

# Fostering Employment through Sheltered Workshops: Reality, Trends and Next Steps



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## Final Report

Prepared for:  
European Association of Service Providers for Persons with Disabilities (EASPD)

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## Acronyms & Abbreviations

AIPD	<i>Associazione Italiana Persone Down</i> (Italy). Italian Association for Persons with Down Syndrome.
ANED	Academic Network of European Disability experts
ASVO	<i>Associazione Scuola Viva Onlus</i> (Italy). Association School Viva Onlus
AZZP	<i>Asociace zaměstnavatelů zdravotně postižených ČR</i> (Czech Republic). Association of employers who employ over 50% of persons with disabilities
BAG WfbM	German association of sheltered workshops ( <i>Bundesarbeitsgemeinschaft Werkstätten für behinderte Menschen e. V.</i> )
Committee	UN Committee on the Rights of Persons with Disabilities
CIS	<i>Centra Integracji Społecznej</i> (Poland). Social Integration Centres
COGAMI	<i>Confederación Galega de Persoas con Discapacidade</i> (Spain). Galician Confederation of people with disabilities
CONACEE	<i>Confederación Nacional de Centros Especiales de Empleo</i> (Spain). National Confederation of Special Employment Centres
CSO	Civil Society Organisation
DABEI	<i>Dachverband Berufliche Integration</i> (Austria). Umbrella Organisation for Vocational Integration
EASPD	European Association of Service Providers for Persons with Disabilities
EDE	European Disability Expertise
EDF	European Disability Forum
EED	Employment Equality Directive 2000/78/EC
EP	European Parliament
EPR	European Platform for Rehabilitation
EU	European Union

European Association of Service providers  
for Persons with Disabilities

EUSE	European Union of Supported Employment (EUSE)
FAIDD	Finnish Association on Intellectual and Developmental Disabilities
ILMA	Inclusive Labour Market Alliance
ILO	International Labour Organization
INE	<i>Instituto Nacional de Estadística</i> (Spain). National Institute of Statistics
KIS	<i>Cluby Integracji Społecznej</i> (Poland). Social Integration Clubs
KVPS	<i>Kehitysvammaisten Palvelusäätiö</i> (Finland). Service Foundation for People with an Intellectual Disability
NASO	National Alliance for Social Responsibility (Bulgaria)
NGO	Non-governmental organisation
OLM	Open Labour Market
PES Network	European network of Public Employment Services
PFRON	<i>Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych</i> (Poland). State Fund for Rehabilitation of Disabled People
SEC	Special Employment Centres (Spain)
SEPE	Public Service of State Employment (Spain)
UN	United Nations
UNCRPD	UN Convention on the Rights of Persons with Disabilities
UWV	<i>Uitvoeringsinstituut Werknemersverzekeringe</i> (Netherlands). Employee Insurance Agency
WsW	<i>Wet sociale werkvoorziening</i> (Netherlands). Sheltered Employment Act
WTZ	<i>Warsztat Terapii Zajęciowej</i> (Poland). A type of day care centre. Translations include: Occupational Therapy Workshops / Activity Therapy Workshop
ZAZ	<i>Zakład Aktywności Zawodowej</i> (Poland). A type of sheltered workshops. Literal translations include: Vocational Activity Workshops / Workshops of Professional Activity / Occupational Workshops / Professional Activity Establishments

ZPCh

*Zakład Pracy Chronionej* (Poland). A type of sheltered workshops. Literal translations include: Protected workforce plants / Supported employment enterprises

## Executive Summary

In recent years, more sheltered workshops across the EU have started embracing the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). However, the disparities in the national legal frameworks, the lack of uniformity and the different sensibilities existing in the EU Member States with respect to this specific model have provoked dissimilar realities at local level; and the transition towards the full compliance with the UNCRPD has moved at distinct paces. The present study assesses the situation of sheltered workshops across the EU at present, especially with regard to article 27 of the UNCRPD. It then explores in detail the situation in seven countries: Czech Republic, Finland, Germany, Italy, the Netherlands, Poland and Spain.

