

Towards a New European Union Disability Action Plan

An Equinet Opinion
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Introduction

The European Year of People with Disabilities in 2003 marked an important turning point for people with disabilities across the European Union. The year marked a new focus on, and prioritizing of the issues and barriers faced by people with disabilities. A key outcome of the European Year was the publication of the European Commission Communication on 'Equal Opportunities for People with Disabilities: A European Action Plan'. This action plan extended from 2003 to 2010. It is a rolling multi-annual action plan with the European Commission issuing a Communication every two years on the situation of people with disabilities and on the priority actions to be taken over the next two years.

The commitment of the European Commission to prepare and publish a new Disability Action Plan is necessary, important and welcome. It is necessary that the participation of people with disabilities in all aspects of society continues to be beset by barriers. It is important in a context of economic and financial downturn, which has created a difficult context within which to progress issues of equality and diversity. It is welcome in the context of the ratification by the European Union itself of the United Nations Convention on the Rights of Persons with Disabilities.

Equinet welcomes this opportunity to provide an opinion to the European Commission on the proposed new Disability Action Plan. Equinet is the European network of specialised equality bodies. This opinion draws directly from the work of the specialised equality bodies in implementing equal treatment legislation at Member State level. An Equinet survey of the work of equality bodies on the disability ground was conducted to inform the preparation of this opinion. This opinion is, therefore, only focused on the policy areas and issues that fall within the remit of the equality bodies rather than seeking to be all encompassing of the issues of inequality currently facing people with disabilities.

Context

The 2007 European Commission Communication on the 'Situation of disabled people in the European Union: the European Action Plan 2008 – 2009' emphasises that exclusion of people with disabilities from the labour market as a serious concern. It noted that accessibility can make the difference between a disabled person being active in the labour market and being dependent on social welfare. It noted that the employment rate of people with disabilities remained stable at 50%, which is well below the rest of the population. It further pointed out that barely 24% of people aged 16 – 64 who are considerably restricted in their ability to work are in employment, compared to 62% of those who are restricted only to some extent. Disabled people with learning or intellectual disabilities are much less likely to be in employment.

Access to education and training is also identified as an issue in the Communication. People born with a disability participate less in education and training and have lower education qualifications than those who do not have a disability. Over 50% of those aged 25 - 64 who were considerably restricted in their ability to work had no educational qualifications beyond compulsory schooling, compared to 32% of those reporting no restriction.

The Communication points out that people with mental health problems now account for a quarter of new disability benefit claims in the EU and mental health problems are becoming a leading issue in this area. The diversity of people with disabilities is also referenced. Women with disabilities are less independent, have less access to education and employment, and have greater risk of exclusion and threat of violence or abuse than men with disabilities. The correlation between ageing and disability is also named in the Communication.

There has been significant growth in the social services sector providing services to people with disability. The Communication notes that in 2004 the sector employed more than 8 million people registering an annual turnover of about €68,000 million across the European Union. The Communication also reports on work in relation to the quality of these services based on human rights and total quality management.

The inequalities experienced by people with disabilities are structural and systemic. They extend beyond the labour market into all aspects of society. They are caused by the way society is organised. This is reflected in the design of communication media, products, services, work processes and physical infrastructure that do not take account of the needs of people with disabilities. It is evident in attitudes to people with disabilities that are dominated by fear, pity and charity rather than rights, respect and recognition.

There have been important legislative developments over the life of the current Action Plan. The European Equal Treatment Directive establishing a general framework for equal treatment in employment and occupation, which prohibits discrimination on the ground of disability among other grounds, has been transposed and implemented across the Member States. A further Equal Treatment Directive is currently under consideration to prohibit discrimination on the ground of disability and other grounds in areas beyond the labour market. The enactment of this Directive will secure a necessary and urgent protection for people with disabilities seeking to access a wide range of goods and services.

