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Making lifelong learning a reality for all

The impact of legal and political frameworks on accessible lifelong learning (ALL)

Cäcilia Weiermair-Märki¹, Elisabeth Unterfrauner²

Key words: *Higher Education, accessibility, lifelong learning, e-learning, legal and political frameworks*

Abstract:

Within the EU4ALL project (www.eu4all-project.eu) extensive research has been undertaken to detect the impact of legal and political frameworks on the accessibility of lifelong learning (ALL), with a clear focus on higher education in this initial phase. The introduction of appropriate technologies in educational institutions is accompanied and shaped by legal and political concepts, measures and programmes capable of reducing or strengthening existing barriers to the participation in lifelong learning (LLL) for all. International declarations have been analysed as well as European legal and political frameworks relevant for accessible lifelong learning accompanied by research on national level in a sample of EU member states and Australia, Canada and the USA. Main areas of investigation are equality, non-discrimination and equal opportunities as well as academic laws and corresponding policies and strategies in favour of disabled students at institutional level.

1 EU4ALL – European Unified Approach for Accessible Lifelong Learning

In October 2006 a team of 13 European partners started to work on a project aiming at the development of a flexible, open, standards-based architecture of services to support lifelong learning within higher education institutions for all people, including those with special needs. The project will be carried out over a period of four years.

Lifelong learning has become a well-known term in the last decade. With the maturing of the information society the awareness for the exclusion of certain groups of people from the benefits of ICT increased accordingly. Technology enhanced learning and e-learning contain great potential for disabled learners but, if technologies are not shaped accordingly, risks of further exclusion are evident. Thus EU4ALL defines accessible lifelong learning (ALL) as follows: „The lifelong learning paradigm recognises that, in a knowledge based economy, education and work are integrated throughout people’s lives. All citizens need ongoing access to learning to enable them to work. Technology is playing an increasing role in mediating this learning. However, if this technology is inappropriate and introduced with insufficient support, disabled people will face even further exclusion from the interlinked worlds of education and work“ (EU4ALL Document of Work).

Accessible lifelong learning is implemented at institutional level and realised at personal level but the frameworks to make it happen are developed and determined by legal and political actors at international, supranational and national level. Being aware of the important role of

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these stakeholders EU4ALL undertook research at all of these levels to detect the state of the art of legal and political frameworks shaping ALL.

2 Legal and political frameworks shaping the participation of disabled students in (higher) education and lifelong learning

The growing presence of disabled students in higher education (HE) as well as the growing prominence of e-accessibility needs in different social and political areas is a clear sign of a trend which is rooted in non-discrimination policies. The shift of emphasis over the last 20 years is reflected at all levels of policymaking and legislation. At the international level above all the United Nations are active in creating a framework for the promotion of equal opportunities and non-discrimination. Also the European Union introduced non-discrimination clauses into the Amsterdam Treaty, the current legal foundation. The furthering of the Information Society brought about the concept of e-inclusion pointing at chances and risks occurring for vulnerable groups in society. Thus also the term e-accessibility has gained more and more attention over the last few years. At national level equality and non-discrimination principles have a long tradition in constitutions and equivalent legal acts and in legislation intended to guarantee equal rights for disabled people. These provisions have a direct influence on access to education in general and the accessibility of learning processes in particular.

As the focus of this paper lies on higher education respective academic laws of countries such as Spain, Greece, Bulgaria, Sweden, Austria, the UK and Italy were researched. Special attention was also given to legal provisions shaping the academic sector in Australia, Canada and the USA. At institutional level the effectiveness of legal frameworks becomes visible. Thus university websites were investigated concerning their published policies and strategies in favour of disabled students as well as the inclusion of special needs into existing learning and teaching strategies. This analysis provides some impressions about the effective culture of inclusion and the actual realisation of ALL at higher educational level.

