**Questionnaire**

**Convention on the Rights of Persons with Disabilities**

**Article 5 - equality and non-discrimination**

**Deadline 30 June 2016**

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| **Submission by Unia (Interfederal Centre for Equal Opportunities), Belgium**  Uniais an independent, interfederal public institution, specialised in equal opportunities policy and non-discrimination.  Unia is charged with the responsibility of assisting victims of discrimination based on different protected criteria (one of which is disability) by the anti-discrimination laws which are the transposition of the EU directives 2000/43 and 2000/78.  Unia is also responsible, as national independent follow-up mechanism under article 33.2 of the Convention on the Rights of Persons with Disabilities (CRPD), for promoting, protecting and monitoring the implementation of the CRPD in Belgium.  Contact person: Charlotte Dekempeneer, [charlotte.dekempeneer@unia.be](mailto:charlotte.dekempeneer@unia.be) |

**1. Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.**

Disability is specifically mentioned as a prohibited ground of discrimination in the antidiscrimination legislation of the federal state, the communities[[1]](#footnote-1) and the regions[[2]](#footnote-2).

While the antidiscrimination legislation ensures protection against discrimination in many areas, several weaknesses still exist. For example, the scope of the antidiscrimination legislation does not cover the relations between joint owners. Consequently, joint owners are not obliged to provide reasonable accommodations (e.g. in the common area of a block of flats) if one of the joint owners has a disability.

For further details, please refer to Unia’s assessment report of February 2016 on the federal Anti-Discrimination Law and Anti-Racism Law.[[3]](#footnote-3)

**2. Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements (500 words).**

The term “reasonable accommodation” has to be interpreted following the principles and indicators of a protocol agreement signed by the federal state, the communities and the regions.[[4]](#footnote-4)

According to the protocol, an accommodation has to:

* be effective, so that the person with a disability can actually participate;
* enable the person with a disability to participate on an equal basis with others;
* enable the person with a disability to participate independently; and
* guarantee the security of the person with a disability.

To determine if an accommodation is reasonable, the following indicators have to be assessed:

* the financial impact of the accommodation, taking into account financial support by public authorities and the financial capacity of the person/organization/… that is obliged to provide reasonable accommodation;
* the organizational impact of the accommodation;
* the expected frequency and duration of the use of the accommodation by persons with disabilities;
* the impact of the accommodation on the quality of life of (an) actual or prospective user(s) with a disability;
* the impact of the accommodation on the environment and on other users;
* the lack of equivalent alternatives;
* non-compliance with self-evident or legally binding standards.

The list of indicators is not exhaustive.

More efforts are needed in order to raise awareness about the right to reasonable accommodation and in order to share good practices. To this end, Unia has published a brochure concerning reasonable accommodation at school.[[5]](#footnote-5) A brochure concerning reasonable accommodation in the workplace will be published in 2017.

**3. Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced (500 words).**

Quotas for employing persons with disabilities exist in the major public services in Belgium, both at the federal and regional level. These quotas vary at different political levels. These quotas are generally not achieved. Different commissions (with the participation of organisations of persons with disabilities) have been set up to monitor the situation of the quotas and to report to the governments.

**4. Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please describe how these policies are reflected in legislation and policy frameworks (500 words).**

Women with disabilities

Disability and gender are specifically mentioned as prohibited grounds of discrimination in the antidiscrimination legislation of the federal state, the communities and the regions. Nevertheless, discrimination against women with disabilities continues to exist.

In its Concluding Observations of October 2014, the CRPD Committee expressed its concern about the lack of knowledge about whether women with disabilities are discriminated against because of their gender and about the extent to which women and girls with disabilities are discriminated against as compared to men and boys with disabilities, and to women without disabilities. The CRPD Committee recommended that Belgium ensure the integration of gender and disability perspectives in its legislation and policies, surveys, plans, evaluation and monitoring activities and services. The CRPD Committee also recommended that Belgium adopt effective and specific measures to prevent intersecting forms of discrimination against women and girls with disabilities.

In its concluding observations of November 2014, the CEDAW Committee expressed its concern about multiple and intersecting forms of discrimination against women with disabilities and about the high rate of violence against them. The Committee recommended that Belgium strengthen its efforts to eliminate discrimination and violence against women with disabilities.

The national action plan to combat all forms of gender-based violence (2015-2019) announces an extensive investigation into the reach of violence against women and girls with disabilities.[[6]](#footnote-6) To date, only the Flemish community has commissioned a study on violence against women with disabilities. The study is expected to be finalised in 2017.

Children with disabilities

The rights of the child are included in article 22bis of the Constitution.[[7]](#footnote-7) Compliance with and the application of children’s rights is monitored by the Flemish Office of the Children's Rights Commissioner[[8]](#footnote-8) and the *Délégué général aux droits de l'enfant[[9]](#footnote-9).*

In its Concluding Observations of October 2014, the CRPD Committee expressed its concern about the fact that Belgium is among the European countries with the highest rates of children with disabilities placed in institutions. The Committee was also concerned that children with disabilities are not systematically included in decisions which affect their lives and do not have the opportunity to express their opinion about issues that affect them directly. Regarding the right to education, the CRPD Committee expressed its concern the fact that many students with disabilities are referred to and obliged to attend special schools because of the lack of reasonable accommodation in the mainstream education system. According the CRPD Committee, the special education system remains an all too frequent option for children with disabilities. The Committee was also concerned about poor accessibility in schools.[[10]](#footnote-10)

The three communities in Belgium have taken steps towards the realisation of the right to inclusive education. However, the education system is not yet inclusive and many children with disabilities still attend special schools. For more detailed information about the legislation in the three communities, please refer to Unia’s annual report of 2015.[[11]](#footnote-11)

**5. Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?**

In general, there is a lack of disaggregated data on discrimination against persons with disabilities.