Unfortunately, the employment Equal Treatment Directive does not require Member States to establish an equality body to provide support to victims of discrimination. Despite this, many equality bodies across the Member States do have a mandate in relation to promoting equality and combating discrimination on the disability ground. Some have this mandate not only in relation to employment and vocational training but also in relation to the provision of goods and services. These bodies have made an important contribution to advancing equality for people with disabilities and to maximising the impact of equal treatment legislation on the situation and experience of people with disabilities at Member State level.

The United Nations Convention on the Rights of Persons with Disabilities represents another key development since the introduction of the current Action Plan. The ratification of this Convention by the European Union itself opens up significant potential to further develop the focus of the European Union institutions on the issues facing people with disabilities and to improve the situation and experience of all people with disabilities across the European Union.

The European Commission Action Plan has placed a valuable emphasis on disability mainstreaming in policy making as a tool for equality for people with disabilities that should accompany and complement the development of equal treatment legislation. Disability mainstreaming must be part of a dual strategy that includes positive action initiatives targeted to improve the situation and experience of people with disability. Disability mainstreaming is vital in ensuring that those responsible for policy making and programme development analyse, understand and respond to the diverse and specific needs of people with disabilities. There have been important developments in disability mainstreaming in European Union policy making and in particular through the Structural Funds over the past decade.

Economic and financial downturn across the European Union presents a very specific context for the new Disability Action Plan. Member States are struggling to stimulate economic growth, to respond to high levels of unemployment and to correct fiscal imbalances. There is a danger that this context will impact negatively and disproportionately on people with disabilities.

Growing levels of unemployment make it more difficult to advance positive action measures to address the already disproportionately high levels of unemployment experienced by people with disabilities. The practice of 'last-in, first-out' for companies that are downsizing is likely to impact disproportionately on people with disabilities as their entry into the labour market is, in general, more recent. Cutbacks in public sector services are also likely to disproportionately impact on people with disabilities given their concentration as employees in the public sector. Cutbacks in public sector services will also limit services to people with disabilities, services that have been key to enabling their participation in society and in the labour market.

There can also be a backlash against equality in a time of economic and financial downturn. It becomes more difficult to maintain a policy focus on equality and gains made in advancing equality for people with disabilities over the past decade can be reversed. This backlash is already evident in the experience of the equality bodies in some Member States.

Survey of Equality Bodies

Twenty equality bodies from sixteen different Member States responded to a detailed Equinet questionnaire over the summer months of 2009. The questionnaire explored the following areas in relation to the work of the equality bodies on the disability ground:

- ▶ Vision and objectives of the equality body
- ▶ Legal work
- ▶ Promotional work
- ▶ Research work
- ▶ Communication work
- ▶ Strategic planning.

The survey is a source of valuable and unique insights into the work of equality bodies on the disability ground. It enables a perspective on the key equality issues for people with disabilities that are being brought to equality bodies and that are being prioritized by equality bodies at Member State level. The survey does not give a quantitative picture given the different ways of gathering and analysing data by the individual equality bodies. However, a useful qualitative picture does emerge.

The disability ground emerges as a significant focus in the legal work of equality bodies. Disability emerges from the survey as a significant risk factor in relation to experiencing discrimination. At the heart of the most of the casework developed by equality bodies is a failure by employers and service providers to make adjustments for access by people with disabilities. The practice of reasonable accommodation of people with disabilities is seriously underdeveloped despite legal requirements in this area in the employment Equal Treatment Directive and in Member State equal treatment legislation that places such requirements on employers and service providers. A number of equality bodies have been proactive in developing guidance for employers and service providers on processes and practices for reasonable accommodation of individual employees and customers with disabilities.

Access to employment and accessibility of the workplace are key issues in the casework of equality bodies in the field of employment. It is clear from the survey that discrimination is a significant barrier to labour market participation by people with disabilities. Equality bodies have done particular promotional work including research in relation to the employment of people with disabilities in the public sector.