In terms of legal frameworks, the clearest requirements for sheltered workshops come from the UN through the UNCRPD and General Comment n.8. These, in combination with previous UN praxis in recommendations to Member States, have delineated an increasingly critical view of the sector, up to the point of recommending its phasing out. However, UN regulatory documents are not without shortcomings, especially in the way they classify organisations as “sheltered workshops”, which is arguably too broad and not nuanced enough to capture the vast differences and good practices that exist within the sector, especially as far as social economy actors are concerned. EU-level regulations, although supposed to follow the spirit of UN ones, are still “playing catch up”: their approach still lacks clear consensus on definitions and on the future plans for the sector. EU Member States’ legislative instruments are highly diverse, as some countries tightly regulate the sector, whereas others do not. In many cases, legal loopholes at Member States’ level allow the development of areas of non-compliance with international regulations.

With regard to sheltered workshops in practice, this study found that across the EU, there are insufficient, or poorly suited, policy measures to encourage mainstream employers to hire persons with disabilities. This, coupled with unfavourable conditions in the open labour market as well as extensive financial support from the state for sheltered labour market participants, is contributing to the growth of the sheltered labour market. Meanwhile, sheltered workshops across the EU are governed by a range of different entities, including for-profit, not-for profit (including cooperatives), and collaborations with for-profit entities.

Sheltered workshops’ compliance with the UNCRPD varies, depending also on the type of organisation and its goals and activities. Segregation is inevitably present in the settings of a sheltered workshops; however, an increasing share of workers work outside the facilities. Findings from the seven country case studies show that employment choices of persons with disabilities are often guided not by preference, but by what is available and considered the “default” option. While some persons with disabilities prefer working in sheltered workshops, they might not be fully aware of alternative choices. However, some persons with disabilities prefer sheltered workshops due to a more welcoming, low-pressure environment and person-tailored support in comparison to the open labour market.

Persons who are working in the sheltered labour market are entitled to at least the minimum wage, but, in practice, they do not always have the chance to maximise their earnings. Sheltered workshops with a rehabilitative focus typically do not pay wages. Career advancement opportunities are available in principle; however, their practical existence depends on the workplace and the capacities of the individual. Although sheltered workshops (especially those with rehabilitative focus) have the legal mandate to encourage transition to the open labour market, transition is extremely rare in practice and is sometimes seen as a purely theoretical goal. In profit-oriented sheltered employment settings, employers are not incentivised to support such transition. Furthermore, the way disability pension systems are designed may contribute to the low employment levels of persons with disabilities.

This study makes a number of recommendations to the actors involved. These include recommendations for:

- Entities operating sheltered workshops to:
  - render transition to the open labour market as a main goal
  - prioritise people over benefits and adopt a person-centered approach
  - reinvest their profits into the organisation and be democratic and participatory in nature
  - train their staff into supporting and encouraging persons with disabilities in their transition
  - develop close ties with businesses in their area;
  
- Country-level policy makers to:
  - dedicate more resources to early intervention initiatives and ensure that vocational education is relevant for employers
  - accompany financial incentives for employers with information, awareness raising, job coaching and other soft measures
  - ensure that employment services' capacities are strengthened in addressing the needs of jobseekers with disabilities
  - legally recognise and invest in supported employment
  - ensure that persons with disabilities still receive financial support for additional living costs related to their disability
  - ensure that work activities are legally treated as such
  - monitor abuse of the financial support system for sheltered workshops and exploitation of workers
  - ensure that professional and personal development of persons with disabilities does not stop once they become employed in the open labour market;
  
- EU-level policy makers to:
  - ensure the collection and availability of data and research that allows progress to be measured: address the need for up-to-date and accurate quantitative and qualitative data on persons with disabilities in sheltered workshops and jobseekers with disabilities
  - increase the amount of funding dedicated to data collection and research
  - clearly define "disability", "sheltered workshops", and rehabilitative work versus work activities

- ensure that EU and Member States' policies incorporate the social model of disability while fully adopting a human rights-based approach
  - enter into discussions with service providers and CSOs to carefully weigh the pros and cons of ratifying the Optional Protocol of the UNCRPD.
- 
- Civil society organisations to find common points between those advocating for the closure of sheltered workshops and those advocating for their continuation, in order to ameliorate persons with disabilities' lives.

