

# Findings on Accessibility of the Zero Project





**The Zero Project**, officially launched in 2011, is the Essl Foundation's project that advocates, with a new and innovative approach, the rights of persons with disabilities internationally, and aims, ultimately, "for a world without barriers". The Zero Project creates platforms for sharing and developing models that clearly improve the daily lives, and legal rights, of persons with disabilities. With its global outreach, the Zero Project monitors the national implementation of the UN Convention on the Rights of Persons with Disabilities around the world. In addition, with a yearly thematic focus, the project identifies and highlights both good practices and, in collaboration with the World Future Council, good policies which actively protect and promote the rights of persons with disabilities. The Zero Project maintains a social media platform ([www.zero-project.org](http://www.zero-project.org)), and, each year, publishes the Zero Project Report and presents its findings at the Zero Project Conference in Vienna, Austria.  
→ [www.zeroproject.org](http://www.zeroproject.org)

## **The Essl Foundation**

The main purpose of the Martin and Gerda Essl Social Prize Private Nonprofit Foundation is to support people in need, and to promote public awareness about the necessity of support for those in need. It has chosen two main focuses for its work: Promote social innovation and social entrepreneurs, and support persons with disabilities. The Zero Project is one of the major activities of the Essl Foundation, combining both its missions.

→ [www.esslfoundation.org](http://www.esslfoundation.org)

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## WELCOME

The Zero Project advocates the rights of persons with disabilities internationally by monitoring the national implementation of the UN Convention on the Rights of Persons with Disabilities and by highlighting good policies and practices.

Knowledge collected over the last several years by the Zero Project, in cooperation with over 100 experts from NGOs and foundations, academics and persons with disabilities, has been summarized briefly in this brochure with a special focus on accessibility.

At the conference 'A Prelude to the European Accessibility Act: Findings of the International Zero Project Report' on the 21 June 2012 in the European Parliament this knowledge is presented and discussed, under the patronage of the Disability Intergroup of the European Parliament and in collaboration with the European Disability Forum, underpinning the call for a European solution on accessibility.

As access to the physical environment, to transportation, to information and communications, as well as to other facilities and services provided to the public widely varies throughout Europe, as well as elsewhere, a steadily growing number of European citizens, especially persons with disabilities and the elderly, are being excluded from enjoying the benefits of a wide range of goods and services.

Accessibility is a cornerstone of an inclusive society based on non-discrimination and the Zero Project, working for a world with zero barriers, advocates a rights-based approach to accessibility. Urgent improvement of the access to, and the accessibility of, goods and services on an European level is needed in order to ensure the inclusion of persons with disabilities in respect of the UN Convention on the Rights of Persons with Disabilities.

*Michael Fembek, Essl Foundation*  
*Ingrid Heindorf, World Future Council*

## WHAT IS THE ZERO PROJECT?

**The Zero Project focuses on three areas: Social Indicators, Good Practice and Good Policy. Together, they constitute material for discussion, supporting those who work to implement the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) nationally, or even regionally.**

► **1. Zero Project Social Indicators** illustrate the implementation of the UNCRPD. For the Zero Project Report 2012, NGOs, foundations and academic experts reviewed 21 indicators in 35 countries, two states in the USA and the nine Austrian federal provinces.

► **2. Zero Project Good Practice** examples provide proven approaches to a number of the problems identified by the social indicators. In other words: moving from the "what to ..." to the "how to ...". The Zero Project Report 2012 included 27 Good Practices.

► **3. Zero Project Good Policies** have been in existence long enough to deliver identifiable improvements. They were selected by a board of disability policy experts for discussion at the International Conference on Good Policies for Persons with Disabilities that took place on 22-23 January 2012 in Vienna.

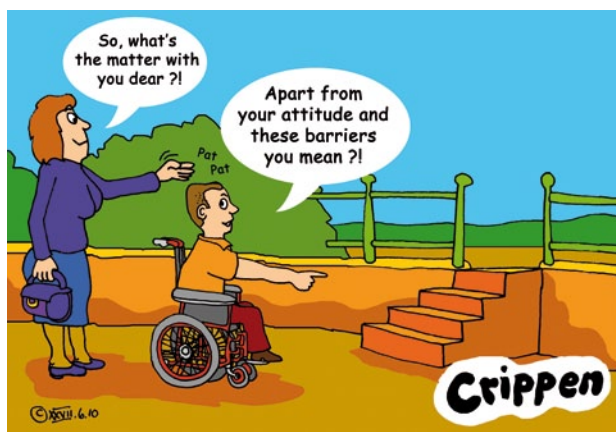
This summary of findings on accessibility is based on information to be found in the Zero Project Report 2012, and the Essl Social Index Pilot Study 2010. The full Zero Project Report 2012, in both PDF and Easy-to-Read format, can be accessed at → [www.zeroproject.org](http://www.zeroproject.org). At the same website the policy presentations given at the International Conference on Good Policies for Persons with Disabilities (22-23 January 2012) are also available for download.

## ACCESSIBILITY – SOCIAL INDICATORS & GOOD PRACTICE

Data concerning the Social Indicators were collected in 2010 and 2011 by way of questionnaires sent each year to a network of NGOs, foundations and academic experts and reflect their responses. The figures in this brochure, together with the examples of Good Practice, relating to accessibility have been taken from the Zero Project Report 2012 (ZPR 2012) and the Essl Social Index Pilot Study 2010 (ESI 2010). Both reports can be found on the Zero Project website at → [www.zeroproject.org](http://www.zeroproject.org)

### 2.1 Built environment and public space

“Access, on an equal basis with others, to the physical environment and to other facilities and services open or provided to the public, both in urban and rural areas,” means enabling persons with disabilities to live independently and participate fully in all aspects of life.



#### Accessibility of new buildings

(ZPR 2012, p. 32)

*Are all newly constructed buildings, to which there is public access, required by law to be accessible?*

**27 OUT OF 35** countries have legislation in place that covers both all newly constructed buildings to which there is public access and covers all disabilities. However, there were several countries, including Hungary and

Sweden, where such legislation only exists for certain newly constructed buildings or accessibility can only be guaranteed for persons with certain disabilities. In addition, the existence of legislation does not necessarily mean that it is implemented.

