

# **Employment Quotas, Levies and National Rehabilitation Funds for Persons with Disabilities:**

Pointers for policy and practice

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Report prepared on behalf of the International Labour Office

by

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### **FOREWORD**

The ILO believes that workers with disabilities should enjoy the same rights to freely chosen, quality employment as non-disabled workers. This is reflected in ILO Convention No. 159 concerning the Vocational Rehabilitation and Employment of Disabled Persons which calls upon member States to formulate, implement and periodically review a national policy favouring the training and employment of disabled persons. Often special measures are required to prepare individuals with disabilities for the world of work, and to adapt the workplace for disabled workers. Additional measures are sometimes required to ensure that disabled persons have access to job opportunities. Such measures include, among others, quota systems, levy systems and national rehabilitation funds.

The ILO has noted an increasing interest in identifying effective measures for promoting employment opportunities for disabled persons on the part of Central and Eastern European countries, as well as by developing countries in Africa, Asia and Latin America. This interest is reflected in the number of requests to the ILO for information about quota-levy systems and related rehabilitation funds from countries examining such options or formulating national disability policy and legislation. Several countries have substantial operational experience with such systems and funds. Others, examining their possible creation, are seeking to learn from countries such as France, Germany, Japan and Poland having experience with rehabilitation funds.

For these reasons, the ILO Governing Body approved the organisation of an inter-regional, tripartite meeting on the subject, which was held in Warsaw from 27 February to 1 March 1997. It was organised by the ILO in collaboration with the State Fund for the Rehabilitation of Disabled Persons in Poland, with support from the French rehabilitation Fund, AGEFIPH, and the German Ministry of Labour and Social Affairs. Representatives from those bodies worked together over the course of a year to prepare for what became the First International Conference on Policies and Management of National Rehabilitation Funds. Eleven countries accepted the invitation from the ILO to be represented at the Conference and representatives from a further seven countries attended as observers. Altogether over 75 representatives of national funds, governments, employers', workers' and disabled persons' organisations, and rehabilitation and service-providing organisations, attended the two and a half day Conference.

The objective of the Conference was to foster an exchange of information on the advantages and disadvantages of quota-levy systems and their associated national rehabilitation funds, as one method of furthering the obligation, shared by governments, employers and workers, to promote the effective labour market

participation of disabled persons. The programme for the Conference allowed for presentations from representatives of countries with established quota-levy systems and associated rehabilitation funds, and contributions and questions from representatives of countries with very new schemes as well as from those considering such an option. Contributions from countries with rehabilitation funds which are not linked to quota-levy schemes added value to discussions about the management and distribution of funds.

Plenary presentations, panel discussions and working groups reviewed the principles which underpin special funding mechanisms and the necessary complementary policies, compared the mandates of national funds and their effectiveness in achieving desired outcomes, considered the management of the collection and disbursement of funds, and examined the consultative and control responsibilities of employers', workers' and disabled people's organisations.

The ILO takes no particular position on quota-levy systems but stresses the importance of dissemination of the best possible information on which to base policy and practice concerning all aspects of vocational rehabilitation of disabled people. Accordingly, it commissioned the Social Policy Research Unit of the University of York to produce this synthesis of information on existing quota-levy systems and national funds and guide to the principles and issues which should be taken into consideration when designing such measures. The publication draws on the Conference discussions, and on the speeches and written papers presented by the invited representatives of national funds, governments, employers' organisations, workers' organisations and disabled people's organisations.

The publication also draws on responses from six countries to a questionnaire constructed by the Social Policy Research Unit in conjunction with the meeting preparation group. The synopsis of the questionnaire responses, which served as a reference document at the meeting, is appended to this report. The hard work of the meeting preparation group and of those who completed the questionnaire is gratefully acknowledged.

The ILO wishes to express appreciation to the State Fund for the Rehabilitation of Disabled Persons in Poland for hosting the conference, for its very professional organisation, for the excellent arrangements for interpretation and translation, for the secretarial and technical support and for the excellent Polish hospitality. Thanks are due also to the staff and disabled young people of the Konstancin Rehabilitation Centre where the Conference was held.

## **INTRODUCTION**

### **Introducing the 'quota' concept**

In the Western world the concept of an employment 'quota' of disabled workers has a long history. Quota systems represent a deeply embedded policy approach,

developed originally in a European context, and based on long-standing acceptance of a social obligation to employ individuals with disabilities.

The obligation to employ a quota of disabled workers may be adopted voluntarily but usually it is a legal requirement. At its simplest, quota legislation requires private and/or public sector employers, who employ a certain minimum number of workers, to ensure that a given proportion of employees consists of designated persons with disabilities. The definition of a disabled worker who counts towards the quota can be broad or narrow. Usually all employers subject to the law work towards a national target set at, say, four or six per cent of the eligible workforce, but sometimes different quotas are set according to size of a firm or industrial sector. In many but not all quota schemes, employers who do not meet their target can be fined for breaking the law.

Most quota schemes are more complex than this in their operation and there are a number of contentious variations. For example, the employment of people with given characteristics, such as young people or those with severe impairments, may be double- or even triple-counted. Or types of occupation, such as construction, mining or working on board ship, may be considered unsuitable for a disabled person and discounted when the total workforce is calculated. In some schemes, action other than direct recruitment, such as contracting with sheltered workshops or reaching enterprise-based agreements to further the integration of disabled workers, can also count towards the quota.

Levy systems differ from plain quota schemes in allowing employers to make a financial contribution, or levy, to a special fund in lieu of employing the target proportion of disabled people. Such a contribution may be permitted only as a last resort when the possibility of direct employment has been exhausted, or may be a legitimate choice. The levy is not conceived as a legal penalty; employers who do not pay the levy may be fined but this option is seldom used. The levies from employers commonly are collected into a special rehabilitation fund and redistributed variously to employers, disabled workers or service providers. The rehabilitation fund usually complements publicly funded provision to promote training and employment of persons with disabilities.

Given such variety in practical application, it is plain that a 'quota-levy system' is a broad concept which can be tailored to national contexts and requirements, rather than a uniform scheme.

There is nevertheless a clear theme unifying the quota-levy policy approach. The policy embodies the concept of a national social obligation to equalise employment opportunities for disabled people. The quota makes concrete the standard which employers are expected to meet. Fulfilment of the obligation can be encouraged and supported by the state but responsibility ultimately rests with employers because it is they who provide jobs. The main purpose of the levy is to encourage employers to meet their quota target, not to raise revenue.

## History of quota and quota-levy systems

Historically, the quota policy approach has been a characteristically European measure<sup>(1)</sup>, although also favoured in Japan since 1960.

Its origins date back to World War I, with regulations and laws in Germany and Austria to promote the integration of war-injured soldiers. Proposals to reserve jobs for disabled veterans through quota systems were first discussed internationally at the Inter-Allied Conference in 1920 which recommended that national governments adopt legislation which would oblige public and private employers to employ disabled ex-soldiers. A committee of experts which met in 1923 under the auspices of the ILO supported the use of legal obligations to promote employment of disabled ex-soldiers and proposed that employers who had a designated number of employees should be covered by legislation, with exemptions for those who experienced certain difficulties. Exempted employers or those who did not meet their percentage target should be obliged to pay a fee or a fine.

The principle of a legal obligation on employers over a certain size, with fines or levies for those who did not meet it, was adopted by several countries in the early 1920s, including Poland<sup>(2)</sup>, and formed the basis of long-standing legislation in Austria, France, Germany and Italy.

Over the years, quota systems were gradually extended to cover civilians disabled through war, victims of accidents at work and ultimately non-insured disabled people. Towards the end of World War II the quota principle was reinforced by a recommendation of an ILO conference, held in Philadelphia in 1944, that to ensure equality of opportunity for disabled workers, employers should be induced, and where necessary compelled, to employ a reasonable quota of disabled workers. The majority of countries with a compulsory employment scheme extended its scope in the post-war years; and some, including the UK and the Netherlands, introduced quota legislation for the first time (although these two countries have since abandoned mandatory schemes). These early schemes were designed to function in situations of full employment.

Subsequently, Greece, Luxembourg and Spain followed suit (and Ireland and Belgium introduced public sector schemes). The principle was further reinforced in European Union Member States by the European Commission Recommendation of 1986. While two-thirds of European Union Member States now have some form of quota scheme it must be acknowledged that certain schemes are designed and implemented in a limited and ineffective manner.<sup>(3)</sup>

Looking beyond the European Union, in the countries of Central and Eastern Europe quotas were widespread after World War II but within a command economy system which allocated workers to jobs. In the 1990s, several of those countries, including Belorussia, Lithuania and the Ukraine, have legislated quotas which apply to the private sector.

Japan's quota scheme dates back to 1960 (the levy-grant scheme was introduced in 1976). Egypt, Turkey and Malaysia have quota schemes extending to the private sector.<sup>(4)</sup> Quota provisions are included in the legislation of non-industrialised countries as varied as Angola, Mauritius, the Philippines and Tanzania.<sup>(5)</sup>

### *Growth of quota-levy systems*

Only a small minority of European Union countries have quota-levy systems. In Austria and in Germany, the notion of levies on employers who do not meet their obligation to employ disabled persons dates back to 1920 and the post World War

II period respectively, while in France paying a levy as an alternative to direct employment was introduced only with the reforms of 1987.

Since 1989, several 'countries in transition' have legislated for quota-levy schemes in the context of the new market economy; for example the Czech Republic, Hungary, Poland, Romania, the Russian Federation and the Slovak Republic. China now has a quota-levy system. African and Asian countries with quota-levy schemes, often uninforced, include Morocco, Tunisia, Azerbaidjan, Pakistan, Thailand and Vietnam.<sup>(6)</sup>

Consequently, there is a new wave of quota-levy schemes set up in unique circumstances.

## **Principles of quota and quota-levy systems**

As quota systems developed incrementally in Europe their underlying principles became open to different interpretations. The original principle of a moral obligation or duty was diluted over time as beneficiaries of quota schemes were extended to cover groups other than disabled ex-soldiers and victims of occupational accidents.

It is now generally agreed that the quota is a form of affirmative action, in that it aims to equalise employment for a group of people who are under-represented in the world of work. The quota may counter negative discrimination, through encouraging an employer to extend an opportunity to a qualified individual who otherwise would be disregarded on grounds of disability alone. However, there is a competing assumption, often held by critics in countries such as the USA with no history of a quota system, that the employment obligation signals that most disabled people are unable to compete for and win jobs on merit; consequently, the quota is viewed by those critics as an obligation to give preference to disabled people on grounds of pity alone. Sometimes the quota is seen as no more than a punitive law. The quota-levy approach, on the other hand, can be viewed as *encouragement*, rather than punishment.

The principles underpinning levy schemes are broadly similar: essentially all employers, above a certain size, should contribute to the employment of disabled workers, ideally through the direct provision of employment, but if this is not possible, through a financial contribution. The aim is to maximise employment rather than to collect revenue. In Germany, it is not possible to buy off the obligation to employ disabled people by paying the levy. In Japan, similarly, employers who contribute to the levy are still subject to the obligation to employ physically disabled people. In France, the expectation is that the voluntary contribution should be paid only when the other possibilities of complying with the legal obligation (employing disabled workers, sub-contracting with the sheltered work sector or implementing an agreed integration programme) cannot be met.

The precise function of the levy varies although the principle remains similar. In Germany it is neither a device for financing rehabilitation nor an instrument of coercion. Rather, it is an equalisation mechanism: the levy paid by employers who do not employ adequate numbers of disabled people is redistributed to those who do, to cover the extra costs they incur. In Japan, the underlying principle of promoting collective responsibility redistributes the levy to cover the costs of employers who employ physically disabled workers. In France, the policy recognises the economic constraints facing some enterprises and allows employers who are not in a position to recruit, train or generally foster the employment of disabled people to discharge their obligations by contributing to a fund to aid integration of disabled individuals in enterprises which are able to support those aims.

### **Quota systems in context**

With the passage of time, the quota approach has become only one among a package of policy measures working simultaneously to promote employment of disabled people in the mainstream: rehabilitation, employment preparation and placement services; job-coaching and other support on the job; financial incentives to employers and to employees; grants for assistive devices and for adaptation of work and workplace; promotion of attitudinal change and voluntary activity on the part of employers; and legislation to outlaw discrimination on grounds of ill-health or disability. Within this gamut of policies, quota systems have lost their exclusive central position and are increasingly seen as potentially viable only when supported by complementary measures. Indeed, the restrictive scope of the employment obligation, limited administrative capability and inadequate sanctions can severely limit the impact of the quota policy approach and reduce its credibility.

Other policy instruments thus need to be in place to give meaning to quotas. These instruments are often more important than the quota legislation itself. Employers often oppose quotas, but unions often see them as the only means to exert pressure on employers to honour their social obligation towards disabled workers. But it does not make sense to regulate for compulsory employment of disabled people unless a number of conditions are met, notably availability of suitable and accessible jobs, and disabled workers who are trained and capable of performing the tasks expected of them. Governments have an obligation to see that these conditions are met if labour market integration is to be realised. It is not legitimate to use regulations such as quotas to impose on employers the responsibility to employ disabled workers whose qualifications, work potential or performance are considerably reduced.

In the countries of Central and Eastern Europe the quota - or, more accurately, the quota-levy approach - now appears to be the standard policy response to the employment problems which disabled people face. Notably in economies in transition, the quota-levy is often found to be the central plank of newly created policies to promote mainstream employment of disabled persons in the new

market economies. As already noted, from 1991 onwards many of those countries have provided for quota-levy systems in their legislation, although not all have been implemented. China has also introduced a quota-levy scheme.

In setting up quota-levy schemes, these countries are looking to established systems for models, tailoring the detail of implementation to their own national circumstances. In transferring the concept from one cultural and economic setting to another, the basic principle of the obligation to employ disabled persons may become diluted. This is particularly likely if systems are not yet in place to create an appropriately skilled disabled workforce or accessible working environments. When the quota-levy system was legislated for in Federal Germany in 1974, meeting the six per cent quota was a real aspiration; in 1982 the average quota attained was 5.9 per cent. In most new quota-levy schemes, by contrast, the quota is far from being achieved and the purpose of the system is more likely to be construed as revenue generation.

It should be noted that, while the quota approach remains a national policy option in Europe, interest is turning towards the anti-discrimination approach, based on a particular understanding of why disabled people are disadvantaged in the labour market and a different mechanism for overcoming the barriers they face. Some countries have looked to the USA, Australia and Canada, countries which have never favoured quotas. In 1995 the United Kingdom replaced its ineffective fifty-year-old quota with disability discrimination legislation. Ireland is seeking to introduce rights against discrimination in employment. Sweden is preparing legislation to counter discrimination in employment on grounds of disability. Amendments have been made to the Constitution in Germany and to the penal code in France and Finland to outlaw discrimination on grounds of health or disability. Also at the European level of policy formulation, the focus has shifted. A significant step was the European Commission Communication on Equality of Opportunity for People with Disabilities which aims to give 'a renewed impetus towards the rights-based equal opportunities approach to disability'.<sup>(7)</sup>

## **Levy redistribution policies**

Quota-levy systems are becoming an important source of revenue to fund measures to facilitate the entry or maintenance of disabled persons in the open labour market.

Two main uses for levy funds are emerging:

1. the Western European and Japanese model, which uses levy funds mainly to invest in a variety of measures that are deemed to improve the labour market efficiency of disabled workers, and that will remove any disadvantage that the employer may have, or feel that they have, when hiring or retaining a disabled employee; and



2. the Eastern European and Chinese model that favours using levy funds mainly as a financial incentive for employers to employ a difficult-to-place category of worker, that is as a form of compensation for agreeing to employ a less productive worker.

Another possibility, apparent in Eastern Europe, is for levy funds to be used for purposes other than promoting the labour market integration of disabled workers, in response to considerable public pressure to use these funds to finance other disability-related activities. Such tendencies might divorce the system from the national strategy to promote disabled people's employment, through diverting funds to meet the aims of other interest groups. In the worst scenario, this practice might be counter-productive to direct employment of disabled people.

The emergence of national funds in some countries has become important for implementing the national employment policy for persons with disabilities. However, these sources are, by definition, only temporary: once employment targets are achieved there will be no levy funds. Consequently, they cannot substitute for national budgets, nor replace programmes which the State is liable to provide to meet the rights and entitlements of its disabled citizens. A special tax on employers, which is conditional on quota compliance, cannot substitute for the government responsibility to create a sustainable system that ensures the preparation of individuals with disabilities for (re)employment, and guarantees disabled workers their right to equal treatment and opportunity.

### **National rehabilitation Funds**

However, the current reality is that the size of the funds collected has necessitated the establishment of legal bodies to administer the collection and disbursement of levy funds, either by adding responsibilities to existing organisations as in Germany and China, or by setting up special organisations for the purpose, as in France. Both approaches are referred to here as 'national rehabilitation Funds'. It should be noted that in some countries, such as Belgium, national rehabilitation Funds were established with tax or insurance income. Another alternative to employer levies is lottery revenue: in Spain, ONCE, a national non-governmental organisation (NGO), manages a major rehabilitation Fund based on this source. In some countries, there are general rehabilitation Funds, not dedicated to vocational rehabilitation alone, which are funded from a range of national and voluntary sources, including employer levies.

Most of these Funds are of considerable strategic importance for the success of national employment policy for disabled people. In particular in countries which have no tradition of budgetary allocations in support of a labour market policy for disabled persons, these national Funds will continue to play a central role in moving employment policies forward. In the longer term, however, they are likely to assume a supportive and complementary role, rather than that of sole provider.

National rehabilitation Funds, although acting on the behalf of the State, enjoy relative autonomy in managing their affairs. It is important to ensure that they are properly managed and controlled. Transparency and accountability, properly defined use of funds, consistent strategies for collection and disbursement of funds, and demonstrable results are of key importance if Funds are to maintain public confidence and employer commitment to facilitating the employment of disabled persons.

## **Structure of the report**

The report which follows is in three parts. Part I provides accounts of the national quota-levy systems, disbursement policies and arrangements for Fund management in France, Germany, Poland and Japan, along with briefer details of schemes in Austria, China and Hungary. Further information on schemes in six of those countries is detailed in the Annex.

Part II discusses the key considerations for design and implementation of a quota-levy scheme. In terms of framing policy objectives it asks: What is the system aiming to achieve and for whom? How do the objectives relate to national disability employment policies? What are the principles underpinning levies on employers? In putting policy objectives into practice it discusses: Which are the most appropriate measures to fund in order to meet desired objectives? What criteria should be applied to define contributors and beneficiaries? How should the contribution level be set?

Part III reviews the management and the operations of national rehabilitation Funds. It asks: What are the decision-making processes and who oversees them? How should the Fund be structured and managed? How can systems for collecting and redistributing levies operate in practice? How can contributors and beneficiaries best be informed? What are the measures of success and how can evidence be gathered?

## **PART I**

### **COUNTRY REPORTS**

**France**

**Germany**

**Poland**

**Japan**

**SUMMARY REPORTS**

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## **THE SYSTEM IN FRANCE<sup>(8)</sup>**

Vocational integration of disabled people is currently defined by the Law of 10 July 1987. The hallmark of the legislation is the mandate to obtain results, in contrast to earlier ineffective legislation. The scope of the reforms resulting from the adoption of the law cannot be assessed without first taking into account the main characteristics of the former legislation.

### **Historical development of the French system**

Social regulations first appeared in France after World War I to rehabilitate the great numbers wounded in the war. The Law of 26 April 1924 thus took into consideration the difficulties encountered by workers whose physical capacity had been affected, dealing only with the war wounded and related categories. These persons were guaranteed employment, as employers were obliged to hire ten per cent of their workers from this category.

It was not until the Law of 23 November 1957 that comprehensive regulations on the employment of disabled workers were adopted in which the term 'disabled worker' was used for the first time. According to Article 1 of the law, 'any person whose prospects of obtaining or keeping a job are reduced as a result of insufficient or reduced mental or physical capacities' was considered to be a disabled worker. The status of disabled workers was recognised by a special commission at the local administrative level of the Département.

A more ambitious structure emerged with the framework law for disabled persons of 30 June 1975. This law is a true charter of the rights of disabled people and was based on a broad consensus. In particular, it abandoned the notion of assistance, replacing it with that of solidarity. It established that 'prevention and identification of disabilities, care, education, skills training and guidance, employment, a minimum guaranteed wage, social integration and access to sports and leisure activities for mentally or physically disabled minors and adults constitute a national obligation'.

Law-makers entrusted COTOREP (Technical Guidance and Professional Resettlement Commission), an administrative commission of the Département presided over by the Département Labour Director, with conferring the status of disabled worker. It confers one of three degrees of disability, proposes solutions and awards financial aid. COTOREP is a point of entry to enable disabled persons to benefit from the measures specifically designed to facilitate integration. It is this agency which guides the disabled worker toward training or employment in an open or protected environment according to his or her skills and abilities.

