



Ten years on: practical impact of the Employment Directive on persons with disabilities in employment

EDF Analysis of Council Directive 2000/78/EC

“In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

Article 4 § 3 of the United Nations Convention on the Rights of Persons with Disabilities

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Introduction

The purpose of this report is to analyse the implementation of the Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (further referred to as the Employment Directive),). This report is written from the perspective of one of the main groups of its intended beneficiaries – **candidates and employees with disabilities**.

The Employment Directive has been analysed by the European Disability Forum on two earlier occasions: in [2006](#) and in [2007](#). In 2007, the analysis addressed the implementation of the principle of equal treatment by companies. The present analysis builds on the previous findings, and further explores the practical implementation of the Directive from the perspective of representative organisations of persons with disabilities.

The report is based on a survey carried out among the national EDF members in summer 2010. They were asked to answer a questionnaire meant to evaluate the implementation of the Employment Directive against a series of criteria. By October 2010, the responses were received from the organisations based in the following countries: Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Lithuania, Luxembourg, Malta, Portugal, Romania, Spain, Sweden and the United Kingdom. Sometimes, more than one organisation per country submitted their response.

The two main research questions asked in the questionnaire were:

- What are the practical problems with the implementation and enforcement of national law on disability equality in employment?
- What have EDF members done to support persons with disabilities to enforce their rights under national disability equality legislation?

The aim of the research is not to duplicate the work of the [European Network of Legal Experts in the Non-Discrimination Field](#), who is carrying out the detailed analysis of the national transposition legislation, and monitors the development of relevant case law at the national level. The current report focuses on the perspective of the organisations of persons with disabilities in using the tools provided by the Employment Directive to promote disability equality in employment.

Executive summary

On the whole, it must be noted that the findings of the 2010 questionnaire are a clear reflection of the concerns raised by EDF in its analysis of the Directive in 2006. Back then, EDF warned that two factors could lead to a limited impact of the anti-discrimination measures for people with disabilities on the ground: the not strong enough language of the Directive, and its inadequate transposition on the national level. EDF specifically emphasised that separating the phenomenon of discrimination in employment from discrimination in other areas of life did not reflect the realities of people with disabilities on the ground. To them, equality in employment is indivisible from access to education, transport, communication technologies and personal assistance. EDF also demanded more attention to the implementation of the provisions on reasonable accommodation, dissuasive sanctions, dissemination of information and civil dialogue, without which the protection afforded by the Directive would not be practically usable by persons with disabilities.

Regretfully, many of the concerns voiced in 2006 have materialised in 2010. Namely, EDF has noticed the following:

- Extremely low level of awareness about disability rights and remedies by most parties concerned by the Directive;
- Inadequate understanding of the law, particularly of the concept of reasonable accommodation, by persons with disabilities and employers;
- Serious financial, procedural and informational barriers to seeking redress for discrimination;
- Inadequate procedures for victim support and representation;
- Fear of victimization as a paralysing factor undermining the effectiveness of protection.

The additional limitation to the effectiveness of the Directive has been caused by the economic crisis spreading in Europe and heavily impacting all spheres of life. Following the general austerity measures introduced across the EU, the organizations defending the rights of persons with disabilities have – once again – found themselves to be outside the main priorities of the political agendas, and faced with an ever-increasing challenge to promote the principles of anti-discrimination. The implementation of the Directive was further hindered by the fact that many organizations of persons with disabilities – a major driving force behind the campaign for implementation – are currently struggling for their existence given draconian cuts in support of their work.

Based on the findings of the survey, EDF formulated a number of recommendations focused on:

- Awareness raising about the rights under the Employment Directive
- The need to reinforce the legislative framework addressing the discrimination in all areas of life
- The means, such as access to legal aid and protection against victimisation to make the legal remedies accessible to citizens
- Enhancing civil dialogue with NGOs, trade unions and organisations of employers.

The findings presented below are just a tip of the iceberg, and challenges faced by the persons with disabilities show huge gaps in the protection that must be provided by the Employment Directive. For a Europe without barriers, EDF urges the Commission and the Member States to take a responsible action to address those gaps.

Information about disability rights and remedies

Lack of information

One of the most striking findings of the EDF survey that was clearly identified by respondents unanimously is the overall lack of awareness of the protection provided by the Employment Directive among all interested parties. The persons with disabilities affiliated with representative organizations are the only group that is somewhat informed about their rights in employment and remedies for violation of rights.

