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WHITTLE, R.

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**‘EU disability policy and the equal opportunity
principle’**

by

[Richard Whittle](#),

School of Law, University of Leeds, UK.

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The purpose of this paper is to explore what is meant by the equal opportunity principle in the context of EU disability law and policy – to highlight its core components, its potential and its limitations. Recent experience at national level demonstrates a tendency to either misunderstand the nature of this principle in the context of disability and seek to realize more from that principle than can credibly be acquired or assume that a rigorous application of this principle would be ineffective in the context of disability. This paper seeks to clarify the application of this principle in the context of disability and demonstrate that it is just as pertinent to people with disabilities as it is to other designated groups.

Introduction

As an international system of law and policy, the European Union (the EU) provides people with disabilities and their associated interest groups with an important facility from which they can influence both their immediate legal and policy contexts as well as that pertaining to geo-political region as a whole. This is significant because this region, like others, continues (albeit often inadvertently) to marginalize the people with disabilities. Due to the nature of this international system, in particular, its supremacy over national law and the dynamics of its policy-making processes, the EU should be viewed not only as a legal and political entity that can impose change on national communities but also as a key 'opportunity structure' from which those same communities can effect positive change. By coordinating efforts on a pan-European scale and securing the support of certain policy-makers at EU and national levels, it is certainly possible to influence national law and policy even over those governments and communities within the EU that would not have independently initiated such changes and may not (at the outset at least) be enthusiastic in their reception to them. It should be stressed in this regard that the 'equality strategy' currently dominating EU disability policy is essentially Anglo-American in nature and would not have taken root had it not been for the persistence of UK based disability rights advocates and a handful of officials within the disability unit of the EU Commission during 1990s.

It is for people with disabilities and their associated interest groups to assess the suitability of the EU equality strategy in the light of their particular situations and priorities but it is important to emphasize that this strategy can just as easily change. In particular, it should be noted that it remains unclear how it will be received at national level and how the policy-making dynamics that will emerge from the recent EU enlargement (and the new constellations of Member State influence) will impact on its further development. Nonetheless, in order to fully exploit the opportunity structure that is presented by the EU, it is necessary to first develop an informed and effective strategy as to how to reach the particular policy goals that are being sought. This, in turn, necessitates an understanding of what can realistically be achieved at EU-level at any point in time and consequently what areas of policy should be the focus of attention.

In essence, the opportunity structure provided by the EU is not open ended in nature - it has limits that are determined by its competence (as set by the EU Treaties) and it has policy priorities within this competence. In other words, it is necessary to know (i) where the battles are (which areas of competence are relevant to the particular cause) (ii) which battles to fight (what is most likely to be successful at any point in time) and (iii) how best to fight them. Specifically, there is no point in marshalling efforts to influence policy change in areas where the EU has no or limited competence. For example, there is at present little to gain in seeking to acquire a minimum level of payments for the purposes of independent living because this aspect of disability policy (like the greater part of what currently falls within this policy field) remains off-limits in terms of EU-level regulation.

The importance of an informed and effective strategy at EU-level is aptly illustrated by the evolution of EU disability policy itself; a policy that, over the last decade, has evolved from being a mere policy gesture (comprising EU-level activity that was more concerned with increasing the legitimacy of the EU project by simply having a 'disability policy' no matter how weak) to a policy of substance. Until the mid 1990s, EU disability policy was essentially comprised of spending programmes (referred to as action programmes) that viewed people with disabilities as passive recipients of funding and expertise to support their vocational integration. Led primarily by rehabilitation professionals, this policy agenda was hampered by the unwillingness of national and local authorities to support activities which they saw as more appropriately falling within their (national and local level) competences. It was this unwillingness that ultimately led to the downfall of the EU disability action programmes during the mid 1990s and spurred the policy change in EU disability policy that we have today. In contrast, the relative success of the new EU disability strategy stems from its suitability for EU-level activity, in particular, its compatibility with a policy priority of the EU integration project and the principle of subsidiarity.