#### Legal time frame for accessibility

(ZPR 2012, p. 34)

*Is there a legal time frame for all existing buildings to which there is public access to be made accessible to those with disabilities? If “Yes”, by when?*

**ONLY EIGHT** of the countries surveyed actually had regulations in place requiring accessibility by 2015 (including Bulgaria, Czech Republic, Ireland, the Netherlands, Slovenia and the United Kingdom)<sup>1</sup>. In many cases (16) not all buildings are included or the law covers only certain disabilities. For example, in Italy buildings only need to be made accessible when they undergo renovation or restoration.

#### Accessibility of medical practices

(ZPR 2012, p. 56)

*Are all medical practices required by law to be accessible to those with all types of disability?*

In **GERMANY** and **FRANCE** there is no

1: How and whether legislation, where it exists, distinguishes between “public buildings” and “buildings to which there is public access” was not noted.



legal requirement for medical practices to be accessible to those with disabilities. On a more positive note, **SOME 11 COUNTRIES** and the state of **NEW YORK** are required to be accessible using generally accepted criteria such as “universal access” to those with all types of disability by 2015 (including Belgium, Bulgaria, Estonia, the Netherlands, Portugal, Slovakia and Slovenia). However, access to medical practices and access to medicine is a necessity that in a number of countries does not appear, yet, to be available.

### Education of architects

(ESI 2010, p. 34)

*Are architects obliged to receive training covering accessibility to those with disabilities?*

**FIVE COUNTRIES** (Austria, Germany, Hungary, Portugal, the United Kingdom) and the state of New York indicated that the topics of barrier-free access and the rights of people with disabilities were not fixed components of the education of architects. The relevant courses were either optional, shallow or only compulsory for some architects.

**ONLY IN DENMARK** it was confirmed that the education of architects includes mandatory courses on this topic. The remaining countries, including Sweden, Spain, Slovenia and Ireland, offered no courses covering design for those with disabilities.

### Accessibility of pharmacies

(ESI 2010, p. 84)

*Are all pharmacies required by law to be accessible to those with disabilities?*

In all countries, except one, all pharmacies are required by law to be accessible to those with disabilities. **GERMANY** was the only country that received a “red” light, since it was the only country where only newly built pharmacies had to be barrier-free. In six out of

15 countries, all pharmacies were required to ensure that their practices were accessible using generally accepted criteria by 2015 (Austria, Portugal, Romania, Slovenia, Sweden, the United Kingdom and the state of New York). However, in the seven others the criteria of accessibility were not considered that effective.

### Accessibility of exhibitions in museums

(ESI 2010, p. 96)

*Are all museums required by law to ensure that their exhibits and/or contents are also accessible to blind persons and persons with hearing disabilities?*



Only in **PORTUGAL, SWEDEN, SWITZERLAND** and the **UNITED KINGDOM** all the state owned, funded or administered museums were legally required, in addition to being fully accessible, to ensure that their exhibits and/or contents were also accessible to blind persons (including their guide dogs) and persons with hearing disabilities. In four other countries (Hungary, Ireland, Spain, Turkey) and the state of New York, only some museums were legally required to be accessible, not all these additional requirements were actually met, or they were on a voluntary, but not legal, basis.

### Reserved areas for wheelchairs in event locations

(ESI 2010, p. 98)

*Do opera houses, concert halls and sports stadia provide reserved areas for those in wheelchairs?*

In two of the 15 countries, such areas were actually provided in all of these: Sweden, Switzerland, plus the United States/New York State. In all the countries surveyed, **SOME, BUT NOT ALL**, opera houses, concert halls and sports stadia provided reserved areas for those in wheelchairs. Whereas in some countries these arrangements have a long history, a countrywide ruling for Switzerland has only been in place since 2009.

## 2.2 Transport and related infrastructures

Article 9 of the UN Convention refers several times to the accessibility of public transportation, emphasizing that minimum standards for all types of disabilities must be established. This includes not only the removal of physical barriers, but also training for “stakeholders” (in this case, the employees of transportation companies), plus the use of generally accessible signage and electronic information systems as required to ensure universal accessibility to persons with mental disabilities or visual impairments.

### Accessibility to public buses

(ZPR 2012, p. 36)

*Are all public buses in the state's capital accessible to those with disabilities?*

**ONLY THREE COUNTRIES** – Israel, the Netherlands and the United Kingdom – have public buses that are accessible to all those with disabilities, drivers are trained and each bus can carry two wheelchairs. So, in each of the other 32 countries, and in New York state, the capital's bus system fell short in one way or another. With buses constituting the vital transportation mode for persons with disabilities, this has very far-reaching consequences for employment (getting to a job),

education (getting to school), leisure activities, etc. In the vast majority of capitals surveyed, at least some buses were accessible to some persons with disabilities. One of the most common observations was the lack of training on the part of drivers. In some of the countries, only the newer buses were accessible, and in several others (Croatia, Portugal and Sweden) there were issues regarding consideration of disabilities other than those affecting mobility.

### Accessibility of railway platforms

(ESI 2010, p. 42)

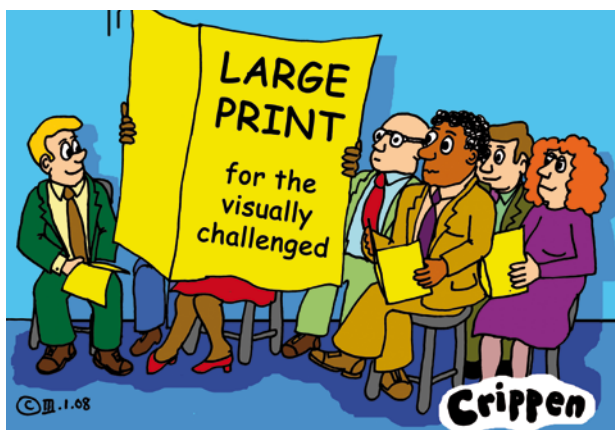
*Are the platforms in the main railway stations of the state's capital accessible?*

In **SWITZERLAND, GERMANY** and **PORTUGAL** all the platforms of the capital's main railway station were accessible, not only just to those in wheelchairs, but also to the blind. In other countries only some platforms were accessible, for instance in Ireland and Slovenia where accessibility was considered to exist for persons with impaired mobility but not for the vision-impaired. In Sweden personal assistance was needed to reach every platform, there were either steps, or no moving walkways, ramps or accessible elevators. **SOME COUNTRIES** have a deadline stating by when train stations should be accessible, such as Austria by 2015 (all train stations with more than 2000 passengers), Ireland or the United Kingdom by 2016.



