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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL  
AND THE EUROPEAN PARLIAMENT**

**Towards a United Nations legally binding instrument  
to promote and protect the rights and dignity  
of persons with disabilities**

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**EXECUTIVE SUMMARY**

The purpose of this Communication is to set out the European Commission's support for a United Nations (UN) legally binding instrument to protect and promote the rights and dignity of persons with disabilities, and to explain why an active participation of the European Community in the development of such an instrument is indispensable.

Discussions have started to take place in the framework of a UN Ad Hoc Committee set up by UN Resolution 56/168 to "consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities".

Even if there is no doubt that general human rights standards apply to people with disabilities, there is widespread evidence that they face major obstacles to enjoy these rights. This has been explicitly recognised at the international level. Respect of the equality principle which is at the core of any human rights instrument requires recognising that people with disabilities are entitled to enjoy the full range of internationally guaranteed rights and freedoms and to do so without discrimination on the grounds of disability. This should be the added value of a new UN legally binding instrument which would complement the existing human rights framework. Thematic conventions have demonstrated added value and complementarity with existing human rights instruments.

The emphasis on discrimination is fully in line with the Community rights-based approach to disability, which implies that people with disabilities should have the opportunity to enjoy their rights on an equal footing with the rest of the population. It is also in line with policy developments which have taken place on the basis of Article 13 of the EC Treaty, which enables the Community to take initiatives to combat discrimination on the grounds of disability. The Community has already made use of these new provisions, in particular in the areas of employment and occupation.

Active Community participation in efforts at the international level to develop effective mechanisms to combat discrimination against people with disabilities would be a natural complement to the European Year of People with Disabilities. It would also send a strong signal to the international community of the importance which the Community attaches to promoting the rights of people with disabilities.

Therefore the Commission will soon propose a recommendation to the Council in order to authorise the Commission to negotiate in the context of forthcoming sessions of the UN Ad Hoc Committee and to conduct these negotiations on behalf of the European Community.

## 1. INTRODUCTION

Discussions have started to take place in the framework of a United Nations (UN) Ad Hoc Committee set up by the UN resolution 56/168 to "consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities"<sup>1</sup>. The Commission welcomes this debate at the international level. This debate is very much in line with the Community's policy to combat discrimination implemented in accordance with Article 13 of the EC Treaty, and with the key objectives agreed by the Member States for the European Year of People with Disabilities in 2003.

The purpose of this Communication is to set out the European Commission's position regarding a possible international legally binding instrument.

The Communication explains the UN background to this issue. It considers the human rights approach to disability and presents the potential added value of a UN legally binding instrument. The Commission considers that the primary purpose of such an instrument should be to draw out and make more directly relevant and visible the application of general human rights standards in the context of disability. Rather than create new law, the instrument should tailor the existing human rights implementation standards to the specific circumstances of people with disabilities, thereby improving access for people with disabilities to their rights.

Drawing upon the Community's experience in the field of combating discrimination and the implementation of Directive 2000/78/EC concerning equal treatment in employment and occupation, which includes specific provision for people with disabilities, the Communication outlines the guiding principles that the envisaged instrument should contain. Finally, the Communication signals the Commission's intention to contribute actively to the development of such an instrument, given the Community's competence in the field of combating discrimination.

## 2. BACKGROUND

The debate in the UN about a thematic Convention on the rights of persons with disabilities is not a new one. Disability issues have been considered on several occasions in the UN history. In the 1970's, two declarations, the Declaration on the Rights of Mentally Retarded Persons (DRMRP)<sup>2</sup> and the Declaration on the Rights of Disabled Persons (RDP)<sup>3</sup>, were the first instruments in which the human rights of persons with disabilities were explicitly recognised. Although these declarations constituted important first steps toward awareness of disability rights, they were criticised for being based on outmoded medical and welfare models of disability.

