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OeAR answer to the questionnaire on “disability-inclusive policies” by the UN Special Rapporteur on the Rights of Persons with Disabilities

Vienna, 13th May 2016

The OeAR is the umbrella organisation of Austrian disability associations. It is an independent NGO that comprises more than 70 member organisations and represents the interests of 400 000 persons with disabilities in Austria. The organisation is based in Austria.

1. Please provide information on how your country is considering the rights of persons with disabilities in their **policies aimed at** **implementing and monitoring the Sustainable Development Goals**, including:
* Existing national strategies and action plans,

*In a very time consuming process we collected the following information:*

*In autumn 2015 all Federal Ministries examined in a stock-taking exercise which of their strategies, programmes and activities correspond with the SDGs. This process, however, has not been made public.*

*In January 2016, a Council of Ministers’ decision commissioned all Federal Ministries with the implementation of the Sustainable Development Goals in the sense of a mainstreaming approach by integrating the goals in the relevant policies and programmes. Action plans and measures shall only be drawn up if necessary. So far, this decision has not been made public.*

*Our enquiries about disability inclusive SDG implementation to the Federal Chancellery were redirected to the Ministry of Social Affairs. The Social Ministry in turn merely referred to the existing National Action Plan Disability 2012-2020 (NAP). The NAP is the national strategy of the Austrian Federal Government for the implementation of the CRPD for the period from 2012 to 2020. It covers 250 non-binding measures in various federal areas. However, the regional authorities are not addressed by the NAP which means that the areas falling under the competency of the regions are neither covered by the NAP nor by the SDG implementation-process. As we asked the Social Ministry how the SDG implementation will be ensured at regional level it couldn’t give us any answer.*

*For the coordination within the government and the respective departments and reporting an interministerial working group of five Federal Ministries (led by the Chancellor’s Office and the Foreign Ministry) has been set up. However, the Foreign Ministry emphasized that there is no central focal point for the coordination of the SDGs.*

* Budget allocation for their implementation,

*In this respect the Foreign Ministry referred to the website of the Austrian Development Agency. As far as we understand there is no budget allocation for the implementation of the SDGs.*

* Existing mechanisms or frameworks to monitor their implementation,

*Our enquiries have revealed that monitoring shall merely be done by the parliament (National Council).*

* How do these strategies/plans take into consideration the situation of women and girls with disabilities, and of children and older persons with disabilities?

*Only through existing action plans (which often lack budgets and clear monitoring and indicators).*

* How is the participation of persons with disabilities and their representative organizations ensured in the development and implementation of such strategies/plans?

*Up until now, there has been no participation of persons with disabilities and their representative organisations. The drafting process of the NAP was neither sufficiently transparent nor participative.*

1. Please provide information on the **legislative and policy framework in place in your country concerning non-discrimination**, including:
* Whether “disability” is specifically mentioned as a prohibited ground of discrimination,

*In Austria, the right to equality and equal treatment of persons with disabilities is enshrined in the Constitution as well as in different laws at the federal and regional level.*

*Art 7 para 1 Federal Constitutional Law sets out:*

*„All nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded. No one shall be discriminated against because of his disability. The Republic (Federation, provinces and municipalities) commits itself to ensuring the equal treatment of disabled and nondisabled persons in all spheres of everyday life.”*

*This constitutionally guaranteed principle of non-discrimination of persons with disabilities only relates to state measures and not to discrimination by private persons.*

*Art 8 para 3 Federal Constitutional Law stipulates that “Austrian Sign Language is recognized as an independent language. […]”.*

*Art 7 para 1 Federal Constitutional Law together with EU-Directive 2000/78/EC, that prohibits discrimination in employment and occupation, form the basis for different laws on equality and non-discrimination in the areas of work and vocational training (e.g. Federal Disability Employment Act) as well as in the area of daily life (e.g. Federal Disability Equality Act).*

*The protection against discrimination includes direct and indirect discrimination (e.g. caused by physical barriers) and also encompasses harassment, instruction to discriminate as well as victimisation and protection against discrimination by association. Likewise, most laws stipulate that measures for the promotion of equality do not constitute discrimination (affirmative action).*

*At regional level, some regional constitutions contain regulations for equal treatment. Provisions against discrimination on the ground of disability exist in all regions with regard to employment in public services and with regard to access to goods and services which are available to the public.*

*However, due to the constitutional division of powers between the Federal Government and the regions and because of the federal system, the level of protection against discrimination varies between Federal and Regional Government as well as from region to region.*

* The existence of any budgetary mechanism to ensure the provision of reasonable accommodation by public entities,