The education and training sectors emerge as a main focus for casework under equal treatment legislation covering areas outside the labour market. Access to educational or training establishments and the accessibility of educational or training provision are the key issues being brought forward to equality bodies. These sectors have also been a focus for research and good practice guidance by equality bodies. Public sector services, housing and accommodation, public transport, financial services and access to public utilities and places are all identified as a focus in the casework of equality bodies outside of the labour market.

The education sector is also a focus in the research work of equality bodies in relation to issues of stereotyping. The stereotyping of people with disabilities as dependent, as in some way deficient, as a burden and as a focus for charity is identified as a barrier to equality. The education sector can propagate or challenge these stereotypes both in the content of education curricula and in the manner in which educational establishments include pupils with disabilities. The media is also identified as an important actor in this regard and equality bodies have been involved in media awards to support accurate and real coverage of people with disabilities and participation by people with disabilities in media production.

Multiple discrimination is identified as an issue in both the legal work and the research work of equality bodies. The particular situation of women with disabilities is most evident. However, there has also been a focus on minority ethnic people with disabilities and older people with disabilities.

Non-governmental organisations of people with disabilities are identified by most equality bodies as key stakeholders in their work. These organisations are a key source of information and knowledge. They provide a valuable channel of communication for equality bodies to people with disabilities. However, issues are identified in terms of limited resources available to and limited capacity of non-governmental organisations of people with disabilities in some Member States.

A number of barriers are identified by equality bodies in relation to their work on the disability ground. Foremost among these barriers are deficiencies in the equal treatment legislation, particularly where areas beyond the labour market are not covered by the legislation. Constraints in the financial and human resources available to equality bodies are also identified. These constraints are becoming particularly problematic in a context of financial and economic downturn.

A third barrier reported is that of under-reporting of discrimination by people with disabilities. Low levels of knowledge and awareness of rights and of confidence in exercising rights among people with disabilities is identified as a key barrier in this regard. This issue is particularly exacerbated for people with learning or intellectual disabilities and people with mental health problems who rarely bring forward claims of discrimination.

Equality bodies face particular difficulties in bringing forward cases of discrimination against people with disabilities who live in institutional care. In part, this relates to the dependent relationship of the person with a disability with the care provider and subsequent fears of victimisation. In part, it relates to difficulties that arise due to the comparator based definition of discrimination used in the equal treatment legislation – in some instances of institutional care, there is no comparator, real or hypothetical, available and the case cannot be advanced.

This survey of the work of equality bodies suggests five key areas that should be prioritized in the new Disability Action Plan. These are:

- ▶ Reasonable accommodation
- ▶ Advocacy
- ▶ Tools for equality
- ▶ Stereotyping
- ▶ Multiple discrimination.

A New Disability Action Plan

1. Reasonable Accommodation

Reasonable accommodation should be established as a key focus in the new Disability Action Plan. The failure to make reasonable accommodation lies at the heart of most of the discrimination cases being taken under equal treatment legislation by people with disabilities. Good practice in reasonable accommodation by employers and service providers in the public and private sectors offers enhanced participation to people with disabilities in society and in the labour market. Reasonable accommodation focuses on the needs of individual people with disabilities as employees and as customers. It involves a dialogue between the person with a disability and the employer or service provider about these needs and how best to meet them. It requires action by the employer and service provider to make the necessary adjustments or to provide the necessary treatment or facilities to make their workplace or service accessible. An effective approach to reasonable accommodation across the Member States could significantly reduce the discrimination being experienced by people with disabilities, enhance accessibility for people with disabilities and lead to a more enabling environment for people with disabilities.