2.1 International safeguarding of human rights for people with disabilities relevant for ALL

From the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 it was a long way to go until “The Standard Rules on the Equalization of Opportunities for Persons with Disabilities” (The Rules) were accepted by the General Assembly of the United Nations (UN) in 1993. The Rules present the directives of social change that should allow all citizens, without exception, to take part in an equal manner in society introducing fundamental principles into the political processes such as equal opportunities, equal access, non-discrimination as well as the equalization of rights and duties. The general impact of the Rules was enormous, influencing policies and actions of numerous governments, and forcing all the countries that have signed them to compare themselves with a thematic which had been neglected, if not even unknown so far. We owe to the Rules the first international conceptual placing of the vision of persons with disabilities, based on the social model. The “Convention on the Rights of Persons with Disabilities” was approved by the General Assembly of the UN in December 2006. It is the final arrival point in the progressive international safeguarding of the rights of persons with disabilities. The convention covers all areas of lives of persons with disabilities in detail, guaranteeing them protection from discrimination and from violation of human rights. It does not introduce new rights but expresses existing rights in a comprehensive way addressing needs and situations of persons with disabilities. In the articles of the convention accessibility in general is present in all areas. The preamble highlights the

importance of accessibility, of services usable by all people to the greatest extent possible and of universal design as the guiding principle. In Article 24 of the declaration broad space is provided for educational affairs aiming at an inclusive education system at all levels and lifelong learning (<http://www.un.org/esa/socdev/enable/rights/convtexte.htm> retrieved September, 2006). This Convention enters into force once twenty countries ratify it. So far (September 2007) four countries did so (Jamaica, Hungary, Croatia and Panama).

2.2 Political and legal provisions of the European Union relevant for ALL

In the 1997 Amsterdam Treaty Article 13 inserted the safeguarding of persons with disabilities into the legal foundation of the European Union, thus laying the ground for legal action by EU institutions. An even stronger guarantee was introduced by the Intergovernmental Conference by including a declaration in the Final Act, stating that the Community institutions must take account of the needs of persons with a disability when adopting measures to approximate Member States' legislation. Accordingly any kind of legal measure, policy or action has to include the rights and needs of persons with disability. A process of transformation of European and national policies is currently taking place by reviewing existing pieces of legislation concerning its effect on equal participation of disabled persons. This introduction of the demand for mainstreaming equal opportunities for disabled people is maybe the most important driver promoting the inclusion of special needs at EU level.

The strategy of the EU for persons with disabilities is human rights based focusing on three fundamental pillars: non-discrimination, mainstreaming equal opportunities and the overcoming of barriers and obstacles including the involvement of organisations of persons with disabilities in decisions concerning them (European Commission, 2005).

The overcoming of barriers is particularly relevant for the EU's e-inclusion policies, which refer to the idea that technology can be used to support and further social cohesion. But – with an ever more widespread diffusion of ICT the risk of digital divide increases as long as products and services are designed to exclude those with different access and processing needs. This approach is pursued in the eEurope 2005 and i2010 action plans, the consecutive strategic frameworks of the EU. The creation of modern online public services accessible for all is in the centre of attention in the EU's e-government, e-learning and e-health policies. The Lifelong Learning concept of the EU, which was issued in 2001, pays special attention to the facilitation of access to learning opportunities to those who are at risk of exclusion such as people with disabilities (European Commission, 2001). The e-learning action plan of the EU states that neither connectivity nor equipment are central issues. The major challenges are pedagogy, content, quality assurance and standards as well as teacher training, organisational change and the transformation of education and training processes. Accessibility is mentioned in the action plan together with other policy areas which are considered to be relevant for e-learning (European Commission, 2003). Both, the European Council and the European Commission addressed the use of ICT in the educational sector and equality of opportunities for disabled people in several resolutions and communications (Council resolutions “eAccessibility – improving access of people with disabilities to the knowledge based society” (2003/C 39/03) and “Equal opportunities for pupils and students with disabilities in education and training” (2003/C 134/04) as well as EC Communication “eAccessibility” (COM(2005) 425)). The EC expresses the conviction that problem areas identified could easily be solved from a technical point of view, but they require close cooperation, coordination and determination at the European level as market forces alone seem not to have been sufficient to date. Furthermore accessibility needs to be included in new technologies such as digital television, broadband communication and third generation mobile telephony.

