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### Introduction

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## Introduction: towards Convergence? Disability Policies in Europe

**Abstract:** Disability is one of the key areas of concern for social security. It represents one of the major risks for loss of income from work among people of working age and, historically, it belongs to the risks first covered by social insurance. All countries with encompassing income maintenance schemes have special provisions for people with disabilities, and the spending on these benefits usually amounts to a large proportion of total income maintenance expenditure. The administrative and legal procedures surrounding the assessment of claims for disability benefits are often complex and involve discretionary judgment. Assessments tend to rely on the input from different professional groups, such as physicians, psychologists, social workers, occupational therapists, and rehabilitation or employment counsellors. In the disability area there is also a close but rarely simple relationship between 'cash' and 'care'. Participation in treatment, training and rehabilitation programmes, combined with suitable technical solutions and services provisions (transport, personal assistance etc.) are believed to diminish dependence on long-term financial support for disabled persons. At the same time, advances in medical diagnosis and treatment have also meant that more people are able to survive illnesses and injuries that would otherwise have been fatal.

### 1. THREE CHALLENGES TO DISABILITY POLICIES

In the 1990s, existing policies and provisions – and the principles and assumptions that informed them – were challenged in several ways.

Firstly, the governments in many modern welfare states came to see their levels of expenditure on disability benefits as excessive and as threatening the sustainability of income maintenance systems in general. Disability benefits were viewed as being too accessible and generous, to the extent that they contributed to undesirable exit from the labour market, especially among middle-aged and older workers.

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Governments therefore sought to tighten up disability benefit schemes by making eligibility rules stricter and lowering benefit levels, as well as emphasising strongly active measures to promote the employment of disabled people.

Secondly, criticisms were raised about the way in which disability has been conceptualised or defined in public policy. Opponents argued that the dominant conceptualisation places too much emphasis on individual limitations in functional ability, as determined by medical conditions ('the Medical Model'). They maintained that this has led to a focus on individual shortcomings and the need for compensation, and that such a conceptualisation disregards how aspects of the environment may reinforce the practical limitations arising from a particular bodily or psychological impairment ('the Social Model'). The former conceptualisation has been associated with segregated provisions, while the latter has been associated with notions of 'mainstreaming', 'equal opportunities' and 'non-discrimination'.<sup>1</sup>

Thirdly, and closely related to the second challenge, organisations of disabled people became much more active and visible in the public arena. These organisations have acted as effective pressure groups to promote the interests and views of their constituency/members, *vis-à-vis* governments, the media and the majority population. Both on a national and supra-national level, these organisations have become increasingly involved in the policy process, for instance through representation in corporatist bodies and systems of consultation. This has led to a fairly wide acceptance of their views and, in this sense, has changed the way in which disability issues are discussed. However, the impact may so far have been greater on an ideological or rhetorical level than in terms of actual policies. The response from the European Union has so far been more positive and forthcoming than from many national governments, but the responsibility for most of the provisions, benefits and services aimed at disabled people has been retained at the national level. Nevertheless, it has been argued that the European Union, with the ratification of the Amsterdam Treaty, has obtained the competence to seek to influence the policies of Member States in this area. In line with Article 13 of the Treaty, the Commission has recently proposed a Directive to outlaw all discrimination against disabled people.<sup>2</sup>

The three challenges to the future of existing policies and provisions have been inter-related, but they have all come from different sources, and thus it is not obvious how well they complement each other. The first challenge has been motivated mainly by a 'top-down' concern for the costs of expanding social protection systems. Admittedly, attempts to promote more 'active' and 'employment-friendly' systems have also been justified in terms of disabled people's welfare, in that governments have argued that participation in gainful employment is best because it

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1 See for instance M. OLIVER, *The Politics of Disablement* (Basingstoke, Macmillan, 1990) and C. BARNES, *Disabled People in Britain and Discrimination* (London, Hurst and Co, 1991).

