



The European Union's Programme for Serbia

# **Feasibility Study on Employment and Professional Rehabilitation of People with Disabilities (PWD) in Serbia**

## **Final Report**

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This Report aims to provide an overview of the current situation related to employment of people with disabilities in Serbia. The focus is particularly set to putting that issue in the context of the current socio-economic situation in the country, preconditions necessary for enhancement of employment rates for people with disabilities and analysis of the draft Law on Employment of Persons with Disabilities. After drawing from the experiences different European countries (namely Germany, Sweden, Greece, Poland and Croatia) had in encouraging and promoting the employment for people with disabilities, along with the lessons learned in Serbia and the opinions of all relevant stakeholders, the Report provides concrete comments on the above-mentioned draft Law, general recommendations and proposals for measures to be taken in implementation (including estimated timeframes) by various stakeholders, particularly public authorities.

The current situation of people with disabilities in Serbia is characterized by an employment rate of only 13% (according to the World Bank data), lack of equal opportunities in accessing the education, physical environment and communication, adequate support services... Yet, at the same time, a strong disability movement has emerged in the country and decision-makers constantly bear in mind the status of people with disabilities as a human rights issue and work on adoption of policies and legislation that are directed at creating equal opportunities for persons with disabilities

Serbia is still facing hard economic conditions and both high unemployment rate and “minus job growth”. The desire to promote and increase employment for people with a disability in these circumstances may therefore be recognised as remarkably ambitious. The government of Serbia anticipates the need for inclusion policies, with the recent anti-discrimination Law for people with disabilities as best proof.

Yet, some essential conditions have to be fulfilled to allow the successful implementation of an employment policy for people with disabilities.

These preconditions are related to:

- Collection of socio-economic data
- Accessibility of the work place
- The need for an integrative educational system
- Facilities for Personal assistance
- Ministerial Coordination

The Report covers the issues of EU policies and legislation, quota-levy system, other revenue systems, rehabilitation procedures, assessment tools and procedures, active labour market programs, all pertaining to employment of people with disabilities.

After putting forth lessons learned internationally and in Serbia, opinions of stakeholders, the Report provides concrete, in-depth comments on political consistency, definitions provided, the content, coordination and control, process, financing of the draft Law on Employment of Persons with Disabilities, as well as some proposals for possible amendments to the draft text. It defines the tasks and possible measures, timeframes for implementation of the Law in fields of social dialogue, governmental efforts, co-operation within the framework of the Socio-Economic Council, assessment of persons with disabilities, quota-levy fund.

The draft Law will affect the interests of different stakeholders (NES, PIO, Associations of People with disabilities (DPOs), MoLESA/ MoES/ MoH/ MoF/ MoE, Labour Union, Union of Employers, Chamber of Commerce, Employment Council (municipalities) and Union of Sheltered Workshops), that is why the appropriate social partners should be involved in a social dialogue.

The governmental level should keep focus on the fact that a continuing cooperation with all partners has to be considered as a precondition for a successful law implementation. In order to monitor the procedure of implementation, the MoLESA should establish and finance an office (task force) with people with disabilities staff. This task force should operate independent from the Ministry.

Since the assessment is a precondition for People with Disabilities measures and eventual placement in the open labour market, the solution must be time- and cost-efficient and harmonised with other assessment-procedures.

Instead of establishing new bodies, the tasks of already existing ones should be extended.

To move forward, PIO and NES will have to get into a close cooperation with each other. Furthermore, the two institutions will have to face organisational development and PIO even a reorganisation. Delivering integrated services will be a point of development. The Report sets exact proposals for tasks of each of the institutions, preconditions to be fulfilled by NES and PIO, as well as timeframes for activities. It is essential for proper implementation to calculate reasonable - instead of over-ambitious – timeframes and planning.

MoLESA, in cooperation with the implementing bodies should be in charge of a proper preparation of funds use. The social partners should have a right to participate in determining the type of measures to be introduced and finances to be assigned to each programme

The Report includes the results of Round Table Conference and Annexes with Terms of Reference and Questions used for Analysis of the Draft Law.

Serbia is still facing hard economic conditions. Though there are signs of a recovering economy and the climate for business is gradually improving<sup>1</sup>, the effects are not yet seen in employment growth; Serbia suffers from high unemployment and together with Macedonia has the highest unemployment rate in the region<sup>2</sup>.

The general unemployment rate is more than two times higher than European level. In addition, other macro-economic indicators (GDP-development, participation rate, average earnings) are reasons for concern and to be addressed through a comprehensive economic policy.

The desire to promote and increase employment for people with a disability in these circumstances may therefore be recognised as remarkably ambitious.

This ambition for integrative policies seems, however, part of a broader approach for social inclusion of vulnerable groups in the society and in “daily economic life”.

In 2005 the Serbian government embraced the Human Resources Development 2005 Serbia report from UNDP, titled: “The strength of diversity”. Boris Tadic, the president of the Republic, wrote in his Foreword: “Human development is the priority of our policies and we have accepted multiculturalism as one of its main components and our everyday priority.”

Though this report did not focus on the position of People with Disabilities, one should include them in defining, developing and executing diversity policies. More importantly, active participation in social and economic life is fundamental to the enjoyment of a person with disabilities’ basic human rights. Inclusion of People with Disabilities in society and economic life is a pillar for successful diversity policy.

The government of Serbia has clearly shown that it anticipates the need for inclusion policies, with the recent anti-discrimination Law for People with Disabilities as best proof, among inclusion initiatives in the Poverty Reduction Strategy and the National Employment Strategy.

As stated above with these actions, government is showing remarkable ambition in the current circumstances. According to the World Bank estimates, People with Disabilities make up approximately 10%<sup>3</sup> and constitute one of the largest and poorest groups among the people living in poverty. It was estimated by Nobel laureate Dr. Amartya Sen that if poverty lines were adjusted to reflect the additional costs People with Disabilities both in time and money, poverty rates of People with Disabilities would be even higher.<sup>4</sup> Ambition is, however, above all a strong signal for development, announcing further sustainable growth.

The plan to move forward is also being expressed in other dimensions: the government has made drafts for the National Strategy for Enhancement of the status of People with Disabilities and for the Law on Vocational Training and Employment of People with Disabilities.

The development of these drafts and the fact that the government is striving for harmonization with international standards and policies led to a project financed and coordinated by the EAR to perform a feasibility study for improving the employment of People with Disabilities in Serbia.

Before elaborating the project’s approach, some preliminary remarks will be made about the subject and the necessity of fulfilling the preconditions for a successful policy.

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**1 Source: Global Monitoring Report 2006 p. 33 et (Worldbank), Investment Climate Surevey 2005, Serbia & Montenegro, (Worldbank)**

**2 Region: Albania, Bosnia & Herzegovina, Bulgary, Croatia, Greece, Hungary, Macedonia, Romenia, Slovenia, Serbia & Montenegro.**

**3 These figures are according to World Bank estimates available at:**  
**<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTDISABILITY/0,,menuPK:282706~pagePK:162100~piPK:159310~theSitePK:282699,00.html>**

**4 World Bank, Development Outreach series, “Disability and the Fights against Poverty”, available at:**  
**<http://www1.worldbank.org/devoutreach/july05/textonly.asp?id=310>**

Promoting equality is not only a “rights oriented matter”, enabling people to consume their rights. Equality is a two-sided coin, with rights and obligations. Where (new) rights appear, (new) obligations come along with them. For instance, materializing the right to employment and career leads also to the obligation to invest in one’s own future. These processes can finally result in a new focus on, for example, the function or form of social security (shifting from passive to active).

During this study, the project team experienced that some essential conditions have to be fulfilled to allow the successful implementation of an employment policy for People with Disabilities.

These preconditions are related to:

- Collection of socio-economic data
- Accessibility of the work place
- The need for an integrative educational system
- Facilities for Personal assistance
- Ministerial Coordination

In developing policies and monitoring their status, detailed data are essential. Socio-economic statistics with regards to the (socio-economic) position of People with Disabilities is limited. The data vary from general figures to (specific) unemployment and qualification data and from income positions to educational data. Often reliable data, measured with one consistent standard, are not available. Recommended is to establish a connection with Eurostat definitions and methods, and the data inquiry for job seekers should be extended.

The National Employment Service (NES) should have an important role in the data inquiry for job seekers. Inclusion of collection of information on disability in the general data collection is recommended. Development of special data-systems for People with Disabilities should be prevented: inclusion should also be a leading theme here.

Despite the experienced “data difficulties”, there should not be a delay in the development of policies until the adequate data collection is established: the urgency of the problems does not become less if, for instance, the unemployment rate ends up at 32% instead of 36%.

The improvement of accessibility of the work place is a major challenge in Serbia and essential for even creating theoretical possibilities for the inclusion of People with Disabilities. The development of a National Action Plan for accessibility (and transportation) is recommended. This action plan could consist of an investment program for public buildings guidelines for new buildings or renovations and tax measures or subsidies for investments in this field. Such a plan, referring to the substantial public funding, should be constituted as an integral part of the National Strategy for Enhancement of the Status of People with Disabilities. Competent ministries (Ministry of Transport and Construction), should devise a plan for implementation of the relevant provisions / consequences of the Law on Prevention of Discrimination against Persons with Disabilities and amendments to the Law on Construction and Planning. This would lead to a list of priorities in adaptation of existing inaccessible public buildings and transport, as well as measures to ensure that all new public buildings and transport must be accessible, including the enforcement of legal sanctions against those who make these facilities inaccessible.

A helpdesk organized by the client organizations can give support to companies and institutions that plan to deal with this problem.

Integrative action starts at early age: in school. If “as normal as possible” is the dominant motto for inclusion, the change should include moving to inclusion in education. Not only for “inclusion” as micro effect, but also to encourage / create equal chances on appropriate education. Affirmative action could be needed in vocational education for the present mature People with Disabilities. A strong partnership between the Ministry of Education and Sport, Ministry of Labour, Employment and Social Affairs and Ministry of Economic Affairs is



suggested, in order to ascertain and carry out the necessary steps towards a labour market demand oriented program for Vocational Education.

Personal assistance for people with (physical) disabilities has a broader scope than exclusively job related; PA also includes private life. It would therefore not be logical to include PA as an employment related issue. Nevertheless, the personal assistance is of essential importance as a precondition for work. We suggest improving PA facilities within the social security services.

Furthermore, one could envisage funding of personal assistance for persons with disabilities who attend higher education from funds for education, and for employed persons with disabilities from a Fund for Promotion of Employment of People with Disabilities, if the above-mentioned persons with disabilities cannot realize funding for personal assistance from other publicly available funds.

Success is often not related to the number and variety of set goals, but to the ability to concentrate actions and to prioritize targets in a way that clear and feasible goals can be achieved... The Ministry of Labour, Employment and Social Affairs does not suffer from a lack of ideas, creativity, commitment or openness. The Ministry has taken a clear direction focused on tangible results. One of the issues the Ministry has to pay a particular attention to is coordination. Through the contacts and interviews with the employees of the Ministry, it has been ascertained that the Ministerial policy is aimed at establishment of an intensive coordination among the stakeholders in this field. The corresponding strategy and/or action plans have been elaborated to such an extent that the quality of the results can be lagging behind due to the quantity of goals set forth. This is very important and should be taken care of in an adequate way. Investments in coordination, leading to concentration of (final) responsibility with one representative and attention for focus in goals, consecutive action and timing could be profitable. If that is not feasible at the moment, it is recommended to initiate a regular weekly exchange of information between departments in Ministry of Labour, Employment and Social Affairs. This measure will considerably contribute (as it already does) to an increase of the coordination and the achievement of desired results in the field of employment of persons with disabilities.

As stated above, there is a great need for inter-ministerial coordination and cooperation in this field. The Twinning Support Program within the General Secretariat of Government is already dealing with this subject and might be of use in this field. Exchange of information and the start of a dialogue would be a constructive beginning. Special attention is to be paid to the cooperation between the MoLESA, Ministry of Education and Sports and Ministry of Economic Affairs.

The project approach is based on the following:<sup>5</sup>

- Review of the existing legal framework, measures and practices, together with a summary of the draft Law are elaborated in chapter 3.
- Collecting comparable national and international data
- International comparison of systems. This comparison involved Germany, Sweden, Poland, Greece and Croatia:
  - Two Western European countries with high standards and costs, one (Germany) implemented a quota-levy system.
  - One new EU member, with high unemployment and in difficult economic conditions.
  - Two countries in the region, one is a EU member.
- The comparison emphasizes Active Labour Market Measures in this perspective, especially the specialist measures and where relevant the mainstream measures.
- These aspects are elaborated in chapter 4.

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**5 Annex 1 of this report contains the original Terms of Reference and the Project Planning.**

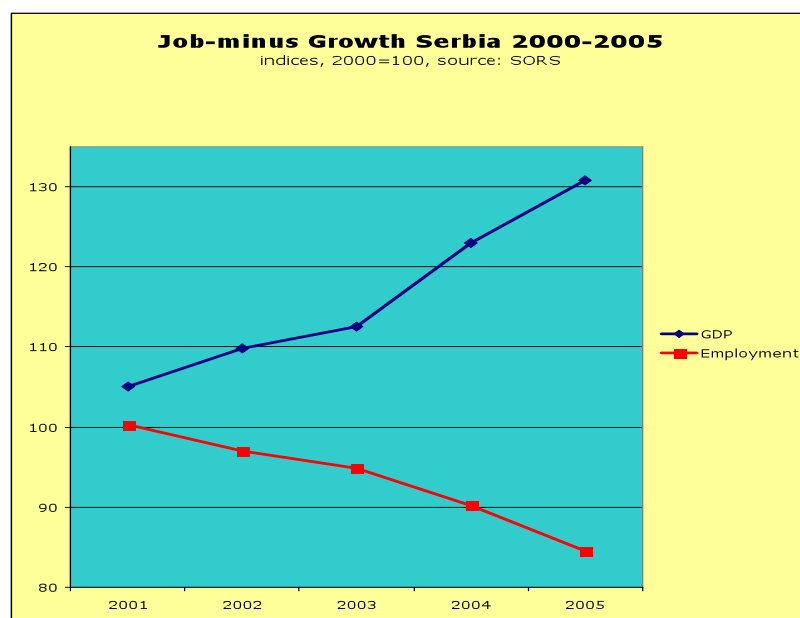
- Stakeholders opinions concerning awareness, appreciation / critics about the present system, the proposed Law, possible own policies, commitment to the subject, social dialogue. This is described in chapter 5. Stakeholders in this perspective are: Social Partners, Client organizations, other related Ministries, NES, Chamber of Commerce, Association of Sheltered Workshops. This is all elaborated in chapter 3.
- Chapter 6 deals with international and national lessons learned, together with general recommendations and comments on the draft Law.

Serbia struggled with a long period of ideological development and war, followed by social and political instability. Over the past five years Serbia has been gradually recovering, making full use of the open-mind-culture that the country is renowned for. This is shown in striving for stronger EU connections, together with considering and adopting European policies, adjusting them to the country's circumstances.

It is more than obvious that in comparison with its development until the 80-ies of the twentieth century, the development of the country in the following years stagnated (and was even set back) due to the wars and the disinclusion of former Yugoslavia. However, the country's historical foundation, cultural heritage and general international orientation are a strong asset. The setback caused delays in economic development, but in general, recovery started approximately two years ago. The business climate has been improved and Serbia's economy is growing.

The recovery is however fragile if, for instance, the development of employment and income are taken into account. The gap between economic growth and decreasing employment is considerable.

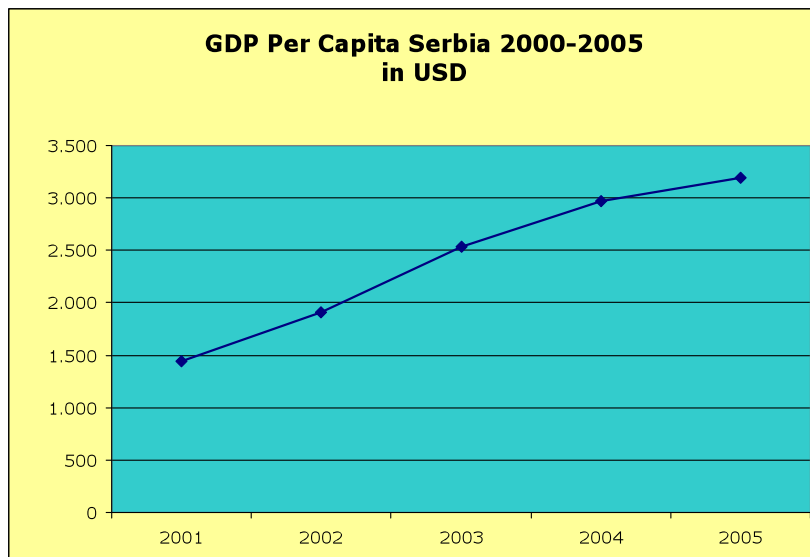
This gap obviously has influence on the labour market position for People with Disabilities. In a situation of unemployment they are the first group to be discriminated, followed by foreign , young, feminine, low educated and elderly people. The higher the unemployment, the more difficulties or even impossibilities People with Disabilities will meet in their search for work<sup>6</sup>.