The new Disability Action Plan should ensure leadership, guidance and initiative for reasonable accommodation for people with disabilities. Actions should include:

- ▶ Guidance for employers on reasonable accommodation policies, procedures and practices in the workplace should be developed. A focus on the practice of reasonable accommodation should be stimulated through initiatives to disseminate and secure support for this guidance at Member State level. Leadership for reasonable accommodation from employers and trade unions should be secured through the active involvement of the social partners and disability organisations in this initiative.
- ▶ An Equal Treatment Directive prohibiting discrimination outside the labour market on the disability ground and other grounds, with strong provisions in relation to the reasonable accommodation of people with disabilities in these areas, should be enacted at European Union level.
- ▶ Guidance for providers of education and training on reasonable accommodation policies, procedures and practices in educational/training establishments should be developed. A focus on the practice of reasonable accommodation should be stimulated through initiatives to disseminate and secure support for this guidance at Member State level. Leadership for reasonable accommodation in these sectors should be secured through the active involvement of the relevant professional and sectoral bodies, the relevant trade unions and disability organisations.
- ▶ An initiative within the Non-Discrimination Governmental Expert Group should be developed on effective Member State strategies and initiatives to promote and support reasonable accommodation of people with disabilities by employers and service providers with a particular emphasis on the public sector.
- ▶ A public education initiative should be developed targeting people with disabilities on their rights to reasonable accommodation under equal treatment legislation and stimulating a demand for reasonable accommodation from people with disabilities. Specific initiatives in this regard should target people with intellectual/learning disabilities and people with mental health problems.

2. Advocacy

Advocacy services play a central role in enabling people with disabilities to be aware of and to exercise their rights including rights under equal treatment legislation. Advocacy services enable the voice of people with disabilities to be heard and to have influence in society and in decisions that impact on them. Particular emphasis is required on advocacy supports to people with intellectual/learning disabilities, people with mental health problems, and people with disabilities in institutional care. Self advocacy, specialist advocacy services and the work of non-governmental organisations of people with disabilities have valuable contributions to make in this area.

The new Disability Action Plan should include practical and effective actions to support the further development of advocacy initiatives targeting and involving people with disabilities across all Member States. These actions should include:

- ▶ A compendium of good practice approaches by Member States in developing or supporting advocacy services for people with disabilities should be prepared. This should address the situation and needs of people with physical disabilities, people with intellectual/learning disabilities, people with mental health problems and people with disabilities in institutional care. This should have a particular focus on advocacy in relation to rights established under equal treatment legislation.
- ▶ A dialogue should be stimulated and supported between people with disabilities, public sector officials and those providing advocacy services on good practice in developing or supporting advocacy services to people with disabilities at Member State level with a particular focus on advocacy in support of rights established under equal treatment legislation.
- ▶ A study should be developed on the participation of people with disability in decision making in politics, business and public sector institutions to establish the current situation, barriers to this participation and initiatives to enhance this participation.

3. Tools for Equality

Legislation, disability mainstreaming, standards and data are key tools in promoting equality for people with disabilities. New developments are required in relation to each of these tools. The new Disability Action Plan could advance necessary new developments. This would include:

- ▶ The new Equal Treatment Directive prohibiting discrimination outside the labour market on the disability ground and other grounds should be enacted. The full and effective transposition of this Directive into Member State legislation should be secured.
- ▶ A legislative requirement on Member States to establish an equality body to address the areas covered by the framework employment Equal Treatment Directive should be developed. Standards should be developed and monitored to ensure that each Member State has an effective and independent equality body to support the implementation of equal treatment legislation. Ongoing support should be provided for the networking of equality bodies through Equinet to support peer learning and good practice by equality bodies.