As regards integration into open employment, the creation of Preparatory and Resettlement Follow-up Teams (EPSR) represented a major innovation. EPSR are put in charge of assisting the disabled person throughout the rehabilitation phase and of facilitating his or her professional resettlement, alongside the national employment agency (ANPE). EPSR find companies which can hire disabled persons, advise them on the kinds of jobs needed and make periodic post-employment checks of the conditions under which the vocational integration has taken place. Their main mission is therefore to find long-term employment. The framework law calls for the creation of one EPSR per Département. It can be public or private and should have a staff of four.

The Law of 1975, however, did not change the requirements regarding the employment obligation which for the employer amounted only to respecting the procedure. The Labour Code obliged employers to set aside a certain percentage of jobs for disabled workers for a period of 15 days, during which time priority was given to considering candidates presented by ANPE. Heads of private companies had to designate the jobs they set aside to comply with the required quota.

The result of the implementation of the procedure was not as had been expected, because the efficiency of the system depended on a placement scheme which could nominate candidates to companies quickly. For the years 1975 to 1987, the overall demand for labour fell dramatically in France with the number of unemployed rising from 0.8 to 2.7 million, that is, ten per cent of the labour force. This trend made it very difficult to achieve the goals entrusted to ANPE and EPSR.

Though not successful, this stage deserves to be mentioned. For the first time, the law placed the responsibility on companies for choosing jobs that had been identified as being suitable for disabled people and, as the legislators had desired, the elected representatives of the employees and the labour doctors were consulted before a choice was made. The defect of the system derived from the fact that the type of disability of the candidates for the job, and their skills, were pre-determined.

## **The Law of July 1987**

The Law of 10 July 1987 demonstrated the willingness of legislators to 'create momentum in making employment accessible to disabled workers, while taking into account the economic constraints of employers and having them participate fully in the policy'.

The general philosophy of this law, in terms of business, consisted of moving from a procedural to a results-oriented obligation. The reforms introduced in the Law of 1987 are carried out along three lines: setting an employment quota for

disabled persons, defining the beneficiaries of the quota, and giving employers the means to fulfil the employment obligation in four ways.

First, setting the employment quota. Both public and private sectors were henceforth under an obligation to employ six per cent of their personnel as disabled workers. All companies with 20 or more wage earners are subject to this Law. In companies with multiple establishments, it applies to each establishment separately. A disabled person may be counted as one unit, a unit and a half, two units or more, according to the category of his or her disability and certain age and status criteria.

Secondly, the Law consolidated the regulations on who is affected by the employment obligation. The following are the beneficiaries of the legal obligation:

- disabled workers registered as such by COTOREP, who make up the largest group of people employed by companies
- victims of accidents at work or of occupational diseases with a permanent, partial incapacity of at least ten per cent
- recipients of disability pensions, provided that the disability has reduced the capacity to work and earn a living by two-thirds
- war-wounded receiving a military disability pension, and related categories.

Thirdly, the Law allows companies to fulfil their employment obligation in various, non-exclusive ways, partially or totally, by: employing disabled workers; signing a sub-contract with the sheltered work sector (converted into an employment-equivalent and limited to three per cent of the employment rate); implementing an annual or pluri-annual programme for the employment of disabled workers; and lastly, one of the reform's innovations, paying a contribution to AGEFIPH, the Fund for the vocational integration of disabled persons. This last case applies when the preceding possibilities for complying with the legal obligation cannot be met.

The Law sets the annual contribution to the Fund at 300, 400 or 500 times the hourly minimum wage per job not filled, depending on the size of the establishment. This amount represents 13,000 to 18,000 francs per year per missing 'unit' depending on the size.

## **The Fund**

AGEFIPH was legally founded in July 1987 and became operational in 1989. Its mission, defined by law, is to 'contribute financially to finding and retaining employment for disabled persons in a regular work environment'. Its activities are guided by three rules.

First, the Fund is not meant to be a substitute for the State as the activities it funds are new and in addition to existing public assistance. In reality, AGEFIPH frequently provides co-funding with other agencies, complementing State assistance.

Secondly, in regard to use of the Fund's resources, the Law of 1987 stipulates three priority areas:

- the extra cost of training activities (training instructors, pre-training activities, and so on for individuals with disabilities)
- corporate innovation and research activities (adapting the workplace and the work station)
- all measures required for the follow-up of disabled workers in vocational or work integration (development of the EPSR, premiums to encourage companies to hire disabled persons, and so on).

Thirdly, AGEFIPH acts exclusively with private sector companies and government-run bodies subject to private law. State and local agencies which do not contribute to the Fund are excluded from its activities. However, funding may apply to companies which are not subject to the employment obligation, that is, companies with fewer than 20 wage earners.

The Fund is managed by a national, private law association which was created *sui generis*. Its statutes are recognised by the Ministry of Labour. It is a collegiate body with a Board of Directors comprising of four 'colleges' representing trade unions, employers' organisations, national associations of disabled persons (NGOs) and, lastly, qualified persons appointed by the three preceding bodies and by the State.

The State is thus not a legal member of AGEFIPH. Nevertheless, the association is monitored by the public authorities. The Ministry of Labour approves the programme and activity budget of the current year, as well as the report on the use of contributions for the previous year. Furthermore, a State controller was appointed in September 1991 to act as a financial auditor on behalf of the State *a posteriori*.

From the outset, the rights and responsibilities of guiding and defining the Fund's policy has been carried out by the Board of Directors. The Chairman implements the decisions taken by the Board of Directors and supervises the operation of the association.

Without pre-empting its national vocation as a development fund, AGEFIPH very early on aimed to expand its geographical presence. Sixteen Regional Delegations at present cover the entire country. Since January 1995, close to 90 per cent of the funding has been decided at the regional level, with the remaining ten per cent handled at the national level.

The management of AGEFIPH is organised around three major divisions led by the chairman. The mission of the Regional Co-ordination and Development Directorate is to implement the policy defined by the Board of Directors and approved by the State; it is also in charge of running the network of regional delegations, as well as analysing activities and developments. The Financial and General Affairs Directorate manages the Fund's finances, its human resources as well as its computer and other resources. Lastly, the General Supervisor ensures that internal procedures are followed by the Regional Delegation and that the projects financed by AGEFIPH comply with the rules. It comprises an external auditing department and an internal inspection department.

## **Intervention programmes**

AGEFIPH has designed four intervention programmes which all seek to provide concrete solutions adapted for the various partners and for the disabled persons concerned. Programme changes reflect the on-going willingness to improve its interventions. The present programme focussing on '17 measures for the employment of disabled persons' (shown below) has been in effect since June 1994. As with the previous three programmes, the present programme seeks to develop complementarity with other schemes, in particular those of the State. These programmes seek to fulfil four main objectives:

- to improve occupational skills
- to mobilise the business world (employers and trade unions)
- to increase the ways in which integration can take place
- to respond to technical barriers encountered by disabled persons.

The objectives are not mutually exclusive and can be combined or used successively.

### *First objective: to prepare persons for employment*

The notion of preparation for employment should be understood as all of the actions leading to the acquisition of skills required for successful employment. This includes vocational guidance and evaluation in order to define career prospects, remedial training and acquisition of professional skills. Vocational training is often accompanied by alternating work-place training schemes in centres and apprenticeships offered as an early means to establish contractual relations between companies and young disabled persons.

**Table 1: AGEFIPH's 17 measures for the employment of disabled persons**

Measures	Beneficiaries of the su		
<b>Awareness raising in the business community</b>			

- Information and awareness-raising
- Diagnostic-counselling to companies

**Preparation of disabled persons**

- Professional evaluation
- Apprenticeship contract
- Work-training contract
- Remedial training and dynamisation
- Vocational training

**Job access and retention**

- Job retention and resettlement of disabled persons
- Activity creation
- Placement of disabled persons
- Hiring premiums

**On-the-job assistance**

- Adaptation of work stations
- Accessibility of work place
- Support and follow-up of integration

**Sheltered environment and innovations**

- Outplacement in companies
- Bringing the sheltered and open sectors closer together
- Innovation subsidies

Key Company Disabled Person

Sheltered Environment Mediators (Training and reporting agencies carrying



out integration and resettlement)

When the Law of 1987 was passed, a report emphasised the weaknesses in the system for training young disabled persons. Despite the fact that the framework law of 1975 called for disabled youth to be placed in a mainstream school environment to the greatest extent possible, the number of schools for training them remained insufficient, undiversified, poorly distributed across the country and not adapted for severely disabled persons. Vocational training, in particular, depends on the specialised sector. The 75 Vocational Rehabilitation Centres (CRPs) and the ten General Vocational Training Centres can handle 10,000 trainees, at a flow of 6,000 to 8,000 persons per year. This led the public authorities to widen the supply of training and to begin a policy of mainstreaming. From the outset, AGEFIPH has operated according to this double goal. Its activities complement those of the State.

First of all, AGEFIPH financed a great part of the increase in the supply of training: mainstream training, special schemes, and training sessions funded by the State for the long-term unemployed. The funding was originally earmarked to cover extra costs related to disabilities and later was used to increase the supply of training.

In this regard, the action taken since 1990 in conjunction with the National Employment Agency (ANPE) should be pointed out: in five years, more than 10,000 disabled persons have received training and vocational integration courses co-funded by AGEFIPH. Similarly, an agreement signed in 1992 with the Association of Vocational Training for Adults made it possible to fund an individual integration path for nearly 1,000 and to provide training for 2,000 to 4,000 trainees in 1995.

Secondly, the goal was to expand the regional training supply by setting up regular vocational training and apprenticeship schemes. This was the aim of the programme set up in February 1992 by AGEFIPH entitled 'Regional Scheme for Training Disabled People'. This programme is structured through agreements made with the Regional Councils and, in some cases, with the State. It is mainly open to the unemployed and also to wage-earners as part of a training or retraining plan. Of the 2,800 openings available in 1995 through 465 training agencies - including 215 apprenticeship training centres - more than 1,400 trainees began training, 400 of whom were apprentices. This scheme presently covers eight regions and will progressively be extended to eight more.

A total of 1,296 million francs, that is, on average, one-third of AGEFIPH's funding excluding hiring premiums, was devoted to employment-preparation activities from 1990 to 1996. A 1996 assessment of a group of AGEFIPH beneficiaries shows that financial aid for training is much appreciated by disabled persons because it contributes to increasing an initially low level of qualification and also contributes in the long run to successful employment outcome. What is called continuing education, aimed at ensuring career development and keeping

pace with technological changes, has also had an important role to play, but will be discussed in a later section on job retention.

*Second objective: to mobilize companies and trade unions*

Integration into ordinary work requires the all-out mobilisation of the business world, even more so in times of massive unemployment and economic stagnation. To achieve this, all of the economic players must be rallied: chief executives, wage-earners, their representatives from professional organisations and trade unions, as well as institutions.

AGEFIPH, in this regard, uses 'information-awareness' and 'diagnostic-counselling' campaigns in the following three ways:

- Long-term actions are aimed at improving the awareness and receptiveness of chief executives. These actions are often entrusted to employers' organisations such as employers' associations, trades associations and a few chambers of commerce and related networks (GIRPEH, OHE-PROMETHEE). The information-awareness campaign funds visits to companies, training sessions, meetings and communication campaigns.
- Information and awareness-raising actions are then taken forward by trade unionists. Agreements were signed with the national trade unions in 1990. The actions they have taken include awareness-raising meetings and training sessions lasting several days. They are aimed at representatives of enterprise councils, committees for health, safety and working-conditions, and union delegates or local and Département level union leaders.
- Direct action is taken in certain companies in response to specific needs regarding integration and employment retention. The diagnostic-counselling scheme provides companies with methods and ways forward for integration of disabled persons into the workplace or for retention.

In addition to all of these actions, AGEFIPH has developed a policy of agreements with large companies, and supplies assistance to implement them. Thus, some agreements for pluri-annual action programmes were signed as early as 1992 with such large corporations as St Gobain, Thomas and Accor and with trades associations such as plastics, cleaning companies, and the federation of construction guilds. This step is a new development which will be strengthened in the coming years.

After eight years of effort, the business world has been made aware of the need to hire disabled people. Nevertheless, hesitation remains in some companies regarding such hiring, as is borne out in the assessment made by AGEFIPH. The mobilisation of all corporate players continues to be a priority.

*Third objective: to increase access to employment and job retention*

All of the activities of AGEFIPH contribute directly or indirectly to its main goal: access to employment and job retention for disabled people.

Direct assistance for hiring accounts for a large part of its funding. As of 1990, AGEFIPH set up a scheme to facilitate the hiring of disabled persons by offering employers a premium supplementing public assistance. Over time, the hiring premium has changed with regard to its beneficiaries, the types of work contracts it is used for, and the amount of funding provided. At present, the premium for hiring disabled people is for permanent job contracts or contracts of pre-determined length lasting at least 12 months.

The scheme has fulfilled its initial objectives. Indeed, the premium-type jobs are mostly full-time and of undetermined length. Two-thirds of the hiring occurs in establishments with fewer than 20 wage earners, which are not subject to the employment obligation. Also, one employer out of four states that he would not have hired a disabled person without this incentive. The premium has also had an integration effect: 55 per cent of the disabled persons hired still have the same job four years after being hired.

A flat rate, one-time premium is also given to the disabled person on recruitment, to encourage a positive attitude in looking for a job.

In addition to direct assistance, AGEFIPH is playing an increasing role in funding bodies which help to find jobs in regular work environments. Since 1989, the Fund has contributed to the development of new Integration and Placement Bodies (OIP) and funded the relaunching of the EPSR. In order to standardise the practices of the agencies, to ensure improved geographical distribution and to co-ordinate their actions more efficiently, the State and AGEFIPH signed an agreement in February 1994 relating to the EPSR and the OIP. The goal of the agreement is to continue the concerted deployment of placement schemes. Funding within this context amounted to 140 million francs in 1996. All French Départements have either ESPR or an OIP; the basic staffing needs of the EPSR and OIP will be completely covered in 1997.

As regards the sheltered employment sector, the Law of 1987 sought to develop co-operation between companies and the sheltered sector by encouraging sub-contracting. With its 17-point programme of 1994, AGEFIPH emphasised the transition function from the sheltered to the open employment sector. In addition to its 'outplacement from sheltered workshops to companies scheme', AGEFIPH offers jointly to companies and sheltered workshops (ateliers protégés) the 'bringing the sheltered and open sectors closer together' measure. The goal here is the technological development of sub-contracting to improve the quality of production and allow for an upgrading of the qualification level of persons working in sheltered workshops.

One of the Fund's main priorities is job retention for disabled workers. In times of decreasing job opportunities in the secondary sector, it is important when

faced with potential lay-offs to have a way of intervening quickly. The 'job retention' measure, created experimentally in 1994, fulfills this objective. It makes it possible to fund the transition period which occurs between the time a person becomes disabled and a solution is found. Due to its flexibility and the fact that it is a flat rate, it allows a company to devise and implement an individualised solution for job retention. Its results have been positive: 94 per cent of disabled wage earners benefiting from the measure are still working and nearly 60 per cent of their employers state that they would have laid off the worker in question had it not been for the funding assistance.

The implementation of the job retention measure contributes to the presence of disabled persons in companies. It helps to lessen the reluctance expressed by companies towards disabled persons, who are viewed as different.

Lastly, setting up a business is a solution which is feasible for many disabled persons who wish to manage their vocational integration directly. AGEFIPH's assistance here takes the form of material and technical assistance to disabled persons wishing to set up or take over a business. The AGEFIPH subsidy is adapted to the project and the amount, with a ceiling of 50,000 francs, represents important complementary income in the funding plan. The 'activity-creation' measure is basically aimed at unemployed disabled persons and has resulted in creating 2,000 activities per year.

#### *Fourth objective: to overcome the obstacles encountered by disabled persons*

As a supplement to public funding and its own job and training assistance, AGEFIPH also often provides specific assistance to compensate for disability. The aim here is to facilitate vocational integration, either to ensure the autonomy of the disabled worker or to provide the company with the means of adapting to the worker.

The individualised financial assistance given to the disabled person so that he or she can be autonomous in the work environment includes:

- Assistance to buy special equipment such as voice synthesizers, video-enlargers and Braille recognition and tactile devices for job seekers, students, apprentices and those in training. The amount is up to 50,000 francs and complements financial assistance from the State, social security and other public agencies.
- Remuneration for temporary, professional helpers such as interpreters and secretaries for job seekers, persons in individual training and students over the age of 16.
- Partial funding towards costs for moving house, automobile purchase or adaptation, and transport costs for employed and unemployed disabled persons, or those in training, who want to access a job.

Financial assistance is paid to companies for adapting the workplace and work stations.

Accessibility to the place of work is the subject of the framework Law of 13 July 1991, which calls for the accessibility requirements to be extended to workplaces and office buildings with more than 20 employees. AGEFIPH handles the construction work and equipment which is needed beyond the legally required minimum. Specifically, the subsidies have been used to make buildings, interior passageways and toilets accessible, as well as for adapting rooms in young workers' living accommodation.

Adapting the work station is one of the main areas of Fund activity. In order to pursue an active policy, in 1992 AGEFIPH proposed taking over from the State the funding of work station adaptation in the open employment sector. AGEFIPH also provides help in the hiring process, job retention and in on-the-job training or the setting up of a business. In 1996, 2,800 disabled persons benefited from work station adaptation at a total cost of 94 million francs; in 70 per cent of cases this was related to job retention.

## **Results in perspective**

An initial analysis can be made of the Fund's activities since it was set up, in particular for the 1991-1996 period.

The action of the Fund must first be placed in the social and economic context of the last six years. France is going through a particularly difficult period in terms of employment and business activity. Thus, of a total of 13.8 million non-agricultural jobs, nearly 650,000 were lost between 1991 and the last quarter of 1993; later, after two years of a slight increase in the demand for wage-earning employment, the number of wage-earners dropped 0.1 per cent in 1996 out of a total of 13.3 million wage-earners. Massive, long-term unemployment impacts on certain categories of job seekers and in particular on disabled persons.

## *Resources*

With regard to the Fund's resources, it should be remembered that the Law of 1987 has been progressively implemented: starting from a quota of three per cent, the obligation has stood at six per cent since 1991.

Since 1992, half of the 86,200 establishments subject to the employment obligation have paid contributions to AGEFIPH.

The number of 'missing disabled person units' in covered firms stabilised in 1992, has declined since and amounted to 118,000 in 1995. Fund income has remained stable at around 1.6 billion francs for each year since 1992.

The employment rate in establishments subject to the employment obligation of disabled persons was 4.05 per cent in 1995, the last year for which figures are available, as compared to 3.76 per cent in 1991.

The general trend in rates of employment of disabled persons is nevertheless better than the previous data might suggest. Indeed, establishments with fewer than 20 wage earners, which are not subject to the employment obligation, have had a higher employment flow for several years: in three years, AGEFIPH has distributed recruitment premiums to the benefit of over 65,000 disabled persons.

### *Funding*

AGEFIPH's interventions have grown considerably. In six years, more than 390,000 funding applications have been recorded for an overall amount requested of 12.7 billion francs. After examination by its staff, 350,000 requests were accepted and funded at a total of 9.3 million francs.

The increase in funding has varied depending on the schemes. Thus, the hiring incentives, corresponding to the hiring premiums, showed exceptional growth between 1991 and 1995. Without putting the continuity of this scheme into question, AGEFIPH's Board of Directors set up as of October 1995 a new system of integration premiums which, supplemented by CIE public assistance in more than 75 per cent of the cases, continues to act as an incentive in 1996.

Funding for integration measures rose regularly from 1991 to 1995 and amounted to 760 million francs in 1996. The areas concerned by this were: awareness-raising in the business world, placement of disabled persons (215 million francs in 1996), on-the-job assistance, sheltered work and subsidies for innovations.

For the same period, AGEFIPH funding has been granted to three categories of requests:

- the business world, comprised of employers and their representatives, received 40 per cent of the funding
- disabled persons received 35 per cent
- 26 per cent of the funding was granted to mediating bodies charged with helping companies and disabled persons to take the necessary steps for gaining access to and retaining a job, retraining, obtaining new skills and adapting workstations.

### *Disabled persons receiving AGEFIPH interventions*

In six years, half a million disabled persons have benefited from AGEFIPH activities. These are 'action-beneficiaries' since they have benefited from one or more of the Fund's interventions over the period. Of that total, 156,000 disabled persons have been reintegrated with the help of the integration premiums,

85,000 have retained their jobs, 123,000 have received training co-funded by AGEFIPH and 135,000 have received other help.

To appreciate the efforts made by the Fund, it should be noted that the number of disabled persons employed in establishments subject to the employment obligation amounted to 266,000 in 1995; and that 111,000 jobseekers were recognised as disabled at the end of 1996 - nearly 130,000 when the cases still being examined by the COTOREP are included.