The government has set a course to enduring and tangible economic development. These intentions for enduring and tangible development are also recognizable in the level of social ambition.

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**6 The Serbian situation will be elaborated in paragraph 3.2.**



Integrative policy is a multi-dimensional issue, not only in an international context, but as well on the national level. Policies supporting diversity and social inclusion are top issues on that agenda.

People with Disabilities in Serbia face many challenges today. Before the beginning of the armed conflict in former Yugoslavia the state provided persons with disabilities with social welfare benefits, allowances and health care that enabled them in many cases to have a rather comfortable existence.

In the turbulent 1990's, the social protection and health care systems collapsed. People with Disabilities became increasingly marginalized:

- Living on the threshold or below the threshold of poverty
- Facing social exclusion
- Facing open or hidden discrimination

Former specialized institutions, special schools, sheltered workshops did not receive public funding from the state as they used to receive before and health insurance funds were emptied.

People with Disabilities had to rely on their families, international humanitarian agencies and organizations of People with Disabilities - primarily to ensure bare survival.

In time, in the second half of the '90s, persons with disabilities started working through several newly- formed client organizations of People with Disabilities. They slowly embraced the theory of social model and approach to disabilities. This theory claims that disability is a social phenomenon and that persons with disabilities are put in the position of disadvantage and inequality through social, physical, communicational, attitudinal barriers.

They started demanding equal opportunities for:

- Full participation in society
- Access to assistive devices and support services
- An accessible society
- Accessible public transport
- Accessible information
- Quality (equal) education
- And equal opportunities to work and to earn money for their living, rather than being passive recipients of care

Though many People with Disabilities in Serbia still prefer the old model of being "cared for" by the state, the number of those who want to have a chance to be equal citizens grows daily. The society and the state are more and more ready to embrace that approach and embody it in appropriate policies and legislation.

In 2001 “Handicap International” (HI) and the Center for Research of Democratic Alternatives (CRDA) from Belgrade conducted a research on persons with disabilities in 12 out of 180 municipalities in Serbia. This research concluded that People with Disabilities constitute around 6,5 percent of the population. This would mean that there are around half a million of People with Disabilities in Serbia<sup>7 8</sup>, which of approximately 330.000 are in their working age between 15-65 years.

The World Bank<sup>9</sup> stated that only 13% of persons with disabilities in Serbia are employed. HI and CRDA calculated in their earlier mentioned research a division based upon sector:

<b>Where do People with Disabilities work?</b>	
Civic sector, NGO	10%
Public sector	1%
Private companies	1%
Sheltered workshops	1%

The unemployment rate of People with Disabilities, based upon this figure, is approximately 74,5%, if the general Serbian employment ratio is applied. The official figure is however much lower: roughly, 25.000 people are registered as unemployed at the National Employment Service. The discrepancy in figures is due to the fact that not all People with Disabilities are registered at the NES. One should also take into account that a certain number of People with Disabilities is already receiving disability pensions, in total approximately 400.000 people.

People with early disabilities are generally lower educated than other people. The PRSP shows that 50% of the People with Disabilities have no education or only primary education; 10% have completed their education in special schools and only 7% acquired a higher education degree.

This is not because of their abilities. The system of education for People with Disabilities has great influence. This system is based on segregation in special schools instead of inclusion. Education for People with Disabilities is therefore not based on - or does not lead to - effective equal opportunities. That does not remain without consequences for the position of People with Disabilities: not (even) having an adequate education must be seen as an extra handicap in the entrance to work, income and in the use of talent.

Low education, high unemployment and in general the lack of equality leads to a low income position: a survey in 2001 showed that 70% of the People with Disabilities had a particularly low income and would be ranked among the poor, according to present standards<sup>10</sup>.

There is no specific research regarding the income position of working People with Disabilities. The annual average wage of employees in sheltered workshops might give an indication: € 1368.

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<sup>7</sup> “Osobe sa invaliditetom i okruzenje”, Beograd, 2001.

<sup>8</sup> The World Health Organization maintains a figure of approximately ten percent. And Eurostat data for EU shows that fourteen percent of the population has to deal with disabilities. Thus, a more probable approximation of the number of People with Disabilities in Serbia would be between 700000 and 800000.

<sup>9</sup> Poverty Reduction Strategy Paper (PRSP) 2004

<sup>10</sup> PRSP Worldbank

A general comparison between the not-disabled and the disabled economically active population shows the following indicative results:

<b>Indicative comparison 2005</b>		
	<b>General</b>	<b>People with Disabilities</b>
15-65 yoa	5.048.025	330.000
Employment rate	51%	13,0%
Econ. Active population	3.292.912	168.277
Unemployment	21,8%	74,5%
Education	+	--
Average income p.a.	€3.399	€1.368

Present complementary policies in Serbia for People with Disabilities can be divided in 11:

- Counterbalances, designed to increase competitiveness of People with Disabilities in the labor market
- Substitutions, i.e. sheltered employment
- Cash benefits, i.e. disability pension

These different forms will be shortly described and characterized hereafter.

The counterbalances policies carried out by the National Employment Service in 2005 consist of:

- Funding of equipping the work place for this category of persons, amounting to 72,000 CSD, with the selection of one out of two possibilities:
  - by participating in funding their salary, lasting 12 months, in the amount up to 80 % of the average monthly salary per employee earned in the Republic and
  - by approving subsidy for mandatory contribution for social insurance paid by the employer lasting 36 months.

84 employment programs have been financially supported for employment of 97 disabled persons, by which the Plan has been accomplished by 97%.

- This program has covered mostly persons up to 25 years of age (41.2%), then 26-30 years (12.4%) and over 50 years (9.3%).
- Amongst the persons covered, 36% has been recorded longer than 24 months, and 65% has started their first work relation (10% more than in 2004).
- In the total number of employees, there is predominant male labour force (65.9%).
- 37% perform activity in the field of trade, production and service craftsmanship.

A relatively small number of persons with disabilities used the self-employment programs. The fact that programs have just begun with realization makes it more difficult to forecast the long-term effects. However, having in mind the general recommendations on raising the employment rate through self-employment, entrepreneurship and small and medium companies, such programs could provide a useful tool in reform of employment of People with Disabilities. The social cooperatives for employment of People with Disabilities, deriving from the good international examples and lessons learned from classical sheltered workshops in Serbia can also be useful tools.

Sheltered workshops substitute a part of the lack of employment on open market labor for People with Disabilities in Serbia.

Serbia has sheltered workshops for the persons with disabilities. They are also called “companies for vocational training and employment of persons with disabilities”. These facilities are operating in accordance with the provisions of Law on Vocational Training and Employment of Persons with disabilities.

The Fund for Pension and Disability Insurance, together with the Ministry of Labor, Employment and Social Policy<sup>12</sup> are founders of sheltered workshops. The financial resources for the functioning of these sheltered workshops come from the Republican Budget.<sup>13</sup> The Union of Sheltered Workshops coordinates the relationship between the government, the Fund for Pension and Disability Insurance, and the sheltered workshops.

Other sheltered workshops are set up by the organizations of persons with disabilities.

In the process of privatization of publicly owned community property, some sheltered workshops were privatized.<sup>14</sup>

The Law on Vocational Training and Employment of Persons with Disabilities that is currently in force created the legal framework for the foundation of sheltered workshops. In order to be acknowledged as sheltered workshops, the companies have to meet certain requirements. Such a requirement is that at least 40 percent of the employees have disabilities. If the sheltered workshops infringe this condition, they lose their status of sheltered workshop, including all benefits and incentives they are entitled too.

All sheltered workshops meet the condition and some even exceed it.<sup>15</sup>

The total number of registered sheltered workshops is 74, out of which 61 have the right to be financed from the Republican Budget.

The total number of employees is 6045, out of which 3206 are People with Disabilities.

Apart from the function as enterprise, sheltered workshops are also supposed to provide vocational training of children with disabilities that cannot get training in special schools, as well as for adult disabled employees who cannot get additional training or re- training. Unfortunately, there are no precise data on the number of beneficiaries of such vocational training programs.

The Association of Sheltered Workshops of Serbia (51 members), provided the following data on their employees:

Sheltered workshops - Gender		
Male	1498	67%
Female	737	33%

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**12** Previously the name was Ministry of Social Affairs.

**13** The Law on Vocational Training and Employment of Persons with disabilities prescribes that the sheltered workshops receive 50 percent of the average wage as subsidy per each employed disabled person. According to the Conclusion of the Government of Serbia, subsidies to public non-financial companies and organizations are to be paid once a year. In 2005, the government allocated DIN 155,000,000.00 (€ 1,960,040.00) for the enhancement of the working conditions and furthering the production programs of the sheltered workshops. The amount in Euro is approximate because it was calculated based on the Euro exchange rate on 31 December 2004.

**14** However, the Union of Sheltered Workshops expressed concerns that, during the privatization process, the employed persons with disabilities might be discharged.

**15** Information received during the debates at a round table on sheltered workshops kept at the Faculty for Business Law in Belgrade on June 2005 from the representatives of the Union of Sheltered Workshops.

Note the inequality in participation between men and women (in the general labour market, women form about 43% of the working population).

<b>Sheltered workshops – Age</b>	
<20	2%
21-30	9%
31-40	19%
41-50	35%
>50	35%

<b>Sheltered workshops: Structure of employed persons according to the types of disability</b>		
Muscular dystrophy	7	0,3%
Physical impairments	26	1,2%
Chronical conditions	34	1,5%
Combined impairments	35	1,6%
Visual impairments	44	2,0%
Hearing impairments	334	14,9%
Decreased intellectual capacities	549	24,5%
Disabled in process of work- labor disabled	1212	54,1%

The number of people suffering from work related disability is more than half of the total number of employees in sheltered workshops.

<b>Sheltered workshops: Qualifications structure of employed persons with disabilities</b>		
Non- qualified	425	19,0%
Semi- qualified	529	23,6%
Qualified	1006	45,0%
Highly qualified	72	3,2%
with High school degree	176	7,9%
with Higher school degree	19	0,8%
with University degree	10	0,4%

Since the democratic changes in Serbia in 2000, antidiscrimination has become one of the significant themes and concepts in Serbia's legislation and policy- making. Serbia's legislation is influenced by the EU legislation due to the gradually evolving pre-accession process.

Furthermore, Serbia is one of the more actively involved countries in the drafting of the International Convention on Rights of Persons with Disabilities, directed by the United Nations.

In 2003 the Charter on Human and Minority Rights of Serbia and Montenegro was adopted. This is one of the highest Constitutional acts and it explicitly prohibits discrimination because of physical or intellectual disability. This led to explicit prohibition of discrimination based on disability in a number of Serbian laws.

The Labor Law from March 2005 explicitly prohibits discrimination on basis of disability (article 18).

Prohibition of discrimination applies to direct and indirect discrimination in terms of:

- Job application
- Labor conditions
- Training
- Career advancement
- Termination of individual labor agreement

Persons who experienced discrimination in labor relations are entitled to demand compensation in court proceedings.



The law also provides that persons with disabilities are employed under general provisions, unless otherwise prescribed by the law. If the employee is not longer fit for the job (in terms of ability), the employer is obliged to offer another job, according to his/her remaining working capacities. The employee may only be fired if he/she refuses the other appropriate job offer.

The Law on Vocational Training and Employment of Persons with Disabilities (1996) is specifically meant for employment of persons with disabilities that cannot find work in the open labor market. The Law prescribes conditions for the organization of sheltered workshops.

As mentioned above, a new draft of the Law on Vocational Training and Employment of Persons with Disabilities is being prepared. This draft will be summarized and discussed in paragraph 3.6.1..

The Law on Rights of Unemployed Persons provides the National Employment Service with possibilities to offer training to People with Disabilities. Specialized programs for People with Disabilities are described above. This Law facilitates general training and qualification programs for (among others) People with Disabilities.

Most recent fact is the adoption of the Law on Prevention of Discrimination against Persons with Disabilities. This Law prohibits discrimination in labor relations, employment and education, among other areas, i.e.:

- Refusal to employ a person with disability who is qualified for a job due to his/ her disability
- Setting health conditions non-related to the job itself
- Prior testing of psycho - and physical abilities, when not-relevant for the job
- Refusal to adapt a work place
- Setting lower wages for persons with a disability
- Special conditions non-related to the job
- Creating special conditions in People with Disabilities' labor rights

The grieved party may initiate a court procedure, requesting cessation of the act of discrimination, prohibition of its repetition and compensation for moral and material damages sustained.

The Draft Law on Employment of Persons with Disabilities of Serbia (April 2006) defines someone with a disability as:

“a person that has decreased working capacity and a diminished possibility of employment, due to damages of organism or disease acquired at birth or later, whose status (as person with disability) has been established by a decision of a competent organ (art 2, clause 1).”

The Draft Law defines vocational rehabilitation as:

“activities taken in order to enable a person with disability to find, or to maintain employment, advance in his/ her career or to re-qualify (art 2, clause 2).”

Persons with disability can be employed under the same or specific conditions in regards to persons without disabilities (art 2, clause 3). Special conditions for the employment of persons with disabilities lead to providing conditions for employment of a person that cannot re-qualify in ordinary working environment without adaptation of the job or the working place (art 2, clause 4).

A company for vocational rehabilitation and employment of persons with disabilities (in further text: Company/ i.e. sheltered workshop) is a legal entity that performs its activities in order to employ persons with disabilities, to provide them with vocational rehabilitation and with the purpose of making a profit.

According to Law, the following persons shall be considered for the status of a person with disabilities:

- Disabled war veterans,
- Peacetime disabled army veterans,
- Civilians that became disabled in war,
- A person that received assessment of his/ her disability,
- A person with remaining working capacity (person with 3<sup>rd</sup> category of disability according to old legislation)
- Any other person that has the status of person with disability in accordance with law (art. 3).

- A person that has diminished working capacity and possibility of finding or maintaining employment, including permanent consequences of physical, sensory, mental or psychiatric impairment or disease that cannot be removed through medical treatment and rehabilitation and cause limitations and obstacles to daily activities and working capacity, and has no prior status of person with disability shall acquire such a status (art. 5).

An unemployed person with disability is a person who has the status of a person with disability, is registered at NES, actively seeks a job and is willing to accept vocational rehabilitation (art. 6).

Vocational rehabilitation encompasses rights to:

- Professional information,
- Counseling,
- Assessment of professional capacities,
- Vocational training, additional training or retraining,
- Maintenance and enhancement of working and social skills and capacities,
- Individual and group general and adapted programs for improvement of working and social inclusion,
- Development of motivation,
- Technical aid and support,
- Monitoring and evaluation,
- Individual counseling, including psycho- social counseling,
- Education and training for the employers and experts in this area and other measures.

Vocational rehabilitation is organized either by the Center individually or through a Company/ sheltered workshop, the NES or other organizations, that fulfill conditions for delivery of vocational rehabilitation (art 15, clause 1).

The Center organizes the vocational rehabilitation upon the request of a person with disability, his/ her legal representative or guardian, the employer or the NES, after deciding on the request.

Company/ sheltered workshop is obliged to provide vocational rehabilitation to:

- Students of secondary schools that are educated in accordance with curricula for students with disabilities,
- Students of special schools and special classes in regular schools,
- Persons with disabilities who participate in a process of vocational rehabilitation in a Center.

The Draft Law prescribes the following Quota - Levy system:

- The employer that hires from 20 to 50 employees is obliged to employ at least one person with a disability (clause 1, art 23).
- The employer that hires more than 50 employees is obliged to hire at least 3 % persons with disabilities (clause 2, art 23).
- Employers who fail to meet the prescribed quota shall be obliged to pay 50% of average wage for each person with a disability they failed to employ for as long as they fail to meet the quota (clause 1, art 24).
- Organs of state administration, judiciary organs, organs of local autonomies, public services, social insurance funds, other state and public organizations and public companies are obliged to hire at least 5 % of persons with disabilities (clause 3, art 23).
- The employers from the public sector who fail to meet the prescribed employment quota shall be obliged to contribute 2% of the total sum paid for the wages and social, retirement and health insurances for all their employees until they meet the prescribed quota (clause 2, art 24).