Two further instruments in the late 1980's - the Principles for the Protection of Persons With Mental Illnesses and the Improvement of Mental Health Care (PPPMI)<sup>4</sup> and the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (StRE)<sup>5</sup> put the

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<sup>1</sup> <http://www.un.org/esa/socdev/enable/disA56168e1.htm>

<sup>2</sup> Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971, [http://www.unhchr.ch/html/menu3/b/m\\_mental.htm](http://www.unhchr.ch/html/menu3/b/m_mental.htm)

<sup>3</sup> Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975, <http://www.unhchr.ch/html/menu3/b/72.htm>

<sup>4</sup> G.A. res. 46/119, 46 UN. GAOR Supp. (No. 49) at 189, UN. Doc. A/46/49 (1991)

<sup>5</sup> Adopted by the United Nations General Assembly, forty-eighth session, resolution 48/96, annex, of 20 December 1993, <http://www.un.org/esa/socdev/enable/dissre00.htm>

emphasis on equal opportunities. All these instruments have been useful in spelling out the rights to independence and self-determination for people with disabilities, and have improved understanding of the general human rights conventions insofar as they relate to people with disabilities. Nonetheless, all these instruments are not binding on the UN member states and contain no provisions for monitoring of disabled people's rights.

It is in this context that, in December 2001, the Government of Mexico put forward UN Resolution 56/168, calling for consideration of a convention on the human rights of persons with disabilities and calling for the immediate formation of an ad-hoc committee. This ad-hoc committee would "consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities". Backed with the support of the Third Committee (on social issues), this Resolution was passed in the UN General Assembly without any vote.

Subsequently, the UN Commission for Social Development adopted a resolution on 21 February 2002, which welcomes the UN Resolution 56/168 on a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. This resolution was followed by resolution 2002/61<sup>6</sup> adopted on 26 April 2002 by the UN Commission on Human Rights.

Following this, the Ad Hoc Committee held its first session from 29 July to 9 August 2002. In its Recommendations to the UN General Assembly, the Ad Hoc Committee has invited *inter alia* "regional commissions and inter-governmental organisations, as well as non-governmental organisations to make available to the Ad Hoc Committee suggestions and possible elements, to be considered in proposals for a Convention".

### **3. THE ACCESSIBILITY OF HUMAN RIGHTS IN THE CONTEXT OF DISABILITY**

The United Nations estimates that more than half a billion people are disabled as a result of mental, physical or sensory impairment and no matter which part of the world they are in, their lives are often limited by physical, technical or social barriers. The majority of disabled people live in developing countries where they also experience poverty and lack of basic social services and education. People with disabilities do not constitute a homogeneous group and there is a broad range of disabilities and corresponding issues. Disabilities may be apparent or hidden, severe or mild, singular or multiple, chronic or intermittent. Types of disabilities include mobility/agility, mental/cognitive, hearing, speaking, and visual impairments. When people with disabilities are in an environment which fails to accommodate the consequences of their impairments, they face barriers and obstacles to exercising their rights and enjoying equal opportunities on the same basis as other people.

#### *The existing legal framework*

Key human rights instruments – including the Universal Declaration of Human rights and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights – make clear that human rights are vested in all human beings and that everyone is entitled to the enjoyment of those rights without distinction of any kind. The entitlement to full enjoyment of all human rights without discrimination extends to people with disabilities – the challenge is to ensure that this entitlement is fully recognised and realised.

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<sup>6</sup> [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/E.CN.4.RES.2002.61.EN?opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/E.CN.4.RES.2002.61.EN?opendocument)

Respect of the **equality principle** which is at the core of any human rights instrument requires ensuring that people with disabilities can exercise their rights on an equal basis as other people. Although there has been significant progress over the past few years, a number of problems remain which prevent people with disabilities from fully participating in society. **A key question therefore is whether or not the current protection provided by the existing international human rights instruments is adequate for people with disabilities.**

*The political will to secure rights of people with disabilities*

The international community has underlined its commitment to the principle that human rights are vested equally in people with disabilities. For example, the World Conference on Human Rights in Vienna<sup>7</sup>, Paragraph 63 of the Vienna Declaration and Programme of Action states:

"The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights. The World Conference on Human Rights calls on Governments, where necessary, to adopt or adjust legislation to assure access to these and other rights for disabled persons".

*The evidence of discrimination.*

Whilst on terms of the international human rights legal framework people with disabilities are vested with the same human rights as everyone else, the reality is that they face lack of equal effective enjoyment of their rights. This problem is well documented at international level.

The Special Rapporteur of the United Nations High Commission on Human Rights<sup>8</sup>, in its report on Human Rights and Disability indicated that:

"In most countries, human rights violations against disabled people take the form of unconscious discrimination, including the creation and maintenance of man-made (sic) barriers preventing disabled people from enjoying full social, economic and political participation in their communities. Most governments appear to have a narrow understanding of human rights vis-à-vis disabled people and believe they need only abstain from taking measures, which have a negative impact on them. As a consequence, disabled people are neglected in the area of human rights policy and legislation".