Obviously, all of these results cannot be ascribed to AGEFIPH alone. The Fund's strategy, approved by the State, was established by numerous public, employer and union organisations and associations which came together to implement the Law of 1987. In this respect, the Département Integration Programme (PDI) which brings together all the partners charged with integration in each Département, plays an essential role. The State and AGEFIPH share the desire that this concerted development policy be strengthened in the future.

## **THE SYSTEM IN GERMANY** <sup>(9)</sup>

The paper concentrates on the most important basic principles of the German system. Details of the system may be found in the synopses of six established systems of employment quotas and compensatory levies prepared for the Conference and annexed to this report.

In Germany, all parties and groups of society are in agreement that disabled persons must not be marginalized. Thus the aim is integration: that is, participation in the life of society, including as full a participation in the economic and working life as possible.

The way in which a society treats its disabled members indicates the moral concepts of that society. It has been and still remains an important concern of the Federal government to promote the integration of disabled and severely disabled persons into working life - into companies and administrations - since the best integration into society is an integration into work and occupation. Work is more than a means to make a living; it is also an opportunity for active participation. This is why this concern is, and remains also in economically difficult times, a central issue of the labour market and social policy of the Federal government.

A central element of the efforts to create and maintain jobs for severely disabled persons is the system of employment quotas and compensatory levies. In Germany, such a system is not the only instrument to create and maintain suitable jobs and training places for severely disabled persons but it complements other important instruments and leads to synergy effects.

The German system can be described in one sentence. Employers are obliged to fill part of their jobs and training places with severely disabled persons; if they fail to meet this obligation, they have to pay a levy.

### **Historical development of the German system**

The roots of a statutory obligation to employ severely disabled persons date back to World War I. The longer the war and the higher the number of war victims, the stronger the general realisation became that it would not suffice to help these

persons only by means of financial allowances. Rather, it was necessary to reintegrate them as far as possible into working life. In the summer of 1917 the then Parliament decided that companies over a specified minimum size should be obliged to employ one war victim per 50 workers.

In the context of the general demobilization after the end of the war, a statutory obligation to recruit severely injured persons was introduced for the first time. In accordance with this regulation, each employer had to fill one per cent of his jobs with severely injured persons, including war victims, victims of industrial accidents and other persons entitled to public pensions and compensation. A few years later this prescribed quota was raised to two per cent, a figure which continued to apply up until the end of World War II.

In special cases individual private employers could be exempted in whole or in part from the obligation to recruit severely injured persons; by way of compensation, they had to pay a certain amount of money. After the end of World War II the so-called 'employers' redemption', payable in cases where the employment quota was not met, was first legally enshrined in regional regulations adopted by the individual Federal states. This question came to be of particular importance because, on account of the large number of war victims, the quota for the employment of disabled persons had been raised to ten per cent. A uniform compensatory levy to apply throughout the Federal territory was first laid down by the Severely Injured Persons Act of 1953. At that time the amount of the compensatory levy which employers were required to pay when they failed to fulfil the employment quota was already highly controversial. Proposals ranged from 25 DM per month up to the monthly average wage. In 1953 agreement was reached on a compensatory levy of 50 DM per month.

The next step of fundamental importance was made about twenty years later, in 1974, with the adoption of the Severely Disabled Persons Act. The scope of persons to be protected was extended to all severely disabled persons regardless of the nature or cause of their disability. At the same time the system under which employers were obliged to recruit severely disabled persons and to pay a compensatory levy was revised.

The Act obliged every employer with 16 jobs or more to make a contribution to the integration of severely disabled persons into work, occupation and society. The priority way to achieve this aim should be for them to fill six per cent of their jobs and training places with severely disabled persons. Any employer who was not able to fulfil this quota had to pay a compensatory levy of 100 DM per month. It was expressly stipulated, however, that the payment of the levy would not release an employer from the obligation to take on severely disabled persons. Public sector employers were also required to pay a levy when they failed to fulfil the quota.

The legislation of 1974 was a great step forward in the field of social policy, particularly because the scope of persons to be protected was no longer limited to



specific groups (such as war victims) but was extended and has covered all severely disabled persons ever since. The legislation provides that the term 'severely disabled persons' includes all persons residing or working in Germany whose disability amounts to a degree of 50 per cent or more; the nature and cause of the disability are not relevant in this context. This means that the term includes persons born with a disability and persons whose disability results from a disease, a traffic accident, an accident at home or in one's leisure time, or from special health impairments that are irregular in view of the person's age. The statutory protection may be extended to persons whose disability amounts to a degree of 30 per cent or more if such persons have particular difficulties in the market for jobs or training places as a result of their disability.

Basically, these essential features of the system of employment quota and compensatory levy have remained unchanged since their introduction. The level of the compensatory levy was adjusted in 1990, however, and now stands at 200 DM per month.

## **The German system to integrate severely disabled persons into working life**

The two pillars of the German system are the employment quota and the compensatory levy.

### *Employment obligation on employers*

The most important pillar of the current system is the employment obligation on German employers. As already mentioned, every employer with at least 16 posts in Germany is subject to the obligation to fill no less than six per cent of posts with severely disabled persons. The term 'posts' includes not only workers and salaried employees, but also civil servants, judges, trainees and other persons recruited for the purpose of vocational training. Exemption is made for certain posts, such as part-time jobs of less than 18 hours a week, and for employment which, by nature of the work involved or by virtue of contractual agreement, has a maximum duration of eight weeks.

The employment quota was not 'arbitrarily' fixed at six per cent but was based on the following considerations. In Germany the total number of severely disabled persons of working age is about 1.1 million; of those some 925,000 are in employment and about 190,000 are unemployed. Considering that due to a certain difficulty of placement of severely disabled persons there should be, as far as possible, a certain margin of posts available, the total number of posts required is 1.3 million. This figure corresponds to a quota of six per cent of all relevant posts in private industry and the public service.

The employment quota is without limitation applicable throughout Germany to all administrations, industries and all types of operations. It applies to private

and public employers alike. There is no possibility of reducing the quota for individual employers. The legislation is based on the assumption that, despite the difference in employment possibilities that may exist in the private and public sector, in administrations and industries, and different types of operations, every employer with 16 or more employees is *in a position* to fulfil at least the prescribed six per cent quota.

The employment obligation on employers is not matched by a corresponding individual right to employment on the part of severely disabled persons. Thus, the individual severely disabled person does not have an enforceable claim to be employed or recruited by a certain employer, be it the government or any other employer.

An employer may fulfil the obligation to employ severely disabled persons not only by providing full-time employment. Severely disabled persons and disabled persons of similar status may also be employed on a part-time basis for less than 18 hours a week. Employers may also provide homework for disabled persons. In cases where workplaces need to be refitted or where severely disabled persons are employed for the purpose of training, multiple counting is possible.

The figure of 190,000 disabled persons out of work represents a specific unemployment rate of about 17 per cent. If every employer fulfilled the employment obligation, severely disabled persons would not suffer from unemployment. In practice, however, the quota reached for all employers subject to the obligation is only four instead of the legal six per cent. For private employers alone, the actual quota achieved is not more than 3.6 per cent.

The causes of unemployment among severely disabled persons are complex. Their specific situation should always be borne in mind. About 63 per cent of unemployed severely disabled persons are aged 50 or older, whereas for the unemployed as a whole the corresponding rate is only about 25 per cent. Moreover, more than 25 per cent of unemployed severely disabled persons have been out of work for two years or more, whereas for the unemployed as a whole the corresponding rate is only about ten per cent.

Employers argue that their inability to fulfil the employment quota is attributable to the fact that it was not always possible to find a suitable disabled person to fill the job offered. This situation may only occur if the placement services are called in *ad hoc*, on short-term notice, and if especially qualified applicants are requested. In such cases it is hardly surprising that a suitable disabled job seeker cannot immediately be suggested. There is a convincing case, however, that with more long-term personnel planning this situation could be avoided.

Many employers are not really willing to recruit disabled persons. Yet it often needs only a few minor adjustments to make a workplace suitable for disabled workers. Some employers have a wrong notion that workers with disabilities perform less well or that the workplace has to be refitted at the cost of the

company or the administration. Others fear that the employment of disabled persons might result in additional expenses or other inconvenience. These fears are quite unfounded. On the one hand, there is a large catalogue of available assistance (described later in the context of fund disbursement). In most cases, however, the failure to hire a disabled person is not due to a lack of money. Rather, it is due to a lack of imagination, an inability to visualise a disabled person doing the job. A lack of information and existing preconceptions have given rise to the notion that the recruitment of severely disabled persons constitutes a risk - a risk which, at a time of increasing cost constraints and tougher competition, many employers are not prepared to take.

The Federal Ministry of Labour and Social Affairs is continuously calling upon employers to take their legal obligation towards disabled persons seriously. Employers must also in future be aware of their responsibility vis-à-vis these persons who have to cope with a hard fate and they should be active in trying to find solutions. Of course, appeals to others are more credible when an example is set. The Federal Ministry of Labour and Social Affairs currently employs about ten per cent severely disabled persons among its personnel.

### *The compensation levy*

The second pillar of the German system is the compensation levy. As already mentioned, employers who do not fulfil their employment obligation to the extent specified are liable to pay a compensation levy of 200 DM per month for each reserved post unfilled.

Liability to pay the levy does not depend on whether the employer is unwilling or unable to employ disabled persons. It is solely determined by the *fact* that disabled persons are not employed to the extent required. The compensation levy is payable even in cases where there has been no suitable disabled job applicant or where the employer applies very stringent suitability criteria and thinks that available candidates are not suitable.

It should be noted that every employer is obliged to equip and maintain work premises, installations, machines and equipment in such a way that at least the prescribed six per cent of severely disabled persons can be employed. For this purpose financial assistance from the compensation fund is made available.

For a full understanding of the system, the purpose of the compensation levy should be comprehended. The levy is not imposed for the purpose of raising funds to finance occupational or general rehabilitation. Nor is the financial liability the levy entails intended as a coercive instrument. The levy is imposed for two reasons. On the one hand, it is intended to skim off the cost advantage of those employers who do not employ disabled persons at all, or to the extent required by law. It therefore acts as an equalisation mechanism. Employers employing the required number of disabled persons incur additional costs because of extra leave disabled persons are entitled to, or because of absence

from work due to the disability. The compensation levy is to ensure that the financial burden is equally spread among all employers. On the other hand, the compensation levy is to persuade employers to fulfil their employment obligation. Therefore, it has also a disciplinary function.

In this context it should be emphasised that under German law an employer who is subject to the employment obligation does not have a choice between the employment of severely disabled persons and the payment of the levy. Payment of the levy is not an admissible substitute for the employment obligation. Nor is there suspension or redemption of the employment obligation when the levy is paid. It is not possible to 'buy off' the employment obligation by paying the levy.

Where in individual cases an employer is to blame for not employing severely disabled persons or not employing them in adequate numbers, the employment services may impose fines which considerably exceed the amount of the compensation levy payments. However, this possibility is hardly ever used.

### **Fund disbursement**

The revenue from the compensation levy payments reflects the extent to which the employment obligation is fulfilled: the less payments received, the greater the compliance with the law. Under this perspective it is not reassuring to note that in 1995 just over one billion DM was paid in the form of compensation levies. The only positive fact is that these funds are available now.

The funds are almost equally shared between the federal government and the Länder. Roughly half the money is given to the federal government for supra-regional or central tasks of occupational integration of severely disabled persons. The other half is spent by the Länder for regional tasks and for individual benefits towards employers and severely disabled persons.

The levy revenue must only be used for the purpose of integrating severely disabled persons into gainful employment. Programmes for other groups of persons, including programmes for medical rehabilitation or for general social integration, or for disabled persons other than severely disabled persons, must be financed from other sources.

Personnel and material costs incurred by the administration and the procedural costs of the authorities involved may not be paid from compensation levy funds either.

It is important to mention that the compensation levy funds are used only in a subsidiary and supplementary manner. This means that all other funding possibilities of the employment services and other social benefit institutions must first be exhausted. The compensation levy which is paid by the employers must not be used to save the budget funds of the responsible public authorities or to make up budget deficits.

The benefits payable from the compensation levy fund are available for employers, disabled persons and institutions providing specific programmes and facilities.

### *Benefits payable to employers*

Among the benefits payable to employers, wage costs subsidies should be mentioned first. As a rule these are granted for up to three years and for up to 80 per cent of the costs, in order to help with the integration of severely disabled persons in particularly difficult cases. Moreover, employers may receive investment subsidies in the form of loans or grants to create jobs and training places for severely disabled persons.

Employers may also be granted financial subsidies for:

- the installation and maintenance of work premises including production facilities, machines and equipment taking account of the needs of disabled persons
- the creation of part-time employment for severely disabled persons
- the equipment of work and training places with the necessary technical aids
- other measures which may enable, facilitate or guarantee, if possible, permanent employment in suitable jobs.

Last but not least, there are benefits to employers to compensate for the extra efforts resulting from the employment of specific categories of disabled persons. This includes, for example, the cost of readers for blind workers.

### *Benefits to severely disabled persons*

Where necessary the severely disabled persons themselves may also receive various benefits. These include, *inter alia*:

- assistance with technical work equipment, e.g. subsidies for purchase, maintenance and repair
- assistance with transport to and from work; this includes in particular subsidies for the purchase of a car adjusted to the respective disability
- subsidies towards achieving financial independence, i.e. in order to set up and run a business of one's own
- subsidies towards buying, equipping and maintaining accommodation adjusted to the disability
- subsidies towards the participation in programmes in order to maintain and develop vocational qualifications and skills, insofar as their funding does not come under the responsibility of the employment offices or any other organisation.

## *Benefits for institutions*

The following benefits are available for institutions providing specific programmes and facilities:

- benefits to pay the fees of 'psycho-social' services; the task of these services, which are not 'authorities' in themselves but may be called in by an authority, is to provide work and job-related assistance and counselling in particular for psychologically disabled persons
- financial assistance to provide information, training and education, as well as for information brochures and information events
- subsidies towards the setting-up, extension, equipment and modernisation of facilities aimed at the integration of severely disabled persons into working life. This includes especially subsidies towards workshops and accommodation for disabled persons. In 1995 about 140 million DM were made available for this purpose from the federal government's share of the compensation levy revenue.

## **Complementary integration instruments**

The German system described so far, which combines an employment obligation with a compensation levy, cannot be the only means of integrating disabled persons into working life. It can only work in conjunction with other integration instruments. These include:

- qualified career guidance and vocational counselling for disabled persons
- comprehensive education programmes for disabled persons financed from public funds - if necessary in specialized vocational rehabilitation institutions since, in a market economy, skill training is the most important key to the integration of disabled persons
- assistance from public funds if such assistance is necessary for the occupational integration of persons with disabilities
- special protection against dismissal for severely disabled persons after six months of employment
- a specific representation of the interests of severely disabled persons in companies and administrations, through special elected representatives
- information and 'awareness-raising' that persons with disabilities can work as well and as efficiently as non-disabled persons provided they get a job suited to their abilities and needs.

On this last point, two compilations of the German experience with the occupational integration of persons with disabilities are available. One is a booklet with the same title published by the Federal Employment Service; the other one is the data bank REHADAT containing a documentation of over 2,000 practical examples of a successful occupational integration of persons with disabilities. Both compilations are also available in English.

## **Conclusion**

The summary of the German policy towards disabled persons of recent years is positive and encouraging.

In Germany about 6.5 million persons were recognised as severely disabled persons at the end of 1995. This is approximately eight per cent of the resident population. Among them are about 1.1 million severely disabled persons who are able to work under the general conditions of the labour market; 925,000 of them have found employment on the general labour market. So a fairly high level of employment of severely disabled persons in Germany has been reached successfully with the existing instruments to further integration into occupation and working life.

There is wide agreement that in particular the German system of employment quota and compensation levies contributed to this success. Without this system a far higher number of severely disabled persons would have been affected by unemployment. This is why in Germany at present one cannot see a realistic alternative to the existing combination system, despite intermittent outbursts of political discussion on specific elements of this system, for example, on the level of the quota or the amount of the compensation levy.

Yet this agreement across party lines can advance policy towards disabled persons only if society as a whole does not turn a deaf ear to their concerns. To ease the situation of persons with disabilities, non-disabled persons have to correct their perception of them. Government and politics can only set the framework for equality of opportunities. What is decisive is the actual way in which people deal with one another in daily life. To live with disabled persons means also to learn from disabled persons; integration into the world of work is an important step on this way and an imperative of solidarity and humanity. Former Federal President Richard von Weizsäcker summed it up in a sentence: 'What we have to learn is difficult, and yet so simple and clear: it is normal to be different'.

## **THE SYSTEM IN POLAND**

### **DISABLED PERSONS LEGISLATION: HISTORICAL BACKGROUND<sup>(10)</sup>**

Vocational rehabilitation started to develop in Poland after World War II, with short-term occupational training centre courses for war-disabled ex-soldiers and civilians, and with employment in ordinary establishments and in the emerging co-operatives for disabled people.

From 1950, district level vocational rehabilitation trainers played an important role in preparation for work. From 1954, Doctors' Committees for the Disabled and Employment, acting at the district and provincial levels and comprising two or three doctors and a representative of the Social Insurance Institute, have issued certificates of disability for the purpose of granting

disability pension and vocational rehabilitation, and have determined eligibility criteria for rehabilitation benefits.

## **Co-operatives for disabled people**

It was generally recognised that the best solution was to provide jobs for disabled people in specially established co-operatives. In 1949 the Central Co-operative for the Disabled was set up, with the aim of increasing economic capacity and the employment rate among disabled people. By 1954, a total of 338 co-operatives employed 73,000 disabled people. In 1988, 422 co-operatives employed 190,000 disabled people. The percentage of disabled employees in co-operatives varied. Under regulations current in the seventies, co-operatives had to meet an employment index set by the head of the province; in all co-operatives in one province the index was 70 per cent but it could vary in individual co-operatives.

From the outset, co-operatives for disabled people were characteristic of the Polish model of rehabilitation, combining economic goals with rehabilitation objectives. In their rehabilitation departments and out-patient clinics, the co-operatives came to employ physicians, psychologists, nurses, physical education teachers, physiotherapists, social assistants, trainers, vocational assessment experts, sign language interpreters and so on. They ran sanatoria and rehabilitation and holiday centres. Their own scientific and research projects helped lay the theoretical foundations for rehabilitation. They played a pivotal role in employment of people with mental handicap and mental illness, blind people and those with severe mobility impairments.

In 1960 responsibility for vocational rehabilitation moved to the renamed Ministry of Health and Social Care from the Ministry of Labour. The co-operative model was generally unaltered. Co-operatives were obliged to provide their workers with medical and rehabilitative care. Economic support included the exclusive right to manufacture certain types of product, tax breaks and exemptions from other duties. Over the years (1967, 1973 and 1985) the tasks imposed on the co-operatives increased and included setting up protected labour establishments for disabled people requiring special work conditions and organising occupational courses, especially for young people.

The Union of Co-operatives of the Disabled and, after 1980, the Central Union of Co-operatives for the Disabled and the Central Union of Co-operatives for the Blind, determined the operating principles, standards, tasks and procedures for a wide range of rehabilitation provision, and for the distribution of the central rehabilitation fund. The Polish unions for disability groups (Union for the Deaf, Union of the Aged, Disability Pensioners and the Disabled, Union of Disabled War Veterans, Union of Blind Soldiers and the Society for Combating Disability) also had a considerable impact on the care system. They assisted the co-operatives and ran their own manufacturing plants, as well as campaigning on behalf of disabled people.



## **Employment in ordinary establishments**

A significant legal act in May 1967 was the Ordinance of the Council of Ministers on the planned employment of disabled persons. It placed an obligation on ordinary establishments to employ disabled people in posts not detrimental to their health where average work efficiency was attained, and to set up and run industrial therapy workshops. (No percentage employment index was set, however.) To attain those objectives, employers in companies with more than 500 workers were obliged to set up company-based employment and rehabilitation committees for disabled workers.

According to estimates dating back to the late eighties, ordinary establishments employed some 600,000 workers classified in one of the two disability categories. However, it must be stated that in practice employers tried to hire persons with maximum efficiency and avoided hiring those with severe handicaps. Such practices led to the isolation of more severely disabled people and a concentration on co-operative employment.

## **Social context**

Looking back, the apparent self-sufficiency of a hermetic system led to considerable isolation of disabled people from the rest of society: disabled persons attempted to solve their problems inside the co-operatives and society ceased to notice the existence of persons with disabilities.

The situation was made worse by the fact that until 1989 other problems of the disabled were not noticed. Whole towns, housing estates and public buildings were constructed with no regard to the needs of people with impaired mobility, leading to a situation where most facilities, including education, culture, offices and shops, were not accessible. Many years of inaccessibility in academia and schools resulted in low educational levels for most disabled persons and limited their occupational capabilities to perform simple tasks. Apartments not accommodated to their needs, streets full of barriers and inaccessible municipal transport furthered their isolation. Disability did not fit with the propaganda of the socialist era, and authorities were more than eager to exploit the situation. The problems of disabled people were not discussed and the media cautiously avoided them.

