

EASPD's position on the UN General Committee on the Rights of Persons with Disabilities in relation to the discussion on Article 27 to the *United Nations Convention on the Rights of Persons with Disabilities*.

Written position – March 2021

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GeneralDiscussion.aspx>

I. Introduction

EASPD is the **European Association of Service providers for Persons with Disabilities**. Our Association aims at promoting equal opportunities for persons with disabilities through effective and high-quality service systems across Europe.

EASPD is committed to increasing the participation in the labour market of individuals with impairments through the involvement of the main stakeholders, such as Disabled People's Organisations (DPOs), the civil society, policy makers, trade unions and the business world, and ensuring that the needs of persons with disabilities are fully taken into consideration.

We are a European not-for-profit organisation representing over 17,000 service providers in 34 European countries. Over a third of our members provide employment-related services to persons with disabilities across the continent.

EASPD is member of the European Disability Forum (EDF), it participates to the Conference of State Parties to the *United Nations Convention on the Rights of Persons with Disabilities* (hereinafter UN CRPD) and is member of the European Commission's High-Level Group on Disability. Additionally, EASPD is a founding member of the "Inclusive Labour Market Alliance" (ILMA).

It is on the basis of this expertise and of the expertise of the members that it represents, that EASPD provides this written contribution.

It is EASPD's belief that every individual has the right to decent work in an open and inclusive labour market. EASPD advocates for an inclusive labour environment. To put an end to the situation of exclusion from the labour market of persons with disabilities and to tackle their persistent situation of unemployment, immediate action must be undertaken, in particular with the expected impact of the COVID-19 pandemic on the employment of persons with disabilities. Support measures are key to unlock job

potential and shift the focus from the disability to the skills and competences. The right to a decent job is another objective equally pursued by EASPD. The unemployment rates of persons with disabilities remains significantly higher than for persons without disabilities. Many persons with disabilities of working age are also inactive, meaning that they do not seek employment at all. It is also true that amongst the persons with disabilities who are job holders, too many are underemployed, underpaid and/or hired with the systematic use of temporary contracts and reportedly have poor career perspectives.

For the purpose of this paper, EASPD describes a decent job as providing for equal remuneration for work of equal value, safe and health working conditions, labour rights, training, opportunities for career advancement, reasonable accommodation; as based on Article 27 of the UN CRPD.

II. Contest of employment of persons with disabilities in Europe

In Europe there are around 80 million individuals with disabilities. Figures show that their rate of participation in the labour market is significantly restricted when compared to data on employment of persons with no disabilities elaborated by official bodies across the continent.

Almost 50% of European persons with disabilities in working age is reported unemployed or considered as not able to work (Eurostat, 2014). For a variety of reasons (societal, political, legal), a significant portion of unemployed persons with disabilities is long-term unemployed. This can be explained by the lack of support given to that category of job seekers and to employers in order to bridge the gap and create inclusive labour markets. EASPD's effort is primarily focused on raising awareness on the potential added value that persons with disability may bring on multiple business areas and on changing the paradigm of the "medical dimension", which prevents them from triggering their full potential and realising their ambitions.

Women and young people with disabilities, persons with mental health issues, persons with intellectual disabilities, persons with psycho-social disabilities and persons with acquired brain injuries appear to have an even greater degree of exclusion on the open labour market as well as persons with severe disabilities, physical and sensorial.

Over the last few decades, a strong movement arose, which has been advocating for a change of mind-set in the work and employment schemes for persons with disabilities. Furthermore, it has been promoting their right to work and facilitating the development of the required abilities to compete in the open labour market, as well as potential reasonable accommodation and support measures for the working environment. This includes the strengthening of the legal frameworks, the expansion of supported

employment and of other inclusive employment models, such as the social economy enterprises and inclusive enterprises, to better support people in entering the open labour market.

However, despite this wide movement, there has been negligible progress on the employment rate of persons with disabilities in the past decade.

