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NOTE

from : The Commission
to : COUNCIL (Employment, Social Policy, Health and Consumer Affairs)
Subject : **Report from the High Level Group on Disability on the implementation of
the UN Convention on the Rights of Persons with Disabilities
- Information from the Commission
(Any other business item)**

Delegations will find attached a note from the Commission.

**Information Note from the Commission
on progress in implementing the UN Convention
on the Rights of Persons with Disabilities**

Introduction

This note, which is based on the second report from the Disability High Level Group¹, outlines progress in concluding and implementing the UN Convention on the Rights of Persons with Disabilities. It reports on developments in the priority areas identified by the Disability Ministers in 2008 and draws attention to areas for EU-level cooperation in implementing the Convention.

Ratification/formal confirmation/accession

The Convention has been signed by the European Community and all its Member States. Nineteen of the latter have also signed the Optional Protocol to the Convention. Seven Member States (Austria, Germany, Hungary, Italy, Spain, Slovenia and Sweden) have already ratified both the Convention and the Optional Protocol².

Since the Convention and the Optional Protocol came into force on 3 May 2008, the Community and the Member States need to speed up work on the conclusion of both instruments. The procedures that need to be completed in the Member States and at EU level should be actively pursued with a view to the early deposit of all the instruments of ratification/formal confirmation and/or accession.

To that end, on 29 August 2008 the Commission submitted to the Council and Parliament proposals for Council decisions concerning the conclusion, by the European Community, of the Convention and the Optional Protocol. Initial discussions in the Council demonstrate the commitment of all the Member States to reach an agreement, while Parliament³ has approved the Convention's conclusion.

¹ <http://ec.europa.eu/social/BlobServlet?docId=2790&langId=en>. The report goes into more detail on the state of play in the conclusion of the Convention and the Optional Protocol and provides a detailed overview of progress in the Convention's implementation by the Member States, the Community and various stakeholders in the priority areas identified

² Annex 1 to the Second HLG Report contains a table giving a detailed overview.

³ P6_TA(2009)0312.

The process

Under the mandate handed down under the German Presidency at the first informal ministerial meeting on disability issues on 11 June 2007, the Disability High-Level Group ('HLG'), which comprises Member State experts and stakeholders, presented its first joint report in May 2008 on progress by the Community and the Member States in implementing the Convention. The report was discussed by the ministers responsible for disability issues, who met for the second time in Kranjska Gora on 22 May 2008 under the Slovenian Presidency.

Under the Slovenian Presidency too, the Council⁴ welcomed the Commission Communication 'Situation of disabled people in the European Union: The European Action Plan 2008-2009'⁵, and the convergence of the latter and the UN Convention. It also invited the Member States and the Commission to begin work on an EU disability strategy to succeed the current European Disability Action Plan 2004-2010. The new strategy should *inter alia* assess how national actions reflect the commitments entered into by the European Community and the Member States with a view to implementing the Convention fully at EU level and should consider setting consistent and comparable national targets to that end.

The HLG's second report responds both to the Council's requests in the above-mentioned Resolution and to the Slovenian Presidency's Conclusions⁶. It builds on the HLG's first report and feeds into the development of a new European disability strategy.

Key areas for attention during implementation

In its first report, the HLG identified seven priority areas where collaboration at EU level could be useful, and nine priorities for joint action. At their May 2008 meeting, the Ministers agreed that the nine priority actions were indeed of mutual interest and that they provided added value for swift, effective implementation of the Convention.

⁴ Resolution of the Council of the European Union and the representatives of the Governments of the Member States, meeting within the Council of 17 March 2008 on the situation of persons with disabilities in the European Union, OJ C 75, 26.3.2008, p. 1.

⁵ COM(2007) 738.

⁶ http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/ns_invalidi_sklepi_220508_en.pdf.

Since then, the Member States and representatives of civil society have reported progress in implementing the Convention in the seven priority areas and have noted evidence of the need for cooperation in those areas involving the nine priority actions.

- Accessibility

The Member States are devoting considerable attention to issues of accessibility. Most have legislation and policies covering accessibility to the built environment, transport, and new technologies, in particular the Internet. Of those three areas, the built environment is most often the subject of specific Member State legislation setting out technical requirements for implementation. For the two other areas, and in particular for telecommunications and the Internet, the Member States use a variety of approaches, some of which are based on legislation and others on policies with technical guidance documents. Legislation in this area is usually more recent than that on the built environment. Some Member States deal with accessibility in their antidiscrimination legislation and policies.