Paradoxically, at that time the theoretical basis of rehabilitation was well developed. The 'Polish model' was emerging, although better known internationally than in Poland, thanks to a few prominent individuals, notably Professors Wiktor Dega, Marian Weiss and Aleksander Hulek.

## **Changes from 1989**

In December 1989 under the Employment Act some responsibilities for vocational rehabilitation (vocational guidance and labour exchange) were transferred to the Ministry of Labour and Social Policy. In 1990, all co-operative headquarters were dissolved, including the Central Union of Co-operatives for the Disabled and the Central Union of Co-operatives for the Blind. In 1991, the Council for the Elderly, Invalids and the Disabled (set up in 1982 to oversee implementation of a parliamentary resolution following the UN International Year of Disabled Persons) was dissolved.

As a result of the economic changes, many companies collapsed and employment in ordinary plants declined; many disabled workers lost their jobs or were forced into early retirement and receipt of disability or old-age pension. Co-operatives were particularly adversely affected and totally unprepared for operation in the free market economy and the new economic conditions. Consequent to all those changes, the whole legal and formal system on which vocational and social rehabilitation had hinged ceased to exist.

Legislative steps towards a more coherent and modern approach to rehabilitation and integration include:

- Act of 9 May 1991 on employment and vocational rehabilitation of disabled people which aims to equalise employment opportunities on the market, entrusts the leading role in solving problems of the disabled to the Plenipotentiary for the Disabled, Secretary of State, Ministry of Labour, and establishes the State Fund for Rehabilitation of Disabled Persons that raises funds for supporting activities pertaining to vocational, medical and social rehabilitation
- Act of 7 September 1991 accounting for the system of special schools and educational centres for disabled children and youth
- Act of 19 August 1994 on protecting rights of patients with mental health disorders
- Act of 7 July 1994 regulating accessibility to buildings and facilities for disabled people
- Recently amended Act of 29 November 1990 on social assistance, stipulating possible provision of various benefits in difficult life circumstances.

The major responsibilities of the Plenipotentiary for Disabled Persons comprise development of state policy on employment and rehabilitation, and on work conditions; analysis and projections of the social and vocational situation of disabled people; programme development; review of the normative acts on employment, rehabilitation and living standards; development of training programmes for the personnel of institutions and organisations acting for disabled people; supervising the content of the work of the Provincial Centres for Employment and Rehabilitation; and, as Chairman of the Supervisory Board, exercising control over the State Fund for Rehabilitation of Disabled Persons.

In 1996 the legal system was reviewed and the extent to which it meets the needs of disabled people assessed. A new act was being drafted at the time of the Conference<sup>(11)</sup>; proven mechanisms for equalising opportunities for disabled people, especially those supporting occupational activity and their position on the labour market, were to be retained or reinforced.

At present there are 4.5 million disabled people in Poland (more than 14 per cent of the total population) and the Central Statistical Office forecasts an increase to six million by 2010. Reasons for disability are changing and becoming more complex. The threats of diseases of modern civilisation, weakness in promotion of health and medical care, hard working conditions, transport problems, low levels of health awareness and low regard for the value of good health are gradually being reduced and should lead to a slowing down of the growth in the number of disabled persons.

## **STATE FUND FOR THE REHABILITATION OF THE DISABLED<sup>(12)</sup>**

### **Act on Employment and Vocational Rehabilitation of the Disabled 1991**

The Act of 9 May 1991 on Employment and Vocational Rehabilitation of Disabled Persons regulates duties and rights of employers pertaining to the employment of disabled persons, regulates labour exchange, established the Plenipotentiary for Disabled Persons and set up an earmarked fund, the State Fund for Rehabilitation of Disabled Persons.

The form of the regulations in the Act was borrowed from the French and German systems. A basic assumption is that every employer should employ at least six per cent disabled people in the company.

### **Payments to the Fund**

Eligible employers who fail to meet the requirement to employ at least six per cent disabled people have to pay defined amounts monthly<sup>(13)</sup> to the State Fund for Rehabilitation of Disabled Persons for each permanent post, reflecting the difference between the actual and prescribed employment level of disabled people; an employer would have paid about US\$ 189 in November 1996 and US\$ 200 in December 1996.

Payments to the Fund are also made by protected labour businesses. The payment accounts for ten per cent of amounts obtained through tax reliefs. Tax reliefs and exemptions have been used to encourage the establishment of protected labour companies; that is, where at least 40 per cent of employees are disabled and where appropriate work conditions and medical and rehabilitation care are provided. Protected labour businesses are mainly for persons whose disability hampers or precludes employment on the open labour market.

Companies with total employment below 50<sup>(14)</sup> workers, and temporary state and municipal budgetary units, are exempt from payments to the Fund. In 1996 the duty of making payments applied to more than 14,000 employers and about 1,500 protected labour businesses.

The payments to the Fund are regulated by the provisions on tax liabilities, under which fiscal audit offices have to control payments and to vindicate liabilities owed to earmarked funds such as the State Fund for Rehabilitation of Disabled Persons. The results of audits made at the employers' businesses are passed by the fiscal audit offices to the Fund.

Employers who fail to meet the duty to make payments, or are in arrears, are subject to the vindication procedure initiated by the Fund under the Code of Administrative Procedures. The Fund has the right to issue an executive title and to direct the tax office to the tax collector, without notifying an insubordinate debtor to pay the overdue tax payments. On this basis the tax collector seizes the debtor's bank accounts and movables. The real estate can be seized with the aid of a court bailiff. Thus, the Fund is entitled to collect its dues without court decision and is increasingly effective in doing so.

The law-makers provided for two options for employers to reduce payments if they fail to employ six per cent disabled people. The first option is to employ those with more severe dysfunctions (epilepsy, deaf, blind, deaf and dumb, or mental handicaps) who count as more than one disabled employee. The second option is to purchase products and services produced by protected labour businesses. Interest by employers in this form of co-operation with the protected labour businesses is noticeably increasing, as their products and services have become quite competitive on the Polish market, in terms of both quality and price. As a result, the Fund's revenues from this source were lower in 1995 by US\$ 126.7 million and in 1996 by US\$ 120.2 million.

On the other hand, employers with more than a six per cent share of disabled people in their total employment get an income tax break equal to the share of disabled employees; and if the share is higher than 50 per cent the employer is then exempt from income tax payment. Half of the funds obtained through reliefs and exemptions is retained by the company and the other half goes to the Fund.

The law-makers also provided for other sources of Fund income, such as state budget subsidies, donations and endowments, and revenues from economic activities. However, the payments made by employers so far account for approximately 90 per cent of the funds managed by the Fund. Approximately ten per cent accounts for own revenues, with the main source being management of idle cash.

## **Purposes of the Fund**

Under the provisions of the Act, financial resources of the Fund are allocated for vocational, social and medical rehabilitation of disabled people, which includes in particular:

- creating new jobs and adaptation of existing jobs for disabled people
- training and retraining
- construction and modernisation of rehabilitation facilities
- setting up and operating activity therapy workshops
- creation of rehabilitation and social infrastructure
- subsidising interest on bank loans drawn by the protected labour businesses
- reimbursement of discounts given to disabled people for transport insurance.

The wording 'in particular' implies that the list of objectives is still open. From the beginning of its operation the Fund has financed many more objectives than specified in the Act.

The Fund also subsidises:

- elimination of architectural barriers in public facilities
- transport routes, and adaptation of flats of disabled people
- fixed period rehabilitation stays (active rest combined with medical and social rehabilitation)
- public and community transport meeting the needs of disabled people.

Under the announced earmarked projects the Fund extends loans to disabled people towards purchases that will support them in their professional activity (passenger vehicles, computers, adaptation of flats and so on). The Fund stimulates and finances creation of new jobs in rural areas and small towns. It provides the Ministry of Health with funding it lacks for free provision of basic orthopaedic equipment and medical aids for disabled people. Additionally, through an organised network of non-profit hire shops, it supplements the Polish system for provision of personal aids and rehabilitation equipment for disabled persons.

The first one and a half years of the Fund's operations was in practice a fund accumulation period. Within this period the Fund spent approximately 25 per cent of its revenues. Such a small fund utilisation rate was due to the lack of sufficient interest on the part of employers in creating jobs for disabled workers. Another important reason was that the Fund and other institutions set up to execute the Act were organised only after the Act had come into effect.

The fact that the Act came into force without a *vacatio legis* period explains why for more than five years of operation there has been a continuous process of modifying rules and procedures of these institutions, aimed at more effective utilisation and control over the funds. It must be admitted that only recently have

all of the funds' allocation titles been covered by rules and procedures known also to the funds' recipients.

In addition to the 'in particular' purposes of funds allocation listed in the Act, there is also an entry which states that excessive funds of the Fund may be used for extending loans, bringing stakes into companies, purchase of share bonds, maintaining existing jobs for disabled people which are threatened with liquidation, and for vocational, social and medical rehabilitation of children and young people. The last two purposes were introduced into the Act by parliament in August 1995, which was the legal confirmation of the Fund's practice in previous years.

The following persons may apply for the funds from the Fund.

*Employers*, regardless of their status and scope of activities, provided that they wish to organise a job for a disabled person. The costs borne by them in relation to setting up a new job for an unemployed disabled person or instrumentation of existing jobs are subject to reimbursement of up to 30 times the average wage per each job. At present this gives approximately US\$ 12,000. Additionally, for an 18-month period the employer is eligible for reimbursement of wages paid to a disabled person sent to perform this job by a labour office, not exceeding the average national wage (approximately US \$ 400) and reimbursement of the social insurance contribution. The employer is obliged to employ a disabled person in such posts for a period of not less than three years.

*Protected labour businesses, government and local government institutions, and non-government organisations (NGOs)* executing tasks for disabled people may obtain subsidies for:

- a. construction and upgrading of facilities used for vocational, medical and social rehabilitation
- b. creation and operation of activity therapy workshops
- c. creation of rehabilitation and social infrastructure
- d. liquidation of architectural barriers in the public use facilities, in buildings inhabited by disabled people and in the streets.

*Disabled individuals* may enjoy: training and retraining courses financed by the Fund; business start-up loans; fixed period rest and rehabilitation stays that are financed by the Fund to a large extent; subsidies towards the elimination of architectural barriers in flats; and loans under earmarked projects supporting vocational activation.

*Protected labour businesses*, in addition to the purposes listed above, in order to maintain the employment of disabled people, may also apply for (a) subsidy to

interest on drawn bank loans, and (b) subsidy to wages of mentally ill and mentally impaired employees. They may apply for preferential interest loans from the excess funds of the Fund (mainly for investment projects) and for assistance to maintain existing jobs of disabled employees which are threatened with liquidation.

Given the specific circumstances of protected labour business operations, the relatively high costs of economic activity stemming from lower work efficiency of disabled employees and the requirement to provide medical and social rehabilitation, the law-makers relieved such businesses from a duty to pay income tax and payroll tax to the state budget. The protected labour businesses transfer 90 per cent of the exemption-related amounts to the plant rehabilitation fund and ten per cent to the State Fund for Rehabilitation of Disabled Persons. Under the provisions issued by the Minister of Finance, the protected labour businesses enjoy more favourable, separate VAT provisions. Since 1996, the surplus of the VAT tax paid by protected labour businesses to the Fund can be used for subventions to such employers.

## **Fund activities and financial allocations**

A number of activities for disabled people supported with funds from the Fund have already brought considerable and tangible results.

In 1991-1996 the Fund had at its disposal a total amount of US\$ 1,520 million. Within this period the Fund spent approximately US\$ 1,200 million by refunding and financing costs of a number of statutory activities. The funds of the Fund allowed in particular for:

*Job creation:* creation by employers of approximately 71,600 new jobs for disabled people over the period 1992 to 1996 (17,800 in 1996) and subsidy of wages and social insurance contributions of disabled employees, both on the open labour market and in protected labour businesses. Spending over that period for these purposes amounted to US\$ 456 million (140 million in 1996).

*Training and retraining* of 11,300 disabled people from 1992 to 1996 (1,000 training course graduates in 1996) for a total US\$ 2 million (0.2 million in 1996).

*Activity therapy workshops:* financing the organisation and operations of activity therapy workshops (50 workshops in 1996) for disabled people completely unfit for work. Some 7,000 disabled persons used their services. For this purpose, the Fund has spent US\$ 49.5 million since 1992 (23.2 million in 1996). Another 12 workshops for more than 350 persons are being organised.

*Elimination of architectural barriers* in some public use facilities and in flats of disabled people, for which the Fund allocated US\$ 108.2 million between 1993 and 1996 (24.4 million in 1996), though the needs in this area are enormous.

To execute the listed tasks the Fund allocated funds to provincial centres for employment and rehabilitation of disabled people set up under the Act of 9 May 1991 for the execution of these tasks. The centres operate within the organisational structures of provincial labour offices (special administration).

The remaining statutory tasks are financed directly by the Fund's Headquarters.

## **Major beneficiaries of subsidies**

### *Protected labour businesses*

The Fund provided the following subsidies to protected labour businesses.

- *Wages for mentally handicapped and mentally ill employees*: subsidies amounted to US\$ 58 million between 1992 and 1996 (15.5 million for 14,500 persons in 1996). The monthly subsidy level per one employee accounted for 75 per cent of the lowest national wage and social insurance contribution paid on his amount. For example, in December 1996 subsidy to one permanent job amounted to US\$ 102.
- *50 per cent of bank loan interest* - the total subsidy between 1992 and 1996 reached almost US\$ 49 million (19.5 million in 1996).
- *For maintenance of jobs threatened with liquidation* 89 employers received US\$ 16 million.
- *Modernisation of medical and recreational infrastructure* and purchase of additional rehabilitation and medical equipment subsidies amounted to US\$ 11 million (1994 to 1996 only).
- *Subventions* for financial shortfall in the production and seasonal services; to offset lower work efficiency of disabled employees; partial reimbursement of incurred capital expenditures; provision of bridging finance to maintain financial liquidity; repayment of bank loans and loans extended by the Fund. Using the surplus of VAT tax paid to the Fund in 1996 by the protected labour businesses, subventions received amounted to US\$ 40.4 million.

The fiscal policy of the state for the protected labour businesses, and a possibility of obtaining additional financial support from the Fund, resulted in a growing number of employers interested in protected labour business status. In 1992 there were 560 protected labour establishments with 80,700 disabled employees. In 1995, numbers were 1,360 and 105,000 respectively. By 15 February 1997, 1,800 employers had that status, employing approximately 140,000 disabled people.

### *Health care units*



To improve the quality of services and widen the scope of activities, of rehabilitation services in particular, in the last three years the Fund financed health care units for a total amount of more than US\$ 50 million, of which:

- More than US\$ 25 million was earmarked for extension and modernisation projects of medical and rehabilitation units and for provision of rehabilitation and medical equipment.
- About US\$ 25 million was earmarked to improve the supply of orthopaedic items, rehabilitation equipment and medical aids for disabled people. The supply is complemented by a network of equipment hire shops opened and financed by the Fund. At present 50 hire shops are operational in Poland.

### *Providers of vocational and social rehabilitation*

Central offices, local administration units, and cultural and educational facilities received from the Fund more than US\$ 17 million over the last three years to be used on vocational and social rehabilitation of disabled people.

### *NGOs*

In addition to central and local administrations whose responsibilities include wide-ranging activities for the disabled (medical care, education) and the earmarked fund, there are many NGOs in Poland that play an intermediary role between disabled people and institutions. The activities of some 4,500 associations, unions and foundations are oriented at providing assistance to a defined disability group, for example, the Polish Union of the Blind, Polish Union of the Deaf, Polish Association for the Mentally Handicapped, Society for the Combat of Disability and so on. Many of these organisations have decades of tradition behind them, and are active in the international arena.

In most cases these organisations' own resources for their activities are scarce and the funds raised from the central and local administration offices are frequently insufficient. Therefore, the Fund supports them as much as possible. In 1994 to 1996 the Fund provided subsidies to the NGOs totalling more than US\$ 36 million.

### *Short-term rehabilitation stays for disabled people*

Since 1993 the Fund has partially covered the participation costs of fixed period rehabilitation and rest stays. Disabled people are extremely interested in this form of rehabilitation, which goes beyond the capabilities of the Fund. To date the Fund has spent for this purpose US\$ 41 million, which allowed more than 330,000 disabled people and their care-givers to participate in two-week stays (141,000 participants in 1996).

An addition in August 1995 to the Act of 9 May 1991 on a possibility of earmarking surplus funds of the Fund for vocational, medical and social rehabilitation of children and youth allowed the provision of subsidies in 1996 amounting to US\$ 6.3 million, although needs in this area are much bigger.

### *Adapted transport projects*

In Poland a fundamental problem is disability unfriendly public transport. Frequently the impediment to entering employment is the impossibility of reaching medical and rehabilitation centres and places of work. To overcome this impediment, the Fund finances the purchase of adapted urban public transport (low-floor buses) and minibuses for the protected labour businesses and institutions for disabled persons, that are used for commuting to work, and transportation to rehabilitation centres and activity therapy workshops. Over the five year period, the Fund financed and commissioned, as well as providing bridging finance for purchase, more than 600 low-floor urban buses and approximately 700 minibuses. On transport projects the Fund spent US \$ 25.3 million in 1995 and 1996.

### *Ministries and central offices in the 'Government Action Plan'*

The Fund also provides bridging finance for the tasks executed by ministries and central offices stipulated in the 'Government Action Plan' for the benefit of disabled people. The Plan has been in operation for more than three years. To date the Fund has spent US\$ 15.4 million to support the realisation of the tasks under the Plan by the ministries and central offices.

### **Preferential loans**

In addition to expenses in the form of cost reimbursement and subsidies, the funds gathered by the Fund are also used to extend preferential loans.

*Protected labour businesses* were granted 943 loans between 1991 and 1996 (81 in 1996), mainly to finance investment projects, totalling more than US\$ 170 million (29.7 million in 1996).

Provincial employment services extended more than 6,000 *business start-up loans to disabled individuals* between 1992 and 1996, totalling US\$ 28.7 million (1,500 loans totalling 9.3 million in 1996) .

Under the earmarked programmes announced and executed by the Fund 16,200 persons were granted loans for the total amount of US\$ 65.6 million. These were *programmes targeting specific individuals, supporting vocational activity and educational processes*. The recipients of the loans purchased passenger cars and computers, paid for their studies and foreign language courses, and carried out adaptation and exchange of their living quarters. These programmes enjoy

enormous popularity, which goes beyond the Fund's capability to provide assistance of this kind.

*For persons living in small towns and villages* in three provinces with the highest unemployment rate a separate earmarked programme was launched in 1995. The employers who create jobs for disabled workers, or disabled persons who themselves create jobs, get preferential loans. By the end of 1996 under this programme 106 loans were extended for a total amount of US\$ 1.3 million. As a result some 180 jobs will be created. Recently the programme was expanded to cover an additional nine provinces.

## **Operation of the State Fund for Rehabilitation of Disabled Persons**

The bodies of the Fund comprise the Supervisory Board and the Board of Directors.

The Chairman of the Supervisory Board is the Plenipotentiary for Disabled Persons. The Supervisory Board consists of six members appointed, and dismissed, by the Minister of Labour and Social Policy.

The responsibilities of the Supervisory Board entail:

- a. adoption of business plans and draft financial plan of the Fund
- b. determining criteria for selecting undertakings financed from the funds of the Fund
- c. approval of the Board's motions on drawing loans
- d. control and evaluation of the Board's activities
- e. approval of annual activity reports submitted by the Board.

The Fund's Board of Directors consists of the President and his two deputies. The President of the Board is appointed, and dismissed, by the Minister of Labour and Social Policy following the motion of the Plenipotentiary for Disabled Persons. Deputies of the President of the Board are also appointed and dismissed by the Minister of Labour and Social Policy, following the motion of the President of the Board.

The responsibilities of the Board of Directors entail:

- a. development of the Fund's business plan and draft financial plan
- b. selection of undertakings to be financed

- c. fund management, except the competencies of the Supervisory Board
- d. monitoring of utilisation of loans extended from Fund's financial resources
- e. submitting activity reports to the Supervisory Board
- f. employment of the Fund's office workers and determining terms and conditions of their work and remuneration.

Each year the Fund prepares a financial plan, which represents an appendix to the state budget. The plan and its execution report are reviewed by the parliamentary social and budgetary policy committees.

Additionally, the State Fund for Rehabilitation of Disabled Persons, as a body managing an earmarked fund, is subject to annual revision by the state superior audit body.

Main organisational units of the Fund include Headquarters in Warsaw and local branches. The Headquarters initiates organisational matters and co-ordinates the Fund's overall activities, performs directly statutory tasks and supervises the execution of tasks by the branches. The operational costs of the Fund are covered by its revenues. By the end of 1996 they accounted for US\$ 34.7 million, that is 2.3 per cent of total revenues.