Each year, Unia presents an overview of the files and reports of discrimination[[12]](#footnote-12) dealt with by Unia. These files are analysed according to the areas for action (goods and services, media/internet, employment, education, etc.) and according to the discrimination criteria (so-called "racial" criteria, disability, religious or philosophical beliefs, sexual orientation, age, wealth, etc.). In 2015, Unia received 4,554 reports regarding potential discrimination, resulting in the opening of 1,596 files. 22% of the files opened concerned (potential) discrimination on the grounds of disability.[[13]](#footnote-13)

Unia also carries out statistical studies to collect objective reliable data which can be the building blocks of a fact-based policy. One of these studies is the Diversity Barometer, which maps out the following aspects of Belgian society:

* The degree of discrimination: the behaviour toward specific target groups in society. One of the target groups consists of persons with disabilities.
* The degree of tolerance: the attitudes toward these target groups.
* The degree of participation: the degree to which these target groups contribute to society.

The Diversity Barometer is financed by the public authorities and developed in cooperation with several universities. The Diversity Barometer focuses on three sectors: employment, housing and education. It is published biennially. In 2012 the first 'Diversity Barometer: Work' appeared; in 2014, the first 'Diversity Barometer: Housing'; in 2016 we are working on the first 'Diversity Barometer: Education’. Thereafter we resume the cycle. Thus we can compare the data collected every six years.[[14]](#footnote-14)

1. Flemish Community, French Community, German-speaking Community [↑](#footnote-ref-1)
2. Brussels-Capital Region, Flemish Region, Walloon Region [↑](#footnote-ref-2)
3. <http://unia.be/en/publications-statistics/publications/evaluation-of-federal-anti-discrimination-legislation>. Report available in French and Dutch. [↑](#footnote-ref-3)
4. Protocole du 19 juillet 2007 relatif au concept d'aménagements raisonnables en Belgique en vertu de la loi du 25 février 2003 tendant à lutter contre la discrimination et modifiant la loi du 15 février 1993 créant un Centre pour l'égalité des chances et de lutte contre le racisme. [↑](#footnote-ref-4)
5. <http://unia.be/fr/publications-et-statistiques/publications/a-lecole-de-ton-choix-avec-un-handicap>. The brochure is available in French, Dutch and German. [↑](#footnote-ref-5)
6. <http://igvm-iefh.belgium.be/sites/default/files/comprehensive_press_file_0.pdf> [↑](#footnote-ref-6)
7. « Chaque enfant a droit au respect de son intégrité morale, physique, psychique et sexuelle. Chaque enfant a le droit de s'exprimer sur toute question qui le concerne; son opinion est prise en considération, eu égard à son âge et à son discernement. Chaque enfant a le droit de bénéficier des mesures et services qui concourent à son développement. Dans toute décision qui le concerne, l'intérêt de l'enfant est pris en considération de manière primordiale. La loi, le décret ou la règle […] garantissent ces droits de l'enfant. » [↑](#footnote-ref-7)
8. <http://www.kinderrechtencommissariaat.be/en/about-us> [↑](#footnote-ref-8)
9. <http://www.dgde.cfwb.be/> [↑](#footnote-ref-9)
10. Similar concerns were already voiced by the CRC Committee in its Concluding Observations of June 2010. [↑](#footnote-ref-10)
11. Unia, *Rapport annuel 2015: Le vivre ensemble mis à l’épreuve*, June 2016, p. 9-10, <http://www.unia.be/fr/publications-et-statistiques/publications/rapport-annuel-2015-le-vivre-ensemble-mis-a-lepreuve>. [↑](#footnote-ref-11)
12. One of Unia's statutory tasks is to deal with "individual reports". Hence, anyone can contact Unia to ask a question, request an intervention, submit an observation or raise any other issue relating to anti-discrimination legislation or the fundamental rights of persons with disabilities, as provided for in the CRPD. If Unia considers itself competent to deal with a report, and if this report is more than a simple request for information, a file will be opened. [↑](#footnote-ref-12)
13. Unia, *Rapport annuel 2015: Le vivre ensemble mis à l’épreuve*, June 2016, <http://www.unia.be/fr/publications-et-statistiques/publications/rapport-annuel-2015-le-vivre-ensemble-mis-a-lepreuve>; Unia, *Unia’s work expressed in figures for 2015,* June 2016, <http://www.unia.be/en/publications-statistics/publications/unias-work-expressed-in-figures-for-2015>. [↑](#footnote-ref-13)
14. The studies are available on our website : <http://unia.be/en/publications-statistics/statistics/unias-statistical-studies> [↑](#footnote-ref-14)