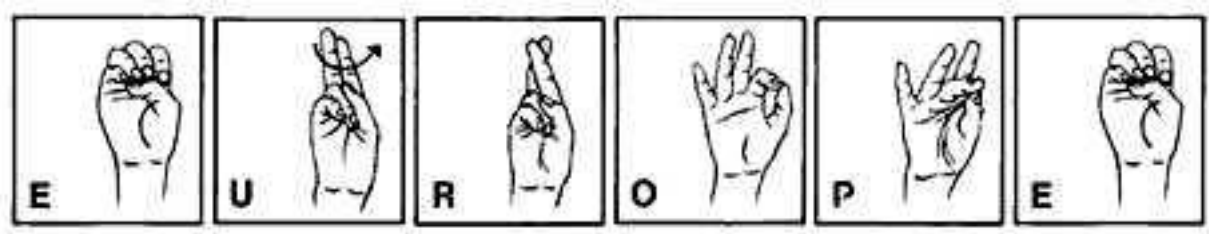


# Disability Policy in EU Member States and the Open Method of Co-ordination

University of Twente  
Sybren Bouwsma



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Sybren Bouwsma (9708146)

Faculty of Business, Public Administration and Technology  
University of Twente  
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Committee:  
Dr. N.S. Groenendijk  
Dr. B. De Vroom

## Summary

The central question this study deals with is: *To what extent and in what sense can the Open Method of Coordination contribute to an effective intervention of the EU in national disability policies of member states?* This question is dealt with in the final chapter.

The first chapter of the study is the introduction and gives some background information on the motivation for the study, states the research questions and presents the research method. The motivation for the study relates to the fact that although recently there has been a lot of attention for people with a disability at a European Union level, the main responsibility for this policy area lies at national level. The Open Method of Co-ordination is a mode of European governance that is based on the periodic writing of national action plans (NAPs) according to specified guidelines, that are translated into national targets. The NAPs and guidelines are subject to peer review and review by the European Commission. Recently, different organisations have suggested the application of the Open Method of Co-ordination as a way to intervene in national disability policy. I wanted to find out if the open method of co-ordination indeed would be a suitable new governance tool for disability policy and to what extent and in what sense this method could contribute to the intervention of the EU in national disability policy. Three research questions are formulated in order to answer the main question. The research questions relate to the need and goals for the EU to intervene in national disability policy, the current experiences with this intervention and the suitability of the Open Method of Co-ordination to disability policy. Answers to these questions are given by an analysis of EU documents on disability policy, an analysis of literature on national and EU disability policy and the Open Method of Co-ordination and answers to a questionnaire on the Open Method of Co-ordination and disability policy that was sent to representatives of national governments and national disability organisations.

The second chapter deals with the state of national disability policy and presents some of the main challenges and problems in this policy area in the European Union member states. The chapter presents the situation at national level with regard to the disability benefits, activating employment measures for people with a disability and disability anti-discrimination measures. It is argued that the national disability policy in the European member states is very complex and encompasses a wide variety of different policies and interests. However, although every EU member state does have its own disability policy with their own specific problems, some of the actual problems each member state copes with are similar. If this is the case, this can be an onset for a European co-operation in disability policy.

The third chapter deals with the EU position on disability policy, and shows the role that is envisaged for the EU to intervene in disability policy. The position of the European Union on disability policy can be derived from two subsequent documents on a new European Disability Strategy that were issued in 1996. In these documents it is argued that in a lot of areas of life, people with a disability do not have the same opportunities in life as people without a disability. This is against various human rights and several EU principles. A lot of barriers still have to be razed in order to guarantee equal opportunities for people with a disability, not only in the member states but also Community wide. The role that is envisaged in these documents for the (institutions of the) EU in disability policy is threefold. In the first place, the European Union could promote the co-operation in disability policy among the EU member states and between the European Commission and the member states. In the second place, the European Commission could mainstream the interests of people with a disability every time when it proposes a new policy or changes a policy. In the third place, the European

Union could promote the involvement of people with a disability in the policy making process.

The fourth chapter deals with the experiences with current EU intervention in national social and national disability policy. The intervention of the EU in most areas of social policy has for a long time been rather limited. Attempts of the EU to act in national social policy often faced strong political, economic and institutional barriers. Political, as the idea for the EU to deal with social issues was often vetoed by conservative politicians. Economic, because the setting of too high European standards in social policy was seen as a ‘competitive disadvantage’ for the EU. And institutional, because the welfare state arrangements in the different member states are divergent and often deeply institutionalised in the national policy structure. Still, in some areas of social policy, primarily related to gender discrimination and employment policy, harmonisation directives have been implemented. But especially since the introduction of the subsidiarity principle in the Treaty of Maastricht, the recognition of diversity instead of harmonisation has become the dominant issue in the field of EU social policy. In the course of time, also ‘softer’ modes of EU intervention were developed that left more policy space to the member states themselves. These were more easily accepted by the member states and led to the introduction of different Social Action Programs, recommendations and White Papers in the field of social policy. To intervene in national disability policy, the EU faced the same political, economical and institutional barriers. But in certain aspects of disability policy, some modes of intervention could be developed. These aspects often relate to ‘human rights’ and a ‘barrier-free society’. Over the last decade several recommendations and resolutions aiming on anti-discrimination and equal opportunities for people with a disability have been issued. Still, the current European Union intervention in national disability policy is relatively limited and focussed on a relatively small number of issues, that are at the margin of traditional national disability policy.

According to answers to my questionnaire the experiences with current EU intervention in disability policy are relatively positive, but the setting of common European standards in disability policy would generally not be favoured as this could lower the disability policy standards in the ‘rich’ countries. A further intervention of the EU in national disability policy is possible, but the fear for over harmonisation and the influence of the subsidiarity principle might make it difficult to find acceptable and effective ways to do this.

The fifth chapter deals with the suitability of the Open Method of Co-ordination to intervene in national social and national disability policy. Given the characteristics of the Open Method of Co-ordination, the method seems to be most suitable in policy areas where there is a need and desire for European action, but where possibilities for harmonisation are limited. In some areas of social policy the OMC is already applied, such as Employment, Social Inclusion and Youth policy. However, the experiences with these Open Methods of Co-ordination show that the effectiveness at national level in practice is sometimes rather limited, or at least that it takes time to become effective. In disability policy there also seems to be a need and desire to act jointly at a European Union level, but the possibilities for harmonisation are limited. If the Open Method of Co-ordination would be applied to disability policy, this could in theory lead to a better exchange of ‘best practices’ and information, the setting of common objectives and it could bring the different stakeholders closer together. But the effectiveness of an OMC in disability policy would in practice be highly dependent on the aspects of disability policy such an OMC would cover and how the process is integrated in the (different) national policy context(s). The question is also whether there is enough political support to adopt a disability specific OMC. If this would not be the case, it might be an idea to strive for disability guidelines in other OMC’s that are relevant for people with a disability.

The sixth and last chapter gives an answer to the main question. It is concluded that the application of the Open Method of Co-ordination to disability policy can contribute to the intervention of the EU in national disability policy by enabling a better co-operation among the member states and the European institutions and by promoting the exchange of information and 'best practices' on this policy terrain. It might even lead to an expansion of the scope of the current EU intervention in national disability policy. However, the eventual effectiveness of an OMC in disability is hard to predict as it is dependent different factors, of which most are currently uncertain. These factors at least include the aspects of disability policy such an OMC would cover, the concreteness of the chosen objectives, the embeddedness of the method in the national policy context, the involvement of non-state actors and whether the process has a Treaty base or not. With the limitations of the OMC in mind, one can say that the method is in principle suitable for some aspects of disability policy, but the eventual success in practice will be highly dependent on the willingness of the different stakeholders to co-operate and the political support of the member states. The end of the chapter is a short reflection, where some words are devoted to the chosen research method, the conclusion and the impact of the expansion of the European Union.

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## Preface and Acknowledgements

Disability policy at EU level is quite a new and also a very dynamic policy area. Since 1996, the 'social model' on disability, based on 'Equal Opportunities' and 'human rights' for people with a disability, has gained a strong foothold at European Union level. Over the last decade a lot of European recommendations, communications and resolutions have been issued aiming at taking away the barriers that exist in society that prevent people with a disability to live their lives to the full.

However, due to several reasons, the actual decisions in disability policy are primarily taken at member state level and that will stay the case in the foreseeable future. A new EU governance tool, the Open Method of Co-ordination, has recently been proposed by several actors to contribute to the intervention of the EU in national disability policy.

This study focuses on the question in what sense and to what extent the Open Method of Co-ordination indeed could be an effective governance tool for the EU to intervene in national disability policy. This question is answered by looking at the problems in national disability policy, the experiences with the current EU intervention in disability policy, and the expected benefits and limitations if the Open Method of Co-ordination would be applied to disability policy.

The study was written in the framework of my study of European Public Administration at the University of Twente. An earlier version of the study was funded by a 'François Staedelin Study Grant' of the European Economic and Social Committee and was carried out for the European Disability Forum.

I could not have written this study without the support of the people around me. I would like to thank especially my parents and the people from the Taizé-group in SPe because they were always there when I most needed them. Furthermore, I would like to thank Stefan Trömel, Nico Groenendijk and Bert de Vroom for giving comments to my work.

Sybren Bouwsma  
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# 1 Introduction

## 1.1 Background

At the Council of Lisbon a new ambitious goal for the European Union was presented: to make Europe the most competitive and economically and socially cohesive area in a global context. One of the instruments to enhance the economic and social dimension of the European Union is the Open Method of Co-ordination (OMC). This is a new form of European regulation, based on the 'Luxembourg' process in employment policy and the 'Cardiff' process in structural policy. The method involves the periodic writing of national action plans (NAPs) according to specified guidelines. These guidelines are translated into quantitative and qualitative indicators and benchmarks and into national and/or regional policies and targets. The NAPs and guidelines are subject to peer review and review by the European Commission and European Council. Recommendations in case of non-compliance with the guidelines are possible, but binding decisions may not be issued. The Open Method of Co-ordination is softer than the classical legalistic approach through directives, but it is more than simple non-binding recommendations. The Open Method of Co-ordination is now, next to employment policy, also applied to the policy areas of social inclusion, pension systems and education. Other policy areas might follow in the future, one of them could be disability policy. The main idea behind this paper is to find out whether it indeed would be a good idea to apply the Open Method of Co-ordination to disability policy. Before coming back to the Open Method of Co-ordination at the end of this introduction, let me now shortly present something about disability policy in the European Union member states and at the European Union level.

### **National Disability Policy and different Forms of Disability Policy**

Disability policy is part of social policy in many member states of the European Union. Disability policy measures can take different forms and usually cover a wide range of subjects, like special education provisions and sheltered workshops, income maintenance and employment provisions for (previous) workers with a disability, welfare state arrangements in the form of disability benefits and anti-discrimination legislation. Some of these measures are directed at a specific group of people with a disability, such as special schools for deaf people. Other measures are more generally directed and can even be applied for by people without a disability, such as measures to increase the employment rate. Most disability policy measures are directly supplied for by the government itself, or are supported by public funding. In many western countries, the development of these (governmental) measures and policies towards people with a disability at national level took place over more than a century of time, and sometimes involved the taking over of 'charity' functions by the government. Because of this, the structure of the disability policy provisions became highly embedded in the national policy and political context and is very much country specific.

Currently, there is a struggle going on between two different models of disability policy, 'the medical model' and 'the social model'. The traditional model of disability policy is based on the medical assessment of disability<sup>1</sup>, whereas the 'social' model focuses on the non-medical causes of disability. In the 'medical model' disability policy aims at supporting the

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<sup>1</sup> For example, the disability typology of the World Health Organisation (WHO). It distinguishes between impairment, disability and handicap. Impairment refers to the psychological or anatomical disorder itself. Disability refers to the impact of the impairment on the every day living. Handicap refers to the social disadvantage that accrues out of the disability. (see: Drake, 1999, p. 10).

inconveniences that result from having a disability. Traditional ways to give in to these inconveniences includes the provision of special education, sheltered workshops and income compensation. The 'social model' derives out of the claim by some people with a disability that 'the medical model' forces them to adapt themselves to the able-bodied society. Instead, in the social model, the unadapted surrounding of society is seen as a main causes of disability. Disability policy should then be directed at the social inclusion of people with a disability and at taking away the barriers that prevent their full participation in society. In practice, the 'social model' most commonly takes the form of equal opportunity measures and anti-discrimination legislation. Several countries already have adopted 'anti-discrimination legislation' aiming at people with a disability.

In practice, the distinction between both models of disability policy is sometimes hard to make and also rather precarious. Take for example the transfer of a pupil with a disability from an ordinary school to a special school for children with disabilities<sup>2</sup>. On the one hand, one can argue that it is rather positive that this pupil can get extra support and attention for the disability, but on the other hand the special education system could create some disadvantages. For example, the pupil might alienate from nearby living friends and often the certificate of a special school is regarded as having an inferior value when compared to 'standard' education. This might negatively influence the pupil's career. Seen from this latter perspective, the provision of special education to children with a disability could be seen as rather 'discriminatory'.

However, as will be explained below, for the development of the disability policy strategy at a European Union level, the distinction between the 'medical model' and the 'social model' is important.

### **European Union Disability Policy**

The role of the European Union<sup>3</sup> in the traditional kind of disability policy of 'care' provisions is almost non-existent. This can be explained quite easily. In the first place, the pre-emptive role of the member states themselves in this policy area makes it hard for the EU to build up a role for itself. In the second place, the institutions of the European Union lack the competence to supply these provisions. Because of the 'subsidiarity' principle the European Community should only take action in areas that are not in its exclusive competence 'only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of effects of the proposed action, be better achieved by the Community' (Art. 5 EC Treaty). According to this principle European action should only be taken in disability policy if that cannot be sufficiently achieved at member state level. In many cases one can argue that 'care' provisions for people with a disability can be most efficiently provided for at national, regional or local level. In the third place the institutions of the EU lack the financial resources, as the available funds for social policy at EU level are relatively small in comparison to the financial resources that are available at national level for this policy area. In the fourth place, the provision of welfare state arrangements, such as disability policy measures, currently forms an important resource of the legitimacy of the state. The provision of disability arrangements by the (institutions of the) European Union presumably would not only be seen as an unwanted infringement to the national welfare state arrangements, but also as an infringement to the national legitimacy.

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<sup>2</sup>See: Council of Europe (2000), p. 16

<sup>3</sup> Although it is more correct only to speak about the European Union after the signing of the Treaty of Maastricht, I will use the term 'European Union' throughout the study for the earlier European Economic Community as well. Sometimes, I will just use the word Europe or European, thereby, unless indicated differently, referring to the European Union or the European Economic Community.

In contrast, for several reasons, the intervention of the EU in national disability policy justified in terms of the above-mentioned ‘social model’ has more potential. In the first place, the ‘social model’ already has a relatively high influence at international level. The ‘social model’ had gained foothold within the United Nations in the 1970s and 1980s in several documents. In 1993 this resulted in the adoption of the UN ‘Standard Rules for the equalisation of Opportunities for Persons with Disabilities’. Because of the fact that all of the European member states accepted these UN standard rules, it could be used as a kind of common denominator for disability policy at EU level. In the second place, the ‘social’ model is a quite new approach to disability policy. Many European Union member states did not provide anti-discrimination legislation and equal opportunities measures for people with a disability, and this opened ways for the EU to act in this policy area. In the third place, equal opportunity measures are relatively cost efficient for the European Union, because it does usually not impose high costs on the regulator, but more on the member states that have to implement these measures.

In 1996, the commitment of EU to the ‘social’ model resulted in the adoption of a Communication on the ‘Equality of opportunity for people with disabilities’ by the European Commission. This was followed by a European Council Resolution that endorsed the Commission Communication (European Council, 1996). These documents form the basis of a new European disability strategy consisting of three pillars:

- Cooperation between the Commission and the Member States
- Mainstreaming of Disability in policy formulation
- Full Participation of People with Disabilities

The pillar of the *Cooperation between the Commission and the European Union Member States* in the field of disability policy consists of the aims to strengthen the co-operation with and between the member states in disability policy; to promote the collection, exchange, and development of comparable information, statistics and good practice; to raise awareness of disability issues and to take account of disability issues in all policy-making (European Commission, 2001b). To that end, among others, a High Level Group of Member States’ Representatives on Disability has been set up to monitor the latest policies and priorities of governments concerning people with disabilities, to pool information and experience, and to advise the Commission on methods for reporting in the future on the EU-wide situation with regard to disability. However, a real instrument for the structured exchange of international comparable information, statistics and good practice in the field of disability policy is still lacking.

To raise awareness every year there is a ‘European day of disabled people’ and 2003 was declared the European Year for People with a Disability. To take account of disability issues in all policy making by the Commission mainly includes the anti-discrimination legislation that will be treated below.

The pillar of *mainstreaming of disability in policy formulation* implies that when the Commission creates or changes a policy, it aims to consider the needs and rights of people with disabilities. To that end there is an Interservice Disability Group that has the purpose to raise awareness of disability matters and to facilitate and encourage co-operation on disability matters among Directorates-General.

The pillar of *the Full Participation of People with Disabilities* implies that people with disabilities should be involved in the planning, monitoring and evaluation of changes in policies and programmes. This pillar includes the erection of the European Disability Forum (EDF). This is an independent non-governmental organisation representing the interests and

rights of disabled people at EU level. The EDF regularly meets with representatives of the European Commission.

Regarding anti-discrimination legislation, the introduction of article 13 in the EC Treaty at the summit of Amsterdam can be regarded a major achievement. The article allows the EU to promote initiatives to combat discrimination on, among others, the ground of disability. On basis of this article a framework directive on equal treatment at the workplace (European Council, 2000a) was approved and a Community action programme on discrimination was established (European Council, 2000b). The framework directive should be implemented by the end of 2003 and the action programme runs until 2006. At the summit of Nice in December 2000 the Charter of Fundamental Rights was adopted, which includes an article that explicitly prohibits discrimination on, among others, the ground of disability<sup>4</sup>. The Charter of Fundamental rights will be included in the draft European constitution that was presented by the European Convention in June 2003.

Several other policy initiatives aiming at ensuring equal opportunities for people with a disability have been issued over the last decade. Most commonly, these initiatives have taken the form of non-binding legislation, like communications or recommendations. Examples of such non-binding measures are the European Council Resolution on 'Equal Employment opportunities for people with disabilities' (European Council, 1999) and the European Commission Communication 'Towards a Barrier Free Europe for People with a Disability' (European Commission, 2000).

However, one should not exaggerate the current effectiveness of the EU disability anti-discrimination and equal opportunities legislation at national level. In the first place, article 13 of the EC Treaty is important, but it is not directly applicable at national level, because it always needs to be translated in a directive or regulation to be effective. And even if there is a directive, as is the case with the 'Equal treatment in employment and occupation' directive, it takes a lot of time to implement it. The employment directive does have an implementation time of three years, but it has a possible extension period of three years for age and disability discrimination. Some of the member states have difficulties with implementing the directive in time. Furthermore, the question is to what extent the directive would be effective in practice.

Finally, member states are reluctant to adopt new EU anti-discrimination disability legislation at national level. For example, recent attempts of the above-mentioned European Disability Forum to propose a disability specific directive to the European Commission have, until now, been unsuccessful. This can be partly attributed to the fear by the European Commission that such a directive would not be easily accepted by the member states.

This latter point also illustrates that the member states themselves remain the central actors to accept or to refuse a new policy initiative in the disability policy area. And even if a new policy initiative is accepted, it is in question what the actual value of this is for the people with a disability themselves. The anti-discrimination approach might indeed have been an attractive starting-point for the European Union to act in the field of disability policy, but for the future other possibilities might be considered as well to enhance the effectiveness.

### **Lisbon Conclusions and OMC**

In this context, the Conclusions of the Lisbon Council and the Open Method of Co-ordination, that were already mentioned in the beginning of this chapter, might be an attractive

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<sup>4</sup> Article 21 of the Charter of Fundamental Rights

contribution to disability policies in the European Union and its member states. The ambitious goal for the European Union to make Europe the most competitive and economically and socially cohesive area in a global context in the next decade matches the goal to improve the integration of people with a disability in society. The Open Method of Co-ordination (OMC) is already applied to some aspects of disability policy. More in specific, in one of the guidelines in the National Action Plans on Employment ('activating employment policy') and in one of the objectives in Social Exclusion ('vulnerable groups') there is already some attention for disability issues. However, an Open Method that covers the whole area of disability policy does not exist.

Recently, some proposals have been made to further apply the Open Method of Co-ordination to disability policy. For example, the European Disability Forum supports 'the launch of an Open Method of Co-ordination of disability policies, which would allow a structured exchange of information of national disability policies, particularly relevant for the new EU Member States' (EDF, 2002). The Social and Economic Committee, an advisory committee to the European Commission: 'support(s) the establishment of an open method in the field of disability, based on common outcome indicators that would allow to monitor the progress in time of the levels of social inclusion of disabled people. This method would include all relevant areas of disability policy like education, vocational training, life-long learning, employment, transport, information society, benefit systems, services for people with complex dependency needs and their families. Examples of good practice in each of these areas must be provided. This would be useful for all Member States and particular also for the countries joining the European Union in the near future' (EESC, 2002). Furthermore, the application of OMC to disability policy might strengthen the co-operation with and between the member states and NGOs<sup>5</sup>, might lead to common objectives in this policy area and bring the different stakeholders together: 'While the legislative approach can have some advantages, and help to underpin achievements, a more active co-ordination – with, and between the Member States – and a more intense dialogue – on what constitutes common objectives, benchmarking and best practices – may achieve faster progress in practice. Moreover such methods gain by bringing the governments, the disability organisations, and the social partners closer together' (Diamantoupoulou, 2002). The idea of this study is that, before applying or suggesting to apply the Open Method of Co-ordination to disability policy, it might be useful to discuss the contribution of the OMC to disability policy in the European Union member states and to find out if this method indeed would be an effective contribution to the current EU intervention in national disability policy.

## 1.2 Main Question and Research Questions

The main question to be answered in this study is:

*To what extent and in what sense can the Open Method of Coordination contribute to an effective intervention of the EU in national disability policies of member states?*

The main question has three important elements: national disability policy, the intervention of the EU in national disability policy and the Open Method of Co-ordination. These elements relate to the steps that I will take to answer the main question.

To start a discussion on the contribution of the Open Method of Co-ordination to the intervention of the EU in national disability policy, one should first know why such an

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<sup>5</sup> Non-Governmental Organisations

intervention would be necessary at all and what goals would be reached. National disability policies are a good starting point for the discussion on the need and the goals of the intervention of the European Union in national disability policy. Because why would it be necessary for the EU to intervene in national disability policy in the member states? Are there any (similar) problems in disability policy at national level in the different member states that ask for and enable EU intervention in this policy area? Or is it the position of the European institutions out of which some of the needs and aims for (current) EU intervention in national disability policy could be derived?

In the second step I will look at the way the European Union currently intervenes in national disability policies and what the current experiences are with this intervention. Other social policy areas do have a longer history with EU intervention, so at first I will take a look at the intervention in national social policy more in general. Thereafter, some of the main barriers to come to EU intervention in national social policy and the main modes of intervention that had to be developed will be dealt with. The next step is to look to what extent this also applies for disability policy, what specific barriers exist and what specific modes of intervention have been developed in this policy area. In that way I hope to be able to say something about the current outline of EU intervention in disability policy, how this intervention is experienced and what barriers might exist if a new mode of intervention would be proposed in this policy terrain.

In the third step I will take a closer look at the Open Method of Co-ordination and the possible contribution of this method to the current EU intervention in disability policy. At first I will take a short look at how this method has been developed, what the main outline and features are and how the Open Method of Co-ordination can be distinguished from other modes of intervention. In the end I hope to find out for what particular aspect of disability policy the Open Method of Co-ordination might be effective and how this method could be used as a mode of intervention in national disability policy.

In short, this study covers the following research questions and subquestions:

1. What is the need of EU intervention in disability policy and what might be the specific goals of this intervention?
  - a. What is the actual state of disability policy in European Member states?
  - b. What are the actual problems at national level in this policy area?
  - c. What is the position of the European Commission with respect to people with a disability?
2. What are the experiences so far with EU-intervention in social policy areas and disability policy in particular?
  - a. What are the specific barriers to intervene in social policy and what modes of intervention have been developed?
  - b. To what extent is disability policy a specific field in this context?
3. Is the Open Method of Co-ordination a suitable governance tool to intervene in social policy issues and in disability policy in particular?
  - a. What is the Open Method of Co-ordination and in what sense can this method be distinguished from other modes of governance?
  - b. For what particular aspects of disability policy might the OMC be effective?

### 1.3 Outline of the Study

The first two subquestions of the first research question, on the national disability policies, will be dealt with in the second chapter. As not all policy areas could be dealt with for reasons of space, I have confined myself to the policy areas of disability benefits, employment and anti-discrimination. On the basis of statistical information and literature on this subject I will give a picture of the actual state of disability policy in the European Union member states. Furthermore, a questionnaire was sent out to members of the Disability High Level Group and representatives of national disability organisations. When speaking about the research method below, this questionnaire is presented more in detail.

The third subquestion of the first research question is answered in the third chapter. The chapter deals with the position of different European institutions on the intervention of the EU in disability policy. It discusses more in detail some of the main EU documents on disability policy that have been adopted over the last years. Thus, at the end of this chapter a better overview of the need for of the intervention of the EU in national disability policy and the main aims of the intervention will be given.

The second research question, on the experiences with the current intervention in both social policy and disability policy, is dealt with in the fourth chapter. In a chronological order some of the barriers to come to a European social policy are dealt with, together with the modes of intervention that have been developed to overcome these barriers. In the second part of the chapter the same is done for disability policy in particular and also some of the current experiences with the EU intervention in this policy area will be dealt with.

The third research question, on the suitability of the Open Method of Co-ordination to disability policy, is dealt with in the fifth chapter. A short study on the development of the Open Method of Co-ordination is presented. Also, I will show how this method differs from other modes of EU intervention. Thereafter some of the experiences with other Open Methods of Co-ordination are dealt with. These experiences are based on answers to the above-mentioned questionnaire and literary resources on the OMCs that are most relevant for people with a disability: Employment and Social Inclusion.

The main question, to the extent and the sense the Open Method of Coordination can contribute to an effective intervention of the EU in national disability policies of member states, is dealt with in the concluding sixth chapter. The chapter forms the repercussion of the answers to the three research questions above. In the end of this final chapter some of the caveats of this study and an evaluation of the research method are presented.