## 2.3 Information and communication

Persons with disabilities have the same right to freedom of expression and opinions, including the freedom to seek, receive and impart information and ideas on an equal basis with others. It is therefore necessary to ensure that information is provided in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost. According to the UN Convention, alternative forms and formats of communication must be used in addition to sign languages and Braille, including electronic media and the Internet. Information available via Internet can only be utilised by many persons with disabilities if the websites are designed to be accessible.



### Translations of the convention

(ESI 2010, p. 32)

*Is an audio version, a sign language translation and a plain-language version of the Convention universally available on an official state website, in all official languages of the country?*

**GERMANY** and **HUNGARY**, which had websites offering the full range of versions (or for order on DVD), were leaders in this regard. **FEW OTHER** countries had

completely fulfilled this requirement of the UN Convention even though it is relatively simple to implement. Slovenia has translated the Convention, which is available in a plain-language version and as audio text. In Ireland and Romania no translation is available on an official state website. In Ireland the Convention can be requested in accessible format and easy-to-read/plain-language versions.

### TV channels for blind persons

(ESI 2010, p. 62)

*What percentage of either programmes or airtime on the most watched public TV channel also provide assistance to blind and visually impaired audiences?*

Blind and visually impaired persons are far from enjoying their right to be informed and entertained via TV on an equal basis with others.

**IN ALL COUNTRIES** the percentage of all TV programmes that were broadcast with additional commentaries for the blind and visually impaired was **LOW** (below 25%).

Sweden reported 25 percent, which is an exceptional figure. The United Kingdom indicated a share of ten percent for BBC productions. The local information source for Germany reported “three to four films with audio commentaries per day”.

### TV channels with subtitling/sign language

(ESI 2010, p. 64)

*What percentage of programmes or airtime on the most watched public TV channel have simultaneous translation into sign language, close captioning or sub-/sur-titling?*

The percentage of TV programmes that were translated into sign language or carried subtitles for the hearing impaired was significantly **HIGHER** than the figure for supplemental commentary for the blind and visually impaired. This was due to the simpler technical implementation (via teletext or the subtitling technology) that has been common for many

years. The **UNITED KINGDOM** and the **US** satisfy the UN Convention **ALMOST BY A 100 PERCENT** via subtitling, and Sweden and Ireland achieve more than 75 percent. In Slovenia and Romania, values below 25 percent were generally reported. Austria lay in the middle range with a current value of about 40 percent but had plans to expand the current offering to reach 55 percent in 2011. The use of translation into sign language was rare, and – if it existed at all – was restricted to individual programmes, even in the “frontrunner states”.

#### Accessible official websites

(ESI 2010, p. 66)

*What percentage of the state's official websites are universally accessible?*

In **A MAJORITY OF CASES**, official websites were not designed with user-friendly accessibility for persons with disabilities. In the case of Germany, Austria, Switzerland, Den-

mark, Canada and the UK, there were studies showing that at least a large portion of official websites were designed according to at least WCAG 1.0. In Slovenia, Hungary, Ireland, Portugal, Sweden and Romania, either no accessibility existed or no studies were available.

## 2.4 Public facilities and services

### Early warning system for national emergencies

(ZPR 2012, p. 38)

*In national emergencies, is the state's early warning system universally accessible?*

In only three countries – **DENMARK**, the **NETHERLANDS** and the **UNITED KINGDOM** – are the states' early warning systems universally accessible to all those with disabilities. In 19 others, the early warning system has not been designed to be universally accessible for persons with disabilities. A particular hurdle in making such systems

## GOOD PRACTICE EXAMPLE

VerbaVoice GmbH, Germany → [www.verbavoice.de](http://www.verbavoice.de)



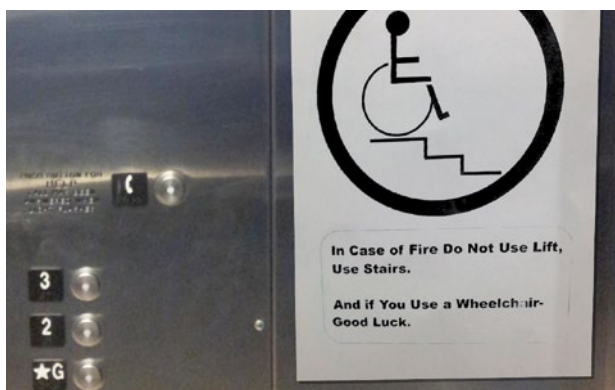
VerbaVoice provides a unique solution to the barriers which deaf and hard of hearing persons currently face in their daily lives. Via an online platform, any deaf or hard of hearing person can connect to a speech-to-text reporter (STTR) whenever necessary: the voice of the speaker is transmitted to a laptop or mobile phone, transcribed in real time and displayed on the screen of the laptop or phone of the deaf or hard of hearing user.

### Why this is an example of Good Practice

- Only a small number (80,000) of all the estimated 14 million deaf and hard of hearing persons in Germany understand sign language. However, transcription of verbal communication into text is still not a widely available solution to tackle communication barriers. The use of the VerbaVoice online platform reduces the costs by an average of 35 percent.



universally accessible is reaching those who are deaf or have hearing impairments. Of the six countries singling out this issue in particular, three (Belgium, Ireland and Italy) indicate that efforts are currently being made to address it. Belgium's "Crisis Alert by Text" system will start to be implemented in the last quarter of 2011. The delivery of a visual warning at home will, however, be predicated on possession of a suitable apparatus to convey that warning, for example a mobile phone or a television, and that it is turned on: this is not, of course, something that can be guaranteed.



### Right to primary mainstream education

(ZPR 2012, p. 50)

*Does a child with disabilities have the right to receive free and compulsory primary education within the mainstream educational system?*

With inclusion from the earliest possible age so important, to see that **IN 22 OF 35 COUNTRIES** every child with a disability has at least the right to receive free and compulsory primary education within the mainstream educational system is encouraging. It is sad to note, however, that in **ARGENTINA**, the right to inclusion in the mainstream educational system remains unrecognised. Although the right to such education exists in nearly two thirds of the countries surveyed, in many the difference between theory and practice remains distinct. Amongst the difficulties cited in achieving inclusion are attitude (Australia), a dearth of "specialists to teach children with severe difficulties" (Estonia), accessibility (Sweden), and, a perennial problem, funding (Italy).