The types of measures vary with the area: in the built environment, for example, the focus is on new public buildings, though in some cases measures must also be taken when buildings are refurbished. Other measures cover existing buildings but only rarely with a timeframe for implementation. Some Member States mention the importance of enforcing regulations on accessibility. The accent in transport is on accessibility in public transport, and the legislation relates in some cases to the application of EC regulations on the rights of persons with reduced mobility. In the new technologies area, Community policies referred to mainly concern Internet accessibility and legislation on telecommunications. In all three areas the Member States express interest in exchanging good practice and sharing information on existing guidelines and accessibility measures.

Various Member States mention the need for formal — preferably EU-level — accessibility standards rather than guidance documents. Several Member States see the adoption of EU accessibility standards as a way of harmonising them across the Union. The need for supporting material on the use of the standards is also mentioned.

Various Member States view the involvement of persons with disabilities in the development of standards as crucial to their success. Another measure identified in various national reports is support for *Design for All* knowledge (through training of those working in the field) and exchange of information (through support for networks active in the field). Setting accessibility indicators per sector is mentioned as a way of measuring progress in the Union. Some reports identify awareness-raising initiatives, such as campaigns and conferences for the industry and policy-makers, as a way of encouraging the use of existing guidance material and increasing the accessibility of goods and services.

- Legal capacity

All persons, including those with disabilities, enjoy legal capacity. Disability rarely constitutes a ground for automatically restricting a person's legal capacity. In practice, however, the legal capacity of persons with disabilities is limited in certain Member States, though the scope of such restrictions varies. Where a person's legal capacity is restricted, the courts appoint a guardian/trustee/curator to take decisions on behalf of the person concerned.

The Convention, and in particular Article 12 thereof⁷, implies a change in this approach. Seven Member States⁸ have just revised, are in the process of revising, or are considering amending their legislation. Together with many other countries, they have all expressed an interest in sharing information by organising conferences, expert working groups and seminars on the topic, involving civil society and all relevant players, including the judiciary, and discussing legal terms with a view to developing legislation, policy and practice in this area. Some Member States also propose to launch studies and publish progress reports.

⁷ It provides in particular for States Parties to:

- recognise persons with disabilities as persons before the law and as enjoying legal capacity on an equal basis with others in all aspects of life;
- take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity;
- ensure the equal right of persons with disabilities to own or inherit property and to control their own financial affairs.

⁸ CZ, FR, HU, IE, LV, PT and SK.

Given the challenges, an interest was expressed in setting up training modules for professionals who could provide legal support. It was felt that persons with disabilities should also be in a position to defend their rights properly and to use the services of defence counsel in proceedings. The individuals concerned and their families need to be provided with information on their rights. Joint training and support programmes for those working in the field throughout the EU were considered a possible solution.

- Access to justice

Access to justice is a widely recognised right of every citizen. However, certain measures are required to ensure effective access for people with disabilities at all stages of judicial proceedings, in accordance with Article 13 of the Convention.

Physical access to courts, law firms, judicial authorities and prisons, particularly those housed in newly constructed and refurbished buildings, is generally guaranteed. Most Member States regulate in detail the legal obligation to provide barrier-free access to public buildings and the requisite standards. In most Member States, the interpretation of legal proceedings by means of various communication systems is guaranteed for people with sensory impairments. In general such interpretation is provided free of charge.

Training courses are held in some Member States for judges, police officers, prison staff and other officials who may be involved in providing access to the justice system. The content of such training varies greatly: while some Member States hold disability-specific courses for selected persons working in the field, in most cases the training covers general human-rights principles, including non-discrimination on various grounds.

As the application of Article 13 of the Convention varies with the Member State, it could be worthwhile for the Member States to exchange information on existing national legal solutions and good practice⁹.

⁹ Examples of good practice: Second HLG Report - AT, CZ, ES, FR, HU, IE, LT, LV, PL, SI and UK.

Promoting the use of ICT to provide effective access to judicial proceedings for persons with disabilities, offering more training opportunities for those working in the field and ensuring that the persons concerned are properly informed of their rights and the arrangements put in place to enjoy them were all identified as actions that could be taken jointly at EU level. Given the sensitivity of the area, some Member States also mentioned the drafting of guidelines on implementing a suitable penal policy for people with disabilities.

One common goal could involve ensuring that assistance and interpretation services using various communication systems for people with sensory impairments were provided across the EU. Minimum standards for effective access to justice could also be drafted.

- Living independently

Article 19 of the Convention recognises the right of all persons with disabilities to live independently and be included in the community. This means that the Member States need to ensure that persons with disabilities have the right to choose their preferred living arrangements and to access to services and facilities meeting their needs and allowing them to be included in the community.