All other actors, such as persons with disabilities not involved in activist work, employers, trade unions, universities and vocational trainers, providers of goods and services, and lawyers and judges are not well informed about the law and the specific protection it provides to persons with disabilities. In individual cases, the universities and vocational training establishments, as well as trade unions, are well-informed about the law, but that usually happens only if the establishment in question conducts dedicated work on disability equality and employs staff trained in disability.

Dissemination of information by all appropriate means is one of the obligations under the Employment Directive (cf Article 12). In most Member States this obligation finds its expression in leaflets and hotlines (**Belgium, France, Germany, Greece, Hungary, Portugal, Sweden** and **United Kingdom**). Sometimes the information is spread through public campaigns, as is the case in **Cyprus, Denmark, Luxembourg, Lithuania** and **Malta**, or through TV spots - in **Cyprus, France** and **Malta**.

Often this information is not spontaneously provided in accessible formats, unless it is provided by the organisations of persons with disabilities or specifically asked for.

Good examples include the information available to persons with disabilities in **Belgium** (in sign language on DVD), **Hungary** (basic information available in easy-to-read format) and **Malta** (in audio, Braille, electronic, easy-to-read, and Maltese sign language on DVD). **Cyprus, Czech Republic, Denmark, Germany** and **Spain** also report that the information is accessible.

Many respondents feel that they carry most of the burden of informing persons with disabilities about their rights, and fulfilling this task is becoming increasingly difficult, as the financial and human resources are becoming more and more scarce in many organisations. Equally significant is the fact that when the ownership of the campaign is completely transferred to the civil society organisations, the commitment of the sponsoring government to promoting the issue is sometimes questioned by the general public who does not necessarily see the campaign as endorsed by the government.

Implementation and understanding of law, particularly the concept of reasonable accommodation

The final deadline for implementation of the Employment Directive expired at the end of 2007 for all Member States, some of whom had asked and received an extension for the implementation of the disability- and age-related provisions. Three years after this deadline, many EDF members observe irregularities and confusion in the application of the national legislation transposing the Directive.

The vagueness of the national law making it difficult to enforce the rights has been noted in many countries, including **Cyprus, Czech Republic** and **Denmark**. The narrow personal or material scope of most of national laws transposing the Employment Directive is a significant obstacle for persons who have been subject to systemic discrimination in all areas of life.

The absence of a guiding provision in the Employment Directive calling for a broad definition of disability has excluded some categories of persons from protection. The **personal scope** of the Directive has already been subject to court decisions in a number of countries (including **Belgium, Denmark, Germany** and **Spain**), as well as by the European Court of Justice¹. The relationship between long-term illness and disability is the issue that has been explored most often. The disability organisations have long called for a dynamic interpretation of the concept of disability, taking into consideration the past, the present and the future disability.

¹ [Case C-13/05, Sonia Chacón Navas v Eurest Colectividades SA](#)

The limitations imposed by the **material scope** of the Directive (i.e. employment) have been acknowledged in most countries, except those who have decided to go further than the minimum obligations under the Directive, and extend the scope of protection to other areas beyond labour market, such as **Belgium, Malta** and the **United Kingdom**.

For example, in **Belgium** and, to some extent, **Luxembourg**, the national legislation transposing the Employment Directive goes well beyond employment and covers the provision of goods and services, social security, health care and participation to any economic, social, cultural or political public activity. The law allows dealing with situations such as the refusal of an assistance dog in a restaurant; the insufficient provision of sign language interpretation hours in schools; the refusal of reasonable accommodation to a golf player unable to use his electric transportation for moving during the contests; the refusal of entry to a woman wearing a scarf (in chemotherapy) in a bowling establishment.

The practical examples from the Member States demonstrate that the prohibition of discrimination in the labour market, important step as it is, is not enough to achieve de facto equality for persons with disabilities. The deeply rooted structural and attitudinal discrimination calls for the adoption of measures tackling discrimination in other areas of life, addressing education, transport, goods and services, personal assistance and others. Equally important is the creation of a positive image of disability, since misunderstanding of the concept and impact of a disability is one of the most significant reasons of exclusion of people with disabilities from the society.

The examples of difference in treatment in employment stemming from earlier difference in treatment in education have been brought by Malta and France.