The organisational structure has divisions of individual members of the Board:

- a. President of the Board division
- b. Deputy President of Economics and Finance division
- c. Deputy President, Administration and Local Matters division.

In each division there are Directors who are the heads of departments, sections and branches. In the Headquarters there might also be independent posts for advisors and proxies of the President of the Board for individual issues.

At present staff at Headquarters numbers 417 and in local branches 157; of the total 574 persons employed 8.5 per cent have disabilities. It is planned to stabilise employment at Headquarters and to increase employment in the branches.

Branches monitor the correctness of utilisation of funds by bodies within their operational areas, co-operate with services for employment and rehabilitation of disabled individuals, local governments and bodies acting on behalf of and to the benefit of disabled persons, with special emphasis on organisation of jobs and professional activation of disabled people. Branch employees participate in audits to check correct utilisation of funds from the State Fund for Rehabilitation of

Disabled Persons made by the employment services, identify the needs of disabled people, and maintain contacts with the relevant NGOs.

The bodies applying for financial resources from the Fund apply first to the branches, in accordance with the financial procedure. In July 1996 the Fund's Board granted branches the right to make financial decisions within a strictly defined scope and to a certain ceiling, the first step towards decentralising financial decisions. The branches complete and review the applications, then pass them to appropriate functional units at Headquarters, where they are subject to subsequent formal, legal and subject-matter procedures before they are submitted to the Board to make decision. When examining applications, special attention is paid to whether the applicant has already used the Fund's resources and, if so, whether they were utilised as declared and the settlement was made on time.

Seeking more effective forms of financial support for the protected labour businesses, in 1996 the Fund set up a company with an objective of leasing equipment and machinery to the protected labour businesses under terms and conditions much more favourable than in the open marketplace. The assumption was that leasing services to a large extent will replace investment loans that are extended to the protected labour businesses by the Fund.

## **Conclusion**

The effects of various activities targeted at equalisation of opportunities for disabled persons in society are already clearly visible. However, there is still a lot to be done for Poland to state that the content of the message brought by the Decade of Disabled Persons has been fulfilled.

Poland's positive and negative experiences over the last five years may be useful to countries that today are implementing solutions for disabled people or are still developing such a system. They might prove to be useful particularly for the countries of Central and Central Eastern Europe trying to form their internal structures in a new socio-economic environment. Similarly, systems in countries with wider experience and longer traditions will be useful in the continuing process of perfecting the Polish system of vocational rehabilitation and employment of disabled persons.

## **Postscript**

On 27 August 1997 the Polish Parliament passed the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons. The new law provides a continuation and further development of the solutions adopted by the previous Act on Employment and Vocational Rehabilitation of Disabled Persons dated 9 May 1991. The following amendments are of particular significance.

1. The extension of the range of actions which qualify for sponsoring by the State Rehabilitation Fund for Disabled Persons. According to the new legislation, at least 65 per cent of the Fund's revenue for a given year will be allocated to the employment and vocational rehabilitation of disabled persons, while five to ten per cent will be allocated for subsidising medical, social and vocational rehabilitation of children and young people.
2. Extending the quota system by imposing an obligation to employ at least six per cent of disabled employees on establishments with over 25 full-time posts (instead of 50 as before).
3. Increasing the minimum number of disabled employees from 20 to 40 full-time posts needed to qualify an establishment for sheltered establishment status, all other requirements remaining unchanged.
4. Introducing a new form of employment for the most severely disabled persons by providing a legal and financial basis for setting up occupational activity workshops. Such establishments can be started by the local government, any foundation, association or social organisation whose statutory tasks include vocational and social rehabilitation of disabled persons.
5. Providing more training facilities for disabled persons due to creation of new rehabilitation and training centres.
6. Setting up a legal framework for the creation of the National Consultation Board for Disabled Persons so as to ensure greater participation of such persons in the policy and decision making.

Another law which has marked further improvement of the position of disabled persons is the Charter of Disabled Persons' Rights, approved by the Polish Parliament on 1 August 1997. The document states *inter alia* that disabled persons have a right for an independent, active life and may not be subject to discrimination.

## **THE SYSTEM IN JAPAN**<sup>(15)</sup>

According to a survey conducted by the Ministry of Health and Welfare in 1991, the number of physically disabled persons (18 years old and over, excluding those who are accommodated in hospitals and other institutions) in Japan is estimated to be 2.72 million. An estimate of the number of intellectually disabled persons (18 years old and over) is as many as 254,000.

The government of Japan has put great emphasis on the national programme for people with disabilities. The programme, comprising measures and projects with regard to health, education, income, employment, housing, accessibility, security and so on, is organised and developed under a leading role of the Prime Minister's Office. Among the authorities taking part in the national programme, the Ministry of Labour is responsible for the employment programme. According to a survey carried out in 1993 by the Ministry, 344,000 physically disabled persons and 60,000

intellectually disabled persons were employed in the private sector as regular workers, in places of work or business with five workers or more, excluding agriculture and fisheries.

These figures might indicate a substantial achievement but the current state of the employment of disabled persons is not necessarily satisfactory. First, a great many disabled persons seek employment and many of them have not yet obtained jobs. Statistics show that approximately 60,000 or 70,000 disabled persons, every year, visit public employment security offices for placement services. Those who have successfully been placed through the services are less than 30,000 in number. This has resulted in a pool of as many as 70,000 disabled persons who have registered with public employment security offices and are still actively seeking jobs.

Secondly, many employers have yet to hire more disabled persons as obliged by the statutory quota. The statutory quota, 1.6 per cent at present, has been imposed on employers since 1976. The latest report published by Ministry of Labour shows that in 1996 the actual proportion of disabled persons in the total workforce of private sector companies was 1.47 per cent, that is, 0.13 points behind the statutory quota rate. The report also reveals that the proportion of companies which have not yet fulfilled the quota was as high as 49.5 per cent of those companies subject to the obligation to employ at least one disabled person or more. It is obvious that there is much to improve upon both in supply and demand.

## **History of legislation in Japan**

The Ministry of Labour's employment programme has been developed on the basis of the Law for the Employment Promotion, etc. of the Disabled.

Legislation first appeared in 1960. Before that, there had been registration of disabled persons seeking jobs and a selective placement service implemented by public employment security offices. Legislation already in place in other countries, and the adoption of ILO Recommendation No. 99 on vocational rehabilitation in 1955, made people strongly aware of the necessity of legislation to promote the employment of disabled persons more effectively.

The law was originally entitled the 'Physically Disabled Persons' Employment Promotion Law', which focused its application on the employment of physically disabled persons only; both mentally retarded persons and persons with psychiatric disabilities were excluded from its scope. A quota scheme first materialised with this law. The quota scheme, however, imposed merely a moral obligation on employers. Notwithstanding these characteristics, this was a remarkable and significant advancement in the field of employment policy aimed at disabled persons. Consequently, according to a series of Ministry of Labour surveys, proportions of physically disabled persons in the private sector workforce increased year after year.

Since then, a number of legislative or administrative changes have taken place to form the present systems. Among those changes, the most epoch-making amendment to the Law occurred in 1976. It made the quota a compulsory obligation and introduced a levy scheme.

Another legislative change, the amendment of 1987, is worth noting. With this amendment, both persons with mental retardation and persons with psychiatric

disabilities have been integrated into the legislative structure of the employment programme, although the introduction of a duty for employers to employ those people is still ruled out. The title of the law, 'Physically Disabled Persons' Employment Promotion Law', was therefore revised to the present 'Law for the Employment Promotion, etc. of the Disabled'.

It should be noted that this amendment enabled the government of Japan to ratify ILO Convention No. 159, concerning Vocational Rehabilitation and Employment (Disabled Persons). Ratification took place in 1992.

Since 1960, when the quota scheme was introduced, the employment of disabled persons has improved; more and more persons with disabilities have participated in the open labour market, and many joined the workforce. According to statistics compiled by the Ministry of Labour, proportions of disabled persons in the private sector workforce have shown a steady growth: 1.09 per cent in 1977, 1.22 per cent in 1982, 1.25 per cent in 1987, 1.36 per cent in 1992, and 1.47 per cent in 1996. From this point of view, one could suggest that, in Japan, the quota scheme and other measures have functioned well to develop the employment of disabled people.

The government now is facing a problem concerning the quota scheme; that is, the imposition of a new obligation to employ mentally retarded persons. A special advisory committee appointed by the Minister of Labour has examined the problem. The committee issued a recommendation in January 1997 stating that a duty to employ mentally retarded persons should be now introduced. The Ministry of Labour has started preparations for an amendment to the Law for Employment Promotion, etc. of the Disabled, in line with the recommendation. It is reported that the quota rate will be raised by 0.2 or 0.3 percentage points from the present level (1.6 per cent), if the employment of mentally retarded persons is made obligatory.

## **Vocational rehabilitation**

The Law for Employment Promotion, etc. of the Disabled deals with vocational rehabilitation, as well as with the quota scheme and the levy scheme.

Within vocational rehabilitation one aspect is placement services. Public employment security offices, subordinate offices of the Ministry of Labour in local areas, are responsible for placement services, which include job guidance, tests of aptitude and follow-up after placement.

A public employment security office may recommend a disabled person to take a specific course, termed 'adaptation training', prior to his or her placement. This course is, in practice, a kind of on-the-job training in a firm selected with regard to placement of the disabled person. The person, as a trainee, is provided with training allowances by the government.



There are also services provided by a group of specific organisations called 'disabled persons vocational centres'. Disabled persons vocational centres are state institutions but are operated by the Japan Association for Employment of the Disabled (JAED). Around 50 centres are located across the country. The centres' mandate is to carry out vocational assessment, vocational guidance, work preparation training (aiming at work conditioning) and occupational skill exercises, and an advisory service for employers. The staff comprises trained experts who are specialised in vocational rehabilitation.

The co-operative relationship between a vocational centre and public employment security offices in the area is of great value. Public employment security offices rely greatly upon the expertise of the vocational centre, such as vocational assessment, vocational guidance, and so on. The vocational centre, in turn, relies upon the capacity of public employment security offices to provide placement services.

Vocational training for disabled persons is undertaken by vocational training schools. Integration is the government's policy in the field of vocational training also. There are, however, a number of disabled persons' vocational training schools, which enrol disabled persons who because of their disability need special provision.

## **Quota scheme**

Under the Law for Employment Promotion, etc. of the Disabled, employers have a public duty to provide appropriate places of work, based on the principle of social solidarity, and shall actively endeavour to hire physically disabled people.

In principle, the Law for Employment Promotion, etc. of the Disabled makes all employers - state, local public bodies and private sector - subject to the quota.<sup>(16)</sup> All private sector employers must employ at least the legally required number of physically disabled persons as full-time employees, calculated on the basis of a quota rate of physically disabled persons of 1.6 per cent. Thus, if an enterprise has more than 63 regularly employed workers (over all its business locations) the employer is obliged to employ one disabled worker. In specified industrial and business sectors, a variable 'exclusion rate' scheme discounts particular jobs considered inappropriate to be covered by the quota. The only industry with total exemption is shipping.<sup>(17)</sup> The current quota was determined on the basis of the population of workers and job seekers with physical disabilities.

Although the obligation is to employ physically disabled persons to meet the quota, when an employer employs a mentally retarded person that person may be counted towards the quota as the equivalent of a physically disabled person. A worker with a serious physical disability or with serious mental retardation may be counted as two units for the purpose of calculating the employment rate. Such workers may be employed in a less than full-time position (and count as only one towards the quota).

A physically disabled person is defined according to a list of very specific physical impairments and loss of functions annexed to the Law (full or partial loss of vision, hearing or voice, speech or mastication; loss of limb or extremity, or loss of functioning of limb, extremity or trunk; or reduced functioning of the heart, kidney or respiratory organs or other prescribed permanent physical impairments which conspicuously restrict daily life). A physically disabled person is issued with a certificate, as is a person with mental retardation.

Employers who employ less than the quota may be ordered to formulate a programme for the appointment of physically disabled people to increase the number to that of their quota.

## **Levy and grant scheme**

The State, local public bodies, and public corporations as specified by the Law are not covered by the levy and grant scheme.

The 'levy and grant system for employing physically disabled persons' is intended to improve the general level of their employment, by collecting levies from those enterprises failing to achieve the employment quota, and offering grants to those enterprises employing many physically disabled persons. Because the employment of physically disabled and mentally retarded persons imposes a costly financial burden, such as the expense of modifying working facilities and equipment, special employment management and so on, an imbalance exists between enterprises which observe their employment obligation and those that do not. The levy and grant system aims to adjust the imbalance in economic burdens and create a collective social responsibility among employers. The levy, therefore, is not a fine. The employer is not exempt from the obligation to employ disabled people at the legal rate even if he or she has paid the levy.

Employers who employ less than 300 full-time workers currently are exempt from the levy.

In principle, employers are required to pay the levy based on the legally required number of disabled employees. In practice, however, those who have fulfilled the quota are exempted from the payment of levies.

The standard amount of the levy of US\$ 400 (Yen 50,000) per month per missing worker is determined by the Ministry of Labour by taking account of the average amount of per capita extra expenditure necessitated by employing the required number of disabled workers.

### *Disbursement*

Levy dues collected belong to the Japan Association for Employment of the Disabled (JAED) which undertakes disbursement of the funds. State and local public bodies and public corporations may not receive funds.

The Law states that the levy is for the purposes of employing disabled people. Employers receive approximately 80 per cent of the funds. Around 20 per cent

goes to bodies which undertake vocational education or skills training of disabled people, and employers organisations which promote disabled people's employment through research, education or information services.

Two disbursement categories, 'adjustment allowances' and 'rewards', aim to adjust economic burdens among employers who employ disabled people and priority is accorded to these two categories. The third category, 'grants', serves as a subsidy to help employers to hire disabled workers and to assist institutions to carry out services to promote employment of disabled people. The administration of the programme is paid from the levies (Yen 3,915 million in 1995).

*Adjustment allowances* may be paid to employers who exceed the quota. The amount of the allowance is 25,000 yen (US\$ 200) per month per worker employed beyond the quota. (Expenditure in 1995 was Yen 5,058 million.)

*Rewards* may be paid to employers who are exempt from the levy (that is, with 300 or fewer employees) if they employ either more than five disabled workers or a number equivalent to three per cent of their workforce. The amount is 17,000 yen (US\$ 136) per month per worker beyond the standard. This provisional measure was introduced in view of the fact that smaller firms provide plenty of job opportunities for disabled people, recognising that financial incentives could further encourage employment. (Expenditure in 1995 was Yen 5,854 million.)

*Grants* are aimed at employers at large and at institutions. (Expenditure in 1995 was Yen 18,423 million.) Grants fall into nine classifications:

- provision of workplace facilities and equipment
- job adaptation for severely disabled persons
- replacement of workplace equipment
- facilitation of re-deployment or up-grading of disabled employees
- provision or refurbishment of recreational facilities at the workplace
- special measures to facilitate commuting to work, housing or personal facilitators for severely disabled persons
- grants to employers who set up special enterprises where many severely disabled people are employed, if they improve business facilities and equipment
- vocational training facilities and equipment, operational costs and training fees
- employment support centres' facilities and equipment and operational costs.

## **Responsibilities of the Ministry of Labour and JAED**

The Ministry of Labour and the JAED share functions with regard to promoting the employment of disabled people.

The Ministry of Labour is, above all, responsible for policy making. In the main, it is responsible for placement services, as placement services in Japan are under a state monopoly, and for enforcement of the quota.

The JAED in turn is responsible for:

- highly professional or technical aspects of rehabilitation services
- collection of levy dues
- disbursement of funds
- advisory, educational and information services directed at employers
- research and studies concerning vocational rehabilitation and other problems on the employment of disabled people.

JAED is an association established in 1977. It is a statutory organisation established on the basis of provisions of the Law for Employment Promotion, etc. of the Disabled. The Law rules how to establish it, and how to organise it. First, several employers' organisations should propose the establishment of an association, and then should inaugurate that association with the participation of its potential members. Secondly, the Ministry of Labour should approve the establishment of the association, ascertaining that it has been done lawfully. The Minister may approve only one association in the country, that is, the Japan Association for Employment of the Disabled.

JAED has a membership which comprises employers' organisations, economic or industrial organisations, and so on. The majority of the members are a group of employers' organisations, in other words, a group of prefectural associations for the employment of disabled people. In fact, in each prefecture country-wide, there has been a prefectural association for the employment of disabled people since long before the establishment of JAED. Those prefectural organisations were founded voluntarily and on the basis of civil law.

The Minister of Labour may allow JAED to undertake some of his own mandates in accordance with provisions of the Law for Employment Promotion, etc. of the Disabled. Among aspects of the Minister's mandates transferred to JAED are:

- running disabled persons' vocational centres
- running state vocational training schools for disabled persons
- collecting levy dues
- disbursing funds of levy dues.

Financial resources are provided by the government for the JAED to run the vocational centres and training schools. Levy dues collected every year belong to the JAED as its revenue, which affords payment of allowances and grants.

JAED officials are more than 600 in number. Half of them are experts on vocational rehabilitation, whose qualification has to be authorised as 'vocational

rehabilitation counsellor' by the Ministry of Labour. The majority of those counsellors are situated at vocational centres across the country.

The headquarters of JAED are in Tokyo. Apart from the vocational centres, JAED has seven branch offices. The National Institute of Vocational Rehabilitation, located in a city close by Tokyo, is part of the headquarters. The Institute not only has a number of active research units but also serves as a control centre for the vocational centres and training schools in local areas.

Relations between the Ministry of Labour and JAED have served as an engine to promote the employment of disabled persons. The government's sound policy together with JAED's professional services have benefited employers who endeavour to employ greater numbers of disabled persons.

## **SUMMARY REPORTS**

### **AUSTRIA<sup>(18)</sup>**

#### **History of the Austrian system**

The employment quota and compensatory levy date back to 1920 with the Austrian Republic's first law for invalid war veterans. All private companies had to employ one invalid war veteran for the first 20 employees and one for every further 25 employees. Those who did not comply were subject to a compensatory levy. These contributions were collected in the compensatory levy fund and used for the care of invalid war veterans.

An Act of 1946 forms the legislative basis for the current quota-levy system, although several amendments have altered the stipulations of the law. The 1953 obligation on employers to employ one disabled person for 15 employees and one more for every 20 was relaxed in 1989 to relate to 20 and 25 employees. The categories of disabled people eligible under the law were extended so that by 1973 all were covered equally, regardless of the cause of disability. In 1975, the quota scheme was extended to all employers, abolishing the differences in regulation for public and private employers. The amount of the levy has changed several times. The most notable rises were in 1979 when it was raised to AS 600 per month and in 1985 when it was raised to AS 1,500. In 1996, the levy stood at AS 1,960 per month for each person who should have been hired.

To be counted towards the quota, a person must have an assessed level of disability of at least 50 per cent. An amendment of 1989 replaced the concept of capacity to work. The degree of disability is determined by medical experts who assign a number of points for each impairment or ailment.

Notwithstanding the many amendments, the essence of the quota and compensatory levy system has remained fundamentally unchanged since its introduction.

### **The employment obligation on employers**

All private and public sector employers who employ 25 or more employees are subject to the quota obligation. They must hire at least one eligible person per 25 employees; that is, an employer with 25 to 49 employees must employ one disabled person; an employer with 50 to 74 employees must employ two disabled persons, and so on. This is considered to be a quota of four per cent. However, in the public sector, 20 per cent of employees are discounted when calculating the total.

The Act allows for changing the specified number of people to be hired. Where there are not enough jobs for disabled people, the threshold can be reduced to a minimum of 20 employees. It may be raised to a maximum of 50 if certain sectors cannot meet the requirement for technical reasons. Examples of increased thresholds include the forestry sector (40), coal mines (45) and freight transport (35) but to date few sectors have availed themselves of these possibilities. The threshold has been altered in approximately 100 branches. It is believed that given technological development there are hardly any sectors in which few or no disabled people can be employed.

In calculating fulfilment of the quota, certain categories of disabled people count as double: blind persons, persons under the age of 19, apprentices, those aged over 50 with an overall degree of disability of at least 70 per cent, those aged over 55, and wheelchair users. The purpose is to provide an additional incentive to hire severely disabled young persons, those in training and older disabled persons. Employers also receive a bonus equal to the amount of the levy for each eligible disabled person they hire who is undergoing training.

In 1994, about 19 per cent of eligible employers met the target quota. Employers who exceed their quota receive a bonus of AS 980 for each eligible person hired in excess of the requirement.

### **The equalisation levy**

If an employer fails to discharge the obligation to hire, or only partly meets it, an 'equalisation levy' must be paid for each person who should have been hired. Payment is compulsory.

The amount of the levy is not linked to the employer's earnings, turnover or financial capacity and the legislation does not provide for any exemption from payment. The amount of the levy - AS 1,960 in 1996 - is determined by ordinance and is continually adjusted according to a formula.