Policy areas related to ALL were investigated in the course of the EU4ALL research concerning their provisions for disabled people and their relevance for ALL. The Copyright Directive (2001/29/EC), the Telecommunications Regulatory Framework above all the Universal Services Directive (2002/22/EC) and the Public Procurement Directive (2004/18/EC) all include provisions for disabled people. EU directives are based on least common denominators between now 25 Member States. This least common denominator may not be undercut, further reaching provisions are allowed. This general characteristic of the EU legal framework is visible in all of these provisions. Thus the EU framework is appropriate for the insertion and harmonisation of provisions at a certain level. Further legal guarantees have to be enforced at national level.

Although education is a concern of the member states EU policies and legislation may enfold some influence on national policy formulation and legislation. This is true for the Framework Directive on Equality in Employment and Occupation (2000/78/EC). It is laying down a general framework for combating discrimination one of which is disability as regards employment and occupation, with a view to putting the principle of equal treatment into effect in the Member States. It introduces the concept of “reasonable accommodation” to meet the needs of persons with disabilities through adaptation of the workplace, the premises, equipment, patterns of working time, the distribution of tasks and the provision of training or integration resources (point 20 of the preamble). Reasonable accommodation is described as appropriate measures, which do not impose disproportionate burden on the employer. Effects on educational matters happen indirectly through harmonisation and consolidation of national legal frameworks in the course of the transposition of the directive. Many countries were adapting their existing equality and non-discrimination legislation to fit with the introduction of the EU principles. Currently, most countries researched dispose on the one hand of a legal act covering non-discrimination and equal opportunities in employment. Education is covered in employment related areas of training. Thus educational institutions addressed are restricted to this area. On the other hand a specialised legal act covering equality and non-discrimination of disabled people is in place as well. The latter will be referred to in the next chapter together with legal frameworks for the academic sector.

2.3 National legislation for equality and non-discrimination relevant for ALL

At national level existing e-accessibility issues are very closely related to e-government services and obligations of government institutions and agencies to provide accessible information and services to all. The closer educational institutions are to the government the more direct is the influence of e-government acts, regulation or policies at national level. To date e-accessibility as such is hardly ever codified but all countries investigated dispose of policies or guidelines regarding the (e-)accessibility of government services.

All countries researched dispose of some kind of equality principle effective for disabled people enshrined in national constitutions or equivalent either mentioning disabled people explicitly (Spain, Sweden, Canada, USA, Australia) or referring to all citizens (Austria, Bulgaria). Equality of access to education or the information society provisions are mentioned explicitly in more recent constitutions such as the Spanish and Greek ones. As mentioned before, most countries also dispose of simple laws to specify the constitutional provisions. These mostly include some general provisions concerning equal access to education. The Spanish law for example comprises equal access to information and communication, universal accessibility and the design for all principle as well as conditions for measures of positive actions to compensate disadvantages disabled individuals endure.

The relevant academic laws of the countries researched also refer to “reasonable accommodations” for disabled students needs at institutional level (Austria, Bulgaria, Italy, Spain, USA and Canada). Yet, detailed analyses of legal provisions concerning the

responsibility for their effectiveness differ greatly. Two groups occur in between the countries investigated. Summarising it may be stated that the first group does not foresee mechanisms for assuring the implementation of legal provisions through processes of evaluation and clear responsibilities for implementation. The second group of countries provides a clear set of responsibilities for government actors as well as legal demands for the addressees of legal demands. Greek, Spanish, Italian, Austrian and Bulgarian legal acts do not foresee any processes for evaluation or control of effectiveness of legal provisions while the second group of countries (Sweden, UK, Canada and USA) effectuate considerable efforts of responsible institutions concerning the evaluation of implementation of legal provisions.

For example in Sweden, where the state is responsible for the provision of higher education, the academic law enjoins all universities annually to draw up plans of action covering measures necessary to encourage and strengthen the students equal rights regardless of their disability.