- In **Malta**, many persons with disabilities, having been discriminated all their lives in education, and unable to obtain competitive qualifications, simply cannot take the advantage of the protection provided by the employment legislation.
- In **France**, a worker with a disability was hired by an enterprise at a grade inferior to the grade of the worker's education qualifications as his diploma was issued by the agency for professional integration of persons with disabilities, and not by the Ministry of Education. The employer was found guilty of indirect discrimination by the Equality Body. According to the ruling, the requirement to hold a diploma issued by the Ministry of Education in order to be eligible for a certain grade of employment disproportionately affects persons with disabilities, who have obtained their qualifications in specialised training centre, and is not objectively justified.
- In **Hungary**, many persons with disabilities under plenary guardianship found themselves unable to enter into an employment contract (and enjoy the protection against discrimination provided by the Directive). In 2010, the Budapest Metropolitan Court issued a decision, interpreting the national

legislation in the way allowing persons under guardianship to work provided that their employment contract is signed by their guardians.

Reasonable accommodation

Reasonable accommodation is the novel concept introduced in Article 5 of the Employment Directive in order to achieve full equality for persons with disabilities in employment. It is admittedly the most important provision that has ever been introduced in any piece of EU law on disability. However, its practical implementation has been far from perfect in many countries.

Many EDF members reiterated the findings of the 2006 EDF analysis of the Employment Directive: the concept of reasonable accommodation lacks legal certainty, which has created confusion and undermined protection. The Directive does not provide much guidance as to the reasonableness and proportionality of the accommodations required by an individual, and leaves these concepts open to wide interpretations by the employers. These may still see the provision of reasonable accommodation as involving prohibitive costs and resources, even when it is not the case.

In **Luxembourg**, for example, there is a general tendency, as far as the built environment is concerned, to evaluate the burden against the number of potential beneficiaries and the frequency of use of the adjustment. In the absence of the official statistics, the organisations of persons with disabilities fear the risk that some adjustments be considered as too burdensome for a small country like Luxembourg. In the field of employment, individual adjustments fall under the competence of the Employment Agency where specific budgets for reasonable accommodation are available.

In some cases, it is unclear who is bound by the obligation to provide reasonable accommodation. In a very positive case in **France**, the Ministry of Justice found itself obliged (following the pronouncement by the national Equality Body) to adapt the court buildings for wheelchair access to accommodate the needs of an attorney using a wheelchair. The Equality Body found that, even though the Ministry of Justice was not the employer of the attorney, the professional activity of the latter is directly linked to the accessibility of the court infrastructures.

In **Belgium**, persons who have acquired a disability during employment are often unaware of their right to reasonable accommodation. People who acquire disability do not usually have a natural reflex to ask for disability-specific information from specialised agencies, turning instead to trade unions, social services or their employer's human resources department, who most often cannot provide qualified information on reasonable accommodation. This experience has also been identified in other countries (**France, Luxembourg**).

Sometimes, due to historical exclusion of persons with disabilities from all mainstream areas of life, the practical use of reasonable accommodation is seriously

undermined. This is the case in **Greece**, where the rate of recruitment of persons with disabilities in the private sector jobs is extremely low. Persons with disabilities who apply for publicly advertised positions often get eliminated from recruitment process at early stages (for various reasons), which means that the employers do not get the chance to face the concept of reasonable accommodation at all. In the public sector, where the quotas for employment of workers with disabilities exist, many persons with disabilities are employed in unskilled jobs, which require fewer accommodations not involving special equipment or technical support.

Once again, it becomes obvious that in order to promote the employment of persons with disabilities, it is not sufficient to address the discrimination in the labour market alone. Equality in education, access to goods and services, transport and personal assistance are indispensable factors in guaranteeing equality in employment.

- In **France**, the practical implementation of the reasonable accommodation obligation often disregards the immaterial accommodations such as human help (tutor, personal assistant) required by persons with intellectual and psychosocial disabilities or specialised training for persons with disabilities; however, this can be a very effective tool for job retention, especially for persons who have acquired a disability while in employment.
- A **Danish** case on whether the demand for flexible working hours can be considered reasonable accommodation within the meaning of the Directive has been referred to the ECJ for preliminary reference and is pending.

As with most other concepts in the Directive, our survey shows that the **insufficient understanding of reasonable accommodation** is a major impediment to effective implementation of the principle of equal treatment.

Employers, vocational trainers and universities, providers of goods and services and persons with disabilities themselves (unless they are involved in the national disability movement) have all been found to be insufficiently informed. Sometimes the persons are aware of the possibility of asking for reasonable accommodation but do not understand that this is their legal right.

A 2008 **Swedish** study demonstrated a positive trend in integrating the reasonable accommodation in the work environment. Almost three-quarters of employed persons with disabilities declared that they needed between one and four reasonable accommodation measures at work, and the majority of them feel that they get the help they need. The most common need is adjustment of work tasks, working hours, and provision of technical aid/devices.