This compatibility stems from the re-branding of EU disability that took place from the mid 1990s and which enabled the dominant part of this policy field to fit within the 'equal opportunity' objective. This objective is essentially concerned with increasing the market participation of designated groups (a policy priority of the EU integration project) and doing so in a manner that is palatable to commercial actors, governments and wider society, that is, by seeking to open up labour and consumer markets via regulation based on meritocratic principles. It is this compatibility that has enabled the profile of EU disability policy to be raised in a manner that has the potential to effect concrete positive change for people with disabilities and it is the equal opportunity objective (and its two core components at EU-level) that form the focus of this paper. However, in order to fully exploit this arm of the new EU disability strategy, it is imperative to understand both the potential as well as the limitations of the equal opportunity objective and this understanding is best achieved by first placing this objective within its wider theoretical context.

Equality and the equal opportunity objective

Falling within a range of objectives seeking to achieve a particular level of social inclusiveness, the equal opportunity objective forms just one element of what many refer to as a generic concept of 'equality'. Whilst there are various labels for these objectives and various interpretations as to their operational remit, a simplified four point classification of 'equality' will be used for the purposes of this paper. Under this classification, the equal opportunity objective sits between that of 'formal equality' on the one hand (the least demanding objective within this range) and 'positive action' on the other. The range concludes with the objective of 'compensatory equality' which is based on the principle of 'solidarity' and forms the most demanding variation under this classification.

These objectives and the extent of their operational remit can be illustrated in the context of disability by applying them to a hypothetical employment vacancy for a typist. In this scenario, the objective of 'formal equality' would simply require the employer to ensure that both disabled and non-disabled applicants are equally entitled to apply for the vacancy and that their applications are considered on 'facially' equal terms. This objective is therefore relatively superficial in its application - in particular it does not seek to encourage the employer to consider how the physical and organizational environment of the workplace might create disabling barriers to an individual's participation as a member of their workforce. A so-called standard keyboard (for example) may be inaccessible to individuals with certain impairments and would impede their ability to compete on equal terms, yet this barrier has nothing to do with that individual's typing ability and thus merits for the job. Instead, this barrier results from the design of the keyboard itself. However, the objective of formal equality would fail to recognize this imbalance and, as a result, fail to preclude the employer's decision from being influenced by such a barrier.

The objective of 'equal opportunity', on the other hand, would require the employer to take an extra step and to make adjustments to the physical and organizational arrangements of the workplace – in this instance, the provision of an adapted keyboard. Importantly, this 'extra step' will only be required where such adjustments are effective, necessary and reasonable to enable the merits of applicant to be measured in equal terms. By so doing, the objective of equal opportunity seeks to render the inaccessible keyboard an irrelevant consideration and thus exclude it from the employer's decision-making process. As before, the determinant in this scenario can still be the applicant's typing speed but the employer's assessment would be influenced, not by the nature of the keyboard itself, but by the merits of the individual - in particular, the speed and accuracy of their typing. By removing such barriers, the equal opportunity principle seeks to ensure that (at the point of interview) a level playing field exists between disabled and non-disabled applicants and thus enable applicants with impairments to compete on equal terms with their non-disabled counterparts. As explained below, this objective is achieved quite openly in the context of disability via the duty to provide reasonable accommodations (the duty to accommodate).

The objective of positive action (and its application to this scenario) would extend further still. It would require the employer in this instance to take into account the history of systemic discriminatory practices encountered by people with disabilities and exercise a preference in respect of those individuals that apply for this vacancy. The extent of this preference will vary depending on the particular type of positive action being employed but it is important to stress that whichever variation is used in a given scenario its application will not require the employer to select an individual who cannot perform the job. At most, the objective of positive action will discourage the appointment of the 'best' qualified individual over a member of the under-represented group where that individual is 'suitably qualified' for the post.