The UK Disability Discrimination Act (DDA) of 1995 makes it unlawful for employers and service providers to discriminate against people with disabilities. Although part IV of the DDA requires educational funding institutions to request disability statements from educational institutions, it is important to note that the DDA did not originally contain the requirement to ensure that people with disabilities were not discriminated against by educational institutions or training providers. The Special Educational Needs and Disability Act (SENDA) was adopted in 2001 to fill this gap. Furthermore the adoption of the Disability Equality Duty (DED) in 2006 created conditions for the development of a proactive approach to disability. The DED is a legal duty that requires public bodies to actively consider how to prevent discrimination against individuals with disabilities. Public bodies covered by the duty include besides many others schools, colleges and universities. More specific duties under the DED are equally required such as the development of a Disability Equality Scheme. By means of this scheme an action plan for the public body has to be set out including the ways in which they will ensure that the needs of people with disabilities are pro-actively considered. People with disabilities are expected to assist in the identification of barriers, the setting of priorities and the evaluation of outcomes of the Disability Equality Scheme.

Similar is the case of Canada where each Canadian province and territory disposes of its own human rights code that applies directly to those matters which are deemed to be provincial in nature. Each of Canada's provinces and territories operates a human rights commission charged with ensuring that the provincial human rights codes are followed.

In the USA the Rehabilitation Act as amended in 1998 prohibits discrimination on the basis of disability in programmes conducted by Federal agencies, in Programmes receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors. Section 504 requires that no qualified individual with a disability shall be excluded from any programme or activity that either receives Federal financial assistance or is conducted by any Executive agency. Agencies that provide Federal financial assistance also have section 504 regulations covering entities that receive Federal funding including colleges, universities and post-secondary vocational education and adult education programmes. Each federal agency has to develop its own set of section 504 regulations that apply to its own programmes and each agency is responsible for enforcing its own regulations.

2.3.1 Financial and material support for disabled learners in selected European countries, Australia, Canada and the USA

The entitlement to social allowances is generally related to the process of formal recognition of a person's disability and to the definition of the grade of disability. Financial and material support may be attributed to an individual to compensate higher costs for daily and independent living on the one hand and to support needs for employment, communication

and/or education on the other. Disability related supports intended to assist an individual with activities of daily living are an important contribution to income and social security of disabled people in general and disabled students in particular. Many countries provide disability related financial support for disabled students at higher education level. Only for Spain and Greece no such schemes are known. Participation in higher education depends on the availability and affordability of assistive technologies (AT) and respective devices. Almost all countries investigated provide funding for AT in some way with the exception of Bulgaria and Greece. There is evidence that the provision of material and financial support is fragmented and difficult to organise for the individual concerned. Thus, funding e.g. for assistive devices for disabled learners in post-secondary education is in some cases provided by a combination of funds from provincial and federal governments. The UK approach does not seem to be widespread where the university applies for the Disabled Students Allowance (DSA) once a student is accepted for admission to a programme. Eligible students undergo an assessment to be able to determine what kinds of human and technological supports the student requires in terms of specialised equipment, personal assistance and general expenditure.

While in all countries investigated material and financial support for educational purposes are provided at individual level, the Australian government provides grants to higher education institutions for the promotion of equal opportunities. The grants are provided for the implementation of specific programmes such as the Higher Education Disability Support Programme (Federal Register of Legislative Instruments, 2007). Thus eligible providers are provided with financial assistance for the high costs incurring through the provision of educational support and/or equipment to domestic students with a disability with high cost needs. The efficient and effective use of equipment and resources to support students with a disability is a major criterion for this way of support. Consequently needs assessment processes are organised by the universities including medical and other advice in verifying disability and related support needs.

2.4 Institutional policies and strategies in favour of disabled students

To be able to estimate the effect of these different legal requirements concerning the implementation of legal demands 54 university web sites (13 Australian, Canadian and US institutions, 6 UK institutions, 25 from Austria, Switzerland, Germany, Spain, Greece, Italy and one French university) were carefully searched. National researchers were looking for published institutional strategies and policies concerning learning and teaching strategies (e-learning strategies) and disability policies (equal opportunity policies). Furthermore the researchers checked whether the university provided easy to find information for disabled students on their website.