In some countries, where the **state participates financially** in the provision of reasonable accommodation and the employers are aware of this, they employers are found to be more open to hiring persons with disabilities.

European Disability Forum

- While in some countries (e.g **Denmark**), the state aids exist for all types of accommodations in all job-related situations, some other countries report patchy implementation of this concept. For example, in **Hungary**, the only measures available are free training of persons with disabilities and free assistive devices for blind university students, whereas in **Greece** the assistance is channelled only through specific projects and not mainstreamed.
- In **Luxembourg**, reasonable accommodation can be financed by public aid in order to encourage employers to hire people with disabilities. Such aid can amount up to 100% of the disabled worker's salary depending on the severity of disability. It can be limited in time. Furthermore, technical aids, accessible equipment and transport can be financed by the State having analysed the specific situation of the disabled worker.
- In **Lithuania**, the state used to provide funding up to 70% of the cost of the adaptations through the funds received through the pre-accession assistance from the EU. Currently, only 45 % of the costs are sponsored.
- In **France**, the employers who do not respect the 6% quota for employment of workers with disabilities pay a special tax to the state agencies responsible for promotion of employment of persons with disabilities. This money can be used for pay for reasonable accommodation measures enabling recruitment, retention and professional training of persons with disabilities .
- In **Sweden**, the state finances reasonable accommodation measures for up to 100 000 SEK (about 10 800 euro), possibly more in special circumstances, during the first year of employment of a person with a recognised disability. Thereafter, the employer and/or Social Security Agency have a responsibility for finding a continued solution.
- In **Finland**, the financial aid provided by employment authorities is limited to only one accommodation measure per person. This scheme is not very effective, as it does not reach the persons who need it most (i.e. persons with severe disabilities who may need more than one accommodation), and it does not make a great difference in employment opportunities. The decision whether to award financial aid is based on the assessment of the financial wealth of the employer, and it has been announced that there would be further limitations on eligibility.

In **Belgium**, the employers in the private sector are often unaware about the obligation to provide reasonable accommodation and rarely apply for public funding provisions available to meet this obligation. In their turn, the public sector employers are generally aware both of the obligation and the financial aid available to this end. This shows that when the state schemes exist, the opportunities provided by the public funding are underused (usually because the employers are unaware of them).

Some EDF members have rightfully pointed out that too heavy reliance on the financial support from the state for reasonable accommodation measures is in the long run detrimental to the equality of persons with disabilities in employment. The governmental subsidies, when used incorrectly, may make the business sector fully dependent on the public support and prevent it from being capable of independently accommodating workers with disabilities.

Barriers to seeking redress for discrimination

The Employment Directive (Article 9) provides that persons who consider themselves wronged by failure to respect the principle of non-discrimination should be able to get legal recourse. The associations having legitimate interest in the Directive provisions (such as national EDF members) should have an opportunity to engage, in one way or another, in the procedure.

In order to defend the rights, the Member States were obliged to put in place appropriate judicial and/or administrative procedures, including conciliation procedures, where appropriate. In practice, this means measures such as access to legal advice and representation, legal aid, protection against victimisation etc.

However, it has been reported that the protection provided by the Employment Directive is often significantly reduced by the practical inability of people to enforce their rights. In many countries, the opportunities have been lost because of the lack of knowledge and/or capacity by persons with disabilities (**Portugal, Malta, Cyprus and Denmark**), the inadequate awareness of the enforcement authorities about the non-discrimination obligations, and the persons' fear of victimisation (**Czech Republic and Lithuania**).

Lack of information/awareness

One of the most important measures as a prerequisite to using the judicial procedure is the knowledge of the victim of discrimination about its existence. Lack of awareness about rights and remedies is the most often quoted reason for not pursuing the case. Insufficient or inaccessible information about remedies has been registered in most countries, including **Belgium, Cyprus, Finland, France, Greece, Hungary, Malta, Sweden and United Kingdom**. Very often people do not know who to turn to when they feel they have been discriminated against, like in **France, Portugal and Romania**. This is especially valid for persons with disabilities living in rural areas.

Financial reasons

Although free access to courts is a constitutional right guaranteed to all, the actual costs of engaging in legal proceedings (hiring a lawyer, paying legal fees) are often prohibitive and prevent the persons with disabilities from seeking redress. This has

been reported by EDF members in **Belgium, Cyprus, Luxembourg, Spain, United Kingdom** and **Finland**.