The limited impact of this change of mind-set and development of effective models on employment rates has several explanations. The starting point is the overarching economic context in Europe. A situation which has been exasperated by the deep economic and financial crisis started in 2008. This persisting situation has eventually impacted the capacity of businesses to recruit and has led Governments to reduce public budgets for support services intended for persons with disabilities, including in the area of employment services, as well as to supportive policies (state aid, public procurement, etc).

At present, the number of jobs available in the open labour market for persons with disabilities has not increased compared to 15 years ago. In addition to that, during the above mentioned economic and financial crisis, the ***last in, first out principle*** has been widely applied by employers across Europe. This means that disadvantaged categories are the last to get into the labour market in times of economic prosperity and often the first to lose their employment in times of crisis. A major cause leading to the application of this principle is linked to the fact that public authorities do not provide the necessary political, financial and legislative support allowing for a large inclusion of persons with disabilities in the open labour market. Additional hurdles in this area have arisen in times of the COVID-19 pandemic, which has thrown the most part of European countries in deep economic recession causing high levels of job loss with many companies facing bankruptcy. A predictable burden arising from the pandemic is related to the expected cuts of budget in social and employment services operated in many countries in order to foster the post-COVID-19 economic recovery.

Despite the significant problems faced on their everyday operations, service providers for persons with disabilities have acquired a great degree of knowledge and data on the inclusion of persons with disabilities and on that basis they deliver increasingly efficient solutions toward a holistic and complete inclusion of individuals with every type of disabilities in the labour market; including with decent jobs.

III. Employment support methodologies in Europe

A variety of methodologies exist to support the employment of persons with disabilities across Europe, many of which have evolved towards a great level of performance over the last years. This is largely due to the influence of the UN CRPD. Although stakeholders are operating a change in order to reflect the principles of the UN CRPD, including of its Article 27, it appears that -often due to restrictions of the existing

legislation- the change is not happening at the same pace across the different European countries and in the different areas of service providers.

In most European countries, there are two main forms of employment-related services.

- The first model includes a variety of different service models focusing on including persons with disabilities in the open labour market. This is especially useful for employers and employees with mild intellectual or psychosocial disabilities or those long-term unemployed Employment services. The two main options in this area are, 1) Supported employment services, and 2) individual placement services (IPS).
- The second model includes methodologies which adapt the overall working environment to the situation of the workers with disabilities. This is particularly the case for persons with more severe intellectual or psychosocial disabilities, who are unable – at that point in time - to access decent jobs in the mainstream businesses, even with the abovementioned support models. The main options in this area are, Social economy enterprises, which include a variety of sheltered workshop models, work integration social enterprises and inclusive enterprises. Within this model, what matters most is the extent to which they provide for decent jobs -as defined by Article 27 to the UN CRPD- and improve the ability of persons with disabilities to access decent jobs in the short to medium term.

Additionally, there are many work and employment schemes which are not clearly defined and have characteristics which are common of the open labour market and of the protected sector. As society, individuals and disability evolve, the employment situations require a great deal of flexibility and innovation in order to pursue the objectives of decent jobs, inclusion and Article 27 to the UN CRPD.

While the situation is at risk of worsening in Europe (due to the COVID-19 Pandemic), it is important to note that the trend in all forms of services is shifting towards forms of support which are in line with the United Nations CRPD.

The following sections outline the main trends within these two main forms of employment-related services and how they relate to Article 27 to the UN CRPD.

i. Open labour market support models

Two open labour market support models have become increasingly popular in Europe: supported employment services and individual placement and support.

Supported Employment is a methodology, which fosters the employment of individuals with disabilities in the open labour market and where training and other tools are provided on an on-going basis to support the job-holder with disability and their employer. Unlike other methodologies, which typically rely on training with the hope

that ultimately a placement in the open labour market may occur, one main feature of supported employment is the fact that this methodology is based on the placement of the individual in the open labour market in the first place. It has been demonstrated by a large number of scientific studies that the major concerns of employers in relation to hiring a disabled individual is not related to productivity or to the additional cost that the company may face, it is mostly linked to the irrational fear of engaging with a situation they are not familiar with and they are not able to manage. Supported employment is thus proving to be effective in dealing with this challenge.