The Employer that employs a person with disabilities is entitled to refunding of the costs of measures taken to equalize the opportunities for employment of the employee with disability in order to adapt his/ her working place. The employer hiring a person with disability without any previous working experience within the scope of fulfilling the quota- levy system obligation, shall be entitled to receive a subsidy for that employee's wages in amount of 80% of average wage in Serbia for a period of 12 months (art 26).

Employers, who employ a person with disability that can be employed only under special conditions, shall be entitled to subsidies prescribed for in article 26 (clause 1, art 27).

The employer in the public sector that hires 1% of persons with disabilities who can only be employed under special conditions, shall be considered as having fulfilled its' obligation of quota- levy and be entitled to subsidies prescribed for in article 26 (clause 2, art 27).

Sheltered workshops will be part in public procurement procedures of public organs, either as invited party or as sub-contractor.

Employment in sheltered workshops aims on employment of persons with disabilities under special conditions (art 29). Sheltered workshops have to fulfill the following conditions:

- It employs at least 40 % persons with disabilities, who have decreased working capacities due to diseases or damages of organism acquired at birth or at a later stage, have been assessed as such by the competent authority and cannot be vocationally rehabilitated to obtain a job in the open market
- Possession of appropriate premises and technical and other equipment, necessary for the vocational rehabilitation and work of persons with disabilities;
- Employing the following expert professionals for vocational rehabilitation of persons with disabilities:
  - One employee who fulfills the conditions for training in the relevant field of work and vocational training set by legislation on education and vocational training,
  - One employee who fulfills the conditions on providing professional assistance to persons with disabilities set by legislation on education,
  - One employee with a degree in either psychology, or in special education, or in social work;
- Has the approval of Ministry of Labor, Employment and Social Affairs.

The sheltered workshop shall receive a subsidy of 50 % of the average wage per each employed person with a disability from the Budget of Serbia, in accordance with instruction of the minister for employment and social affairs (art 36). Besides the above- mentioned subsidies, sheltered workshop may receive funds from any special Government program that will be used for improving working conditions and investment in production programs of the company.

The Fund for Vocational Rehabilitation and Employment of Persons with Disabilities shall:

- Ensure the direct and efficient enjoyment of rights of persons with disabilities
- Ensure the purposeful and economical use of the Fund's resources and monitor it
- Provide support for employment for persons with disabilities under general and specific conditions
- Perform activities prescribed in article 11 through the Center for Vocational Rehabilitation as its organizational unit
- Carry out procedures to determine the disability status of applicants and beneficiaries
- Evaluate the working capacities and possibilities for employment of persons with disabilities

The resources of the Fund shall be used for:

- Support for employment of persons with disabilities under general and specific conditions
- Vocational rehabilitation for persons with disabilities
- Expertise to determine the (decreased) working capacity
- Provision of wage compensation during vocational rehabilitation
- Other measures and activities in accordance with this Law

The Ministry for Employment and Labor shall monitor the implementation of this Law through

- Labor inspection
- The Retirement and Disability Insurance Fund
- The Agency for Business Registers
- Fiscal Administration

The Ministry shall as well monitor the legality of the work results and acts of the Fund and of sheltered workshops.

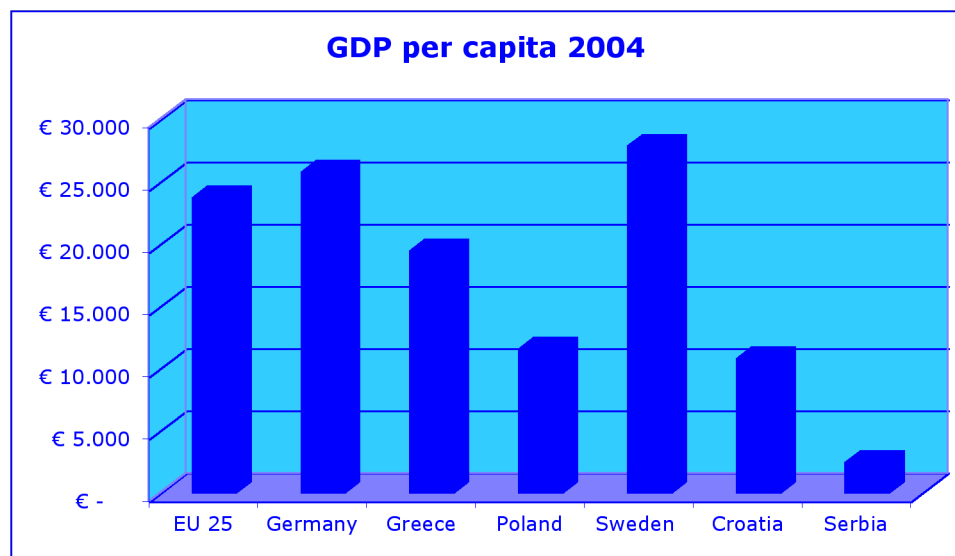
Sheltered workshops that employ predominantly persons that became disabled in the process of work can be privatized, if the new owner intends to permanently maintain the status of sheltered workshop for the company. Furthermore, they need to act in accordance with this Law (art 59).

Sheltered workshops that predominantly employ persons with mental and sensory impairments can be privatized under conditions prescribed by the Government of Serbia.

According to the draft, the Law shall come in force 8 days after its publication in Official Gazette of Serbia.

This chapter performs a cross-country comparison with five European countries - Sweden, Germany, Poland, Croatia und Greece. The aim is to make their approach transparent in the employment policy for disabled people. Three of the involved countries are long term EU members (Sweden, Germany, Greece), one country is a short term member (Poland) and one applied for a membership in the European Union (Croatia). This selection is also based on a variety of socio-economic circumstances and – development.

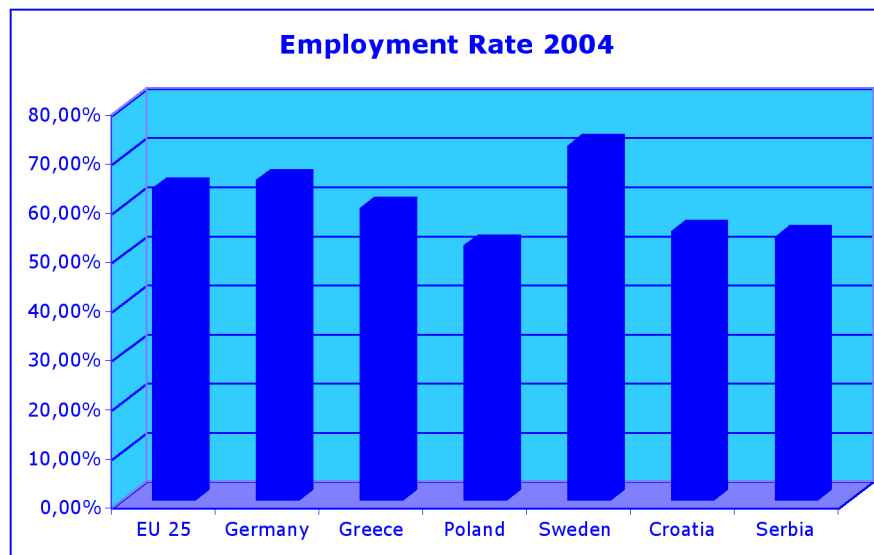
The general differences in economic development are significant as shown in the income per capita. Note the position of Serbia.



All countries show a stable high or growing unemployment rate; Poland has to deal with extreme high unemployment (comparable with Croatia and Serbia).

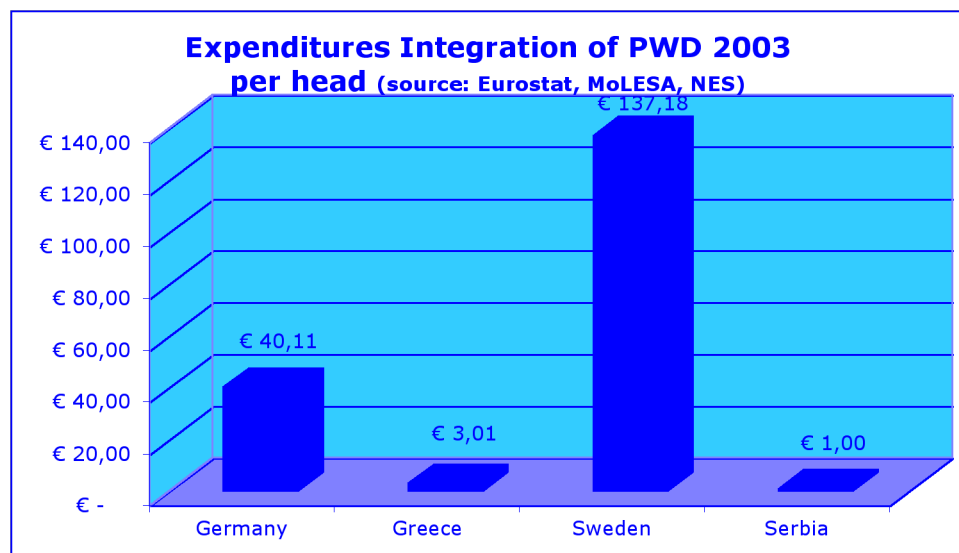


In addition, the employment rates of Poland, Croatia and Serbia show resemblance.



All countries intend to encounter unemployment by increased using of active labour market instruments and a stronger focus to respective disadvantaged groups in their national strategies.

Below is an indicative comparison of the expenditures on inclusion measures for People with Disabilities.



Since the European Community Initiatives “Horizon”, “Equal” and the “European Year of People with Disabilities 2003”, People with Disabilities are in the wider public eye.

The European Union's commitment towards People with Disabilities goes together with a human rights approach based on inclusion and active participation in economic and social life.

This created a change of paradigms in the 1990's and led to focus on one persons “ability” instead of “disability”.

An exclusively “medical needs based model” shifted into an approach, funded on the need for all people, to be included in society as equal. And this had legal consequences and changed the employment and vocational education policy in the EU.

The European Union's Disability Policy started in 1996, when the Council and its representatives of the Member States proclaimed the resolution of "Equality of Opportunities for People with Disabilities".

The Amsterdam Treaty is one of the core instruments on which the EU legal framework is currently based. Directive 2000/78 on Equal Treatment in Labour Relations on November 27<sup>th</sup> 2000, explicitly prohibited discrimination because of disability in labour relations and employment. This Directive is the basis for all recent amendments of national legislation pertaining to labour relations and employment in EU member states.

The European Employment Strategy is the basis for EU-countries' employment policy. Especially the Luxembourg Summit 1997 became evident with four pillars:

- Adaptability
- Employability
- Entrepreneurship
- Equal opportunities

All fields of employment are covered by an integrated approach and will be added by a set of employment guidelines. This framework is completed with National Action Plans for Employment, Operational Programmes/Single Programming and financial instruments as the European Social Funds. In all the current legislation, disability-issues are to be seen as a part of the mainstream and cross sector policies.

In April of this year, the Council of Europe adopted the recommendations of the Council of Ministers, on a European Action Plan to promote the rights and full participation of People with Disabilities in society: improving the quality of life of People with Disabilities in Europe 2006-2015.

This action plan seeks to translate the aims of the Council of Europe with regard to human rights, non-discrimination, equal opportunities, full citizenship and participation of People with Disabilities into a European policy framework on disability for the next decade.

This action plan provides a comprehensive framework that can be adapted to country-specific conditions and is intended to serve as a roadmap for policy makers in EU membership countries.

The plan is made up of 15 action lines covering the following areas:

1. Participation in political and public life;
2. Participation in cultural life;
3. Information and communication;
4. Education;
5. Employment, vocational guidance and training;
6. The built environment;
7. Transport;
8. Community living;
9. Health care;
10. Rehabilitation;
11. Social protection;
12. Legal protection;
13. Protection against violence and abuse;
14. Research and development;
15. Awareness raising.

The domestic legal frameworks comparison in the five selected countries will be concentrated on the following laws or strategies<sup>16</sup>:

- Anti-discrimination approach
- (Specific) labour market policies
- Approaches with a stronger economic component in this context

<b>Table 1. Legislative framework</b>			
<b>Country</b>	<b>Legislation</b>	<b>Disability definition</b>	<b>Q L - System</b>
<b>Sweden</b>	Anti-discrimination Law <sup>17</sup>	Disability means every permanent (enduring) physical, mental or intellectual limitation of a person's functional capacity that as a consequence of an injury or illness existed at birth, arose thereafter, or may be expected to arise.	No
<b>Germany</b>	The National Act on Equal Opportunities <sup>18</sup>	Disabled persons are persons whose physical functions, mental capacities, or psychological health are most likely to deviate within six months from the condition which is typical for the respective age and whose participation in the social life is therefore restricted.	Yes
<b>Greece</b>	The Law on Compulsory Placement <sup>19</sup>	Persons with disabilities are those persons whose employability is limited by any chronic physical and/or mental illness or impairment.	Yes
<b>Poland</b>	The Vocational and Social Rehabilitation and Employment of Disabled Persons Act <sup>20</sup>	Disability means permanent or periodic inability to perform social roles due to a permanent or long-term body impairment, in particular resulting in inability to work.	Yes
<b>Croatia</b>	The Law on Professional Rehabilitation and Employment of Disabled Persons	Persons with disabilities are persons with physical, sensory or mental impairment causing permanently or at least for 12 months decreased capacity for satisfying individual needs in everyday activities.	Yes

<sup>16</sup> See Annex 4 for further details about the legal framework.

<sup>17</sup> The Law came into force in 1999 and covers discrimination in recruitment, advancement, terms of employment and wage conditions, allocation of work, dismissal and disability definition. The implementation is regulated through several acts: an Employment security act, Social service act, Act concerning support and service for persons with certain personal impairments, Work environment act.

<sup>18</sup> The Act came into force in 2002. Rather than being a legal instrument, it has the function of a social guiding principle. The Social Code Book 3 and 9 regulate the implementation. Social Code Book 3 (Socialgesetzbuch 3) covers job placement, vocational education and training and passive labour market measures like job allowance. Social Code Book 9 is related to rehabilitation and participation of PEOPLE WITH DISABILITIES, protection against unfair dismissal, rules for applying quota-levy system.

<sup>19</sup> The Law constitutes the current legislation on the compulsory placement and the quota system and it takes care of the employment of persons belonging to special categories.

<sup>20</sup> The Act provides the basis for Quota-levy system and facilitates job finding, professional advancement, professional guidance, training, job placement, workplace adaptation as well as rights and duties of employers and employees.



Two types of quota schemes for disabled veterans first emerged in Austria, Germany, France and Italy during the early 1920's with the following distinctions:

- Quota schemes which created legal obligations for employers to hire certain percentages of disabled veterans
- Quota levy systems that imposed penalties, if quotas were not met.<sup>21</sup>

Employment quotas for many years have played a certain part in the disability employment policies of most countries in Europe. The 'quota-levy' is still the main pillar of national disability employment policies in Germany and France (since 1987).

To over-simplify two complex schemes, employers must employ a target percentage of recognised disabled workers or pay a levy which is redistributed, through a fund, both to support the costs to employers of employing disabled people and to finance measures to promote the employment of recognised disabled workers.

Quota systems are based on principles of collective obligation towards disabled people - an obligation that rests on society as a whole, implemented by employing organisations as societal representatives, and controlled by agents of the state.

The German quota system requires public and private firms with more than 20 employees to meet a quota of 5% severely disabled employees in their workforce. If they fail to meet this quota, they have to pay a monthly amount per non-employed disabled employee into a compensatory levy fund (Ausgleichsabgabe), which is used only for participation purposes of severely disabled people to promote rehabilitation, personal assistance, workplace adaptations and employment.

The levy fund can be used, for example, to provide grants to employers who exceed their quota obligations or to help employers meet any extra costs associated with the employment of disabled persons.

The German Ministry of Employment and Social Affairs is in charge of the fund. The implementation has to be effected with specific authorities (Inklusionsämter) from federal and regional level and in cooperation with the NEA.

The Quota levy system in Poland is functioning in a similar manner like in Germany. The quota requires private and public employers with more than 25 employees to employ at least 6% of disabled people. Employers who fail to meet the mandatory quota are required to pay a compensatory levy into the fund.

In Greece this law stipulates that the employers with 50 workers or more have to employ disabled workers placed by the Public Authority. The law gives disabled people first priority over all other protected special groups in the public sector and second priority in the private sector.

There is no quota system for private firms in Croatia. Since 2004, all governmental bodies and public services are obliged to employ at least two percent of workers with disabilities. This quota is set to increase by one percent every fourth year, so by the end of 2020 the proportion of employees with disabilities in these bodies should be six percent. In Government entities, the quota for employing People with Disabilities was one per every 49 employees; this includes courts, public services, legal bodies owned by local or regional government.