*In Austrian Law, there is no general definition of the term reasonable accommodation as foreseen in the CRPD. Only the Disability Employment Act obliges to ensure that reasonable accommodation is provided in the working environment. It sets out that grants or loans may be granted from the so called compensatory fund (Ausgleichstaxfonds) to finance e.g. technical tools, the creation of jobs and training opportunities, wage and training costs, work assistance, vocational training assistance, job coaching and clearing, individual workplace support, consulting services for companies, professional development, establishment  to earn a living as a self-employed etc. However, support measures are by no means sufficient for disposal.*

*The compensatory fund consists of legally prescribed compensation taxes. Every employer who employs 25 or more employees is obliged to employ on every 25th employee one employee with disabilities otherwise the employer has to pay compensatory tax.*

*The Federal Disability Equality act merely states that the Federal government undertakes to take the appropriate and necessary steps to enable persons with disabilities to have access to its performances and offers. In particular and following a hearing of the Austrian Working Group Rehabilitation it shall establish a plan for the removal of constructional barriers in buildings used by it by December 31, 2006 and to provide a step by step implementation (Step-by-step Plan for Federal Buildings).*

* Whether the denial of provision of reasonable accommodation amounts to discrimination,

*The denial of provision of reasonable accommodation is to be assessed under the general principle of non-discrimination of persons with disabilities. Without prejudice to the general obligation to provide reasonable accommodation, it does not constitute a discrimination if reasonable accommodation would impose a disproportionate or undue burden. That burden is not disproportionate when it is sufficiently remedied by measures existing within the federal or provincial legislation. In practise, this exemption is extensively used.*

* The existence of any affirmative action measures for persons with disabilities,

*Affirmative action measures are being taken by several institutions e.g. the promotion of employment, protection against dismissal, preferential taking on in equal cases of qualification etc.*

* The existence of any legal, administrative or other effective remedies available for persons who have been subject of discrimination on the basis of disability (including denial of reasonable accommodation),

*In general, the legal consequences of discrimination on the ground of disability in employment (with a few exceptions, for instance in the case of dismissal) as well as in access to goods and services are restricted to claims for damages.*

*The Federal Disability Equality Act merely specifies an entitlement to compensation for financial loss as well as for the harm suffered but not the elimination or omission of barriers as a legal consequence/sanction. In cases of harassment, there is a minimum compensation of 1000 Euros. In the context of all other forms of discrimination (direct and indirect discrimination, instruction to discriminate against a person, discrimination on grounds of association) there is no minimum compensation foreseen for the harm suffered.*

*The compensation is to be resolved through the court; before that, a mediation procedure must be conducted at the Federal Social Office. The model of mediation has proved itself during the past few years and in many cases this process leads to a settlement between the parties. In practice, it can be seen that conciliation proceedings can lead to the creation of accessibility, whereas law suits only lead to low amounts of damages being paid. However, a large part of discrimination cases on the ground of disability are not resulting in effective and sufficiently dissuasive punishments. There are hardly any court decisions so far regarding the Federal Disability Equality Act and even the possibility of mediation proceedings is often not used by victims of discrimination because the proceedings involve enormous efforts that are, in many cases, absolutely disproportionate to the potential outcome.*

*The main reason is that there is no legal claim for the omission or elimination of the discrimination. Besides that, the legal minimum compensation that is usually used by courts as a reference when assessing damages is much too low and especially for larger businesses, it is in no way dissuasive. The non-material damage for the harm suffered is usually not adequately taken into account. Additionally, the risk of high legal charges contributes to the fact that victims of discrimination hardly ever choose to take legal action (e.g. legal expenses of 2,500 Euro with a potential compensation of 1,000 Euro). In addition, the courts often miss the necessary sensitivity to the objectives of the Federal Disability Equality Act.*

*Alternatively, there is the possibility to launch a class action through the Austrian National Council of Persons with Disability (OeAR). However, this is only possible with the approval of the Federal Disability Advisory Board. The possibility of a class action has not been made use of to date.*

*Alternatively, persons who feel directly discriminated against by a state measure may file a complaint to the Constitutional Court on the basis of Article 7 para 1 Federal Constitutional Law seeking to have the contested law/regulation/decision annulled.*

* The establishment of governmental agencies or other similar institutions to guarantee to persons with disabilities equal and effective protection against discrimination.