## GOOD PRACTICE EXAMPLE

Eurokey, Switzerland → [www.eurokey.ch](http://www.eurokey.ch)

Eurokey is a service guaranteeing access to, and the accessibility of, public facilities (with specific room and hygiene requirements). Access is with a universal key, a Eurokey, a Dom key system registered for the whole of Europe. The key can be used in lifts, stair lifts, toilets, cloakrooms, for barriers, special secured entrances, interphone systems, etc. Eurokey is developed for persons with either mobility or visual impairments, as well for persons with other disabilities. The Eurokey is given directly to the user. Eurokey is also integrated into information in city maps, available as a smartphone application "gpstracks", and is incorporated in projects for accessibility of other cooperating partners.

### Why this is an example of Good Practice

- The Eurokey guarantees more autonomy and independence for persons with a disability. A trip or a journey can be planned better.
- Access to lockable facilities in public spaces and buildings is independent of their operating hours.
- Eurokey offers an added level of security to the restricted user group and improved cleanliness and hygiene conditions, and protection from vandalism.

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### Alternative testing methods for students

(ZPR 2012, p. 52)

*Do university students with disabilities have access to alternative testing methods?*



Although it is comforting to see that there are only three countries in which no alternative methods are available to students, the fact that, in **JUST OVER ONE THIRD** of countries (plus the state of California), such methods are available in all universities is disappointing. Specific measures include: “Additional time for the exams, human assistance (secretary or translator), additional years to pass the exams, and in certain cases, no exam (upon decision of the Head of the University)” (France).

### Sign language in court

(ZPR 2012, p. 42)

*Is sign language an officially recognized language in the courts?*

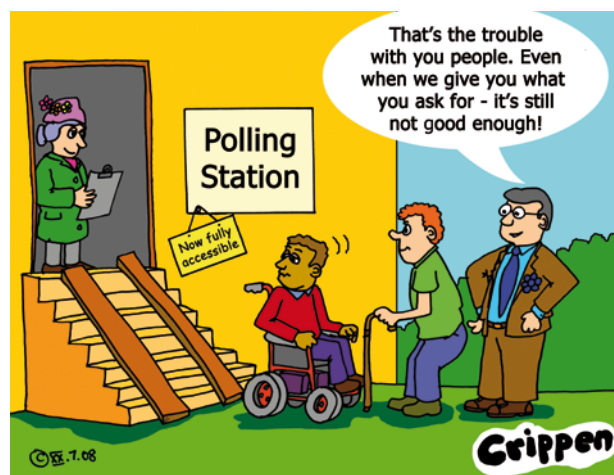
**IN OVER 60% OF THE COUNTRIES** surveyed, sign language is both an official language of the courts and persons with a hearing impairment have the right to a translator paid for by the state. Of all the 35 countries 24 responded with an unqualified “Yes” (including almost all EU member states). Only two countries, **ALBANIA** and **IRELAND**, responded with a “No”. In nine other countries (including Bulgaria, Germany and Romania) sign language is only officially recognized in some

courts, those with a hearing impairment do not have the right to a translator, a translator is not paid for by the state or only by custom translators are made available and paid for by the state.

### Right to receive necessary support to vote

(ZPR 2012, p. 64)

*Does a person with disabilities have the right to receive all the necessary support to vote, in secret, in elections for parliament?*



**IN 23 OUT 35 COUNTRIES** persons with disabilities do not receive all the necessary support to vote in secret. Transport may not be free, personal assistance may be limited, Braille ballot or template may not be available or a voter may not vote freely or secretly in his or her institution. In just about one third (11) of the countries surveyed voters did receive all the necessary support to vote in secret, including Austria, Czech Republic, Estonia, Finland, Italy, the Netherlands and Spain. In Finland, for example, persons can vote from home and request assistance if desired.

### 2.5 Summary Ranking on Accessibility Indicators

In order to enhance clarity and comparability, all the Zero Project results have been summarized in traffic light colours, with “green” representing a good solution, “orange” a partial solution, and “red” an unsatisfactory solution.

## The Zero Project Report 2012

(UNCRPD Review in 35 countries) 2011

*Count and ranking of traffic lights per question*

In brief	Red	Orange	Green
Early warning systems for national emergencies	19 (9)*	11 (8)	3 (All)
Legal time frame for accessibility	7 (1)	20 (13)	8 (6)
Accessibility of medical practices	4 (2)	20 (10)	11 (8)
Alternative testing methods for students	3 (None)	21 (10)	13 (10)
Accessibility of public buses	2 (None)	30 (18)	3 (2)
Sign language in court	2 (1)	9 (3)	24 (16)
Right to primary mainstream education	1 (None)	12 (8)	24 (12)
Right to receive necessary support to vote	1 (None)	23 (13)	11 (7)
Accessibility of new buildings	0 –	8 (2)	27 (18)

\* The number in brackets refer to the results of the Zero Project Survey in European Union Member States. The survey was carried out in a total of 21 countries: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, The Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