## **Fund disbursement**

All measures are aimed at the vocational rehabilitation of disabled people. The Disabled Persons Employment Act provides for a wide range of benefits for eligible disabled persons and/or their employers. These include:

- individual benefits - subsidies towards wage costs, help with purchase of a car, transport allowances and grants towards adapting housing for wheelchair users, training grants, technical aids at the workplace, grants towards setting up a business
- special programmes and subsidies to associations
- subsidies for sheltered workshops
- bonuses to employers who exceed the quota and who contract work with sheltered workshops.

Wage subsidies and bonuses to employers together account for around half of the Fund's total expenditure. But it is misleading to single out items of expenditure as the different types of benefit are intended to be complementary.

Wage cost and hiring subsidies may be granted to an employer irrespective of how far the employment obligation is met. The Federal administration and the Länder are not entitled to wage subsidies.

To be eligible for benefits, an employee must belong to the category of eligible disabled person. As the purpose of the Disabled Persons Employment Act is the integration of disabled people into working life, persons attending school or vocational training and those of retirement age are not eligible for benefits. The award of a benefit is based on individual need, subject to certain earnings thresholds and purchase price limits. The rate of reimbursement must not exceed 50 per cent.

The Fund is only one body able to give benefits under the act. Other agencies include the Länder, the social insurance carriers and the employment service. A team from all the relevant agencies assesses the different agencies' capacity to provide assistance on a case-by-case basis.

## **Fund management**

The Equalisation Levy Fund is administered by the Federal Minister of Labour and Social Affairs in consultation with an Advisory Board. The Advisory Board consists of a chairman and representatives of war veterans' organisations, disabled people's organisations, the Länder, workers and employers and the Ministry of Finance. In addition to supervision by the Board, the Fund's financial practices are subject to normal internal audit as well as external audit by the General Accounting Office. Disbursements by the Federal offices of social affairs are monitored and supervised centrally by the Federal Ministry.

# **CHINA<sup>(19)</sup>**

## **Developments in China**

Early in the 1990s China began a policy of a quota rate for employment of disabled persons and to collect levies from those employers who hire fewer than the quota. The Chinese term for the levy is 'employment security fund', indicating that the funds are used to secure the employment of disabled persons. The policy was based on the Law on Labour, and on the 1990 Law on the Protection of Disabled Persons, with reference to the experience of other countries.

Since the reform and opening up of China to the outside world, and especially during the period of transformation from a planned to a market economy system, the old mode of employment for disabled persons, sheltered workshops, has been in crisis. In most sheltered workshops, equipment is simple and crude and techniques are backward. Nor is their management competitive. Consequently, with the growth of the market economy, a new way of providing employment opportunities for disabled people had to be found. Altogether there are about 60 million disabled people in China.

A survey in 1990 in 29 provinces, 12 cities and 1,439 enterprises and organisations - in heavy and light industries, mechanical and electrical industries, communications and commerce - found that employed disabled persons constitute 0.93 per cent of the total number of employees. There is evidence that it is not so difficult to provide suitable places of employment for disabled persons and that they can be competent at their jobs. Thus, the policy of an employment quota is feasible. Advantages of the system are thought to include:

- employment conveniently near normal place of residence
- more choice of jobs for disabled people
- integration of disabled and non-disabled people, promoting mutual aid and understanding
- conformity with the principle that all employers have a public duty to provide places of work for disabled persons.

The agency of the employment services under a disabled persons' federation at and above the county level is in charge of conducting an inspection of the local employment of disabled persons and for gathering information about employment and unemployment among disabled people. It is also responsible for assessing vocational ability and aptitude, for vocational training and courses and for post-training introductions to employers. Another function of the agency is to manage the levies.

## **The quota**

The Law on the Protection of Disabled Persons 1990 states that:



state organs, non-governmental organisations, enterprises, institutions and urban and rural collective economic organisations should employ a certain proportion of disabled persons in appropriate types of jobs and posts. The specific ratio may be determined by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government in line with their actual conditions.

(Art. 30)

## **The levy**

According to the Regulations Concerning the Management of Levies for Promotion of Employment of Disabled Persons, issued by the Ministry of Finance in 1995, if the number of disabled persons working for the organisation concerned is less than the employment quota rate, this organisation shall pay dues. The annual dues paid shall be the amount obtained by multiplying the difference between the number prescribed and the number less than the employment quota rate by the previous year's annual wage of local staff and workers. For example, if an enterprise in a city should employ five disabled workers according to the quota but employs only three (that is, two short) and if the city's average annual wage of staff and workers is 5,000 yuan RMB (US\$ 603), then the enterprise pays 10,000 yuan (US\$ 1,205).

An organisation may apply for a reduction or exemption from levies if short of funds or if an enterprise has losses permitted by policy. If the application is not approved or payment is overdue, the organisation shall pay a fine of one five thousandth of the overdue payment per day

## **Fund disbursement**

According to the local needs of employment for disabled persons, the agency of the employment service at or above the county level shall make an annual plan for fund allocations. The budget shall be submitted to the financial department for examination and approval.

The levies are disbursed for the following purposes only:

- the expenses of vocational training for disabled persons (accounting for 50 per cent of fund allocations)
- money award to employers who hire more than the legally prescribed number of disabled persons (20 per cent of allocations)
- subsidies to collectively owned enterprises of disabled persons (sheltered workshops) and private businesses to pay disabled employees, but only on the basis of a feasibility report and verification and approval of the budget (20 per cent)
- with the approval of the financial department, an allowance to the agency of the employment services for their overhead costs and an allowance

directly used for the work of employment of disabled persons (ten per cent).

## **Fund management**

The levies collected from employers belong to extra-budgetary funds. The money is deposited in a bank and interest accrues to the fund. The levies are managed by the financial department which examines and approves the budget and allocation plan; the audit department exercises inspection and supervision over the funds.

It is noted by the All-China Federation of Trade Unions that the scheme should be positively encouraged and extended. Its practice has demonstrated that it not only can protect enterprises' initiative to absorb disabled people into work but can also balance the financial shortage for disabled people who seek work and help more disabled people to find jobs. Meanwhile, in order to secure normal collection of the levies and to promote use of the fund, detailed administrative measures, including supervision and checking mechanisms, should be worked out to improve the transparency of fund management and to enhance the positive effects of the levy.<sup>(20)</sup>

## **HUNGARY<sup>(21)</sup>**

### **History of the Hungarian system**

The legislative basis of the quota system stems from Decree No. 8 of 1983, since modified several times. Act XVIII of 1993 on the Rehabilitation Fund was repealed at the end of 1995. Since 1 January 1996 the legal successor to that Fund has been the Labour Market Fund, managed by the Ministry of Labour.

### **The compulsory rehabilitation employment quota**

The rehabilitation employment quota is set at five per cent of the average staff number in the relevant year. To qualify under the quota system, a disabled worker must have become permanently unfit, due to changing work capacity resulting from his or her worsening state of health, for work performance of full value in the original job, without any rehabilitation measures; the degree of disability must exceed 40 per cent.

Most employers do not fulfil the target quota of five per cent disabled employees, and payment of the rehabilitation contribution to the rehabilitation part of the Labour Market Fund is mandatory in the case of economic organisations with over 20 employees. Economic associations, lawyers' offices and private entrepreneurs are subject to the obligation. Housing co-operatives, social

organisations, the church, foundations, public utility companies and non-profit organisations are exempt from the quota obligation.

Six per cent of economic organisations fulfil the quota; 15 per cent employ some disabled people and also pay the rehabilitation employment contribution; and 79 per cent pay the rehabilitation employment contribution only. The rehabilitation contribution is said to be insufficient to stimulate fulfilment of the quota. The rehabilitation contribution is HUF 8,000 (US\$ 46) per person per year. The rate is specified annually by the Act on the State Budget.

Economic organisations subject to payment assess their contribution and pay it directly to the account of the 'Rehabilitation Contribution' kept by the state Tax and Financial Auditing Office which transfers it monthly to the Ministry of Labour.

An economic organisation which exceeds the compulsory employment quota may claim a grant from the state budget. 'Target organisations' (economic organisations appointed by the Ministry of Finance on the basis of certain criteria, fundamentally that the proportion of disabled workers exceeds 60 per cent of the total staff) and 'social employment organisations' (owned by a municipality, which employ handicapped, unemployed or disabled people) also may apply for grants when they exceed the target quota; 95 per cent of them fulfil the employment obligation.

## **Fund disbursement**

The revenue of the rehabilitation part of the Fund is approximately HUF 600 to 700 million (US\$ 34,000 to 40,000) per year. Grants applied for amount to HUF 6 to 7 billion per year. Funds are distributed exclusively through application, following a call for applications. Those who register for the call for applications receive information on its purpose, conditions of participation and the method of financing.

Employers who create or preserve jobs are eligible for funds. All employing organisations are eligible except for government ministries and their institutions at county level. The disabled people employed must have a degree of disability of at least 40 per cent or be deaf, blind or partially sighted; they must possess a medical certificate or a certificate issued by the National Institute of Medical Experts.

Approximately 70 per cent of funding goes to employing organisations, five per cent to disabled persons for work preparation, 20 per cent to sheltered workshops and five per cent to services or agencies. The funds are focused on creating and preserving jobs and promoting projects. The rehabilitation part of the Fund finances project-type expenditures and does not finance the costs of operations such as materials or wages. In every case assessment of applications is preceded by an on-site survey and direct information.

Conditions attached to funding include an own contribution of 20 per cent of development costs, the obligation to maintain employment for three years and co-operation with the county labour centres.

Decision-making processes involve labour councils which comprise representatives of employers, employees and municipalities, as well as the inter-departmental committees and the National Labour Market Council. In accordance with the Employment Act, the Minister of Public Welfare and the Minister of Labour approve a decision to give support.

## **Fund management**

The rehabilitation fund is part of the Labour Market Fund. The main authority for Fund management, the Ministry of Labour, employs the staff. Management of funds is a central task, while ensuring continuity of their utilisation is a decentralised county task. Financial practices of the Fund are supervised by the Ministry of Finance, the State Audit Office and the Government Control Office. Funds are not invested and unused funds pass to the Treasury account at the end of the fiscal year.

The media cover rehabilitation employment only occasionally, mainly when publishing the call for applications.

## **PART II**

# **ESTABLISHING POLICY**

# **ESTABLISHING POLICY**

There is no single model of a quota-levy system, as the accounts of national schemes have shown. Countries thinking about setting up a quota-levy scheme will be looking for the optimal design for their national context, according to the state of their historical development. Many inter-connected decisions have to be taken about the objectives and principles of quota-levy schemes, which employers should be subject to the quota and to the levy, how to set the levy amount, which disabled people should benefit and how funds should be used. But before addressing these questions national policy makers will want to consider the national circumstances and the appropriateness of a quota-levy system.

## **Are the circumstances right?**

Deciding whether the time and circumstances are right for a quota-levy scheme will depend on a number of considerations.

### *The social and medical care infrastructure*

In many countries contemplating a quota-levy system, medical and prosthetic provision to enable people to work may be impoverished. Inadequate levels of medical care may mean that chronic ill-health is as much of a problem as physical injury. A response may be needed to the emerging 'social' diseases (AIDS and HIV, stress). In countries emerging from conflict, the needs of people with physical injury and mental trauma may be paramount. Equally, disabled people must have minimum resources to enable them to take up work, but adequate systems for income maintenance may not be in place. A minimum social and medical care infrastructure is a prerequisite to a quota-levy scheme.

### *The economic and labour market context*

Levels of unemployment and predicted trends, the demand for labour and the need to create jobs will all affect the viability of a quota-levy scheme. The early schemes were designed to operate in conditions of full employment. The higher the unemployment rate, the more difficult it is to convince society as a whole, and employers in particular, of a special obligation to employ disabled people.

### *Traditions of segregated provision*

A history of segregated educational and occupational facilities and of special care, and a corresponding lack of mainstream opportunities, will necessitate considerable investment in changing social attitudes to the employability of disabled people. Employers and co-workers need to be convinced of their right to employment in the mainstream. A particular challenge will be to ensure the integration of those groups who have never been perceived as potentially competitive workers, notably people with mental impairments or mental illness.

### *Existing structures for employment of disabled workers*

A quota-levy system which aims to promote competitive employment may threaten the economic viability of established sheltered or protected labour organisations which traditionally have employed a substantial proportion of disabled workers. Whether such establishments further the integration of disabled people is open to debate. Difficult decisions have to be taken nationally about the role of quota-levy systems vis-à-vis protected labour.

### *Availability of complementary national funding sources*

The aim of the quota-levy system is to maximise the employment of disabled workers. Ultimately, the success of the system will be proven when it is no longer needed. Over time, the levies accruing to the levy Fund should diminish as the policy takes effect. For this reason alone, a levy Fund cannot be the sole source of national funding for rehabilitation, employment and other services. Moreover,

contributions from employers cannot be expected to meet all the investment required for vocational integration. Additional funding sources will be needed to make sure that disabled workers are in a position to take up competitive employment: for medical treatment and aids, for income maintenance while undergoing rehabilitation and training, to finance providers of vocational preparation services, for appropriate housing, transport to work and so on.

### *Capacity for implementation*

A quota-levy scheme requires an organisation behind it, with powers to gather levies, scrutinise employment records, redistribute funds, monitor their utilisation and publicise results. In turn, such an organisation needs to be controlled, scrutinised and audited. These observations may seem obvious but there are examples of legislation without the necessary regulations to put their provisions into effect, and of national rehabilitation Funds established with no powers to act. Even where legislation is fully in force, Funds can lack the administrative resources to implement the schemes. Particular problems arise if insufficient time is allowed between passage of legislation and setting up operations. The capacity to make the scheme work is an essential pre-requisite.

### **What are the objectives of a quota-levy system?**

The quota-levy system is a mechanism to equalise employment opportunities for disabled workers. It is a form of positive action which allows for special help to a defined group on the grounds of their disadvantaged situation in getting and retaining employment.

The objectives are to equalise the representation of disabled people in employment. This is achieved directly by influencing employers' hiring practices to increase the proportion of disabled workers in their workforce. Or, if direct employment is not possible, it can be achieved indirectly by redistributing the levy to increase the competitiveness of disabled people on the one hand and the accessibility and suitability of employment opportunities on the other.

According to the French Fund, AGEFIPH, the quota-levy policy achieves its objectives by a combination of 'stick' and 'carrot': employers avoid paying the levy as far as possible (the 'stick'); and are persuaded to recruit and retain disabled people by the prospect of financial support (the 'carrot'). In the long-established schemes, as in France, the aim is to maximise employment, not to maximise revenue.

### **What principles should underpin a quota-levy policy?**

Three fundamental principles guide the long-established quota-levy schemes:

- employing disabled people is a social responsibility

- redistribution is based on the collective responsibility of employers
- the purpose is to promote vocational integration of disabled people.

### *Social responsibility*

The principle of social responsibility - framed as a legal obligation on employers - traditionally has underpinned the quota-levy policy approach. The obligation is to employ sufficient disabled people to meet a set target. If direct employment is not possible, then a levy should be paid for each post which should have been filled by a disabled person.

In some schemes established in the 1990s a contrary principle is now at work: paying the levy is perceived as the obligation and hiring disabled people as a way of avoiding it. This approach apparently is not enshrined in law, which still tends to conform to the European and Japanese principle of recruitment before levy. However, there is minority opinion in favour of creating legal bases for obligatory payments to Funds, with reliefs and exemptions if disabled people are employed. Presenting the levy as a tax which can be avoided by employing disabled people is clearly not compatible with the principle of a social obligation to equalise employment opportunities for disabled workers first and foremost through direct employment.

It is essential, when framing a scheme, to articulate the principles clearly from the start and to give careful consideration to factors which may lead to their misinterpretation. Given the impossibility of meeting the quota in certain economic and social circumstances (the estimated quota attainment level in Poland is one to 1.5 per cent), in conjunction with a multitude of other levies and taxes imposed on employers, it is perhaps not surprising that the levy is perceived as simply another tax, even if the opposite is intended. Lowering the threshold for eligible employers in order to increase Fund revenues may confirm that view, as might oversight by taxation authorities. Good information to employers about the benefits which result from their contributions may dispel the view of the levy as a tax.

### *Collective responsibility*

In the redistribution of the levy from those who do not meet their social obligation to those who do, the principle of collective responsibility applies. Long-established schemes operate the principle in differing ways. Germany has a clear principle of 'equalisation': employers who do not meet their legal obligation by direct employment should support the costs of those who do. A similar principle of redressing the financial imbalance applies in Japan but the levy-grant system also helps with the expenses of smaller employers, recognising that they employ large numbers of disabled people. In France also, employers who are not subject to the quota may benefit from redistributed levies; there they receive 60 per cent of funds.

## *Vocational integration*

Levies are gathered from employers and redistributed to further the vocational integration of disabled workers. The vocational needs of disabled people vary according to the kinds of national circumstance outlined above. For example, if people with physical impairments do not have the aids and adaptations they require, such as artificial limbs or wheelchairs, the possibility of integration will be severely restricted. Similarly, if housing and transport are not suitable people cannot access work. The legitimate scope of Funds may vary accordingly. However, there is a risk of spreading resources too thinly and of not targeting them sufficiently on people who will ultimately take up employment. Where to draw the line is a dilemma for Funds in countries where social and medical needs are enormous and demand is great.

Distributing funds too widely may be counter-productive to the aim of promoting direct employment. If employers see their contributions being used to meet wider social needs which might otherwise be met by the state, rather than productive employment, they may question the fundamental principle of the quota-levy scheme.

Further problems concern the use of funds to support employment in sheltered or protected labour environments. It has been questioned whether work in an establishment where the majority of workers are disabled constitutes 'integration'.

The nature of the obligation created is thus the first important policy decision to be taken when a new system is developed. Following from that decision there are questions to address about which employers should be covered and to what extent. Two questions inter-relate: which employers should be subject to the quota, and which of those should pay the levy?

### **Which employers should be subject to the quota and levy?**

Commonly used criteria for deciding which employers are subject to the quota are sector, number of employees and type of jobs. In practice these criteria interact.

#### *Sector*

The first question is whether the quota should extend to all sectors - public, semi-public, private and the protected/sheltered sectors.

There are clear advantages if the public sector is committed to meeting the employment target and can set a good example to the private sector. Subjecting the public sector to the employment obligation is not always standard practice, although the trend is towards bringing the public sector within the law. The laws



in Poland, Hungary and China currently do not apply to state or local authority bodies. In Poland, state-owned companies undergoing privatisation are exempt.

If the public sector is subject to a quota, should it be required to pay the levy? All of the public sector is subject to the levy in Germany but in France it only applies to the 'semi-public' sector (around 28 bodies, such as public utilities, railways, toll-road companies and national radio and television companies). In Japan, state and local public bodies are subject to the employment obligation but not to the levy; if they do not meet the target they are required to draw up a recruitment plan. Equity under the law for public and private sectors may be an important consideration if there is a risk that private sector employers will view the levy as a state imposition or tax. However, considerable administrative resources may be needed if the performance of the public sector is to be monitored adequately.

In the Western European schemes, operators of sheltered workshops are not considered to be employers for the purpose of the law. Thus, the quota and levy do not apply to them. In many of the countries adopting quota-levy schemes in the 1990s, there is an infrastructure of protected labour companies or co-operatives where a majority of employees are disabled people. These are commonly subject to the quota. In some schemes, protected labour establishments are theoretically required to pay a levy if they do not meet the quota but in practice need not do so, as the number of disabled workers they are required to employ to qualify for special status far exceeds the quota obligation.

### *Number of employees*

In practice, the quota applies to employers with over a certain number of employees. There are two approaches.

- All employers are subject to the quota but the target is set at a percentage of the workforce which effectively excludes employers below a certain size (for example, in Japan the obligation affects those with 63 or more employees only, as the quota is set at 1.6 per cent).
- Only employers with over a certain number of staff are subject to the law.

It is important to determine whether the obligation depends on the size of a company as a whole (the most usual method) or applies to every establishment or workplace (as in France). If the former applies, it is possible for an employer to meet the quota requirement by concentrating disabled employees in one site, for example by establishing a subsidiary company to employ disabled people. It has been government policy to promote this practice in Japan, where 'third sector companies' have received substantial grants from the Japanese Association for Employment of the Disabled (JAED).<sup>(22)</sup>

It is also important to consider how a job is defined. The calculation of number of employees can depend on how part-time employees, fixed-term contract workers, trainees or apprentices are treated, as well as on the number of full-time positions. Calculation of staff size for the purpose of

the quota may differ between the public and private sectors; for example, the Austrian public sector is subject to the quota but 20 per cent of employees are exempt when calculating the total number of employees.

Normally the same rules apply for deciding who is subject to the levy as for deciding who is subject to the employment obligation. In Japan, however, there is provision to exempt firms below a given size (300 full-time employees) from paying the levy.