The Office of the Special Rapporteur on Disability of the United Nations Commission for Social Development<sup>9</sup> organised a seminar on Human Rights and Disability whose purpose was to draft guidelines for more effective identification and reporting of violations and abuse of the human rights of persons with disabilities. On this occasion, incidents of abuses and violations of people with disabilities' human rights were reported.

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<sup>7</sup> World Conference on Human Rights - Vienna - 14/25 June 1993-  
[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)

<sup>8</sup> Report on Human Rights and Disability by Leandro Despouy  
<http://www.un.org/esa/socdev/enable/dispaperdes0.htm>

<sup>9</sup> "Let the World Know" - Seminar on Human Rights and Disability ,Stockholm, November 5-9, 2000 -  
<http://www.un.org/esa/socdev/enable/stockholmnov2000.htm>

Inclusion International, a non-governmental organisation, submitted a written statement<sup>10</sup> to the UN Human Rights Commission in which it highlighted that:

"In practice, people with disabilities continue to be marginalised. People with intellectual disability, in particular, are the most likely of all to be incarcerated in inhumane institutions. They are commonly deprived of an education, refused ordinary social relationships, blocked from meaningful and gainful employment, reduced to irrevocable poverty... their civil and political rights are frequently abused, as are their physical persons."

This experience at international level is mirrored by experience at the European level. In the context of the annual European Days of Disabled People sponsored by the European Community, disability organisations reported cases where people with disabilities were denied equal treatment on the grounds of their disability. In particular, a report prepared in the context of the 1995 European Day of Disabled People, "Invisible Citizens" examined the status of disabled people in Europe from a legal perspective and described in very concrete terms the discrimination encountered by disabled people on a daily basis<sup>11</sup>.

The European Disability Forum, the largest disability organisation in Europe, published the findings of a survey among all its national members' organisations on the "violence and discrimination against disabled people"<sup>12</sup> in 1999. The report refers to surveys, which revealed that disabled people are the victims of a high number of incidents and suffer from violence and discrimination in many forms.

The European Parliament has referred on several occasions to the adverse situation of people with disabilities and the discrimination which they experience throughout the Union<sup>13</sup>, and put a strong emphasis on the need for developing policies in areas such as education and employment. The European Economic and Social Committee has spoken of the grave situation faced by people with disabilities. The European Committee of the Regions has also referred to the exclusion and discrimination felt by people with disabilities in Member States. These problems have also been observed in Candidate Countries.

The Council of Europe has recently published a report on "safeguarding adults and children with disabilities against abuse"<sup>14</sup>. The report underlines that "their fundamental human rights may still be compromised including the fulfilment of basic needs such as nutrition, warmth, hygiene and privacy".

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<sup>10</sup> Human Rights Commission - fifty-seventh session  
<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/dbe1af0a89688693c12569eb00453f88?opendocument>

<sup>11</sup> The document reported cases where a travel agency was ordered by a Member State court to pay compensation to a group of non-disabled tourists because they had to share their holiday hotel with disabled tourists. Other typical examples of discrimination include disabled people being barred from restaurants because "they do not present the right image".

<sup>12</sup> European Disability Forum - Position paper 99/5 - "Report on violence and discrimination against disabled people" - <http://www.edf-feph.org/en/publications/publi/publi.htm>

<sup>13</sup> See in particular "Report on the rights of disabled people", A40391-96 (Mary Banotti report)

<sup>14</sup> Council of Europe Publishing - ISBN 92-871-4919-4- Council of Europe, July 2002

#### 4. THE EU RIGHTS-BASED APPROACH TO DISABILITY

The European Union has made considerable progress in acknowledging the need to ensure the equal effective enjoyment of all human rights by people with disabilities. In its 1996 Communication on equal opportunities for disabled people<sup>15</sup>, the Commission made clear that "the old medical-centred approach is now giving way to a social one which puts much stronger emphasis on identifying and removing the various barriers to equal opportunities and full participation in all aspects of life for people with disabilities".