## The Essl Social Index Pilot Study

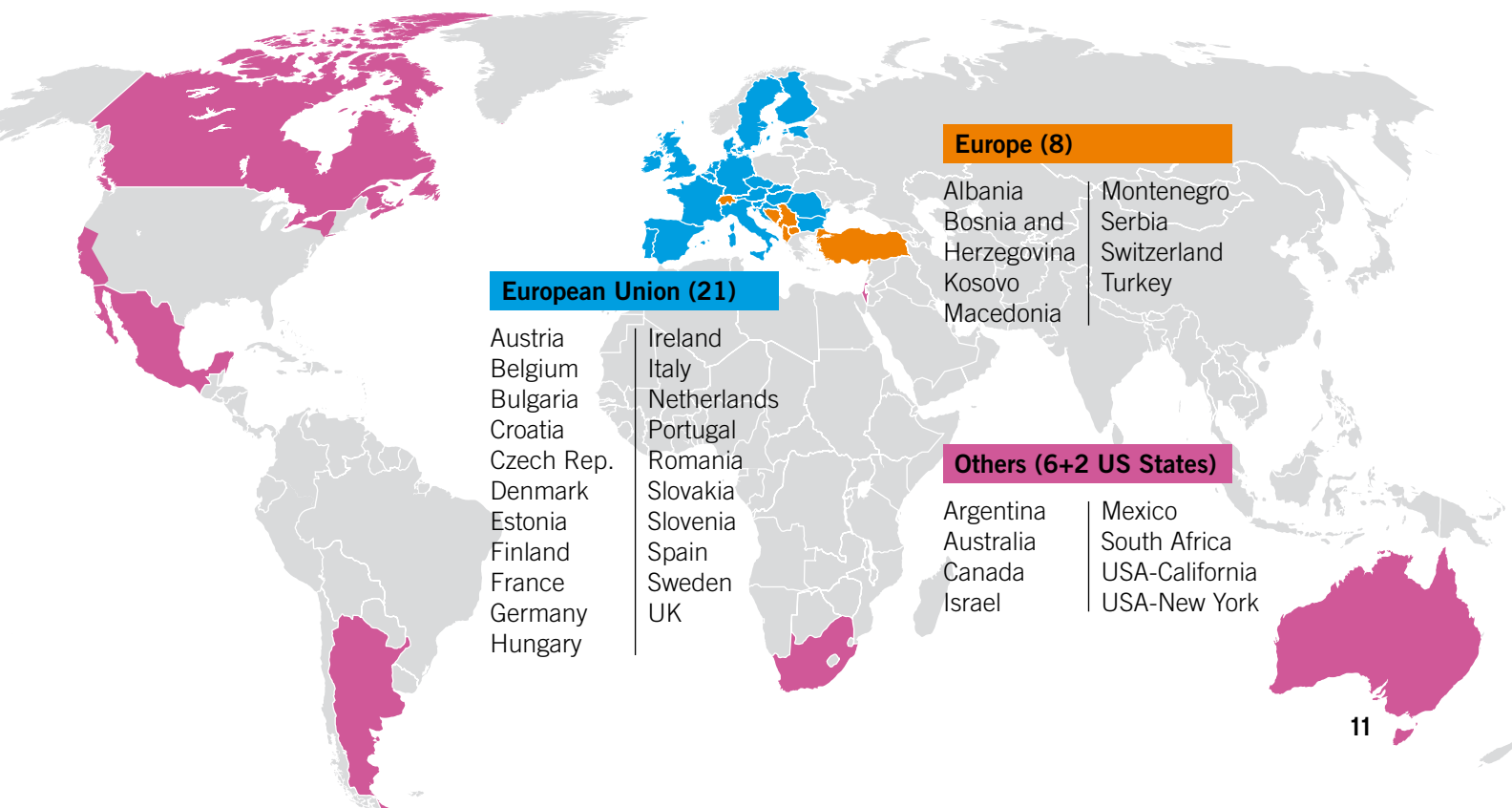
(UNCRPD Review in 15 countries) 2010

*Count and ranking of traffic lights per question*

In brief	Red	Orange	Green
Accessibility of TV to the blind and visually impaired	14 (10)*	1 (1)	0 –
Accessibility of official websites	8 (6)	7 (5)	0 –
Training for architects covering accessibility	7 (5)	6 (5)	1 (1)
Accessibility of the UNCRPD	7 (3)	4 (All)	4 (All)
Accessibility of exhibitions	6 (5)	5 (3)	4 (3)
TV programmes with sign language and subtitling	5 (4)	5 (4)	4 (3)
Accessibility of existing public buildings	5 (3)	3 (All)	6 (5)
Accessibility of railway platforms	1 (1)	10 (8)	4 (2)
Accessibility of pharmacies	1 (1)	7 (4)	7 (6)
Reserved areas for wheelchairs in event location	0 –	12 (10)	3 (1)

\* The number in brackets refer to the results of the Essl Social Pilot Survey in European Union Member States. The survey was carried out in a total of 11 countries: Austria, Denmark, Germany, Hungary, Ireland, Portugal, Romania, Slovenia, Spain, Sweden the United Kingdom.

## Countries reviewed in 2011



## ACCESSIBILITY – GOOD POLICIES

The Zero Project examples of Good Policy have all been presented at the International Conference on Good Policies for Persons with Disabilities that took place on 22-23 January 2012 in Vienna, Austria. With a view on antidiscrimination, accessibility and equality five of these policies were being discussed in particular: Foremost the Americans with Disabilities Act of 1990, the UK Equality Act of 2010, the Spanish Law of Equal Opportunities, Non-Discrimination and Universal Access for Persons with Disabilities (LIONDAU) of 2003, the Austrian Federal Disability Equality Act of 2006 and the Norwegian Anti-Discrimination and Accessibility Act of 2009. They are all briefly presented here with a special focus on accessibility. In-depth information about these laws (as well as the others) is currently prepared by the World Future Council.



### 3.1 The Americans with Disabilities Act of 1990, USA

Internationally, the United States is a front-runner for achieving accessibility throughout society. The Americans with Disabilities Act (ADA) of 1990, together with the Architectural Barriers Act of 1968 (applying to federal facilities), the Rehabilitation Act of 1973 (applying to federal programmes) and the Fair Housing Act as amended in 1988, has a very broad scope covering both the public and the private sector. A number of states, for example California, have laws which are maybe even broader than the ADA and related laws. Specifically the ADA's second title requires that public services, programmes and activities offered by state governments and local governments need to be accessible to people with disabilities, including access to the physical environment, transportation, information, buildings, roads, schools, medical facilities, social services, recreation, courts, voting, town meetings and workplaces. Structural changes needed for program accessibility needed to be made as expeditiously as possible, but no later than January 1995.

Title III of the ADA requires privately operated businesses and non-profit service providers that are public accommodations to provide reasonable accommodations. These are restaurants, retail stores, hotels, movie theatres, private schools, convention centres, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centres and recreation facilities, but do not include private residences, private clubs, religious organizations or places of worship. Public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense. In addition, courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered. A failure to take such steps is defined as discrimination. To support businesses two tax incentives are offered by the federal government: the Internal Revenue Code Section 190 allows all businesses a tax reduction of up to \$15,000 each year for the removal of existing barriers, meanwhile the Internal Revenue Code Section 44 allows a small business to use a non-refundable tax credit, up to \$5,000 for a taxable year, to make their business accessible.