There is wide variation in threshold among countries with quota-levy schemes: 16 employees in Germany, 20 in France (based on establishment) and in Hungary, 25 in Austria, 50 in Poland, 300 in Japan (for the levy). Deciding where to set thresholds requires national information on the breakdown of the employed population, by size of employer and sector. There is no single formula which can be transferred from one country to another. Rapid change in the labour market in some transition countries suggests that thresholds might be revised to accommodate growth in the private sector or an increase in the number of small firms.

In introducing a quota-levy scheme one option may be to exempt smaller firms in the first years of operation. In France, for example, the threshold stood at 34 and 25 staff in the first two transitional years, reaching 20 in the third. Also during the transitional years in France, the quota level rose a percentage point each year from three per cent to six per cent.

### *Excluded occupations*

It is not uncommon for entire occupations, such as pilot, fireman or ambulanceman, to be excluded by law when calculating the staff size for the purpose of the quota. This practice can have the effect of exempting certain employers where the vast majority of employees fall into categories such as these. Specified occupational positions thought inappropriate for disabled people may be disregarded when calculating the size of company or establishment. In France, around ten per cent of jobs in the private and semi-public sectors are excluded overall. These broadly cover: people who drive, navigate or travel on board as their occupation; and qualified or unqualified workers in jobs which involve physical labour - mining, building, construction, wood-working, masonry, dock-working, fishing.

One rationale given for excluded occupations is that they may be too dangerous or difficult for disabled people. In Japan, where the employment obligation applies to physically disabled people, a special exclusion rate formula applies in sectors with 'inappropriate' jobs such as work in elevated positions, underground or on water and where public safety is a concern, such as train-drivers and pilots. However, it is not clear why in Japan highly qualified professional jobs, such as doctors and teachers, are excluded.

Excluding occupations in these ways is thought to be contrary to the aim of integration and to reinforce negative stereotypes of disability.

### *Exemptions from the levy obligation*

Some legislation, such as the Austrian law, does not allow for exemptions. Hardship may be a justification in some schemes. In Poland, the Chairman of the Management Board of the Fund has considerable discretion to exempt an employer from the obligation of payment if special social or economic considerations require it.

### *Alternative options*

In some quota-levy schemes alternative options are open to employers. In France, private and semi-public employers may choose to fulfil their employment obligation by reaching and applying an agreed accord, negotiated between employers and employees associations, aimed at the integration of disabled workers. Sub-contracting with sheltered workshops may be off-set against the target quota in several schemes, including the Polish scheme. Questions have been raised over whether supporting the secondary labour market in this way counts as vocational integration. It has been argued in France that supporting the commercial activities of sheltered workshops helps to counter the assumption that their disabled workers are not normal productive workers, thus promoting their social integration.

### **How should the quota target be set?**

In countries with no levy system, quota targets range widely - from as low as one per cent to as high as 15 per cent (Italy). In countries with quota-levy schemes the range is narrower: 1.6 per cent in Japan, four per cent in Austria, five per cent in Hungary, six per cent in France, Germany and Poland. A standard national percentage is usually adopted.

Clearly, where there is an obligation to pay a levy, the target must reflect both the size of the population of disabled workers and the ability of employers to absorb them. In Japan, the 1.6 per cent quota was determined on the basis of the population of workers and job seekers with physical disabilities. The formula for setting the six per cent quota in Germany similarly was based on the total number of severely disabled persons of working age in employment and unemployed, alongside consideration of certain difficulties in placing severely disabled persons.

One option is to set variable quota targets, depending on employer size - the larger the employer, the higher the quota. (Such a system has recently been introduced in Luxembourg and has been discussed in Italy and in Spain.) A variant which also takes theoretical account of the employer's ability to take on disabled workers is to adjust the quota by industrial sector. This option is possible under Austrian legislation but is not much used; indeed, it is generally considered that employing disabled people should be equally possible for all employers. The notion that different targets might be set for certain industries can be criticised because of the stereotypical picture of disability which it presents.

If the quota level is determined on the basis of the population of disabled people in the labour market, then there may be an argument for regional or local quotas. In China the quota varies according to local needs and circumstances.

An unusual step is to set a maximum as well as a minimum quota.<sup>(23)</sup> Such an arrangement may be a device for preventing enterprises from concentrating disabled employees in semi-segregated establishments.

Clearly, the decision on where to set the quota level interacts with the determination of minimum size of enterprise or establishment subject to the employment obligation or levy. Both decisions must be taken in the light of information about the national or local distribution of jobs by size of firm.

**Table 2: Minimum number of employees and quota rate**

Country	Minimum no. of employees		Quota
	For quota	For levy	
France	20 (in an establishment)		6 per c
Germany	16		6 per c
Poland	50		6 per c
Japan	63 300		1.6 per
Austria	25		4 per c
Hungary	20		5 per c

## How should the levy be set?

Deciding on the monetary value of the levy is a complex matter, with several interdependent factors including:

- the likely effect on employers' recruitment behaviour
- the affordability of the set amount and its affect on the viability of enterprises
- the requirement for adequate funds with which to compensate those employers who do employ disabled workers.

Commonly, the amount of the levy payable for each post not filled by a disabled worker is related to a wage standard, such as the minimum wage (as in France) or the average local wage (as in China). In Poland, the levy equates to half the normal wage.

Given that the aim of the quota-levy system is to equalise the financial burden across employers who meet their obligation and those who do not, there is a case for an economic formula that ensures that the employer is no worse off employing a disabled person than paying the levy. In Japan, the standard amount is determined by the Ministry of Labour by taking account of the average amount of per capita extra expenditure necessitated in meeting the quota of physically disabled persons. Such an approach presumes that the employment of a disabled person imposes an average cost. According to the Ukrainian League of Industrialist, a formula which took account of disabled persons' differing productivity depending on industrial setting would achieve a better equilibrium.

The levy may be set at different levels according to other criteria such as size of firm, in recognition of varying ability to pay. In France, there are three levels according to the size of the employing body: those with under 200 staff pay 300 times the hourly statutory minimum wage (SMIC); those with 200 to 750 staff pay 400 times SMIC; and those with more than 750 staff pay 500 times SMIC. In Bulgaria, the 'fine' on employers which accrues to the fund is reported as between one and five times the minimum wage.

A further consideration in setting the level of the levy may be the cumulative financial impact on employers already burdened with very high tax liabilities, insurance premiums and other ear-marked levies. In such circumstances, the requirement to pay a levy may be resented to such an extent that its objective of encouraging employment of disabled people is thwarted.

In sum, decisions should be based primarily on consideration of how far the amount is likely to stimulate employers to hire and retain disabled workers. Given that the aim is not to maximise revenue, the financial needs of the Fund are not the first priority. That said, it will be necessary to ensure sufficient revenue to meet any commitment to redistribution to cover the extra costs of those employers who fulfil their obligation.

### **How flexible should the quota and levy levels be?**

A flexible structure which is responsive to changing circumstances can be important, especially in countries in transition experiencing rapid changes in the economy and in the labour market. Thus, as more and more small firms are created it may be necessary to adjust the threshold and/or the quota level. Equally, the population of disabled people needing employment may rise, as in countries emerging from conflict, and greater incentives may be required to promote employment opportunities.

If adjustments to the rules of quota-levy systems are considered, it will be essential to consult widely and especially among employers who will be affected by proposed changes. The rationales for changes need to be clearly articulated. The transparency of decision making must be assured. Particular care should be

taken over proposals which may be perceived as moves to maximise Fund revenue rather than to increase direct employment.

## **Who should benefit?**

The purpose of a quota-levy scheme is to maximise the employment of disabled people. This employment can be achieved directly by employers taking on or retaining disabled people to meet the quota (as in all quota schemes), or indirectly through redistribution of levy funds to create or maintain jobs. To hold faith with the principles of the quota-levy, the beneficiaries of the redistributed funds should be determined in the same way as those who count for the quota.

A major problem with the design of quota schemes for disabled people is defining the target group in a way that facilitates identification of those people whose prospects of vocational integration are reduced.

### *What is disability?*

A fundamental question of principle first has to be addressed: what is disability? Is it a medically defined condition? Is it reduced functional capacity, resulting from an impairment, injury or illness? Or should disability to be interpreted as the interaction between individual impairments and barriers in the social and physical environment?

The first two approaches suppose that problems are located in the individual, and that because of their impairments disabled people have less capacity for work than non-disabled people. The third interpretation, on the other hand, suggests that if action is taken to reduce the negative effects of the work environment, such as discriminatory attitudes or work practices, then the disadvantages associated with impairment can be minimised.

Pre-1989 in countries of Central and Eastern Europe the concept of disability was attached to the larger notion of a labouring society: a handicapped person was defined as someone who had partially or wholly lost the capacity for work in a normal environment, through injury, ill health or occupational disease.<sup>(24)</sup> (A person with congenital disability was not considered part of the labour force.) This concept still obtains in some quota-levy legislation. In Poland, the law, which is currently under revision, categorises disability in terms of how far the person is precluded by impaired health and fitness from working in a normal environment; seriousness of disability refers to the type of workplace in which the person is judged able to work. The categories used in the Ukraine are similar, while the definition in Russia no longer relates to limited capacity for work.

### *Defining the beneficiaries*

Using this approach, the coverage of a quota scheme can be very limited. Not only does it assume that individuals with serious impairments are incapable of work in normal environments but it also excludes individuals with no work experience. In Hungary, for example, a disabled person under the quota system is someone who has become permanently unfit, due to changed working capacity resulting from a worsening state of health, for work performance of full value in the original job, and whose degree of disability exceeds 40 per cent.

In the long-established quota-levy schemes in Austria, Germany and Japan the cause of disability or the circumstances in which it occurred are not relevant, and the definition does not relate to capacity for work. Indeed in Germany the term 'a reduced earning capacity' in the Severely Disabled Persons Act was replaced in 1986 by 'degree of disability', to avoid implying a reduction in the person's fitness for work.

In France, because of the incremental way in which the employment obligation has been extended to cover further groups of beneficiaries over the years, there is no single method of determining beneficiaries of the quota-levy scheme. These include, in addition to the historical categories of war veterans and persons permanently incapacitated by occupational injury or disease, workers recognised as disabled by a special Commission (COTOREP) and persons entitled to invalidity pension under the social insurance scheme whose capacity to work or to earn a living is reduced by at least two-thirds. Accordingly, the French system encompasses more than one way of defining disability.

As already noted, some definitions are based on medical conditions and diseases, while others take account of the functional limitations which result from impairment or disease, such as inability to walk. Both of these approaches are used to identify beneficiaries of quota-levy schemes; and sometimes the two types of definition can be found side by side in a single scheme.

It is generally felt that medical classification alone is not a useful method of determining whether a person should benefit from special treatment through a quota-levy scheme. However, in some countries medical assessment for the purpose of certification as a disabled person will remain an important way of drawing attention to unmet need for medical interventions.

Some quota-levy schemes have a special arrangement to promote the integration of the more severely disabled, who are least likely to gain and retain employment. Employees who fall into certain severity categories or have specified conditions can be counted as more than one unit for the purpose of meeting the quota target. These schemes identify the more severely disabled people in different ways:

- by type of impairment, such as visual impairment, or of illness
- by the consequences of impairment, such as needing to use a wheelchair
- by a measure of 'severity of disability', or of reduced working capacity, commonly based on medically recognised conditions.

It is increasingly believed that medical condition *per se* is not an appropriate indicator of severity of disability.

It is commonly supposed that quota schemes require a precise and measurable assessment of disability conducted by medical experts. An alternative approach may be to build on the ILO definition of a disabled person as set out in Article 1 of Convention 159:<sup>(25)</sup>

the term 'disabled person' means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment.

Here, reduced prospects do not mean that work capacity necessarily is reduced but indicate that the person can be perceived as being less productive. Moreover, this formulation recognises that environmental factors as well as attitudes contribute to reduction of prospects, and that with proper measures the disabled person, irrespective of his or her medical classification, can take his or her place in the labour market.<sup>(26)</sup>

The Netherlands provides an interesting illustration of the possibility of a quota scheme being used to encourage adaptation of the working environment, and so overcome any reduced capacity for a given job. Under its voluntary quota scheme, people for whom adaptations have been made at work, or who need adaptations in order to take up a job, may be counted, along with other beneficiaries. This solution has the advantage that disabled people do not become locked in to a system which classifies them according to their deficits rather than their abilities.

### *Age and gender*

Age is a further consideration when deciding who should be covered. From the limited information available, it appears that the standard approach is to include all disabled people of working age. However, if schemes exclude trainees and apprenticeships and if they do not include part-time appointments, younger people and possibly those nearing retirement may miss out. Restricting the scheme to full-time positions may disproportionately affect women in societies where women tend to work part-time.

### **For what purposes can funds be used?**

The purposes for which funds can be used will depend on sources of funding and on how the Fund relates to national policy.

### *Sources of funding*

In most schemes, levies from employers are the sole source of income at the disposal of national rehabilitation Funds - in Austria, France, Germany and



Japan. The Fund in Poland may also receive a portion of the tax reliefs granted to protected labour organisations and there is legal provision for it to receive monies from other sources, although this has not been used. In the longer-established Funds employer levies are used primarily to promote employment of disabled people.

Some national Funds receive contributions from several sources and thus may allocate resources beyond vocational rehabilitation, as is the case in Bulgaria.<sup>(27)</sup>

### *National policy and fields of intervention*

The field of intervention of the Fund may be negotiated to *complement* public policies for disabled people, may be *integrated* within state policy or may, to all effects, *substitute* for a state policy.

The relationship between Fund distribution and state policies may be laid down by law. In Germany, for example, all other funding possibilities of the employment services and other social benefit institutions must first be exhausted; the levy must not be used to achieve savings against the budgets of the responsible public authorities.

Typically the scope of programmes is decided in one of three ways:

- the programme is defined by the social partners and subsequently approved by the state
- the programme is centrally defined by precise legislation and regulation, with partial scope to adjust at a decentralised level to the local socio-economic situation
- the programme is defined by directive of a central government ministry, incorporated into the state budget and approved by Parliament.

Depending on how Funds relate to national policy and on how programmes are defined, their competencies may cover:

- the open labour market only
- the open labour market and the sheltered sector
- the open labour market, the sheltered sector and the broader field of social integration (including medical and social rehabilitation, therapeutic workshops, facilities for disabled children, housing and transport).

### *Non-vocational purposes*

As just noted, some Funds support non-vocational purposes. Sometimes the beneficiaries of these interventions are below working age or assessed as unfit for work and unlikely to enter the labour force. Some Funds also subsidise improvements to public facilities, housing, transport and other public amenities to overcome barriers and increase social integration, and those actions may have

the effect of improving conditions for disabled people generally as well as facilitating access to employment.

Table 3 shows the non-vocational measures funded as declared by the six Funds which responded to the questionnaire survey in preparation for the Warsaw Conference.

It is generally believed that existing Funds should aim to reduce the proportion of aid directed towards non-vocational measures. Trade unionists in particular argue that the state budget should support organisations and foundations for disabled people. It is also recognised that in some countries disabled people remain highly dependent on the efforts of foundations and associations supported by the Funds which provide occupation in workshops or rehabilitative activities.

#### *Administrative costs*

It is to be expected that the administration costs of Funds which are administered by government departments will be met by those departments. This is the case in Germany and Austria, whose Federal Ministries of Labour and Social Affairs also staff the Funds. In Hungary, where the Ministry of Labour is also the employer, a proportion of the revenue (two per cent) is dedicated to administrative costs; in Poland also the operational costs of the Fund are covered by its revenues.

**Table 3: Non-vocational measures funded**

Non-vocational measures funded	Recipients		
	Disabled person	Sheltered workshop	Se ag
Housing for disabled people	A. G.	H.	G.
Transport for disabled people	A. P.	H. P.	P.
Assistive devices and technical aids	A. F. H. P.	P.	P.
Medical rehabilitation facilities	H. P.	P.	
Social rehabilitation facilities (e.g therapeutic workshops)	A.	H. P.	
Social and medical rehabilitation of disabled people not economically active (eg children, retired people)	A. H. P.		P.
Income maintenance of non-employed people	H.		
Other non-vocational measures	P.	P.	H.

A = Austria F = France G = Germany H = Hungary J = Japan P = Poland

#### **Who receives funds and for what vocational purposes?**

There are four main groups of recipient: employers, disabled people themselves, sheltered workshops and enterprises, and organisations charged with rehabilitation of disabled people. The allocation of funding for vocational rehabilitation purposes varies from Fund to Fund as shown in Table 4.<sup>(28)</sup>

**Table 4: Estimated percentage of disbursement on vocational measures by type of recipient**

	Estimated percentage of disbursement on vocational measures provided			
	Company	Disabled person	Sheltered workshop	Service o
Austria	*	*	24	*
France	40	35	3	22
Germany - Federal Fund	43	0	32	7
Regional Funds	58	5	31	6
Hungary	70	5	20	5
Japan	80	0	0	20
Poland	45	2	52	1

\* not specified

Table 5 shows the vocational measures funded and the types of recipients declared by the six Funds which responded to the questionnaire survey in preparation for the Warsaw Conference.

### *Employers*

Employers are the main recipients in most cases. Some schemes distinguish between employers who have fulfilled their employment quota, those who are subject to the quota (or to the levy) and others who are not subject to the employment obligation. Given that the majority of disabled people are employed in small enterprises or establishments there is considered to be a case in France, Germany and Poland for enabling them to take advantage of Fund resources. In France it is national government policy to involve small and medium-sized enterprises in the employment of disabled people.

The rationale may be to compensate for the extra costs associated with employing disabled workers (such as management costs, adjustments not compensated in other ways, or as in Germany the costs of the extra paid leave to which severely disabled persons are entitled). Or the rationale may be to subsidise reduced productivity. Grants and subsidies are also intended as incentives, to encourage the employer to take on someone they might have discriminated against or to undertake adjustments which they might not otherwise have considered.

**Table 5: Vocational measures funded and types of recipient**

	RECIPIENT
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	Company	Disabled person	Sheltered workshop	Se
<b>Raising awareness among employers</b>	H.			
information and awareness raising campaigns	F. G.	G.		F. J.
advice to companies	F.			J.
other ...				A.
<b>Preparation for work</b>	H.	H.		H.
guidance				F. P.
assessment	F.			A. F.
training and retraining	F. J.	A. F. P.	P.	F. G.
rehabilitation institutions		P.	P.	G. J.
other ...	P.		P.	P.
<b>Access to work</b>	H.			
job search and placement			F.	F. P.
integration support and follow-up	F. J.	F. G.		F.
transport to work	A. F. J. P.	A. F. G. P.	P.	F. P.
recruitment incentives	F. G.	F. P.	P.	
creation of workplaces	F. G. J. P.	F. G.	P.	
other ...		A.		
<b>Job retention and redeployment</b>	H.			
wage subsidies/financial incentives	A. F. G.		P.	
resettlement	G.		P.	
other ...	A.			
<b>Support in the working environment</b>	H.			
adaptation of workstations	F. J. P.	G.	P.	
improving workplace accessibility	A. F. J. P.	A. P.	P.	
integration support and follow-up	F. J.			F.
other ...		A.		
<b>Research and innovation</b>	F.		P.	F. G.
<b>Sheltered work</b>			H.	H.
creation of sheltered workshop places	P.		A. G. P.	
promotion of transition from sheltered work	A. F. P.		F.	
other ...			A.	

A = Austria F = France G = Germany H = Hungary J = Japan P = Poland

Employers may receive funds to support the hiring or retention of specific disabled workers, to create jobs, or for benefit of current or future disabled workers in general.

*Support for employment of specific workers* includes both on-going subsidies and one-off grants, notably:

- compensation for the costs incurred in employing disabled people to meet their employment obligation: grants may take the form of a regular sum for each person hired above the employment obligation (as in Austria and Japan); in Poland, employers may be relieved of income tax
- compensation for costs where employers are not subject to the quota or levy but take on disabled people; for example, a regular sum for each person hired
- regular subsidy towards wage costs or relief of national insurance contributions, often dependent on assessed productivity of the worker
- reimbursement of all the wage and national insurance costs of specified workers for limited periods
- lump-sum hiring premiums as an incentive to complete an employment contract and retain the disabled worker (France)
- full or partial payment towards one-off or on-going adaptations or adjustments required in order to recruit or retain a disabled worker, including personal aids and assistance
- help with costs of training or retraining.

*Job creation:* investment loans, grants or bonuses may be given to create jobs. Loans and grants may be given for creating part-time jobs and training places for disabled persons.

*Support for general benefit* includes:

- help to improve facilities for disabled workers, including accessible work premises and adapted equipment, and to create more receptive working environments
- support for technological development
- information and disability awareness training for the workforce.

Conditions may be attached to receipt of certain types of funding. In the Brussels Fund, employers must make a ten per cent contribution. In Hungary, employers must undertake to contribute 20 per cent of the costs of projects funded. In Austria, the reimbursement rate must not exceed 50 per cent of the costs. If funds are given towards wage costs, or as recruitment incentives, a commitment to retain the disabled employee for a certain number of years is usually required.