Finally, the above objective should be contrasted with that pertaining to compensatory equality (the most demanding variation of equality) which operates outside market based notions of meritocracy and its associated boundaries. In essence, this notion of equality seeks to achieve its objectives by providing financial benefits (typically via State redistribution of taxes) to those individuals that are either unable to work in the open labour market or require assistance outside the workplace. For the most part, it takes the form of financial benefits and measures under social assistance and insurance based programmes; measures that are justified by reference to the notion 'solidarity'.

Under the above four-point classification, therefore, the objective of equal opportunity offers more than that of 'formal equality' but not as much as 'positive action' which, in itself, does not go as far as 'compensatory equality'. However, common to each of these objectives is a desire to achieve a particular level of social inclusion for the protected group. The important point for the purposes of this paper is to recognize the differences between these objectives and place the operational remit (and thus limits) of the equal opportunity objective within its wider conceptual context. The implications arising from these limits will be returned to later in the paper.

The equal opportunity objective – core components

At present, the objective of equal opportunity dominates the new policy agenda at EU-level in the context of disability. Emerging during the mid-1990s, this objective has two core components, namely, the components of 'anti-discrimination' and 'design-for-all'. Crucially, both of these components benefit from the strengths of the equal opportunity principle in effecting policy change, but (if they are to be successful) must be exercised within the boundaries of its operational remit.

Whilst most people recognize the existence of the anti-discrimination component, many fail to fully understand how it fits with the objective equal opportunity (and thus its place within the wider notion of 'equality') and consequently fail to fully recognize both its potential and its limitations. The design-for-all component, on the other hand, is often simply overlooked in the sense that many do not know of its existence, or if they do, that it fits within the objective of equal opportunity and functions alongside the anti-

discrimination component. As a result, the potential (and also the limitations) of this component are often misunderstood. What follows seeks to provide clarification as regards both of these components and thereby address the above misunderstandings.

The new EU disability agenda - the success of the equal opportunity objective

The objective of equal opportunity has played a key role in the re-branding of EU disability policy. Reflecting the paradigm shift that continues to take place globally in this policy field, this objective spearheads the EU's attempt to concretely realise the ethos behind the 'socio-political model' of disability. In essence, this model politicizes the impact of the environment on the potential of individuals with impairments to participate in everyday life. Whilst the interaction between the environment and an individual's impairment was recognised prior to the emergence of this model (rehabilitation practitioners have acknowledged this relationship since the 1970s), it was only through the lens of the 'socio-political model' of disability that many of the physical and organisational barriers created by the environment were seen as inherently 'discriminatory' and thus requiring removal as a matter of right. Previously, these barriers were viewed as being inherently neutral and, if removed, would have been removed as a benefit (a special favour) to those who were seen as being incompatible with an environment built and organized around a hypothetical able-bodied norm. In this sense, the 'socio-political model' has provided and continues to provide a strong political slogan for change.

Following the approach taken in respect of other minority groups, the disability rights movement adopted anti-discrimination law as the main tool to further the goals of the socio-political model. However, it is important to understand that a credible interpretation of this model would not capture every single barrier to participation - some barriers simply cannot be blamed on the environment. For example, for those individuals in a persistent coma, it is the coma (their impairment) that is preventing them from working, not their physical and organizational environment. To be clear, therefore, in some, albeit limited circumstances, the 'problem' (from a policy perspective) lies with the impairment not with the environment. Likewise, it is important to stress that not every barrier that correctly falls within the parameters of the socio-political model can be redressed by anti-discrimination law.¹ This is because anti-discrimination laws are primarily concerned with removing considerations

¹ For example, the socio-political model would 'capture' past systemic barriers that have limited the ability of an individual to participate educationally. However, these types of barriers will only fall within the purview of anti-discrimination law to the extent that they currently exist. Moreover, positive action, an exception to the principle of equal treatment, would need to be triggered in order to alter the competitive position of the individual where the individual can still participate in the educational setting but cannot access that system simply on meritocratic terms. In certain situations, the systemic barriers may be such that temporary positive action measures would not enable an individual to participate in an integrated educational setting and, in this context, action based on compensatory equality (for example, special educational services) may be needed.

