**Submission relating to the outline of the Draft General Comment on article 27**

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

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| **Submission by Unia (Interfederal Centre for Equal Opportunities), Belgium**  *Unia is an independent public institution that fights discrimination and promotes equal opportunities. We have interfederal competence, which means that, in Belgium, we are active at the federal state level as well as the level of the Regions and Communities.*  *As an Equality body, Unia is responsible for assisting victims of discrimination based on the protected grounds (one of which is disability) of the anti-discrimination laws that implement the European directives 2000/43 and 2000/78.*  *As an independent mechanism based on article 33.2 of the Convention on the Rights of Persons with Disabilities (CRPD), Unia is also responsible for promoting, protecting and monitoring the implementation of the CRPD in Belgium.* |

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# I. Introduction: Belgium and the CRPD

Belgium is a federal state consisting of three communities (the Flemish, French and German-speaking Community) and three regions (the Flemish, Walloon and Brussels-Capital Region). Disability policy mainly falls under the different competences at community or regional level.

Belgium – and thus the different communities and regions – signed the [CRPD](http://www.un.org/disabilities/default.asp?id=259.) on 30 March 2007 and ratified it on 2 July 2009. The CRPD came into force at the national level on 1 August 2009. The Committee on the Rights of Persons with Disabilities adopted the concluding observations on the initial report of Belgium in October 2014[[1]](#footnote-2).

Unia warmly welcomes the opportunity to give its input on the outline of the draft General Comment on article 27 of the CRPD.

# II. The right of persons with disabilities to work and employment in Belgium

## Context

The rate of employment[[2]](#footnote-3) of persons with disabilities remains very low and far below the European average. Only 26% of Belgians with disabilities aged between 15 and 64 have a job and 72% of them are inactive. In the same age group, 65% of Belgians without disabilities have a job. There is therefore a very large gap between the employment rate of Belgians with and without disabilities.

In 2019[[3]](#footnote-4), Unia received 8 478 reports regarding alleged discrimination, resulting in 2 343 opened files. A file will be opened if the report entails more than a simple request for information and if it falls within the competences of Unia. Of the 2 343 files, 614 encompass alleged discrimination based on disability, representing 23% of the files.

One third (32%) of all files on disability concern alleged discrimination at work. The majority of these concern the organization and conditions of work (44.1% of the files on alleged discrimination based on disability at work), dismissal (24.1% of the files) or alleged discrimination in recruitment (20.5% of the files). In most cases, reasonable accommodations could have been provided, but were not considered.

# III. Comments relating to the outline of the Draft General Comment

## 2 : Normative Content

### Legal analysis and links to the general principles of the Convention: the right to work and employment as a fundamental and transversal human right

#### II. Interpretation of article 27.1 (a): Discrimination in the workplace, including workplace segregation

*“The Committee outlined in its Concluding Observations that States parties are required under the Convention to move away from sheltered and segregated work employment”.*

Unia observes that Belgian policy makers still prefer to invest in sheltered employment for persons with disabilities instead of opting for inclusive solutions. Sheltered workshop employment is encouraged, promoted and reinforced, while policies for employment in mainstream settings are practically non-existent. However, in 2018, Unia saw an upsurge in reports of persons with disabilities working in these companies, complaining in particular about refusal of reasonable accommodations, about being treated differently or about well-being in the workplace.

It would therefore be relevant to explicitly remind that States Parties should establish a clear and budgeted action plan to support the employment of persons with disabilities in the mainstream sector.

Unia suggests the Committee to clarify that States Parties must be extremely vigilant with regard to the rights of workers with disabilities in sheltered workshops, with a particular attention to the obligation to provide reasonable accommodation for workers with disabilities and to the vulnerable situation of women in these enterprises (e.g. protection from harassment).

#### III. Interpretation of article 27 (b): The right to equal remuneration for work of equal value

*“On the issue of equal remuneration, the CRPD Committee has called on States parties to ensure that persons with disabilities are paid no less than the minimum wage and has also underlined that in order to fully adhere to the CRPD, persons with disabilities must not lose the benefit of disability allowances when they start working”.*

Unfortunately, in Belgium, persons with disabilities often lose their allowances when they start working. The competent federal Minister is trying to address the issue, but for the time being, choosing not to work is often still the most attractive option financially.