### 1.4 Research Method

The research questions are answered in the following three ways:

- documents analysis
- literature analysis
- a questionnaire

The documents analysis primarily encompasses an analysis of EU documents on disability policy and the intervention of the EU on this policy terrain (subquestion 1c), and an analysis of EU documents on the Open Method of Co-ordination (subquestion 3a).

The literature analysis encompasses an analysis of literature on national disability policies (subquestions 1a and 1b), an analysis of literature on the development of EU social policy and

EU disability policy (subquestions 2a and 2b), and a literature analysis on the development and outline of the Open Method of Co-ordination (subquestion 3a).

To get more insight in the opinions and experiences from the governmental and non-governmental organisations active in disability policy, a questionnaire has been set up and sent out to the fifteen members of the High Level Group on Disability and fifteen representatives of national disability organisations.

This questionnaire consists of nine questions and is divided in three parts: European intervention in disability policy, the Open Method of Co-ordination and disability policy and the implementation of the Open Method of Co-ordination. The first part of the questionnaire deals with the current problems in disability policy at national level (subquestion 1b) and the experience of the current EU intervention in national disability policy (subquestion 2b). The second part relates to the experiences with the current OMC's that relate to disability policy (subquestion 3a). Another element in this second part relates to the disability policy areas where the method could be applied to and how it could be implemented (subquestion 3b). The questionnaire can be retrieved in the Appendix of this study, next to a list of the respondents of the questionnaire.

The respondents' list shows that only eight of the thirty questionnaires that have been sent out were filled in and returned. A lack of time and too much work may have contributed to this relatively low response rate. A lack of knowledge on the issue can have prevented some people to respond as well. It is at least striking that the organisations that have responded all had experiences with OMC or were asking attention for some of their problems. Due to this relatively low response rate, it might be difficult to generalize the answers to this questionnaire for all the member states of the European Union. However, the answers might still give an idea of some of the thoughts and experiences of ministries and disability organisations in the EU member states with regard to national disability policy, the EU intervention in disability policy and the Open Method of Co-ordination.



## 2 Disability Policy in EU Member States

This first chapter focuses on the first two questions of the first research question and deals with disability policy in the European Union member states. The chapter forms the starting point for a discussion on the need and the aims of EU intervention in national disability policy, but it is primarily concentrated on national disability policy. In the first part of the chapter I will describe the current state of disability policy in the member states of the European Union on basis of secondary documentation and statistical information on disability policy in the European member states. The focus is on the policy terrains of income maintenance, employment and anti-discrimination legislation. In the second part I will investigate the current main problems at member state level in the disability policy area by using a recent study on disability policy in six EU member states and one of the answers to my questionnaire.

### 2.1 Actual State of Disability Policy in European Member States

The central question to be answered in this section is: *What is the actual state of disability policy in the European member states?* When one wants to answer this question, one encounters several difficulties. In the first place one cannot speak about one kind of disability policy as this policy area encompasses a wide variety of different policy measures. One can at least distinguish between the following areas of disability policy: disability specific provisions like special education and sheltered workshops, income maintenance provisions for (previous) workers with a disability, welfare state arrangements like disability benefits and ‘care’ provisions and civil rights legislation. As also explained in the introduction not only are there different policy areas, but also different approaches to disability policy. Next to the traditional view of adopting people with a disability to their needs, recently a view has been developed aiming at an inclusive society.

Furthermore, due to the long history of the different policy measures aiming at people with a disability, the exact composition of the disability policy in the European Union member states is quite country specific<sup>6</sup> and highly embedded in the national policy and political context. In other words, ‘legal rules, provisions and methods of assessment in this area vary much between countries and reflect different social policy traditions and trajectories’ (Hvinden, 2002). This means that the composition of the disability measures is very much country specific.

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<sup>6</sup> According to Drake (1999), in the United Kingdom over time the following disability specific policies have developed: containment in institutions, financial compensation, welfare state arrangements and civil rights legislation. Containment in institutions for people with a physical or mental impairment became popular in the nineteenth century, mainly created by philanthropists. This was later followed by the creation of special education provisions and sheltered workshops. Financial compensation for income losses was mainly influenced by the growing number of industrial injuries in the early 20<sup>th</sup> century and the high number of injured soldiers that came back from the first World War. However, people born with a disability with no previous income were not covered by these compensatory measures. After the second World War the emergence of welfare and health services took a high flight. The main idea became to ‘normalise’ or rehabilitate people with a disability, therefore special rehabilitation centres were created, partly aiming at vocational rehabilitation. Also, income maintenance measures for ‘workers’ with a disability were extended with a more general ‘welfare state’ system of social protection covering all people with a disability. Furthermore, there was an enormous growth of professionalised social ‘care’ services. Over the last ten years legislation covering the civil rights of people with a disability was adopted. The policies of containment, compensation, ‘care’ and citizenship still coexist along each other and currently form a complex patchwork of different motives, aims and policies in the disability area. Although this is mainly the story of the UK, other member states do have similar stories that led to their own complex composition of different disability measures.

These difficulties make it hard to give an overall picture of the actual state of disability policy in the European member states. However, despite the complexity and diversity in disability policy it is not impossible to say something about the actual state of this policy area in the European Union member states as all of them do cover similar policy terrains in one way or another. In most European member states a central disability policy consists of a financial compensation and service provision through a disability protection system and income maintenance provisions. Furthermore, employment measures for people with a disability are also generally provided for, although the form and the coverage of these measures can strongly differ. Also, in line with the ‘social’ model on disability, in some European member states a disability policy based on anti-discrimination legislation has recently emerged. For reasons of space, I will confine myself in this section to the actual situation in the disability policy area in the European member states of disability benefits and income maintenance, activating employment measures and anti-discrimination legislation.

### 2.1.1 Disability Benefits

All European member states do have some form of financial and other provisions for people with a disability in the form of disability benefits. However, the eligibility and form of these provisions can differ. In some countries disability benefits cover the entire population, while in other countries only the working age population is covered by these disability benefits. Sometimes a distinction is made between income maintenance provisions that protect the income of people (partly) unable to work because of a disability and disability protection benefits on the other hand that consist of cash benefits and provisions in the form of good and services that are not specifically related to work. However, the distinction is not always easy to make. On the one hand, disability protection benefits (in cash) are in some member states (mis)used to conceal forms of structural unemployment, especially among older workers. On the other hand, in some countries a substantial part of the people with a disability receives the main income from unemployment benefits or means-tested social assistance (Hvinden, 2002). This fact of course complicates the description of the actual state of the disability benefit policy area in the European Union member states. Despite these caveats, it is still possible to deal with the number of disability beneficiaries, the state expenditure on these measures and the income position of people with a disability.

#### **Number of Disability Beneficiaries**

Table 1 below gives the disability reciprocity rates of 1999. The numbers derive from the most recent ‘Social Indicators’ publication of the Organisation for Economic Co-operation and Development (OECD, 2003). However, the statistics in the ‘social indicators’ publication do not always cover all of the European Union member states. This means that when statistics out of that publication are used, in general the numbers for Luxembourg, Greece, Ireland and Finland will be missing. The numbers on Norway were added<sup>7</sup>.

Regarding the number of disability beneficiaries, the OECD has related the total number of benefit recipients to the entire working age population in each country.

In this table, the OECD makes a distinction between contributory and non-contributory disability benefit schemes. Contributory benefit schemes are most often social insurance provisions (sometimes also covering the non-insured population), while non-contributory benefit schemes involve ‘means-tested disability benefits for those without a sufficient

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<sup>7</sup> The numbers are clustered around the division around the four ‘geo-social’ European families of countries. The division is based on a summary of characteristics of the countries’ social protection system, rules of access, benefit formulae, financing regulations and organisational arrangements (Ferrera and Hemerijck, 2002 in: Hvinden, 2002).

insurance record' (OECD, 2003). If data are missing in this first table in either the contributory or the non-contributory benefit schemes, this means that the country has chosen for either a contributory or a non-contributory system. One can see that most countries in the table do provide a mix of both forms of disability benefits, with the exception of Denmark that only has non-contributory provisions, and Austria and Germany that only provide contributory provisions<sup>8</sup>. With the exception of Italy, countries that provide both schemes, the contributory benefit schemes are higher than the non-contributory schemes.

When looking at the total proportion of disability benefit recipients, it is striking that the proportions differ so strongly among the member states (from 4,2 to 9,2%). In the countries in northern Europe, and also in the Netherlands, the proportion of the population receiving these disability benefits is substantially higher than in most of the other member states.

In general, one can say that numbers of disability benefit recipients currently highly vary among the European Union member states, both in the proportion of the population that is covered by these benefits and in the composition by type of benefit programme. It might be interesting to look at the development in time of the number of disability beneficiaries and to look how this number is connected to the age of the recipients.

	<b>Contributory</b>	<b>Non-contributory</b>	<b>Total</b>
<b>Denmark</b>	--	7,7	7,7
<b>Norway</b>	9,2	--	9,2
<b>Sweden</b>	8,2	--	8,2
<b>Austria</b>	4,6	--	4,6
<b>Belgium</b>	4,3	1,6	5,9
<b>France</b>	2,9	1,7	4,7
<b>Germany</b>	4,2	--	4,2
<b>The Netherlands</b>	7,8	1,2	9,0
<b>Italy</b>	1,6	3,9	5,5
<b>Portugal</b>	5,7	0,8	6,5
<b>Spain</b>	3,0	1,7	4,7
<b>United Kingdom</b>	4,1	2,6	6,6

*Table 1 Disability Benefit Reciprocity Rates (1999), percentage of 20-64 age population. Source: OECD (2003) EQ 6.1*

Table 2 also derives from the OECD publication and presents the data on the developments in the number of disability benefits recipients in the 1980 and 1990s. In general, the number of disability beneficiaries has increased in this time period. However, in the last part of the 1990s the number of beneficiaries has stabilized or decreased in some member states. The lower reciprocity rates in some countries by the end of the 1990 could be explained by attempts of the government to economize on these measures by limiting the number of people that can apply for these measures. In most countries there was a decline in the inflow rate of the disability benefits 'led by successful measures to curb access on reasons other than disability

<sup>8</sup> This might mean that in these countries the social insurance also covers the non-insured population, as the OECD explains.

itself' (OECD, 2003). However, the outflow out of these measures stayed very low and this explains why the rate did not decline dramatically.

Furthermore, the differences in the number of disability beneficiaries between the different member states over time seems to be very strong. But one can say that in Scandinavian countries and in the Netherlands the number of beneficiaries of disability benefits is highest. The highest increase in disability benefits recipients over the last twenty years seems to have happened in the United Kingdom. However, this country has had relatively low recipiency rates before 1990. The number of disability beneficiaries in Southern European countries has increased since 1980, with the exception of Italy that already had very high rates in 1980. The other countries that are covered by this study, most in continental Europe, do have relatively low disability beneficiary rates that are relatively close to each other.

	1980	1985	1990	1995	1999
<b>Denmark</b>	52,8	69,6	76,6	80,9	76,8
<b>Norway</b>	59,6	67,1	81,5	79,7	91,5
<b>Sweden</b>	61,6	67	73,2	82,1	82,1
<b>Austria</b>	25,4	35	40,3	42,8	46,2
<b>Belgium</b>	48,5	53,4	56,4	58,8	59,5
<b>France</b>	39,7	41,4	45,9	46,1	46,8
<b>Germany</b>	38	41,6	32,5	41,8	42,4
<b>The Netherlands</b>	76,3	83,1	91,2	85,9	90,4
<b>Italy</b>	126,9	108	89,9	71,9	54,9
<b>Spain</b>	32,7	45,5	53,6	50,2	47
<b>Portugal</b>	71,7	82,5	83,6	66	65,2
<b>United Kingdom</b>	25,6	34,7	42,4	65,2	66,3
<b>mean (total)</b>	<b>54,9</b>	<b>60,7</b>	<b>63,9</b>	<b>64,3</b>	<b>64,1</b>

Table 2 Disability Benefit Recipients, per 1000 people. Source: OECD (2003) EQ 6.2

Table 3 could tinge the high disability benefit recipiency rates in (some of) the European member states. By looking at the age differences in the disability recipient rates, one sees that the disability benefit recipiency rates increasingly rise with age. The number of people between 55 and 59 years old that receive disability benefits is overall almost twice as high than between 45 and 54 years old. And the number of recipients is even substantially lower in the lower age categories. It might well be that older people more often do suffer from a disability, but the substantially high number of disability recipients in the higher age categories might also indicate that disability benefits are sometimes used as a pre-retirement pension. In that case 'disability' benefits might sometimes be attributed on other grounds than impairment, and this colours the number of disability beneficiaries in some countries.

In this case there are also strong differences between the member states regarding the disability benefits recipiency rate. For example, in the Netherlands and the United Kingdom the benefit recipiency at a younger age is substantially higher than in for example Austria, Germany or Spain. And in these latter three countries the recipiency rate in the 55-59-age category is substantially higher than in the United Kingdom.

	<b>20-34</b>	<b>35-44</b>	<b>45-54</b>	<b>55-59</b>		<b>20-64</b>
<b>Denmark</b>	10,9	29,9	83,5	155,5		76,8
<b>Norway</b>	17,9	54,4	119,7	219,0		91,5
<b>Sweden</b>	14,7	36,8	59,9	171,0		82,1
<b>Austria</b>	2,8	10,8	39,6	187,6		46,2
<b>Belgium</b>	20,3	39,3	66,1	98,3		59,5
<b>Germany</b>	3,6	13,9	38,5	106,3		42,4
<b>Netherlands</b>	31,5	63,4	119,7	191,7		90,4
<b>Portugal</b>	11,3	24,3	69,7	175,3		65,2
<b>Spain</b>	6,2	16,8	39,9	80,5		47,0
<b>United Kingdom</b>	31,0	52,3	89,1	144,1		66,3

*Table 3 Variation in age specific disability benefit recipiency rates 1999, per 1000 in each age group.*

*Source: OECD (2003) EQ 6.3*

On basis of the tables above one can in the first place conclude that disability benefits strongly differ among the European member states that are covered in the OECD publication, both in the composition of the benefit programme and the proportion of the population receiving the disability benefits. In the second place they show that in general the disability recipiency rate has increased over the last twenty years but that recently there has been a decline or stabilisation in the recipiency rates of some countries that can be explained by governmental attempts to bring down the number of disability recipients. In the third place it seems that especially in the higher age categories there is a relatively higher number of people receiving a disability benefit, which could indicate that these benefits are sometimes used as a pre-retirement pension.

Furthermore, in general it seems that the Scandinavian countries and also the Netherlands do have higher proportions of income maintenance and disability benefits recipients than in the other countries. However, in the UK the number of disability benefits and income maintenance recipients has highly increased over the last 20 years, whereas the number of disability benefit recipients declined in most Southern European member states.

Still, the question to the number of disability beneficiaries is something different than the question to how generous this benefit system is and how much money is spent to these measures. Therefore the next part of the section will shortly deal with the government expenditure on the disability benefit system.

### **Expenditure on Disability Protection**

Table 4 shows the development in expenditure on cash disability benefits as a percentage of General Domestic Product (GDP) in the European member states. The numbers may not say everything about the amount of expenditure in disability benefits at national level, as the GDP also strongly differs among the member states of the European Union. But it still could give an idea about the development in expenditure in the 1980s and 1990s. Furthermore, the number of expenditure on disability protection is much better available than the number of disability benefit recipients. This means that in this subject all European Union member states are covered.

In general, the table shows a light increase in the overall expenditure as a percentage of GDP in disability benefits until the mid-1990s and then a decrease or stabilisation. This partly mirrors the picture of the number of disability beneficiaries in the section before. For example, the higher number of beneficiaries in the Scandinavian countries is also mirrored by a higher expenditure on these measures and the growing number of disability beneficiaries in the United Kingdom is reflected in growing expenditure to these measures. The Southern European member states seem to have a relatively lower number of beneficiaries as well as a lower spending on disability protection. However, the higher number of disability recipients in the Netherlands is not reflected in a higher expenditure on these measures and in Belgium a decreasing expenditure is even reflected in an increasing number of disability recipients. Also the expenditure as a percentage of GDP to disability protection in Germany and France is relatively low when compared to the number of beneficiaries. A relatively higher GDP in these countries might be part of the explanation.

Finally, it is striking that in some member states a decrease in expenditure to disability benefits is only followed by a decrease in the disability benefit rates years later. This is especially the case in Portugal, where a significant decrease in expenditure as a part of GDP in disability protection in 1990 is only reflected by a lower number of disability beneficiaries in 1995. Of course, this might have happened earlier in time, but numbers on that period were not available.

The expenditure on disability benefits might also be related to the personal income of people with a disability, which is the subject of the next section.

	1980	1985	1990	1995	1998
<b>Denmark</b>	1,73	1,56	1,68	1,95	1,81
<b>Finland</b>	2,7	2,74	3,01	3,6	2,81
<b>Norway</b>	1,9	2,04	2,75	2,67	2,81
<b>Sweden</b>	1,9	1,99	2,04	2,33	2,1
<b>Austria</b>	1,18	1,41	1,43	1,78	1,95
<b>Belgium</b>	2,08	2,36	1,46	1,4	1,32
<b>Germany</b>	0,89	0,81	0,72	1,04	1,05
<b>France</b>	0,99	1,1	1,04	0,88	0,87
<b>Luxembourg</b>	2,74	2,77	2,03	1,95	1,82
<b>The Netherlands</b>	4,36	4,11	4,63	3,89	2,39
<b>Greece</b>	0,92	1,81	1,51	1,14	1,13
<b>Italy</b>	1,02	1,17	1,66	1,11	0,99
<b>Portugal</b>	2,17	2,78	1,88	1,69	1,87
<b>Spain</b>	1,1	1,3	1,27	1,34	1,34
<b>Ireland</b>	0,52	0,68	0,78	0,87	0,74
<b>United Kingdom</b>	0,86	1,2	1,58	2,75	2,64
<b>Total (mean)</b>	<b>1,69</b>	<b>1,86</b>	<b>1,84</b>	<b>1,9</b>	<b>1,73</b>

Table 4 Disability Cash Benefits in percentage of GDP. Source: OECD (2003)

### Personal Income

In table 5 the personal income of people with a disability in working-age is related to that of their non-disabled counterparts. It shows that despite the disability protection and income maintenance measures, people with a disability generally do have a lower personal income than people without a disability. But it also seems that in countries with a higher expenditure as a percentage of GDP on disability cash benefits, the personal income is also relatively higher. This means that in most countries in northern Europe and western continental Europe the personal income of people with a disability is relatively higher than in southern European countries and the UK. Furthermore, it shows that the expenditure on disability protection as a percentage of GDP indeed does not say anything about the real expenditure to these measures. For example, despite the relatively low expenditure to disability benefits as a percentage of GDP in Germany this country has one of the highest amounts of personal income for people with a disability. And in Portugal, a relatively higher expenditure as part of GDP is reflected in a relatively low personal income.

Also, the actual situation in some countries can be different, as sometimes a large part of the income of people with a disability is given in the form of non-financial provisions.

<b>Danmark</b>	0,86
<b>Finland</b>	0,83
<b>Norway</b>	0,79
<b>Sweden</b>	0,96
<b>Austria</b>	0,86
<b>Belgium</b>	0,82
<b>France</b>	0,8
<b>Germany</b>	0,93
<b>Italy</b>	0,8
<b>Netherlands</b>	0,88
<b>Greece</b>	0,66
<b>Portugal</b>	0,59
<b>Spain</b>	0,71
<b>Ireland</b>	0,7
<b>United Kingdom</b>	0,78
<b>Total (mean)</b>	<b>0,79</b>

Table 5 Personal income of disabled persons age 20-64 relative to that of non-disabled persons, late 1990s, income ratio Source: OECD (2003) SS 9.1

### 2.1.2 Employment Measures

Measures related to employment policy form another main disability policy area in most European Union member states. As employment measures on people with a disability is again a relatively broad terrain, this section primarily deals with employment measures for people with a disability aiming at enhancing the employment level of people with a disability

(‘active’ measures). As already mentioned in the introduction, measures to increase the employment rate of people with a disability can be motivated by different arguments. On the one hand it could be a way to tighten up the disability benefit schemes or to prevent that people have to make use of these measures. On the other hand it can be a way to improve the self-sufficiency of people with a disability and to enable their full participation in society. In the first case people with a disability can be obliged to search for a job, before they are eligible for the disability benefit system. For example, Germany applies the principle of ‘rehabilitation before pension’ while the Danish municipalities are strongly stimulated to explore employment options before making a long-term disability benefit award (Mabbett and Bolderson, 2002). In the other case employment provisions for people with a disability are motivated by a right for self-sufficiency, equal opportunities and full participation in society. However, in both situations it is necessary to involve employers, to convince them of the abilities of people with a disability and to urge them to employ people with a disability in their businesses.

A starting point for a description of employment measures for people with a disability across European member states could be the study ‘Definitions of Disability in Europe: A comparative analysis’ (Mabbett and Bolderson, 2002). One of the sections in the study is devoted to disability employment provisions. In the study the different employment measures for people with a disability are grouped in the following way:

- Specific disability-related interventions
- General employment measures
- Quota schemes and work-related anti-discrimination legislation.

The division above will be used to get more insight in the subject of activating employment measures.

### **Disability Specific Provisions**

The first set of measures, specific disability related interventions, includes, next to adaptation of workplaces, rehabilitation centres and sheltered workshops. This again is a highly complex policy terrain: ‘Across the European Union member states there is a high variety of measures falling into these categories. Some are linked to the social insurance system, some to social services, and some draw heavily on voluntary and charitable endeavours. Often provisions are impairment-oriented: there may be specific measures for people who are blind or deaf, for example’ (Mabbett and Bolderson, 2002). Often people have to be assessed as having a certain impairment or having reached a certain percentage of disability before they are eligible for a sheltered workshop place or a similar measure. Also, the ways of assessment can strongly vary among the different European Union member states. Some countries do rely more on a medical assessment of the impairment, whereas other countries do rely more on aspects related to the profession.

In some European Union member states financial measures are available to ensure workplace accommodation. Employers may be able to obtain specific financial assistance for workplace adaptations if the worker is disabled. Both the need for the adaptation and the workers’ general level of functioning might be taken into account when considering the adaptation. If a very expensive adaptation would be needed for a specialised activity, but the person can still do other – less specialized - activities without this adaptation the financial claim might be rejected.

Table 6 shows the expenditure on special labour market policies for people with a disability. It cannot give a complete picture, as data from Southern European countries and the United Kingdom and Ireland are lacking. Of the remaining countries, the Scandinavian countries,



with the exception of Finland, and the Netherlands seem to be the high-spenders on specific labour market measures.

	1990	1994	1998	2000
<b>Denmark</b>	0,3	0,3	0,2	0,3
<b>Finland</b>	0,1	0,2	0,1	0,1
<b>Norway</b>	0,2	0,5	0,6	0,6
<b>Sweden</b>	0,7	0,8	0,6	0,5
<b>Austria</b>	0,1	0,1	0,1	0,1
<b>Belgium</b>	0,2	0,1	0,1	
<b>Germany</b>	0,1	0,1	0,1	
<b>France</b>	0,2	0,3	0,3	0,6
<b>Luxembourg</b>	0,1	0	-	
<b>The Netherlands</b>	0,6	0,6	0,5	0,6
<b>Greece</b>	0	0	0	
<b>Portugal</b>	0,1	0,1	0	
<b>Spain</b>	0	0	0	0
<b>Ireland</b>	0,1	0,1		

Table 6 Expenditure on special labour market measures for disabled people, as percentage of GDP.  
Source: Hvinden (2002, table 9)

### General Employment Measures

The second set of employment measures for people with a disability are not specifically related to the disability itself. Often, people with a disability are also eligible for general employment measures available for other disadvantaged groups, like training allowances, subsidies and placement assistance. These kind of measures are less concentrated on the impairments themselves, but more on 'contextual factors in assessing degrees of disability for employment policy purposes' (Mabbett and Bolderson, 2002). It can even be that 'employment provisions may be 'mainstreamed' so that access to employment programmes does not depend on classification as disabled, but instead arises from a disadvantageous labour market position, however caused' (ibid.). From one perspective, these general activation measures do enlarge the range of opportunities and services available to people with a disability, but from another perspective this could mean a competition for financial resources with other needy groups. But it can also be the other way round. For example, in Sweden it seems to be the case that if you are registered as someone having a disability a wider repertoire of measures and subsidies is available. This can lead to long-term unemployed people that are sometimes classified as occupationally disabled in order to use these measures. In this case there is a risk that 'resources intended for those with the most severe disadvantages are diverted to less-disabled people' (ibid.).

Table 7 gives a rough indication of the expenditure on active labour market programmes in general in 1980 and 1998. For 1980, a lot of the numbers are lacking, which makes it very difficult say something about the development in time. The expenditure in 1998 highly differs

between the different countries. However, it seems that currently in Northern Europe and to a somewhat lesser extent in the Continental countries, the expenditure is higher than in Southern and Western Europe.

	1980	1998
<b>Denmark</b>	0,4	1,7
<b>Finland</b>	1,0	1,4
<b>Norway</b>	..	0,9
<b>Sweden</b>	1,2	2,0
<b>Austria</b>	..	0,4
<b>Belgium</b>	..	1,4
<b>France</b>	..	1,3
<b>Germany</b>	..	1,3
<b>Italy</b>	..	0,7
<b>Luxembourg</b>	0,3	0,2
<b>The Netherlands</b>	0,7	1,3
<b>Greece</b>	..	0,2
<b>Portugal</b>	..	0,7
<b>Spain</b>	0,2	0,6
<b>Ireland</b>	..	1,2
<b>United Kingdom</b>	0,6	0,3

*Table 7 Expenditure on active labour market programmes (as a percentage of GDP)*

*Source: OECD (2003) EQ 3.2b*

### **Quota Schemes**

In the third place, in some member states, there is a quota scheme that is based on the idea that a certain proportion of the employees in a company of a given size should be people with a disability. If the company does not comply with this criterion it has to pay a fee. These kind of quota schemes may be useful to enhance the participation of people with a disability in employment. However, the quota system is not tension free. If one would use these measures for anti-discrimination purposes it gives rise to several problems: ‘An anti-discrimination policy which seeks to protect people whose productivity is unimpaired may use a very broad definition of disability, encompassing people with minor impairments and people perceived as having limitations that they do not in fact have. However, such a broad definition of disability would not provide a meaningful basis for a quota. The quota must somehow be selective, but the process of selection then invites the criticism that, by identifying people as disabled, quotas are themselves a form of discriminatory treatment’ (Mabbett and Bolderson, 2002). Furthermore, a quota system might be discriminating for the more severely disabled people: ‘The employer may have superior information about the severity of a disabled person’s limitations in specific relevant situations, and he or she has an incentive to ‘cream skim’ i.e. to select those disabled workers whose limitations are least disabling in the job in question’ (ibid.). Therefore, recently several states have adopted reforms to their quota systems to promote the employment of disabled people and to counter the potentially discriminatory employment

practices. For example, in France and Germany policies have been introduced in which the quota-enforcing institutions work more closely with the employers. In Germany it involves making more financial assistance available to employers and the encouragement of a more pro-active and wide-ranging approach to the placement of disabled workers. In France, there is an increased emphasis since the mid-1990s on stimulating employers to develop plans for integrating disabled workers and on supporting these plans with negotiated funding.