from a decision-making process that are (or should be) irrelevant to the decision at hand. In the employment context, for example, the fact that an individual does not hold the essential qualifications for a job is not an irrelevant consideration and should not therefore trigger the prohibition under the anti-discrimination law - the successful candidate must still be the best person for the job. Anti-discrimination laws are not therefore intended to interfere with the employer's prerogative to put in place the best possible workforce. They are not about securing jobs for people simply because they are part of an under-represented group and share the 'protected' characteristics. Instead, anti-discrimination laws are concerned with removing any distractions that might be caused by those characteristics and enabling the merits of such individuals to come to the fore. In other words, anti-discrimination laws are about maximizing the potential of individuals to participate in certain aspects society subject to the limits imposed by meritocratic principles.

More often than not the focus of such laws is on the participation of individuals as workers or consumers and in this sense they can be described as essentially market participation measures. It is for this reason that the equal opportunity objective that underpins such laws can be sustained in jurisdictions such as the United States; jurisdictions that are particularly concerned with the free play of market forces. Likewise, given the market focus of the EU integration project, we can see how this objective resonates with the wider EU agenda and thus attracts the same level of political, legislative and judicial support as other more obviously market-focused EU policies. This is reaffirmed by the reaction of the EU institutions to any departure from the rigour of the meritocratic approach (for example, treating positive action measures as an exception to the prohibition of discrimination rather than as part of that prohibition). Moreover, the resonance between this agenda and that supporting the new EU disability strategy (based on the equal opportunity objective) stands in stark contrast to the low level of support for the previous strategy in this context; a strategy that was largely concerned with state-regulated social policy issues that are underpinned by more intensive notions of equality than that underpinning measures confined to meritocratic principles (such as anti-discrimination laws). Consequently, in order to ensure the continued acceptance and support for an EU disability policy based on the equal opportunity objective, it is vital that the two key components to that policy operate within the parameters of meritocratic systems. This observation is further explored below but the key point to be stressed at this juncture is that any departure from meritocratic principles will undermine the legitimacy of the equal opportunity agenda and its core components.

The 'anti-discrimination' component

The objective of equal opportunity is typically associated with the various anti-discrimination law initiatives that have been adopted over the years and their associated rulings from courts and tribunals. However, it was not until the mid 1990s that this principle had any formal connection with disability law and

policy within the European Union.² Prior to this decade, disability law and policy was dominated by initiatives conferring special or compensatory entitlements, whether through social assistance and insurance programmes or basic employment quotas, and by measures regulating legal capacity. The 1990s therefore constituted a watershed in the development of disability anti-discrimination law - culminating at EU-level in November 2000 with the adoption of the [Employment Framework Directive](#) (EFD)³; a directive that prohibits discrimination on a number of 'prohibited grounds' (including disability) and as such constitutes the first EC disability anti-discrimination law. For this reason, the EFD is the most significant development to date in EU disability law and policy and it would be no exaggeration to say that the future development of this policy field is likely to be greatly influenced by the success or otherwise of this directive.

At present, the EFD forms the flagship of the EU's equal opportunity strategy in the context of disability. It requires significant changes to disability laws and policies in the majority of EU Member States, and whilst its provisions on disability are (for many of these countries) still in the process of transposition, a number have already transposed them and they must in any event be transposed by all Member States no later than December 2006. This paper does not seek to provide a review of the EFD from a disability rights perspective (reference should be made elsewhere for this purpose)⁴ but it is important to stress that (at EU-level at least) some of its provisions on disability are new from a legal perspective and are thus open to legal challenge and interpretation.