In certain countries, such as in **Finland, Hungary, Luxembourg** and **Spain**, legal representation is free for persons with limited financial means. However, the Hungarian EDF member notes that the effectiveness of this system is questionable, because the legal representatives assigned for free in Hungary are under-paid and lack the specialist knowledge about disability discrimination. A better balance would be achieved if persons eligible to free legal aid could choose their legal representative.

In **Lithuania**, primary legal advice is free to all citizens; however, only persons with severe disabilities are eligible to get more in-depth legal aid free of charge. In **Malta**, the National Commission Persons with Disabilities provides free legal advice and representation, but only if it is involved in the case; in other cases, the victims have to pay the lawyer and all court expenses themselves.

Even when legal representation per se is free of charge, a serious deterrent for many applicants is the risk of having to pay the legal costs of the opposing party if the case is lost. In **Finland**, a case of unfair dismissal on the ground of disability was decided in favour of the employee, who managed to prove that her dismissal was caused by her disability, and not the financial constraints of the enterprise, as claimed by the employer. In addition to the damages paid out to the applicant, the employer had to pay the legal fees of about 17 000 Euros. Such an amount remains an insurmountable obstacle to many persons with disabilities wishing to seek redress.

Fear-based reasons

Fear of victimisation has been cited by many respondents as a reason not to bring a case against a discriminating employer. The fear of losing employment or benefits, as well as of indirect repercussions (such as gaining a reputation of a ‘troublemaker’, making it more difficult to find a job in the same region later) have been mentioned by organisations in **Belgium, Czech Republic, Finland**, and **Malta**. The latter reports that victimisation was particularly severe in case of individuals with psychosocial and intellectual disabilities returning to work after having complained of discrimination.

In **Lithuania**, a family changed their mind about bringing a legal case against the municipality who refused to make accessibility adaptations in a public hospital to enable a child with a disability to use the facilities. Despite the Human Rights Monitoring Institute agreeing to fund legal representation for the family, the claim did not go ahead because the family was afraid of the prejudice, negative attitudes and possible adverse actions from the municipality.

Procedural and judicial process-related reasons

Lack of faith in the judicial system or the positive outcome of the proceedings sometimes prevent people from seeking redress (**Czech Republic, France, Germany, Lithuania, Luxembourg, Portugal**). The complexity and length of the process have also been listed as deterrents.

Limited recognition before the law of persons with disabilities, including their legal capacity and the capacity to act according to the UN Convention on the Rights of Persons with Disabilities (CRPD), is a further obstacle. In **Hungary**, a country that has ratified the UN CRPD, persons are still placed under plenary guardianship and thus prevented from taking cases to court without the consent of the legal guardian.

The lack of measures providing access to justice for persons with disabilities (e.g. accessibility of premises, provision of sign language interpretation, etc) creates further barriers for persons with disabilities to claim their rights. Such measures are foreseen by the UN CRPD.

Some EDF members report the lack of dissuasive sanctions that would motivate the people to seek redress. Indeed, EDF members remark that in some countries, the companies prefer to pay a one-off fine (the amount of which is rarely dissuasive), than take steps to hire and retain a worker with a disability.

A positive example of a dissuasive sanction outside the labour market is the decision of a **Belgian** court against a travel agency that was found guilty of discriminating against a deaf person. The travel agency was obliged to publish the court decision at its own cost in all main national newspapers, on its own website, and in its offices open to external clients.

Ineffective enforcement of other legislation that directly informs the employment of people with disabilities has also weakened protection. For example, **Spain** notes that the weak enforcement of accessibility legal requirements is often observed.

As emphasised before, the effectiveness of prohibition of discrimination in employment is necessarily undermined if discrimination is nourished or tolerated in other areas of life that directly interact with employment (such as education, transportation, accessibility of goods and services).

The burden of proof of discrimination

Although the Employment Directive provides for a partial reversal of the burden of proof, this is not always respected in the national courts, and people with disabilities find themselves responsible for proving discrimination. A number of EDF members have reported that the difficulties in demonstrating that the difference in treatment was the result of a disability discourage people from pursuing their claim.

Out-of-court procedures for victim support and representation

Equality Bodies and Ombudspersons

Although the Employment Directive does not require the establishment of an equality body to promote the equal treatment in employment, a number of countries have in fact designated an independent agency (an **equality body** or an **ombudsperson**) for this role. In particular, the equality bodies in [Cyprus](#), [France](#), [Greece](#), [Hungary](#), [Luxembourg](#), [Sweden](#) and [United Kingdom](#), among other countries, have been mandated to fight against discrimination on the basis of disability. Sometimes, these bodies serve as an out-of-court mechanism for the disputes concerning discrimination in employment.