*The Disability Ombudsman that has been installed 2006 by the Federal Disability Act has a consulting function and can deliver advisory opinions and recommendations; however, he hardly has any further competencies in order to enforce the right to equal opportunities for persons with disabilities. Otherwise, the non-transparent appointment of the present and the previous disability ombudsman, that were not part of the candidate pool of qualified persons with disabilities, has been criticized repeatedly.*

1. Please provide information on the **legislative and policy framework in place in your country concerning** **accessibility for persons with disabilities** in relation to the physical environment, transportation, information and communications, and to other facilities and services; including:
* The existence of national standards, guidelines, and regulations on accessibility and universal design, including access to Information and Communication Technologies,

*In Austria, there is no national concept for establishing full accessibility and there are multifaceted barriers that impede and frustrate the equal and independent participation of persons with disabilities in many aspects of life. This concerns physical, social, communication and informational barriers. Physical barriers such as, for instance, barriers of access to public buildings, private homes, schools and health care facilities or obstacles in public spaces often lead to discrimination of persons with disabilities. Neither the existing staged plans for the eradication of environmental barriers nor the present legal protection from discrimination are effective enough to enable comprehensive accessibility. Social barriers – whereupon the image of persons with disabilities is still marked by pity and the care (welfare) concept instead of self-determination and full inclusion – call for substantial measures for awareness-raising and sensitization. Communication barriers that manifest themselves in a lack of service offerings in alternative forms of communication such as the sign language, captioning, Braille or large print, as well as informational barriers such as a lack of information that is presented in Easy Language, still exclude a great number of persons with disabilities from social life.*

*The general rule to eliminate disadvantaging circumstances at all levels of government and to create basic conditions for the comprehensive equality before the law by persons with disabilities is based on the Principle of Equality of Art 7 para 1 Federal Constitutional Act. It is concretised by the Federal Disability Equality Act which together with a few other laws contain specific rules and measures for the establishment of accessibility. However, the regulations are incomplete and there is a lack of a standardised nationwide concept with the aim of achieving comprehensive accessibility. The distribution of competences between the federal Government and the regions (Laender), as well as the strongly pronounced federalism in terms of disability-related legal matters, have led to enormous uncertainties and inequalities.*

*In July 2012 a National Action Plan on Disability 2012-2020 (NAP) was adopted by the Ministerial Council that also contains measures to improve accessibility at a nationwide level. However, the NAP lacks binding elements. The regional authorities are not addressed by the NAP that is to say that the areas falling under the responsibility of the 9 regions are not covered by the NAP. The financing of the measures and goals in the area of accessibility is not ensured.*

***Physical environment***

*The Federal Disability Equality Act entered into force in January 2006. It applies to the federal administration including its activity as holder of private rights. The provisions furthermore apply to legal relationships and suchlike provided that in each case the access to and the provision of the goods and services available to the public are at stake and that the regulatory competence of the state is given. Access to workplaces is regulated separately through the Disability Employment Act. In respect of constructional barriers and barriers to transport the Federal Disability Equality Act set out a transitional period of 10 years which ended on 31.12.2015.*

*The Federal Disability Equality Act does not make accessibility obligatory, but clarifies that a lack of accessibility may constitute indirect discrimination. This means, for example, that discrimination exists if consumer businesses cannot be entered or if persons with disabilities are denied access to the provision with goods and services due to physical, communicative or other barriers. However, the Federal Disability Equality Act merely specifies an entitlement to compensation for the occurred damage but not the elimination or omission of barriers as a legal consequence/sanctions.*

*The Federal Disability Equality Act obliges the federal government to take the appropriate and necessary measures to enable persons with disabilities to gain access to its services and offers. In particular, the federal government had to draw up a staged plan to ensure accessibility to and in federal buildings. However, the effective implementation faces many challenges. The OeAR has a right to be heard regarding the single staged plans, but there is no compulsory monitoring to ensure the plans’ actual realisation. Furthermore, in 2011 the Act was amended to the detriment of persons with disabilities in two points. Firstly, for buildings used by the federation there is now a transitional period for the creation of barrier-free access until 2020 (extension by four years). Secondly, only the barriers described in the staged plans are to constitute discrimination in buildings used by the federation. Construction-related barriers which are not listed here are not to be considered discriminatory barriers as defined by the Disability Equality Act, although persons with disabilities are indeed discriminated against by these barriers.*

*Regarding the barrier-free access to housing the Federal Disability Equality Act foresees for that the affected person has to demonstrate his/her need to use the apartment. Furthermore, according to the Landlord and Tenancy Act (and the Austrian Civil Code), a tenant is not entitled to build or to legally force the owner to build a ramp, an elevator or a parking lot, for example. Accessibility does also not form part of customary local standards according to which a landlord/landlady is responsible for the ‘dynamic’ maintenance of buildings and accommodation.*

***Legislation on construction***

*Legislation on the elimination of construction-related barriers lies within the responsibility of the regions. In the present* ***construction laws****, accessibility is neither considered sufficiently nor regulated in a standardised manner. Minimum standards on barrier-free building are set out in the Austrian standards which were drawn up in working groups with the involvement of persons with disabilities (e.g. Austrian standard B1600: Planning principles for barrier-free building, B1601: Special buildings for disabled and old people – planning principles, B1602: Barrier-free schools and training institutions as well as accompanying facilities, and B1603: Barrier-free tourism facilities). However, these standards are recommendations and do not have any binding character nor have they been incorporated into existing building laws. The harmonization of building laws across Austria is attempted through OIB guidelines, which can be incorporated into the regional construction laws. Although initially intended, OIB guideline 4 on safety in use and accessibility does not refer to the Austrian standards on barrier-free building.*