Key to the success of the EFD in the context of disability is the manner in which its concept of discrimination is interpreted and applied. It is important to note in this regard that disability anti-discrimination laws are no different in purpose than anti-discrimination laws on other prohibited grounds. As mentioned above, the prohibition of discrimination is essentially concerned with the removal of considerations from a decision-making process that are (or should be) irrelevant to the decision at hand; an observation that is equally applicable in the context of disability. Whilst variations do exist in terms of the mechanics of the prohibition - specifically, the duty to accommodate (a duty synonymous with disability anti-discrimination law) which is typically absent from the legal expression of discrimination in respect of the other prohibited grounds - such variations are a matter of form only and in no way affect the purpose of the prohibition. To the extent that a difference exists between disability and the other prohibited grounds, it is in the level of recognition that it is currently afforded as to when certain forms of disability discrimination take place. For the most part, anti-discrimination laws in respect of the other

² With the exception of the United States's Rehabilitation Act 1973 (a measure limited in application to Federal level activities) it was not until the early 1990s - and measures such as the Americans With Disabilities Act 1990 - that the principle of equal opportunity had any formal connection with disability law and policy globally.

³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] O.J. L 303/16.

⁴ See, Whittle, R. (2002). "[The Framework Directive for equal treatment in employment and occupation: an analysis from a disability rights perspective.](#)" *European Law Review* 27(3): 303-326.

prohibited grounds are concerned with the removal of considerations that are (or have become via the operation of law) quite obviously irrelevant. Whereas, in the context of disability, the prohibition is typically seeking to remove considerations that, for many in today's society, would at first glance appear to be relevant and it is here that the duty to accommodate operates to correctly steer the legal analysis and provide the necessary clarification.

The above observation is best explained by way of illustration. Imagine an employment vacancy for a telephonist in which two candidates apply (one is black, the other is a wheelchair user) and both of these applicants have the necessary qualifications for the job. In this scenario, the black candidate's skin colour is quite obviously an irrelevant consideration and should have no part to play in the employer's decision-making process.⁵ However, the scenario involving the wheelchair user might not be so straightforward because the vacancy may be situated on the top floor of the office complex which has narrow corridors, 'standard' sized desks and one (temperamental) elevator. The dependency on the wheelchair in this scenario is (at least initially) a relevant consideration and, prior to the socio-political model of disability, would likely have generated a sympathetic rejection from the employer who may genuinely have felt that (given the practicalities of the situation) their decision was the only realistic response - a view that would have been shared by the majority of the employer's peers. Nonetheless, the purpose of disability anti-discrimination laws (and in particular the duty to accommodate) is to remove any camouflage that may be created by these physical and organisational barriers and to allow the merits of the individual to become the focus of the assessment.

Where effective and reasonable accommodations can be made to remove such barriers (an assessment that is based on the particular circumstances of the case),⁶ the employer's decision has to be made on the basis that they will be removed because these barriers (which by now are recognised as being socially imposed as a result of exclusionary design) are in themselves discriminatory. In the above scenario, for example, it may simply be a case of moving the vacancy to the ground floor of the office complex (where the corridors may be wider and thus removing any dependency on the elevator) and providing an adjustable desk. If so, a failure to make a decision on this basis would (in effect) be taking into account an individual's impairment in circumstances where it is an irrelevant consideration and thus trigger the prohibition of disability discrimination. Similarities can be drawn here with the principle of indirect discrimination; a principle developed and has since been applied to all prohibited grounds to capture and remove discriminatory barriers hidden within apparently neutral criteria or practices. The key differences lie in

⁵ It is important to highlight in this context that claims of disability discrimination can be similarly straightforward. For example, an individual's facial disfigurement is also quite obviously an irrelevant consideration for this position. The duty to accommodate does not need to be triggered in this scenario - the employer is simply being asked to question and ignore any negative reaction he/she may have towards the impairment.

⁶ These circumstances will often include (i) the technology available at the time of the complaint (ii) the resources of the employer and (iii) the benefits likely to accrue from the accommodation beyond those to the individual complainant.

their intended beneficiaries – the prohibition of indirect discrimination tends to benefit groups, whereas the duty to accommodate tends to benefit individuals.⁷

