Comments by the German Social Accident Insurance

Presented on

28 February 2012

The DGUV (German Social Accident Insurance) is the umbrella association of the German statutory accident insurance institutions for trade and industry and for the public sector. It represents the common interests of 3.8 million insured companies and institutions (members), and supports them in their tasks in the interests of the 75 million insured individuals (all salaried employees, schoolchildren, students, nursery-school children, and voluntary workers). The DGUV represents the individual statutory accident insurance institutions in their dealings with government bodies at regional and national level, with European and international institutions, and with the social partners. The statutory accident insurance institutions have the statutory mandate of preventing occupational accidents and diseases, work-related health hazards, and accidents involving schoolchildren and students. In the event of an insured accident, their duties involve assuring continued participation by accident victims in the community (by means of medical and vocational rehabilitation), in particular in working life, and the payment of compensation to them and to their dependants.
A. General remarks

The German Social Accident Insurance (DGUV) welcomes the European Commission's intent to eliminate the many obstacles still remaining for persons with disabilities and for older persons by means of a European Accessibility Act. In the view of the DGUV, the European Accessibility Act announced by the European Commission could contribute considerably to improving the existing situation in the Member States, and also to implementing the UN Convention on the Rights of Persons with Disabilities (UN CRPD).

Accessibility is an essential criterion for participation in social and economic life. In order for this criterion to be met, the EU should take measures which provide each and every citizen with opportunity for unrestricted participation. Statutory provisions are also able to create a framework for persons with disabilities to be able to participate in social and economic life autonomously and on equal terms with the non-disabled.

The statutory accident insurance in Germany has for many years been using all suitable means to facilitate the greatest possible participation in society by persons with disabilities. These include measures in occupational safety and health and in rehabilitation, and also in the DGUV's support for the Paralympics. However, the DGUV wishes to extend its involvement in this area in the future. Since 1 January 2012, it has therefore undertaken to contribute, with an action plan of its own based upon the UN CRPD\(^1\), to the creation of an "inclusive society". The foci lie upon the world of work and educational establishments. By this means, the DGUV aims not only to bring about changes within its own spheres of activity, but also to motivate its partner bodies as further players. The DGUV co-operates closely with the German federal government with regard to the latter's National Action Plan for implementation of the UN CRPD.

In the context of the broad debate concerning accessibility for persons with disabilities and for older persons, the German Social Accident Insurance wishes above all to comment on the topics which concern its own activities and areas of responsibility. The individual accident insurance institutions are managed directly by the social partners, are not-for-profit organizations, and take the form of institutions incorporated under public law and under state supervision. As such, they serve the public welfare, whilst at the same time not being government organizations. The measures for rehabilitation, particularly the equipping with assistive devices for the elimination of barriers, are taken according to the needs of the affected individuals, as required by Article 26 (1) a) of the UN CRPD.

B. Consultation Questions

I. Profile of the respondents

1. Are you replying
   - [ ] As an individual citizen, on behalf of myself only
   - [x] On behalf of an organization

\(^1\) German version is available on the Internet at: http://www.dguv.de/inhalt/presse/2011/Q4/aktionsplan/aktionsplan.pdf English version see annex.
12. What is the name of your organisation?
   Deutsche Gesetzliche Unfallversicherung (DGUV)

13. What is your Interest Representative Register ID?
   DGUV is registered via Deutsche Sozialversicherung Arbeitsgemeinschaft Europa
   (see: member organisations)
   Register ID: 917393784-31

14. Please give the contact email address of your organisation
   ilka.woelfle@dguv.de

15. Is your organisation:
   ☒ EU-level or international
   ☐ National, from a particular country

16. Please indicate, from which country is your organisation.
   Germany

17. What type of organisation do you represent?
   ☐ Commercial
   ☐ Government or public authorities
   ☐ NGO, including disability NGO
   ☐ Sector industry, business and professional organisations
   ☒ Other: registered non-profit organisation

18. Do you represent
   ☐ industry or business
   ☐ service provider
   ☒ Other: The DGUV (German Social Accident Insurance) is the umbrella association
   of the accident insurance institutions for the industrial and public sectors which are
   responsible – as social security insurers – for the prevention, rehabilitation and
   compensation in case of an accident at work or an occupational disease.

