrelevant factors which bear no relation to individual ability and potential to do the job is morally unjustified, bad practice and uneconomic.

Discrimination against people with disabilities is a basic human rights issue. It needs to be combated through the prevention and removal of barriers that deny people with disabilities equal access to, and participation in the labour market.

We have heard a lot today in terms of legislation and the differences in terms of interpretation; and we know that legislation on its own is not going to be enough. But, now with the new Directive agreed at European level, we need to sharpen our focus on positive actions and on finding creative and constructive solutions to the many difficulties people with disabilities have in securing employment in the labour market. We know that the causes of discrimination and exclusion for people with disabilities come from deep-

rooted social, economic and cultural factors. We know that social systems set up to help people often result in poverty traps that are difficult to escape from. And, we know about the difficulties posed by inaccessible transport, buildings; and, more fundamentally, by attitudes towards people with disabilities in general. All these barriers need to be tackled.

Employers alone cannot be held responsible for the unacceptably high level of unemployment among people with disabilities. But they are a critical part of the solution.

It is worth remembering that two thirds of the jobs in the private sector are in small and medium sized enterprises. Such employers need information, they need know-how and they need support. It is important to exchange information at all levels on Best Practice and innovation; and, we have seen some very useful examples in the Breaking Barriers Award films. We need to look at what works and how obstacles have been overcome; and employers also need to revisit and 'disability proof' all their policies. This new Directive means that policies for recruitment, selection, training and promotion and retention all need to be looked at again and 'disability proofed'. Disability awareness training is a fundamental building block for this, and should be used to raise awareness, to change attitudes and to give people the 'know how' on developing inclusive policies and practices.

So we need a partnership approach involving all of the key players. It is not just a job for employers. It is not just a job for people with disabilities or for governments. We all have an agenda for action arising from this Directive. Using the partnership approach, it is vital to raise awareness of the employment potential of people with disabilities and to address barriers at national, regional and local levels. We need to share information on programmes and schemes that are available to assist the integration of people with disabilities in the work force, and to promote the take up of these programmes. We need to feedback to policymakers and service providers the implications of pilot initiatives to enable people with disabilities to participate in employment and to become competitive through education, skills and job experience. We know there is a clear business interest in employing people with disabilities; and with demographic changes and skill shortages, people with disabilities are a major resource.

Progressive companies attract and retain the best employees. With 37 million consumers in Europe having a disability, and many others being closely linked to some one who has, that is a lot of spending power to influence product design and access to premises and marketing. All of these can help change attitudes among the general public.

Companies need to tap into new markets. A diverse workforce can provide information and give competitive edge in reaching and attracting new markets.

If we are to increase awareness and maximise employment for people with disabilities. We need proactive approaches and positive actions involving co-operative relationships that will help to meet the needs of all concerned. That

means people with disabilities, service providers, co-workers and employers. I think this is the way forward.

Concluding Speeches

Gilbert Huybrechts, Vice-president, European Disability Forum

Everybody knows that combating discrimination against disabled people on the labour market is one of the main topics for disabled people. The topic was chosen for this conference by the Commission in co-operation with the EDF as it is one of the major issues for all involved in the disability movement. Everybody also knows that the employment rate for the disabled people is far lower than for the rest of the population. And, furthermore, that there are few reliable statistics to illustrate it. But everybody knows it nonetheless.

I would like to congratulate the two prize winners from yesterday, and all those who participated in the competition. Their participation has allowed us to discover very interesting and highly innovative experiences, and I think it shows sceptics that, once you get through the barrier of prejudice, it really is possible to employ people with disabilities.

What should we take forward from today? First, a better understanding of the implications of the new Directive. As underlined earlier, it is important to have a partnership-based approach, at all levels - local, and national - and involving trade unions, employers, disability NGOs and public authorities. The Directive should mean that innovative laws are adopted. This, in turn, will provide access to justice, and it will also allow the initial steps to be taken towards a new culture, so overcoming the discriminatory attitudes that are far too widespread, and a movement towards the rights of individuals rather than the protection of disabled people.

We have also seen the need for additional measures to accompany the Directive. A positive action approach. Examples were given to us from Spain and France. Discrimination is found in all areas of life and it is something that affects all disabled people. It is not just a matter of impact on employment, but also on access to transport, education, meeting places and social activities.

An approach based on the rights of the individual has made a lot of progress in some countries. The idea of focusing on the environment that creates disability rather than on individuals with disabilities is also an important step forward. We have seen this in Canada and the USA, and also countries like South Africa and Uganda.

The disabled people's movement has recognised the new Directive as an important first step. But, it is a process that has to be followed through. That is why we hope we will see a disability-specific Directive established on the basis of Article 13; and that this Directive will create real anti-discrimination legislation covering all areas of life such as access to education, services, transport, and the Information Society. We are also counting on the co-

operation of all concerned for this Directive to become a reality in 2003 - the year of disabled citizens.

This year will be of particular importance for us because it will enable us to carry forward this process and improve public awareness of the issues that are relevant to non-discrimination, not only in the field of employment but in every aspect of the day-to-day lives of disabled people whatever the nature or severity of their disability.

The topic of the non-discrimination will be the continuing theme for the European Day in 2001, 2002 and 2003; and the specific topic next year will be 'discrimination against disabled children'. This is a priority for us to focus on if we are going to ensure access to jobs for disabled people in the future. I want to express the wish that the European Day of Disabled People in 2001 will meet the expectations of today's event.

Bartho Pronk, MEP, Disability Intergroup

I would like to end by thanking the Forum for all its work, not only this year but also in previous years. It is absolutely essential work, not only for progress in your own field, but it is also an example for other groups on how you can work together, even though you are so different geographically, different in background and so on. It is very important for the civil dialogue as the whole, for Europe to look at the Forum.

I think we can end this day now. I think we have started the new Millennium with some hope, and it is always good to start a new Millennium with hope! If we continue this way and follow a lot of the things that have been said today and yesterday, then real substantial advances are possible for disabled people in Europe, not only in the field of employment but also in other fields. I think that is very important and this day will, hopefully, contribute to that aim. Thank you very much for attending and go home and please put everything you have learned into practice.

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