- In **France**, the HALDE (Equal Opportunities and Anti-Discrimination Commission) has been generally successful in convincing employers to respect legal provisions concerning reasonable accommodations (connected with “indirect” discriminations) without having to go to court.
- In **Greece**, persons with disabilities can address their complaints to the Greek Ombudsman (for cases of discrimination in public employment sector only), and to the Labour Inspection Body of the Ministry of Labour and Social Security (for cases of discrimination in private employment sector). The Ministry can also receive complaints for cases of discrimination in both public and private sector that it then forwards either to the Greek Ombudsman or Labour Inspection Body. The latter can impose fines and administrative penalties on an employer if discriminatory behaviour is established. Neither of these bodies can represent plaintiffs before the Court (but the Labour Inspection Body can be called to express its opinion in court and support the claim of the victim).

Despite this limitation, the National Confederation of Disabled People (N.C.P.D.) of Greece finds that the Greek Ombudsman works very effectively in providing legal support and conciliation services to discriminated individuals. Actually the majority of cases brought before the Ombudsman were solved effectively out of court.

- In **Malta**, the National Commission Persons with Disability ([KNPD](#))’s Equal Opportunities Compliance Unit (EOCU) can act on behalf of them in case of discrimination². In the first instance, it tries to reach an agreement with the

² Besides KNPD, the Department of Industrial and Employment Relations is empowered by the Employment Directive to investigate any alleged case of discrimination in the workplace and to take legal action if necessary. However, as of August 2010, there have been no cases received by the Department on disability-based discrimination in employment.

employer in question and, failing this, it has the option to take the case on behalf of the discriminated person.

However, the low number of cases brought to the attention of these bodies in Greece and Malta must be noted: 13 and 11 employment discrimination cases in 2009 respectively. The Greek Ombudsman's annual report 2009 notes that the lack of public information about the work of the Ombudsman and the Labour Inspection Body (the two agencies dealing with complaints; see above) and the insufficient coverage of various discrimination issues by the Greek law are main reasons for the low number of complaints.

Such a **lack of awareness** caused by the lack of (accessible) information about the very existence or the competence of the equality bodies has been reported in most countries.

The narrow mandate of ombudspersons and equality bodies is a serious limitation to their effectiveness in many countries. Many of these cannot take legal action (**Czech Republic, Lithuania, Luxembourg**), and some do not even focus on individual complaints against discrimination as their *primary* task (**Hungary, Spain**).

Finally, in a number of countries, the Ombudspersons / equality bodies do not have the competence to address discrimination on the basis of disability. Indeed, the **Finnish** Ombudsman and the **Danish** equality body are not mandated to work on disability discrimination at all.

The discriminated individuals are usually referred to the ombudsperson/equality body by a disability NGO; only in very rare cases do they contact the equality body directly. This pattern demonstrates the crucial role of the civil society in enforcing legislation.

Organizations of persons with disabilities

Persons with disabilities' organizations that have legal power and legal department can provide legal advice and support to persons with disabilities. As this is not required by the Employment Directive, most of these organizations cannot represent plaintiffs.

- One notable exception is in **Greece** where the National Confederation of Disabled People (N.C.P.D.) is eligible to represent persons with disabilities in court in case of discriminative treatment. The same practice is now being developed in **Spain** (often, with the help of lawyers working pro bono), and the results are encouraging.
- In **Luxembourg**, the National Disability Council runs the Information and Meeting Centre Info-Handicap that has a legal information office and gives free legal advice on a short-term basis to citizens. The organization can arrange a meeting with a lawyer and pay the fees of the first legal advice but should the person decide to engage in a judicial procedure, he needs to cover

the expenses himself and he can choose any lawyer competent for acting at the Luxembourg Bar.

Trade unions

Trade unions in some countries (**Greece, Luxembourg, Romania, Spain, Sweden**) are often involved in providing advice, support or legal representation to persons, but they seem not to always have expertise in disability. EDF members recognise the importance of the role of trade unions in promotion of disability equality in the workplace, and have sometimes organised training for the unions on disability-specific aspects of discrimination in employment.

In **Luxembourg**, trade unions are qualified to intervene in the situation where a person brings a legal action deriving from a collective bargaining agreement or national or inter-professional agreement that covers him. If the person agrees to be represented, the union is empowered to represent him in the proceedings without needing to demonstrate a material or moral interest.