The Quota System is still disputed.

In Germany actually there is a tendency to pay rather than to employ, despite the reform of the existing system. In Poland however, the employment of People with Disabilities made a huge step forward after the implementation of the Quota levy system.

Sweden does not apply a Quota Levy System. Disabled persons are considered as a special target group, and they will be financed out of tax revenues and own revenues particularly in sheltered workshops. The implementation of the policy is supported by a tax system to which all taxpayers contribute.

<b>Table 2. Rehabilitation procedures<sup>22</sup></b>	
<b>Country</b>	<b>Institution in charge</b>
<b>Sweden</b>	Social Security and Labour Office
<b>Germany</b>	Social Security, Labour Offices, Pension offices, Youth Welfare Service and the Accident Prevention Insurance
<b>Greece</b>	Manpower Employment Organization under the Ministry of Labour and Social Security
<b>Poland</b>	Labour Offices under the Ministry of Labour and Social Policy

According to the ILO, vocational rehabilitation is defined as “...the continued and coordinated process of rehabilitation which involves the provision of those vocational services, e.g. vocational guidance, vocational training, and selective placement, designed to enable a disabled person to secure and retain suitable employment...”.

All mentioned countries provide similar varieties of measures for vocational rehabilitation of People with Disabilities which refer to the ILO definition. But the implementation procedures show large differences.

There is a strong distinction in case of supporting medical rehabilitation, working life and the participation in every day life in Germany.

Assessment tools generally aim on acquiring the following information about a person with disability:

- Diagnosis
- Impairment
- Standardised descriptions of physical or mental capacity
- Standardised descriptions of working life
- Standardised descriptions of daily life
- Job abilities or requirements specific to the person
- Personal and social circumstances specific to the person.

With these tools, the assessment is provided in Sweden, Greece and Germany<sup>24</sup>.

In Croatia, assessments measure the capacity / ability to an independent living and work situation. Assessments in Poland evaluate the ability to work, partial or total, and to live independently. The medical certification is made by Social Security Institutions and the psychological and educational evaluation is done by selected training institutes.

The classification is made in Germany with a 10 step disability rating from 10 until 100 and in Poland just in 4 steps from mild, moderate, severe or profound disabled.

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**22 See Annex 5 for further details about rehabilitation.**

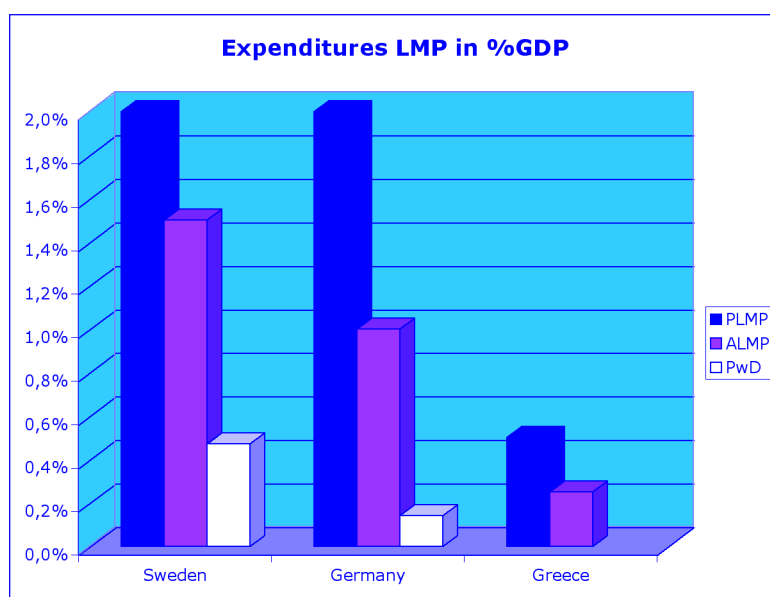
**23 See Annex 6 for further details about assessment.**

**24 Definition of disability in Europe-comparative analysis, Brunel University, European Commission-directorate Employment and Social Affairs, 2002**

<b>Table 3. Assessment procedures</b>		
<b>Country</b>	<b>Institution in charge</b>	<b>Classification</b>
<b>Sweden</b>	The National Social Security Board	---
<b>Germany</b>	The Pension Office (Versorgungsamt) and Labour Office	Range 10-100
<b>Greece</b>	Manpower Employment Organization	----
<b>Poland</b>	Social Security Institute	4 step approach mild moderate severe profound
<b>Croatia</b>	Ministry of Health	3 step approach

If the programmes are aimed at activation of the people by improving their inclusion into the labour force, they are considered to be active labour market programmes (ALMPs). On the other hand, passive labour market programmes (PLMPs) mainly provide income replacement, either through early retirement programmes or through programmes on out of work income maintenance and support.<sup>25</sup>

The expenditures spent on ALMPs in relation to GDP is shown below:



PLMP = Passive Labour Market Programs = Social Security Benefit schemes etc

ALMP = Active Labour market Programs = programs to increase employment and / or to intervene in the labour market

PwD = People with Disabilities = expenditures for programs for People with Disabilities.

Percentages are shown as a percentage of expenditures of the Gross Domestic Product.

The active labour market programmes carried out in European countries are mostly mainstream measures, where People with Disabilities are considered as a specific target group. Some countries provide specialized measures.

ALMP's are focussed on social aspects and oriented towards employment. These programs are financed out of the quota fund, social security, tax revenues and co-financing by ESF, depending on the content and focus of the respective programs.

An overview of common programmes is shown below:

Name of the programme	Croatia	Germany	Greece	Poland	Sweden
<b>Social enterprise</b>	X	X			
<b>Sheltered Workshop</b>	X	X		X	X
<b>Workplace adaption</b>	X	X	X	X	X
<b>Vocational counselling</b>		X	X		X
<b>Vocational rehabilitation</b>		X	X		X
<b>Self-employment</b>			X	X	
<b>Wage subsidies</b>	X	X	X	X	X
<b>Subsidies for part-time employment</b>			X		X
<b>Combined measures</b>		X	X		
<b>Disability management</b>		X			

The registration as unemployed is a precondition to receive any kind of benefit, either direct or indirect in Germany. But the registration is discussed, because it can lead to stigmatisation. In Greece for instance, People with Disabilities are considered a vulnerable group and (further) registration is not required.

In Germany 3,7% of all unemployed<sup>26</sup> are People with Disabilities. Programs are directed to:

- Inclusion of disabled
- Incentives for the recruitment and employment of severely disabled
- Promoting inclusion of the disabled into working life

Altogether 169.718 persons participated in these measures in 2004.

For this number the ALMP expenditure was € 3.245,7 Mio.

Greece has spent € 54,3 Mio for this kind of measures.

The next two paragraphs go into selection of programs and measures with possible positive effects to (self) employment. These (mainstream) programs are implemented in almost all five countries, focus on disadvantaged groups and often have an individualised approach.

One of the “oldest” mainstream programmes is “the start up incentive.” It encourages the start-up of a private business and is one of the most successful mainstream programs in Germany, but is rarely used for/by People with Disabilities.

Sweden had 676 participants in 2002.

In Poland, these programs are especially used by founders / owners of sheltered workshops.

It seems there are some initial obstacles, such as personal capital or getting a start-up loan at the bank, since long term professional experience, along with special personal skills and abilities are considered a prerequisite.

For this reason the Chambers of Commerce and Job Centres in Poland, Sweden and Germany offer counselling and training before establishing an own business.

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**26 Croatia reports 2,42%.**

Job counselling is generally a task of the Labour Office in all European countries. During the last few years however, a more individualized approach, in some countries called “case management”, seems to be more in favour. Beside the ascertainment of the professional qualification and work experience, additionally the key qualifications for a job get more attention in the process of (re)placement. This requires an extensive qualification of the job broker.

Employers can be stimulated to support the (re)employment of a People with Disabilities, using five programme types:

- Wage subsidies
- Workplace adaptations
- Technical assistance
- Work assistance
- Assistance for People with Disabilities participation in training

Wage subsidies belong to mainstream programmes and are overall focussed on specific categories of disadvantaged groups on the labour market, such as women, young people under 25, people over 50 years of age, the long-term unemployed and - as a sub-category- People with Disabilities.

The other four mentioned programmes are explicitly related to People with Disabilities and mostly financed out of the levy funds.

The wage subsidy in Germany is modified again with regard to the age. If the person to be employed is over 55 years of age, the respective employer can receive this subsidy up to 5 years (usually 3 years). With this measure, 19.900 persons with disabilities were replaced in 2002.

In Sweden, an amazing number of 49.031 persons have been supported. But the Eurostat categories<sup>27</sup> indicated, that almost all subsidies amounting to € 645 Mio went to employers in sheltered employment.

Germany spent 295 Mio for transfers to the employers (including sheltered workshops).

Greece spent € 29 Mio for subsidized employment.

Wage subsidy programs can be combined with workplace adaptation and assistance measures. This makes the replacement or further employment very attractive for an employer, particularly in Small and Medium-sized Enterprises (SME).

Workplace adaptation can be allocated as a grant or a loan. It is mostly used to purchase of special equipment.

In 2004, 2860 people in Sweden received this type of aid. The same year in Germany, 3742 persons<sup>28</sup> received it, with support of the quota levy funds of € 7,64 Mio.

Employers in Croatia have reportedly expressed concern that the level of support for adaptation of the workplace is too low. In Poland, only Sheltered workshops had the opportunity to use this type of aid.

Vocational education and training are curative or preventive programs to support future employment or maintain an already existing workplace. In the employment policy for People with Disabilities, vocational education is considered the part of the rehabilitation that refers mostly to improvement of the work ability.

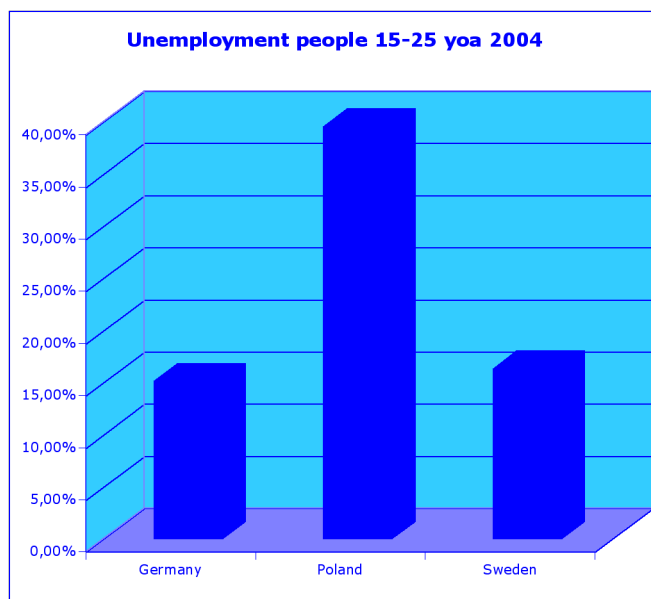
Finally, special vocational education programs for young People with Disabilities seem to be used only in Germany. In the other analysed countries, such as Sweden and Poland, similar programs are mostly connected with separate training in sheltered workshops.

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**27 European social statistics, Data 2004**

**28 Hilfen für schwerbehinderte Menschen im Beruf, Jahresbericht 2004/05, Bundesarbeitsgemeinschaft der Inklusionsämter und Hauptfürsorgestellen, Karlsruhe**

The unemployment rate of young people under 25 years of age in all mentioned EU countries is comparatively high.<sup>29</sup>



Without a completed secondary school or a vocational school certificate, it is hard or completely impossible to access the regular labour market, especially for young disabled people.

In labour market terms, the transition from school to apprenticeship is called **the first threshold** and from completed apprenticeship to the regular labour market - **second threshold**. These transitions are difficult to handle and that is why most programs of implementing bodies try to intervene here. It is for these reasons that the EU member states are now adapting their policies regarding compulsory education and employment of the young.

For example, Germany offers subsidies for apprenticeship. The payments include social security contributions and grants to employers if they offer a job to the apprentice after completion of his/her vocational training.

- Employment for a probationary period
- Or a part time job without any cost for the employer
- And/or with full charge for the quota for the employer
- In order to test the person,

can be an opportunity to experience the ability and skills of a disabled person.

In the search for qualified people, employers need counselling and help of the Labour Office. Enterprises often explain that they experience problems in finding appropriate qualified disabled people.

The first argument for sheltered employment is that it can serve as a transition instrument to regular employment. In general, though, this does not turn out to be the case.

A second argument is that sheltered employment is better than no employment, because employers will not hire disabled workers. This is the reason why sheltered workshops often are called "last resort" for People with Disabilities.

In many instances, though, the wages offered People with Disabilities are merely symbolic. Some countries provide regular sector-specific minimum wages, dismissal protection and full social security benefits.

The minimum requirement for sheltered workshops is to employ a certain percentage of disabled employees.

If these conditions are fulfilled, sheltered workshops are eligible for possible incentives, such as wage subsidies, workplace adaptation, re-training, vocational education etc. out of the quota levy fund or reduced tax and social insurance. Often external institutes with more qualified trainers are providing the professional training.

The required percentage of disabled people in sheltered workshops differs from country to country:

- Sweden 40%
- Germany minimum 20%
- Poland minimum 40%

The range of provider/owner varies from private persons or social welfare organisations to state owned companies with the status of limited company, foundation or association. The number of workshops and the employed number of People with Disabilities differ too.

<b>2002</b>	<b>Poland</b>	<b>Sweden</b>	<b>Germany</b>
Number of SHW	3000	Samhall (state owned) 200	621
Employed People with Disabilities	204 000	24 000 6000	227 000

All countries have waiting lists for People with Disabilities to be employed in sheltered workshops.

The function of sheltered employment is in many countries subject for (dynamic) reconsideration and object for re-structuring. In Germany for example two approaches are being tested:

- “Inclusion enterprises”, a kind of subsidised social companies, that are supposed to function as “bridges” to the open labour market
- “Company related inclusion management” (supported employment, an internal way of maintaining the workplace, supported by a factory committee and a PwD-representative )

The methods of financing sheltered workshops are different from country to country too.

Germany: Own economic activities Subsidies from NES Subsidies from regional social assistance authority Subsidies from Levy fund Donations	Sweden 50% own economic activities 50% state subsidy.
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The economic activities of sheltered workshops in the different countries are comparable and concentrated to industrial production, crafts, packaging, dispatching, woodwork, general services, administrative work, landscape conservation and gardening.

Different departments of the Ministry for Labor, Employment and Social Affairs prepare measures to provide equal opportunities for People with Disabilities. They recognize the need for a full participation of persons with disabilities in all areas of life. Improving the chance on employment is one of key goals. The Poverty Reduction Strategy and the National Employment Strategy contain proposals for a strategy and concrete measure to ensure these goals. A great value is given to legislation, with the recently adopted Labor Law and the Law on Prevention of Discrimination against Persons with Disabilities as examples. A new Law on Employment of Persons with Disabilities is currently drafted and the Ministry hopes it will be adopted by Parliament by the end of June of 2006. Introduction of a Quota- levy system is one of the draft Law's measures, but the Ministry remains open to hear evaluation of quota system based on comparative law and practice analysis. Other cornerstones of the draft are the creation of a Fund for Vocational Rehabilitation and Employment together with a Center for Vocational Rehabilitation and Employment.

The Ministry of Health also works on equalizing the opportunities for People with Disabilities, primarily through provision of aids and services based on the health insurance. Other ministries showed relatively little involvement up until now or interest in the disability-related issues.

Until recent, People with Disabilities were not a target group in the policies of the Union of Employers in Serbia. Activities were related to provision of some support to sheltered workshops, i.e. in IT skills. First contacts between sheltered workshops and the Association were established. As a result of the draft Law, the Union of Employers made investments to develop a broader policy towards the employment of People with Disabilities.. In the past weeks the Employers received the draft Law and they prepared their comments. In general, the Employers are against a Quota Levy system, especially when the legislation would not provide a realistic timing, parameters and implementation. They see a strong need for a broad social dialogue in which the general unemployment situation has to be considered too. Furthermore, Employers emphasize that it is necessary to invest in a better (labour market demand oriented) education for People with Disabilities and in a program to improve the accessibility of the workplace. Encouraging employment for People with Disabilities would also need better incentives for employers. The Union of Employers is prepared to consider better connections between sheltered workshops and (regional) business life.