As highlighted above in all of the countries investigated legislation addressing equality, equal opportunities and non-discrimination with relevance for ALL are in place. The most striking difference in Swedish, UK, Canadian and US legislation are the designated provisions for the enforcement of the effective implementation of the legal demands.

Results from the research of institutional websites clearly reveal the consequences of the different preconditions. At the institutions researched in the UK, Australia, Canada and the USA the scope of institutional strategy and policy development differs significantly from what was found on websites of university situated in Austria, Germany, Switzerland, Greece, Spain and Italy. The missing necessity to prove the effective implementation of legal provisions in the latter countries results in a low degree of codification of institutional policies and strategies. Only recently with the institution wide implementation of e-learning in Europe a trend towards strategy development may be observed.

A comparison between the two groups proves the practical impact of institution wide codification. E.g. the Ontario authorities ask institutions for an annual accessibility plan setting out their policies and the accommodations they have put in place, and also require them to set up services or structures specifically for that purpose. These services or structures shall serve disabled students to gain access to their funding entitlements, assess their needs and identify the support disabled students require during their studies. In the UK universities and colleges must produce a disability statement setting out clearly their policy on provision for disabled students and how it is to be implemented. Furthermore the creation of a special team is demanded to implement the policy and to advice students. This team is well positioned at institutional level and works actively on behalf of attitudinal and organisational changes benefiting disabled students. Form and availability of services tailored to the needs of disabled students very much depend on institutional strategies.

This elaborate codification of attitudes and rules for institutional support for disabled students is widely unknown in the European countries represented in the research sample, with the exception of the UK. There is evidence that in institutions that have not set up policy objectives and/or strategies, the rationale is different. In many cases, responsibility for disabled students lies with one or several individuals, seldom with the institution as a whole. Accommodating the needs of disabled students thus becomes a daily battle with administrative and teaching staff. Inventiveness and creativity are needed when acknowledgement from the institution is limited. Staff may be isolated and the quality of the services delivered depends on the personal involvement of a single individual, even if it is that person's job (compare OECD, 2003). At Austrian, German, Italian and Swiss university websites information dedicated to disabled students is relatively widespread with the exception of Greece where none of the investigated websites provides any information for disabled students or related services. The Open University Catalunya and the Spanish distance university UNED are good examples of the Spanish sample. All other websites of the Spanish sample provide no information for or about disabled students. Information resources are to be found on Italian websites researched. German and Austrian sites researched provide information for and about disabled students and related services but scope and intention are falling short compared to their counterparts in the UK, Canada, Australia or the USA.

The OECD summarises accordingly in a report issued 2003 "Disability in Higher Education" that many barriers "stem from the fact that an institution has no comprehensive strategy for the disabled". A disability policy or statement indicates the institutions commitment and it communicates that services for students with disabilities are "more than an occasional act of philanthropy on behalf of the needy" but an educational duty inherent in the institutions mission. Thus the work involved in accommodation and supporting students with disabilities does not rest on the shoulders of a single individual but is a community effort involving everyone, from students and academics to administrative and other staff (OECD, 2003).

3 Conclusions

As a major result of the analyses undertaken it may be concluded that the political and legal frameworks for the safeguarding of human rights, equality of opportunities and non-discrimination in favour of disabled people are in place. This is true for international declarations, the level of the EU and, to a considerable extent, for the national level as well. A lot has been achieved in the course of the last decades. When going into more detail considering implementation and effectiveness of legal provisions the picture changes. The ingredients necessary for real effects on the lives of addressees lay beyond legal provision. They are closely linked to cultural backgrounds and to embedded attitudes of whole societies. Existing legal frameworks are measurable by their implicit will to implementation. This will

is expressed by means of clear and effective programmes whose implementation is evaluated by responsible and accountable actors. Thereby policy makers and legislators make clear that they seriously intend to achieve what they adopt. The examples of the UK, Canada and the USA regarding ALL may serve as examples of good practice which have a measurable effect on students' lives and learning at educational institutions in these countries.

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