In **Denmark**, many cases (most of them concerning dismissal on a disability-related ground) have been generated by the trade unions. Generally, the unions' lawyers are reported to have good awareness about disability; the cooperation with the unions is productive in cases where both the unions and the organisations of persons with disabilities pursue the same interest.

In **Romania**, an independent trade union of workers in the disability field was created in 2005. Their members are the employees in centres for persons with disabilities, teachers, doctors, social workers, psychologists, non-governmental organizations employees and work inspectors. This organization also has good contacts with other trade unions and the Romanian Council of the national organizations of people with disabilities.

Involvement of the organisations of persons with disabilities in the implementation of the law

Training

Recognising the inadequate knowledge of the law by the people who are affected by it, many national organizations of persons with disabilities have organized **training** courses for their staff to learn more about the anti-discrimination measures under the Employment Directive, and equip activists with tools to counsel victims of discrimination. Many of them have also provided training to their members' organizations and others (trade unions, employers' associations, employment agencies, funding agencies) on the national legislation. Sometimes the training is

organized in cooperation with the equality body / ombudsperson (e.g in **Lithuania** and **Sweden**).

Awareness raising

Most EDF members (including **Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Hungary, Lithuania, Luxembourg, Malta and Spain**) are involved in **disseminating the information about the national anti-discrimination legislation**. Sometimes, public funding permitting, public awareness campaigns are organised, such as in [Denmark](#) and [Greece](#).

The impact of the information campaigns has been mixed: in some cases, they have helped persons to identify the violations of their rights and seek redress. For example, the **Belgian** sign language information campaign generated two cases, and the **French** information message on reasonable accommodation targeting the press agencies increased awareness about the issue. At the same time, some respondents affirm that the campaigns targeting politicians or public authorities are not always successful (**Denmark, Finland**), and in any case, the campaigns need to be repeated regularly to keep the message alive.

Legal advice

Although most respondents are active in dissemination of information about national law, many of them are unable to provide **individualized legal advice** to persons with disabilities on their rights. **Sweden** and **Romania** report having to discontinue the legal advice service due to the lack of funding.

Greece is an encouraging example of a country where the national organization of persons with disabilities provides a free information and legal advice service “Claiming Together” that can also put people in touch with a lawyer if further legal assistance is needed. The majority of cases registered by the service concerns employment in public sector (as fear of victimization is great in private sector), and deals with denial of reasonable accommodation.

In **Czech Republic**, the counselling centres across the country answered 32 400 requests in 2009. Due to the lack of public funding, the number of counselling centres was reduced from 80 to 13 (one per region). Most requests received by the centres relate to financial help provided by the state to persons with disabilities, while the employment-related queries rank 4th overall. The Czech National Disability Council finds that administering the counselling centres allows it to have direct contacts with persons with disabilities and have a better understanding of their needs. This helps the organisation to be a better negotiator vis-à-vis the government and participate in the political process more actively.

Cooperation with other bodies

Many national organizations of people with disabilities establish partnerships with other bodies who are better equipped (and resourced) to provide advice and inform citizens of their rights. However, the **Czech** EDF member stated that it only refers persons to other bodies when the issue in question falls outside its competence, and the **Greek** confederation never refers persons to other bodies at all. Most often quoted partners are the national ombudsperson, equality body, trade unions and organizations of other discriminated groups.

In **Belgium**, for example, the national [Equality Body](#) provides information and legal advice services that are free of charge and open to all. Depending on the area of discrimination (whether it falls under federal or regional competence), the Equality Body can intervene directly or through its regional contact points that are trained by the Equality Body and work closely with it.

Other interesting examples of cooperation include cooperation with the, International Organisation for Migration (**Greece**), National Forum of Equality and Diversity (**Lithuania**), [Liaison Committee of Foreigners' Associations](#) and the [Consultative Committee on Human Rights](#) (**Luxembourg**).

Recommendations

Related to awareness raising and training

The most obvious conclusion resulting from the above findings is the need for more information campaigns and training targeting persons with disabilities and employers. It is important to disseminate the message about the right to equality and reasonable accommodation in employment to persons with disabilities in a simple accessible language. Given that the overwhelming majority of persons with disabilities use local disability organizations as a primary contact in case of suspected discrimination, the capacity of such organizations should urgently be reinforced.

The employers' organizations must be trained on the practical implementation of reasonable accommodation, and informed about the existing fiscal incentives for hiring persons with disabilities (public aid for reasonable accommodation, tax rebates, etc). It is crucial to invest resources and time into dispelling the myth about the prohibitive cost of reasonable accommodation.