Data provided by the Member States show that most people with disabilities in the EU live in the community with their families or with other types of support (sheltered accommodation, shared flats, and other forms of community settings). However, in many Member States, around 5% of people with disabilities, and mainly severe mental and intellectual disabilities, still live in residential institutional settings. There is broad consensus on deinstitutionalisation in those countries, and several national and/or local strategies have been developed for the gradual closure of institutions and the placing of the residents in community settings. The main challenges in implementing such strategies are a lack of resources and a fragmented administrative set-up (responsibility shared by national and regional/local authorities).

Depending on the stage reached in the deinstitutionalisation process in the country concerned, several alternatives to institutional care are being developed, such as community-based services, personal assistants, home care services, and the funding of assistive technologies and equipment to adapt houses and apartments. Some Member States provide a number of mechanisms (such as personal budgets, life projects and the right to choose a personal assistant) with the aim of developing tailored care plans incorporating health and social care services with a view to extending people's self-sufficiency as much as possible. Financial assistance schemes should be strengthened and tailored to the needs both of care-providers (families or others) and of users.

A major common challenge is to improve the quality of services, both in institutional and in community-based settings, by developing quality standards and monitoring mechanisms. To that end, some Member States have set up independent authorities with the task of developing quality standards and monitoring compliance with them. In other countries, service-providers have to be registered and the personnel have to meet special qualification requirements (i.e. special training). However, little attention seems to have been paid to developing mechanisms to measure the impact of such services on the quality of life. Surveys and research are carried out in a few countries only and on a limited scale.

Although there is broad consensus among the Member States on the need to promote independent living and deinstitutionalisation, challenges in implementing Article 19 of the Convention vary considerably, depending on the Member State's legislative, administrative and cultural framework. It is therefore recommended that an exchange of good practice in developing quality and cost-efficient community-based services and in empowering people with disabilities to exercise their right to live independently and to choose their own living arrangements and their care services be organised at EU level.

- Voting rights

People with disabilities in all Member States have a constitutional right to vote and be elected. However, the UN Convention provides not only for such people to have the right to vote but also for efforts to be made by legislative and practical means to grant them full enjoyment of their right to vote or not to vote by addressing such issues as privacy and confidentiality. The solutions found vary widely across the EU. Most Member States provide for physical accessibility at a given number of polling stations within a specific voting area. Some Member States go further and provide for suitable, accessible, easy voting procedures, facilities and materials. Civil society bodies are also organising various campaigns to promote effective exercise of the right to vote¹⁰.

Measures laid down for national elections also apply to elections to the European Parliament. Nevertheless, ensuring that the rights of all European citizens with disabilities are respected equally across the EU with regard to participation in European Parliament elections remains a challenge.

Many Member States therefore felt that an exchange of information on legislation and good practice in various countries that have adopted specific measures for different groups of people with disabilities would be useful. The regular exchange of good practice at HLG meetings was highly appreciated. An innovative approach to ensure that persons with disabilities could effectively exercise their right of vote, including via ICT, and the establishment of common rules and procedures on practice regarding voting for persons with disabilities were suggested.

¹⁰ Examples of good practice: Second HLG Report - AT, BE, DK, EE, FI, FR, HU, IT, LT, UK, civil society

- Monitoring mechanisms

Article 33 of the Convention obliges State Parties to maintain, strengthen, designate or establish a framework, including one or more *independent mechanisms* in line with the Paris principles¹¹, to promote, protect and monitor its implementation. The Convention also lays down specific provisions on the full involvement and participation of persons with disabilities in the monitoring process. As most Member States have still to ratify the Convention, they have not yet needed to designate such mechanisms. Representatives of civil society are keen to participate in the process of establishing the monitoring mechanisms. Discussions at EU level on common challenges, existing and possible solutions¹² and recommendations drafted at national level would make it easier to establish a proper monitoring framework.

Once established, such bodies could cooperate at EU level¹³, in particular where responsibility is shared by the Community and the Member States. Such cooperation could consist of exchanges of best practice, sharing of experience, reports and information, the holding of special meetings within or outside the HLG, joint work on individual cases and active participation in EU decision-making process.

The Convention also provides for a *reporting* procedure. Almost all Member States have well-established procedures for reporting on the implementation of other UN human-rights conventions. Where such procedures enable guidelines on reporting to be drafted during 2009 by the Committee on Rights of Persons with Disabilities that is to consider such reports, the widespread intention is to follow them in the case of this Convention too. Standard models for reporting at EU level may be useful.

¹¹ United Nations General Assembly Resolution 48/134 of 20 December 1993.

¹² Existing solutions: Second HLG Report - AT, DE, HU, IT and SI.