*Subsidies from the federal government, the regions (Laender) and local authorities are not fully bound to the criterion of accessibility. This leads to buildings being constructed, renovated or adapted and not being barrier-free in spite of subsidies. In areas where subsidies are linked to accessibility, there is no appropriate check on whether accessibility has actually been realised.*

***Transportation***

*The Federal Disability Equality Act obliged transport operators to draw up staged plans to ensure accessibility of public transport vehicles, spaces and buildings for the period 2006 – 2015 until end of 2006. The OeAR had a right to be heard regarding the single staged plans, but, as already mentioned above, there is no compulsory monitoring to ensure the plans’ actual realisation. Meanwhile, the transport system is very well equipped in many areas and it is being continuously improved.*

*The Federal Act on Local and Regional Public Transport sets out that the allocation of subsidies to public transport companies or the purchasers of public transport contracts must be dependent on the needs of persons with reduced mobility being taken into account, and on vehicles being designed in a user-friendly way.*

*Apart from that several directly applicable EU regulations exist which aim, among other things, to prevent discrimination against persons with reduced disabilities.*

***Information and communications***

*The E-Government Act states that official websites operated by the Federal Government, the regions and the local authorities have to be designed in such a way that international standards on web accessibility are adhered to, also with regard to barrier-free access for persons with disabilities. Within the private sector, the call for accessible websites is supported by the Federal Disability Equality Act. However, the implementation or elimination of barriers cannot be achieved using the Federal Disability Equality Act. The recently reached agreement on the EU - web accessibility directive is a crucial milestone to achieve an inclusive digital society, to which also the draft European Accessibility Act could contribute.*

*The Telecommunications Act merely broadly and vaguely regulates that the interests of disabled users have to be accounted for. There is a great need for concretization on this matter.*

*The Austrian Television Act (ORF Act) obliges the Austrian Television (ORF) to produce television programmes in such a way that it is easier for deaf people and those with impaired hearing to follow them. In addition, the proportion of programmes made for persons with impaired hearing or vision in stages shall be annually increased. To this end, the ORF has to draw up a yearly plan on the further extension of barrier-free access to its television programmes and its online offers, including measures for its staged implementation. Furthermore, in the medium term the ORF has to aim to provide subtitles for all of its television programmes with language content. However, in a Europe-wide comparison barrier-free access to television programmes is quite limited.*

*The Audio-visual Media Services Act requires private audio-visual media providers to gradually make their services barrier-free for persons with impaired hearing or vision.*

* The existence of time bound action plans to make public and private facilities and services accessible for persons with disabilities,

*The National Action Plan on Disability 2012-2020 (NAP), adopted by the Ministerial Council, contains several (non-binding) measures to improve accessibility till 2020 at a nationwide level.*

*E.g.:*

* *Establishment of accessibility commissioners in the federal ministries*
* *The principle of accessibility should be better taken into account in the allocation of funds*
* *Accessibility as a compulsory subject in all relevant training (for example, architecture, civil engineering, structural engineering professions), and for the responsible persons in the building authorities and tin preservation order*
* *Accessibility as a precondition of funding from public funds for the construction or renovation of sports venues*
* The existence of accessibility requirements for public procurement,

*The Federal Public Procurement Act 2006 is currently revised to implement the EU Public Procurement Directive.*

* The existence of any enforcement mechanism of accessibility standards,

*There is no enforcement mechanism of accessibility standards. A lack of accessibility may constitute indirect discrimination. Persons with disabilities who are affected are entitled to compensation for the occurred damage. No mechanism exists for the removal of barriers.*

* The provision of training on accessibility issues for State officials and other actors.

*Generally, universal design is not obligatory in the curricula of (especially technical) vocational training courses and further training, or at least, it is not common. There are neither basic training courses nor further training courses on accessibility (this applies to areas within responsibility of the Federal Government, the regions and the municipalities).*

*Measure 112 of the National Action Plan on Disability 2012-2020 recommends to establish accessibility as a compulsory subject in all relevant training (for example, architecture, civil engineering, structural engineering professions), and for the responsible persons in the building authorities and in preservation order until 2013. This measure has not yet been implemented.*

*Furthermore, a university chair in accessibility should be established.*

1. Please provide information on the **legislative and policy framework in place in your country concerning support services for persons with disabilities**, including:

*In view of the time available and the broad nature of the subject it is not possible to answer this question.*