When persons with disabilities choose to work, the financial gain linked to receiving a salary is often cancelled out by the reduction in allowances and the increase in work-related expenses. Indeed, the amount of the integration allowance depends on the amount of the income. Although the allowance is intended to compensate for the additional costs generated by the disability, and should thus stay the same regardless of work status. When it comes down to it, the allowance should be higher for those who work.

Moreover, if people lose their job (e.g. for health reasons), they risk receiving an unemployment allowance that is lower than the disability allowance they received before they started working. As a result, many people who wish to work are often forced to prefer the security of their allowances rather than trying to start working. This is yet another obstacle for persons with disabilities who wish to work.

Unia suggests the Committee to urge States Parties to investigate how a disability allowance can be combined with an income from part-time work. Persons with disabilities who have tried to work and who have not been successful should be able to quickly recover their full allowance.

#### V. Interpretation of article 27 (b) part III: Measures to eliminate discriminatory attitudes and harassment, particularly against women, migrants and refugees with disabilities

Unia draws the Committee's attention to the particularly vulnerable situation of women with disabilities in the labour market, especially in sheltered workshops where they are under-represented.

Labour inspectors, occupational physicians and prevention counsellors should receive more training on the specificity of sexual violence committed against women with disabilities as well as on reasonable accommodations.

Unia suggests the Committee to clarify how to prevent harassment against women with disabilities. For example, labour inspectors, occupational physicians and prevention counsellors must be trained in the specific risks faced by women with disabilities. Sheltered workshops should dispose of a confidential counsellor, whose mission would be to assist victims of violence or aggression.

#### VII. Interpretation of article 27 (d) and (j): Access to inclusive education and inclusive vocational training

In Belgium, legislative measures have been taken to support the implementation of reasonable accommodations at all levels of the education system, but there is still much to be gained in terms of availability, accessibility, acceptability and adaptability of the education system. Because the competent authorities refrain from making a clear future-oriented choice for a single inclusive education system, the educational actors remain highly dependent on special education.

Standard vocational training is not very accessible to persons with disabilities. Reasonable accommodations are often difficult to obtain, despite the legal obligation to provide. Plans for a reform exist, but the implementation is very slow. Training for special needs students is not included in teacher training, nor is support guaranteed to teachers in the classrooms.

Persons with disabilities are more likely to leave education earlier and less qualified. Those who follow an individually adapted program at school often cannot count on civil recognition upon graduation. Otherwise, persons with disabilities often tend to underestimate their skills. A first work experience could ensure a better assessment of their potential.

It is recommended that States Parties are urged to invest more in the availability, accessibility, acceptability and adaptability of the education system for students with disabilities. Standard vocational training should reach out to persons with disabilities. Teachers should be trained to address special needs students and support should be more readily available. States Parties must give equal recognition to individually adapted programs. Efforts should be made to provide persons with disabilities with a first work experience.

#### VIII. Interpretation of article 27 (f): Self-employment, microfinance, business development services

Persons with disabilities encounter many obstacles when starting up an independent professional activity, either full-time or part-time. They have difficulty in obtaining tailored information and support; reduced profitability is not compensated[[4]](#footnote-5). Persons with disabilities cannot combine their allowance with a complementary part-time self-employed activity.

Once again, Unia suggests the Committee to urge States Parties to investigate how a disability allowance can be combined with an income from part-time work. Persons with disabilities who have experienced a failed attempt at entrepreneurship should be able to quickly recover their full allowance.

#### IX. Interpretation of article 27(g) Employment of persons with disabilities in the public sector / X. Interpretation of article 27 (h): Affirmative action programs and special attention to persons with disabilities who are particularly excluded from the labour market

The Committee's interpretation of Article 27 (g and h) allows for specific measures, including a specific recruitment process for persons with disabilities. These affirmative action measures are acceptable as long as the labour market and the working environment are not accessible and inclusive to persons with disabilities.

