



**Legal Seminar 9 November 2010**  
**Making Equality Rights Work in Practice**

**DISCUSSION PAPER WORKSHOP 5**  
*EU Disability Non-Discrimination Law in Practice*

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**Discussion Topic 1**

**To Whom Should Protection from Discrimination on Grounds of Disability be Granted?**

The Employment Equality Directive (Directive 2000/78/EC) does not include a definition of disability or guidance on who is to be protected from discrimination on the grounds of disability. However, the personal scope of the Directive has been the subject of judgments of the European Court of Justice (ECJ).

In *Chacón Navas* - Case C-13/05 *Chacón Navas v. Eurest Colectividades SA* (Case C-13/05) [2006] ECR I-6467 - the Court defined disability, for the purposes of the Directive, as: "a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life."

In *Coleman* - Case C-303/06 *S. Coleman v. Attridge Law and Steve Law* (Grand Chamber) of 17 July 2008 - the Court focused on the fact that the Directive prohibits direct discrimination and harassment "on ... the grounds of disability", and found that the Directive also protected individuals who were directly discriminated against or harassed not on the grounds of their own disability, but on the grounds that someone they associated with had a disability (*in casu*, a mother caring for a disabled child).

The UN Convention on the Rights of Persons with Disabilities (CRPD) does not define the term 'disability' as such. However, it does draw attention to the disabling effect of interaction between impairment and social forces. Thus, in Article 1 (which sets out the purposes of the Convention) it is stated that:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

Q1. What tensions and inconsistencies, if any, are there between EU and UN law on the meaning of disability?

- Q2. What relevance, if any, should national definitions of disability used for purposes of social security or benefit entitlement have in the formulation of definitions of disability for purposes of national non-discrimination law?
- Q3. Should protection from discrimination on grounds of disability be afforded to non-disabled people and, if so, in what circumstances?
- Q4. What particular issues arise, if any, in connection with the specification of the class of people in whose favour reasonable accommodation duties operate?

## **Discussion Topic 2**

### **What is the Reasonable Accommodation Duty and how does it Relate to Positive Action**

Article 5 of the Employment Equality Directive provides that:

“In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to provide training for such a person, unless such measures would impose a disproportionate burden on the employer. When this burden is, to a sufficient extent, remedied by existing measures as an element of disability policy in the Member State, it should not be considered disproportionate.”

Recital 20 expands on the kinds of measure that could amount to a reasonable accommodation:

“Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.”

According to Recital 21:

“To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.”

The CRPD also imposes a specific reasonable accommodation obligation on employers (in Article 27).

In addition, it imposes a general obligation on States Parties to require that reasonable accommodation is provided to disabled people as part of non-discrimination law.

Article 2 defines 'discrimination on the basis of disability' as 'any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms' and as 'including denial of reasonable accommodation'. The obligation imposed on States Parties by Article 5(2) of the CRPD to 'prohibit all discrimination on the basis of disability' thus carries with it a requirement to impose reasonable accommodation duties on employers, educators, transport providers and others.

- Q1. What tensions or differences, if any, are there between the Directive's approach to reasonable accommodation and that of the CRPD?
- Q2. What consequences follow from regarding a failure to provide reasonable accommodation as a form of discrimination?
- Q3. What similarities and differences are there between reasonable accommodation and positive action (as provided for in Article 7(2) of the Directive and in Article 5(4) of the CRPD)?

### **Discussion Topic 3:**

#### **What is Accessibility and how does it Relate to Reasonable Accommodation?**

'Accessibility' is listed as one of the general principles of the CRPD (Article 3(f)). It is dealt with most comprehensively in Article 9 which indeed is entitled 'Accessibility'. The exact scope of this obligation is not yet clear. It reads as follows:

- 1) To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
  - a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
  - b) Information, communications and other services, including electronic services and emergency services.

- 2) States Parties shall also take appropriate measures to:
- a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
  - b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
  - c) Provide training for stakeholders on accessibility issues facing persons with disabilities;
  - d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
  - e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
  - f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
  - g) Promote access for persons with disabilities to new information and communication technologies and systems, including the Internet;
  - h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost."

- Q1. To what extent, if at all, does the accessibility obligation go beyond requiring compliance with standards of accessible design?
- Q2. Does the accessibility obligation add anything to the reasonable accommodation obligation in the employment context?
- Q3. How can EU and domestic non-discrimination law be used to require accessibility?