¹³ Germany mentioned the Steering Group of the European Group of National Human Rights Institutions in this context.

The monitoring system and proper reporting would benefit greatly from *common indicators* and specific parameters drawn up at EU level. There is therefore a need for comparable, systematic *data collection* at both national¹⁴ and EU level. The implementation of the Convention would benefit greatly from cooperation and agreement on a model for the follow-up report, based on jointly defined indicators.

- Empowering people with disabilities

The empowerment of people with disabilities is a precondition for the exercise of their rights and is therefore relevant to the Convention's full implementation. All Member States recognise that persons with disabilities and their representative organisations play an important role in the policy-planning and decision-making process on disability issues. Most countries have established an advisory body (which often takes the form of a national council), including representatives of persons with disabilities, which governments consult when preparing policies in this area. In some Member States such consultation is a legal obligation.

Many Member States¹⁵ organise awareness-raising activities and training courses to foster the empowerment of people with disabilities as well as providing financial support for representative organisations of persons with disabilities.

The implementation of such measures across the Union could be even more effective and would strengthen the empowerment of persons with disabilities. In this area, closer cooperation and exchanges of views and good practice between the Member States and representative organisations could be encouraged.

The Member States agreed that governments, disability organisations and other stakeholders should participate jointly in conferences and meetings with a view to sharing best practice, that a structured dialogue must take place with civil society and that more involvement of local players (municipal officials and disability councils) was needed.

¹⁴ Examples of good practice: Second HLG Report - CY, DE, NL, PT and SE.

¹⁵ Examples of good practice: Second HLG Report - BE, DE, EL, ES, FI, HU, IE, MT, NL, PL, SE and UK.

It was suggested that organising and promoting — and providing financial support for — training to develop the organisational and leadership skills of people with disabilities would help to ensure that they were empowered and acquired the skills to take on leadership roles. Most Member States also agreed that the role of the European Disability Forum (EDF) needed to be highlighted at EU level and cooperation between the EDF and national organisations was vital.

Civil society asked for attention to be paid to the empowerment of families of persons with disabilities, and especially the families of children with disabilities and of persons with disabilities, who may require assistance in representing themselves.

Conclusions

The second HLG report confirms the relevance of the priorities for joint action to implement the obligations in the Convention in the areas identified in the first report. It highlights the different stages of implementation reached, the differences in practice between the Member States and the increase in the pace of work to implement the Convention.

Notwithstanding those differences, national contributions to the report expressed a desire for joint action. This was exemplified by the interest in mutual learning, in making better use of scarce resources in various fields and in taking advantage of existing solutions. In those areas where the Member States had not made great progress in developing their own approaches, there was a clear interest in developing joint initiatives and coordinating processes to identify coherent solutions.

The report illustrates the importance of:

1. developing EU statistics and indicators in areas such as accessibility, access to justice and living independently, and in general as the basis for a common approach to monitoring the Convention's implementation;
2. exchanges of good practice, the sharing of information on possible solutions at various levels and mutual learning for the implementation of various obligations, in particular in relation to:

- Article 12 on legal capacity, because of its novelty and complexity. In this area there is a need to increase knowledge of legal matters in order to continue to develop legislation, policy and practice;
 - Article 9 on accessibility, because a level playing field brings added value. This could perhaps be achieved by developing EU standards on accessibility and fostering their use;
3. exploring the benefits of — and developing continuous cooperation for — attendance of the Conference of the States Parties and the establishment of the governance framework (focal points, coordination mechanism and independent mechanisms). To that end, a working forum¹⁶ in Brussels bringing together national and Community focal points and representatives of coordinating and independent mechanisms for the Convention would provide an opportunity to exchange experience, identify good practice and foster mutual learning. It could also boost the preparation of common models for reporting in areas of mixed competence and could feed into the preparation of a common code of conduct, to be adopted by the Council, on attendance by the Community and the Member States of meetings on the Convention's implementation¹⁷;
 4. organising training¹⁸ for persons with disabilities on their rights and ways of asserting them and training to develop the leadership skills of persons with disabilities with a view to their empowerment.

The abovementioned actions, in which civil society needs to be closely involved, emerge as key points for consideration in the development of a new European disability strategy.

¹⁶ A work forum for EU focal points, coordinating and independent mechanisms for the UN Convention is among the activities planned under the Progress programme in 2010.

¹⁷ As discussed at the COHOM meeting on 16 December 2008, a code of conduct, to be adopted after the conclusion of the Convention, could set out the practical details for coordination, as in the case of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (see 5914/1/07 REV1).

¹⁸ Many EU disability networks supported under the Progress programme report training on the UN Convention for their members as a key activity.