ADA Title IV requires telephone companies to establish telecommunications relay services that enables callers with hearing and speech disabilities who use telecommunications devices for the deaf, and callers who use voice telephones to communicate with each other through a third party communications assistant. With the ADA Amendments Act of 2008, an individual right to eAccessibility and a right to remedy has been established.

### **Definition of accessibility**

The ADA includes a concrete definition of accessibility: “Accessible refers to a site, facility, work environment, service, or program that is easy to approach, enter, operate, participate in, and/or use safely and with dignity by a person with a disability.”

### **Enforceable standards**

The Department of Justice maintains ADA Standards that govern the construction and alteration of places of public accommodation and state and local government facilities except transportation facilities, which are subject to standards issued by the Department of Transportation. ADA’s Title III authorizes the Department of Justice to certify that state laws, local building codes, or similar ordinances meet or exceed the ADA Standards.

### **Guidelines & training for accessibility**

The US Architectural and Transportation Barriers Compliance Board (“Access Board”) is responsible for publishing guidelines for accessibility, which serve as the minimum baseline for standards. Its most recent guidelines were the Americans with Disabilities Act and Architectural Barriers Act accessibility guidelines of 2004. Once adopted by a standard setting agency, the Board’s guidelines are enforceable. The Board provides also information and train-

ing, for example in 2009 it trained approximately 7,000 people on accessibility issues and responded to over 13,600 technical inquiries. In addition, it conducts investigations (148 cases in 2009). Barriers were successfully remedied in all cases where the law applied, and in some cases voluntarily where it did not. For specific guidance on accessible design, 10 ADA advice bodies were set up all over the country, called the Disability and Business Technical Assistance Centers.

### **ENFORCEMENT**

- Title II and III of the ADA are enforced by the Civil Rights Division of the US Department of Justice. The Department can not file a lawsuit unless it has first attempted to settle the dispute through negotiations. It sometimes resolves cases by means of formal written settlement agreements and numerous cases with other settlement agreements. The Department can file lawsuits in the Federal court to enforce the ADA and can obtain court orders including compensatory damages and back pay to remedy discrimination. Under Title III the Department can also obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.
- Many people with disabilities and disability rights organizations request the Department to refer their complaints to mediation. More than 400 professional mediators are available nationwide and over 75% of the cases in which mediation has been completed have been successfully resolved.

### **CONCERNS**

- However, the majority of complainants have no access to mediation and enforcement of the ADA is still too much reliant on the individual lawsuit. In addition, the Department of Justice has not the necessary resources in order to deal with all important cases.



### 3.2 The Equality Act 2010, UK

116 separate pieces of legislation were consolidated and updated with the introduction of the single Equality Act, perhaps the most comprehensive and detailed anti-discrimination legislation in Europe. Introducing the Equality Act 2010, the UK government reformed and combined anti-discrimination legislation into one single act for nine “protected characteristics”: disability, age, gender reassignment, sex, sexual orientation, race, religion or belief, marriage and civil partnerships, as well as pregnancy and maternity. Its comprehensiveness derives not only from the range of the protected groups, but also from the areas covered by the Act, which include nearly all the functions of public authorities and the private sector. Particularly in the non-employment context, two promising tools for tackling discrimination can be found: the public sector equality duties, and the anticipatory reasonable adjustment duty.

#### The Public Sector Equality Duty

The Disability Discrimination Act (DDA) 2005 made important changes to the scope of the original legislation, including the creation of a legal duty for public authorities actively to promote Disability equality, known as the Disability Equality Duty. It placed duties on those who provide services, education and employment and encouraged employers to identify what adjustments and support might be needed by disabled persons. On 1 October 2010 the Equality Act replaced the whole of the DDA of 1995, except in so far as it applies to Northern Ireland. The law expanded the equality duties to all protected characteristics by introducing a single public sector equality duty consisting of a general duty and the specific duties, and applying to almost all public

bodies. The public sector equality duty requires public authorities to have due regard to advance equality, and to consult with disabled persons organisations.

#### The Anticipatory Reasonable Adjustment Duty

The Equality Act 2010, firstly, prohibits discrimination and, secondly, applies an individualized definition of discrimination in each of the areas covered, including services and public functions, premises, work, education and associations. In addition, the failure to comply with the reasonable adjustment duty constitutes discrimination. The requirements of the duty are to remove substantial disadvantage to which a disabled person would otherwise be exposed, by: altering provisions, criteria or practices; altering, removing or circumventing physical features; and, providing auxiliary aids and services. Outside the contexts of employment and housing, all duty-bearers must anticipate any potential disadvantage and take reasonable steps to remove it.

#### RESULTS

- With regard to the general equality duty, there is an increasing number of successful cases and about 100-200 settlements per year.
- The anticipatory reasonable adjustment duty appears to have inspired the European Commission to include a similar anticipatory duty in its draft of the Goods and Services Directive.

#### ENFORCEMENT

- The Equality and Human Rights Commission (EHRC) plays a strategic role in enforcing the Act. Disappointingly, it will see its budget halved because of government spending cuts. In 2010, the EHRC took 50,000 calls to its helpline. As well, it created dedicated local

authority advisers to help industry to comply with accessibility requirements.

- Since 2007, the Equalities Mediation Service has dealt with hundreds of discrimination cases in the provision of goods and services, employment and education, and, in 80 percent of them, reached full agreement.

## CONCERNS

- Unfortunately, due to the cost of legal action when people are discriminated against, it seems the Act is ineffective especially with regards to access to goods and services. Many individuals do not have the resources or support they need to seek redress.
- The Equality Act 2010 covers those goods that are essential in the delivery of a service, but there is poor compliance with this requirement. Furthermore, it does not cover all manufactured goods, which are not part of a service, such as washing machines etc, and where the inaccessibility of ICT is a major issue. Many examples exist where accessibility to services and/or premises is poor.



### 3.3 The Federal Disability Equality Act of 2006, Austria

The focus on accessibility in the public and private sector combined with a mandatory low-threshold conciliation procedure, which is promoted as Good Practice by disability organisations, are what distinguishes the Austrian Federal Disability Equality Act. The Federal Disability Equality Act was enacted by Parliament in 2006. It has a broad definition of disability and prohibits direct and indirect discrimination, harassment and instruction given by others to discriminate. The Act applies to federal authorities and to the access to goods and services available to the public under federal competence. It defines measures against

discrimination and requires reasonable accommodation in services, including social security, healthcare, education and housing (both to a limited extent), access to goods and services available to the public, as well as public spaces and infrastructures.