### Employment Level

Table 8 shows that, despite the different measures to increase the employment level of people with a disability, the employment rate of people with a disability currently is still substantially lower than for people without a disability. It also seems to be that people with a severe disability are less often employed than people with a moderate disability<sup>9</sup>.

Furthermore, with some exceptions, it seems that countries with a higher expenditure on labour market measures also have a higher employment rate for people with a disability. In the Scandinavian countries, that have a relatively high expenditure on these measures, the employment rate is relatively high. While in most countries in Southern Europe the expenditure to 'active' labour market policy for people with a disability is relatively low, this also seems to be case with the employment rate.

Yet, the expenditure on employment measures for people with a disability is of course only one of the several factors that has an effect on the employment level of this group of people.

	All	Disabled			Non-disabled
		Total	Severe	Moderate	
<b>Denmark</b>	73,6	48,2	23,3	55,1	79,4
<b>Finland</b>	58,4	38,4	22,8	43,3	64,8
<b>Norway</b>	81,4	61,7	..	..	85,8
<b>Sweden</b>	73,7	52,6	33,8	69	75,8
<b>Austria</b>	68,1	43,4	23,9	50,2	71,8
<b>Belgium</b>	58,7	33,5	21,1	40	61,7
<b>France</b>	63,6	47,9	36,4	55,5	66,6
<b>Germany</b>	64,8	46,1	27	52,9	69
<b>Luxembourg</b>	61,6	40,4	29,2	43,8	65,5
<b>The Netherlands</b>	61,9	39,9	26,5	46,4	67
<b>Greece</b>	57	30,2	15	40,3	60,6
<b>Italy</b>	52,2	32,1	19,4	37,9	53,8
<b>Portugal</b>	68,2	43,9	27,6	55,3	74
<b>Spain</b>	50,5	22,1	15,1	26,5	54,2
<b>Ireland</b>	58,6	29,5	23,4	31,1	62,8
<b>United Kingdom</b>	68,6	38,9	19,3	46,8	73,9
<b>Total (mean)</b>	<b>63,8</b>	<b>40,6</b>	<b>24,3</b>	<b>46,3</b>	<b>67,9</b>

Table 8 Employment rate by severity of disability, percentage of 20-64 population, late 90s Source: OECD (2003) SS 5

<sup>9</sup> The distinction between these groups was based on 'self-definition'

### 2.1.3 Anti-discrimination Legislation

Anti-discrimination legislation for people with a disability is quite a recent development and is closely related to the development of the ‘social model’ on people with a disability. As said in the introduction, the social model can be contrasted to the traditional ‘medical’ or ‘personal tragedy’ model. The latter model is based on the traditional model of offering people with a disability special provisions outside mainstream society, such as separate education and sheltered workshops or charity (Drake, 1999). According to some people, the problem with this medical approach is that the *societal* causes of the disadvantages that people with a disability encounter are left untouched. Despite the good intentions, it is argued that the traditional ‘medical’ approach placed a large amount of disabled people out of society and contributed to their isolation and insufficient social participation.

As a reaction, from the 1970s onwards a number of disabled people have worked on the development of the social or ‘human rights’ model. The keywords in this approach are integration and equal opportunities. In this model it is assumed that the obstacles found by people with a disability can be substantially reduced or overcome by organising our societies in a different way. The solution for the problems is not that people with a disability should be adapted to mainstream society, but that the society should ensure equal opportunities for all people, including people with a disability.

Anti-discrimination legislation plays a central role in the ‘social model’ on disability. This legislation means that the situation of people with a disability is compared to that of non-disabled persons, and if there is a difference that cannot be justified by special circumstances, it will be classified as discrimination. The aim is ‘to preclude any distinction between human beings on the sole ground of disability’ (Council of Europe, 2002).

Three European Union member states have adopted anti-discrimination legislation: the United Kingdom, Sweden and Ireland. The adoption of this kind of legislation is now being considered in other member states<sup>10</sup>. The United Kingdom introduced its anti-discrimination legislation for people with a disability in the first half of the 1990s, in Sweden the anti-discrimination act came into force in 1999. Ireland introduced parts of the anti-discrimination legislation in 1993 and 1998. The introduction of anti-discrimination legislation can be supported by different arguments. Anti-discrimination legislation often replaced or supplemented other disability measures. In the United Kingdom, the 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. Ireland, for a long time, has been one of the least spenders on disability policy and the introduction of the anti-discrimination law could be seen as a compensation for that.

Due to the quite short period this legislation is in use now, the impact of this anti-discrimination legislation is currently unknown. Experiences with the ‘Americans with Disabilities Act’ – that is used as an example for anti-discrimination legislation by many countries – show that over the last decade quite some achievements have been made, but that not yet the full potential of improving the situation of disabled Americans has been realised (National Council on Disability, 2000). To what extent this will be the case at EU member state level, is at this moment hard to say.

Although the thinking about disability policy associated with the ‘Social Model’ is often associated with ‘anti-discrimination legislation’, some member states and disability organisations do not favour the introduction of these anti-discrimination legislation for people with a disability. For example, the Danish Disability Council argues that anti-discrimination legislation ‘is more an expression of American society with its extreme individualism, its

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<sup>10</sup> For example, the Netherlands will enforce their own anti-discrimination act for people with a disability in December 2003.

division into widely different subcultures without mutual ties and its lack of communal solidarity, and hence less appropriate for European societies' (Bengtsson, 2000). Instead, in Denmark a more corporatist structure with a strong role for the Danish Disability Council has been established to ensure equal opportunities for people with a disability.

## 2.2 Actual Problems in Disability Policy

In the former section I dealt with the current situation in disability policy at national level. The second section of this chapter deals with the question: *What are the actual problems in national disability policy in the European Union member states?* To answer this question, in the first part of this section some of the different problems in national disability policy will be dealt with by a recent study on the situation in disability policy in six European Union member states. The second part of the section has the same intention, but also tries to distinguish between the problems that are seen by those responsible at governmental level for disability policy and the national disability organisations.

### 2.2.1 Secondary Literature

Some major problems and challenges in disability policy at national level will be found out by using a study among six European countries on disability policy. The study covers Spain, Ireland, United Kingdom, The Netherlands, Sweden and Denmark (Van Oorschot and Hvinden et al., 2000).

Because the authors of the articles are all represented in an academic network on vocational rehabilitation for people with a disability, the articles in the study generally relate to social security and employment (disability) policy. However, it also gives a more general overview of some of the main challenges and problems that currently exist in national disability policy in these countries. The aim of the articles was not to adhere to a strict framework to describe the situation in each individual country, but to highlight what, in the eyes of the authors, has been the main current national developments in disability policy. Of course, this leads to a divergence in emphasis and a lower degree of comparability between the different articles. However, still some similar trends might be able to be distinguished. So, first let me shortly deal with the articles on the individual countries and then try to find out some of the similar developments and problems.

The article on Spain mentions that despite the adaptation of several legislative measures there has been no effective change ('improvement') in the social and employment conditions for people with a disability (Verdugo et al, 2000, p. 337). Three fundamental barriers for this lack of improvement are given: insufficient political will and fund provision; danger of false controversies and the lack of systematic and updated information about the needs of people with a disability and their employment situation. Regarding the first, it says that: 'Although there has been a significant increase in active measures to promote the employment of disabled people, Spanish initiatives have been somewhat fragmented and have not appropriately translated the political commitment into a shift based on dependence to more active and preventive labour market policies' (ibid., p. 338). The second barrier means that there is: 'a lack of consensus on various issues, such as the balance between measures to protect special employment and to promote ordinary employment, funding sources, and the degree to which 'positive discrimination' is compatible with market freedom and competition'. In the third place, an assessment of the needs of people with a disability is 'almost impossible due to the lack of systematic and periodic data about their employment conditions' (ibid., p. 339).

The article on Ireland mentions that in the 1990s this country has experienced ‘seismic changes’ in disability policy by the adoption and implementation of several legislative and policy measures aiming on the needs of people with a disability themselves. Many of these measures were inspired by the UN Standard Rules on Equal Opportunities for People with Disabilities of 1993 and cover equal opportunities and anti-discrimination legislation. However, the adoption of these measures generally has not brought about a major change at the individual level, as ‘these changes have as yet all taken place at the macro level, and their impact at the micro level - on the lives of people with disabilities - particularly relative to employment has so far been negligible’. But, ‘it may be that the changes made at the macro level are only aspirational, and that more intervention is required to make a difference at the micro level’ (Lundström et al., p. 379).

The paper on the United Kingdom is primarily focused on the recent developments regarding disability and employment. In the first part of the study an account is given of some of the major changes in vocational rehabilitation services. Also the ‘New Deal for Disabled People’ is described that has the aim of getting people with a disability (back) into work. Then the Disability Discrimination Act that was adopted in 1995 that among other covers employment and includes a section on ‘reasonable accommodation’ is outlined. In the study, also the social security benefit system that showed a tremendous increase of claimants until 1995, mainly because it was used as a (pre-) pension by older workers is considered. However, attempts have been made to reduce this number. The second part of the paper attempts to analyse the values underlying these policy changes. The Consultative Document, which proposes changes in the vocational rehabilitation service, is examined, and this is followed by an analysis of a Social Security Green Paper and the New Deal. The third part considers other influences on policy, such as the ongoing changes in perceptions of and social responses to disability, including the influence of the ‘social model’ of disability, (party) political influences and the influence of European Union policy and practice in other European countries. The final part offers a brief look at how UK policy is likely to change in the next few years. It concludes that UK disability policy is largely driven by external forces and that the major disability policy changes have derived from wider policy considerations. This means that disability policy has been largely determined by political factors, instead of new ideas about the best way of helping disabled people. Therefore, the article argues for more evidence based disability policy.

According to the article on the Netherlands, there has been an ongoing attempt to reduce the number of disability benefits claimants over the last twenty years. A first strategy was to reduce the inflow of claimants, but when this strategy proved unsuccessful the focus was shifted to the promotion of the activation of the disability benefits claimants. However, despite the fact that ‘many new proposals for reducing the number of disability claimants have recently been put forward, (but) most of these can be described as more of the same, and their effectiveness is doubtful’ (Van Oorschot and Boos, 2000, p. 343). Furthermore, in the Netherlands the ‘disability’ problem seems to differ from the debate on the social and economic integration of people with a disability in society. The first is presented as a budgetary and social-economic problem in the field of social security, whereas the latter is a more specific social-medical and social-economic problem for a relatively small group (ibid.). This means that despite the internationally agreed documents in the field, there has been relatively little development in the field of the reintegration of people with a disability in society<sup>11</sup>.

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<sup>11</sup> By the time of writing of the article, there was only discussion on the introduction of equal opportunities legislation in the Netherlands. The ‘Act on Equal Treatment on grounds of chronic illness and disability’ (Wet

According to the article on Sweden, in the 1990s a shift has taken place in the universal welfare policy for people with a disability towards a more selective system (Lindqvist, 2000, p. 399). The social security benefits for people with a disability have been lowered and the entitlement criteria have been tightened. In parallel, there has been an emphasis on activation policies for people with a disability. Furthermore, there has been a tendency to introduce more social and civil rights in disability policies. The establishment of the Disability Ombudsman and Disability Reform are primary examples of this latter tendency. The Disability Reform Act meant decentralization for the provision of social services to relatively severely disabled people and made the provision of these services a social right (id, p. 409). The Ombudsman monitors the implementation of the UN Standard Rules and safeguards the rights and interests of people with disabilities in Sweden. He has the opportunity to carry out investigations on a national scale and to give legal individual advice on disability issues. In 1999 an act has come into force that prohibits discrimination against disabled work-seekers and employees. Furthermore, mainstreaming of anti-discrimination and equal opportunities in Swedish welfare policy was put high on the political agenda to try to solve the discrepancy between the expansion of social services and the lasting major participation problems for people with a disability in working life, education, and life chances in general (id, p. 410). Overall, it means that the Swedish welfare state policy has become less universal, more selective and more directed at social and civil rights. Furthermore, the local authorities and private initiatives have become more important in the provision of arrangements for people with a disability.

The study on Denmark is focused on the growing corporatisation of the Danish Disability movement and argues that Denmark had a disability policy in line with the 'social model' 'avant la lettre', but that it did choose for a corporatist instead of a judicial implementation of this model. The recently established national disability organization, the Danish Disability Council, consisting of both representatives from different disability organizations and from the government, quickly gained political influence and developed into a powerful corporatist structure. In the 1990's disability policy in Denmark could be characterized by devolution - the transfer of responsibilities from state level to counties and municipalities - and activation - as a way to get people with a disability back to work instead of granting disability benefits. The main argument of the article is that Denmark embraced the 'social' model, for a great deal influenced in this matter by discussions going on in the United States and the United Nations, but that it dissociates itself from the American impulse on anti-discrimination legislation and instead chooses for the political instrument of negotiation. The author sees this Danish (or even Scandinavian) model as 'the best way of securing integration and equal rights, especially for the more disadvantaged groups' (Bengtsson, 2000, p. 367).

On first sight it seems that all of these studies give a rather separate vision on disability policy. Because every article seems to be written from a different viewpoint, the drawing of strict conclusions out of this information is very difficult. Furthermore, the study does not cover all of the European member states. However, I think that still some similarities can be distinguished on some current main developments and problems in disability policy in at least these six European member states.

In the first place one can see a general shift in (employment) disability policy from disability benefits towards a disability policy that is aimed at bringing people back to work, sometimes accompanied by anti-discrimination legislation. Some problems are attached to this development. On the one hand, it seems to be very hard to bring down this number of benefits

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gelijke behandeling op grond van chronische ziekte of handicap) will come into force in December 2003 in the Netherlands and will cover equal treatment for people with a disability in the areas of education, employment and transport (CG-Raad, 2003)

claimants and the measures to bring people with a disability back to work are often highly ineffective. On the other hand, the adoption of different policy measures aiming on the improvement of the social and employment situation for people with a disability seems not necessarily to lead to effective changes for people with a disability themselves. In short, the adoption of new legislation, either to reduce the number of disability claimants or to improve the employment situation of people with a disability often runs aground when the measures have to be implemented and brought into practice. Even if legislation is successfully implemented (macro-level), it is the question whether the lives of people with a disability indeed will improve (micro-level).

In the second place it seems that the development of international initiatives in the field of anti-discrimination and equal opportunities sometimes highly influenced developments at national level. Every country has its own reasons for doing something with that concept, chooses its own specific way of implementation and tries to fit this approach in its own national context, as can most clearly be seen in Denmark. This might mean that there is not one model of equal opportunities and anti-discrimination policy that works and is useful in each national situation.

Of course, these conclusions might be rather tentative and it might well be that other member states do have different problems than the six countries covered in the study. Also different authors might stress different issues. Furthermore, it could be that the conceived problems are dependent on whether one is representing people with a disability or a governmental organisation.

### 2.2.2 Questionnaire

To get some more information on other member states and to find out the actual problems as perceived by different actors, I will deal with the answers to one of the question in my questionnaire<sup>12</sup>. This section shortly presents the results to the first question, on the problems in national disability policy.

As only eight completed questionnaires were sent back out of the thirty that were sent out, an overview of the results might not be representative for the situation in all European Union member states. The answers to the questionnaires thus should be used with care and cannot be easily generalized. Still, some cautious similarities can be distinguished and careful conclusions could be drawn.

#### **Government Level**

Four of the returned questionnaires came from national ministries represented in the High Level Group on Disability. According to the respondent of the Danish ministry of Social Affairs (department of Disability and Housing): 'The general problems with accessibility (transport, housing, schools etc) results in an increasing demand on individual compensatory measures. As a result the budgetary pressure is increasing in this area'. In the Netherlands the answers comes from Dutch Ministry of Public Health, Welfare and Sports (direction of disability policy): 'In view of the worrisome economic situation in the Netherlands austerity measures that will also impact on the health care and care system will be unavoidable. This may have negative consequences for people with disabilities and hamper the introduction of inclusive policies'. In Sweden according to the ministry of Health and Social Affairs the main problem is: 'To mainstream policies in making society accessible. Most environments and activities in our society affect people with disabilities in one way or another. Disability must

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<sup>12</sup> See introduction and appendix A



permeate all spheres and all sectors of society'. France answers: "1. To develop all means of integrating disabled persons. 2. to improve accessibility".

### **Disability Organisations**

The other four returned questionnaires were filled in by disability organisations in the member states. I will subsequently present their answers. According to the German 'Sozialverband VdK': 'The main problem in disability policy in Germany is that the achievements in disability policy in the last government term are counteracted by ongoing social security reforms, especially in the health and employment sector. Measures such as the privatisation of the sick benefit, patient fees, the reduction of the unemployment benefit will hit especially people with a disability or a chronically illness. The same applies to the reduction of measures that facilitates employment for disabled people'. Following the Italian representative of the Consiglio Nazionale sulla Disabilità/DPI the main problem is: 'Changing the take care system, with an approach based on non discrimination and equal opportunities principles'. According to the respondent of the Portuguese Confederação Nacional dos Organismos de Deficientes (CNOD) the main problem is: 'Discrimination. Disabled people and their representative organizations are not respected, according to the principles of the Madrid Declaration'<sup>13</sup>. The Swedish HSO sketches three main problems: '1. The lack of awareness that disability policy is a question of Human Rights. 2. The gradually dismantling of the general welfare system with privatisation of services which threatens the quality. 3. The decentralisation of responsibility for disability questions to local municipalities where both resources and knowledge are scarce resources in many cases'.

Because relatively little organisations have responded from both groups it might be somewhat inaccurate to make clear distinctions between the answers of both organisations or to generalize the answers for all the European member states. If you could draw any conclusions at all, it might be that the problems are quite diverse among the member states but that the policy areas in which these problems are in seem to be quite similar. It strikes that (almost) all of the governmental organisations do mention the problems with accessibility and making our society more inclusive for people with a disability. Some see this more as a budgetary problem (the Netherlands and Denmark), and others (Sweden) see it more as a problem of mainstreaming. Furthermore, the Dutch ministry also mentions the problem of the cutbacks in the (health) care system. This latter point is also generally shared by a lot of respondents from the disability organisations (Germany, Italy and Sweden), but also relate to the dismantling of the welfare system. Furthermore, the lack of human rights, non-discrimination and equal opportunities is generally seen as a major problem by the disability organisations.

Another striking thing is that the language that is used by the governmental organisations in the governmental seems to be different from that of the disability organisations. Where the government mainly speak about accessibility and inclusion, the disability organisations speak about anti-discrimination and equal opportunities. The meaning of this difference, however, is beyond the coverage of this study.

## **2.3 Conclusion**

The first section of the chapter focussed on the situation in national disability policy in the EU member states on three central policy terrains: disability benefits, employment policy and anti-discrimination legislation. The reciprocity rates and the government expenditure on

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<sup>13</sup> The Madrid declaration was adopted in March 2002 during the European Congress of People with Disabilities. The document 'proposes a general vision, in which disabled people are not objects of charity and patients, but independent citizens fully integrated in society' (see: [www.madriddeclaration.org](http://www.madriddeclaration.org) for more information).

disability benefits strongly differ between the different member states, although there are some regional similarities. In general, the expenditure on disability benefits and disability benefits reciprocity rates shows an increase until the mid-1990s and then a stabilisation or decrease. This economisation in expenditure in some countries is reflected in declining reciprocity rates some years later. Despite the different income measures, the personal income of people with a disability is currently substantially lower than of their non-disabled counterparts. Regarding employment measures, almost every member state does have a range of activation measures for people with a disability, but the content of these measures and the motivation behind them differs. The creation of anti-discrimination and equal opportunities measures is a relatively recent development. In some EU member states non-discrimination policies and legislation for people with a disability have been adopted, although the specific reasons for the implementation of such measures and the coverage of these measures varies. What can be concluded out of the first part of this chapter is that the disability policy area at national level in the European Union member states is a very complex policy that encompasses a wide variety of different policies and interests.

The second section dealt in some more detail with the main developments and problems in disability policy at national level in the European Union member states, by using a study on disability policy in six European member states and the answers to one of the questions in my questionnaire.

On first sight it seemed as if the articles on the six individual member states only complicated the picture on the problems at national level in the member states because every article was written from a different perspective. The study might not be seen as suitable for a complete investigation on national disability policy in all EU member states as it only covers six countries and because the study mainly deals with employment policy. However, with these caveats in mind that at least two careful conclusions could be drawn. In the first place, most member have recently attempted to reduce the number of disability benefit claimants and to get these people back to work, often accompanied by anti-discrimination legislation. The adoption of measures to reduce the number of benefits claimants and to improve the employment and social position of people with a disability often gets stuck when the measures have to be implemented. And even if they are successfully implemented, there might nothing change for the people with a disability themselves.

Regarding the questionnaire, relatively little organisations have responded from either the disability organisations and the ministries. Thus it might be difficult to find generalisable answers for all of the European Union member states. However, one of the cautious conclusions could be that the problems in disability policy are quite diverse in each member state, but the policy areas in which these problems are in seem to be quite similar. There are in general problems with making our society better accessible and more inclusive for people with a disability. The cutbacks in care provisions and welfare state arrangements, and the lack of human rights, non-discrimination and equal opportunities for people with a disability are generally seen as major problems by the disability organisations.

The general conclusion of the chapter is that although every member state seems to have its own disability policy with their own specific problems, the actual problems each member state copes with in disability seems to come down to just a handful of issues. If the member states indeed do have about the same problems in the policy area and are willing to co-operate with each other to deal with these problems, this might be an onset for a European dimension in disability policy.

### 3 EU Position on Disability

While the latter Chapter was focussed on the national dimension of disability policy, this chapter focuses on the European dimension of disability policy. The central question of this chapter is: *What is the EU position with respect to people with a disability?* As one cannot speak about ‘the European Union’, because it consists of different institutions this chapter deals with the most important ones: European Commission, European Council and European Parliament. The European Commission seems to be one of the central actors that has put disability policy on the European Union policy agenda. I will start with their position. Thereafter, I will shortly deal with the position of the European Parliament and the European Council in so far as they seem to differ from or are complementary to the position of the European Commission.

This chapter also forms the complement of my investigation to the need and the goals of the intervention of the EU in national disability policy. As was found out in the last chapter, disability policy is often quite member state specific and in the course of time it has become a very complex policy area with many different interests. However, the problems on this policy terrain seem to be quite similar in the different member states of the EU and this might enable a European intervention. Combined with the positions of the different institutions of the European Union an answer to the first research question on the need and the aims of a European intervention in national disability policy is presented in the conclusion.

#### 3.1 European Commission

The position of the European Commission on people with a disability and disability policy can be most clearly derived from the Communication of the European Commission on the equality of opportunity for people with disabilities (European Commission, 1996). Their position regarding people with a disability is clearly built on the ‘social’ model and principles of equal opportunities, mainstreaming and non-discrimination. It endorses the UN Standard Rules for the Equalisation of Opportunities for Persons with Disabilities (see: United Nations, 1993). These standard rules are directed at states to make people with disabilities participating members of society and to achieve equality of living conditions. One important principle is that all human beings have equal dignity, regardless of their disability and that all must have the same rights and obligations. The second important principle is that there is a difference between disability and handicap. A disability is a functional impairment, but these disabilities only become handicaps when encountering unadapted surroundings.

The Communication of the European Commission argues that ‘our societies are, in many ways, organised for ‘average’ citizens without any disability, and therefore, a great number of citizens are excluded from the rights and opportunities of the vast majority’. Especially the areas of education, work, mobility and access, housing and welfare systems are mentioned as areas of life where people with a disability sometimes do not have the same opportunities as people without a disability. The traditional public policy of accommodating people to their disabilities is seen as insufficient. It is mentioned that: ‘the old approach is now giving way to a much stronger emphasis on identifying and removing the various barriers to equal opportunities and full participation in all aspects of life (...) integration rather than the narrower aim of accommodation is now seen as the key to inclusion in active society’.

The Commission also argues in this document why the European Community should do something in the field of disability policy. In the first place ‘exclusion and discrimination are against various human rights. Respect for human rights and human diversity have long been characteristic features of our societies and form an essential part of our shared European

values' (European Commission, 1996). In the second place the 'structural exclusion and discrimination on the grounds of disability also sap labour market efficiency. A market that structurally excludes a significant proportion of its human resources cannot be described as efficient, much less fair'. In the third place the communication speaks about 'the European Community's current and correct sense of urgency to reduce structural employment'. These measures should 'incorporate a very practical concern for the variety of arbitrary barriers which stand in the way of labour market entry and participation for people with disabilities'. Restructuring of labour towards more active labour market measures instead of creating more 'recipients of passive payments of income support' is called for. In the fourth place, 'exclusion and discrimination on the grounds of disability also impose onerous costs on the welfare state (...) (t)he lessening of dependency and the mentality of dependency that continues to isolate the person as well as burden the state would be of benefit to all'. The arguments form a combination on human rights and economic costs of current (passive) disability policy. The main emphasis is on the employment market. The first argument is dedicated to human rights, whereas the other three arguments are more economically (employment) oriented. In the same document some principles of the European Community are mentioned that could further support European 'mobilisation' in this policy area: 'key Community principles and objectives are involved which further justify its particular concern in the field. These include guaranteeing the free movement of workers, encouraging the mobility of students, guaranteeing the achievement and development of the internal market, and guaranteeing the exercise of the rights of Union citizenship. This calls not only for the gradual rising of standards towards best practice at the level of the member states, but also for increased mobilisation at the level of the Community' (ibid.).

However, the primary responsibility for action in this policy area should rest with the member states. It is mentioned that: 'As policies to assist people with disabilities have their own cultural and social framework in each member state, it follows that the form of responses to the objective of equal opportunities will vary with the national, regional and local context' (ibid.). To help the member states implementing the 'equal opportunities approach', the Commission proposes the adoption by the European Council of a Resolution on Equal opportunities 'founded on respect for the diversity of systems within the European Union and on the added value to be secured from the adoption of common guidelines toward a shared core of policy objectives' (ibid.). A suggested text for this Resolution was appended to the Communication.