This social approach to disability seeks to achieve the full participation in society of people with disabilities by breaking down the barriers that prevent the realisation of equal opportunity, full participation, and respect for difference. Changes in the way societies are organised can substantially reduce or even overcome obstacles encountered by people with disabilities. It noted that "it is essential for the European Community to clarify and confirm its overall disability strategy, the core of which should be a shared commitment by all Member States to promote equal opportunities, to eliminate discrimination in this field and to recognise the rights of people with disabilities".

This analysis recognises that the circumstances of people with disabilities and the discrimination they face, are socially created phenomena which are not directly related to their impairments *per se*. While the medical approach is often characterised as locating the "problem" of disability within the person, the social approach locates the problem of disability in the environment, which fails to accommodate people with disabilities. For example, the social approach would conclude that the reason why a deaf person cannot watch TV programmes or attend conferences is not located in his/her deafness but in the fact that TV programmes are not subtitled or that conferences do not have interpretation in sign languages<sup>16</sup>.

This is a critical reorientation of perspective, which has important implications for the way in which policy and law in relation to disability are developed and interpreted, as well as for its substantive content. It focuses on the many barriers within the existing social environment faced by people with disabilities who seek to carry out the usual activities of everyday life and to participate in the full range of activities in society. Thus, the problem is not in the impairment itself but rather is one which results from the structures, practices and attitudes that prevent the person from exercising his or her capabilities.

Following this 1996 Communication, the Council of the European Union and Member States reaffirmed their commitment to the principle of equality of opportunity<sup>17</sup> in the development of comprehensive policies in the field of disability, and to the principle of avoiding or eliminating any form of negative discrimination on the sole grounds of disability.

The growing attention to the discrimination on the grounds of disability as well as on a number of other grounds was reflected in the preparatory work to the Amsterdam Treaty. This

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<sup>15</sup> COM(96) 406 final of 30 July 1996

<sup>16</sup> Technological developments can contribute to the integration of persons with disabilities. It is essential to ensure that they do not create additional barriers to this integration.

<sup>17</sup> Resolution of the Council and of representatives of governments of Member States meeting within the Council on equality of opportunity for people with disabilities - 20 December 1996

led to the introduction, in the EC Treaty, of a general anti-discrimination article<sup>18</sup> which enables the Community to combat discrimination, *inter alia*, on the grounds of disability. For the first time, disability is explicitly mentioned in a European Treaty and the need for combating discrimination on this ground is publicly acknowledged.

On the basis of this new Treaty article, the Council adopted on 27 November 2000 Directive 2000/78/EC<sup>19</sup> "Establishing a general framework for equal treatment in employment and occupation". The Directive prohibits any discrimination, be it direct or indirect, on the grounds of religion or belief, disability, age or sexual orientation<sup>20</sup>. With regard to disability, this Directive recognises that the failure to provide **a reasonable accommodation** in the workplace can constitute discrimination. In practical terms such accommodation includes measures to adapt the workplace to people with disabilities, for example adapting premises and equipment, patterns of working time etc. in order to facilitate their access to employment.

The obligation to accommodate is aimed at removing barriers to the participation of people with disabilities in employment. This means that employers shall take appropriate measures to enable people with disabilities to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. Rather than aiming to achieve identical results for disabled people, as compared to non-disabled people, it simply aims to ensure that people with disabilities are afforded an equal opportunity to achieve those results<sup>21</sup>.

The Charter of Fundamental Rights proclaimed at the European Council in Nice on 7 December 2000, by the Presidents of the Council, the European Parliament and the Commission includes the prohibition of any discrimination on the ground of disability (Article 21). It also recognises as a fundamental right "the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community" (Article 26).

This approach of enabling people with disabilities to full and equal enjoyment of their rights has been endorsed by the Council of the European Union in its Decision establishing 2003 as the European Year of People with Disabilities<sup>22</sup>. The Year will provide the European Union a unique opportunity to promote equal rights and full participation in society for people with disabilities. It will improve the knowledge on and the visibility of disability issues<sup>23</sup>. It is expected to act as a catalyst for a new political impetus to achieving equal rights for people with disabilities both at the European and at international level, which will continue well after the closure of the Year.

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<sup>18</sup> Article 13: Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation

<sup>19</sup> Official Journal, L 303, 2.12.2000, p. 16

<sup>20</sup> Discrimination on the grounds of sex and ethnic or racial origin is dealt with under other directives.