To be effective, awareness campaigns should not be limited to one action. They should instead be comprehensively designed to address different target groups with individualised communicate means, and repeated over a period of time.

Related to the legal framework

The arguments about the interrelatedness of discrimination in the labour market with inequalities experienced by persons with disabilities are not new and have been recognized by most actors involved in disability policy. The legislative framework must be reinforced in order to maximize the protections of the Employment Directive.

Some of the gaps could be better addressed on the European level, such as the accessibility of goods and services (a uniform obligation would create an internal market of accessible goods and services, providing incentives for industries to comply with it) and transferability of personal assistance schemes among the Member States. Others – such as education, community living and local transportation links should be addressed by national governments without delay.

The activation of the maximum available labour force in Member States is a wise long-term investment that cannot be disregarded any longer, and the EDF calls on the Commission and the Member States to take use of this opportunity.

Related to defence of rights

Any legal framework is a living instrument that is shaped by the people using it. If the tools for using the law/ enforcement are inadequate, the very purpose of legal protection is negated.

It has been noticed that the people in most Member States are not confident invoking their rights in employment. The following measures need to be taken:

- Access to free legal aid. The schemes facilitating access to qualified legal advice and representation for individuals who need it must be put in place.
- The associations representing victims of discrimination must be given appropriate legal status allowing them to represent person before tribunals. This would be a very effective measure against victimization which is currently one of the main obstacle for victims who choose against seeking redress.
- Procedural regulations must ensure full accessibility to legal processes for persons with disabilities, including physical accessibility of the courts and legal advice offices and communicational accessibility, as well as free of charge sign language interpretation.
- Reinforcement of mandates of equality bodies and ombudspersons. In many countries, the equality bodies are not competent to work on disability discrimination. At the same time, the involvement of an equality body could be an effective way to seek a friendly solution in cases of discrimination in employment, as proven by the examples of countries where this practice already exists. Their intervention is competent, informal, free of charge and impartial.

Related to the civil dialogue

The importance of civil dialogue cannot be underestimated. The organizations of persons with disabilities are an invaluable hub of information and an important focal point for victims of discrimination. No decision concerning disability policy should be taken without their active and direct involvement, and the organization should be adequately compensated for their precious expertise by allocation of sufficient financial and human resources to them.

The meaningful civil dialogue is impossible without strong well-resourced organisations of persons with disabilities. The importance of capacity building of organisations is crucial. This should be seen as an investment into the human and political capital of every Member State.

Related to the social dialogue

The trade unions and the employers' associations should also not be forgotten. The implementation of the Directive in the spirit of common benefit is much more effective than when it takes place in an adversarial atmosphere. Therefore, it is important to invest effort in advertising the benefits of equality to the employers and unions. This is the role for both national governments and the European Commission.

Acknowledgements

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Belgian Disability Forum

Cyprus Confederation of the Organisations of the Disabled

[Czech National Disability Council](#)

[Disabled Peoples Organisations Denmark](#)

[Finnish Disability Forum](#)

[French Council for Disabled People in European Affairs](#)

[German Federation of the Blind and Partially Sighted](#) (DBSV)

European Disability Forum

[Greek National Confederation of Disabled People](#)

Hungarian National Council of Federations of People with Disabilities

[Lithuanian National Forum of the Disabled](#)

[Luxembourg National Disability Council](#)

[Malta National Commission Persons with Disabilities](#)

Malta Federation of Organisations of Persons with Disabilities

[Portuguese National Confederation of Organisations of Disabled People](#)

Romanian Federation of Councils of Disabled People

[CERMI](#)

[Swedish Disability Federation](#)

[European Network of \(ex-\) Users and Survivors of Psychiatry](#)

Contact

The **European Disability Forum (EDF)** is the European umbrella organisation representing the interests of 65 million persons with disabilities in Europe. The mission of EDF is to ensure disabled people full access to fundamental and human rights through their active involvement in policy development and implementation in Europe. EDF is a member of the Social Platform and works closely to the European institutions, the Council of Europe and the United Nations.

Contact person at the EDF Secretariat: Janina Arsenjeva, janina.arsenjeva@edf-feph.org; Tel +32 2 282 4602

More information about EDF is available on www.edf-feph.org

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

Ten years on: practical impact of the Employment Directive on persons with disabilities in employment EDF Analysis of Council Directive 2000/78/EC

The document is available in English and French, and in alternative format upon demand.

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