- ▶ Case studies of good practice by non-governmental organisations and trade unions in supporting the effective implementation of equal treatment legislation for people with disabilities at Member State level should be developed.
- ▶ New equal treatment legislation should be developed to require the public authorities in Member States to have due regard to equality for people with disabilities in carrying out their functions and to require employers and service providers to be planned and systematic in their approach to equality for people with disabilities.
- ▶ The practice of disability mainstreaming should be advanced at Member State and European Union level through supporting, stimulating and securing good practice in multi-ground equality mainstreaming. Equality mainstreaming should be implemented in European Union policy making and in particular on new guidelines for the Open Method of Coordination on Social Inclusion and Social Protection, on new regulations governing the European Structural Funds and on the new Lisbon post 2010 Strategy for economic growth and employment. In turn, the Open Method of Coordination, the European Structural Funds, and the strategy for economic growth and employment should require equality mainstreaming of National Action Plans for Social Inclusion, Operational Programmes and National Reform Programmes produced as part of these processes at Member State level. Good practice guidance should be developed to support equality mainstreaming and training initiatives should be devised and supported to enable implementation of this good practice.
- ▶ Standards should be further developed, promoted and monitored in relation to services specifically targeted at the needs of people with disabilities. These standards should be a focus for dialogue with organisations of people with disabilities and relevant service provider representative bodies. These standards should be linked to and a requirement of any funding provided under the Structural Funds to such services. Particular attention should be given to working conditions and pay in sheltered workshops.
- ▶ Data should be gathered and analysed to enable the impact of the current economic and financial downturn on people with disabilities to be assessed and responded to.

4. Stereotyping

The stereotyping of people with disabilities leads to discrimination against, fear of and stigmatisation of people with disabilities. It undermines the dignity of people with disabilities. This stereotyping can be internalised by people with disabilities and can thus limit choices made and aspirations held. Many equality bodies have, therefore, developed a particular focus in their work on the issue of stereotyping. The education sector has been a key focus for this work. The education sector provides a key forum within which to develop a challenge to this stereotyping. The education sector can also be a forum within which damaging stereotyping can be communicated and learned unless checked by good practice. The new Disability Action Plan should include a focus on combating stereotypes of people with disabilities. Actions should include:

- ▶ A report should be prepared and disseminated on the nature and extent of disability stereotyping within the education sector at Member State level. Qualitative and quantitative data on this issue

should be used to expose what can often be a hidden process and in stimulating action to eliminate any disability stereotyping in this sector.

- ▶ Good practice within the education sector in combating stereotyping of people with disabilities should be identified and reported on in the form of case studies. This should include a focus on the contribution of inclusive education and of good practice in affirming the dignity of people with disability to the elimination of stereotyping.

5. Multiple Discrimination

The multiple discrimination experienced by people with disabilities has emerged as an issue in the work of equality bodies. There has been a focus on women with disabilities, minority ethnic people with disabilities and older people with disabilities. People with disabilities holding such multiple identities have specific needs, experiences and situations that need to be addressed. The new Disability Action Plan should include a focus on multiple discrimination. Actions to be taken should include:

- ▶ Reports should be developed and disseminated to establish the particular identity, experience and situation of people with disabilities holding different multiple identities. The work already done in relation to women with disabilities should continue and work could be developed on other groups such as older people with disabilities, minority ethnic people with disabilities, and gay and lesbian people with disabilities.
- ▶ Equality mainstreaming methodologies should be developed that have a capacity to take account of the needs, experience and situation of groups holding such multiple identities.
- ▶ An initiative to stimulate and support good practice in service provision that specifically targets people with disabilities such that these services respond effectively to the needs, experience and situation of people with disabilities with these multiple identities, should be taken.
- ▶ Legislative provisions should be developed and introduced into the Equal Treatment Directives to ensure that cases can be taken on multiple grounds and that the gravity of multiple discrimination can be recognised.
- ▶ Methodologies for cross ground data collection should be developed to identify multiple discrimination issues on the disability ground.

Conclusion

Equinet and the equality bodies could usefully be accorded roles within the new Disability Action Plan in supporting implementation of the priorities set out above. It will also be imperative to ensure that the Disability Action Plan involves and supports the effective participation of people with disabilities and organisations of people with disabilities.

This opinion does not span the full spectrum of issues that need to be addressed in achieving equality for people with disabilities. This is because the opinion draws directly from the work of equality bodies and its boundaries are set by the mandates given to these equality bodies. However, the opinion draws strength from the depth of the work that has been developed by equality bodies in these areas.

Equinet looks forward to a positive response to this opinion. Equinet hopes to continue its support for the preparation of the new Disability Action Plan in any way deemed useful. Equinet is happy to provide any further information that might be required in relation to this opinion.

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