In Belgium, these measures take the form of quota or reserved jobs. However, the Belgian public administrations have never been able to respect these quota, which, at 2 to 5%, are far lower than the quotum of persons with disabilities in the general population (15%). There are no penalties for non-compliance. Moreover, public employers are currently authorised to fulfil their quota by subcontracting with sheltered workshops.

According to the jurisprudence of the Court of Justice of the European Union, affirmative action measures have to respect the principle of proportionality. They have to (1) serve a legitimate aim, (2) be appropriate to achieve that aim, and (3) be necessary to achieve that aim.[[5]](#footnote-6)

At the Belgian level, the Constitutional Court has also held that affirmative action measures must respect the principle of proportionality. Such measures are only admissible if (1) a manifest inequality exists, (2) the legislator has identified the need to remedy the inequality, (3) the measures are temporary and disappear when the objective has been reached, and (4) the measures do not go further than is necessary to reach the objective.[[6]](#footnote-7) These conditions are reflected in the anti-discrimination legislation of the federal state, the regions and the communities.

The CRPD also seems to contain a proportionality test, as article 5 (4) provides that “Specific measures *which are necessary* to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”

Affirmative action measures like quota clearly stand the proportionality test. For measures like reserved jobs, this might be more questionable. While it is clear that measures are needed to improve access to employment, it is debatable whether reserving jobs for persons with disabilities is appropriate and necessary to achieve that aim.

The Office of the High Commissioner for Human Rights has already questioned the appropriateness of the measure: “while quota systems are desirable to promote equality, they should not include reserved working positions or tasks exclusive to persons with disabilities, which reproduce stereotypes and stigmatization, lead to an impasse in career development and do not value the skills of the employee”.[[7]](#footnote-8)

For Unia, reserving jobs for persons with disabilities can have the following negative consequences:

* Stigmatization of workers with disabilities and the assumption that they got the job because of their disability and not based on their skills;
* Risk of excluding persons with disabilities from applying for ordinary jobs and limiting their application to reserved jobs, to the detriment of the obligation to provide reasonable accommodation during recruitment and upon employment.

In the General Comment n°6, the Committee specifies that “specific measures adopted by States parties under article 5 (4) of the Convention must be consistent with all its principles and provisions. In particular, they must not result in perpetuation of isolation, segregation, stereotyping, stigmatization or otherwise discrimination against persons with disabilities. Thus, States parties must consult closely with and actively involve representative organizations of persons with disabilities when they adopt specific measures”.

Unia suggests the Committee to clarify how the States Parties should act to enforce the compliance of quota. The mere requirement to report annually is not sufficient for Unia. The Committee could encourage the States Parties to accompany the quota for the employment of persons with disabilities with sanctions in case of non-compliance. These sanctions can be used to finance reasonable accommodation, job coaching or training for persons with disabilities. Subcontracting sheltered workshops in case of non-compliance with quota, should not be considered a valuable alternative.

Unia invites the Committee to elaborate its position about reserved jobs in this general comment. Could The Committee explain what should be put in place to avoid the perverse effects that may be associated with this kind of measure? E.g. awareness of colleagues, complaints mechanism, etc.

#### XII. Interpretation of article 27 (k) Return-to-work programmes

In Belgium, a new procedure on the reintegration after long-term work incapacity entered into force in 2017. In this procedure 73% of the persons that want to return to work, were fired based on medical force majeure[[8]](#footnote-9). This procedure does not sufficiently make the link between long-term illness or chronical disease, disability and the right to reasonable accommodations and does not leave sufficient room for consultation with the worker concerned. The reintegration procedure is sometimes misused to dismiss workers because of their disability or chronic illness. Therefore, Unia demands that appropriate sanctions are foreseen when the conditions for initiating or finalising the reintegration procedure are violated.

Unia suggests the Committee to explain more in detail what measures are to be taken to guarantee the right to reasonable accommodations for workers with disabilities. E.g. occupational health doctors should receive more training on reasonable accommodations and the existing support measures; companies could seek advice from accessibility experts, etc.