## Achieving Accessibility of the Built Environment

The Federal Disability Equality Act puts forth a highly interesting approach with regards to achievement of an accessible built environment, which, in its original version, is favoured by the European Disability Forum as a model for the European Accessibility Act. The law defines the existence of “barriers” as a form of prohibited indirect discrimination and addresses preexisting barriers using a staggered approach based on both a staggered set of deadlines and the cost of removing the barrier. It provides for a series of timeframes for the elimination of barriers in public buildings and transport. Where barriers cannot be removed, the law still requires a decisive improvement in the situation of the affected individual. The law establishes also the duty of federal authorities to undertake concrete efforts for achieving accessibility.

## ENFORCEMENT

- Disability organisations praise the Austrian mandatory low-threshold conciliation procedure as Good Practice. It is a compulsory mediation before the Federal Social Welfare Board, prior to enforcement in court, which both examines whether public funds can be used to abolish cases of systemic discrimination and promotes out-of-court settlements.
- The law’s provisions include a limited class action mechanism. In the instance of important and lasting harm, the Austrian National Council of Disabled Persons can initiate a class action with the approval of the Federal Disability Advisory Board.

► Parallel to this, a Disability Ombudsman was established from whom people can obtain advice and support.

## RESULTS

- From 2006 to 2010, there were 732 mandatory conciliation cases, of which approximately 60 percent could be solved out of court.
- In the same year, EUR 3.4 million was granted by the Federal Social Welfare Board to almost 200 undertakings for accessibility works.
- In 2010, the Disability Ombud answered over 1,200 requests.
- In addition, several ministries have published action plans with the objective of achieving accessibility.

## CONCERNS

- The implementation of the Federal Disability Equality Act is far from being completely achieved. In addition, legislative improvements are needed: The government has recently evaluated the Act and is considering whether to introduce the right to removal of discriminating offences and injunctive reliefs, to raise compensation for damages, to improve the mandatory low-threshold conciliation procedure and class action as well as the protection against discrimination on a regional level.
- In February 2012 the government published its ten-year strategy, the National Action Plan 2012-2020, which focuses exclusively on accessibility in Chapter 3. However, it is highly likely that problems will arise due to the split responsibilities between national and regional levels for many issues.
- Accessibility: The original regulations (2006) requiring accessibility of public buildings by 2015 were softened by a law accompanying the budget (2010). The new timeframe is 2019, which is very disappointing taking into account that 10 years for amending the situation has not been considered enough.



### 3.4 The Law of Equal Opportunities, Non-Discrimination and Universal Access for Persons with Disabilities (LIONDAU) of 2003, Spain

The LIONDAU marked an unambiguous shift in Spanish disability policy towards a human rights perspective based on the social model of disability. The law seeks to guarantee equality of opportunity for all persons with disabilities through the basic tenets of non-discrimination, positive action and universal accessibility. The law has an almost universal scope and requires the adoption of subsidiary legislation in different fields such as goods and services available to the public, transportation, telecommunications and information technology, urban public spaces, infrastructures and buildings, and relations with public administrations. Crucial for achieving its objectives is the crosscutting goal of universal accessibility, addressed with its strategy “Design for All”.

#### Equal Opportunities

The law defines equal opportunities as lack of direct and indirect discrimination based on the ground of disability. It focuses on both non-discrimination and accessibility on an equal level. The law places particular emphasis on awareness raising and training, which go hand in hand with accessibility plans.

#### Universal Accessibility

In order to permit persons with disabilities to live in the community, LIONDAU adopts the principle of universal accessibility, which is particularly important for access to social services, employment and education. Most importantly, it considers accessibility as an autonomous right. Therefore, almost all its regulations have a clear focus on accessibility



requirements which are mandatory for all parties that are supposed to meet the standards. Only when these accessibility requirements cannot guarantee equality, individual reasonable accommodations come into play.

## ENFORCEMENT

- LIONDAU provides for an arbitration system and establishes a series of enforcement measures, including a regime of administrative offences and sanctions. Violations can be punished by a fine up to one million euro.
- A specific role is performed, at the complaint level, by the “Oficina Permanente Especializada” (Permanent Specialized Bureau) which gathers reports by citizens and entities where the rights of people with disabilities have not been respected. Its report 2010 stated that during this year the number of inquiries or complaints were 238. There is also a Spanish ombudsman and some regional ombudsmen, who, in some cases, serve specifically for persons with disabilities.
- The Law includes the following timetable for basic accessibility conditions and non-discrimination in the access and use of transport: in new infrastructures and transport 5-7 years; in pre-existing ones subject to reasonable accommodation it is 15-17 years.
- Within six months of the law’s enactment the National Accessibility Plan 2004-2012 *“Achieving Equal Opportunities and Full Participation through Design for All”* was launched, planning to remove barriers especially in social services, justice, new technologies of information and communication, and infrastructure for leisure and tourism, and to introduce the Design for All concept. Activities include awareness-raising campaigns, training on “Accessibility” and “Design for All” in universities and promotion of research.
- In 2007, a series of specific regulations were promulgated.

## RESULTS

- Reports have highlighted that improvements in quality of life have been made, foremost in accessibility of transport and communication. Public and private attitudes have started to change.
- With regards to access to information and communication, the MeAC study of 2008 revealed progress in improving accessibility. Specifically, the study identified that three out of the five public websites evaluated were accessible; emergency numbers were directly accessible by means of text telephones; text and video relay services were also available.
- In 2011, the Spanish government published a new Disability Strategy 2012-2020 with universal accessibility as one of its main features.
- In 2011, the enactment of Act No 26 of 2011 incorporated the definition of a person with disabilities as in UN CRPD Article 1.
- In May 2012, Ana Mato, the Minister of Health, Social Services and Equality, announced the Government’s intention to study a future Disability Law, in collaboration with disability associations, consolidating LISMI into a single text with the LIONDAU (2003) and the Act on Offences and Penalties (2007), which are the three main general laws in force in Spain devoted to persons with disabilities.