In effect, the supported employment methodology is made of the following three key stages:

1. Placement on the open labour market.
2. Training on the job.
3. On-going support.

Another innovative approach for supporting the employment of persons with disabilities in the open labour market is the Individual Placement and Support (IPS). The IPS model developed out of Supported Employment and focuses primarily on people with psychosocial disabilities. The model is described through six primary elements: commitment to competitive employment (inclusive employment in our context); eligibility based solely on client choice; rapid job search; well-integrated treatment and employment teams; attention to client preference in job search; and individualised employment support. Adherence of services to the project is often assessed by use of an IPS Fidelity Scale, which assesses on what extent programmes deliver all elements of the model.

While the trend is for increase delivery of these forms of services across Europe, significant variability remains in formal arrangements for delivery and funding, which leads to problems in “institutionalising” and scaling-up supported employment initiatives. Typically, persons with disabilities are perceived differently from other employment support beneficiaries and, without stable and predictable funding and legal systems, a gap in the availability of this methodology for that target group remains apparent.

There is strong evidence that supported employment and IPS are among the most cost-effective methodologies for inclusion in the labour market of individuals with disadvantages. However, while in the UK, it has been recognised as an effective approach for people with psychosis and heavy intellectual disabilities¹, recent reports suggest that they are insufficiently developed within the most part of European

¹ <https://www.nice.org.uk/guidance/qs80/chapter/Quality-statement-5-Supported-employment-programmes> (accessed on 19 February 2021).

countries. In that respect, professionals of the employment sector appear to be reluctant to the possibility of using that methodologies. Moreover, peer-reviewed literature suggests that the nature of the link between receiving welfare benefits and the eligibility for free or affordable health care in different countries can also impact the outcome of these methodologies among persons with severe psychosocial disabilities. Another factor that often hinders the success of this model is the lack of constant support and flexible return options to other services. Another important factor to be considered is the lack of flexibility by host organisations (e.g. businesses) to accommodate the approaches that are key to the success of these supported employment methodologies.

Ultimately, the cost-benefit argument is often seemed as crucial to advocate for governments to fund and to provide a solid legal framework for supported employment services and IPS.

ii. Social economy enterprises & Inclusive Enterprises

Social economy enterprises are among the employment models generated in the framework of social economy, which have been gaining traction at the EU and national level for their significant contribution to the employment of persons with disabilities in some countries. -

Today, social economy enterprises employ more persons with disabilities than other types of business model. In many cases, social economy enterprises represent the only working opportunity for persons with disabilities in Europe. Furthermore, their presence in many underdeveloped and rural areas makes them also an important vehicle for promoting social cohesion and contrasting the declining population in rural areas.

Due to their unique combination of social and market goals, social economy enterprises are at the forefront in the implementation of Article 27 to the UN CRPD.

Social economy enterprises are business actors that combine social goals with entrepreneurial spirit. These types of enterprises have as a main focus the achievement of social and environmental objectives, rather than generating profit. The European Commission use the expression “social enterprise” to cover the following types of business :

- *“Those for who the social or societal objective of the common good is the reason for the commercial activity, often in the form of a high level of social innovation.”*
- *“Those where profits are mainly reinvested with a view to achieving this social objective.”*

- *“Those where the method of organisation or ownership system reflects the enterprise's mission, using democratic or participatory principles or focusing on social justice.”*

While some form of legal recognition for social economy enterprises exists in many countries, this business concept is not universal. Many social economy enterprises across Europe operate in the form of social cooperatives, some are registered as private companies limited by a guarantee, some are mutual, and a lot of them are non-profit-distributing organisations, like provident societies, associations, voluntary organisations, charities or foundations.