Trade Unions in Serbia, SSSS and Nezavisnost, have sections for People with Disabilities. They primarily focus on persons who became disabled through accidents at work and professional diseases. The Trade Unions are interested in promotion of employment of People with Disabilities. Together with the Association of

*The Union of Employers suggested to include more People with Disabilities in the management of i.e. sheltered workshops.*

*Would it be an idea to start a management development program for People with Disabilities, in order to prepare them for management positions in sheltered workshops?*

Employers, the trade unions expect the Government to set up a comprehensive social dialogue principally in the Socio- Economic Council. The Trade Unions complain that they were not yet involved in the preparation of the draft Law; they were not even invited yet to study the draft Law and comment on it. Both Unions see the need for a new Law and generally support the Quota – Levy system. They emphasize the need for an inclusion and inclusion policy. Nezavisnost stresses, that the government should be a role model in the implementation of this policy.

The Chamber of Commerce of Serbia is interested in the promotion of employment policy for People with Disabilities. They are willing to consider a stronger involvement / role in e.g. guidance and coaching of self-employment initiatives, promotion of the cooperation between business life and sheltered workshops and the provision of (vocational) training. The Chamber sees a need for a restructuring of sheltered workshops, in order



to improve their market orientation. In their opinion, fulfilment of the pre-conditions (social dialogue, data, education, accessibility, cooperation) is very important, together with a good timing for the implementation of a new law. The Chamber of Commerce suggested to use economic performances of industries / sectors in order to determine quotas, i.e. better performing branches should have higher quotas or growth rates than sectors in decline.

The Association of Sheltered Workshops states that it is crucial to adopt a law that would improve the operation of sheltered workshops. This new Law would have to create better possibilities for sheltered workshops to win contracts, i.e. on tenders. They see a need for strict rules in a possible privatization process of sheltered workshops. In their opinion the State has to invest money into sheltered workshops in order to make them ready to operate under market conditions. There's a strong need for modern entrepreneurship and the introduction of new technologies. Staff needs to be educated and trained for the new challenges. The Association wishes to point out that not all managers of the sheltered workshops share (such) progressive ideas. Some managers still cling to the old ideas of being fully sponsored and "cared for" by the State, without having to produce any economic results at the market.

Organizations of People with Disabilities, such as the Center for Independent Living of People with Disabilities, the Muscular Dystrophy Association in Belgrade, the Association of Paraplegics in Leskovac, stressed the need for equal conditions in work for People with Disabilities. Accessibility, support services, integrated education, subsidies for employers who hire persons with disabilities were pointed out as main preconditions. Awareness-raising among People with Disabilities and the society in general, together with capacity-building for People with Disabilities were further mentioned as challenges to be conquered. Furthermore, they want to be included in the social dialogue. They urge that is better to take the time for a good law, then to rush to a law eventually consisting of words only. People with Disabilities organizations see the need for a reorganization of sheltered workshops, with more involvement of People with Disabilities in the management and more business oriented. They also find it necessary to harmonize subsidies for open labour market employment with sheltered workshops.

1. The main general challenge for Serbia's socio-economic policy is to break through the pattern of combined economic growth and decreasing employment.

This is a challenge that definitely cannot be overcome by the government alone: this battle will need a strong, focused coalition of all relevant social stakeholders (such as union of employers, trade unions, chamber of commerce, civil sector) with a firm, consistent mid-term commitment about the broad socio-economic policy, in which social ambitions (as employment for People with Disabilities) are a part.

The installed Socio-Economic Council could be the infrastructure for this cooperation.

2. There is so far no coherent policy for People with Disabilities in Serbia, either in general or in particular, concerning their employment. However, a successful policy for People with Disabilities can never consist of a focus on employment alone: education and physical accessibility are extremely relevant in this perspective along with the needed support services to facilitate independence and inclusion. However, a successful policy can only be achieved when there is a change in the overall mindset of the population on disability. The community must see People with Disabilities as equal citizens capable of contributing to society. An inter-ministerial cooperation on all aspects of People with Disabilities-policies is therefore the first condition. One should take into account here that the level of commitment with this policy could vary between the different ministries.
3. Intentions, one-dimensional plans and even Laws are the easy aspects of People with Disabilities-policies. The heart of success is where words and regulations are translated into action and implementation. Critical factors for success are coherency, commitment, coordination, operational translation, implementation and planning: this policy is an enterprise...
4. The level of awareness of the challenges for People with Disabilities-policy among socio-economic

*The employment rate is a reason for concern in the present economic situation in Serbia. A profound approach, changing attitudes towards employment of persons with disabilities, is therefore essential. Employers have to realize that persons with disabilities can be valuable employees...*

*A good example of such a positive and yet a realistic attitude was demonstrated by Ms. Afrodita Maric, owner and CEO of one of leading textile companies on the Serbian market - AMC. She engaged workers with disability in an open labour market setting. Her reason? They are good workers!*

stakeholders (labor unions, employers organizations) is still quite low. The level of familiarity with these matters seems to be only on the verbal level so far. However, there is a genuine interest in - and a constructive attitude towards - the development of this policy among social partners. Thus, putting emphasis on development of the social dialogue with other above- mentioned social partners would be a welcome course of action.

5. The lack of policies was an inspiration for some individual people with a disability and organisations of People with Disabilities to start their own entrepreneurial initiatives; mostly small scale enterprises, varying from a print shop to ICT courses (aiming at people with and without disability). If one aspect of the present practice should be preserved and where possible encouraged / facilitated, it is this type of entrepreneurial activity.

6. The situation of sheltered workshops in Serbia is far from desirable. They lack concept and consistency in all aspects:

- A concept for the sheltered workshop as an enterprise still has to be developed and gain universal acceptance

*The Association of Paraplegics in Leskovac set up a printing company. The company is managed by a person with disability, who invested his own money in the course of self-employment.*

*This enterprise provides an excellent example of a client – oriented enterprise run by People with Disabilities.*

*Professional work and market-competitiveness enabled the company to find a growing group of customers. The workers are not hired because they are persons with disabilities, but because they are qualified to perform the job professionally. The company offers the necessary training to its employees.*

*This model of client-oriented Small or Medium sized Enterprise for employment of persons with disabilities can provide a good basis for similar enterprises throughout Serbia. These initiatives would need the appropriate support from the Ministry of Labor, Employment & Social Affairs, the Ministry of Finance and the Ministry of Economy to maximize the chances for success.*

- A missing concept in their relations with (regional) business life
- No consistency in branch policy
- Lacking (consistent) policies regarding rehabilitation
- No appropriate, tailored financing structure
- Lack of professional training takes place inside sheltered workshops
- Very few sheltered workshops have People with Disabilities within the management structure
- There is a low rate of transition from sheltered employment to employment in the mainstream labour force
- No elaboration of specific goals and direction in People with Disabilities- policy beyond the mere statement in the legislation that sheltered workshops serve as a place for employment of People with Disabilities who cannot find a job in the open labour market
- And maybe even missing managerial power to enforce and guide change in many of the sheltered workshops.

7. In most (Western-) European countries policies, frameworks and practices are institutionalised. Essential change is difficult and takes a long time. The unique opportunity in Serbia is that institutionalisation is not an issue in this policy in Serbia: this is where “laying behind” can be turned into “taking the lead” in emancipation based integrative policy. One could look into better management and utilization of the existing structures and institutions, such as NES and PIO Fund, and change from within rather than setting up large, expensive new institutions.

The policy for disabled people within the five countries assessed is harmonized with - or at least orientated towards European Equality and Employment policy. Respective cultural and economic characteristics are the basis for differences.

The research has shown big differences in the expenditures in other European countries, especially Germany and Sweden spend massively more than Serbia. However, comparison of results in endurable open labour market effects between the different European countries shows that money isn't everything: better results are not (always) expenditure-related. The research does not show significant differences in employment or other labour market effects between countries with and without a Quota-Levy system.

#### **6.1.2.1 Quota Levy System**

A Quota Levy System can be considered as one of the revenue sources to support the employment of People with Disabilities. However, as already mentioned, a main obstacle could be the commitment of employers. The following facts should be taken into account:

- A wide spectrum of employment measures can be supported out of the levy funds exclusively for People with Disabilities
- The system requires clear disability / ability definitions and an infrastructure for the indication of applicants
- The system can support active labour market policy in different ways
  - To create measures for employment and training
  - To finance sheltered workshops
  - To finance campaigns, public relation activities, initiatives, model projects related to the subject
  - Support of non-traditional approaches for employment promotion, i.e. with a focus on all aspects of entrepreneurship.
- The system can lead to a bigger awareness of People with Disabilities's needs, but it could lead to frustration instead of awareness, if the standards and conditions for employment are rigidly and mandatory regulated
- There is a mentality among (many) single employers just to pay the contributions to the Fund, rather than to recognize People with Disabilities as potential employees
- The implementation can lead to additional administrative staff and financial effort in NES, at least it needs more qualified staff to this subject
- The fund needs a strict shared-goals-oriented cooperation with Social Partners (Labour Union, Employers Federation, Chamber of Commerce, Ministries) to secure employees and employers interests.

#### **6.1.2.2 Programmes**

The unemployment situation in the most analysed countries is increasing. The respective governments try to take countermeasures with active labour market policy, i.e. supporting employment and training. These policies aim at inclusion or re-inclusion of unemployed people in the regular labour market. The focus is on two objectives:

- Reducing unemployment
- Maintaining / creating a social balance

The second objective is focussed to – the so-called - disadvantaged groups that would include People with Disabilities. The following need to be stressed:

- People with Disabilities measures are generally similar in all countries; differences can be recognised in:
  - Financing
  - Less or more individualized approach
  - Modification regarding to age, sex, level and duration of support
- Qualitative effects, like performance comparison between sheltered workshops, the quality of created jobs or the quality of training are mostly not measurable
- People with Disabilities are mostly treated as sub-category in mainstream measures with the advantage of being involved in all kind of measures but less awareness of their specific skills and abilities
- Specialized programmes need a bigger administrative effort
- People with Disabilities are considered as “difficult to place” in labour inclusion, because the inclusion requires three steps:
  - Rehabilitation/training - qualification
  - Stronger awareness of their abilities among employers
  - And finally, supporting measures and placement
- It seems that combined measures, i.e. wage subsidies combined with funding for workplace adaptation, lead to better results in the stimulation of employers to hire People with Disabilities. Above that, possibilities to create tailor-made individual solutions contribute to better results.

#### **6.1.2.3 Sheltered Workshops**

The sheltered workshops shall be considered as “last resort” in active labour support. The comparison of the sheltered workshop policies and the expert experience lead to the following considerations:

- The sheltered workshops are mostly acting in less attractive economic sectors and markets, mostly with a traditional industrial orientation. That makes these workshops vulnerable for competition from very low-wage areas. Sheltered workshops don't seem yet to succeed in a role towards (regional) business life, securing their future with services oriented products.
  - Partnership models for cooperation with "real" enterprises are not yet daily practice
  - Wage level and dismissal protection are regulated differently. There is a dilemma whether there is a need for dismissal protection of People with Disabilities, but stronger regulation of dismissal protection and wage level seems to be an obstacle for employment of People with Disabilities. This dilemma also occurs in sheltered workshops with an enterprising approach.
  - Sheltered workshops do not seem to be qualified enough to deliver vocational rehabilitation and training that is acknowledged by open market employers.
1. Based on the findings, regarding the position of People with Disabilities on the labour market, the present effectiveness of the Law and measures, together with the political vision and direction towards People with Disabilities, Serbia (definitely) needs a new framework for employment policy and legislation. This framework<sup>30</sup> needs to consist of:
    - Vision on inclusion policy in the labour market, considering:
      - The fragile labour market
      - The level of awareness among social partners
      - The level of awareness in business life and the broader society
      - The need for an "ability-based marketing approach"
      - The position and value of this policy in the general labour market policy
      - The worth of this policy in a EU perspective
      - The need to permanently "sell" the issue to business life
    - Means to make this vision operational:
      - An active early rehabilitation infrastructure and - measures in order to minimize the influx
      - Measures to stimulate inclusion of employment of People with Disabilities in the open labour market, to be divided into:
        - Vocational guidance (talent-management)
        - Job qualification (training, education, training on the job, job coaching)
        - Workplace adaptation
        - Subsidies (wage)
      - Measures to stimulate entrepreneurial behavior of People with Disabilities and /or their organizations in order to start up enterprises
      - Sheltered employment as "last resort" and "first entrance", transparently financed and connected with business life
  2. The general fragile labour market is the most dominant friction in establishing the employment policy for People with Disabilities. It is therefore more than advisable to create the circumstances and the climate for a broad deliberation with social partners establishing and securing an agreement about the employment policy for the mid-term (5 years), of which employment policy for People with Disabilities is a part. This pact should finally lead to balanced stability and perspective in the socio-economic development of the country and therefore also go into related (or even conditional) subjects as inflation, tax- and wage development.
  3. As already stated in the introduction of this report: fulfilling the preconditions for this policy is essential for the success of this specific policy. These preconditions are:
    - Collection of socio-economic data
    - Accessibility:
      - Of the work places
      - In public transport
      - Of relevant public buildings and offices
      - Of information and communication related to employment
    - The need for an integrative educational system
    - Facilities for personal assistance
    - Ministerial coordination

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**30 The first draft for this framework is shown in Annex 7.**

An action plan to fulfil these preconditions, accompanying the legislative measures, should cover the different investments in this perspective.

4. The position of People with Disabilities requires serious investments: zero base budgets are definitely insufficient. However, planning is very essential to establish tangible and feasible results. This policy will benefit best from a process of gradual change. Improving the employment situation of People with Disabilities and turning it into “a fair share” situation will take at least five years. The planning needs to be made with that perspective. A yearly initial target for 3500 jobs would be a good start.
5. The draft Law, adapted with the comments made in this report, could be the basis for a new policy. The Law requires a strong focus on implementation planning, content goals, organizational change and budgetary frameworks, before putting it into force.
6. Using a general applied quota system for all sectors and industries in the country is not advisable. Variation with quotas between sectors opens more chances for a succeeding policy. The better performing and growing economic sectors (together with the government) should have higher and / or faster growing targets than shrinking sectors, without exceeding the maximum target of 5 percent.
7. Essential in a stimulation policy is to enable open labour market employers to create and maintain long-term employment for People with Disabilities. This would mean that stimulation measures, as wage subsidies, have the possibility to be made permanent instead of temporary. The policy should be at least comparable to the system used for sheltered workshops.
8. Variety in subsidies and measures based upon differences in the categorization of disabilities should be considered. It would be recommendable to start with not more than two “handicap-“ categories, i.e. 30-50% ability and 50-70% ability to perform the job.
9. The development of an employment policy for People with Disabilities could profit from an experimental phase in the Law, in which the best Serbian practices can be established. However, lack of experience with this type of legislation in Serbia, the need to offer clarity about this policy towards the society and the desire to make a close connection with broadly accepted European policies lead to the advice to use the (adapted) Quota Levy Law as the basis for the social dialogue.
10. Creation of new institutions for the execution of tasks related to assessment procedures, the Fund and vocational rehabilitation should be prevented. New institutions create unacceptable risks of increasing bureaucracy, different (dis-) ability approaches and expanding costs. Above that, creation of segregating institutions should be prevented, especially where the focus of this policy is directed to inclusion. Therefore, institutions that are already present in the infrastructure, like NES and PIO should be used to carry out these tasks.
11. Where PIO and NES should deliver the services and perform most of the operational tasks related to the Law, the Ministry would have a strong role in the policy development, distribution tasks related to the “Fund” and monitoring, that according to the draft Law had to be done by the Fund.
12. Despite the choice to use the existing infrastructure, NES, PIO and sheltered workshops are not ready yet for any change in policy and /or measures. Awareness, ability approach, assessment, vocational guidance, special job broking, subsidy policy, enterprising sheltered workshop, regional orientation.... The themes are all new and require development, at least training, sometimes even expanding the staff. The preparation of these organizations requires (radical) organizational change, but that is far more preferable than to create new bodies.
13. The Levy administration function in the Law could best be carried out by the institution that is presently responsible for the collecting function of social premiums and contributions, the Tax administration. The distribution function of the Fund should be carried out by MoLESA. In order to create optimal transparency this function would need to be separated from other ministerial budgets. This distribution function needs to be funded via the collected Levy, in a direct relation.
14. Mainstreaming is an important aspect of inclusion. And what counts for institutions – no creation of separate institutions – counts for measures too: where possible People with Disabilities-policies should be a part of mainstream measures and instruments.
15. Mainstreaming should also be the basis for (vocational) education: the Law is targeted on realizing as much open labour market employment as needed and possible. Qualification (education) should therefore be focused on the acknowledgement of employers / business life. Vocational education measures for People with Disabilities should thus be directed to mainstream education, rather than be a part of separate (segregated) rehabilitation programs in sheltered workshops.
16. In order to initiate and control the change, the temporary establishment of a project bureau, operating as a “ watch dog”, should be considered. This bureau would have no function in the delivery of operational services; it would only coordinate the different actions and changes indicated by the law and the policy.