## CONCERNS

- LIONDAU is an important law that has not yet been fully implemented. A firm commitment is necessary to extend its impact to the entire Spanish legal framework. Its implementation is taking place more quickly than pre-2003 legislation but relies on the quality of the technical regulations and the monitoring systems accompanying the legislation.
- Legislative improvement needed: The regulation on the access and use of goods and services available to the public is due since 2005. Regulating and promoting accessibility

is a regional and even a local competence, many rulings on accessibility are not updated on a regional level.

► Spain appears to have, similar to the UK, reasonable accommodation duties which require the removal of group-based disadvantage on an anticipatory basis.

While these duties are mandatory and punishable by fine, a breach of them is not classified as discrimination. It is, however, unclear to what extent the duties would be used to eliminate structural discrimination.

► While the enactment of Act No 26 of 2011 has incorporated the definition of a person with disability of Article 1 of the UN CRPD, at the same time it includes a vague last paragraph which seems to support the old definition of disability, that is, persons having a 33 percent minimum degree of handicap recognised by a certificate.



### 3.5 The Anti-Discrimination and Accessibility Act of 2009, Norway<sup>2</sup>

In 2009, Norway launched an ambitious Action Plan which sets the goal of “*Norway universally designed by 2025*” and enacted a disability-specific Anti-Discrimination and Accessibility Act, which is mainly focused on transport, ICT and the built environment. The Act refers to the sector legislation in each field as well as specific regulations elaborating on the regulations in the Act itself. The main shortcoming of this last Act is that it includes no right to reasonable accommodation in the access to goods and services. Only employers, educational institutions, kindergartens and municipalities have a duty to ensure a reasonable accommodation for individuals. However, for several aspects the Norwegian

Anti-Discrimination and Accessibility Act can be considered unique. The Norwegian Act has legally established the principle that inaccessibility is a matter of discrimination. One has to take note also of the all-encompassing prohibition against discrimination on the basis of a present, past, assumed or possible future disability, which might be said to fully apply the social model of disability.

#### Universal design

The Norwegian Act is definitely among the best examples worldwide, when it comes to the obligation to apply universal design, which - if breached - amounts to discrimination (only a few countries already require the application of universal design). Universal design is defined in accordance with the original concept invented by Centre for Universal Design at North Carolina State University. Regulations specifying detailed requirements regarding accessibility to buildings, constructions, developed outdoor areas, ICT and means of transport turn universal design into a legal standard. The paragraph referring to universal design of the built environment and outdoors areas refers to the Public Procurement Act (2007) and the Planning and Building Act (2010). In particular, the obligation to provide universally designed information and communication technologies has been legally enshrined, without any reference to disproportionate burden. The Act contains also positive duties for public and private undertakings offering goods and services to the general public to achieve universal design. Conceiving universal design as an essential condition for sustainable development, in Norway the Ministry of Environment is in charge of its implementation.

#### Positive duties

The Act contains also positive duties for public authorities as well as public and private em-

2: The Norwegian Act No 42 of June 20, 2008 relating to a prohibition against discrimination on the basis of disability (the Anti-Discrimination and Accessibility Act).

ployers to promote equality. Public authorities must report about the measures undertaken in their annual report which will be checked by the Equality and Anti-Discrimination Ombud.

### **The Equality and Anti-Discrimination Ombud and Tribunal**

The Equality and Anti-Discrimination Ombud and Tribunal are responsible for following up and monitoring this Act. Together, they constitute a well-functioning low-threshold enforcement system that has already started to enforce the law effectively in the areas of their competence. Everyone can appeal, without any cost and without a lawyer, to the Equality and Anti-Discrimination Ombud. The Ombud reviews the complaint, asks for a statement from the perpetrator of the discriminatory act and issues an opinion about which provisions have been violated. Most cases are solved by the Ombud and concern Universal Design and accessibility. If violations have occurred the Ombud asks the perpetrator of the discriminatory act to stop the practice and s/he needs to report back. If the case is not solved, it will be forwarded to the Equality and Anti-Discrimination Tribunal, which is a semi-court composed of lawyers and disability experts. The tribunal can give legally binding statements and can fine the perpetrator of the discriminatory act directly with the help of the State. If the discriminator does not accept, she or he can go to court.

### **RESULTS**

► The Ombud is a name and shame mechanism, meanwhile the Tribunal can issue fines in order to stop or to modify practices and to introduce new measures. In many cases of direct and indirect discrimination the Ombud mechanism is very successful. During the first three years, the Ombud received more than 300 complaints mainly concerning universal

design. In addition, the Ombud has received hundreds of calls from people with disabilities asking for advice and information about their rights under the law.

► The implementation of universal design is set forth in the Action plan “*Norway universally designed by 2025*” launched by the Ministry of Children and Equality, in cooperation with four other ministries. The ambitious plan combines both the equality policy and sustainability policy, and aims at establishing a European platform for the development of universal design.

### **CONCERNS**

► The law does not ensure access to goods and services for all, since it only considers universal design. Without an obligation for service providers to provide reasonable accommodation, goods and services will not be accessible to persons with disabilities who may need a sign language interpreter or personal assistance.

► Accessibility of existing buildings needs to be addressed.

► At the moment, there is a consultation on a proposal put forward by a law advisory committee which would give the Anti-Discrimination and Equality Tribunal authority to decide in cases concerning redress for non-economic loss.

This brochure presents results of the Zero Project Report 2012 published by the Essl Foundation in November 2011, authored by Michael Fembek, Thomas Butcher, Ingrid Heindorf and Caroline Wallner-Mikl.

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Editing: Ingrid Heindorf, Michael Fembek, Thomas Butcher, Sannie Naus

Special thanks to Crippen for generously sharing his cartoons for our brochure.

Cartoons created by Crippen - Disabled Cartoonist ([www.crippencartoons.co.uk](http://www.crippencartoons.co.uk))

Printed on FSC certified paper

Published in June 2012

**“ Every time a person is prevented from using the environment to his or her full potential, society incurs a cost.”**

The late Justin Dart, Jr., renowned leader of the international disability rights movement and widely thought of as the “Father” of the Americans with Disabilities Act, stated: “The economic cost of excluding two-thirds of Americans with disabilities from the mainstream is about \$200 billion annually, in public and private payments - \$300 billion when you include lost taxes and lost productivity. The failure to invest in the empowerment of people to be productive is the cause of economic problems in rich nations and poor alike. Humanity is losing hundreds of billions of dollars by keeping human beings isolated from the productive mainstream of society.”