2 *Proposal for a Council Directive Establishing a General Framework for Equal Treatment in Employment and Occupation*, COM (1999) 565 final.

secures social inclusion, improves status and respect and gives disabled people a more meaningful role in society. However, the context of these statements makes it clear that there is an increasing obligation to work, when one considers that benefits are often stopped if a person declines to participate in rehabilitation or 'return-to-work' programmes. Thus, recent reforms are likely to have both increased and decreased the scope for individual choice and self-determination: they have improved the practical possibilities for entry or return to employment for those who believe they can benefit from the expanded services and measures, but they have also limited the scope for choice for those who find participation in such measures meaningless, too demanding or simply not adjusted to their needs and capacities. The latter must risk having their benefits cut if they refuse to take part.

By contrast, the second and third challenges have stemmed from 'bottom-up' pressures, largely but not exclusively consisting of organisations of disabled people and their supporters. The driving force here has been a broader and more general quest for equity and a fuller and richer life for people with disabilities. This might involve the possibility of gainful employment, but here this is seen as only one of several routes to enjoying autonomy and living on equal terms with the majority of the population. Individuals may find that the opportunity to live on one's own, to have a private life as well as contact with other people, to take part in ordinary social and cultural activities, and to have a secure and predictable income are more significant or at least of equal importance to labour market participation. Thus, from this perspective, any measures to promote participation in gainful employment will be judged in the context of their co-ordination with other provisions, such as suitable housing, home support services, personal assistance and accessible transport.

The policy impulses associated with the three challenges have generally not yet led to integrated policy programs. In most countries there is still a division in approaches to the challenges. To some extent this is also reflected within the action programmes of the European Union. On one hand, its Employment Strategy, expressed in three years of Guidelines for National Employment Plans, includes only a brief section about disabled people: 'Each Member State will ... give special attention to the needs of the disabled ... and develop appropriate forms of preventive and active policies to promote their integration into the labour market'.<sup>3</sup> On the other hand, the EU has in the 1990s also formulated an ambitious and general Disability Strategy, built on the principles of

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3 EUROPEAN COMMISSION, *Guidelines for Member States' Employment Policies for the Year 2000 and Council Recommendation on the Implementation of Member States' Employment Policies* (Luxembourg, Office for Official Publications of the European Communities, 2000) pp. 12-13.

4 *Communication of the Commission on Equality of Opportunity for People With Disabilities*, COM (96) 406 final; *Raising the Employment Levels of People with Disabilities – the Common Challenge*, SEC (1998) 1550; *Mainstreaming Disability within EU Employment and Social Policy*, DG V Service Working Paper, 1999; *Towards a Barrier-Free Europe for People with Disabilities*, COM (2000) 284 final.

equal opportunity, mainstreaming and non-discrimination.<sup>4</sup> These two pieces of EU policy have so far appeared to be only loosely linked to each other. For example, there are no explicit targets or operational objectives in the section of the Employment Guidelines dealing with disability, in clear contrast to the sections about unemployment in general. Similarly, the Guidelines display a much more narrow understanding of the issues than can be seen in the documents outlining the Disability Strategy.

It is against the background of the above challenges that this special issue aims to review and discuss the disability policies that have developed in six Western European countries in recent years. What have been the major changes? Have the disability policies of these countries become more similar in the course of the 1990s? If so, is it possible to identify a closer relationship between the emerging EU Disability Strategy and national policy developments in this area?

The countries discussed – Sweden, Denmark, The Netherlands, the United Kingdom, Ireland and Spain – are all represented in an academic network on vocational rehabilitation of disabled people that seeks to understand and compare policy developments in the field. Authors have been asked to highlight what, in their view, have been the main developments in their countries, rather than to adhere to a strict common framework for all texts. This has led to variation in emphasis. The article on the Netherlands, for example, discusses policy changes from the perspective of the aim of trying to reduce benefit claimant numbers rather than an aim of social and vocational reintegration of disabled people. The Spanish article emphasises obstacles to change, like insufficient political will and lack of information on the needs of disabled people. The Danish article focuses on changes in disability movements' influences on policies, and compares corporative structures (the Danish way) with equal rights legislation (the USA way) as institutional means for this. The article on the United Kingdom describes recent policy initiatives, analyses the values underlying them and looks into the future of benefits and services for disabled people in the UK. The Swedish article detects and describes a shift from universality to selectivity and a greater emphasis on activation, which leads to a stronger ethic of 'deservingness' and increasing barriers to access in services. Finally, the Irish article compares a strong increase in activity at the policy-making level with an as yet lagging real improvement in opportunities for disabled people at the individual level.