## 3 – States parties’ obligations

### Immediate obligations

#### I. Non-discrimination, particularly on the basis of disability or multiple grounds

*“Legislation should protect persons with disabilities from discriminatory dismissal on the basis of disability, in particular in situations where people acquire an impairment while at work. In these situations, there should be an obligation, including as a form of reasonable accommodation, on the employer to retain the worker and offer them the necessary support to keep their position or, if this is not possible, alternative work should be offered. States should, however, be careful in providing an absolute protection against the dismissal of persons with disabilities, for example through the establishment of very burdensome procedures to allow for the dismissal of a person with disability, as this could lead to disincentives for initial recruitment”.*

As mentioned above, in Belgium, 73% of the persons involved in a procedure of return to work are fired based on medical force majeure.

Unia suggests the Committee to explain in more detail what measures are to be taken by the States Parties to avoid dismissal based on disability. E.g. the right to reasonable accommodations must be clearly included in the legislation on return-to-work; before concluding that reintegration is not possible, the compliance with the right to reasonable accommodations should be monitored by the labour inspection; occupational health doctors should receive more training on reasonable accommodations and the existing support measures; companies could seek advice from accessibility experts, etc.

Unia suggests the Committee to clarify its position whether or not it can be possible to dismiss a worker based on disability.

## Heading 4 – Relationship with other provisions of the CRPD

Unia joins the Committee's position that *“the right to work and employment is affected by the effective enjoyment of other rights like legal capacity, independent living, personal mobility, inclusive education, respect of home and the family, rehabilitation and habilitation and access to information, but is also clearly interrelated with enabling elements such as accessibility, in particular of transport and the physical environment, as well as awareness raising”.*

In order to guarantee the right to work, the working environment must be designed in such a way that it can be easily adapted to the needs of persons with disabilities. This requires a proactive approach based on “**universal design**”. It consists, for example, in designing a fully accessible office building to avoid having to make costly adaptations later on. But “universal design” does not only apply to the built environment. It also applies to the products used by companies and to organizational measures. For example, adopting a work rule that allows employees to have a personalized schedule or to telework two or three times a week can allow workers with a disability to avoid exhausting journeys or to combine medical care and professional life.

Thus “universal design” can help to reduce the amount of individual requests for reasonable accommodations. However, reasonable accommodations will still be necessary in some situations.

Unia suggests the Committee to develop a paragraph on the concept of “universal design” applied to work.

Unia suggests the Committee to clarify what measures States Parties should take to move towards an inclusive working environment.

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# Contact for this submission

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1. Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Belgium*, 28 October 2014, CRPD/C/BEL/CO/1, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fBEL%2fCO%2f1&Lang=en> [↑](#footnote-ref-2)
2. <https://statbel.fgov.be/en/news/people-disability-or-long-standing-health-problem-have-less-job-autonomy> [↑](#footnote-ref-3)
3. Unia’s statistical report from 2019 available in French and Dutch, <https://www.unia.be/fr/publications-et-statistiques/publications/rapport-chiffres-2019> [↑](#footnote-ref-4)
4. As revealed by the report [Ondernemen met een arbeidshandicap in Vlaanderen](http://www.serv.be/sites/default/files/documenten/StIA_2018_OndernemenMetEenArbeidshandciap_RAP.pdf) of the Stichting Innovatie en Arbeid (Innovation and Labour Foundation). [↑](#footnote-ref-5)
5. *Commission v. France*, C-312/86; *Kalanke*, C-450/93; *Marschall*, C-409/95; *Abdoulaye*, C-218/98; *Badeck*, C-158/97; *Abrahamsson*, C-407/98; *Griesmar*, 366/99; *Lommers*, C-476/99; *Briheche*, C-319/03; *Commission v. Greece*, C‑559/07; *Commission v. Italy*, C‑46/07; *Leone*, C-173/13; *Roca Álvarez*, C‑104/09; *Maïstrellis*, C‑222/14. [↑](#footnote-ref-6)
6. Constitutional Court, nr. 17/2009. [↑](#footnote-ref-7)
7. Office of the United Nations High Commissioner for Human Rights, *Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities*, A/HRC/34/26, 9 December 2016, p. 7, nr. 20. [↑](#footnote-ref-8)
8. <https://www.unia.be/fr/articles/recherche-durgence-amenagements-raisonnables-parcours-de-reintegration> [↑](#footnote-ref-9)