A significant proportion of services providing support in the field of disability are committed to delivering on social objectives, for instance employing individuals with disabilities in the structure of their economic activity.

The social goals make them part of the social economy and thus eligible for the status of social economy enterprises.

Social economy enterprises operate in sectors such as tourism, catering, gardening and factory work and it is not uncommon that they employ many persons with disabilities or other individuals excluded from the labour market.

In this sense, it is also important to highlight inclusive enterprises, which are ordinary businesses with special status, since they employ a high percentage of people with disabilities, and where Disabled workers are common law employees, they have the same rights and obligations as other employees. As they are “ordinary businesses with special status” and for-profit organisations, they are not generally considered to be part of the Social Economy, which in many countries focus only on non-profit organisations.

As part of their workforce is comprised of persons with disabilities, such social economy enterprises and inclusive enterprises are often submitted to the permanent need of vocational and education training as well as substantial support on the job that is more significant if compared to enterprises mainly employing a non-disabled workforce. This is easily explained by the fact that social economy enterprises and inclusive enterprises often employ persons with disabilities and additional support needs and The return of this type of investment may not be evident when the above-mentioned requirements must be fulfilled to adapt the working premises to disabled job holders. For this reason, a common precondition for the functioning of social economy enterprises and inclusive enterprises– who often operate on the market, alongside other businesses- is the availability of subsidies and/or tax reductions. Those are tools that can be put in place by public administration across the EU to mitigate the additional expenditure that social economy enterprises may have to face and to compensate the loss in production possibly generated by individuals who can be less productive than persons without disabilities.

There is a significant diversity in forms of social economy enterprises and to which extent they provide decent jobs or train people towards access to decent jobs on the short to medium term. Many social economy enterprises provide decent jobs for their staff with disabilities on an equal or similar basis to workers without disabilities.

The organisation of sheltered workshops differs from country to country. It is therefore risky to discuss sheltered workshops as a category of social enterprises or inclusive enterprise; as some provide for decent jobs, whereas other operate on the basis of vocational education and training and some focus primarily as forms of social services (e.g. occupational therapy). Their different objectives mean means different relationship between the persons with a disability and the service provider, and thus that they relate to Article 27 to the UN CRPD in different ways.

This being said efforts are needed – both by public authorities and by the sheltered workshops themselves – to ensure that decent jobs are provided to persons with disabilities when they are *de facto* doing work-type activities for the social enterprise. For persons with disabilities involved in vocational education and training activities, it is important that the objective remains to help them get access to decent jobs on the short to medium term and that they are not permanently in training.

For the matter of inclusive enterprises, which are ordinary businesses with special status, since they employ a high percentage of people with disabilities and where disabled workers are common law employees. They have the same rights and obligations as other employees but as a difference with the ordinary companies, they receive special support training for the inclusion and transit to the open labour market.

Another challenge for social enterprises is that some of them, particularly the sheltered workshops can be perceived as ghettos that make it difficult for people to eventually integrate into regular competitive settings. Therefore, in some ways they are not (always) fully inclusive models; even though they often provide for decent jobs. Regarding inclusive enterprises, their staff must be diverse in terms of the type and severity of disability of workers, avoiding its segregating configuration or its configuration as a permanent instrument, but are instruments at the service of ensuring the full inclusion of people with disabilities and their right to employment, guaranteeing the rights recognized by Article 27.

Additional impediment to the development of social economy enterprises in several European countries is the lack of appropriate legal frameworks, which prevents service providers that could operate as commercial entities to be fully recognized as social economy enterprises. Given their particular context, social economy enterprises employing persons with disabilities often face obstacles, which place them in a condition of disadvantage for the unequal conditions that they face on the market preventing them to exploit their full potential for the benefit of the individuals they are aimed at supporting.