Notwithstanding this variation in focus, all articles include detailed information on recent changes in disability policies in the respective countries. At least three major conclusions can be derived from this information. These are set out in sections 2 to 4 below.

## 2. PREVIOUS POLICY MEASURES – POLICY FAILURE OR IMPLEMENTATION FAILURE?

Firstly and not unsurprisingly, a basic common trend in the six countries is 'activation', i.e. increased efforts to aid disabled people in finding or retaining work. It is striking that in many instances, new policy instruments have been introduced to replace or supplement measures that have been deemed ineffective, insufficient and

unsuitable. Many of these assumed 'failures' turn out to be cases of weak implementation or poor enforcement, where governments or lower-level agencies have been unable or reluctant to put the measures into practice in the light of dissatisfaction or resistance from affected parties. The obvious examples here are measures targeted at potential or actual employers of disabled people. Some countries (for instance the Netherlands, Spain and the United Kingdom) have had quota schemes; that is, arrangements giving employers an obligation to have a certain proportion of their jobs done by disabled people. In some instances, attempts have been made to give employers financial incentives to employ disabled people and to fine them if they fail to do so (as in the Netherlands). As the articles show, such schemes have to varying degrees been dismissed as ineffective or inappropriate, when in fact it is questionable whether they have really been put to the practical test.

As a backdrop for this discussion one may refer to a distinction between three types of policy instruments: 'coercive' (legislation and regulations), 'remunerative' (economic incentives) and 'normative' (symbolic rewards and deprivations).<sup>5</sup> As is illustrated by the articles, these types of instruments are not mutually exclusive but may be combined in various ways. For instance, in addition to using legislative and financial instruments, governments have also tried to persuade employers to take on greater responsibility for disabled workers through their recruitment and retention policies, by means of information campaigns, guidance and moral appeals. As is noted, governments have tended to shrink back in enforcing the legislative means at their disposal in order to achieve the compliance of employers. The resulting non-implementation suggests that the significance of 'coercive' instruments has been primarily *symbolic*; they have demonstrated the good intentions of governments but have said little about their commitment and practical ability to improve the labour market situation of disabled people.<sup>6</sup> In other words, the distinction between 'coercive' (but non-enforced) and 'normative' instruments becomes blurred in practice.

To the extent that governments provide wage subsidies to disabled workers and/or financial support to employers for providing work opportunities, levels of spending on such instruments might be seen as an indicator of governments to 'do something in practice' for disabled people. However, it is difficult to assess the extent to which the granting of financial resources really obligates employers and improves the employment prospects of disabled people, rather than encouraging mere opportunistic adjustments on the part of employers, and proving to be inefficient on account of displacement, dead-weight and substitution effects.<sup>7</sup>

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5 E. VEDUNG, 'Policy Instruments: Typologies and Theories', in M. L. BEMELMANS-VIDEC, R. C. RIST, E. VEDUNG (eds.) *Carrots, Sticks, and Sermons: Policy Instruments and Their Evaluation* (London and New York, Transaction Publishers, 1998) pp. 29-30.

6 M. EDELMAN, *The Symbolic Uses of Politics* (Urbana and Chicago, University of Illinois Press, 1985).

7 R. LAYARD, R. JACKMAN, S. J. NICKELL (eds.) *Unemployment: Macroeconomic Performance and the Labour Market* (Oxford, Oxford University Press, 1991) pp. 476-477.