But if the main responsibility for the implementation of measures on 'equality of opportunity of people with disabilities' stays with the member states, what then can the European Union do and what are the goals of European action in this policy area? The general idea is described as to 'bring as much added value to process of reflection and change as possible'. In practice, this means that the European Union could in the first place promote the co-operation between the member states in the disability policy area, by making sure that comparable information and statistics on disability policy become available and to make sure that member states could learn from each others best practices. To that end, among others a High Level Group of Member States' Representatives on Disability was set up to monitor the latest policies and priorities of governments concerning people with disabilities, to pool information and experience, and to advise the Commission on methods for reporting on the EU-wide situation with regard to disability in the future. In the second place, the EU could involve people with a disability into the planning, monitoring and evaluation of policies relevant for people with a disability. In the European Union this could be done by the European Disability Forum, which is an independent non-governmental organisation representing the interests and rights of

disabled people at EU level. In that way, also disability NGO's in the member states could be supported. In the third place, the European Union could try to 'mainstream' disability in its own policy formulation. This means that when the Commission creates or changes a policy it aims to consider interests of people with disabilities. To that end there is an Interservice Disability Group that has the purpose to raise awareness of disability matters and to facilitate and encourage co-operation on disability matters among Directorates-General. All of these issues can be derived as the pillars of the European Disability Strategy that is treated in the next chapter.

In short, the position of the European Commission comes, next to economic motives, down to a rights-based equal opportunities approach to disability based on anti-discrimination legislation. However, it is argued that the main responsibility in disability policy should rest with the member states. The (institutions of the) European Union could play a role by promoting the co-operation between the member states in disability policy and enabling information exchange between the member states, by promoting the involvement of people with a disability themselves in policy formulation and by 'mainstreaming' the interests of people with a disability in new or existing EU policies.

### 3.2 European Council

In general the position of the European Council is quite similar to that of the European Commission as it adopted the proposed resolution of the European Commission. Still, some minor changes made by the European Council in the proposed Resolution of the European Commission give away a slightly different and more reluctant position than the rights-based disability policy approach of the European Commission. A short comparison between both documents is given by Mabbett and Bolderson (2001): 'The Guidelines were removed entirely from the final version approved by the Council, and replaced with very summary declarations on enabling participation, mainstreaming and developing a more positive climate of public opinion. Discrimination became 'negative discrimination', a much more limited concept, and one which member states had signed up to ten years before. The Commission's attempt to steer the reading of the UN Standard Rules, particularly by highlighting the abolition of discrimination, was deleted, as was the definition of disability proposed by the Commission. A Council of Europe resolution on rehabilitation of people with disabilities was placed alongside the UN Standard Rules; this could be seen as enhancing the international sources for the Resolution, but equally it muddied the waters of rights-based policy, being rather traditional in its orientation. The same thing can be said about the inclusion of a reference to the Community Charter in the preamble: as noted above, the Charter emphasises vocational training, ergonomics and other interventions rather than anti-discrimination rights'. However, with these 'minor' amendment the European Council still adopted the Resolution on Equality of Opportunity for People with disabilities (European Council, 1996) and endorsed that the UN Standard Rules are at the basis of the intervention of the EU in national disability policy.

### 3.3 European Parliament

The European Parliament also is an important institution that has put disability policy on the policy agenda. Within the European Parliament there is a Disability Intergroup (EDF, 2001), which full name is 'All Party Disablement Group'. It is a cross party group of European Parliamentarians from each of the 15 EU member states supporting the rights of disabled people and meets each second month. The Disability Intergroup is the major political group working within the European Parliament on disability policy, but has no formal powers. Members of the Intergroup discuss issues of concern to disabled people, disability groups and the EU institutions. The Intergroup members take follow-up action on priorities for disabled

people, such as in putting forward parliamentary questions to the Commission, tabling amendments to parliaments reports on EU policy and programmes of interest and concern to disabled people and raising issues of concern to disabled people in their parliamentary committees.

Examples of issues recently being successfully discussed about are the Bus and Coach Directive (making local buses accessible to people with a disability), the Copyright Directive (exemption in the copyright directive for special editions for people with a visual disability), the Employment guidelines (raising awareness of the employment position of people with a disability) and the Non-Discrimination package. Thus, although the Intergroup has no formal powers and is not a formal committee of the European Parliament it still has the ability to put issues on the European Union policy agenda.

The Disability Intergroup gets administrative support from the European Disability Forum. In this way the European Disability Forum, the Disability Intergroup and the European Commission sometimes can form strong policy coalitions when proposing and adopting new legislation in the field of disability policy. For example, the close contacts of the European Parliament with the disability movement for example led to the strong support of the European Parliament for the Bus and Coaches directive (2001/85/EC) and an amendment to the Copyright directive (2001/29/EC) that now gives special attention to the rights of people with a disability.

### 3.4 Conclusion

The position of the various EU institutions merely shows a complementary role for the European Union in disability policy to what is already done at national level. As was argued in the latter chapter, the member states do offer a wide variety of different policy arrangements for people with a disability, and if the European Union would offer disability provisions for itself it might only complicate the situation. Furthermore, presumably there is a lack of competences for such an approach due to the subsidiarity principle and a lack of financial resources. But these issues will be dealt with more thoroughly in the next chapter. What then is the main argument for the European Union to intervene in national disability policy? The European Union, at least the European Commission, seems to choose for a Human Rights perspective to justify its intervention in this policy area. The Commission argues that in the European Union there are about 37 million people with a disability that do not have the same opportunities in many areas of life as their non-disabled counterparts. The exclusion and discrimination this involves is against various human rights and principles and objectives of the European Union, such as the free movement of workers, the mobility of students and the rights of Union citizenship. Moreover, the Commission argues that the exclusion of a big part of the population from economic activity is very cost inefficient. In its position the European Commission closely gathers around the 22 UN Rules on Equal Opportunities for people with a disability. With some reluctance, the European Council also endorsed the importance of the UN rules for the European Union. In fact, these rules form the basis and justification of the European Union Disability Strategy.

But it is stressed that every member in principle should have its own disability policy and that the member states should make their own decisions in order to better the equal opportunities of people with a disability. What then are the specific goals for the EU to intervene in this policy area? In the first place, the European Union could help this process by promoting the co-operation in disability policy among the EU member states and also between the European Commission and the member states. The European Union could make sure that the member states do have comparative information on disability policy at their disposal and enable that member states can learn from each other's experiences in disability policy. In the second place, the European Union could try to involve people with a disability in the policy making

process. The creation of the European Disability Forum might have been a good first step. In the third place, the European Commission could 'mainstream' the interests of people with a disability every time when it proposes a new policy or changes a policy, because currently a lot of legislation at member state level originally derives from the European Union. This EU legislation of course also has influence on the lives of people with a disability.

Because the EU has to cope with the wide variety of different policies and interests in disability policy at national level in the different member states, the EU position does not deal with the problems in the relative complex and highly institutionalised areas of disability policy such as disability benefits. The role of the EU in disability policy is merely seen as complementary, and the question arises how this position has worked out in practice. Therefore, in the next chapter the experiences with the EU intervention in social policy and disability policy are being dealt with.

## 4 Experiences with EU Intervention in Social and Disability Policy

This chapter deals with the experiences of EU intervention in social and disability policy in the member states. The main question to be answered in this chapter is: *What are the experiences so far with EU-intervention in social policy areas and disability policy in particular?* One of the main aims of the chapter is to investigate the possibilities and limits of EU intervention in these policy areas and the modes of intervention that are currently available. To that end this chapter presents a literature analysis to the chronological development of the EU intervention in social policy and disability policy, with a special attention for the barriers that came across and the modes of intervention that have been developed. The first section investigates the developments of the EU intervention in national social policy more in general, whereas the second section relates to the development of the intervention of the EU in disability policy. Furthermore, the second section shortly deals with some of the current experiences with the EU intervention in disability policy. The main question of the chapter will be answered in the conclusion.

### 4.1 Social Policy Intervention in the European Union

Social policy is not a traditional policy area that the European Union (or the European Economic Community) was involved in and so a lot of barriers had to be overcome to develop at least some modes of intervention in this policy area. Therefore, the main question to be answered in this first section is: *What are the specific barriers to intervene in social policy and what modes of intervention have been developed?* The question will be answered by doing a literature analysis to the development of social policy intervention in the European Union.

Government intervention in the social policy area according to some authors generally comprises of budgetary policy, regulation and direct provision of services (Kleinman, 2001). However, at a European Union level the direct provision of services is largely absent. The EU intervention in social policy is mainly done by budgetary policy (or 'redistribution') and regulation (Kleinman, 2001, p. 112; Hvinden, 2002, p. 17), of which the latter is said to be by far the most important. In fact, with the exception of the structural funds (European Social Fund and European Regional Development Fund) the main modes of EU intervention in social policy are said to be of a regulatory type. Therefore, the rest of the section will be primarily devoted to the barriers and modes of intervention in the regulatory type of social policy.

#### 4.1.1 Regulation

The competence of the European Community in social policy was traditionally rather restricted. Two of the general problems for increasing the competence in the social policy area is that the mode of intervention should be compatible with existing national welfare-state institutions in the member states and that it should not impose too much extra costs on the member states (Streeck, 1997 in: Scharpf, 2000).

Binding modes of intervention in traditional social policy areas that impose too high costs were not acceptable for the European Union member states. Nevertheless, in some areas of social policy great achievements could be made. Furthermore, in the course of time, different 'soft', non-binding modes of intervention that do not directly impose higher costs on the member states were established in some areas of social policy. Relatively successful



initiatives could be developed in the margins ('uncrowded areas') of traditional social policy of the European Union member states.

The development of the social dimension of the European Union could chronologically be divided in three time periods (Mosley, 1995; Kleinman, 2002): the first period runs from the establishment of the European Community in 1958 through the end of the sustained economic growth in the early 1970s and is marked by the relatively little attention for social policy. The second period coincides with the end of the economic boom after 1974 and the growing unemployment rates, and is characterised by the adoption of several directives mainly in the field of employment policy. The third period starts with the election of Jacques Delors as president of the European Commission and the signing of the Single European Act in 1986. Seeking for common objectives and involving non-state actors in the process were key issues. The signing and implementation of the Maastricht Treaty in 1992 and the publishing of the White Paper on European Social Policy in 1994 mark the end of this period. The current period could be characterised by an emphasis on the subsidiarity principle and the use of 'soft' law, although directives in social policy are still being proposed and implemented.

#### 4.1.2 First Period: 'Benign Neglect'

The founding treaty of the European Economic Community (EEC), the treaty of Rome, was primarily economically orientated and left most components of social policy in the hands of the member states. The social dimension was mainly restricted to removing barriers of labour market mobility and the improvement of working and living conditions (article 117). Furthermore, on the insistence of France that feared competitive disadvantages, the original EEC Treaty includes some aspects of the harmonisation of social legislation, of which equal pay between men and women and holiday pay are the main issues (articles 119 and 120). Indeed, article 117 of the Treaty referred to the harmonisation of social systems within EEC, but one should keep in mind the original six signatories (France, Belgium, Italy, Germany, Netherlands and Luxembourg) were already closer to each other than the countries that became part of EEC or EU in later years, as they were all countries with 'corporatist social protection systems' (Kleinman, 2002, p. 84 ff.). In most of the other social policy areas mentioned in the Treaty of Rome, the competences of the European institutions were restricted to the possibility for the European Commission to promote the co-operation between member states in formulating and administering the provisions (Mabbett and Bolderson, 2001, p. 4). One could say that the period from the establishment of the EEC to the mid-1970s is characterized by a policy of 'benign neglect' in the area of social policy (Mosley, 1995).

#### 4.1.3 Second Period: Directives

The second period is said to begin at the end of the post-war economic boom in 1974 that led to a substantial rise in the unemployment rates of the EU member states. In response, the European Economic Community came with top-down harmonisation directives, mainly in the field of employment policy. Harmonisation directives are based on the European Commission's exclusive right of legislative initiative and the adoption of these legislative initiatives by the Council of Ministers and the European Parliament. The European Court of Justice guarantees respect for the rule of law. The directive is binding upon the results to be achieved but leaves the choice of the form and methods of the implementation to the national authorities (art. 249 EC Treaty, 3<sup>rd</sup> paragraph). Still, a directive imposes uniform rules for all member states with the aim of harmonisation. In the 1970s directives were adopted to protect the employees' rights in case of a business transfer, to establish a fund to guarantee employee wage in case of bankruptcy, to ensure the equal treatment between men and women and to

ensure health and safety at work (Mosley, 1995). But in other social policy areas, such as part-time work and parental leave, the adoption of such directives was not successful.

At least three reasons could be given for the lack of progress in some of these latter policy areas (Gold, 1993, in Kleinman, 2002, p. 86): in the first place the United Kingdom feared increasing costs of labour and used its veto against these initiatives, in the second place there was a political shift to Right and Centre-Right governments in some European Union member states. In the third place, the setting of too high European standards in social policy was seen as a 'competitive disadvantage', both in a European and in a global context. Other important arguments for the lack of progress are the very divergent and deeply institutionalised national welfare states of the European Union that do not easily allow for a harmonisation towards one European social policy.

Other policy initiatives that were developed around this time, such as the Social Action Programme in 1974, were more easily adopted by the member states. The action programme was primarily aimed at employment policy: full and better employment, improvement of working and living conditions, and a greater involvement of management and labour. The areas of action in the Social Action Programme were in education and training, health and safety at work workers' and women's rights and poverty. The Action Programme led to the establishment of a number of European networks and observatories to stimulate action and monitor progress in the social field. This action programme could also be seen as a foreshadow of the later use of the subsidiarity principle (Kleinman, 2002, p. 85).

#### 4.1.4 Third Period: Social Charter

The third period begins in the second half of the 1980s and can be seen as one of the most decisive periods for the further progress of the social dimension of the European Union. A direct impetus for the further development of the 'social dimension' of the (future) European Union in this period was the election of François Mitterand in 1981 as president of France and the election of Jacques Delors as president of the European Commission in 1985. Mitterand, Delors and also the German Chancellor Helmut Kohl wanted to give the European integration process a more human face. They wanted to prevent that 'the European project would be seen as benefiting big business, bankers and politicians, while ignoring the needs of workers and citizens' (Kleinman, 2002, p. 86).

One of the main political achievements of the Delors presidency during this period was the signing of the Single European Act (SEA) in 1986. It was the first major amendment to the Treaty of Rome. But although the SEA allowed for more Qualified Majority Voting (QMV) on health and safety for workers, the development of a 'social dialogue' and for better co-ordination of the social funds (budgetary policy), social policy remained a relatively minor issue in the EEC Treaty. The amended EEC Treaty was still primarily economically oriented, but now with more emphasis on the completion of the single market and the free movement of capital, goods, labour and services.

The progress in EU social policy through harmonisation directives in this period became blocked by a growing national bias against a further infringement in the national welfare state arrangements and the great divergence in the social policy arrangements in the European Union member states. This 'harmonisation deadlock' was tried to surmount in two ways (Mabbett and Bolderson, 2001, p. 5): in the first place the standpoint was taken that indeed there is a great variety of means and measures in social policy among the member states, but the underlying aims and principles are common to a lot of member states. This means that the member states should be able to agree on the fundamental aims of social policy, but leaving the carrying out of these aims to the member states themselves. In the second place, non-governmental organisations such as trade unions were involved in the European Union social

policymaking. As these organisations are not inherently national they could in principle operate across national boundaries and bring the member states closer together.

The first part of this strategy can be most clearly seen in the adoption of Community Charter of the Fundamental Social Rights of Workers or 'Social Charter'. This document was signed in 1989 by eleven member states – of the then twelve member states only the United Kingdom did not sign. The Social Charter is concerned with defining some basic minimum rights at work but has a non-binding character. In this way some common rights were formulated, but decisions on the implementation were left over to the European Union member states themselves. Furthermore, the Charter was accompanied by a Social Action Programme consisting of 47 initiatives to enhance the social character of the European Union (Kleinman, 2002, p. 88). Only non-binding Recommendations, Communications and Opinions were proposed. However, due to the fierce opposition of the United Kingdom to adopt more social legislation at EU level, only two minor initiatives were actually implemented. The idea of a 'European Social Model', that will be dealt in the next period, is also part of this same strategy of searching for underlying values.

The central place that was given to the non-governmental organisations and social partners can be derived from the relaunching of the 'social dialogue' process and the introduction of 'framework directives'. The social dialogue allows representatives of employers and employees to enter into voluntary agreements. This means that with the dialogue the initiative for proposing legislation rests with the social partners and not the European Commission. But still, the final result of the social dialogue is a directive (Scott and Trubek, 2002, p. 4). The process even gained official recognition in article 118b of the Single European Act (Mabbett and Bolderson, 2002, p. 6).

#### 4.1.5 Fourth Period: Subsidiarity

The Maastricht European Council in December 1991 and its implementation can be seen as a fourth turning point in the development of the social dimension of the European Union, characterised by a more programmatic and less legalistic approach to social policy (Kleinman, 2002, p. 90). The Maastricht Treaty formulated strict convergence criteria necessary for the transition to the Economic and Monetary Union and the introduction of a single currency. One could argue this could hamper the further development of the social dimension of the European Union. But the transition to the Economic and Monetary Union (EMU) also brought the member states closer together in an economical and political way, thereby entailing social spillovers that had to be dealt with.

Furthermore, it was tried to incorporate the Social Charter into the (amended) Treaty on the European Communities, but again the United Kingdom vetoed this decision. Therefore, a separate 'Protocol on Social Policy' was annexed to the Treaty of Maastricht, signed by the then other eleven European Union member states. Although the legal status of this document has been questioned, it can be argued that this document prevented a deadlock in the development of a social dimension to the European Union. However, this Protocol 'does not mention harmonisation. The institutions of the EU had in fact accepted that there was a lack of commitment by the member states to a top-down, legally enforced harmonisation' (ibid.). Subsidiarity, co-ordination and recognition of diversity instead of harmonisation became the key words in the field of European Union social policy.

The subsidiarity principle is reflected in the idea of the 'European Social Model'. This model is an important element in the White Paper on European Social Policy that was issued in 1994 and is said to lie behind the social dimension of the European Union. But a single European Social Model does not exist, therefore the main element in the European social model is

merely a recognition of the underlying shared values of the European member states: ‘(B)eyond our diversity in the social field, there are some values, which we Europeans share, and which make our way of life different from what you find elsewhere in the world. These values cover the quest for economic prosperity which should be linked with democracy and participation, search for consensus, solidarity with the weakest members, equal opportunities for all, respect for human and labour rights, and the conviction that earning ones living through work is the basis upon which social which social welfare should be built. These principles could be defined as the “European Social Model”. The individual member states of the Union have then a certain degree of freedom to implement this model’ (Lönnroth, 2002). To define the European Social Model in terms of values, however, might also entail several problems (Kleinman, 2002, p. 98). In the first place, by emphasising on supposed shared values, the development of welfare states as the outcomes of political and industrial struggles is too easily glossed over. In the second place, the emphasis on the shared values implies a process of nation building at a European Union level that parallels the role of social policy in the nation building of member states over the 20<sup>th</sup> century. This analogy with national state building is not there as the policy space in social policy is simply lacking. Furthermore, it is the question whether the idea of a shared European identity is desirable or acceptable for the European citizens.

The main issue on the European Union social policy agenda in the mid- and late 1990s has to do with the tackling of the growing unemployment rates in the European Union member states. In 1993 the European Commission presented a White Paper on a medium term strategy for Growth, Competitiveness and Employment. At the European Summit of Essen in December 1994 employment was given a high place on the political agenda. The European Council called upon the member states to take employment-generating measures in five key areas: increasing vocational training for the young; facilitating the introduction of more flexible forms of work; the moderation of wage increases; the reduction of non-wage labour costs and the improvement of the effectiveness of labour market policy (especially by activating people that were especially hard hit by unemployment). The member states were urged to transpose the recommendations into multi-annual programs. The ECOFIN and Labour and Social Affairs Council were asked to keep track of employment trends in the member states, to monitor the relevant policies and to report this annually to the Council on further progress. However, an agreement on a control or peer process in employment policy could not be reached (Cameron, 2000). At the Council of Amsterdam an employment article was added to the EC Treaty. But the idea about how the European Union should deal with the employment problems strongly differed between the governments of the member states. The struggle mainly reflected the different views of the left and centre-left governments leaders elected in France and the United Kingdom in the late 1990s. The French Prime Minister Jospin argued ‘for an economic government to co-ordinate economic, taxation and wage policies; and for an explicit EU commitment to growth and employment, including spending EU funds to stimulate job creation’ (Kleinman, 2002, p. 92). The English leader of government Blair also prioritised employment policy but argued for a flexible labour market, an avoidance of over-regulation and he also rejected the creation of additional funds to tackle unemployment. Blair’s centre-left vision against excessive regulation and additional spending in European Union employment policy was the vision generally accepted by the European Union member states. This vision can be retrieved in the Employment Chapter that was added to the Treaty of Amsterdam in 1997. This centre-left vision, which allows for flexibility and the avoidance of over-regulation, became the dominant view in other areas of social policy in the European Union as well. Other current issues at the European social policy agenda include

social exclusion, occupational health and safety, equal opportunities and discrimination and reconciling working and family life (Diamantoupoulou, 1999 in: Kleinman, 2002, p. 102).

#### 4.1.6 Barriers and EU Intervention in National Social Policy

In short, one can say that the role of the European Union in social policy today is undoubtedly greater than was envisaged in the original Treaty of Rome. The scope, the role and the objectives of the European Union in social policy have certainly increased over the last forty-five years. However, certain barriers had to be overcome (Kleinman, p. 106) and specific modes of intervention had to be developed. Let me start with the main barriers.

In the first place, a lot of the 'policy space' in social policy is already occupied by the national governments so there is not much 'space' left for the EU to intervene. In the second place, the European Union has only limited financial resources to act in the social policy area and can for this reason not build up such a complex system of social provisions that exists at national level. In the third place, the member states were quite reluctant to let the EU influence their national social policy because social policy is 'an important source of legitimacy for governments' (Van Oorschot and Hvinden, 2000, p. 300) and also because the EU member states had already seen their role diminishing in other policy areas because of the intervention of the EU (Hvinden, 2002). Finally, from a more practical point of view, the large differences in existing social policy arrangements of the member states makes it difficult for the EU to intervene.

These barriers have highly influenced the development of EU intervention in the social policy of the member states. Partly because of the first barrier, the attention of the European Union in social policy is focussed on a relatively small number of social issues, primarily labour market policy and equal opportunities between men and women. The issues that are dealt with by the European Union are often at the margin of traditional social policy. And in most cases it concerns issues where the overlap between economic and social policy is strongest (Kleinman, 2002, p. 111). In the second place, although the European Social Funds have been in place for more than forty years now, this budget is only relatively small when compared to the budget that is (still) available for social policy at national level. Because of this, the European Union has devoted itself more to regulatory modes of intervention, such as directives and recommendations. As some of the European Union member states were quite reluctant to let the EU influence their national policy, the strict regulatory approach by the use of 'harmonisation' directives has not been successful in some areas of social policy. Indeed, from the 1970s onwards a number of 'harmonisation' directives in social have been issued, mainly in employment policy and gender policy, but in a lot of other social policy areas the introduction of such a mode of intervention was vetoed (primarily by the UK). This fact, combined with the large differences in social policy arrangements of the member states and the growing influence of the subsidiarity principle, urged the EU to think about other possibilities. More 'soft' and non-binding modes of intervention in social have been developed. These rather flexible instruments could be much easier accepted by the member states. Examples of this approach are the several Action Programs on social policy, the White Papers on Social Policy and the issuing of different Communications and Recommendations on subjects related to social policy.

Furthermore, two other strategies to develop modes of intervention in national social policy are the search for the underlying aims and goals of social policy and the involvement of more non-governmental actors in the social policy process. The search for the underlying aims and principles in social policy can be derived from the 'European Social Model'. This model is based on the assumption that the European Union does roughly have the same fundamental aims of social policy or values, although the carrying out of these aims can strongly differ

among the member states. In a way it reflects the more general 'subsidiarity' principle to social policy. The non-governmental organizations have become more closely related to the social policy-making in the European Union through the social dialogue, framework directives and also the social action programs. This can sometimes lead to stronger footholds in social policy in the member states.

## 4.2 Disability Policy in the European Union

The central question being dealt with in this section is: *To what extent is disability policy a specific field in the EU social policy context?* To answer this question first I will describe the development of disability policy at European Union level, as I did with social policy in general in the first section of this chapter. As far as possible the same chronological order as for the EU intervention in social policy is used. However, the development of EU intervention in disability policy has a relatively late start when compared to social policy in general, but also a relatively active period during the last decade. Until the beginning of the 1980s there was no activity at all in the field of disability policy at a European level, except for a section in the Social Action Programme of 1974. Between 1981 and 1996 different action programmes and recommendations have been issued in the field of disability policy. A major turning point in the development of disability policy at European Union level was in 1996 when the Communication of the European Commission and the Resolution of the European Council on Equal Opportunities for People with a Disability were adopted. Instead of four time periods then the development of disability policy in the European Union could be roughly described in two time periods: the time period until 1996, and the time period after 1996 when the European Disability Strategy was created.

In the last part of this section I will deal with some of the experiences with EU intervention in disability policy by presenting the answers to two of the questions in my questionnaire on this subject. One of the questions is on the opinion on current EU intervention in national disability policy and the second one is on the possible negative aspects when more EU intervention in national disability policy would be considered.

At the end of this chapter I will present the conclusion to the experiences so far with EU-intervention in national social policy areas and disability policy in particular.

### 4.2.1 First Period: Recommendations and Action Plans

As with most other areas of social policy and as was already mentioned above, the European Union originally does not have many competences in disability policy. The policy area as such was not mentioned in the Treaty of Rome. The first notion of disability policy at a European level was in the Social Action Programme of 1974, which included a section on disability and employment. The section speaks about bringing down the high unemployment level of people with a disability. Local authorities and other authorities are encouraged to disseminate examples of innovative actions in this policy area.