*How does the law fit in the concepts for general (socio-economic and employment) policy?*

Serbia seems in need for a broad understanding and commitment between social partners about the general socio-economic policy of which People with Disabilities-policy is a part. This Law should be subject of a social dialogue and a result of that dialogue. Proper execution of the law and effective change will need a shared commitment with the social partners and other stakeholders.

Seen from a government point of view however, the Law on employment of People with Disabilities is a logical sequel of the Anti-discrimination Law, the aims set by the Poverty Reduction Strategy and the National Employment Strategy. (some of the proposed provisions would not necessarily be the most appropriate, see further text for specific comments).

*How are the relations with related laws secured (i.e. anti-discrimination law)?*

The Anti-discrimination law deals with ensuring equal treatment and preventing discrimination against People with Disabilities, while this law deals with promotion of employment of People with Disabilities and concrete legal measures to ensure that. The Law doesn't deal with general labour relation rights and duties as these are set by the Labour Law.

*How does the law fit in the present state of the social dialogue?*

There has been extensive exchange of opinion between the MoLESA and organizations of People with Disabilities as part of the preparation process. Employer organizations and Trade Unions have not participated in the process of drafting so far. The social dialogue about this subject has still to be initiated.

*Can the law expect broad commitment from Employers organisations and Trade Unions and can it expect to be accepted by employers?*

Both Employers' organizations and Trade Unions are not yet familiar with the draft-Law. Tripartite deliberation is necessary to determine their support and / or acceptance.

*Is there a program to fulfil the preconditions for this type of equality policy?*

A program to fulfil the mentioned preconditions concerning:

- Socio-economic data
- Physical accessibility
- Integrated education
- Appropriate facilities for Personal Assistance
- Ministerial and inter-ministerial coordination s not yet available.

*Are definitions clear, consequent, indisputable and international recognised?*

The definitions for People with Disabilities are apparently derived from a medical model / approach to disability and tend to focus on incapacity rather than on capacity of People with Disabilities.

*Is there a (internationally recognised) classification system prescribed?*

The definitions fail to take into account either WHO ICIFD classification or the Quebec classification.

*Does the law lead to direct and clear employment effects/goals for People with Disabilities?*

No, direct employment effects of the Law cannot be calculated. Due to the quota system employers will be obliged to employ People with Disabilities, or pay a contribution to a Fund.

*Are there arrangements for primary labour conditions (wages, social security etc) and how is equality in this perspective arranged?*

Those arrangements are not necessary: primary labour conditions are prescribed for by the Labour Law and the Law on Social Protection, furthermore the Anti-discrimination Law offers protection and means; thus these arrangements do not fall within the scope of this draft Law.

*Is there a spread over different categories of People with Disabilities described and / or demanded?*

Effectively the Law only recognizes one category of a person with a disability; the Law does not recognize differences in economic capacities, nor are these differences translated in different means.

*Does the law meet the demand for an ability based approach for People with Disabilities?*

Not in the definitions, partially in the chapters concerning the quota-levy system, the measures for vocational rehabilitation and the promotion of employment.

*Does the law create possibilities for a broad approach in LM measures: vocational training / retraining, rehabilitation, vocational guidance, job adaptation, work place adaptation, subsidised labour, supported employment, target group SME initiatives, sheltered workshops?*

Yes, except for target group SME initiatives.

*Does the law contain stimulation measures for People with Disabilities and a Disability Fund benefit scheme?*

Partially. The Law describes a Fund for Vocational Rehabilitation and Employment of People with Disabilities from which employers can cover costs of working place adaptations.

There are however no stimulation measures for the return of people with a disability benefit scheme to return to the labour market.

*Are protection measures foreseen towards lay offs? How does the law cope with this possible dilemma?*

The Law doesn't cover lay offs as this issue is covered by Labour Law. The Labour Law prohibits lay offs based on sickness. It obliges an employer to offer to a worker that became disabled at work, another appropriate job position in accordance with his/ her remaining working capacity.



*How does the law cope with the dilemma of “carrot and stick”: will employers be encouraged and are there positive incentives?*

There are possibilities for compensating costs of adapting working place from the Fund for Vocational Rehabilitation and Employment of People with Disabilities as well as wage subsidies for employers who hire People with Disabilities without any previous working experience. Considering the level of awareness towards employment of People with Disabilities these facilities seem to be not sufficient.

Furthermore, it is necessary to point out that Law unwillingly directs People with Disabilities towards sheltered workshops rather than employment at open labour market: The wage incentive is given to employers at open market just for 1 year (alternatively employer can receive subsidies for social protection contribution for disabled employee for 3 years instead of one year wage subsidy), whereas sheltered workshops receive wage subsidy for their disabled employees as long as they employ them.

*How does the law contribute to awareness towards equality and abilities of People with Disabilities?*

Any law dealing with employment of People with Disabilities will raise awareness about their abilities, but the quota-levy system may be viewed as a double-edged sword. On one hand, this system could contribute to the promotion of above-mentioned abilities, as employers will be forced to hire People with Disabilities. Then they can eventually see that People with Disabilities can be good workers. On the other hand, as an imposed obligation, the quota-levy system could contribute to the creation of an image of People with Disabilities as non-sufficiently productive and perpetuate prejudices unwillingly and indirectly, only to be employed by the force of law.

*How are the goals in the law controlled? Which data systems and control measures will be developed and used?*

A database will be developed and registers related to the operation of the Fund and sheltered workshops are to be used. The Ministry of Labour and Employment is in charge of the monitoring.

*Is the administrative coordination to be provided by the ministry clear?*

Yes, as far as the Law needs to provide this coordination, however implementation and other aspects of operational enforcement are not visible yet.

*Is the inter-ministerial coordination (especially related to (vocational) education) clear and indisputable?*

The Ministry of Education is not committed in the chapter about vocational education; it is so far unclear if the Ministry of Finance / Economic affairs are consulted regarding the Levy-system. This may create challenges in the coordination.

*How is the operational coordination and control secured; which instruments and / or measures are used for optimal cooperation between MoLESA, NES, Disability Fund and possible related parties?*

The particular instruments and measures will be prescribed by by-laws and regulations to be enacted by MoLESA, the NES, the Fund and other related parties. The Draft Law clearly prescribes the competence of MoLESA to monitor implementation of the Law.

*Are there sufficient measures for administrative, organisational and operational changes because of the law?*

The Law prescribes that the Fund for Vocational Rehabilitation and Employment of People with Disabilities and the Centre for Vocational Rehabilitation take the bulk of the measures related to the implementation of the Law, that Ministry is in charge of monitoring process.

*How does the law cope with necessary changes in services offered by NES and DF?*

The Law creates mainly the Fund for Vocational Rehabilitation and Employment of People with Disabilities. Further possible necessary changes are not yet visible.

*How does the law cope with changes in sheltered workshops?*

Sheltered workshops continue to operate under virtually the same conditions as set by 1996 Law. A general criterion for the privatization of sheltered workshops is that most employees are persons that were disabled at work. The Government will develop the conditions and programs for the privatization of workshops, where the majority of the employees are persons with sensory and intellectual disabilities. However, it is significant to note that the Draft Law explicitly prescribes that besides providing employment and vocational rehabilitation for People with Disabilities one of a sheltered workshops' main functions is to make profit at the market. There could be a danger due to this friction and due to the lack of a tailor made budget system.

*Are investments foreseen in qualification, training and guidance for workers in NES and DF delivering services towards People with Disabilities?*

No, not yet. This would need an implementation plan.

*How is the direct relation between law's goals, implementation - and other indirect effects and budgets needed?*

The main financial pool from which resources for the implementation of the Law will be derived shall be the Fund. The Fund collects compensations of employers that fail to meet the prescribed quotas and fines for violation of the Law. The Fund will also take care of the expenditures related to the Law. Since the Law does not contain quantitative goals the financial streams are difficult to calculate.

*Are budgets sustainable, securing long-term policies?*

Unsure yet, since operational goals are not part of the Law.

- The definition of a person with disability in clause 1 of article 2 is based on a medical approach to disability; it focuses on the lack of ability rather than ability. The definition ignores the social environment and obstacles this could mean for the employment of persons with disabilities.
- The definition of an employers' obligation to employ persons with disabilities in clause 5 of article 2 implies that the employer has to meet the prescribed quota, regardless the fact whether there are qualified persons with disabilities or not; i.e. the employer should hire People with Disabilities even when a person is not qualified to do any job.
- Articles 3 to 5 lead to confusion as they are partially contradictory with - and partially overlap the articles 2 (clause 1) and 6.
- One should delete clauses 1 and 5 of article 2 and articles 3 to 5.
- Articles 3 to 5 should be replaced by following new text of article 3:
  - “ 3. 1. A person with disability for purposes of this law is a person that has a diminished possibility to finding or maintain employment, due to physical, sensory, mental or psychiatric impairment or disease that cannot be solved through medical treatment and rehabilitation, and faces limitations and obstacles in his daily activities and working capacity due to social and other barriers.
  - 3.2. Persons with disabilities mentioned in clause 1 include disabled war veterans, peacetime disabled army veterans, civilians that became disabled in war, person that received assessment of his/ her disability, a person with remaining working capacity (person with 3<sup>rd</sup> category of disability according to old legislation) and any other person that has the status of a person with disability in accordance with law.
  - 3.3. If a person meeting the criteria from clause 1 had no prior status of a person with disability he/ she shall acquire it in accordance with this Law.”

- The obligation of employers in the non- public sector to hire persons with disabilities under the quota-levy system prescribe in the clauses 1 and 2 of article 23 has to be rephrased to specify that the duty to hire pertains to persons with disabilities who are qualified for the job offered by the employer.
- Furthermore, one should carefully consider the possibility of setting different quotas for employment of People with Disabilities by employers in different sectors of economy, setting higher quotas for sectors experiencing expansion (e.g. service provision) and also bearing in mind whether People with Disabilities are qualified for work in particular sectors (e.g. construction work etc.).
- Implementation and entry in force of clauses 1 and 2 of article 23 shall be set not before January 1<sup>st</sup> 2007, and not 8 days after Law is published in “Official Gazette of Serbia”. It would be welcome to elaborate entry of Law into force in more details, since various aspects of it shall need different timeframes and timetables for feasible implementation.
- The text of clause 1 of article 24 has to be rephrased and strengthened to read:
  - “The employer shall be entitled to refund the costs of measures taken to equalize the opportunities for employment of People with Disabilities through adaptation of his/ her working place”.
- Provisions of article 37 regarding the possibility to request for investment funds in sheltered workshops should be strengthened; if there is no privatization of sheltered workshop yet, then the state has to invest into its’ development and the Ministry of Economy should also involved be in this.
- In article 41, sub-paragraph 5 provides the possibility to use resources of the Fund for Vocational Rehabilitation and Employment of People with Disabilities for other measures and activities in accordance with this Law should be expanded to read “..., including funding for personal assistance for employed People with Disabilities that cannot be financed from other public funds”
- In general, one could reconsider the wisdom of introducing new costly institutions that would need time to get prepared for a proper and efficient functioning. One could rather look into using the existing institutional capacities and reforming them along the way, as they would need to adapt to provisions of this Law anyway (e.g. NES, PIO Fund etc.).

In the meeting held with the MoLESA staff different implementation issues were discussed. The following results were moderated and communicated to the Ministry. The outcomes should be considered as tentative and developed further step by step. The eight general issues presented below are also the (pre)conditions for the law.

The different stakeholders have a different interest position with this Law. An effective Law requires a general agreement among stakeholders, that is why the appropriate social partners should be involved in a Social Dialogue. In this social dialogue should participate:

- NES
- PIO
- Associations of People with Disabilities (DPOs)
- MoLESA/ MoES/ MoH/ MoF/ MoE
- Labour Union
- Union of Employers
- Chamber of Commerce
- Employment Council (municipalities)
- Union of Sheltered Workshops

The governmental level should keep focus on the fact that a continuing cooperation with all partners has to be considered as a precondition for a successful law implementation. In order to monitor the procedure of implementation, the MoLESA should establish and finance an office (task force) with People with Disabilities staff. This task force should operate independent from the Ministry.

#### Final Conference

- Tasks for further cooperation
- Participation of all suggested Social Partners

Time frame: June 8<sup>th</sup> 2006

#### Installation of a Task Force (Project Office)

- Anti-discrimination law
- People with Disabilities law for employment and vocational rehabilitation
- Monitoring of law implementation
- Planned project duration 1,5 years / MoLESA in charge of budget

Time frame: September 2006

In order to bring the law to a broader context and diminish the tendency to segregate institutions as a way of exclusion instead of inclusion, the Law has to be integrated into national and European strategies. The Law development is a strategic process, taking the time for development without losing focus will be eventually good for the implementation.

1. Task Force involvement
  - Law promotion
  - Engaging Social partners
  - Public relations
2. Law involvement in a broader national/European employment policy
  - Advantages: involvement in a broader context / diminishing the tendency to segregative institutions
  - National Action Plan
  - National Employment Strategy
  - Focusing on requirements for European accession

Time frame: Mid August/September 2006

#### **Parliament: law adoption**

Time frame:

Project team EAR: October 2006

MoLESA suggestion: June 2006

Since the assessment is a precondition for People with Disabilities measures and eventual placement in the open labour market, the solution must be time- and cost-efficient and harmonised with other assessment-procedures. As stated, instead of establishing new bodies, the tasks of already existing ones should be extended. To move forward, PIO and NES will have to get into a close cooperation with each other. Furthermore, the two institutions will have to face organisational development and PIO even a reorganisation. And moreover, delivering integrated services will be a point of development.

In the planning of the implementation, the exact figures of persons to be assessed are needed in order to calculate the capacities and budgets for PIO.

#### **NES tasks**

- Cooperation/arrangements with MoLESA /PIO
  - Proposal for being in charge of People with Disabilities programmes
  - Active labour market measures
  - Training
  - Accompanying measures

- Prerequisites
  - Organisational development
  - Staff qualification
  - Budgets
- Capacity building in MoLESA

Time frame: one year after law adoption

#### **PIO**

- Cooperation/arrangements MoLESA/ MoH/ NES
- Institution change/ reorganisation
- Development assessment procedures
- Staff qualification regarding
  - moving from disability to ability model
  - moving away from an exclusively medical approach
- budgeting (i.e. number of People with Disabilities from 2003 to 2005 of PIO)
- average of assessed as 100% disabled people = 9100
- average of assessed as capable of work = 12600
- no data regarding People with Disabilities in NES, no obligation for registered unemployed to be classified according to their work capacity,
- alternatively required finances can be calculated on the basis of European experience)

Time frame: one year after law adoption, end of 2007 with pilots in 3 cities from September 2007

MoLESA, in cooperation with the implementing bodies should be in charge of a proper preparation of funds use. The Social partners should have a right to participate in determining the type of measures to be introduced and finances to be assigned to each programme.

Hedging the fund against the inflation is important in terms of prevention of a loss in value.

Early programme development and planning should avoid programmes that are unsuitable and ineffective.

- Proposal for responsibility
- Policy development level- MoLESA
- Operational level- NES / PIO
- The resulting proposals of implementation
  - Overall budget (compensation function)
  - Duration of implementation
  - Staff (training/ recruitment)
  - Monitoring
  - Controlling
  - (Re)Organization
  - Collecting function
  - Involvement of Social partners
  - Programming
- Hedging against inflation

Time frame: PIO / NES at least one year  
Quota-Levy system mid 2008

Serbia needs urgently a new law on the employment of persons with disability (PWD). It is also necessary to increase the number of PwD employed, especially in companies and government. The employment rate of PwD in the country stands at as little as 13 percent relative to their total number.

One of the solutions proposed by the Draft Law on the Employment of Persons with Disability is the introduction of a quota levy system, which bounds employers to employ 3 % of PwD or otherwise to pay compensation. Funds collected in this way, as proposed by this Draft Law, would be used in improving employment of PwD.

Proposed solutions to the problems of employment of PwD result from the *Feasibility Study to Improve the Employment of Persons with Disabilities*, conducted by the Ministry of Labor, Employment and Social Policy and supported by the European Union through the European Agency for Reconstruction.

The Study indicates the possibilities of employment of PwD offered by the new Law on the PWD drafted by the Ministry. All relevant aspects of employment of PwD were analyzed. This project was carried out jointly by local and foreign experts.

For the purpose of the Study, all social partners relevant for solving this issue were consulted, i.e. key stakeholders in the area: trade unions, Employers' Association, government officials and the representatives of PwD organizations.