19. If you represent industry or business, please mark the sector
   ☐ Building environment
   ☐ Transport
   ☐ ICT
   ☐ Other (please specify)
20. Building environment sector
   - Constructor
   - Architect
   - Manufacturer of building material
   - Other (please specify)

21. Transport sector
   - Manufacturer (of the vehicle or of parts that are relevant)
   - Service provider
   - Other (please specify)

22. ICT sector
   - manufacturer
   - service provider
   - web developer
   - Other (please specify) The DGUV cares about barrier-free working-places in industry and the public sector

23. If you represent other Service providers please mark the sector
   - Social services
   - Health services
   - Educational
   - Recreational
   - Cultural
   - Tourism
   - Sports
   - Employment
   - Financial
   - Other (please specify)

II. Questions common to all respondents

Current situation in the Member States

29. Please provide your general assessment of the accessibility in your country in the areas of built environment, transport and ICT?

Measures have been taken for many years now to eliminate physical barriers, lower kerbs, install ramps or lifts, and equip pedestrian crossings with signals for the blind and visually
impaired, in order to provide mobility for persons with visual or mobility impairments. More and more local public transport services are now accessible to these people. The statutory accident insurance institutions also endeavour to facilitate unrestricted participation in working life for their insured individuals. In accordance with its statutory mandate, the statutory accident insurance in Germany uses all suitable means to safeguard existing employment relationships following an occupational accident or an occupational disease, existing or imminent. All measures taken are focused upon the affected individuals. The measures are based upon the UN CRPD and have the objective of promoting the individuals' self-determination in the sense of the German Social Code (SGB) IX. Inclusion is therefore an integral component of the statutory accident insurance’s activity. Even before injured persons are discharged from in-patient care, specially trained rehabilitation advisers or case managers from the statutory accident insurance in Germany advise and support them throughout the rehabilitation process, in order to ensure re-integration as sustainably as possible into education or work and into wider social life. The focus always lies upon retention of the individuals’ workplaces. In this context, the DGUV supports the concept of disability management. This programme is consistent with efforts being made worldwide to retain the workplaces of persons with health impairments, to keep them healthy and fit for work in the long term, and to reduce the socioeconomic consequences of diseases and accidents. The DGUV is Germany’s leading organization in this area. It supports companies in introducing a disability management system, and trains disability managers in accordance with defined international standards. Companies are thus able at the same time to fulfil the extended prevention mandate formulated in Section 84 (2) of the German Social Code (SGB) IX, in the form of a corporate integration management system.

That is not to say that no room exists for further improvement, even in Germany, to accessibility for persons with disabilities and for older persons. For example, more persons with disabilities and older persons could be involved in actual decision-making processes and during planning, or better integrated into working life if it were to be suitably structured. Many persons with disabilities encounter difficulties in finding a job on the primary labour market. Workplace organization is part of the problem. These, and other barriers, are familiar to the statutory accident insurance in Germany, not least through its activities for vocational rehabilitation following an occupational or commuting accident.

Barriers are however not only physical in nature, but also communicative. Even though the paternalism is no longer the typical pattern, many persons with disabilities continue to be patronized. The conventional definitions of disability, such as those in the provisions of the German Social Code (SGB) IX concerning rehabilitation, describe it as a deviation from a norm. Non-disabled people continue to regard a life with a disability in the first instance as one of suffering and to focus upon the deficits, rather than considering persons with disabilities as a part of human diversity and with potential to contribute.

Even though considerable progress has been made in Germany in recent years, persons with disabilities still do not enjoy universal, unimpeded accessibility.

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2 The training provision (training and certification for disability managers) is based upon a programme developed in Canada by NIDMAR (www.nidmar.ca) and licensed by the DGUV in German-speaking countries for the initial and ongoing training of disability managers. The NIDMAR programme is in turn based upon a guide issued by the International Labour Organization.
30. Please provide your opinion on the accessibility legislation in your country in terms of its scope and efficiency?

Over the years, the German legislature has created exemplary framework legislation governing barrier-free access. Equal treatment for persons with disabilities is enshrined in Germany's Basic Law (Article 3 (3) 2). The German Disability Discrimination Act and General Equal Treatment Act have also been enacted in order to protect persons with disabilities. Furthermore, the UN CRPD has been in force in Germany since 2009, in the form of a Federal law.

Notwithstanding this progress, the situation should be continually re-examined in order to determine scope for improvements to the implementation of the existing legislation. The German Social Code (SGB) IX and the 2004 Ordinance on Workplaces contain numerous provisions governing companies and educational establishments. Promotion of employment of persons with disabilities is enshrined in the German Social Code (SGB) IX. The efficiency and implementation of statutory provisions should be monitored.