As the implications arising from the socio-political model of disability become better understood by society and society, in turn, becomes better equipped to see the discriminatory physical and organisational barriers that are often created, one can expect the distinction between considerations that 'are' obviously relevant and those that 'should be' irrelevant for the purposes of disability anti-discrimination law to erode. However, whilst there will be short-to-medium term challenges in conveying this understanding of the physical and organisational environment and enabling society to understand why the duty to accommodate is about removing discriminatory barriers (as opposed to providing special treatment for people with impairments) there will also be challenges to ensure that the application of this duty does not exceed its intended boundaries; boundaries that are set by meritocratic principles. The responsibility in this regard lies primarily with disability rights advocates and interest groups; advocates and groups that understandably want to get as much out of the anti-discrimination law as possible. However, sometimes this desire extends too far and leads to contradictory stances being taken (for example, we want equal treatment *irrespective* of our disabilities, we want jobs etc *because of* our disabilities). Given the history and nature of disability policy (particularly in European society), the public and consequently the judiciary and government find it difficult not to sympathise with this contradictory stance and may lean towards an approach based on compensatory equality rather than that of equal opportunity. I should stress that I am not saying that an approach based on compensatory equality has no place in disability policy but rather that it manifests (or should manifest itself) in a different legal mechanism based on a different notion of equality and consequently a different policy aim to that of equal opportunity. If they are to be effective, these mechanisms and policy aims should be kept distinct.

This conflation of aims and principles is most readily apparent (and temptingly convincing) in the majority decision of the House of Lords in [Archibald v. Fife Council](#),⁸ where the duty to accommodate under the UK's Disability Discrimination Act (1995) was used to ensure the appointment of a disabled applicant who - whilst qualified for the job in question - would not have otherwise been appointed on the basis of a competitive interview. In other words, this individual simply was not the best person for the job on the basis of merit. The duty to accommodate was therefore used in this scenario to put into effect a form of positive action in favour of the disabled applicant - an objective that constitutes an exception to the principle of equal opportunity

⁷ Although the prohibition of indirect discrimination could be utilised to the benefit of an individual provided that the prohibition allows recourse to a hypothetical group liable to be adversely affected by the criterion or practice at issue (and this is possible under the EFD – see Whittle, R. (2002) above at 309). Equally, the duty to accommodate, whilst often highly individualized, can generate significant benefits in terms of barrier removal for a whole range of individuals disabled and non-disabled – for example, the installation of a lift or ramp, widening of doors, precise and easily understandable instructions on neutral backgrounds, flexible working arrangements.

⁸ *Archibald (Appellant) v. Fife Council (Respondents) (Scotland)* [2004] UKHL 32.

and thus demands a more intensive type of equality than that invoked by anti-discrimination laws. Whilst it is beyond the scope of this paper of to provide a critical review of the majority opinion in *Archibald*, the significance of this decision (in particular the fact that it comes from the highest appellate court in the United Kingdom) and its implications for the interpretation of the equivalent duty under the EFD should not be underestimated. *Archibald* is an example that should not be followed in other jurisdictions.

To be clear, therefore, a failure to keep the duty to accommodate within the rigours of meritocratic systems (and thus the principle of equal opportunity) will undermine the credibility of the law and will likely generate a socio-legal backlash against it.⁹ At a minimum, if the duty to accommodate is seen as providing disabled people with something 'special', something beyond the principle of equal treatment, then the application of the anti-discrimination law will be limited to those individuals that are considered to be most deserving of it. This, in turn, can generate complex legal problems with the definition of disability; problems that are essentially based on a desire to unnecessarily limit the protected class in respect of the prohibition. These problems are aptly illustrated by the experience in the United States under the Americans with Disabilities Act 1990. Given that the definition of disability (like the definitions in respect of other prohibited grounds) acts as gatekeeper to the protection that is afforded by the anti-discrimination law, any constraining of the prohibited ground - and thus the personal scope of the anti-discrimination law - could result in many of its intended beneficiaries being excluded from its protective remit. Disabled Europeans and their associated interest groups should therefore be active to ensure that such confusion does not take root within the European Union.

The 'design-for-all' component

This component originates from, and is currently most clearly articulated in, the non-binding declaration that is attached to Article 95 EC; a legal basis that is concerned with the approximation of national laws affecting the functioning of the internal market. In other words, Article 95 provides a legal basis that enables the adoption of EU measures to regulate products and service provision across the EU (including technical and construction standards) with a view to furthering the market goals of the EU integration project.