Among the key shortcomings of the current situation, as identified by the authors of the Study, are the absence of equal opportunities to access education, buildings, information and communication and the absence of adequate support services for PwD.

Authors and key stakeholders advocate an urgent launch of a comprehensive social dialogue on the draft law and the report made by the authors of the Study. The Government and trade unions agree that a new law on employment of PwD is necessary, employers association is some more reserved. They advocate a policy of inclusion and equal opportunities for PwD participation in all segments of life and community.

## **ANNEX 1**

### **TERMS OF REFERENCE**

## **1. BACKGROUND INFORMATION**

### **1.1 BENEFICIARY COUNTRY**

The Republic of Serbia

### **1.2 CONTRACTING AUTHORITY**

European Agency for Reconstruction (EAR), Vasina 2-4, P.O. Box 717, 11 000, Belgrade, Serbia & Montenegro.

Contact: Bernard O'Sullivan, Programme Manager

### **1.3 BACKGROUND**

Labour market opportunities for persons with disabilities in Serbia are limited. The number of People with Disabilities (PWD) registered as unemployed is over 25,000<sup>32</sup>. In effect only 13% are working and only one third of employed PWD have adjusted workplaces. The educational structure of unemployed PWD indicates that more than 70% have finalised primary education but with very narrow based qualifications. A major reason for this is the absence of inclusive education and alternatives, such as distance learning, have not been developed.

To create employment generation opportunities for PWD, the Ministry for Labour Employment and Social Affairs (MoLESA) has given the highest priority to improving the newly drafted legislation for employment of people with disabilities. This law focuses on support to mainstream employment of PWD. A system of professional rehabilitation inclusive of a disability categorisation/classification methodology is envisioned to support implementation of this legislation.

Planned improvements to the legislation focus on (a) supply and analysis of PWD quantitative data including categorisation/classification (b) new policy instruments such as government incentives/job quotas (c) supporting professional rehabilitation actions (d) increasing sheltered employment opportunities.

## **2. DESCRIPTION OF THE ASSIGNMENT**

### **2.1 BENEFICIARY**

Project beneficiary is the Ministry of Labour, Employment and Social Affairs

#### **2.2.1 Global Objective**

The global objective is to improve the legal basis in Serbia for the professional rehabilitation of PWD into the labour market.

#### **2.2.2 Specific Objectives**

Through an assessment of the present situation and international comparative analysis the specific objectives of this study include the following:-

- Design an effective professional rehabilitation system under Serbian conditions
- Develop a funding structure for the professional rehabilitation system and PWD employment,
- Develop a comprehensive PWD assessment/categorisation methodology (moving from medical to the so called Quebec model)
- Reform the concept of shelter employment in Serbia with a classification model for existing shelter employment
- Support PWD employment with on-going privatisation process in both shelter and open employment.
- Develop system solutions for PWD categorisation and integration into the Labour force
- Develop mechanisms for systematic data collection and setting up the data base related to PWD.

The models of PWD professional rehabilitation that the beneficiary are targeting for comparison include the German, Swiss and Swedish models that apply a more comprehensive social approach instead of one based on medical diagnoses (e.g. Quebec model).

#### **2.3.1 Requested Services**



The study team should carry out a comparative analysis of international best practice for PWD Professional Rehabilitation, design an appropriate model for Serbia and develop the legal, financial and organisational frameworks to introduce the new model. This will require analysis and recommendations regarding:-

- The Policy Environment for PWD in Serbia
- Government Coordination on PWD Policy
- Incentive Measures to stimulate PWD Employment
- Financing PWD Policy
- PWD Categorisation/Data collection and analysis
- Development of PWD Employment Fund
- Types of Financial Frameworks/Budgeting/Sources of Finance
- Legislative requirements
- Organisational Structures
- Development of National Centre/Centres for professional rehabilitation (Implementation)
- Implementation structures including staffing and costings
- Role of Inter-ministerial Coordination
- System solutions for the reintegration PWD into the Labour Market (Instruments)
- Measures to support re-integration of PWD into the Labour Force (e.g. sheltered and open Employment)
- Categorisation and costing for proposed Measures
- Developing supportive legal requirements
- Self- Employment of PWD

### **2.3.2 Suggested Methodology**

The implementation would include the following activities:

- Overall assessment of the present situation. Analysis of existing legal, economic and financial frameworks. Interviews with key stakeholders. Identification of international best practice models, comparison and testing under Serbian conditions.
- Develop and test model alternatives and implementation structures. Carry out a full cost and funding analysis
- During a Workshop/Seminar present draft findings and agree adjustments/changes
- Produce a final report (in English and Serbian) and submit to the Contracting Authority.

## **2.4 REQUIRED OUTPUTS**

The outcome of the study will be a report based on a comparative analysis of best practice and analysis of the cost effectiveness of the suggested model.

This report will provide a set of recommendations and guidelines for:

- a professional rehabilitation system for PWD inclusive of legal, financial and Implementation frameworks
- reform and provision of shelter employment,
- Increasing PWD employment with the on-going privatisation process

The end document will serve as a direct input for the new Law on Employment of PWD, supporting MoLESA in developing overall PWD related policies.

## **3. EXPERTS' PROFILE**

### **3.1 EDUCATION, EXPERIENCE, REFERENCES AND CATEGORY OF EACH EXPERT, WORKING LANGUAGE**

The study team will consist of two experts (category I) specialized in (a) disability employment policy, legislation and institutional framework and (b) disability employment practice and rehabilitation framework.

The category I experts will have at least 10 years of experience in dealing with disability related legal, economic development and financing policy issues.

The category I experts should have in-depth knowledge of at least one of the preferable PWD professional rehabilitation models including organisation, financing and implementation. Experience in the privatisation process related to the employment of disabled persons will be an advantage.

The category I experts will be supported by two experts (category II) . The category II experts must be specialized in (a) disability employment policy, legislation and institutional framework and (b) the economy and privatisation process in Serbia.

The category II experts need to have in-depth knowledge of the national and regional disability movements and be familiar with all international and national strategic documents relevant to this study.

The Working language will be English.

#### **4. LOCATION and DURATION**

##### **4.1 DURATION**

Proposed starting date:	10.04.2006
Final date:	09.06.2006

The field research will last two months after which a seminar will be organised with all relevant stakeholders. After the seminar, with all findings and inputs collected, two weeks is reserved for report finalization, translation and production.

Number of days for the assignment per expert: 63 days for each expert.

##### **4.2 LOCATION**

Most of the fieldwork will be done in Belgrade however several field trips in the country are foreseen.

No office space, equipment or access to communication facilities will be provided.

#### **5. REPORTING**

##### **5.1 CONTENT, LANGUAGE, FORMAT AND NUMBER OF REPORTS AND DATE OF SUBMISSION**

The draft findings will be presented during a seminar at the end of the third month of assignment (June 2006) to discuss with the Ministry of Labour, Employment and Social Affairs and all other relevant parties and further actions taken if necessary.

After the seminar a final report will be produced and published in Serbian and English.

The report should be submitted (in hard and electronic copy) to the Contracting Authority by 16 June 2006.

#### **ADMINISTRATIVE INFORMATION**

Note: The costs of personal assistance service during assignment period should be included if any of the experts are persons with disabilities.

## **ANNEX 2**

### **PROJECT PLANNING**

## **A feasibility study for improving the employment of People with Disabilities in Serbia.**

### **Introduction**

The Project Team will emphasize on a realistic and feasible approach. The team is aware that the study outputs will serve to inform the new law on employment of PWD, and developing the MoLESA's policies related to PWD.

The Project Team consisting of EU experts Snezana Puaca, Damjan Tatic, Birgit Rauschenbach and Henry Leerentveld has made the project planning in close contact with the contractor, the European Agency for Reconstruction, and the beneficiary, the Ministry for Labour Employment and Social Affairs.

### **Content**

The content of this study will focus on the following subjects:

1. Budget (development)
  - Directly related to employment for people with disabilities
  - Indirectly related to employment for PWD (e.g. relevant benefit schemes)
  - Budget reallocation possibilities (e.g. day-care costs)
  - International subsidy possibilities (e.g. Instrument for Pre-Accession / ESF)
2. Definitions related to quantitative and qualitative effects on the target group of PWD:
  - Application and classification process
  - Employment rehabilitation and reintegration programs
  - Systems for wage subsidy and subsidised labour, including the adapted work place
  - Sheltered employment
3. Picturing present facilities and infrastructure for the employment of PWD (with regards to 1 & 2)
4. Picturing desired (realistic and feasible) facilities and infrastructure for the employment of PWD and their sustainable financing based on international experience.
5. Proposal including time path and critical success factors.
  - Essential leading themes of the study are:
  - From disability oriented systems (what people cannot do) to ability oriented systems (what people can do)
  - "Normal" goes before "special"; integration in the general work force unless impossible is normative.
  - Integrated education and effective training is the strategic basis for social inclusion
  - Raising social awareness by employers and "selling" the quality of PWD might be even more important than legal force.

**Planning**

The following activities are planned:

Week nr.	Activity nr.	Activity
15	1	Tentative planning
	2	Acquaintance meetings with EAR and MoLESA
	3	Arranging team facilities
	4	Literature review including analysis of existing regulatory framework
	5	Collecting list of stakeholders and interview planning
	6	Planning and settling other appointments (study visit, conference)
	7	Production of questionnaire for stakeholders interviews
15/16	8	Assessment and analyses present employment situation PWD based on recognised methodologies including categorisation and data collection/processing
	9	Identification of relevant international best practice models
16	10	Interviews with stakeholders, first round
16/17	11	Study visits
17/18	12	Identification and comparison of relevant international developments and virtual tentative testing under Serbian conditions.
	13	Development and test of alternative models , regulatory and implementation structures, including cost and funding analyses to increase employment of PWD
19	14	Interviews with stakeholders, second round, based on findings
20	15	Adjustments of concept report
21	16	Production of materials for workshop / conference
	17	Preparation of publicity activities
22	18	Workshop / Conference
	19	Presentation of shared conclusions
22/23	20	Production final report
		Presentation final report

## **ANNEX 3**

### **ASSESSMENT QUESTIONS FOR THE LAW(S)**

We see the following questions as relevant for the assessment of the draft-Law.

### **A3.1 POLITICAL CONSISTENCY**

How does the law fit in the concepts for general (socio-economic and employment) policy?

How are the relations with related laws secured (i.e. anti-discrimination law)

How does the law fit in the present state of the social dialogue?

Can the law expect broad commitment from Employers organisations and Trade unions and can it expect to be accepted by employers?

Is there a program to fulfil the preconditions for this type of equality policy?

### **A3.2 DEFINITIONS**

Are definitions clear, consequent, indisputable and international recognised?

Is there a (international recognised) classification system prescribed?

### **A3.3 CONTENT**

Does the law lead to direct and clear employment effects/goals for PWD?

Are there arrangements for primary labour conditions (wages, social security etc) and how is equality in this perspective arranged?

Is there a spread over different categories of PWD described and / or demanded?

Does the law meet the demand for a ability based approach for PWD

Does the law create possibilities for a broad approach in LM measures: vocational training / retraining, rehabilitation, vocational guidance, job adaptation, work place adaptation, subsidised labour, supported employment, target group SME initiatives, sheltered workshops?

Does the law contain stimulation measures for PWD and a Disability Fund benefit scheme?

Are protection measures foreseen towards lay offs? How does the law cope with this possible dilemma?

How does the law cope with the dilemma of “carrot and stick”: will employers be encouraged and are there positive incentives?

How does the law contribute to awareness towards equality and abilities of PWD?

### **A3.4 COORDINATION AND CONTROL**

How are the goals in the law controlled; which data systems and control measures will be developed and used?

Is the administrative coordination to be provided by the ministry clear?

Is the inter-ministerial coordination (especially related to (vocational) education) clear and indisputable?

How is the operational coordination and control secured; which instruments and / or measures are used for optimal cooperation between MoLESA, NES, Disability Fund and possible related parties.

### **A3.5 PROCES**

Are there sufficient measures for administrative, organisational and operational changes because of the law?

How does the law cope with necessary changes in services offered by NES and DF?

How does the law cope with changes in Sheltered Workshops?

Are investments foreseen in qualification, training and guidance for workers in NES and DF delivering services towards PWD?

### **A3.6 FINANCE**

How is the direct relation between law's goals, implementation - and other indirect effects and budgets needed?

Are budgets sustainable, securing long-term policies?



## **ANNEX 4**

### **LEGAL FRAMEWORK**

#### **A4.1 SWEDEN**

Sweden is one of the three European countries having some form of civil law against disability discrimination. The Law came into force in 1999 and covers discrimination in recruitment, advancement, terms of employment and wage conditions, allocation of work, dismissal and includes the disability definition<sup>33</sup>.

- An employment security act
- Social service act
- Act concerning support and service for persons with certain functional impairments
- The work environment act have extended this Law that covers all fields of actions regarding PwD.<sup>34</sup>

Central point in the implementation of the 1999 Act is the office of the Disability Ombudsman (Handikappombudsmannen). The Office receives and investigates complaints from individuals and gives advice concerning the situation in particular sectors (e.g. accessibility of public buildings).

#### **A4.2. GERMANY**

The national constitution in Germany has been amended recently. Now it includes an equality clause with regards to PwD. The National Act on Equal Opportunities for disabled persons came into force in 2002. Rather than being a legal instrument, the law has the function of a social guiding principle.

The following legislations are important with respect to the employment of PwD:

1. The Social Code Book 3 (Sozialgesetzbuch 3) is particularly related to:
  - Job placement,
  - Vocational education and training,
  - Passive labour market measures like job allowance.
  - In this law the PwD are one of the target groups in mainstream measures.
2. The Social Code Book 9 (Sozialgesetzbuch 9) is related to:
  - Rehabilitation and participation of PwD,
  - Including protection against dismissal
  - As well as rules for applying the quota system.

According to this ninth Social Code Book, disabled persons are persons whose physical functions, mental capacities, or psychological health are most likely to deviate within six months due the condition which is typical for the respective age and whose participation in the social life is therefore restricted. Severely disabled persons are considered disabled if their disability is assessed to at least 50%.

#### **A4.3 GREECE**

There is no anti-discrimination law in force in Greece, neither specific on PwD nor general. But, there are specific disabilities-constitutional-provisions directly addressing disabled persons:

“People with disabilities are entitled to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the Country”.

The Law on Compulsory Placement of special groups of workers is the central legislation on the employment of disabled persons. It constitutes the current legislation on the compulsory placement and the quota system and it takes care of the employment of persons belonging to the special categories.

According to this Law, persons with disabilities are those whose degree of disability is at least 50% and whose employability is limited by any chronic physical - mental illness or impairment, provided that they are registered as unemployed and disabled with the Greek Manpower Employment Organization (OAED).

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**33 Disability is understood as ‘enduring physical, mental or learning limitations of a person’s functional capacities, that have occurred at birth or later or can be expected to occur as a consequence of injury or disease’. A person’s limitations do not have to be substantial.**

**34 Convergence to a European employment policy for disabled people?, Margot de Greef, University of Groningen / Cedris / Workability Europe, Utrecht, 2005**

#### **A4.4 POLAND**

During the transformation process and before the EU membership, Poland dealt with huge changes in its social system. Therefore, there was no special regulation on PwD before 1989.

The Vocational and Social Rehabilitation and Employment of Disabled Persons Act

- Provides the basis for Quota /levy system and facilitates
  - Job finding
  - Professional advancement
  - Professional guidance
  - Training
  - Job placement
  - Workplace adaptations

Later, the rights and duties of employers and employees were regulated. Discrimination of any kind, direct or indirect is prohibited.

Assessment of disability is now carried out in accordance with the 1997 Act on Vocational and Social Rehabilitation and Employment of Disabled Persons. The provisions of this Act concerning disability assessment were considerably amended in 2002 and came into force in 2003:

- Disability means permanent or periodic inability to perform social roles due to permanent or long-term body impairment, in particular resulting in inability to work.

#### **A4.5 CROATIA**

Croatia does not have a comprehensive anti-discrimination legislation, although various laws incorporate anti-discrimination provisions.

Croatia's Constitution provides that "everyone has the right to work and the freedom to work," and that individuals are free to choose their vocation. Every workplace must be accessible under equal conditions to everyone. People with disabilities are entitled to "special care of the State in the interests of their protection and inclusion in social life" and "special protection at work".

In October 2002, the Croatian Parliament adopted the "National Strategy of Unique Policy for the Disabled for the period from 2003 to 2006", which called for reinforcing human rights and fundamental freedoms, social justice, dignity and the value of each person.