The German Ordinance on Workplaces states (in Section 3a) that employers who employ persons with disabilities must furnish and operate their work premises in consideration of the particular health and safety interests of these employees. Should adaptation, conversion or installation work be required for employees with disabilities, costs become a major issue. In order for persons with disabilities to be treated equally from the outset, buildings and workplaces must therefore also be designed for accessibility from the outset. The qualification of an applicant is then the deciding factor, and not their disability.

For this reason, in its own capacity as an employer, the German Social Accident Insurance automatically thinks inclusively during the design of new office buildings, conference halls and workplaces and gives consideration to the concept of accessibility from the outset.

Content of possible measures

31. The accessibility for persons with disabilities of which goods and services should be given priority?

Based upon the principle that work is an existential need for all people – irrespective of whether they are disabled or not – in order for them to be able to participate in life in society and the community, absolute priority must be given to accessibility in this area. Barrier-free access by all people to work premises, to all areas within them, and to the work equipment must therefore be assured from the very beginning. Only when this is the case are persons with disabilities able to participate in working life to the same degree.

In addition, the assistive devices used to overcome barriers must be adapted to the needs of the individuals entitled to support. The mere commercial availability of such devices does not assist those affected in overcoming the barriers. Persons with disabilities require advice if they are to receive precisely the products they need, which is also in the social and economic interests of society. At the statutory accident insurance in Germany, rehabilitation is managed in this way by specialists who in some cases have disabilities themselves, which lends them particular expertise as peers.
32. Which are the most important policy and legal measures to improve accessibility in your opinion?

As a general principle, attention should be paid in the future to accessibility for persons with disabilities being assured from the outset in all policy and legal measures. It is therefore advantageous to dispel the perception that including people with disabilities necessitates costly investments. As set out by the UN CRPD, which formulates the human rights of persons with disabilities, inclusion and participation are not special rights. In Germany, too, all legislation must therefore be reviewed for whether it gives consideration to accessibility for persons with disabilities.

In the specific case of the work of the statutory accident insurance in Germany, OSH legislation and the Ordinance on Workplaces in particular should be reviewed with regard to whether they assure accessibility for persons with disabilities. For this reason, consideration should be given to workplaces also being evaluated with regard to how easily they can be used by persons with disabilities. This could yield an overview of the main deficits in accessibility; at the same time, industry could obtain indicators on how to develop its products further. An independent obligation for suppliers of assistive devices to consult would also support the provisions of Article 26 of the UN CRPD.

33. What should public authorities and market operators do to improve accessibility of goods and services?

The statutory accident insurance institutions in Germany are one of the bodies with a particular responsibility for assuring the welfare and health of employees, schoolchildren and students. The German government draws attention to this fact in its memorandum on the convention (BT Drs. 16/10808, p. 59). Assuring the greatest possible participation in society by persons with disabilities is a core business of the statutory accident insurance. In Germany, around 75 million people are insured by the statutory accident insurance institutions against accident and health risks at work and in educational establishments. These individuals are offered a comprehensive range of services from a single source, from prevention, through rehabilitation, to compensation. The range of advice provided covers measures for safe and inclusive work and education, the advising of insured individuals regarding the provision of assistive devices, and consulting with employers on the accessible design of a workplace.

The social security bodies should also be proactive in involving persons with disabilities from the outset in their activities, such as prevention campaigns and the supply of assistive devices. These persons should be involved as peers, i.e. experts in the issues affecting other disabled persons. The DGUV has therefore examined what measures can be taken in order to strengthen the spirit of the convention. These include reinforcing the self-determination of the insured individuals. The result of this review is the Action Plan of the German Social Accident Insurance (2012-2014), adopted last year, for implementation of the UN Convention on the Rights of Persons with Disabilities. In order to accord full importance to the principle of involving persons with disabilities pro-actively, the DGUV formed a Participation Advisory Council at the preparatory stage. Persons with disabilities and their associations enjoy equal representation on this council. The Participation Advisory Council supported the development of the DGUV's Action Plan.

With the Action Plan, the statutory accident insurance in Germany aims to make a sustainable contribution of its own to achieving an inclusive society. Its guiding concept has
always been that of placing the focus upon human beings. This philosophy is reflected in its activities, both internal and external.