Thereafter, in 1981 a recommendation of the European Council was adopted that aims at the social integration of people with a disability. This recommendation was primarily economically orientated, as the main purpose was to ensure that people with a disability should not bear an unfair burden of the effects of economic adjustment. In 1986, a subsequent recommendation was adopted that recommended the member states to take measures to promote fair opportunities for disabled people in the field of employment and vocational training, e.g. by providing protection against dismissal. Furthermore, disabled organisations should be consulted in disability policy. The Social Charter of 1989, that was already spoken about in the first section, also includes an article relevant for people with a disability. Article 26 says: 'All disabled persons, whatever the origin and nature of their disability, must be entitled to additional concrete measures aimed at improving their social and professional integration. These

measures must concern, in particular, according to the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing'. In May 1990 the European Council and the ministers of education adopted a resolution on the integration of children and young people with disabilities into ordinary systems of education.

But the main interventions of the European Community with disability issues during this period were three broad-scale Action Programmes that were issued between 1982 and 1996. Main aims of these programmes were the exchange of experience, dissemination of innovations, ideas and information and the promotion of good practices.

The first, nameless, Action Programme on disability adopted by a Resolution of the European Council in 1982 and was meant to promote the social and economic integration of disabled people. It was structured on existing networks of rehabilitation centres, and focused on employment-related activities and educational integration (Bolderson and Youll, 1997, pp. 20-21). This first action programme lasted until 1986.

The second Action Programme was called HELIOS I (Handicapped<sup>14</sup> People in Europe Living Independently in an Open Society) and was adopted in 1988. Different from the first programme, this action programme took the form of a Council Decision because that would provide a more secure basis. Furthermore, the scope of HELIOS I was wider than the first programme as next to the strengthening of the existing networks of rehabilitation centres, two other networks were started as pilot projects: one on vocational training, rehabilitation and economic integration and one on social integration and independent living. The involvement of disabled people was made a key principle of this programme. An Advisory Committee, consisting of national representatives and a Liaison Group -a meeting between NGOs and national delegations – was set up.

The third Action Programme, HELIOS II, was eventually adopted by a Council Decision in February 1993. The overall aim of the programme was 'to promote equal opportunities for and the integration of disabled people' (EC, 1993). This was centred on four areas: functional rehabilitation, educational integration, employment rehabilitation, economic integration (including vocational training and employment integration), and social integration and an independent way of life. Main means to pursue these aims was to strengthen the co-operation between NGOs, to raise public awareness about the rights of disabled people, to develop a computer-based information and documentation system (HANDYNET), and to promote the exchange and information of activities between Member States. Another important feature of this programme was that to the two existing advisory bodies, a third body was added: the European Disability Forum (EDF). This body comprised of delegates from each of the National Disability Councils and from European NGOs in the field of disability. The Liaison Group then consisted of both representatives from the Advisory Committee and from EDF. General Co-ordination was in the hands of Directorate General V (Employment, Industrial Relations and Social Affairs). The third action programme expired in 1996, and there was not enough political support to adopt a new Action programme.

Despite the issuing of the resolutions, recommendations and action programmes on disability in the 1980s and early 1990s one could say that the EU was clearly hampered by the lack of legal competence in this policy area. Different from social policy in general, no binding modes of intervention were developed for disability policy in this period. Therefore, considering the direct influence on the national disability policies, the direct impact of this intervention on national disability policy may not be very high. It could be argued that 'in this period the EU had a relatively cautious and non-directive role in this policy area. It was not in

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<sup>14</sup> In English, it is preferred to speak about disability instead of handicap, but these regulations and programmes were directly translated from the French.

the position to influence established policy aims and practices to a great extent' (Hvinden, 2002, p. 15).

But from another point of view, it is still significant that the European Community was able to develop modes of intervention in this policy area at all. The same barriers that existed for social policy also apply for disability policy more in specific. In the first place, the main part of policies for people with a disability is already provided for by the national governments themselves. In the second place, the European Union has only limited financial resources to act in disability policy. Also, the member states were very reluctant to let the EU influence their disability policy. Finally, and as was clearly shown in the second chapter, it also is a fact that disability policy does highly differ among the EU member states. Considering this, it is not a surprise that only non-binding and relatively flexible Action Programs, recommendations and resolutions were acceptable for the European Union member states.

However, this rather 'soft' approach was relatively successful. One of the significant effects of the action programmes was that links could be set up between supranational and sub-national organisations in the field of disability policy. In that way political channels could be created that bypassed the national governments (Mabbett and Bolderson, 2001, p. 14-15). So, despite the resistance of the member states, the European Union could slightly increase its competence in the field of disability policy, because 'national governments (...) were slow to recognise how small, apparently innocuous action programmes could change the political environment and mobilise 'new constituencies of support' for European-level actions'' (Wendon, 1996 in: Mabbett, 2002, p. 9). Another significant fact of this period, also in the light of future developments, is that within HELIOS II the non-governmental disability organisations were involved in the Action Programme by way of the European Disability Forum. In that way, the disability organisations could learn from each other that an effective co-operation could really strengthen their influence in policy-making, not only at national but also at a European Union level. This fact was an important prerequisite for the later institutionalisation of the European Disability Forum as an independent organisation representing the interests and rights of people with a disability at EU level. The attempt of the European Union to better involve NGO's in the policy could also be seen in the intervention in social policy more in general.

More specific for disability policy is the relatively high influence of international fora on the development of intervention in this policy terrain (Mabbett and Bolderson, 2001, p. 2). Especially the declarations and commitments within the Council of Europe and the United Nations have been important (ibid., p. 15). In 1975, the United Nations General Assembly adopted the Declaration on the Rights of Disabled Persons. The declaration recommended international organisations and agencies to include provisions in their programme to ensure the rights of disabled persons. Thereafter, 1981 was designated by the UN as the UN International Year of Disabled Persons. This was followed by the UN Decade of Disabled Persons between 1982 and 1992 (Oliver, 1996, p. 112). The outcome and crown of this decade was the adoption of the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities in 1993 (United Nations, 1993). The 22 rules are divided into three parts (Farr, 2001). The first four rules are preconditions for ensuring the participation of people with a disability on equal terms: awareness, medical care, rehabilitation and support services. Rules 5 till 12 describe some target areas in which society has a responsibility to ensure equal participation: accessibility, education, employment, income maintenance, family life, cultural amenities, recreation and religion. The final group (13 till 22) consists of measures to ensure the effective implementation of the rules, among others: information, 'mainstreaming', recognition of disability NGO's (rule 18), national monitoring of the rules



and international co-operation. In the 1994 White Paper on Social Policy it was stated that the Commission would prepare an 'appropriate instrument' endorsing the principles of the UN Standard Rules (Mabbett and Bolderson, 2001, p. 15). This was eventually done with the adoption of the Commission Communication and the Council Resolution, which were already thoroughly dealt with in the last chapter. In this way, we have returned to one of the strategies of the intervention in social policy in general: the general search for certain common values. Namely, as the UN standard rules were also signed by all EU member states, they could be used by the European Commission as a kind of common denominator to come to a new direction for European disability policy at a European Union level: the European Disability Strategy. This strategy comes down to an attempt for a better cooperation between the Commission and the Member States and between the member states themselves, the mainstreaming of disability policy issues in EU policy-making and the full participation of people with a disability to relevant policy areas. The main idea behind the strategy is ensuring the equal opportunities for people with a disability in society, based on the concept of the 'social model'. This approach was relatively easily accepted by the EU member states for several reasons: in the first place the 'social model' was already known from the international context, in the second place the 'social' model is a quite new approach for most member states in a national context and there is a void of anti-discrimination disability policy in most European Union member states. This opened ways for the EU to act in this policy area. In the third place, this kind of policy is relatively cost efficient for the European Union because this approach does not directly impose high costs on the regulator. Finally, the approach may be seen as more legitimate and more in line with what the governments of member states think the EU should engage in (Hvinden, 2002, p. 19). For the European Commission especially the concept of mainstreaming was attractive, because it 'allowed references to disability to be inserted into established areas of competence, instead of having to struggle to achieve recognition of disability policy as a new, separate area of competence' (Mabbett and Bolderson, 2001, p. 16). The modes of intervention that resulted from the European Disability Strategy will be dealt with below.

#### 4.2.2 Second Period: European Disability Strategy and Thereafter

The period after 1996 is the most active period for the European Union to intervene in the field of national disability policy. An important step in this period was the adoption of a Communication of the European Commission on 'Equality of opportunity for people with disabilities' (EC, 1996) and the subsequent European Council Resolution endorsing the Communication (European Council, 1996) that were already dealt with in the third chapter. Both documents see the Standard Rules of the United Nations as guiding principles for the Disability Policy at EU level, but that 'does not set out to repeat verbatim the contents of those rules. Nor does it simply mean a reiteration of commitments already made by the Member States within the United Nations system' (European Commission, 1996). Anti-discrimination and removing and identifying barriers to equal opportunities for people with a disability are two of the most important issues in the European Disability Strategy that was developed after 1996. Several documents about disability policy in the European Union from after this period speak about this subject.

The most important event in this respect was the inclusion of an anti-discrimination article in the Treaty of Amsterdam in 1997. According to article 13 of the EC Treaty the Council may take 'appropriate action' to combat discrimination on grounds of sex, racial origin, religion or belief, sexual orientation, age and disability. The article is not directly applicable in most European Member States and needs further action from the European Council and Commission to be effective. Therefore, a significant step on basis of this article was the

adoption of a framework directive on 'Equal Treatment in Employment and Occupation' in 2000. It covers equal treatment on several grounds, and prohibits among others direct and indirect discrimination on the workplace for people with a disability<sup>15</sup> (European Council, 2000). The Member States are responsible for the implementation of this directive. It should be done by December 2003, but the member states might ask up to three years of extra time for age discrimination and disability discrimination. Also a Community Action programme to combat other forms of discrimination was adopted next to the directive. This action programme runs till 2006 and covers treatment by public agencies and services (e.g. social security, education, judicial systems), media, participation in decision-making, and access to goods and services (including housing, transport, culture, leisure and sport).

Other important aspects of the disability strategy include the strengthening of the co-operation between the European commission and member states in disability policy; mainstreaming disability in policy formulation; and the promotion of full participation of people with a disability in policy-making and in society (European Commission, 2001a).

The co-operation between the European Commission and the member states in disability issues consists of four issues:

- strengthen cooperation with and between the Member States in the disability field
- promote the collection, exchange and development of comparable information and statistics and good practice
- raise awareness of disability issues
- take account of disability issues in all policy making and legislative work of the Commission - external and internal

The establishment of the High Level Group of Member States' Representatives on Disability, consisting of high civil servants from each national department responsible for disability policy, is one of the main instruments to *strengthen the co-operation with and between the member states* and to enhance the structured exchange of useful information between the European Member States on disability issues.

*Raising awareness about the abilities of people with a disability* is one of the important issues of the European Day for people with a disability that is organised every year and the European Year of Disabled People in 2003. The European Day is celebrated each year at the 3<sup>rd</sup> of December and is modelled after the 'International Day of Disabled People' of the United Nations. In addition, to give extra attention to disability issues at a European level the year 2003 was proclaimed as the European Year of People with Disabilities (European Council, 2001a). A guideline for this European Year is the Madrid Declaration that was proclaimed at the European Congress of People with Disabilities that was held in Madrid in March 2002. The text is a consensus between the European Disability Forum, the Spanish Presidency of the European Union and the European Commission (European Disability Forum, 2002).

To *take account of disability issues in European policy making* can be seen in the concept of a 'society open and accessible to all' or a 'barrier-free society' that can be distinguished in various documents issued by the institutions of the European Union after 1996. At a European Union level, special importance is given to Employment and the Information Society, with a clear emphasis on the first issue. A few developments in the field of employment policy on a European level can demonstrate the special attention in the European Union for disability and employment. The main achievement in this area is probably the anti-discrimination

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<sup>15</sup> Unless this would imply a disproportionate burden (e.g. 'undue hardship') on the employer.

framework directive on 'Equal Treatment in Employment and Occupation' that should be effective in the member states by the end of 2003. Furthermore, the European Employment Strategy includes a guideline on the 'employability' of people with a disability. The Employment Strategy is currently part of the Open Method of Co-ordination and will be dealt with more thoroughly in the fifth chapter. Thirdly, the Social Partners adopted a Joint Declaration on the Employment of people with disabilities on 19 May 1999. There also is the EQUAL initiative (2000-2006) in which social partners and other key players, including representatives of groups who are discriminated against in relation to the labour market, are involved in developing and testing out new ideas on job creation. Finally, within the European Social Funds there is an EMPLOYMENT programme that aims at people who have specific difficulties in finding or keeping a job or career. As a part of this programme there is HORIZON that is specifically directed at project funding for people with a disability. About 1700 projects already have received ESF funding under this programme.

In the field of the information society, a European Commission communication 'Towards a Barrier-free Society' has been adopted on the improvement of access for people with a disability, especially by aiming at the increase of mobility and access to the information society (European Commission, 2000). Furthermore, the Open Method of Co-ordination on Social Inclusion includes an objective on making the information society better accessible for people with a disability.

Regarding the mainstreaming of disability in policy formulation there is a Unit for the Integration of People with Disabilities that is responsible for mainstreaming disability matters within the European Commission. It organises regular meetings with representatives from other Directorates-General in the context of an Interservice Disability Group. Its purpose is to raise awareness of disability matters and to facilitate and encourage co-operation on disability matters among Directorates-General. Within the European Parliament, there is the Disability Intergroup that can be seen in the same light. The Intergroup forms a cross party group of European Parliamentarians from each of the 15 EU member states, supporting the rights of disabled people. In this way, 'the disability lobby has been successful in raising disability issues in areas as diverse as public procurement rules, telecommunication standards, and access standards in public transport' (Mabbett, 2003, p. 10).

The promotion of the full participation of people with a disability can in the first place lead to the involvement of people with a disability in the implementation and follow-up of relevant policies and in the second place to policies to enable people with a disability to fully participate in society.

Regarding the involvement of people with disabilities in the implementation and follow-up of relevant policies, Rule 18 of the United Nations Standard rules is important. It says: 'States should recognize the right of the organizations of persons with disabilities to represent persons with disabilities at national, regional and local levels. States should also recognize the advisory role of organizations of persons with disabilities in decision-making on disability matters' (United Nations, 1993). Although the European Union cannot be easily compared to a state, this article has been one of the foundations for the establishment of the European Disability Forum. By a regular dialogue of the European Commission with Disability NGOs, and especially with the European Disability Forum, the involvement of people with disabilities in the implementation and follow-up of relevant policies should be guaranteed.

To enable people with a disability to fully participate in society is related to the concept of a 'society open and accessible to all' or a 'barrier-free society' that was already dealt with above.

In short, the second period in disability policy clearly shows that the 'social model' and anti-discrimination has become an important central issue in European Union disability policy. The 'social model' reminds of the more general approach to social policy in the European Union in two ways. In the first place the model reflects the search for shared European values as 'respect for human rights and human diversity form an essential part of our shared European values' (European Commission, 1996). In the second place, the 'social model' is meant to fill in a niche in traditional disability policy. The model is presented as a new approach, which differs from traditional social welfare models of disability. Therefore, it can be seen as occupying a new policy space, away from existing social policies which are fastened to the different social policy traditions of member states (Mabbett, 2003).

Furthermore, as with social policy in general the attention of the European Union in disability policy seems to be focussed on a relatively small number of issues, mainly related to labour market policy. But by the use of mainstreaming the European Commission tries to increase this number. In this way a disability perspective can be brought into other policy areas. Within the European Commission and Parliament special forums have been created to mainstream the issues relevant for people with a disability in the policy formulation.

However, despite all this activity one can hardly say that disability policy currently is a major policy area at a European Union level. With the exception of the framework directive on 'Equal Treatment in Employment and Occupation', the intervention of the EU at national level is primarily dealt with by 'soft' non-binding modes of intervention like action plans, resolutions and communications. This has to do with the subsidiarity principle that leaves the primary responsibility for this policy area to the member states.

There might be some reluctance by the member states to go any further with adopting more binding legislation. For example, the European Disability Forum has made up a draft for a disability specific directive on anti-discrimination and strives to get this directive adopted in the European Union during the European Year. Attempts to get this adopted have until now not been successful.

#### 4.2.3 National Experiences

This section will shortly deal with some of the national experiences of the EU intervention in disability policy. This will be done with the help of the questionnaire that was sent out. Two of the questions in my questionnaire directly relate to the experiences with the intervention of the European Union in national disability policy. Question 2 in the questionnaire runs as follows: What is your opinion on current EU-intervention in the field of national disability policy? I asked for a positive, neutral or negative position and a motivation for this position and an explanation. The other question, question 3, asked for possible negative aspects when more EU intervention in national disability policy would be considered. I asked for a positive, negative or neutral answer and a motivation for this choice.

As was already mentioned in the second chapter, there were eight respondents on the thirty questionnaires that were sent out. This means that not every country is covered and that the answers are not generalisable for all of the European member states. Still, a presentation of the answers might give an idea about some of the experiences with the current EU intervention in national disability policy and the ideas about further intervention in some European Union member states.

Five of the respondents to my second question took in a positive position and three of them took in a neutral position. I will start with the respondents with a positive position and then present the respondents with a neutral position.

The Swedish, the Danish and French ministry all took in a positive position, together with the German and Italian disability organisation. The Swedish respondent argues: 'Shared experiences and agreements may enhance further development within disability policy'. For Denmark the position is motivated in the following way: 'The EU Disability year is a good way to increase information and awareness on the issues/problems facing people with disabilities the EU. The ministry of Social Affairs is not involved in the EU directives on employment (anti-discrimination etc.)'. The German Sozialverband VdK motivates: 'The adoption of the treaty of Amsterdam has been a huge step forward in European disability policy. Article 13 provides the legal base to fight discrimination of disabled people. On the basis of article 13 a directive on equal treatment in the workplace has been adopted that is currently being implemented on national level'. For the Italian disability organisation it says: 'propose an Human Rights approach based on non discrimination legislation and equal opportunity policies'.

Both the Dutch ministry and the Swedish and Portuguese disability organisation took in a neutral position. The neutral position of the respondent of Dutch government is argued by: 'EU intervention – also – helps to move the national disability policy agenda forward. Cooperation on a European scale enhances policy development and innovation'. The Swedish HSO says: 'the EU-intervention is not of such importance up today. Even when the EU actions are or could be positive the process is slow, take for example the bus and coaches directive or the lift directive. The enforcement of EU directives on employment for example is too weak'. The Portuguese Confederação Nacional dos Organismos de Deficientes motivates: 'The creation of Directives and the Decisions are not enough to their implementation, it's necessary to put more pressure on the Member States'.

Out of these answers it is difficult to draw clear conclusions. Nevertheless, when comparing the different motivations it seems that the possibilities for sharing experiences and the human right perspective are seen as positive elements of the intervention of the EU in national disability policy. But on the other hand more negative experiences with the EU intervention include the creation of European legislation that takes a lot of time and the fact the adoption of European legislation is not always accompanied by an effective enforcement.

Regarding the third question in the questionnaire, six out of the eight respondents indicate that they see negative aspects when more EU intervention in this policy area would be considered. These respondents are all of the governmental organisations and the respondent of the German and Swedish disability organisation. The Danish respondent argues: 'It is difficult to intervene in national social policy because of their very different financial set-up. Furthermore EU-intervention could undermine well-established arrangements and possibly result in a lower general standard in those countries'. For the Netherlands it says: 'European wide harmonization of disability policy may result in economizing of service provision in "rich" countries'. The respondent from the Swedish ministry argues: 'Swedish disability policy is rather high developed. There might be a risk that minimum standards will have negative effect on the provisions and lower standards in Sweden'. The respondent from the French ministry of health argues: 'lead to uniformication among the EU member states'. The respondent of the German disability organization says: 'It has to be prevented that standards in the national states are lowered due to European "standardization"'. The Swedish disability organisation HSO argues: '(Namely) if there would be a restrictive and conservative trend in the EU-policy'.

Both the Portuguese and the Italian disability NGOs do not mention negative aspects when considering further intervention, and the Italian Consiglio Nazionale sulla Disabilità/DPI adds: 'if it continues to be based on Human Rights approach'.

Although also in this case it is hard to draw any strict conclusions, the answers to this question certainly give an argument why the intervention of the EU in national disability policy should not go to far. The main argument comes down to the fact that setting European standards in disability policy could possibly lower the standards in countries with a relatively high standard of disability policy, and thus a too strict form of uniformisation or harmonisation between the EU member states might not be favourable.

It is striking that the respondents from Portugal and Italy, two of the countries of which I found out of having a somewhat lower standard of disability policy in the second chapter, did not mention this argument. It might be that these countries would only gain more from setting a (higher) standard in disability policy at a European Union level than countries that already do have a relatively high standard.

#### 4.2.4 Barriers, Modes of Intervention and Experiences in EU Disability Policy

In the second section of this chapter the specificity of disability policy in the context of the European Union intervention in social policy was dealt with. When looking at the development of disability policy at EU level there are some striking similarities with the development of EU social policy in general, but there are also some differences. I will start with the similarities. As with most other areas of social policy the European Union does originally not have many competences in disability policy and certain barriers had to be overcome to develop modes of intervention this latter policy area. Similarities with the barriers to social policy more in general are that the main part of policies for people with a disability is already provided for by the national governments themselves and also that the European Union only has limited financial resources to act in disability policy. Furthermore, it was said that the member states were very reluctant to let the EU influence their disability policy and that disability policy does highly differ among the EU member states. This explains why mainly non-binding and relatively flexible Action Programs, recommendations and resolutions were adopted in this policy area.

The first attention for disability policy at a European level was in the Social Action Programme of 1974 that included a section on disability, aiming at the high unemployment level of people with a disability. The first active period of the European Union in disability policy starts in the 1980s when some European Commission recommendations and specific action plans in disability policy were issued. However, this 'soft' approach was in a certain way relatively successful in the disability policy area as it opened ways for a growing activity of the EU in disability policy in later years. One of the significant effects of the 'soft' approach was that links were set up between supranational and sub-national organisations in the field of disability policy and that people with a disability with were partly as a consultative body. So political channels could be created that bypassed the national governments and also footholds in disability policy could be gained in the national member states. The involvement of non-state actors was also characteristic for EU social policy in general.

The main differences with the development of EU intervention in social policy relates to the relatively high influence of international fora on the development of the intervention in disability policy and influence of the 'social model'. Regarding the influence of international fora, especially the declarations and commitments within the Council of Europe and the

United Nations have been important, and more in specific the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities of 1993. These rules are a primary example of the 'social model' on disability and lies behind the European Disability Strategy. The 'social model' sees disability as a product of disabling environments and has a 'human rights' perspective. This means that anti-discrimination and equal opportunities are the current keywords in European Union disability policy. The adoption of an anti-discrimination article in the EC Treaty and the framework directive on 'Equal Treatment in Employment and Occupation' that is based on this anti-discrimination article are main achievements in this respect. In a certain way the 'social model' also reflects the EU intervention in national social policy as the model involves the search for common values and also fills in a niche in traditional disability policy. This might explain part of its relative success.

Still, the EU disability policy is hardly a major policy area when compared to other EU social policy areas. And the intervention in national disability policy is currently mainly focussed on just a certain number of issues, primarily related to employment and anti-discrimination. By the use of mainstreaming it might be that this number can be extended to other policy areas that are relevant for people with a disability. However, the subsidiarity principle and the reluctance of the member states might also hamper the introduction of other (binding) modes of intervention in national disability policy.

Some of the current experiences with the intervention of the EU in national disability policy were given on basis of the results to my questionnaire. Despite the difficulties to draw strong conclusions out of these answers one could say that on the one hand the possibilities for sharing experiences and the human right perspective are seen as some of the positive elements of the intervention of the EU in national disability policy. On the other hand the time-consuming creation of European legislation and the lack of effective enforcement in European legislation are seen as some of the more negative aspects. A negative aspect if more intervention in national disability policy would be considered, is the fear that setting European standards in disability policy could possibly lower the standards in 'rich' countries that might lead to a further economisation in disability policy.

### 4.3 Conclusion

The main question to be answered in this chapter was: *What are the experiences so far with EU-intervention in social policy areas and disability policy in particular?*

In most areas of Social Policy, the intervention of the EU has for a long time been rather limited. Despite the development of harmonisation directives in some areas of employment policy and in the policy area of equal opportunities between men and women, attempts to introduce harmonisation directives in other areas of national social policy often faced strong political, economic and institutional barriers. On the political side, the election of conservative politicians in a member state often meant a block for more harmonisation in social policy. This was the case with the United Kingdom during the major part of the 1980s and early 1990s. An economic barrier is the fact that the setting of too high European standards in social policy was seen as a 'competitive disadvantage' and the relatively little money that was available to intervene in the social policy areas. A more institutional aspect is the fact that welfare state arrangements in the different member are simply quite hard to harmonise because they are so divergent and deeply institutionalised in the national policy structure. Strategies to overcome these barriers include the search for the underlying values of social policy in the 'European Social Model', and the involvement of more non-governmental actors in EU Social Policy. In the course of time, more 'soft' modes of intervention, like Social Action Programs, recommendations and White Papers were developed in the field of social policy. In general these modes of intervention leave more policy space to the member states

themselves and therefore were more easily accepted by the member states. Especially since the introduction of the subsidiarity principle in the Treaty of Maastricht, the recognition of diversity instead of harmonisation has become the dominant issue in the field of EU social policy.

In the area of disability policy, the EU intervention faced the same political, economical and institutional barriers. However, by the use of internationally accepted documents and the involvement of (disability) NGOs some modes of intervention could be set up in this policy area. From 1996 onwards, a new European Disability Strategy has been set up based on the 'social model' on disability. This means that the keywords in current EU intervention in national disability policy area are anti-discrimination, equal opportunities and mainstreaming. Recognition of diversity, instead of harmonisation also is the main approach in disability policy. Several non-binding recommendations and resolutions aiming on anti-discrimination and a 'Barrier-free society' for people with a disability have been issued over the last decade. Still, the current European Union intervention in national disability policy is relatively limited and mainly focussed on a relatively small number of issues.

The experiences with current EU intervention in disability policy are relatively positive. But the setting of common European standards in disability policy would, according to one of the answers to my questionnaire, generally not be favoured as this could lower the disability policy standards in the 'rich' countries. The relatively positive experiences of EU intervention in national disability policy might make a further intervention of the EU in national disability policy possible. However, the fear for over harmonisation and the influence of the subsidiarity principle might make it rather difficult to find acceptable and effective ways for this intervention. As the Open Method of Co-ordination opens opportunities for co-operation in disability policy on EU level, but leaves a lot of policy space to the member states themselves, this method can be especially attractive for the national governments. Therefore, in the next chapter this method will be further presented and the suitability to apply the method in disability policy will be investigated.