<sup>21</sup> "The Framework Directive for equal treatment in employment and occupation: an analysis from a disability rights perspective" by Richard Whittle - European Law Review - June 2002

<sup>22</sup> Council Decision n° 2001/903/EC of 3 December 2001

<sup>23</sup> As a support for this action, the results of the ad hoc module on employment of people with disabilities in the 2002 European Union Labour Force Survey will be published by EUROSTAT by the end of 2003.

The Commission believes that this emphasis on the rights approach to disability should be reflected in the evolution of international human rights standards relating specifically to disability. Such an achievement at international level would in turn reinforce the coherence between internal and international action of the EU.

In this regard, the Commission notes the statement of the Danish Presidency on behalf of the European Union at the UN Third Committee's meeting on 3 October 2002<sup>24</sup> whereby it welcomed the stronger focus put on the rights of persons with disabilities and recognised the usefulness of an international legally binding instrument to promote and protect the rights of persons with disabilities.

## **5. ADDED VALUE OF A NEW UN LEGALLY BINDING INSTRUMENT**

Under the global umbrella of the Charter of the United Nations six specific conventions have been developed and are implemented with regard to Human Rights:

- International Covenant on Civil and Political Rights (CCPR);
- International Covenant on Economic, Social and Cultural Rights (CESCR);
- Convention against Torture (CAT);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention on the Rights of the Child (CRC), and the
- Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In a study commissioned by the United Nations Commission for Human Rights, two renowned disability and human rights experts<sup>25</sup> have attempted to clarify the relevance of these six United Nations human rights treaties to disability. They also reviewed how the system actually works in practice with respect to disability, by looking at how States parties report to the treaty monitoring bodies on human rights and disability and how the current treaty monitoring bodies respond. While underlining a positive move towards considering disability as a human rights issue, the study calls for a thematic convention as an "aid to the mainstreaming of disability in United Nations human rights instruments".

Throughout the 1970's and 1980's, the United Nations began recognising certain populations as being particularly vulnerable to human rights violations. To ensure their protection under international law, the United Nations adopted thematic legally binding instruments such as the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). These Conventions created legal protections addressing the social, political and cultural circumstances of these populations. They have demonstrated added value and complementarity with existing Human Rights instruments and there is no

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<sup>24</sup> [http://www.eu2002.dk/news/news\\_read.asp?iInformationID=23164](http://www.eu2002.dk/news/news_read.asp?iInformationID=23164)

<sup>25</sup> Prof. Gerard Quinn and Mrs Theresa Degener, "Human Rights and Disability- the current use and future potential of United Nations human rights instruments in the context of disability" - February 2002- UN Human Rights Commission, <http://www.unhchr.ch/html/menu6/2/disability.doc>

reason why a legally binding instrument on people with disabilities should not follow the same course.

It should be explicitly acknowledged and recognised at international level that people with disabilities are entitled to enjoy the full range of internationally guaranteed rights and freedoms and to do so without discrimination on the ground of disability. Not only would this give the claim of universality of human rights real meaning, but it would underline the fact that people with disabilities are full members of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others, without discrimination.

A key tool in achieving equality is the **non-discrimination principle**. Equal access to the human rights can be guaranteed by ensuring that people with disabilities are not discriminated against on the grounds of their disability. The legally binding instrument should protect people with disabilities from discrimination in having access to and enjoying human rights.

Non-discrimination, and the equal enjoyment of all human rights by people with disabilities, is currently the dominant and crucial theme as regards changing the way disability and the disabled people are viewed throughout the world. Non-discrimination is intrinsic to the principle of equality. It covers both direct and indirect discrimination.

The concept of indirect discrimination is particularly important in this context. It is deemed to occur where an apparently neutral provision, criterion or practice would put some people at a particular disadvantage compared to others. The recognition of indirect discrimination as a form of discrimination is generally considered to reflect a more substantive interpretation of the notion of equality. As with the concept of substantive equality, the notion of indirect discrimination is primarily concerned with the outcome of a form of treatment. The prohibition of indirect discrimination on the grounds of disability thus allows for consideration of individual or environmental differences which, in a particular situation, result in denying equal opportunities to individuals belonging to a protected group<sup>26</sup>.