The effectiveness of information and persuasion strategies is clearly even harder to evaluate. Nevertheless, many governments favour such strategies, particularly in the Nordic countries, where it has been argued that more can be accomplished through a climate of cooperation and negotiation with employers than through confrontation and the use of legislative 'coercion'. The article on Denmark illustrates this belief most clearly. Related arguments have been that employers are able to evade legislative instruments, and that their enforcement has unintended and undesirable consequences (such as stigmatisation under quota schemes and tighter screening of recruits under schemes which give employers increased financial responsibility for those who become disabled, as in the Netherlands).

As with activation, the new discourse on equal opportunities and non-discrimination has only had a limited impact on the policies of the six countries examined in this special issue. The United Kingdom introduced anti-discrimination legislation for disabled people in the first half of the 1990s, and in Sweden an anti-discrimination act came into force in 1999. Ireland introduced elements of anti-discrimination legislation in 1993 and 1998. Such legislation has been considered in the other countries, probably in the most concrete terms in the Netherlands. In the United Kingdom, anti-discrimination legislation replaced the quota scheme, while in Sweden it was intended to supplement existing legislative means to promote the employment of disabled people. Since there have been serious doubts about the effectiveness of other legislative instruments in this area, it seems natural to ask what difference these anti-discrimination acts will make for the employment prospects and security of disabled people. In the cases of Sweden and Ireland, it is clearly too early to say, and relevant evidence has only recently begun to emerge in the United Kingdom. The United States introduced an anti-discrimination act in 1990 and thus a more extensive evaluation has been possible. Evidence suggests that in the US there have been problems of hesitant implementation and passive, reactive enforcement on the part of the responsible agencies.<sup>8</sup> It has been claimed that the act's potential in improving the situation of disabled Americans has not been realised.

It is important to consider why similar problems of failing implementation and enforcement of legislative measures tend to replicate themselves in different national contexts. One possible answer is that it is not believed to be the role of the state in Western political economies to infringe too strongly on the prerogatives of employers, especially their sovereignty in making decisions about hiring, firing, internal careers and retention. While this may generally be the case, one may also argue that such infringements have become widely accepted in these political economies in order to promote greater gender equality. However, awareness and recognition of the resources of disabled people may still be insufficient to challenge the conventional views of employers. Arguably, most employers are only interested

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<sup>8</sup> NATIONAL COUNCIL ON DISABILITY, *Promises to Keep: a Decade of Federal Enforcement of the Americans with Disability Act* (Washington DC, National Council on Disability, 2000).

in what they perceive to be the 'best' employees. Those who score highest in terms of employers' criteria tend to be those who are young, male, white, healthy and educated. In other words, employers still have prejudices against disabled people (as they have against women, ethnic minorities, and the long-term unemployed).

Another possibility is that there is a failure in the policy process to fully communicate and to acknowledge that there may be conflicts of views and interests between those who see themselves as disabled and those who do not. These conflicts need to be articulated in order to find more workable solutions. Disabled people continue to be an invisible, neglected minority in important arenas such as national parliaments.

A third possibility is that failure to implement and enforce legislative measures simply reflects the workings of politics and administrations. Politicians are challenged to formulate new policies, and that is what they do. However, once the policy is formulated and the budget assigned, they lose interest and immediately set their eyes on another compelling policy problem. Administrative staff tend to be overloaded with the follow-up of new policies. They might still be busy implementing last year's measures when they are confronted with completely new ideas and instruments. It is logical for them not to jump too eagerly into every new plan and measure. Thus, it may be of great significance that the EU has set itself the task of putting pressure on Member States to follow up their stated goals and promises in the disability field, and monitor the progress made.