## 5 Open Method of Co-ordination and Disability Policy

The main question to be answered in this chapter is: *Is the Open Method of Co-ordination a suitable governance tool to intervene in social policy issues and in disability policy in particular?*

In the first section a closer look is given on the development of the Open Method of Co-ordination, some of its characteristics are treated and it is presented how the method is different from other modes of EU governance. In that way I am better able to say in what situations this method might be effective. In order to further elaborate the answer, also the experiences in two of the policy areas where the method is applied to are mentioned. Then I will look at the aspects of disability policy the Open Method of Co-ordination might be effective in and the experiences with the objectives and guidelines in the current Open Methods of co-ordination. The main question is dealt with in the conclusion.

### 5.1 What is the Open Method of Co-ordination?

This section is devoted to the Open Method of Co-ordination and the relation of this method to other modes of intervention in EU social policy, according to the following question: *What is the Open Method of Co-ordination and in what sense can this method be distinguished from other modes of governance?* I will at first deal with the development of the Open Method of Co-ordination and some of its key features and then with the Open Method of Co-ordination in relation to other modes of governance. At the end of the section I hope to be able to say something about particular situations the open method of co-ordination might be useful in.

#### 5.1.1 Development of OMC

The ‘Open Method of Co-ordination’ (OMC) was introduced at the Lisbon European Council in March 2000. The method codified the practices developed under the Employment chapter and in the Cardiff Process. These processes will shortly be dealt with below. The Open Method of Co-ordination consists of four elements (European Council, 2000):

- fixed guidelines for the European Union combined with specific timetables for achieving goals they set in the long, medium and short term;
- establishing, where appropriate, qualitative and quantitative indicators and benchmarks against the best in the world and tailored to the needs of different member states and actors as a means of comparing best practice;
- translating these European guidelines into national and regional policies and by setting specific targets and adopting measures, taking into account national and regional differences;
- periodic monitoring of the process, evaluation and peer review, organised as a mutual learning process

In general, the Open Method of Co-ordination comes down to the following: on basis of guidelines<sup>16</sup>, that are proposed by the European Commission and adopted by the European Council, member states set national targets and periodically write National action plans. Then the European Council and Commission reviews how each of the member states has put the guidelines into practice. The European Council may issue a recommendation to the member states if a member state did not comply with the guidelines<sup>17</sup>. The European Commission writes a Joint Action Plan on basis of the different National Action Plans, and can propose

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<sup>16</sup> Also called objectives in some OMCs.

<sup>17</sup> This is not true for all policy terrains OMC is applied to.

amendments to the guidelines after which the process can start over again. Some of these elements will be elaborated in some more detail in section 5.1.2.

One of the main sources of the Open Method of Co-ordination lies in the development of employment policy in the European Union in the 1990s. In the early and mid-1990 all over Europe the unemployment rates were tremendously high and EU initiatives were discussed to do something about the rising unemployment levels. At the Council of Essen in November 1994 main steps for an unemployment initiative were taken. The European Council called upon the member states to take employment-generating measures in five key areas: increasing vocational training for the young; facilitating the introduction of more flexible forms of work; the moderation of wage increases; the reducing of non-wage labour costs and to improve the effectiveness of labour market policy (especially by activating people that were especially hard hit by unemployment). The member states were urged to transpose these recommendations into multi-annual programs. The ECOFIN council and the Labour and Social Affairs Council were asked to keep track of the employment trends in the member states, to monitor the relevant policies, and to report this annually to the Council on further progress (Cameron, 2000). A weakness in the system was the lack of a real control system or peer process. However, at least employment policy stayed at the agenda of subsequent Council meetings.

Around the same time an agreement should be reached about the Stability and Growth Pact (SGP). This pact can be seen as a continuation of the Maastricht criteria that formed a prerequisite for the euro-zone member states to take part in the European Monetary Union (EMU). The SGP is mainly meant to avoid excessive government deficits. The SGP was not easily approved by some of the EU member states.

At the Council Meeting in Amsterdam (1997) the Stability and the Growth Pact discussion and the discussion about a common European employment strategy came together. The newly elected socialist French government was hesitant to approve the SGP. In exchange for its approval on the Stability and Growth Pact a new employment title was introduced in the EC Treaty (articles 125-130). However, not Lionel Jospin (French president), but Tony Blair (British prime minister) and Helmut Kohl (German chancellor) had main influence in the eventual outline of the employment title: 'Blair and Kohl joined together to rule out any harmonization in the area of employment policy, and to block any major EU spending on employment programmes (...) In short, the new treaty provisions place employment clearly on the EU agenda, yet the approach is voluntaristic and falls short of granting the Union any significant regulatory or redistributive capacity' (Pollack, 1999, in: Kleinman, 2002, p. 101). Next to the adoption of this article, a Resolution was adopted that stated that employment issues should stay at the top of the political agenda of the European Union. Furthermore, it was agreed that Luxembourg would organise a meeting on employment during its next EU Presidency.

At the Jobs summit in November 1997 in Luxembourg it was arranged that the employment article should be put in effect immediately. This meant that from 1998 the employment policies of the European Member States would be coordinated according to employment guidelines issued by the Labour and Social Affairs Council. This can be partly seen as an elaboration and formalization of the process of multi-annual employment plans that started in Essen. But the 'Luxembourg Process' or European Employment Strategy (EES) also involves the writing of National Action Plans on basis of the employment guidelines, with where possible quantifiable objectives. The NAPs, as well as a report on the implementation of the guidelines are sent to the European Commission and Council. The Commission, and the

Labour and Social Affairs Council then make an assessment and categorization of the national reports, issues recommendations to the member states and decide about new initiatives at community level, upon which new employment guidelines are written.

A similar approach to employment policy was agreed in the field of Structural Policies (Hodson and Maher, 2001, 723). The process started at the summit of Cardiff. The scope of the 'Cardiff' process is much broader than the Luxembourg process, as it encompasses product, service and capital markets, labour markets and public finance.

The central thrust of the Lisbon conclusions was to extend the practice of the 'Luxembourg' and 'Cardiff' processes, then codified as the Open Method of Co-ordination, to other policy areas. These areas should be in line with the general goal for the next decade of the European Union, as formulated in Lisbon: 'to become the most competitive and dynamic knowledge based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' (European Council, 2000). At the Lisbon European summit, it was also agreed that one Council Session a year, the spring session, would be devoted to economic and social issues.

At the Council Meeting in Nice in the second part of 2000 the Social Policy Agenda for 2000-2006 was adopted. Three of the issues in this Social Agenda should be dealt with as a social OMC: more and better jobs, social inclusion and the reforming of pension systems.

In Stockholm in March 2001, the first summit devoted to economic and social issues was held. It was agreed that OMC would be applied to pension systems. During this same Swedish Presidency, at the Gothenburg Council, the possibility was envisaged to apply OMC to the area of health care and care for the elderly.

At the Laeken Summit in Belgium in September 2001, the first joint report on Social Inclusion and Poverty was presented. The first National Action Plans on Pension Reform were presented in the autumn of 2002. National Action Plans in the field of Youth Policy are planned for 2003. Other policy areas may follow in the future.

### 5.1.2 Guidelines, Benchmarking, Targets and Monitoring

The definition of the Open Method of Co-ordination mentions four elements that can be used for a further elaboration and evaluation of this method: fixed guidelines, best practice/benchmarking/indicators, translation to national targets and periodic monitoring<sup>18</sup>. These elements are shortly presented below together with the application of these elements in the Open Method of Co-ordination.

#### *Guidelines*

The guidelines in the Open Method of Co-ordination are targets that are set at EU-level in common agreements. But the member states can follow their own path to reach these targets. This process might remind to the subsidiarity principle, but there is an important difference. Whereas the subsidiarity principle deals with the best suited level of policy-making and decision-making, the Open Method of Co-ordination proceeds 'via a widely meshed interactive process, in which the actors – ranging from those at European to local level – have articulated their strategy and actions in a multi-level logic' (De la Porte, Pochet and Room, 2001, p. 294). Hodson and Maher (, 2001, p. 728) speak about subsidiarity as a 'static principle' with a 'continuing emphasis on hierarchy of structures', whereas the Open Method is 'dynamic in nature' and 'heterarchical'.

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<sup>18</sup> Part of this evaluation is based on Pot (2003)

It means that within the OMC no explicit boundaries are drawn between what can be done at member state level and what should be done at EU level, but that it searches for broadly accepted principles on a given policy terrain. These broadly accepted principles could then be enacted as guidelines. This element might make the OMC most useful in policy areas where the authority of the European Union is limited and where it has little competences, but where there is a consensus among the member states on a common problem and on common targets that might enable a solution.

*Best Practice, Indicators and Benchmarks*

To progress towards the common target there is a system of sharing best practices. In this way the member states can directly confront their own plans and experiences with the plans and experiences of other member states and so they can easily measure or adjust their own performance and learn from each other (Trubek and Mosher, 2001, p. 15). This might indeed be a good system, but there are also some caveats with a system of transferring and comparing of national policy arrangements. Adnett (2002, in: Groenendijk, 2002, p. 26) states that in the first place it might be problematic to compare policies because very often policies are intertwined to other policy arrangements, and comparing different policies might be useless if you do not look at the policy context where it derives from. In the second place policy outcomes are not always determined by the policy measures, and thus transferring a policy measure to another state might give very different outcomes than in the originating state. Finally, policy outcomes must be viewed in a broader context, e.g. in UK a low employment rate might be problematic because the household income is very sensitive to labour market participation, whereas in the Netherlands an extensive redistributive systems that protects the households from the consequences of low participation exists. But if you take the broader context into account it also complicates the identification of best practices.

The progress in the Open Method of Co-ordination is measured by a way of benchmarking. A benchmark is a standard or point of reference against which things can be assessed or compared. This can be initiated by the organisation itself ('bottom-up') or it can be imposed from outside ('top-down'). In the first case the organisation wants to assess itself and it can choose those benchmarks that are appropriate to the own specific objectives. In the latter case the aim is to improve the performance across the sector where it is assumed that all the organisations have the same objectives and can be scrutinised by the use of these benchmarks (De la Porte et al., 2001). Applied to the Open Method of Co-ordination the bottom-up approach is more a voluntary process in which countries can decide on what it thinks is useful and what can be the best practice for the member state. In this way every country can learn from each other, also the 'better performing countries'. The top-down approach involves an equal learning on the same practices and a ranking of countries. It is a kind of country examination. This approach implies the use of indicators. By the use of indicators one can monitor the progress in a policy area over time and across the different member states. Both quantitative and qualitative indicators are foreseen. However, in some policy terrains it is very difficult to establish commonly agreed indicators and statistics. Thus in some OMC's the indicator system is not worked out yet.

In the bottom-up approach the pressure for benchmarking can come from the 'pressure' of other member states or from 'pressure' from inside the Member State. The first case is also referred to as 'peer pressure', whereas the second case involves the integration of elements of the civil society in the Open Method of Co-ordination. The latter issue will be treated below when speaking about the translation to national targets.

In each of the approaches the European Commission plays a different role. In the top-down approach the Commission decides on the indicators and the examination of the member states can involve the ranking on these indicators. In the bottom-up approach the Commission plays a more technical role in ensuring that each country has the information available on the best practices in the other member states. This distinction is important when dealing with the experiences with the European Employment Strategy (EES) and the OMC in Social Inclusion in the second part of this chapter. In the EES the Commission can play a more active role, as this is the only OMC that has a Treaty base.

In practice, one finds elements of both approaches in each of the applications of the Open Method of Co-ordination on different policy terrains. But because the European Employment Strategy is the only OMC that is integrated in the EC Treaty, one can say that the top-down approach of benchmarking is more eminent in this strategy than in the more recent applications of the Open Method of Co-ordination, such as Social Inclusion and Pensions. Still, the first Draft Joint Report on Social Inclusion also included a form of performance ranking, but this was highly criticized by the individual member states. The ranking even had to be omitted in the final Joint Report in order to get adopted by the member states (Ferrara, Matsaganis, Sacchi, 2002, p. 232). On the other hand, the current system of 'peer review' also has its caveats, as only less than one hour is dedicated to each National Action Plan for peer review (when speaking about EES) and this included a presentation, two comments from other member states and discussion. Such a short session might not produce an in-depth assessment and a useful feedback mechanism (Trubek and Mosher, 2001, p.16).

#### *Translation to National Targets*

The translation of the guidelines to national and regional targets is crucial for the Open Method of Co-ordination as the authority for reaching the targets rests principally with the member states themselves. It is also important to consult the interest groups in civil society in this process of translating the guidelines into national and regional targets. Ignoring this fact might lessen the legitimacy and efficiency of the Open Method of Co-ordination for several reasons. In the first place the OMC could be used as a kind of scapegoat, because member states could pursue unfavourable changes on a policy terrain and accuse the European Union of these unpopular decisions. In other words 'the open method allows domestic political actors to shift the blame for unpopular decisions to the EU, without having to shift any real control' (Mosher, 2000). In the second place, the member states could just write down in their National Action Plans (NAP) what they are doing anyway. Then it just shows the current policies, regardless of the targets set for the EU. The OMC then would be an example of symbolic politics, so it gives the appearance of responding to a policy crisis, but masking any real action (ibid.).

These problems might, according to some authors, be overcome by the use of a bottom-up benchmarking system, more (domestic) public scrutiny and the better integration of the Open Method of Co-ordination in domestic policy-making (De La Porte et al., 2001). In such a system: 'each EU member state might benchmark other member states by reference to its own policies. This would exploit the use of benchmarking as a tool for raising standards of performance, while at the same time recognizing the diversity of national policy objectives' (ibid., p. 299). The pressure for change then should not come from above - from the European Union level - but from the national and sub-national policy actors in the individual member states.

### *Periodic Monitoring*

The process of periodic monitoring, by the system of peer review and mutual learning is an important element for the continuation of the process. Furthermore, in the European Employment Strategy the European Commission may issue recommendations that can be taken over by the European Council and presented to the individual member state. These recommendations should then be obeyed and this is measured in the following period. In OMC's where the issuing of recommendations by the European Commission is not provided for, the periodic monitoring should take the form of 'peer review' and (domestic) public scrutiny.

The periodicity the Open Method Co-ordination is applied depends on the policy area under consideration. Whereas the European Employment Strategy is carried out annually, most of the other OMC's are carried out every two years.

### 5.1.3 Distinction of OMC from other Modes of Governance

To mark the Open Method of Co-ordination in the landscape of different modes of EU governance, one should at first know what modes of governance could be distinguished at EU level. This section deals with the ideas of Scott et al. (2002) that discerns in the EU modes of governance: 'the traditional Community Method', 'new, old governance' and 'new governance'. The exact differences between these modes of EU governance will first be dealt with. The Open Method of Co-ordination is seen as an example of 'new governance'. This latter concept then will be elaborated in some more detail, and the extent to which the Open Method of Co-ordination fits in that model of 'new governance' will be elaborated.

Furthermore, in the end an article by Mosher (2002) is presented that tried to find out some of the functional and political 'advantages' of the Open Method of Co-ordination over more traditional modes of governance.

The most traditional mode of governance at EU level is the Classical Community Method (CCM). The traditional Community method is highlighted in the recent White Paper on Governance of the European Commission (European Commission, 2001). According to this paper, the CCM is based upon: the Commission's exclusive right of legislative initiative; the Council of Ministers (representing Member States) and the European Parliament (representing citizens) adopting the legislative and budgetary acts; and the European Court of Justice that guarantees respect for the rule of law. Other important features of CCM include the tendency to use binding legislative and executive acts at EU level, and to impose more or less uniform rules for all member states (Scott and Trubek, 2002, p. 2). The two main instruments in this traditional method are regulations (art. 249 EC, 2<sup>nd</sup> paragraph) and directives (art. 249 EC, 3<sup>rd</sup> paragraph). A regulation is binding in its entirety and is directly applicable in all member states, whereas a directive is only binding upon the result to be achieved and leaves the choice of the form and method to the national authorities. For a long time, the European Union relied heavily on harmonization directives to coordinate actions of the member states and to secure regulatory uniformity (Mosher, 2000). However, member states were quite reluctant to hand over part of their sovereignty to the European level in certain policy areas, especially in social policy. The authority of the EU to act in policy areas that are not in its exclusive competence became restricted by the subsidiarity principle. The principle is formulated in article 5 of the EC Treaty.

As a reaction to the reluctance to hand over their sovereignty and because of the subsidiarity principle, in the course of time different variations have emerged from the Community Model (Scott and Trubek, 2002, p. 3-4) that did not lead to binding regulations in the end. Scott and Trubek refer to this form of governance as 'new, old governance': it clearly has elements of

the CCM, but also departures from it in certain respects. Three elements are specifically mentioned that are seen as a departure from the CCM: flexibility, comitology and the involvement of different actors. Regarding flexibility, several situations have been created in which the legislative process is used to produce non-binding laws or to allow substantial flexibility in the outcome. The main example is the development of framework directives, where substantial flexibility is allowed to Member States in the implementation of directives. Often, to make sure there is still some sort of uniformity, the flexibility is often accompanied by a certain degree of procedural descriptiveness that is also not characteristic of CCM. With comitology the innovation lies in 'the introduction of implementation committees into the decision-making process'. The involvement of different actors primarily refers to the expansion of the role of civil society in the decision-making process, while the role of civil society is still to give advice rather than sharing responsibility for decision-making.

Furthermore, some examples are dealt with that are presented as alternatives to the CCM, instead of departures from it. The first example that is dealt with is the partnership concept that was developed in the context of structural funding (Scott and Trubek, 2001, p. 4). These partnership committees do have a significant authority in selecting projects to receive government funding, but next to representatives of the Commission and the member states, several other competent bodies are involved. The second example is the emergence of the 'social dialogue' (ibid.). This system allows representatives of employers and employees to enter into voluntary agreements that can subsequently be enacted as directives by the European Council. This means that the initiative for the directive lies not with the Commission, but with the social partners.

But the Open Method of Co-ordination is currently probably the most radical new form of a European governance tool that emerged outside the scope of the traditional Community Method. Unlike the classical method, the open method is not designed to produce binding laws, but to co-ordinate the actions of the European member states in a given policy domain by creating conditions for mutual learning that hopefully leads to a degree of voluntarily policy convergence. The member states agree upon a set of policy objectives, but remain free to pursue these objectives in a way that fits best in their own national context in their own speed (ibid., p. 4-5).

The examples of the 'new, old governance' and the alternatives to CCM can be brought together as forms of 'new governance'. Other authors may use other terms, for example, Sabel (2000 in: Mosher, 2000) refers to a 'post regulatory approach to governance' when speaking about the Open Method of Co-ordination. What this 'new governance' or 'post-regulatory approach' is, is further worked out in six characteristics that distinguish these modes of governance from more traditional modes of policy making (Scott and Trubek, 2002, p. 5-6). Not every example of 'new governance' includes all of these elements, but it might still give an idea of how 'new governance' might differ from the more classical modes of EU governance. The elements that are mentioned are: increasing participation by representatives of civil society, the co-ordination between different levels and organisations, the possibility of co-ordinated diversity, deliberation among stakeholders, flexibility of the outcomes, and the possibilities for knowledge creation. These elements will first be some more elaborated and then related to the Open Method of Co-ordination.

In the first place, 'new governance' can be characterised by an extension in the policy-making by the participation of representatives from civil society. This also might entail a greater degree of power sharing than with traditional modes of governance. Decision-making no longer only involves the traditional governmental organisation, but can be a system of

reciprocal problem solving and information exchange among different interest organisations, from both the government sector and the private sector. This also brings me to the second characteristic, because 'new governance' asks for a mechanism of co-ordination to bring the various levels of government and different actors together and to facilitate this dialogue and co-ordination.

In the third place, 'new governance' accepts the possibility of 'co-ordinated diversity'. This means that it is not directed at creating uniformity across the Union but that it allows for diversity in the outcomes. This asks for governance mechanisms that co-ordinate Member State policies instead of harmonisation. Fourthly, 'new governance' can encourage a better deliberation or discussion among the different stakeholders. This might enable a better problem solving and a higher support for the outcomes.

Another characteristic of 'new governance' is the flexibility because it is not primarily based on hard laws, but rather on open-ended outcomes and revisable guidelines. This allows for diversity in the outcomes and enables exchange of experiences and knowledge.

How does the Open Method of Co-ordination fit in this short characterisation of 'new governance'?

To start, I will take the first two characterisations together, as they both relate to the participation of different interest organisations, private and public. In the Open Method of Co-ordination the relevant national stakeholders from civil society and from different government levels can be invited to participate in the writing of the national action plans. Also, the relevant stakeholders could play a role in the monitoring of the process at national level. This issue also relates to the fourth characterisation of 'new governance' about the encouragement of discussion among the different stakeholders in a policy terrain. In OMC, this deliberation among different stakeholders might take place during the evaluation of the guidelines and the translation of the guidelines to national and regional targets. How these three characteristics could go together is shown in the following remarks on the EES: 'many levels and units of government must cooperate to produce the National Action Plans. This must be done in consultation with regions and social partners. The annual processes involves discussion between Member State and Commission officials, and creates contacts among officials and social partners from different Member States (Trubek and Mosher, 2001, p. 9). All of these issues ask that the stakeholders are aware of the possibilities for participation and are also integrated in the process. Whether this indeed is the case will be evaluated in the next section. Relating to the second and fifth characteristic, the OMC is a relatively 'flexible' mode of governance that leaves space for national priorities and lacks a binding sanction system. There is no attempt to control the outcomes. The guidelines are commonly agreed at EU level, but the guidelines are then translated into national and regional priorities. In other words: 'The desire of EC to control outcomes (...) is overcome by recognition of the importance of diversity at the national level in relation to policy formation, legal frameworks, ideational references and popular perceptions' (Hodson and Maher, p. 731). The flexibility of the system and the lack of a sanction system might mean that especially in sensitive policy areas, where member states are quite reluctant to accept any intrusion from the European Union, the Open Method would be more easily accepted than more traditional modes of governance. In other words: 'It could be said that the EES trades off the legal force of traditional regulations so that the EU can deal with some core areas of social policy that were hitherto solely reserved to the Member states'.

The Open Method of Co-ordination can also be compared to other modes of governance in a different way. Mosher (2000, p. 6/7) has tried to find out the functional and political



‘advantages’ of the Open Method of Co-ordination over the traditional regulation by harmonisation and mutual recognition with regulatory competition<sup>19</sup>.

Regarding the functional advantages he mentions that OMC allows policy initiatives to be adapted to the diverse institutional arrangements, legal regimes and national circumstances in the EU. Furthermore, the open method allows member states to move at different speeds in reforming policy, while attempting to keep the member states together in the same direction. It also leaves space to opt-out. This means that it is attractive to member states that are opposed to regulations that permanently would take away their responsibility. Therefore, the Open Method of Co-ordination is often applied to ‘policy areas where member states seem capable of proceeding individually but may be unsure of the best way to take’. Furthermore, the method institutionalises the sharing of member states’ experiences and allows for cross-national policy learning. Finally, OMC permits simultaneous movements that are also adapted to local circumstances. Eventually he concludes: ‘Compared to traditional regulation, open coordination seems to offer the possibility of acting in areas where full harmonization is blocked. Compared to mutual recognition and regulatory competition, it allows for policy learning while also allowing policy coordination and possible convergence’.

Regarding the political advantages of OMC, he mentions that it could offer a possibility to overcome the reluctance of Member States to accept EU policies alien or disruptive to their national arrangements and thus it allows more EU action in traditionally sensitive policy areas. This might become a disadvantage as well as the open method can allow domestic political actors to shift the blame for unpopular decisions to the EU, without having to shift any real control. OMC might then be an example of symbolic politics, so it gives the appearance of responding to a policy crisis, but masking any real action. The last two problems could be partly overcome by (domestic) public scrutiny and the better integration of the Open Method of Co-ordination in domestic policy-making<sup>20</sup>.

In general, one can say that the Open Method of Co-ordination is a more flexible method than the traditional legislative measures as it has open outcomes and lacks a real sanction system. Furthermore, more possibilities are created for different government levels and interest organisations to become involved in European Union policy-making. This might enable a process of interactive policy learning. These features make OMC probably an attractive method in policy areas where full harmonisation at a European level is not possible, but where there still is a political desire to act jointly on basis of co-ordination and policy learning.

But there might also be some (political) risks attached to the Open Method of Co-ordination. On the one hand, the blame for taking unpopular domestic decisions could be shifted to the EU level. On the other hand, the OMC could in other situations give the appearance of dealing with a policy problem, but masking any real action. A good integration of the Open Method of Co-ordination in domestic policy making might prevent part of these political risks.

If the political caveats could be overcome, the Open Method of Co-ordination might in theory be a good mode of governance to disability policy as it can deal with the different institutional arrangements of disability policy in the member states. The system might promote the exchange of information and best practices, which is one of the key elements in the European Disability Strategy.

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<sup>19</sup> Mutual recognition was introduced in the EU in the 1980s as a reaction to the experienced limits of harmonisation in the 1970s. Mutual recognition ‘allowed the Union to surmount many trade barriers caused by variation in legal arrangements’ (Mosher, 2000). It also set in motion a process of ‘regulatory competition’ in which the ‘best’ regulation would eventually prevail. However, there is a risk of a regulatory ‘race to the bottom’ that could undermine the European Social Model.

<sup>20</sup> see: De La Porte, Pochet and Room, 2001

But before further dealing with the possible aspects of disability policy an OMC might be effective in, the chapter will first continue with some of the current experiences with the Open Method of Co-ordination in Employment and Social Inclusion. In that way some more practical experiences can be brought into the discussion.

## 5.2 Experiences with OMC in Employment and Social Inclusion

The Open Method of Co-ordination is currently applied to a wide arrange of policy areas like employment, social inclusion, pension systems, health care, education, information society etc. This section describes some of the experiences the ‘European Employment Strategy’, and the OMC in Social Inclusion. These experiences might be relevant for the evaluation of the suitability of the Open Method of Co-ordination in disability policy. The selection of experiences with the Open Method of Co-ordination is restricted to Employment and Social Exclusion. These OMC’s are currently longest in use and thus more information is available on these processes. Furthermore, both the OMC on Social Inclusion and on Employment include an objective or guideline that is related to people with a disability. The section starts with some of the main differences between both processes, and thereafter some of the experiences with the OMC’s individually will be presented. The attention will on the one hand be relatively general, but on the other hand the main focus will be on an evaluation of the relevant guideline and objectives for people with a disability in both processes. The section concludes with a short evaluation of the experiences with both processes on basis of answers to the questionnaire.