The UN legally binding instrument would serve to tailor the application of human rights to people with disabilities. This would not in the main create new rights but would seek to clarify and make more visible existing human rights. It could help trigger a positive dynamic of reform where it is currently lacking and would further underpin positive trends elsewhere. It could develop a knowledge-base and set of insights that could serve to further the mainstreaming of disability. It could provide a focal point for the disability movement and help it to influence policy and legislative change. It should also seek to establish an institutional framework to monitor the global human rights condition of people with disabilities. In sum, it should set concrete standards for government conduct according to which States will guarantee equal effective enjoyment of human rights by people with disabilities and will undertake to put forward internal legislation and policies in line with applicable human rights standards.

In view of the above, it is important and useful to develop a new UN legally binding instrument which spells out the relevance and application of the general human rights standards to persons with disabilities. It would provide a clear signal from and to the international community and serve as a political catalyst and educational tool to enable a change in the way people with disability enjoy their rights.

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<sup>26</sup> "The Expanding Concept of Employment Discrimination in Europe: From Direct and Indirect Discrimination to Reasonable Accommodation Discrimination" -Lisa Waddington & Aart Hendriks International Journal of Comparative Labour Law and Industrial Relations

## 6. GUIDING PRINCIPLES FOR A FUTURE LEGALLY BINDING INSTRUMENT

The Commission calls for an **effective and realistic** legally binding instrument to promote and protect the rights and dignity of persons with disabilities. This instrument should be guided by the following overarching principles:

- a reaffirmation in law of the principle that people with disabilities have the same fundamental rights as the rest of humanity;
- a reaffirmation in law of the core values at stake: namely equality, dignity, liberty and solidarity;
- the securing of the equal effective enjoyment of all human rights for people with disabilities through the combating of all forms of discrimination on the grounds of disability, including the promotion of equal treatment and the accommodation of difference.

The instrument should refer to and identify the full spread of human rights including political and civil/fundamental rights as well as economic, social and cultural rights. In line with the above mentioned human rights approach, the instrument should highlight that states should take action to ensure that in reality people with disabilities are in a position to exercise their rights. The establishment of a strong monitoring mechanism and the specification of enforcement provisions is crucial to the successful implementation of this new international instrument.

The Commission believes that the current mechanisms put in place by the Convention on the Elimination of All forms of Racial Discrimination, by the Convention on the Elimination of Discrimination Against Women, and by the Convention on the Rights of the Child, respectively, can provide some useful pointers as to how this issue might be dealt with in the context of disability issues.

In dealing with discrimination, it is necessary to take into account the diversity of people with disabilities as well as their common experience of discrimination. In addition it is worth noting that experience of discrimination on the grounds of disability has some common features with the experience of discrimination on other grounds and indeed people with disabilities can be victims of multiple discrimination (on the grounds of sex, racial or ethnic origin, religion or belief, age or sexual orientation).

The participation of people with disabilities in decisions that concern them is a fundamental principle that must be reflected in international law and policy. All stakeholders, and first and foremost disability and human rights organisations and their representatives, should be fully involved into the process of the development of the UN legally binding instrument. The Commission welcomes the resolution on the "accreditation and participation of non-governmental organisations" in the Ad Hoc Committee's inaugural session, which was put forward by the Danish EU Presidency and recommends that these working methods continue in the forthcoming meetings. The Commission believes that the involvement of non-governmental organisations in this process, amongst other things, must be fully participatory and inclusive of people with disabilities themselves.

## 7. CONCLUSIONS

In light of the above, and without pre-empting any substantive discussion, the core of the debate currently taking place is how to ensure that people with disabilities do not suffer discrimination when accessing or enjoying the full panoply of existing human rights.

Article 13 of the EC Treaty enables the Community to combat discrimination, be it on the grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation, in the areas of Community competence, and the Community has already made use of these new provisions in particular in the in the areas of employment and occupation. The Commission considers that it is important that the European Community confirms at international level its overall strategy with regard to disability, the core of which is a shared commitment by all Member States to combat discrimination on this ground.

It is therefore the Commission's intention to play an active role on behalf of the European Community in the process of the development of a future UN legally binding instrument to promote and protect the rights and dignity of persons with disabilities. The Commission will also seek to ensure consistency between European internal and international action regarding disabled people.

Therefore the Commission will soon propose a Recommendation to the Council in order to authorise the Commission to negotiate in the context of forthcoming sessions of the UN Ad Hoc Committee established to "consider the proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities" and to conduct these negotiations on behalf of the European Community, the Council appointing a special committee to assist it in this task.