Sheltered workshops in Europe include two or more of these overarching models. They are not uniformly organized and according to the country they offer models that are more or less in line with the concept of “decent job” offered by the UN CRPD. Additionally, many of them are in a process of transition towards a closer compliance with Article 27 to the UN CRPD. This process should be further supported by public policies.

IV. Facilitating public policies for employment-related services

Appropriate public policies are crucial for achieving inclusion in the labour markets, creating decent jobs and implementing Article 27 to the UN CRPD.

All forms of employment services require the right public policies to be in place to facilitate their activities. This includes:

- Anti-discrimination policies to ensure that employers cannot discriminate against a person on the basis of their disability. More should be done to ensure that these measures are well understood and applied by employers and by other stakeholders in Europe. Public administrations across Europe and beyond, should lead by example, introducing effective positive discrimination mechanisms in their recruiting policies.
- The need for the employment-related services to be recognised in law as an effective instrument for the employment of persons with disabilities. For instance, supported employment remains absent from the legal frameworks of many European countries. There are also oftentimes legal barriers to the creation of social enterprises. This of course poses a major barrier to the employment of persons with disabilities as it not possible – or at least very difficult- to consequently create the right legal and financial frameworks needed to maximise the potential of employment-related services.
- Employment-related services require financial support frameworks from public authorities that can enable the service providers to cover their basic costs of operation; most of which include to staff-related expenditure (salaries, training, etc). This includes for both supported employment-type services as for social enterprises. For instance, one of the biggest barriers faced by sheltered workshops willing to offer decent jobs is the lack of proper legal frameworks and appropriate funding opportunities allowing them to do so.
- To be as effective as they can, the need to be supported by facilitating legal frameworks that can cover the additional expenses/costs employers may need to bear if they employ persons with disabilities. This can include state subsidies aimed at



covering the additional expenses linked to reasonable accommodation, the training costs of workers or a loss of productivity of the job holder. State Aid policies are important to create a level playing field between organisations that employ persons with disabilities and those who do not. It is also important to facilitate fair competition for businesses or social enterprises who employ persons with disabilities and operate on the market. Public procurement – and the specific use of reserved markets for inclusive businesses or social enterprises- can contribute significantly to create business opportunities for these organisations. Reduced taxation measures can also help businesses and social enterprises to employ persons with disabilities.

- Tackling the existence of benefit traps which lock persons with disabilities into unemployment as they risk losing income if they gain employment. It is therefore important for persons with disabilities to keep their disability benefits, which help to cover the additional costs of having a disability, whilst gaining employment. People who fall out of employment again, on the other hand, must be sure to get access to additional disability benefits in a smooth and undiscriminating way..
- Policies which encourage stakeholder cooperation; for instance between public employment agencies, employment-related services for persons with disabilities, businesses and others.
- Additional support to research, innovation and exchange of promising practices in the field of employment; a matter which is significantly underinvested and results in not making the most of the knowledge acquired. Additionally, benchmarking between different approaches, methods, sectors and countries is only feasible when comparable data are available.
- ICT can be a crucial advantage and should be developed and oriented in a way that considers the needs of persons with disabilities. Technology advancements and digitalisation should be focused on facilitating the life of individuals as active workers and on triggering their full potential through tackling every types of impairments and minimising them in order to dismantle existing barriers. The digital revolution is one of the landmark EU strategies and a priority for the European Commission for the upcoming years. A series of tools have been created in order to finance it and a relevant part of the EU budget will be devoted to achieving the digital revolution and the digital single market. EASPD would like to underline the potential that technology advancements and digitalisation can bring in facilitating the employability of persons with disabilities. For this reason, contributing to shape the digital revolution in a way that it fosters inclusion, maximises the productivity and facilitates the lives of individuals with disabilities is an opportunity that should not be missed. However, particular



attention should be paid that the future policy interventions in that area are not shaped in a way that the digital revolution becomes a vehicle for reduction of job opportunities and that the progress of technology does not hamper the employability or under evaluates the professional tasks of those categories that are historically more at risk, such as persons with disabilities.