### 5.2.1 Differences between EES and Social Inclusion OMC

The figure below gives an overview of the main differences between the European Employment Strategy and the OMC on Social Inclusion (also referred to as: NAP/incl). As already mentioned above one of the most striking differences between both processes is that the European Employment Strategy is included in the EC Treaty, whereas the NAP/incl has a much weaker Treaty base. The Employment process is based specific provisions about European guidelines and Commission recommendations in the employment title of the EC Treaty (art. 128), whereas the Social Inclusion process is now one the fields where the community ‘only’ ‘shall support and complement the activities of the member states’ (art. 137). This fact has several consequences.

It at least means a weakening of the role of the European Commission in the Social Inclusion process. It also means that the European Council lacks the potential to issue recommendations to the member states if they do not comply with the Social Inclusion objectives. Not directly related to the Treaty base is the fact that where the EES speaks about guidelines, the NAP/incl speaks about objectives. The difference is that the guidelines in EES already can be quite vague, but that these guidelines are still relatively specific when compared to the ‘objectives’ that are stated in the Social Inclusion OMC. A last difference has to do with the periodicity; the Employment NAPs are written every year, whereas the Social Inclusion NAPs are only written once every two years.

	<b>Employment</b>	<b>Social Inclusion</b>
<b>Treaty base</b>	Art. 128 EC, allows the Council to issue guidelines and recommendations	Art. 137 EC, allows the Community to 'Complement the activities of the member states'
<b>Periodicity</b>	Annually	Biannually
<b>Recommendation to member states</b>	Yes	No
<b>Implementation of guidelines</b>	Yes	No (use of 'appropriate' objectives)

Figure 1 Differences Between Employment and Social Inclusion Source: Ferrera et al. (2002)

### 5.2.2 Experiences with EES

The reasons for the development of EU intervention in employment policy and the development of the European Employment Strategy were already given in the beginning of this chapter. So, on this point, only a short outline of the EES should suffice as introduction. In general, the European Employment Strategy is clustered around four pillars:

- employability,
- development of entrepreneurship,
- adaptability
- equal opportunities

Each of the pillars in the process consists of a set of 2 to 6 different guidelines. These guidelines are formulated by the Commission, in consultation with the main actors in employment policy<sup>21</sup>, and approved by the Council of Ministers (the ECOFIN and the Economic and Social Affairs Council). Subsequently, the member states write National Action Plans on basis of these guidelines, and translate the guidelines into national targets and policies. Furthermore, best practices in employment policy are given. The National Action Plans are presented each year during the EU spring meeting. Finally, the European Commission writes a Joint Employment Report on basis of the National Action Plans. Recommendations can be issued to member states that did not comply with the guidelines and new guidelines are proposed. In between, 'peer reviews' are organised that give the opportunity to member states to comment and to learn from each other (Pot, 2003, p. 55).

Whether the 'peer review' and the recommendations of the Commission to the member states indeed resulted in policy learning and how the EES actually has reformed national employment policy can be evaluated differently. The European Commission argues that the OMC in employment policy has led to a more coherent approach in employment policy with effects on other policy areas as well (ibid.). Furthermore, EES has led to a shift from 'managing unemployment to managing employment growth, and has become gradually embedded in national policy formulation' (European Commission, 2002, in: Pot, 2003).

But whether the EES has really changed member state employment policies and to what extent it encouraged policy learning can be questioned. To find out the changes in employment policy at national level, Trubek and Mosher (2001, p. 11-12) investigated the first three guidelines of the 'employability' pillar in 2000. The first two guidelines of this pillar require that people with a disability should be able to make new start by receiving different employability measures such as a training or work practice. For the young, this is 6

<sup>21</sup> Council of ministers, Member States, relevant social actors, academics (Trubek and Mosher, 2001, p. 8)

months, for everyone else it is within 12 months. The other guideline says that at least 20% of the population should benefit from an activating employment measure. They found out that member states indeed improved the performance on these aspects (between 1998 and 2000), although not every country complied with these guidelines. However, according to them, these changes might not all directly derive from EES as some member states have put these issues on their national policy agenda even before it was highlighted by EES. Furthermore, these changes seem to be relatively costless because costs for 'passive' employment measures could be reallocated to 'active' employment measures. For a further assessment, they also investigated another guideline on making the taxation system more employment friendly. What strikes in this guideline is the more soft formulation of the guidelines when compared to the other guidelines. The taxation guideline uses a lot of preservation by using terms such as 'if necessary' and 'where appropriate' and does not set any quantifiable targets. The formulation has been softened in the original proposal by the European Council, as the original Commission proposal could not be easily agreed on. A survey on this guideline shows that in many Member States the taxes on labour have been declined recently, but that the extent of change varies widely. However, in many cases this tax reduction started before the introduction of the guideline. The impact of this guideline seems to be some more limited than of the other guidelines. This might be explained by the reluctance of the member state to let the EU interfere in this terrain, and this makes it that the 'guidelines are so broad that they really do not push countries along a clear reform path' (ibid., p. 13). Several conclusions were drawn out of this comparison: in the first place, some of the guidelines of EES are not far beyond current practices and just mention what countries are doing anyway, and this might explain part of the success. In the second place, the mandate the guidelines give can vary over the different areas, for example by a more or less reserved formulation and the setting of quantifiable targets. In the third place, the EES is only one of the several factors that intervenes in national employment policy.

Another important question relates to the system of policy learning. Trubek and Mosher (2001, p. 14-17) have evaluated this in two ways. In the first place they investigated the potential of the 'learning-promoting' elements in the EES and in the second place the relationships are shown between the learning elements and the actual policy changes. That the EES has learning-promoting elements like peer review, the exchange of best practices and deliberation among stakeholders was already mentioned in the first section of this chapter. These really might have learning potential, but it was also clear that not the full potential is used. For example, the insufficient time for the peer reviews and the fact that the best examples are only mentioned in the end of the NAPs were also mentioned. Regarding the actual policy changes due to these learning elements in EES, it is currently impossible to see the impact of it on the national policies. However, when looking at refinements in the employment guidelines indeed one could conclude this might be due to the policy-learning elements in the method. The conclusion might be that EES indeed has some important learning-forcing mechanisms, which work to some extent. But this only can be a preliminary conclusion and further research should be carried out.

Let me now turn to the impact of EES for people with a disability. The guideline that is most relevant for people with a disability in the EES is also part of the 'employability' pillar. Namely, the sixth guideline in this pillar is devoted to the promotion of a labour market open to all, to combat discrimination in access to the labour market and to promote the social inclusion of disadvantaged groups. These disadvantaged groups are more specifically defined as people with a disability, ethnic minorities and immigrants.

About this guideline recently a background paper has been issued (Employment Committee, 2002), and for a short evaluation on the experiences with this guideline this background paper will be used.

To start with, the background paper states that a comparison of the progress made by the member states regarding the integration of disadvantaged groups was not possible because the specific groups in the guidelines are defined differently in the different member states and there still simply is a lack of comparable statistical data on this issue. Furthermore, there was found out a lack of target setting. Concerning the activating employment policy one could perceive a slight shift towards attention improvement of the opportunities for disadvantaged unemployed persons, but 'clear conclusions as to whether or not employment policies for disabled people meet their objectives can not be drawn in all cases' (ibid.).

This also has to do with the fact that many measures to reshape the policies were already introduced before the introduction of the guideline, although sometimes the introduction of the guideline did accelerate the introduction of already planned policies. This makes it difficult to evaluate the real impact of the guideline. Related to this, 'Member States seem to develop policy responses and programmes on the basis of tradition rather than on actual knowledge of programme performance and outcomes' (Employment Committee, 2002). Furthermore, 'in terms of learning, the European Employment Strategy had relatively little impact on the policy orientations of the member states' and 'the European Employment Strategy has remained peripheral and has not become a core part of the national policy making process' (ibid.). To promote this in the future it is suggested that the public accountability could be bettered by the introduction of more comparable data and targets and also the social partners should be better integrated in the process.

In some member states, the guideline indeed seems to have had influence, for example on the changing of eligibility criteria for disability benefits (Denmark) and the removal of disincentive structures between income support and active labour market measures (United Kingdom). But in general, despite the good intention of the guideline, the substantial gap between the overall unemployment rates and those of the disadvantaged groups mentioned in the guideline in most member states remained the same or worsened. Therefore, the main conclusion regarding the impact of the guideline can be that: 'it seems that the most vulnerable groups have not necessarily benefited in due proportion from sustained employment creation' (ibid.).

A conclusion more related to the guideline itself was that an integrated approach towards social inclusion in this guideline is still lacking and that most member states tend to focus on specific measures for different groups. Therefore, a 'more comprehensive and integrated policy, i.e. promoting a holistic approach to the needs of individuals' is suggested for.

### 5.2.3 Experiences with Social Inclusion OMC

This more comprehensive strategy towards social inclusion might be the Open Method of Co-ordination in Social Inclusion. Social Inclusion was brought under the OMC umbrella in the course of 2001 and the first Joint NAP was presented in the autumn of the same year. Because the Open Method of Co-ordination in social inclusion has not been very thoroughly mentioned before, I will start with a short introduction to the development and outline of this process and then proceed with a short evaluation of the process.

The decision to apply the Open Method of Co-ordination to Social Inclusion and Poverty is aimed at the goal to eradicate poverty in Europe by 2010 (De la Porte, 2002, p. 51). In a way, the decision to apply the Open Method of Co-ordination Social Inclusion could be linked to the emphasis on 'activation' and participation in the European Employment Strategy. It was not the first time that it was suggested that something constructive should be done at a European Union level with Social Inclusion (De La Porte, 2002, p. 52). Already in 1992 recommendations were issued on the convergence of social protection objectives and on minimum resources. In these recommendations it was mentioned that Member States should submit reports on their steps taken to converge on both issues, and that the progress should be measured according to 'appropriate criteria'. However, there was no surveillance procedure and the process was never institutionalised.

The term Social inclusion is closely related to the concept of 'social exclusion' that became a popular term at a European Union level during the first years of the Delors' presidency. The term originally derives from the French policy context. In general, the term can cover many dimensions of life like housing, education, health, mobility, but in the EU policy context 'Social Exclusion' often is linked to poverty.

In the Open Method of Co-ordination, 'social exclusion' was replaced by social inclusion as it may provide even wider possibilities and may sound more positive. The official name of the Open Method of Co-ordination in this policy then is Social Inclusion and Poverty, or it is shortened to NAP/incl. The Open Method of Co-ordination in this policy terrain consists of the following objectives that again are divided in 2 to 6 sub-objectives:

- to facilitate participation in employment; and to facilitate access to resources, rights, goods and services for all European citizens
- to prevent the risks of exclusion;
- to help the most vulnerable and
- to mobilize all the relevant bodies.

The outline of the process in Social Inclusion is generally the same as the European Employment Strategy, because member states write National Action Plans on basis of these objectives, reformulate the objective into national targets. Then the European Commission writes a Joint Report on basis of these NAPs and the process can start over again. But as was already mentioned in the beginning of this section, there are also some important differences between both processes as the OMC in Social Inclusion lacks a Treaty base. This means that the role of the Commission in Social Inclusion is smaller, that the formulated objectives are broader than the guidelines in EES and less quantifiable, and this process does not foresee in the option for the European Commission to issue recommendations. The pressure for change should just derive from the 'peer review' and the learning mechanism of sharing best practices. Even, as mentioned earlier in this chapter, the classification of the Social Inclusion National Action Plans by the European Commission received much criticism by the member states and had to be omitted in the final version.

When compared to EES, it is more difficult to evaluate the actual policy changes at national level that derived out of the Social Inclusion OMC, because until now only one round of NAP/inc has been fully carried out. However, some tentative conclusions about this first round could be drawn.

The European Commission writes in the first Joint Inclusion Report: 'most NAPs tend to concentrate on existing policy measures and programmes instead of setting out new policy approaches. Most 2001 NAPs are thus an important starting point, but, in order to make a

decisive impact on poverty and social exclusion, further policy efforts will be needed in the coming years' (European Council, 2001b). This might not be surprising, as the NAPs had to be drawn up rather quickly, leaving little time to think about new policy approaches. The time pressure might similarly partly account for the rather low visibility of the involvement of social partners, non-governmental organisations, and regional and local entities in the NAP/incl that is discussed below.

Nevertheless, some opportunities of the NAP/incl can also be mentioned (Ferrera et al., 2002). In the first place, it could make the policy makers aware to what works and what not in this policy area in other member states. In the second place, it could strengthen the national structures of policy co-ordination. In the third place, 'blind spots' in the policy terrain might be identified. All of these opportunities relate to the 'promotion of policy learning' and 'creating a knowledge base'. An evaluation about whether these opportunities indeed have been used is currently not available.

One of the most eminent risks of the method might be the complete lack of sanctions and the fact that the objectives are currently rather vague. This might make the Social Inclusion OMC 'a biennial ritual of 'dressing up' existing policies, at least on the part of governments with little inclination to direct energy and resources to this policy area' (ibid., p.237).

Relevant for people with a disability in the OMC on Social Inclusion is the second objective on preventing the risks of exclusion and the third objective on helping the most vulnerable. In the objective to prevent the risks of exclusion there is a(n) (sub-)objective of making the information society better accessible for people with a disability and in the objective of helping the most vulnerable there is a(n) (sub-)objective on promoting the integration of people facing persistent poverty. In these objectives people with a disability are specifically mentioned. Other objectives are relevant as well, such as the objective on the mobilisation of all actors that includes a sub-objective to promote dialogue and partnership between all relevant bodies to fight social inclusion, both public and private, including social partners and (disability) NGOs.

One of the positive things about the objective on promoting the integration of people facing persistent poverty is that it seems to give a 'more coherent strategy' than the Social Inclusion guideline in the employment strategy. Member States do not only mention work as a way to integrate people in society, but also refer to the educational attainment, training, 'Design for all', accessible transport and also the right to live independently. But this wide arrange of issues might also make the objective rather vague and hard to stick the member states to this objective. The implementation of the objective on the integration of people facing persistent poverty seems to be very much dependent on the existing national policy context. What becomes clear from the Joint Report is that not all member states have implemented the objective to a high extent in their national policy context and that not all member states have transformed the objective into concrete national targets.

Regarding the mobilization of all relevant bodies, one can estimate that the involvement of social partners and NGOs in this process has been rather limited. Despite the objective on activating all relevant bodies, including disability NGOs, it can be said that 'though social partners and representatives of non-governmental organizations were formally consulted in most member states, (...) it was difficult to assess what their contribution to Naps/incl. had been; in general their intervention seemed to have been limited' (Ferrera et al., 2002, p. 236). However, 'the active participation of civil society is absolutely essential to ensuring that national action plans reach their intended targets' (ibid., p. 237).

#### 5.2.4 Experiences

On this point, and related to the participation of NGOs, it might be interesting to deal with two of the questions in my questionnaire. These questions do relate to the current experiences of the ministries and NGOs with the Open Method of Co-ordination. Of course, with respect to the questionnaire, the same caveats as mentioned in 2.3 do apply. Still, dealing with the answers could illustrate some of the current experiences of disability organizations and ministries with both processes.

One of the questions in the questionnaire relates to the actual involvement of the ministry or (disability) organisation in the OMC on Employment and Social Inclusion. If this indeed was the case, the next question asked for experience with the current functioning of this method, and a motivation.

Seven out of the eight respondents indicated that their organisation or ministry was at least involved in one of both processes. Only the Portuguese disability organisation (CNOD) was not involved in one of the Open Methods of Co-ordination. The Portuguese respondent even emphasizes: 'We seize this opportunity to inform that in Portugal the NGO's of Disabled People have never been consulted neither to the redaction of NAP's (Employment, Inclusion), or to the evaluation, although CNOD has done, and keeps doing, diligences to reverse this situation'. Almost all other respondents were involved in both processes, but the German disability organization ('Sozialverband VdK') was only involved in the Open Method of Co-ordination on Social Inclusion.

Five out of the seven organisations that indicated that they were involved in this method also indicated that they had positive experiences with the method. Strikingly, these were all of the ministries and the German disability organisation. The Swedish ministry supported its positive experience with: 'The process of focusing disability questions in these contexts might lead to awareness'. The Danish ministry argued: 'An interesting process— a way to focus our attention by collecting information on a variety of policies'. The respondent of the Dutch ministry argues: 'It stimulates the design and/or implementation of national policy schemes'. The French ministry respondent says: 'exchange of good practice, competitiveness'. The German 'Sozialverband VdK' is positive, but also mentions a risk: 'The OMC is a dynamic element of European policy that initiates policy development in the member states and puts disability and social policy on the agenda. But it is of significant importance that disability NGOs are involved in the intergovernmental discussions and that the NAPs are taken seriously by the national governments'.

The experience of the Swedish disability organisation is more neutral: 'the goals are positive but very little seems to happen in reality. Even if there are good examples in the different NAPs they apparently don't look so interesting for other countries. I think that most of the countries want to export their ideas but none want to import them', and furthermore 'The principle of OMC is positive but the experience is that it has little effect on the national policies. Perhaps it's a little bit better when it comes to the employment sector because there are stronger texts in the treaty in order to remove the barriers in the labour market. But, still it's positive with OMC's because they stimulate the debate and the political processes'.

The Italian disability organisation has a rather negative experience: 'Minister responsible did not include a good involvement of the NGO concerned. Consultations are rare and poor of power'. The overview of these experiences might not be representative for the experiences of all governments and disability organisations with both processes, but the results are still interesting.



In this case one can see a clear distinction between the experiences of the ministries and of the disability organisations. The ministries rather positive as the OMC might lead to awareness of the problems, and stimulates new policies. The disability NGOs seem to be some more critical about the current processes. Sometimes the disability organisations were not even involved (Portugal) in the process or the consultations with them were very rare (Italy). On the other hand, it could 'stimulate the debate' (Sweden), although the effects on the national policies are doubted. Of course, these experiences might not be representative for all of the EU member states. But these answers might still underline the relatively low participation rate of national non-state actors in both processes.

### 5.3 Disability Policy and OMC

The central question in this part of the chapter is: *For what particular aspects of disability policy might the OMC be effective?* Before answering this question in the second part of this chapter, I will at first deal with the last questions of my questionnaire, that are partly related to this subject.

#### 5.3.1 Suitability and other Questions

In the questionnaire a question was included to the suitability of an OMC in disability policy. I asked an opinion on the following statement: a disability specific Open Method of Co-ordination would be a suitable new governance tool for disability policy.

Only two of the eight respondents completely agree with the statement, namely the respondents from Portuguese CNOD and the Italian Consiglio Nazionale sulla Disabilità. The Portuguese respondent argues: 'In the field of disability, the more the NGO's of Disabled People are listened to as the real experts on the policies that concern to them, more fair is the policy'. The Italian respondent argues: 'It is important include in the OMC the European and national NGOs of disabled people. The OMC needs to include a periodical European meeting of National Councils on disability to share experiences and good practices too. The OMC at the national level need to include formal consultation with NGOs of disabled people'.

The respondents from the Dutch and French ministry, and from the Swedish and German disability organisation agree to a certain extent to the statement, although for very different reasons. The respondent from the Dutch ministry of Public Health, Welfare and Sports argues: 'It is a 'double edged sword'; it can bring stakeholders together and lead to common objectives, but also to more bureaucracy'. The respondent from the French ministry means that it should not lead to 'uniformisation'. The respondent from the German disability organisation argues: 'As the OMC is a useful instrument in social policy, it is in disability policy as well. A disability specific OMC can be a contribution to the mainstreaming of disability in other policy areas'. From the Swedish HSO it says: 'the goals and measures presented are progressive in relation to the needs of people with disabilities. It's in any case better than if nothing happens'.

The respondents from the Swedish and Danish ministries disagree with the statement. The respondent from the Swedish ministry argues 'Disability policies have to be mainstreamed'. The Danish respondent argues: 'Against the Danish policy on people with disabilities. We wish to mainstream – include people with disability into our general policies (housing, transport, education etc.) – as far as possible'.

In short, the two respondents from disability organisations in the southern countries argue that a disability specific OMC might be feasible as long as the involvement of disability NGOs is assured. In a way, this answer is striking because these organisations also seem to be least involved in the current OMC's (see last section). The possibility for the involvement of

disability NGOs in the process (and primarily their own organisation) might be the main reason to be in favour of such an OMC in disability policy.

The Dutch reaction comes down to the fact that although it might be a useful method in this policy area, but it might also entail a lot of bureaucracy. The Swedish respondent is quite realistic.

The response of the German disability organisation, and the Swedish and Danish government responses seem to form a kind of contradiction as the first one agrees with the statement and argues that a disability specific OMC might lead to mainstreaming of disability in other policy areas, whereas the latter two disagree with the statement just because of their national policy of 'mainstreaming'. However, it might be that all three respondents see the use of an OMC in disability policy, but that the two respondents from the two Nordic governments do not support a disability *specific* OMC.

The last questions of the questionnaire relate to the disability policy areas an OMC in disability policy might be useful in, the question whether the Open Method of Co-ordination should be integrated in the EC Treaty and what should be the periodicity.

Regarding the policy areas an OMC should cover, there was a question related to the specific policy areas an Open Method of Co-ordination might be useful for. The areas I mentioned were: Disability benefits, Education, Employment, Transport and Mobility; Information Society and Civil rights legislation. Respondents could also choose for one or more, or for all of these aspects.

The French government mentions: Transport and Mobility, Information Society, and Civil Rights. The Danish respondent mentioned Employment and Civil Rights legislation, with the remark: 'Not sure but this is our best guess'. The respondent from the Swedish Ministry marked Education, Employment, Transport and Mobility and Information Society. The Dutch respondent 'only' argues: 'All aspects are relevant for inclusive disability policies. But coordination must take place on Cabinet level'.

The Portuguese respondent mentioned all of the aspects, as did the respondents from the Swedish, the Italian and the German disability organisation.

The answers to the specific areas mentioned are interesting. It is at least striking that all of the disability NGO's marked all of the aspects of disability policy that were mentioned, whereas the government respondents did only mention a few. The area of disability benefits was not mentioned by the government respondents. This might have to do with some of the politically sensitive policy areas to which it might be difficult to apply to the Open Method of Co-ordination.

Regarding the place of the OMC in the EC Treaty, there was a question whether an eventual Open Method of Co-ordination in disability policy should be integrated in the EC Treaty. Most of the governmental respondents think it should not be integrated in the EC Treaty, whereas most of the non-governmental actors it should be integrated in the Treaty, but the reasons highly differ. Let me start with the governmental actors. The Danish respondent refers to his answers to the possible negative aspects of further EU intervention in disability policy. The Swedish respondent mentions the 'subsidiarity principle'. The Dutch respondent argues: 'First the present position and role of the EC in this matter must be evaluated and clarified, before making proposals'. The respondent from the Swedish disability organisation says:

‘Because it’s not sure if the EU actions will be positive or negative for people with disabilities’.

Most non-governmental actors and also the respondent from the French ministry think it should be integrated in the EC Treaty. The German disability organisation says: ‘There should be no difference in the status of OMC’s. Otherwise a disability specific OMC would be regarded less relevant’. The Italian respondent says: ‘have a legal base and favorise more strong coordination of policies’. The Portuguese respondent says: ‘It is written the importance of this method’. The French respondent (government) says: ‘among the anti-discrimination articles’.

It seems that the arguments, both in favor of the integration in the treaty and against this integration, do strongly differ. But with the member there might be some reluctance to integrate a possible OMC in disability policy in the EC Treaty. In practice, it might be more expected for an OMC in disability policy outside the Treaty, as is also the case in Social Inclusion.

The last question was about the periodicity of the method: every year, every two years or they could fill in a periodicity by themselves. None of the governmental actors did mention one of the first two answers. The Swedish government respondent did not fill it in at all, and the Danish respondent says: ‘3 to 5 years. It is our experience, that policies in this area are fairly stable (changes take time to implement at local/regional level)’. The respondent from the Netherlands says: ‘Dependent on political priorities, scope of Action plan, degree of detail of the plan, involvement of NGOs’. The French respondent says: ‘every 2 to 4 years’.

The respondents from the Italian, German and Swedish disability organisation mark every two years, whereas the respondent of the Portuguese disability organisation marks every year.

Two years seems to be most acceptable for the disability organisations, whereas most of the government organisations are at least unsure and let this answer depend on several factors.

### 5.3.2 Aspects of Disability Policy

The current aspects in which the European Union intervenes in national disability policy, mainly relate to ensuring equal opportunities and anti-discrimination. But in other aspects of disability policy there might also be problems that are shared among the EU member states. The EU thus could try to expand its scope of intervention to other aspects of disability policy as well. But if such an expansion would be considered, not all modes of intervention might be acceptable for the EU member states. As was concluded in the fourth chapter, especially the hard approach by adopting a (harmonisation) directive or by setting European standards on certain aspects of disability will not be easily accepted by the member states. In policy areas where full harmonisation at a European level is not possible, but where there still is a political desire to act jointly on basis of co-ordination and policy learning, the Open Method of Co-ordination has potential. This seems to be the case in disability, thus in theory the Open Method of Co-ordination might work in this policy area.

But what aspects of disability policy could be dealt with by the Open Method of Co-ordination? The actual situation in national disability policy in this study related to the disability benefit system, activating employment measures and anti-discrimination. The current aspects in which the European Union intervenes in national disability policy, mainly relate to ensuring equal opportunities and anti-discrimination. But in other aspects of disability policy there seem also to be problems that are shared among the EU member states. Thus, in theory, the EU thus could try to expand its scope of intervention to other aspects of

disability policy as well. The Open Method of Co-ordination could help with this, especially in aspects of disability policy where full harmonisation at a European level is not possible, but where there still is a political desire to act jointly on basis of co-ordination and policy learning. The Economic and Social Committee even proposed that an OMC in disability policy should 'include all relevant areas of disability policy like education, vocational training, life-long learning, employment, transport, information society, benefit systems, services for people with complex dependency needs and their families'. The aspects of disability policy the Open Method of Co-ordination can deal with does not only depend on the policy areas at national level and the shared problems that might exist in this policy area. It will also be dependent on the political desire by the member states to deal with these aspects on a European Union level. Aspects of disability policy that are more embedded into the national policy structure might be more difficult to deal with in an Open Method of Co-ordination as it will be more difficult to find common objectives in such aspects of disability policy. Within the scope of the study, in anti-discrimination and employment policy it should be easier to find these common objectives than in the area of disability benefits. But it is rather precarious to give a definitive list of aspects the Open Method of Co-ordination could deal with on this place, as other aspects of disability policy were not so thoroughly dealt with in the second chapter. However, one could well argue that the disability organisation that have responded to the questionnaire would support an OMC that deals with as many aspects as possible, presumably to get these aspects on the policy agenda and to get information on these aspects. On the other hand, the government organisations might look more to the practical and political implications of this method, and for that reason seem to support a much narrower list of aspects.