### 3. THE 'SOCIAL MODEL' – OLD OR NEW?

Even though only two of the six countries in this issue have introduced specific anti-discrimination legislation (notably Sweden and the UK), the thinking about disability associated with the 'Social Model' appears to have become more widely accepted in all of the countries. At the same time, it is worth noting that important elements of this conceptualisation of disability had been formulated and institutionalised in the form of practical policies in both Denmark and Sweden long before the conceptualisation was named and elaborated theoretically by Oliver, Barnes *et al.*<sup>9</sup> More generally, the papers indicate that the development of disability policies has followed slightly different trajectories or is in different phases of similar trajectories in the six countries. Universal income maintenance benefits for disabled people appear to have been introduced more recently, and have played a more limited role in Ireland and Spain than in the other four countries. Government concern for excessive expenditure on 'passive' measures has been articulated more strongly in the other countries, perhaps in particular in the Netherlands. Similarly, it may also be the case that Ireland and Spain have been able to move more directly towards a Social Model of disability. Conversely, the more conventional 'Medical Model' – associated with generous arrangements for financial compensation and the use of

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<sup>9</sup> See *supra* note 1.



disability benefit to conceal long-term unemployment and segregated services – was probably more strongly institutionalised in the other four countries.

#### 4. INCREASED EU INFLUENCE ON NATIONAL DISABILITY POLICIES?

The six papers in this issue suggest that EU influence on the disability policies of Member States has been uncertain and at best limited so far. Apart from the obvious fact that the EU only recently formulated its own coherent Disability Strategy, and the fact that this is hardly a major policy area for the EU,<sup>10</sup> there are other important factors:

- For those countries that have introduced anti-discrimination legislation or considered the adoption of such legislation, there have been other, earlier sources of inspiration. The United Nations Standard Rules<sup>11</sup> on equal opportunities for disabled people have been widely publicised and have in principle been accepted by most governments in Western Europe. The Americans with Disabilities Act (ADA) of 1990 has similarly been an important point of reference, particularly in Ireland and the United Kingdom.
- Governments concerned with growing spending on disability benefits that have sought to switch to a more active and employment-oriented profile tended to do so earlier in the 1990s, before this kind of policy reform became official EU policy. Moreover, the Organisation for Economic Cooperation and Development (OECD) had focused on these issues in its Jobs Study<sup>12</sup> and subsequent Jobs Strategy<sup>13</sup> earlier in the decade, and thus might have reinforced national programmes of reform initiated in the late 1980s (cf. the Netherlands and Sweden). In this sense, Member States' policies may have influenced those of the EU, rather than vice versa.
- More generally, it may be argued that Member States have been reluctant to let the EU influence their national social policy. This may be an important source of legitimacy for governments. Large differences in existing policy arrangements, levels and patterns of spending and traditions between the countries are also likely to have reinforced path dependencies.<sup>14</sup>

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<sup>10</sup> R. R. GEYER, *Exploring European Social Policy* (Cambridge, Polity Press, 2000) p. 187.

<sup>11</sup> UNITED NATIONS, *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Resolution adopted by the General Assembly, 85th plenary meeting, 20 December 1993.

<sup>12</sup> ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *The OECD Jobs Study: Evidence and Explanations* (Paris, OECD, 1994).

<sup>13</sup> ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *The OECD Jobs Strategy: Pushing Ahead with the Strategy* (Paris, OECD, 1996).

<sup>14</sup> M. NEWMAN, *Democracy, Sovereignty and the European Union* (London, Hurst, 1997) pp. 77-108.

On the other hand, there are several articles which emphasise the importance of participation in various EU action programmes (such as HELIOS and HORIZON) for providing a forum for exchange of views and experiences, and has thus contributed to national policy discussions. On the basis of this, membership has probably led to similar innovations and changes in measures at a less aggregate level. For some countries, the EU has also been an important although temporary source of funding for piloted and experimental approaches, especially in the service field.

In conclusion, the articles in this issue show that there have been some significant parallel developments within disability policy in the six countries and that overall provisions aimed at disabled people may in this sense have become more similar throughout the course of the 1990s. At the same time, the articles also demonstrate that there are still substantial differences in benefits and services for disabled people between the six countries, and that this is likely to remain so for the foreseeable future. However, the limited trends towards convergence in this area may become stronger if Member States agree on a Directive along the lines of that proposed by the Commission, which will aim to combat discrimination against disabled people. This would also mean that the impact of EU membership on national disability policies will be clearer and more visible in years to come.

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