The declaration, which was appended to the EC Treaty by the amending Treaty of Amsterdam in 1997, 'encourages' the EU institutions to take into account the needs of people with impairments when they are adopting measures on the basis of Article 95. At best a procedural obligation, this declaration articulates a principle that could be expanded to all areas of EU activity. Indeed, recent EU measures adopted under the legal bases for

⁹ See, for example, Krieger, L. (2000). "Foreword - Backlash Against the ADA: Interdisciplinary Perspectives and Implications for Social Justice Strategies." *Berkeley Journal of Employment & Labor Law* 21(1): 1-18 and Krieger, L. (2000). "Afterword: Socio-Legal Backlash." *Berkeley Journal of Employment & Labor Law* 21(1): 476-520.

transport (such as rules governing air passenger rights and the interoperability of rail travel) arguably demonstrate such an expansion.

At its heart, the principle underpinning the declaration can be said to represent high-level political recognition that goods and services can be designed and performed in such a way as to better open up the EU market to all its potential consumers. By recognizing human difference, and thus taking into account the needs of people with impairments at the design stage of the process, this principle seeks to avoid exclusionary design and thus fully exploit the consumer base within the EU. In this sense, the declaration can be said to articulate a principle of 'design for all'; a principle that fully complements the EU's policy priority of market participation. Should the ethos underpinning this declaration be properly understood and applied at EU-level, its potential (given the nature and extent of EU-level regulation in this area and the practical benefits of inclusive design) to generate concrete change for people with impairments is substantial.

Crucially, the 'design for all' principle is concerned with providing 'equal' access to all groups where commercially viable - not 'special' access for any particular group. Thus if a wheelchair-user can get to the bus stop and pay for his fare, he should be enabled (as matter of principle) to get on and off the bus and enjoy the journey as much as other disabled and non-disabled passengers. It is in this sense that we can see how the design for all component of the EU disability strategy fits with the principle of equal opportunity. Specifically, the operation of this component is market-governed - it does not require a change to the essence of the products or services, neither does it necessitate the manufacturer or service provider to bear commercially unviable costs. Thus, like the duty to accommodate, the 'design for all' principle is intended to operate within meritocratic systems – to ensure a level playing field of access where physical and organisational barriers can be reasonably removed.

The importance of the 'design for all' component to EU disability policy cannot be overstated. In particular, there are now few aspects of our day-to-day lives that are not affected in some way by EU-level activity (especially the functioning of the internal market). This activity includes measures governing matters such as construction, transportation, environmental design and communications (to name but a few). The application of this component therefore has huge potential to effect concrete change to the everyday lives of people with disabilities living within the European Union. In order to fully exploit this potential, people with disabilities and their associated interest groups have to be able to operate effectively at both national and EU levels with a view to influencing the EU policy agenda. At stake here is the opportunity to ensure that any harmonisation of current designs and standards, as well as the development of new technologies (e.g. internet-related applications), takes place in a manner that facilitates the integration of people with disabilities. Conversely, should this opportunity be missed, there is an equal chance that the harmonisation process of the very products and services that ought to promote inclusion will instead operate in a manner that further marginalises people with disabilities.

Concluding observations

There are two key points that should be taken from this paper. The first is that those components of EU disability policy based on the principle of equal opportunity fit best with the overall EU agenda and its policy priority of market participation. It is these components that people with disabilities and their associated interest groups should therefore focus on in their efforts to effect positive change. The second point is that in order to maximize the use of these components, it is necessary to understand the operational boundaries of the equal opportunity principle, i.e. that it operates within the confines of a meritocratic system. It is these boundaries that make the equal opportunity principle widely acceptable from a market-oriented point of view and thus attractive to business, employers and wider society. Any departure from a meritocratic approach would therefore severely limit the 'take-up' from the very actors necessary to deliver the positive changes that are sought under these components.