### *Disabled persons*

Disabled persons are, of course, always the end beneficiaries of redistributed funds. They do not necessarily receive funds themselves; in Japan, for example, that is not permitted.

The most common uses of funds to support disabled individuals directly include:

- subsidies towards the purchase or maintenance of equipment needed at work
- improvements in access to work and workstations
- grants or loans towards transport to work, including car purchase and adaptation
- subsidies towards participation in training and skills-development programmes
- grants or loans to set up in self-employment.

In addition, some Funds provide help towards mobility aids and housing adaptations. Usually, help is given for specific items according to the individual's assessed need. The alternative approach of a 'voucher' system is under consideration in the Netherlands.

A novel use of funds for the benefit of a disabled person taking up work is the recruitment premium in France. A lump sum is given to the employer simultaneously. These recruitment premiums have proved very popular.

### *Sheltered workshops and enterprises*

It can be misleading to use a generic term to encompass sheltered workshops, as found in Austria, France and Germany, and other enterprises specialising in protected labour, typically found in the countries of Central and Eastern Europe. The former type tend to be covered by separate legislation from that governing mainstream enterprises and are not subject to quotas. They may, however, receive levy funds for the creation of workshop places or, as applies in France, only to promote transition to a mainstream environment. As already noted, employers can choose to meet their employment obligation in part by entering into contracts with sheltered workshops.

Protected labour enterprises, on the other hand, may be the largest recipients of Funds in the newer quota-levy schemes outside the European Union and, in the case of Poland, themselves contribute to the Fund. As noted in the contribution from Poland, co-operatives had a substantial role in providing work for disabled people pre-1989. Promotion of protected labour companies has been a central plank of policy to provide work for people whose chances in the mainstream are minimal. Such organisations can have special needs for funds for investment as they move from a state-subsidised condition to market competition. Now that some protected labour businesses are highly successful in the competitive market, mainstream employers have queried whether it is appropriate for these businesses to receive disproportionate amounts of levy funding.

Protected labour businesses may obtain subsidies for facilities for vocational, social and medical rehabilitation (which they may be legally obliged to provide), for repayment of bank loans, for maintenance of jobs threatened with liquidation or for wages of specified employees, such as mentally ill or mentally impaired workers.

### *Institutions, NGOs and agencies*

In some Funds, a sizeable share of levy is allocated to the various organisations which support the employment of disabled people, including voluntary bodies and employers' associations. The criteria may exclude organisations which are financed to provide services from other sources (as in France).

Funds may be used for the benefit of disabled people for vocational purposes such as:

- rehabilitation
- training and retraining
- assessment and guidance
- job search, placement and follow-up
- transport to work.

Organisations may be funded for activities which raise awareness among employers and at the workplace. Several Funds also support research and innovation. The German Fund, for example, supports REHADAT which contains an extensive database of information about technical aids to support rehabilitation into the workplace.

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Having taken account of the considerations outlined above, countries planning to establish a quota-levy scheme need to examine how best to administer the scheme through a national rehabilitation Fund.

### **PART III**

## **MANAGEMENT OF NATIONAL FUNDS**

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Part II considered questions of principle about who should benefit from levy funds and in what ways. Part III moves on to examine the practical arrangements for collecting levies and allocating funds and the structures for managing those activities. Detailed information about those aspects is presented in the synopses of arrangements in six countries which is annexed to this report. Here the main models of practice are presented.

The tasks of a national rehabilitation Fund in collecting levies, allocating funds and monitoring their use are considerable. The number of private sector establishments subject to the employment obligation in France is in the order of 87,000 and around half of these contribute to the Fund. In 1995 annual revenues<sup>(29)</sup> of the French and German Funds amounted to US \$282 million and \$667 million

respectively. In Japan revenue in 1995 was US \$182 million. In 1996, the revenue of the Polish Fund was US \$38.8 million; the duty of making payment applied to over 14,000 employers (of over 50 staff) and 1,500 protected labour businesses. These statistics help to illustrate the size of the administrative task potentially confronting a national rehabilitation Fund.

## **Calculating and collecting the levies**

Commonly the employer assesses and declares the amount due. Dues can be collected annually, quarterly or monthly. Bank transfer to the account of the Fund is a usual method.

As computerised systems spread, the burden of administration, both on employers and on Fund officers, is likely to diminish. In Austria, where the Fund is administered by a federal ministry, the department's officers calculate the amount and inform the employers. Through a link up with the main association of insurance carriers in Austria the data is usually transmitted by computer and the employer is released from the obligation to submit a record to substantiate the assessment.

Compliance is a particular problem in new schemes which can lack the resources to ensure that the correct dues are collected. Even identifying the proportion of employers who meet the quota can be difficult. The early experience in Poland found instances both of enterprises which made declarations but never made payments and of enterprises which made payments but did not complete declarations. Legal provision for enforcement of levy dues sometimes is not applied because of the lack of secondary legislation, is not attempted, or is put into practice only with difficulty. In Poland, where payments to the Fund are regulated by provisions on tax liabilities, fiscal audit offices control payments and are empowered to collect debts.

## **Assessing need**

Most spending programmes are established on the basis of an estimate of need, taking evidence from placement agencies, disabled people's organisations, employers and sheltered enterprises. Funds which operate at a regional or local level may consult with relevant bodies at those levels.

## **Applying for funds**

The need for specific interventions may be considerable but information and awareness are required to translate need into requests for support. Professional staff who work with disabled people, as well as disabled people themselves, need to know what is available and how to access it. In some schemes, the various preparation, support and placement agencies have an important role in bringing Fund programmes to the attention of employers.



It is common practice to apply on a ready-made form. In Austria, in the case of bonuses for exceeding the quota, where automated records exist on employers' levels of compliance with the quota, an employer need not apply.

Usually applications for grants and subsidies need not be made at specified times. A process of calls for applications, announced in the press, applies in Hungary where a site visit precedes assessment of applications.

Decentralised administrative structures, bringing Fund officers closer to applicants, could ease the process.

Almost no information is available on Funds' timescales for processing applications, taking decisions and making funding available. These are essential considerations, particularly from the point of view of the disabled person whose placement may be dependent on swift or reliable action.

## **Allocation rules and practices**

Four approaches to allocating available funds can be identified.

*Proportions allocated to specific purposes* may be laid down. In China, the agency of the employment service at county level or above draws up a plan according to local needs. The proportion of allocations for particular purposes is controlled: 50 per cent for vocational training; 20 per cent as awards to employers who exceed the quota; 20 per cent for subsidies to collective and private enterprises; and ten per cent to the agency for its costs.

Priority can be given to certain *types of funding*. In Japan, for example, the allowances and rewards to employers who employ target numbers of disabled workers take priority. In Poland, priority must be given to actions for the creation and maintenance of workplaces for disabled people.

Priority can be given to certain *groups of recipients*. In Germany priority is given to allocations to individuals and employers.

A *'first come, first served'* method is used in Hungary where demand greatly exceeds supply and where a call for applications is normal procedure.

## **Monitoring use of funds**

Ensuring that funds are used for the purposes for which they are allocated is potentially a problem. Arrangements for subsidising wages or relieving employers of national insurance contributions in respect of designated disabled people are open to abuse: the problem of 'fictitious disabled people' is a widespread phenomenon occurring beyond quota-levy schemes. Typically, recipients are

required to provide a written report on how they have used the money. Conditions attached to receipt of funds for a specific project may be effective, if, for example, the recipient is required to part-fund it.

## **Management and accountability**

Who makes the decisions about Fund policy is an important and sometimes contentious question. In setting up Funds in some countries new organisations were created based on statutory law. In others, the function was entrusted to already existing agencies, notably ministries of labour or of social affairs or of health. Uniquely in Japan an employers' association was entrusted by the Ministry of Labour with administering the grant-levy system.

Legal and formal relationships between Funds and government ministries vary but there is commonly a close working connection. In France, the Fund is managed by a national private law association and the State is not a legal member. Yet the Ministry of Labour approves the annual programme and budget and approves annual reports on how funds were used. This is important to ensure the complementarity of the Fund's activities to those of the State. It is reported that in Japan the Minister exerts very strong control over the Fund.

National rehabilitation Funds are typically managed by Boards which may comprise representatives of all or some of the parties affected by Fund policies. Boards may be chaired by ministers, by ministerial appointees or by independent persons. Representation varies from Fund to Fund. In Japan, for example, where the Fund is run by an employers' association, the Board of Directors consists solely of employers' representatives; disabled people are represented on a Deliberative Council but not on the Board. By comparison, the French Fund has a Board of Directors which includes representatives of employers' organisations, trade unions and national associations of disabled people. In Poland, currently, employers' organisations are not represented in Fund management. In Bulgaria there is no trade union representation.

There is an emerging consensus that employment policy for disabled people is a national social concern and as such should be informed by all the social partners as well as by disabled people and their organisations. The constitution of the Board, and the respective representation of employers' associations, trade unions, disabled people's organisations and of government ministry representatives, may be enshrined in the law which establishes the Fund or may be subject to political decisions. Parity in representation is one formula to consider.

National rehabilitation Funds must be accountable to a higher authority. Some have state controls, such as the State Audit Office, while others must report

quarterly to the Council of Ministers; some are accountable directly to Parliament or to a special government body.

### **Administrative structures**

Structures varied from all national, to mixed national and regional, to regional, to mostly community oriented. Decentralised arrangements, which are the most common, have the advantage of maximising proximity to the potential beneficiaries of Fund activities.

The various operational tasks of the Funds may be located at local or central offices - collection of levies, inspection of records, publicising the scheme, processing application forms, deciding on funding application, processing payments, supervising use of the funds and reporting on activities. The degree of decentralisation of procedures and decision making depends on the way in which funds are collected and redistributed.

### **Assessing the effectiveness of Fund activities**

Establishing uniform, transferable criteria with which to assess the effectiveness of quota-levy schemes is a major task requiring detailed study and intensive debate. The apparently simple outcome measure of numbers of disabled people in mainstream employment is not a useful comparator, given differences in judicial and working definitions of disability and of what constitutes open employment. The state of development of rehabilitation systems, and other elements in national policy infrastructure, affect opportunities for disabled people to take up and retain employment. To date, the field of comparative outcome measurement is not well developed and the effect of national schemes must be assessed within their own terms.

An adequate statistical base is necessary both to inform policy in the first instance and to assess its effect. Population data will be needed: the size of the population of working age, numbers of persons looking for work or employed, and their age and gender, and the proportion of disabled persons in those populations. Labour market data will be needed on the distribution of employment by industrial sector and by size of employer, the amount of full-time and part-time employment, and the distribution across sector by age and gender. Differentiation of these data by type of impairment or disability will be difficult without comprehensive national data on disabled people in the population.

Statistical data need to be compiled at least annually on the characteristics of employers according to how they fulfil their quota or pay contributions to the Fund. Information is also required about the characteristics of the disabled people they employ.

Data such as these, if gathered regularly and consistently, will provide the context within which to monitor progress towards meeting the employment quota and to

assess the effects of Fund activities on employment rates. Good data is also needed in order to assess the unmet or latent demand for interventions offered through national rehabilitation Funds and by national governments and to plan mutual and co-ordinated action.

Where the purpose of the Fund is to compensate for the costs of employing disabled people or of job creation, it will be necessary to investigate the actual costs involved in the different employment situations and for employing people with different types of impairment. Whether the chosen methods of promoting employment integration through subsidies, grants or loans are cost-effective and sustainable is a further area for investigation.

The expertise of independent research institutions, such as universities, should be used to investigate the social and economic impact of Fund activities. Not all outcomes can be assessed in quantitative terms and it will be important to find ways of assessing the qualitative experience, of both employers and disabled people. Additional research may be needed to investigate important questions about the impact of quota-levy schemes in providing integrated employment opportunities for those with more as well as less severe disabilities, for women and men, in high skill as well as low skill jobs, in rural and urban areas.

## **Promotion**

Promotion is key to the success of quota-levy schemes. All sectors of society, not only actors at the enterprise level, must be enthused about the importance of integrating disabled people into the world of work. This holds true for politicians as well as for the general public; the level of awareness among Members of Parliament could be increased. The Funds have an important part to play in spreading knowledge about the national system for promoting employment of disabled people, its objectives and its principles. Their activities should complement those of the state, particularly in the arena of changing attitudes to disability, promoting understanding of impairments and their effects, and in rooting out prejudices. To those ends, disabled people's organisations and the social partners can take an active part in compiling relevant and effective materials.

Funds need to inform those affected about the uses to which the funds are put. Arguably, employers' support will be enhanced through better information about the benefits of their contributions. Some Funds have an obligation to make public annual reports; these should be comprehensive, accessible and widely disseminated.

Lack of information about what a Fund can provide is often a problem. Personal contacts between Fund officers and employers are important channels of information. Informing the various professionals, including rehabilitation specialists, who work with disabled people and with employers can promote the spread of knowledge. As demonstrated in the report from France, trade unions

and disabled people's associations can play an important part in sensitising the workforce to the situation and requirements of disabled people.

Several media may be used to promote to employers and to disabled people the benefits and services which can be obtained via national rehabilitation Funds. Printed media (such as brochures and newsletters), CD Rom, video films and tapes, interactive video displays and the Internet have been used to good effect. The mass media - newspapers, television and radio - may be employed to promote the Funds' messages.

## **CONCLUSIONS**

Governments, employers and workers share a common obligation to promote the effective labour market participation of disabled persons. Quota-levy systems and related national rehabilitation Funds offer one, potentially effective, method to further this obligation and objective. This report has built on presentations and discussions at the first International Conference on Policies and Management of National Rehabilitation Funds, and on documentation prepared for the Conference, to review the principles and legislative basis of quota-levy systems and the structure and management of related national funds. The purpose was not to reach a consensus or to form recommendations, but rather to disseminate information about different approaches and to promote awareness of the issues that need to be considered if a quota-levy scheme and national rehabilitation Fund are to be established.

There is no single model of a quota-levy system. A scheme in one country cannot simply be transplanted to another without considering:

- the guiding principles or philosophies which underpin the policy
- the historical, social and economic context into which a quota-levy system must fit
- how disability is perceived and defined, and how employment needs of disabled people traditionally have been met
- the objectives of the system - who is expected to benefit and in what ways?

Certain conditions may need to be in place if a quota-levy scheme is to be viable: notably, an adequate infrastructure of vocational rehabilitation, training and employment services so that workers with disabilities can compete for jobs in the marketplace; employer commitment to the principles which underpin the quota-levy system; a common sense of obligation to furthering employment opportunities for disabled people; and public confidence in the ability of the system to deliver measurable results.

Internationally, attention is turning to policy models which focus on the rights of individuals with disabilities - the right to freely chosen, non-discriminatory, high

quality, productive employment, alongside non-disabled persons. From an individual rights perspective, quota systems can be criticised for not addressing the quality of the employment obtained and for not upholding the right to advance in employment. Other objections relate to the image sometimes portrayed of a charitable system which protects the less able and less productive. Properly managed Funds, with the participation of government, employers and workers, and representation of disabled people, have an essential and responsible role to ensure that people with disabilities are counted as equally productive members of society and in securing their prospects of obtaining, retaining and advancing in employment. The Conference indicated a continuing need for exchange of experience if these goals are to be met.

1. For an account of the history of quota systems in Europe see Lisa Waddington (1994) 'Legislating to employ people with disabilities: The European and American way', *Maastricht Journal of European and Comparative Law*, 1, 4, 367-95.

2. Madhav R. Kulkarni (undated) *Quota Systems and Employment of the Handicapped: Experiences in three countries*, Michigan State University.

3. For further details of the operation of quota systems in European Union countries, see Patricia Thornton and Neil Lunt (1997) *Employment Policies for Disabled People in Eighteen Countries: A Review*, York: Social Policy Research Unit.

4. Suresh C. Ahuja (ed) (1992) *Social Security and Other Benefits for the Blind*, Paris: World Blind Union.

5. Willi Momm and Masaaki Iuchi (1998) 'International labour standards and national employment legislation in favour of disabled persons', 17.14-17.18 in J.M. Stellman (ed) *Encyclopaedia of Occupational Health and Safety*, 4<sup>th</sup> edition, Vol. I, Geneva: International Labour Office.

6. Information provided by International Labour Office.

7. COM(96)406 final, para 7.

8. Based on 'Legal Framework in France for the Vocational Integration of Disabled People', paper presented to the International Conference on Policies and Management of Rehabilitation Funds by Gérard Bollée, President, Fonds pour l'insertion professionnelle des personnes handicapées (AGEFIPH).

9. Based on 'The German System of Employment Quotas and Compensatory Levies', paper presented to the International Conference on Policies and Management of National Rehabilitation Funds by Wilhelm Hecker, State Secretary in the Federal Ministry of Labour and Social Affairs.

10. Based on 'Legislation, laws on the disabled and their historical background', paper for the International Conference on Policies and Management of National Rehabilitation Funds, presented by Adam Gwara, Secretary of State, Plenipotentiary for the Disabled, Ministry of Labour and Social Policy.

11. A new Act on Vocational and Social Rehabilitation of Disabled Persons was passed by the Polish Parliament on 27 August 1997. See Postscript to 'The System in Poland'.

12. Based on the 'Review of the Fund's Activities in Poland', paper for the International Conference on Policies and Management of National Rehabilitation Funds, presented by Roman Sroczyński, President of the Board of the State Fund for Rehabilitation of the Disabled.

13. Employers make payments to the Fund by 20th day of the month following the month when circumstances causing payment obligation occurred. At the same time, employers submit a statement in which they show the due amount, and the confirmation of payment is a copy of the money transfer from the bank. Both the statement and money transfers are inputted into a computer system, where track is kept of due amounts and payments.

14. Reduced to 25 by the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons of 27 August 1997.

15. Based on presentation entitled 'Developments and promotion of the employment of disabled persons' by Yasou Yashima, Managing Director, Japan Association for the Employment of the Disabled (JAED), to the First International Conference on Policies and Management of National Rehabilitation Funds. Additional material from the Ministry of Labour, Prefectural Government, JAED (1996) *Employment and its Promotion for Disabled People in Japan: A guide to employment for employers and disabled people* and *Law for Employment Promotion, etc. of the Disabled*.

16. Terence Ison (1992) reports in 'Employment quotas for disabled people: The Japanese experience', *Kobe University Law Review*, No. 26 that in the public service the rate is 2 per cent for clerical work and 1.9 per cent for non-clerical, and that it is 1.9 per cent for certain public corporations, as established by cabinet order.

17. Terence Ison (1992) reports in 'Employment quotas for disabled people: The Japanese experience', *Kobe University Law Review*, No. 26 that in the public service the rate is 2 per cent for clerical work and 1.9 per cent for non-clerical, and that it is 1.9 per cent for certain public corporations, as established by cabinet order

18. Based on Austrian national response to the questionnaire survey of selected countries participating in the International Conference on Policies and Management of National Rehabilitation Funds.

**19. Based on a contribution to the Conference discussion written and presented by the Chinese delegation to the International Conference on Policies and Management of National Rehabilitation Funds.**

**20. Taken from a written Country Paper prepared for the Conference by Zhang Zhilin from the Social Security Department of the All-China Federation of Trade Unions.**

**21. Based on the Hungarian national response to the questionnaire survey of selected countries participating in the International Conference on Policies and Management of National Rehabilitation Funds.**

22. Terence Ison (1992) 'Employment quotas for disabled people', *Kobe University Law Review*, 26.

23. According to Suresh C. Ahuja (ed) (1992) *Social Security and Other Benefits for the Blind*, Paris: World Blind Union, in South Korea the Act for Employment Opportunity for Disabled People 1989 requires each employer to employ a minimum of one per cent and a maximum of five per cent disabled persons.

**24. ILO (1996) *Employment Prospects for Disabled People in Transition Countries: Guidelines on active training and employment policies for disabled people in Central and Eastern Europe*, Geneva: International Labour Office.**

**25. Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)**

**26. ILO (1996) *Employment Prospects for Disabled People in Transition Countries: Guidelines on active training and employment policies for disabled people in Central and Eastern Europe*, Geneva: International Labour Office.**

**27. In Bulgaria, the income of the National Fund for the Support, Rehabilitation and Social Integration of Disabled People is raised from fees from employers who do not meet their quota, a budgetary subsidy of 0.1 per cent of GDP, contributions from insurance companies (1 per cent of the 'civic responsibility' insurance which is obligatory for all state and private cars), income from a special lottery in aid of disabled people, other draws, charity, sports and social events, and voluntary donations and legacies. The Fund may support: training and vocational rehabilitation; incentives for the employment of disabled people; subsidies for specialised enterprises, co-operatives and individually owned businesses; medical rehabilitation; improving access to living accommodation and the surrounding environment; culture, sports and tourism; and social assistance for disabled people.**

**28. Estimates provided in response to questionnaire to participating countries.**

**29. US dollar values at 1 March 1997.**