The Law on the Professional Rehabilitation and Employment of Disabled Persons has come into force in the same year and governs the employment of people with disabilities. It also articulates the right to professional rehabilitation of "people with reduced working capacity".

This Law defines persons with disabilities as persons with physical, sensory or mental impairment causing permanently or at least for 12 months decreased capacity of satisfying individual needs in everyday activities.<sup>35</sup>

Furthermore the Law defines a person with disability as someone:

- With diminished working capacity
- A person with disability, whose disability causes permanently or at least for 12 months diminished capacity to receive training, find and maintain a job:
  - In the open labour market under general conditions in comparison with persons without disabilities
  - Of the same or similar age
  - The same or similar qualification
  - Under the same or similar working conditions
  - In the same or similar professions.

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**35 Right of people with disabilities-access to education and employment, Monitoring report - Croatia, published by Open Society Institute –EU Monitoring and advocacy programme, Budapest 2005**

## **ANNEX 5**

### **REHABILITATION**

### **A5.1 SWEDEN**

After 28 days the employer, the sick person and the social insurance office should agree on a rehabilitation plan. The plan may simply indicate that the person is expected to resume his or her job upon recovery; however, it may also go into possible rehabilitation measures and/or job reassignment.

Where there is no employer, the rehabilitation plan is the responsibility of the Social Insurance Office (Försäkringskassan). In executing this responsibility, they may work closely with the rehabilitation services (AF-Rehabilitering), which are part of the labour market services system (under the National Labour Market Board, AMS). Referrals to AF-Rehabilitering often occur when it is out of the question that the person can return to his/her former job and when further information is needed concerning the individual's preferences, talent and work capacity. The staff of AF-Rehabilitering often consists of occupational therapists, psychologists, social workers and employment officers.

In principle, a person can also be found to be insufficiently incapacitated to require rehabilitation services, in which case responsibility for his or her support will pass to the unemployment insurance funds or to the social assistance.

The benefit system is separate to the health care system and the social security system does not determine access to medical rehabilitation or other health interventions, nor does it have any means of financing these interventions. However, the social security system has financial resources to purchase vocational rehabilitation (training, tests, education etc), and the dividing line between medical and vocational rehabilitation is far from clear-cut.

### **A5.2 GERMANY**

The main provision of income support for people with reduced capacity to work in Germany is Erwerbsminderungsrente, EMR. This is a contributory insurance benefit. An application for EMR is treated as an application for rehabilitation, and rehabilitation options must be investigated prior to the award of long-term benefits.

A person who becomes ill when working is initially entitled to six weeks wage continuation, payable by the employer. Responsibility then shifts to the Health Insurance funds which pay 80% of the wage for up to 78 weeks.

The Insurance covers incapacity to work (*Arbeitsunfähigkeit*), i.e. the assessment of incapacity is conducted in relation to the person's last work/job. The assessment for EMR however, examines the person's incapacity to earn a living (*Erwerbsunfähigkeit*), i.e. the assessment of the person's overall capacity in relation to the general labour market.

In principle, an employed person who becomes less able to work, without experiencing the onset of a critical illness causing him or her to stop working, should be assisted by the rehabilitation services of the pension funds (the health insurance might not be involved).

The system is also marked by a complex allocation of responsibilities for medical and vocational rehabilitation between the Health Insurance Funds, the Pension Insurance Funds, and the Employment Service. Various government measures have called for greater co-ordination between these institutions. The most recent initiative is the establishment of 'joint service centres' which will inform disabled people about benefit eligibility criteria and identify the competent fund for arranging and financing rehabilitation.

## **ANNEX 6**

### **ASSESSMENT PROCEDURES**

### **A6.1 SWEDEN**

Normally, a medical certificate is needed, but medical doctors do not play an important role. The key actors are the personnel from the social insurance office. Persons with severe hearing and visual impairments are always entitled to a Handicap Allowance.

The emphasis is very much on observation of the real-life situations. The National Social Security Board recommends that the social insurance office collects information concerning:

- The employer
- The work tasks
- Working time
- The kind of help the disabled person needs to transport himself/herself to the work place
- Travel mode and travel time
- The need for help in order to perform (part of) the work tasks
- The time that takes and the frequency of the help
- The need for help in order to move around in the work place
- Information on who provides the help
- Whether that person receives remuneration from other than the disabled
- The costs of that help.

Employers are not obliged to contribute in the costs covered by the Handicap Allowance. However, they do have duties in the area of rehabilitation (contribution to the rehabilitation costs of their own employees) and related obligations under the Law prohibiting discrimination against disabled persons in employment. It is reported that 'social insurance officials often end up in arduous negotiations with employers who will not or cannot meet expectations of taking care of their own long-term sick employees'

### **A6.2 GERMANY**

The Versorgungsamt assesses a person's overall disability rating out of 100. The disability rating is intended to measure limitations of a person's life chances. It does not reflect working ability and is independent of the person's occupational history and aspirations. The impairment has to be atypical for a person of that age to be recognised.

The labour office can apply special measures for a person with a disability rating of 30-50 ("top"-disability = 100) after consideration.

The disabled person must apply for an assessment. The official website ([www.jobs-fuer-schwerbehinderte.de](http://www.jobs-fuer-schwerbehinderte.de)) urges disabled people not to try to work without the document of identification as severely disabled, for they will otherwise not be able to take advantage of their rights. The website encourages disabled people to 'assess themselves' i.e. to consider their occupational aspirations and restrictions, whether they want to work by themselves or in a team, etc. Disabled persons are also encouraged to visit the Labour Office, even if they have been before, as new measures are now available, and to use the Occupational Information Centre.

The 2001 reforms involved some changes in the relationship between employers, the disabled persons and labour office. Employers are obliged to contact the relevant authorities if a severely disabled person applies for a job or if problems arise with his or her employment. They are also required to formulate integration agreements with the authorities, containing 'concrete statements' about personnel planning, workplace layout, labour organisation and working time. The rights to be consulted at the workplace (Vertrauenspersonen) have also been extended.

### **A6.3 GREECE**

To be eligible for measures, one's disability rate should be of 50%+. In determining the number of quota points a person receives, the following additional criteria are considered by the Greek Manpower Employment Organisation (OAED):

- Age of the candidate
- Professional qualifications
- Family circumstances
- Economic (financial) situation.

For the quota, the age range is 21-45 years old; for subsidies it is 18-65.

The Health Committees are made up of doctors.

The Guide for the Evaluation of the Disability Rate is applied to determine the disability rate. The disabled person must register with OAED.

In principle, employers are bound by a rigorous system of job nomination. However, employers can ask for medical certification that the nominated person is not suitable for the job. The assessment of suitability is subject to the obligation on the employer (not clear) to adapt the workplace, if the cost of adaptation is not excessive. Employers may also ask for replacement of the candidate after a two month trial period.



## **ANNEX 7**

### **CONCEPT OF A POLICY**

Based upon the lessons learned and the collected impressions in the country, a concept for employment promotion in Serbia could consist of the following ideas.

### **A7.1 STRATEGIC ENVIRONMENT**

The political goal in this matter was set with the adoption of the Anti-Discrimination Law on 17 April 2006: people with disabilities have the fundamental right to be included and integrated in all aspects of the Serbian society, including the labour market.

People with Disabilities are entitled to a “fair share” of society’s structural indicators, from education to employment.

This goal is therefore set towards “full integration”, based on measures leading to a position of PwD which is “as normal as possible” and in which segregation is a “last resort” with a pursuable temporariness.

In order to achieve this goal, stimulating and compensating means need to be introduced to ensure (and monitor) equivalency.

With respect to the design of the employment policy, the following circumstances should be considered:

- Budgetary restraints; this policy will not be facilitated with “open end” budgets. Present expenditures and possible budget shifts are the basis, additionally supplemented with assets from new sources.
- The general fragile economic situation, together with the high unemployment and the situation of “job-minus growth”, force to be cautious with high ambitions.
- The awareness of employment challenges and solutions for PwD are still low developed with Social Partners and in business life. The stimulation of awareness is essential for the success of this policy. The policy (and the legal transition) should be based on a broad commitment in the society and at least be materialized in an agreement with Social Partners on the National level.
- Since the role of business life in the development of this policy is so essential, all measures on micro-level should be ready for public-private partnerships.
- The process of development should include possibilities for “trial and error”, experimental approaches and gradual growth.

### **A7.2 CONTENT OF POLICY: THE PREFERABLE WAY**

According to the above-described environment, the policy would consist of the following aspects.

#### **A7.2.1 Conditions**

In order to be able to connect, organize and monitor activities it is essential to create a basis for “market development” in this field.

1. This would primary mean that disability registration becomes an integrated part of the registration process of the National Employment Service.
2. This registration should also determine whether the disability is / or could be a hinder in the search for work in the opinion of the job seeker.
3. If that is the case, the NES consultant should verify if the job seeker, due to this disability, is not able to find a job on his own, with regular assistance from the NES.
4. If so, the job seeker will be offered the possibility to take part in an assessment in order to determine if this disability should lead to special measures in terms of vocational training, specialized job broking programs, adaptation of the work place, wage subsidies, subsidized self-employment, supported employment or sheltered employment.
5. This assessment consists of:
  - Psychometric testing, picturing the intellectual abilities, talents and occupational interests
  - Physical assessment, i.e. picturing strength, condition, (fine-) muscular movement.
  - Medical examination to determine limitations, risks and adaptations<sup>36</sup>.
  - Vision on integration – rehabilitation, in which it is elaborated what investments or compensating measures are necessary to enable the job seeker to take part in the process of labour (again). This vision describes:
    - a. Chances on rehabilitation and success.
    - b. Education, occupational preference, motivation and presentation.
    - c. Functional limitations and possibilities
    - d. Chances on the regional labour market
    - e. Necessary investments
6. The statistical relevant data collected with this system will be used for monitoring and planning<sup>37</sup>.

#### **A7.2.2 Priority 1: Disability Management**

Practices prove that paying attention to prevention,

- Early intervention in sick leave periods
- Using retraining,

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**36 Be aware of the MD: due to the nature of their study, most medics are trained to diagnose impairments, moving to an ability approach could be “new ground”.**

**37 This leads do data collection on 4 levels: 1. the number of job seekers that consider themselves disabled; 2. the number of persons that are brought for assessment due to possible disability by the NES; 3 the number of persons not admitted to legal support according to the Law on Employment for PwD and 4. the number of persons admitted to the LoE PwD.**

- Work place - or work time adaptation  
reduces the influx of disability cases, long term drop out of the work process and disability pensions.

The above-mentioned assessment methods can also be of use in early rehabilitation programs.

#### **A7.2.3 Priority 2: Open Labour Market Focus**

Once people are admitted to a disability employment program, the job seeker and the consultant are facilitated with measures to compensate the probable distance in competition between a non-disabled and a disabled job seeker. It would nevertheless be naïve to assume that subsidies and related measures solve the problem. Regional agreements between the NES and bigger employers, emphasizing on (if possible) labour market friction vacancies, cooperation with job agencies in temporary employment, comprehensive placement methods<sup>38</sup>, need to secure necessary support. Moreover, the toolbox of the NES consultant contains measures related to:

- Vocational guidance
- Vocational education
- Training on the job
- Probation periods
- Subsidies for workplace adaptation and facilities
- Wage subsidies
- Supported employment
- Sheltered employment

#### **A7.2.4 Priority 3: Client-oriented Initiatives**

In different parts in the country client organizations have established SME's, in which PwD are employed. And, sometimes, individuals with disabilities have a desire and a plan to start their own business. These initiatives should be considered as extremely valuable for the position / emancipation of PwD. The Chamber of Commerce seems to be the logical institution to coordinate and guide these initiatives, in cooperation with NES. Useful instruments are:

- SME-education and training
- Business plan guidance
- Loans and guarantees

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<sup>38</sup> i.e.: if McDonalds is able in different countries to succesfully employ people with cognitive disabilities, it should be possible to use this model for more restaurative and catering services.

#### **A7.2.5 Priority 4: Sheltered Workshops**

Sheltered employment is considered a “last resort” instrument in this concept. The deploring situation that many sheltered workshops are facing should be countered with the following approach for restructuring:

- Sheltered workshops will be structured on regional basis.
- Sheltered workshops will transform into “facility centers” for regional business life, offering “outsourcing services”, i.e. services in print- en copy, administration, catering, cleaning, gardening, courier and delivery.
- The workshops will work in close connection with business life, the Supervisory Board should consist of representatives from companies in the region.
- Government steering will take place via contracts for 3 years, containing agreements about target groups, volumes and budgets.
- Budgets will be based on disability (-categories) and integrated investment costs.
- Sheltered workshops will further be encouraged to be as entrepreneurial as every other company.
- This transformation process will take approximately 2 years.

#### **A7.3 GOVERNMENT AS ROLE MODEL?**

In giving the good example and making the Quota Levy system a success, government must act as a role model.

- Making government buildings and – information accessible
- Being the first in planning the fulfillment of the quota’s
- Actually reaching the targets are examples of this role.

#### **A7.4 PROCESS CONDITIONS**

As stated before, this policy needs broad commitment to be effective, not only on a political level, but also on the level of social partners. In order to establish this commitment the following approach would be advisable:

- Plans and legislative proposals are subject of a social dialogue with social partners and client organizations.
- This subject will be part of an agreement regarding the broader socio-economic policy for the coming years.
- An information and marketing campaign will be developed on the basis of the anti-discrimination (pro-integration) Law.
- Social partners and client organizations will be involved in the further development of this policy.

#### **A7.5 FRAMEWORK FOR LABOUR CONDITIONS**

The right to equivalency should also get effect in the labour conditions for people with disabilities. Subsidies are used to compensate employers for (possible) deficiencies in production capacity of a person with a disability. There is therefore no reason to withhold the concerned worker of any condition that his colleague gets. Here is equivalency translated into solidarity, in which the content of the job determines the conditions. There can be two exceptions for this practice: when an employer offers qualifying vocational education and in the first two years of engagement with a sheltered workshop, in order to stimulate non-sheltered search activities. In these two exceptions, minimum wages can be considered.

#### **A7.6 SHIFTING DEAD MONEY – ACTIVE SECURITY**

Stimulating active integration of PwD would also lead to encouragement of people with a disability pension. Effectively, in strict economic terms, every Dinar spent here is “dead money”, serving no other purpose than to minimally compensate the living costs of the beneficiary.

However, when there would be a way to use (part of) this money in the economy different goals are served:

- The economy, because “dead money” is put to “life” again.
- The integration policy.
- The (former) beneficiary, because he can improve his income position and his social status with salary and a job.
- And last but not least this could lead to lower contributions, because the subsidies would be lower than the benefits.

Suggestion: with all forms of cautiousness, to develop further research to open possibilities for experiments with volunteers, ensuring all present rights of these volunteers

#### **A7.7 OPERATIONAL CONSEQUENCES**

This policy has obviously great impact on the NES and probably PIO.

Evidently, the NES has to prepare their staff for job mediation for PwD. We suggest making as less “specialized positions” as possible in order to establish a broad understanding and commitment and to work as integrative as possible. Never the less this would lead to a specified training program for people involved with job broking. Staff has to be trained to work meaningfully with PwD.

Another aspect of organizational change is the creation of “Work-Ability Assessment Centers”; possibly these Centers are subject of a joint venture between NES and PIO and will be used with a broader function then for people with disabilities only, i.e. also for longer unemployed people and in sick-leave intervention programs.

PIO will have an important role in the administrative processes related to subsidy-management.

It is of crucial importance that all the transformed services are fully accessible for PwD: premises and information has to be accessible for PwD.

## **A7.8 GOALS AND MONITORING**

Different experiences with complementary labour market policies in different countries show that results cannot be recognized or not even be reported. That must be prevented in the Serbian way. Clear goals in quantities and qualities, based on the demand for these special measures are a fundament for the monitoring of results.

## **A7.9 FINANCIAL MODELS**

These measures can be arranged using different financial models. There are basically five options to finance this policy:

1. General tax funds (everybody pays)
2. Premiums (employers and employees pay)
3. General taxes with relevant refund (Tax funds are the basis, but every “saved benefit scheme” will be cashed by the tax department)
4. Quota-levy system (employers pay)
5. Mixed model: general taxes are used for early disabled and not-work related disabilities, premiums are used to finance measures for people with disability caused in the process of work.

The mixed model is the most sophisticated and perhaps most fair.

## **A7.10 INTERNATIONAL SUPPORT**

Making a “switch” like this is a huge operation in which (further) international support is essential. We therefore suggest trying to use to following instruments for implementation:

- The pre-accession instrument.
- The CARDS program
- The European Social Fund (i.e, social inclusion, vocational training).
- A Twinning project aimed on reform on national level.
- Technical Assistance in Organizational development.