



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.1.2003  
SEC(2003) 116 final

**RECOMMANDATION FROM THE COMMISSION TO THE COUNCIL**

**in order to authorise the Commission to participate  
in the negotiations of an international legally binding instrument to promote and protect  
the rights and dignity of persons with disabilities**

## EXPLANATORY MEMORANDUM

The purpose of this Recommendation to the Council is to authorise the Commission to negotiate in the context of the forthcoming sessions of the United Nations Ad Hoc Committee established to "consider the proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities" and to conduct these negotiations on behalf of the European Community. The Community competence is based on Article 13 of the EC Treaty, which enables the Community to take initiatives to combat discrimination on the grounds of disability. The Community has already made use of these new provisions, in particular in the areas of employment and occupation.

### **1. BACKGROUND**

Disability issues have been considered on several occasions in the UN history. In the 1970's, two declarations, the Declaration on the Rights of Mentally Retarded Persons (DRMRP)<sup>1</sup> and the Declaration on the Rights of Disabled Persons (RDP)<sup>2</sup>, were the first instruments in which the human rights of persons with disabilities were explicitly recognised. Although these declarations constituted important first steps toward awareness of disability rights, they were criticised for being based on outmoded medical and welfare models of disability.

Two further instruments in the late 1980's - the Principles for the Protection of Persons With Mental Illnesses and the Improvement of Mental Health Care (PPPMI)<sup>3</sup> and the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (StRE)<sup>4</sup> - put the emphasis on equal opportunities. All these instruments have been useful in spelling out the rights to independence and self-determination for people with disabilities, and have improved understanding of the general human rights conventions insofar as they relate to people with disabilities. Nonetheless, all these instruments are not binding on the UN member states and contain no provisions for monitoring of disabled people's rights.

It is in this context that, in December 2001, the Government of Mexico put forward UN Resolution 56/168, calling for consideration of a convention on the human rights of persons with disabilities and calling for the immediate formation of an ad-hoc committee. This ad-hoc committee would "consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities". Backed with the support of the Third Committee (on social issues), this Resolution was adopted in the UN General Assembly [SJ].

Subsequently, the UN Commission for Social Development adopted a resolution on 21 February 2002, which welcomes the UN Resolution 56/168 on a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. This resolution was followed by resolution 2002/61<sup>5</sup> adopted on 26 April 2002 by

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<sup>1</sup> Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971, [http://www.unhchr.ch/html/menu3/b/m\\_mental.htm](http://www.unhchr.ch/html/menu3/b/m_mental.htm)

<sup>2</sup> Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975, <http://www.unhchr.ch/html/menu3/b/72.htm>

<sup>3</sup> G.A. res. 46/119, 46 UN. GAORSupp. (No. 49) at 189, UN. Doc. A/46/49 (1991).

<sup>4</sup> Adopted by the United Nations General Assembly, forty-eighth session, resolution 48/96, annex, of 20 December 1993, <http://www.un.org/esa/socdev/enable/dissre00.htm>

<sup>5</sup> [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/E.CN.4.RES.2002.61.EN?opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/E.CN.4.RES.2002.61.EN?opendocument).

the UN Commission on Human Rights. Following this, the Ad Hoc Committee held its first session from 29 July to 9 August 2002.

## **2. CHARACTERISTICS OF THE ENVISAGED LEGALLY BINDING INSTRUMENT**

At this stage the shape and content of the envisaged instrument have not been addressed. Discussion is under way about this and several options could be considered.

There is certainly a growing consensus on the idea that a disability legally binding instrument should, on the one hand, complement and strengthen the monitoring of disability rights by the treaty monitoring bodies under the six core Human Rights Treaties.

On the other hand, the UN legally binding instrument should serve to tailor the application of human rights to people with disabilities. Such an instrument would not in the main create new rights but would seek to clarify and make more visible existing international obligations in this regard. It would also provide a clear signal from and to the international community and serve as a political catalyst and educational tool in bringing about a change in the way people with disabilities enjoy their rights.

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

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

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

## **3. COMMUNITY COMPETENCE**

Article 13 of the EC Treaty<sup>6</sup>, as introduced through the Amsterdam Treaty, gives competence to the Community to take appropriate action within the limits of its powers to combat discrimination, *inter alia*, on the grounds of disability.

On the basis of this competence, the Council adopted on 27 November 2000 Directive 2000/78/EC<sup>7</sup> "Establishing a general framework for equal treatment in employment and occupation". The Directive prohibits any discrimination in these areas, be it direct or indirect,

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<sup>6</sup> Article 13: Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

<sup>7</sup> OJ L 303, 2.12.2000, p. 16.

on the grounds of religion or belief, disability, age or sexual orientation<sup>8</sup>. With regard to disability, this Directive recognises that the failure to provide a reasonable accommodation in the workplace can constitute discrimination. In practical terms such accommodation includes measures to adapt the workplace to people with disabilities, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources in order to facilitate their access to employment.

According to the Directive provisions (art. 5), "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 undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned."

Duty to accommodate is not to provide 'special measures' to people with disabilities, but instead to remove barriers to their participation where it is equitable to do so. Rather than aiming to achieve identical results for disabled people, as compared to non-disabled people, it simply aims to ensure that people with disabilities are afforded an equal opportunity to achieve those results. Again by providing the reasonable accommodation's obligation, the directive endeavours to ensure equal access and equal effective enjoyment of the rights laid down in the Directive.

Building on the achievement of this first use of Article 13 of the Treaty, the Commission considers that it is important that the European Community confirms at international level its overall strategy with regard to disability, the core of which is a shared commitment by all Member States to combat discrimination on this ground. It is therefore the Commission's intention to play an active role on behalf of the European Community in the process of the development of a future UN legally binding instrument to promote and protect the rights and dignity of persons with disabilities and, having respect to Member States responsibilities and competences, to cooperate closely with them throughout the negotiating process. Appropriate co-operation will also be established with future Member States within the framework of the transitional arrangements established for the period between the signature of the Accession Treaty and the date of accession to enable these countries to be gradually integrated in community policies and to take part in the process of adopting new acquis.

#### **4. ELEMENTS TO BE TAKEN INTO ACCOUNT IN THE NEGOTIATION OF A LEGALLY BINDING INSTRUMENT**

**IN VIEW OF THE ABOVE, THE COMMISSION RECOMMENDS THAT THE COUNCIL DECIDES:**

- a) that the European Community will participate in the negotiations on a legally binding instrument on the promotion and protection of the rights and dignity of persons with disability in the UN forum.

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<sup>8</sup> Discrimination on the grounds of sex and ethnic or racial origin is dealt with under other directives.

- b) that, since in accordance with the Treaty the Commission will conduct these negotiations on behalf of the European Community, a special committee be appointed to assist it in this task,
- c) that the appended negotiating directives be issued.

## **ANNEX**

### **Negotiating Directives**

1. The Commission shall ensure that the provisions of the future legally binding instrument to promote and protect the rights and dignity of persons with disabilities is consistent with relevant Community legislation, in particular Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, with international commitments and with the objectives of other Community policies.
2. The Commission shall ensure that the draft legally binding instrument contains appropriate provisions enabling the Community to become a Contracting Party thereto.
3. The Commission shall report to the Council on the outcome of the negotiations and at any time in the course of the negotiations as it may be deemed appropriate.
4. The Commission shall take into consideration the needs and concerns of candidate countries in this context.