## 5.4 Conclusion

The main question to be answered in this chapter was: *Is the Open Method of Co-ordination a suitable governance tool to intervene in social policy issues and in disability policy in particular?* The Open Method of Co-ordination seems to be most suitable in policy areas where there is a need for European action, but where possibilities for harmonisation are limited. As was concluded in the fourth chapter, in some national social policy areas there is a desire to act at a European Union level. But in some of these areas, mainly due to the subsidiarity principle and the fact that the social policies in the member states are sometimes so diverse and embedded in the national policy structure, the option of more harmonisation is not possible. In these cases the Open Method of Co-ordination might be suitable. The current experiences with the Open Method of Co-ordination, however, show that the effectiveness at national level in practice is sometimes rather limited because the process is not fully integrated in the national policy process. Thus, despite some caveats, the method is suitable in some areas of social policy.

In disability policy there is a need and desire to act jointly at a European Union level, and the possibilities for further harmonisation are limited. Whether the Open Method of Co-ordination is a suitable governance tool for disability policy still seems to be an open question. The Open Method of Co-ordination might lead to the exchange of 'best practices', it could lead to common objectives in this policy area and it could bring the different stakeholders closer together. But best practices cannot be easily transferred to another Member State, it is the question whether common objectives can be easily agreed on in this very complex policy area, and there seems to be a serious lack of an involvement of NGOs in the current OMC's. The effectiveness of such an OMC thus would be highly dependent on the aspects of disability policy such an OMC would cover, how the process would be integrated in the (different) national policy context(s). And whether there is a political desire to adopt a disability specific OMC is hard to predict. Although the experiences of the governmental

actors with the disability-related objective and guideline in the Social Inclusion OMC and the Employment OMC were not very negative, the adoption of a disability specific OMC might not find enough political support. In that situation, it might be an idea to strive for the mainstreaming of disability issues in other OMC's that are relevant for people with a disability.

## 6 General Conclusion and Reflection

In the general conclusion, the main question is answered. Thereafter a short reflection on the study is given.

### 6.1 Main Question

The main question to be answered in this study is: *To what extent and in what sense can the Open Method of Coordination contribute to an effective intervention of the EU in national disability policies of the member states?*

As mentioned in the introduction the main question shall be answered in the three steps that were covered by each of the three research questions. The first step relates to the national situation and problems in disability policy and the opinion of the European Union on this subject. The second step relates to the experiences with the current EU intervention in national disability policy. The third step relates to the suitability Open Method of Co-ordination as a mode of intervention in national disability policy. These steps will subsequently be taken in order to answer the main question.

#### 6.1.1 First Step: national Situation and Problems and the EU Position

Concerning the first step, disability policy is a highly complex policy area in the EU member states as it covers a lot of other policy terrains like employment policy, health care and education. The policy terrains that are more specifically dealt with were disability benefits, activation employment measures and anti-discrimination legislation.

Regarding the disability benefits, the organisation of these measures highly differs among the member states and also the level of these benefits. The level of disability benefits on the one hand might have to do with the fact that people at a higher age indeed do have more chance to have a disability, but on the other hand these measures are sometimes used as a kind of early pension for older workers. After a period of relatively generous disability benefits, the national governments of the EU member states now try to bring down the expenditures on disability benefits. This economisation can have negative consequences for the income position of people with a disability. Regarding the employment measures, these could again be divided in several other measures aiming at people with disability and employment. The main focus was on activation measures to get people back to work and measures aiming at employers to require them to hire people with a disability, the quota schemes. These kind of measures are related to the disability benefits, as the economisation on these latter measures is often accompanied by an emphasis on getting people with a disability back to work. It sometimes seems quite hard to implement these activation measures in an effective way. Despite the employment measures, the unemployment rate of people with a disability is still relatively high, especially among people with a severe disability.

Anti-discrimination legislation is relatively new and is partly a reaction to more traditional policies towards people with a disability. It can be related to the 'social model' on disability and is a way to preclude the distinction between human beings on the sole ground of disability. In three EU member states, disability anti-discrimination legislation has been implemented and the implementation is deliberated in others. But the reasons for the implementation of these measures can differ.

What could be concluded is that is that the disability policy area at national level in the European Union member states is a very complex policy that encompasses a wide variety of different policies and interests. Still, some more general trends in disability policy at national

level can be distinguished. Most member states have recently attempted to reduce the number of disability benefit claimants and to get people with a disability back to work, often accompanied by anti-discrimination legislation. The adoption of measures to reduce the number of benefits claimants and to improve the employment and social position of people with a disability are hard to implement. And even if these measures are successfully implemented, there might nothing change in positive for the people with a disability themselves. One of the cautious conclusions of the questionnaire are that the problems in disability policy are quite diverse in each member state, but that the policy areas in which these problems are seem to be quite similar. There are in general problems with the cutbacks in care provisions and welfare state arrangements, and on the other hand there is the lack of human rights and equal opportunities for people with a disability.

Thus, despite the fact that every EU member states has its own disability policy and their own specific problems, there are some problems that are more or less shared among the various member states. This opens opportunities for a European dimension in disability policy.

The current position of the European Union on disability policy is laid down in two subsequent documents on a new European Disability Strategy that were issued in 1996. In these documents it is argued that in a lot of areas of life, people with a disability do not have the same opportunities as people without a disability. This is against various human rights and makes that part of the population is unnecessarily excluded from the labour market. Furthermore, several EU principles, such as the free movements of workers and the mobility of students and the rights of Union citizenship are invoked to show that several barriers still have to be razed, not only in the member states but also Community wide. But it is emphasised that the main responsibility in disability policy rests with the member states themselves. The role that is envisaged in these documents for the (institutions of the) EU in this policy area is threefold. In the first place, the European Union could help this process by promoting the co-operation in disability policy among the EU member states and between the European Commission and the member states. In the second place, the European Commission could mainstream the interests of people with a disability every time when it proposes a new policy or changes a policy. In the third place, the European Union could promote the involvement of people with a disability in the policy making process in order to take along the interests of people with a disability when creating a new policy. This EU position does not touch the problems in relative complex areas of national disability policy, such as disability benefits. Still, because the role of the EU in disability policy is merely seen as complementary, in a certain way the position reflects the wide variety of different policies and interests in disability policy at national level in the EU member states.

#### 6.1.2 Second step: experiences with EU intervention in disability policy

As with most other areas of social policy the European Union does originally not have many competences in disability policy. The policy terrain as such was not mentioned in the Treaty of Rome. However, as shown above, some strong arguments have been formulated for an EU intervention in national disability policy. Additionally, the legislation of the European Union increasingly plays a role at national level, also in the lives of people with a disability. Still, there are certain barriers that hamper the EU to intervene in this policy area. In the first place, the member states already do have a complicated system of different measures aiming on people with a disability. In the second place, the financial resources available for social policy in the EU are relatively small when compared to that of the EU member states. In the third place, there is the subsidiarity principle that says that policy should be made at the best-suited level for this policy terrain. In the case of disability policy this level often lies at the national

or sub-national level. Despite these barriers, over time a certain, although relatively minor, intervention of the EU in national disability policy has been created.

About twenty years ago first steps were taken that are at the basis of the current intervention of the EU in disability policy. Under two subsequent action programmes in the 1980s, HELIOS I and II, links were set up between supranational and sub-national organisations in the field of disability policy and people with a disability became first involved in the EU policy making as a consultative body. The intervention of the EU in national disability policy is currently based on a human rights approach that is aimed at ensuring the equal opportunities of people with a disability. Based on this idea, a framework directive has been implemented that aims at equal opportunities at the workplace, among others for people with a disability. The current pillars of the EU disability strategy include the promotion of the cooperation with and between the member states and disability NGOs in the field of disability policy, the mainstreaming of disability issues in different policy areas and the involvement of people with a disability in the policy-making on relevant policy terrains.

The intervention in national disability policy is currently mainly focussed on a relatively small number of issues, primarily related to employment and anti-discrimination. The intervention could be further extended to other areas of disability policy. However, the subsidiarity principle applies and the main responsibility in disability policy rests with the member states. Harmonisation is not an option as the setting of European standards in disability policy might not be easily accepted as it could possibly lower the standards in rich countries. Thus, the fear for harmonisation might make it difficult to adopt new binding modes of EU intervention in disability policy. However, more soft modes of EU intervention, like the Open Method of Co-ordination, might be suitable.

### 6.1.3 Third step: Suitability of OMC for disability policy

The Open Method of Co-ordination (OMC) is based on the writing of periodic National Action Plans (NAPs) by the member states on basis of fixed (European) guidelines, which are translated into national and regional targets. The member states review each other's NAP (peer review) and try to learn from each other. The European Commission writes a Joint Action Plan on basis of the National Action Plans of the member states and can issue recommendations to the member states. New guidelines are then adopted and the process can start over again. The method is applied to several social policy areas: Employment, Social Inclusion, Education, Pension systems and Youth policy. Except for employment, in these policy areas the role of the European Commission is somewhat smaller and the option of issuing recommendations is not envisaged.

When compared to traditional legislative measures one could say that the Open Method of Co-ordination is a more flexible method as it has open outcomes and lacks a sanction system. Furthermore, this method allows different governmental levels to become involved in European Union policy-making and has elements of interactive policy learning. This makes it an attractive method in policy areas where full harmonisation at a European level is not possible, but where there still is a political desire to act jointly on basis of co-ordination and policy learning.

In disability policy there are reasons to act jointly at a European Union level, at least on certain aspects. But as mentioned in the second step, the possibilities and desire for harmonisation in disability policy is limited. In that situation, an Open Method of Co-ordination in this policy area might be useful.



In the introduction several reasons for an OMC in disability policy were mentioned. The European Disability Forum spoke about ‘structured exchange of information of national disability policies’, and the European Economic and Social Committee emphasises on: ‘common outcome indicators that would allow to monitor the progress in time of the levels of social inclusion of disabled people’. An other issue that was brought forward was to ‘bring the governments, the disability organisations, and the social partners closer together’.

Regarding the first issue, it might indeed be that an OMC in disability policy has elements that lead to a better exchange of information, so that member states are able to learn from each other in this policy terrain. But the experiences with the other OMC’s show that there is sometimes very little impact of the policy orientations of one member state to the other member states. How this will be in disability issues is hard to predict, and is also dependent on the willingness of the individual member states to learn from each other. Still, the publication of National Action Plans alone already could enhance information on certain aspects of disability policy, and enable the exchange of information.

To what extent that convergence and the setting of common indicators is possible, highly depends on the specific aspects the OMC in disability policy would cover. Some aspects are more probably politically sensitive, like disability benefits, than other aspects, like transport and mobility. In more politically sensitive areas, common indicators might be found, but they will probably be rather vague. This makes them relatively easy to attend, but some less useful in practice. Additionally, an OMC that covers aspects of disability policy will be more similar to the Social Inclusion OMC than the EES. This means that is not integrated in the EC Treaty and lacks the option of issuing recommendations. It is the question whether the pressure from other member states will be enough to come to common indicators and convergence.

Regarding the third issue, to bring together the different stakeholders, would presuppose that the disability organisations and social partners are sufficiently involved in this process. However, the current experiences with OMC show that, depending on the national political context, the involvement of these non-state actors is not always guaranteed.

The Open Method of Co-ordination thus might in theory be suitable to disability policy, but only under certain conditions. Some of these conditions are formulated in the conclusion below.

#### 6.1.4 Conclusion and recommendations

The three steps above taken together give an answer to the main question: *To what extent and in what sense can the Open Method of Coordination contribute to an effective intervention of the EU in national disability policies of the member states?*

Out of the first and second research questions it has become clear that there are good reasons for the EU to intervene in national disability policies. A lot of member states face the same problems in disability policy and the EU disability policy is increasingly important for the social policy in the member states. However, the current intervention in national disability policy is mainly focussed on issues at the margin of traditional disability policy and justified from a human rights perspective. The issues that are dealt with are primarily related to employment and anti-discrimination. It also has become clear that the primary responsibility for disability policy rests at national level, because of the subsidiarity principle and the highly institutionalised disability arrangements. The role of the EU in national disability policy can only be additional. According to the EU Disability Strategy this role encompasses the co-operation in disability policy among the EU member states and with the European Commission, the mainstreaming of interests of people with a disability and the promotion of the involvement of people with a disability in the policy making process. In principle, the EU intervention in national disability policy might be extended to other, more complex aspects of

disability policy, such as disability benefits. But one has to deal with the very different outline of disability policies in the European Union member states. Furthermore, the subsidiarity principle limits the possibilities for this intervention. In this situation, the Open Method of Co-operation is attractive for the member states, because they can remain responsible for their own national disability policy, and still could co-operate with their European peers. This could even enable the EU to act in domains of disability policy in which it currently is not active, although it might be more difficult to find common targets in these domains of disability policy.

The Open Method of Co-ordination might *in theory* also contribute to the current intervention of the EU in national disability policy. The Open Method of Co-ordination seems to fit in the European Disability Strategy as it has elements of the pillar of the *Cooperation between the Commission and the European Union Member States* and the *Full participation of people with disabilities*. Regarding the former pillar, the OMC could strengthen the co-operation between the member states and with the European Commission. Common European objectives have to be prepared, the member states review each other's action plan and the European Commission comments on the national action plans and brings the NAPs together in one report. Related to this, the Open Method of Co-ordination opens the opportunity to learn from the experiences and best practices of other member states. Because OMC is a process that is periodically repeated, it can be a way of keeping track of the changes in national disability policy and priorities over time. This information on national disability policy might be a useful instrument in the hands of different stakeholders to identify the differences in disability policy across the EU member states<sup>22</sup>, and this might also lead to more awareness of disability issues in these member states. Thus, in theory OMC might lead to an instrument for the structured exchange of international comparable information, statistics and good practice in the field of disability policy that is currently lacking. Regarding the latter pillar, OMC could promote the involvement of different interest organisations of people with a disability in the policy-making. In OMC the European objectives have to be translated into national and regional targets, and in that process the disability NGO's can play a role.

But whether the Open Method would be effective *in practice* in this policy terrain, is more difficult to predict. The effectiveness will at least depend on certain conditions, related to the aspects the OMC would cover, the concreteness of the chosen objectives, the embeddedness of the method in the national policy context, the involvement of non-state actors and whether the process has a Treaty base or not. The specific aspects of disability policy the method would cover and the concreteness of the objectives may be closely linked to each other. If the OMC deals with aspects of disability policy that are currently already dealt with by the EU, it will be easier to formulate common and concrete objectives. The integration of new aspects of disability policy in OMC could widen the scope of EU intervention in national disability policy. However, this might also lead to more vague objectives that could lower the effectiveness of an OMC in disability policy.

The current OMCs sometimes suffer from a lack of impact on the national policies. One of the reasons is that the method is not always integrated into the national policy context. The commitment of politicians instead of civil servants could help. Also ensuring the involvement of elements of civil society if a disability OMC would be proposed, such as disability NGOs, could have a positive impact on the effectiveness of such an OMC in the EU member states. This fact depends on the current involvement of disability NGOs in national policy making.

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<sup>22</sup> See for example: Gubbels (2001)

Thus, what could be recommended for the governments if the Open Method of Co-ordination would be considered for disability policy is the integration of the method at national level and the involvement of non-governmental organisations.

The current National Action Plans are sometimes concentrated on the existing policy measures, and primarily give an enumeration of what the member are already doing anyway. This also was the case in the OMC in Social Inclusion, partly due to a lack of time to draw up these NAPs. In that situation it might help to give the member states enough time to think about new policy approaches and to write their reports. Still, for the disability organisations, I would suggest not expect a too fast result of this method.

It also matters if the Open Method of Co-ordination is integrated in the EC Treaty or not. If the process has a Treaty base, the objectives of the Open Method of Co-ordination can be more clearly defined and the European Commission may issue recommendations. If the OMC does not have a Treaty base, the role of the member states themselves is greater, and the possibilities for the issuing of recommendation by the European Commission are limited. On the other hand, a Treaty base might limit the political support for an OMC in politically sensitive aspects of disability policy and a non-Treaty based OMC then would be more likely. Finally, it is not clear whether there is indeed enough political support by the member states to adopt a disability specific OMC. If the political desire for a disability specific OMC would be too low, an alternative could be to strive for the implementation of disability guidelines in other OMC's in policy terrains relevant for people with a disability.

In conclusion, the application of the Open Method of Co-ordination to disability policy can contribute to the intervention of the EU in national disability policy by enabling a better co-operation among the member states, the European institutions and different stakeholders and by promoting exchange of information on this policy terrain. It might even lead to an expansion of the scope of the current EU intervention in national disability policy. However, the eventual effectiveness of an OMC in disability is dependent on certain preconditions, of which a few are formulated above. This makes the eventual effectiveness of this method in disability policy hard to predict, as too many facts are currently still unknown. Whether there will be enough political support to effectively implement the Open Method of Co-ordination on this policy terrain, only time can tell. With the limitations of the OMC in mind, one can say that the method is in principle suitable for some aspects of disability policy, but its success will be highly dependent on the willingness of the different stakeholders to co-operate.

## 6.2 Reflection

In the reflection some words are devoted to the chosen research method, the conclusion and the extension of the European Union. With regard to the research method, primary and secondary literature was used, and a questionnaire was sent to the members of the Disability High Level Group and national disability councils in EU member states. In total thirty questionnaires have been sent out. After sending out three reminders, only eight questionnaires were filled in and sent back. Reasons for this low response rate might have been a lack of time of the respondents and a lack of knowledge on the subject. This relatively low response might have made the questionnaire unfit for a strict empirical analysis. But although I am aware the answers may not have been easily generalisable and that the empirical evidence of the answers might be relatively low, as illustrations to some of the thoughts and experiences in this policy area of some ministries and disability organisations, the answers to the questionnaire have been very useful. If a further research on disability policy and the open method of co-ordination would be undertaken, I would at least suggest to issue another questionnaire among the relevant stakeholders in this policy area. Choosing the

right stakeholders, giving enough information on the Open Method of Co-ordination, emphasising the interest of the study and calculating enough time for the participants to respond might be ways to increase the response rate.

An unambiguous conclusion about the Open Method of Co-ordination and disability policy can not be drawn out of this study, as too many factors related to this subject are currently unknown. This lack of information, however, might be symptomatic for all ex-ante studies. Still, with this study, I hope to have contributed to the literature on disability policy in the European Union in general and to the discussion on the application of the Open Method of Co-ordination to disability policy more in specific.

The extension of the European Union with the accession countries in the spring of 2004 is a factor that was not dealt with in this study, but that is still important for a good understanding of the Open Method of Co-ordination and disability policy. The accession countries are said to have a relatively lower 'level' of disability policy standards than in the main part of Western Europe. The Open Method of Co-ordination might lead to a structured exchange of information on national disability policies and this could improve the disability policies in these new EU member states. For a proper understanding of the idea to apply the Open Method of Co-ordination to disability policy, the extension of the European Union should at least also be taken into account. If a further research on this subject would be undertaken, I would recommend to include this fact in the study.

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## Appendix I: Questionnaire

### Questionnaire on Open Method of Co-ordination and Disability policy

The questionnaire is divided in three parts: the need for European intervention in disability policy, the suitability of the Open Method of Co-ordination in disability policy and the preferred form of an Open Method of Co-ordination in disability policy. Every part begins with a general introduction and every question is preceded by a short explanation. At the end of the questionnaire there is room for additional comments you might have.

**Indication for the correct completion of the questionnaire: to check your answer please type an x before the square (and remove the empty square). If the question is (partly) open, please specify your answer in the textbox.**

#### Need for European intervention in national disability policy

In the European Union, disability policy is primarily a policy area of the member states themselves. However, over the last years several European Union communications, recommendations and framework directives have been issued dealing with disability policy. One could see these initiatives as an intervention in national disability policy. The need of this policy intervention of the European Union in national disability policy is the main issue of this section.

*The first question relates to the current main problem in disability policy in European Union member states. For example, the lack of coherence between the different aspects of disability policy, or the high costs of the disability benefit system are sometimes seen as major problems in this policy area. Similar or other problems might be distinguished in your own country as well.*

1. What do you see as the current main problem in disability policy in your member state?

*The second question deals with your opinion on the current EU-intervention in disability policy. Not only am I interested in your opinion itself, but also in the reasons behind your opinion on this matter.*

2. What is your opinion on current EU-intervention in the field of national disability policy?

Positive,

because:

Negative,

because:

Neutral,

because:

*The third question relates to the possible negative aspects if more policy intervention of the European Union in national disability policy would be considered. You could for example think of the dissimilarities in disability policy between the different European Union member states or a fear for the effectiveness of this intervention. I am interested in your personal viewpoints.*

3. Would you see any negative aspects when considering more EU-intervention in national disability policy?

Yes,

namely:

No

### **Open Method of Co-ordination and disability policy**

The Open Method of Co-ordination (OMC) is a new non-binding mode of governance in the European Union based on the periodic writing of National Action Plans (NAP) according to guidelines and on the exchange of best practices. The method is currently among others applied to structural (economic) policy, employment policy, social inclusion, education, youth policy and pension systems. The OMC on Employment policy includes a guideline on employability and disability policy and the OMC on Social Inclusion includes an objective on disability policy and poverty prevention and an objective on making the information society better accessible for people with a disability. However, a disability specific Open Method of Co-ordination does currently not exist.

The questions in this section refer to your current involvement with the Open Method of Co-ordination and the further applicability of the Open Method of Co-ordination to disability policy.

*Question four and five are on to the actual involvement of your ministry or organisation with an Open Method of Co-ordination related to disability policy. As mentioned above both the Employment OMC and Social Inclusion OMC include a guideline or objective related to disability policy. I am interested in the involvement and your experiences with these Open Methods of Co-ordination. See the questions below.*

4. Is your ministry or organisation involved in one or two of the above-mentioned Open Methods of Co-ordination that are closely related to disability policy?

Yes, with the guideline in the Employment OMC

Yes, with the objective(s) in the Social Inclusion OMC

Yes, with both OMC's

No, with none of these OMC's

5. If your ministry or organisation is currently involved in one or two of the above-mentioned OMC's, what is your experience with this method?

Positive,

because:

Negative,

because:

Neutral,

because:

*Question six is on the aspects of disability policy to which the open method of co-ordination could be applied. National disability policy can encompass a wide variety of different policy areas, like education, disability benefit systems, employment, information society, transport and civil rights legislation. According to several organisations a disability specific Open Method of Co-ordination should cover this whole picture of disability policy. However, in some areas of disability policy it is easier to find common European objectives or to exchange best practices among the European Union member states than in other policy areas.*

6. To what of the following aspects of disability policy would the open method of co-ordination be applicable? (You can choose more answers than one)

- Disability benefits
- Education
- Employment
- Transport and Mobility
- Information Society
- Civil rights legislation
- All of the aspects above
- Other aspects of disability policy,

namely:

*The following question is on the suitability of the Open Method of Co-ordination to disability policy. Several European and disability organisations argue that a disability specific OMC might be a suitable governance tool to apply in disability policy. For example, it could lead to common objectives in disability policy, and bring the different stakeholders in disability policy closer together. However, one could think of several reasons that could restrict the suitability of the Open Method of Co-ordination to disability policy. For example, OMC could be seen as too much infringement in national policy-making or one could argue that because the method has no binding elements it could just be another example of 'symbolic politics'. Could you indicate to what extent you agree with the following statement?*

7. A disability specific Open Method of Co-ordination would be a suitable new governance tool for disability policy.

I completely agree with this statement.

because:

I agree with this statement to the extent that

I disagree with this statement,

because:

### Form of Open Method of Co-ordination

Despite the fact that there are a lot of similarities between the several OMC's, the nature of the Open Method of Co-ordination can differ considerably from one policy area to another. Two of the main differences relate to the integration of the Open Method of Co-ordination in the EC Treaty and the periodicity the National Action Plans are written.

These issues are the theme of the last two questions.

*The eighth question is on the integration of the Open Method of Co-ordination to disability policy. The OMC's on Structural and on Employment policy are integrated into the EC treaty. This means that the European Commission can more actively play a role as it may issue corrective recommendations to the member states. The other OMC's are not integrated in the EC treaty, and thus in these cases the role of the European Commission is much weaker. However, it is at the same time more respectful for national priorities, because pressure for convergence in these OMC's derives primarily from the discourse among the European Union member states.*

8. If the Open Method of Co-ordination would be applied to disability policy, should it be integrated into the EC Treaty?

Yes,

because:

No,

because:

*The last question relates to the periodicity of the Open Method of Co-ordination. One can make a distinction between OMC's in which National Action Plans are written every year and OMC's in which National Action Plans are written every other year. The Employment OMC uses annual Action Plans, whereas most other OMC's are based on bi-annual National Action Plans.*

9. If the Open Method of Co-ordination would be applied to disability policy, how often should there be written National Action Plans?

Every year

Every two years

Otherwise,

every:

### Room for comments

**Thank you very much for your co-operation!**

## Appendix II: Respondents of Questionnaire

<b>Country</b>	<b>Disability/Government</b>	<b>Organisation/ministry</b>	<b>Name</b>	<b>Function</b>	<b>date</b>
<b>Sweden</b>	Disability	HSO	Ingemar Färm	General Secretary	11-6-03
<b>Sweden</b>	Government	Ministry of Health and Social affairs	Eva Lisskar-Dahlgren	Deputy Director	15-5-03
<b>Netherlands</b>	Government	Ministry of Public Health, welfare and sports (direction disability policy)	Hans Sluiter	Official at the direction of disability policy	14-5-03
<b>Portugal</b>	Disability	CNOD	Henrique Mendonça	President	13-5-03
<b>Danmark</b>	Government	Ministry of Social Affairs (Disability and Housing)	Charlotte Aastrup Poole	Official at the direction of disability and housing	13-5-03
<b>Italy</b>	Disability	Consiglio Nazionale sulla Disabilità/ DPI Europe	Giampiero Griffo	Chair of DPI-Europe	10-5-03
<b>Germany</b>	Disability	Sozialverband VdK Deutschland	Jens Kaffenberger	Assistent to the board	8-5-03
<b>France</b>	Government	Delegation interministrielle aux P. Handicapees	Patrick GOHET	Interministerial delegate on people with a disability	21-8-03