Finally, the statutory accident insurance in Germany and its partners aim to strengthen inclusion at the place of residence through pilot projects in companies, educational establishments and children's daycare facilities. Five issues have been identified. First, a number of communication channels are to be used to familiarize staff and partner bodies with the spirit of the convention. Second, persons with disabilities are to be given the most barrier-free access possible to their environment in terms of construction measures, language and communication. A further important element is the earliest possible involvement of persons with disabilities in the decision-making processes of the statutory accident insurance in Germany. Participation by insured individuals in the world of work and in the community is also to be strengthened, in consideration of the individuals’ needs. Finally, the German Social Accident Insurance and its partners aim to strengthen inclusion at the place of residence through pilot projects in companies, educational establishments and children's daycare facilities. On the one hand, these issues cover essential targets of the UN CRPD; on the other, they offer a strategy for thinking beyond the particular competencies of the statutory accident insurance in Germany (prevention, rehabilitation, compensation, communication). The synthesis of these competencies through their delivery “from a single source”, which enjoys a high priority at the statutory accident insurance in Germany, is thereby promoted.

In other areas too, the DGUV works closely with persons with disabilities and their associations, and supports their efforts. It particularly supports the promotion of disabled sports in Germany. For this purpose, it works closely with the DRS (the German wheelchair users' association), the DBS (National Paralympic Committee Germany), and the Förderkreis Behindertensport, the group tasked with supporting sport for people with disabilities. In order to promote awareness in society for both popular sports and athletics, the DGUV has launched a campaign with the slogan "Fit at sport – fit at work". In 2004, the DGUV launched a multilingual newspaper, the "Paralympic Post". Since then, the newspaper has won numerous prizes. It has been produced for each summer and winter Paralympic Games by schoolchildren from Germany and the respective host country of the Paralympics, with the support of journalists. With the Paralympic Post, the DGUV seeks to contribute to the Paralympic Games receiving the greater public awareness that they deserve.

Businesses should also contribute to life in an inclusive society. Besides the wider integration of people with disabilities into the business activities of the companies, the focus in companies active on the market should always lie on finding forward-thinking solutions by which the costs for necessary barrier-free adaptation or extensive conversion work, for example of working premises, can be avoided. Accessibility should serve the diversity of working persons, whether with or without disabilities, in companies and administrations. Steps for example are not only an obstacle for wheelchair users, but could potentially cause anyone – such as customers or visitors – to trip. The UN CRPD therefore emphasizes the promotion of universal design. Universal design means that products, forms of transport, etc. are designed to satisfy the most diverse requirements possible. This frequently benefits everyone. When buses or trams are suitable for use by wheelchair users, they are also easier for people pushing prams to use, or for older people who have difficulty walking. The same principle applies to the design of work premises and schools.

3 Further information can be found on the Internet at http://www.panta-rhei-berlin.eu/Paralympics_Zeitung_Nr1.pdf
34. Could you please provide your opinion on the role that SME's could play in the provision of accessible goods and service? Should there be any specific measures to that extent?

SMEs in particular have the potential to play a major role in the development and marketing of barrier-free goods and services. In this context, the statutory accident insurance in Germany wishes to draw attention to its experience with the introduction of special ergonomic requirements for visual display units (VDU). The background here was that Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment had emphasized particular ergonomic aspects of VDU workplaces that were transposed in Germany by the Ordinance on VDU Work. Following transposition of the technical ergonomic requirements by the German legislature, SMEs were seen to be particularly willing to give consideration to them during development of their, and used the ergonomic benefits as a sales argument. Numerous SMEs in Germany were thus able to adopt a competitive position on the market. The large industrial companies then automatically followed suit. The DGUV therefore particularly encourages the supporting of SMEs in the provision and marketing of barrier-free goods and services.

35. Based on your experience with existing national or foreign accessibility legislation, which provisions do you consider as essential for the effectiveness and success of such legislation? In that context could you please explain how prescriptive and detailed do you think accessibility legislation should be and how it should be enforced?

In Germany, the statutory framework already exists in principle for barrier-free access for persons with disabilities and for older people. During the legislative procedure, it must be ensured that the relevant provisions, which may not always be binding, be brought to bear. In this context, we draw attention to the proposals of the European section of the global organization of “Rehabilitation International” (RI)\(^4\). The proposals made by the Section should be reviewed with regard to their possible adoption in European or national legislation.

36. Please provide your comments about the complementary role that the EU, national, regional and local authorities could play in improving accessibility?

Through the planned European Accessibility Act, the EU could contribute to improving access for and providing advice to persons with disabilities. European directives already exist which serve among other things to protect the interests of persons with disabilities (such as Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation). The European provisions have however not always been adequately transposed.

In addition, the EU should promote standardization with regard to the design of barrier-free products.

\(^4\) www.riglobal.org
It is also particularly important that all parties, regardless of whether they are active at European, national, regional or local level, contribute to a consciousness that persons with disabilities are entitled to barrier-free access and to advice.

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