# 1 Introduction

Decent work as defined by the International Labour Organization (ILO) sums up the aspirations of people in their working lives. It involves opportunities for productive work that delivers a fair income, security in the workplace and social protection for families, decent prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives, and equality of opportunity and treatment for all.<sup>1</sup> Thus, decent work for all not only increases resilience but reduces inequality,<sup>2</sup> making it one of the top priorities of the 2030 Agenda for Sustainable Development.<sup>3</sup>

Hundreds of millions of people, however, suffer from discrimination in the world of work through multiple forms of discrimination, including on the basis of disability.<sup>4</sup> The situation of work and employment for persons with disabilities across the EU is in transition to models in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>5</sup> and the whole support service sector is affected. More sheltered workshops across the EU are – in recent years – embracing the principles enshrined in the UNCRPD. However, the disparities in the national legal frameworks, the lack of uniformity and the different sensibilities existing in the EU Member States with respect to this specific model have provoked dissimilar realities at local level and the transition towards the full compliance with the UNCRPD has moved at distinct paces.

To this end, the European Association of Service Providers for Persons with Disabilities (EASPD) commissioned a research study – contracted to Policy Impact Lab (PIL) - to assess the situation of sheltered workshops across the EU at present, especially with regard to article 27 of the UNCRPD. In particular, the study aimed to assess their contribution to the employment of persons with disabilities in the open labour market, whilst also considering the diversity of support needs of persons with disabilities using such services and acknowledging its importance in order to maintain persons with severe disabilities on to the labour market. The study also analysed sheltered workshops' trends towards the UNCRPD and identify the barriers to these dynamics.

## Report Structure

This chapter will go on to delve further into the context of sheltered workshops across the EU, as well as the need and reason for this study. The final section will then detail the methodology applied to the research study. Following this [introductory chapter](#), the report is structured as follows:

- [Chapter 2](#): Legal frameworks on Sheltered Workshops, covering an overview of international regulations, EU legal instruments and national regulations.

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<sup>1</sup> International Labour Organization (ILO). 2022. *Decent Work*. Available: <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

<sup>2</sup> Ryder, G. (ILO). 2022. *Decent Work and the 2030 Agenda for Sustainable Development*. Available: [http://ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_436923.pdf](http://ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436923.pdf)

<sup>3</sup> United Nations. 2015. *Transforming our world: the 2030 Agenda for Sustainable Development*. Available: <https://sdgs.un.org/2030agenda>

<sup>4</sup> International Labour Organization. 2016. *Background Note by the International Labour Organization for the UN High-Level Political Forum 11-20 July 2016, New York*. Available: [https://www.ilo.org/global/topics/sdg-2030/WCMS\\_510121/lang--en/index.htm](https://www.ilo.org/global/topics/sdg-2030/WCMS_510121/lang--en/index.htm)

<sup>5</sup> United Nations. 2022. *Convention on the Rights of Persons with Disabilities (CRPD)*. Available: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

- [Chapter 3](#): Main Findings across EU Member States, exploring the governance and characteristics of sheltered workshops, their compliance to the UNCRPD & ILO and future trends in the sector.
- [Chapter 4](#): Recommendations.
- [Annex I](#): Country Case Studies
- [Annex II](#): List of EU-Level interviewed stakeholders + Validation Workshop participants.

## The Context

Sheltered workshops – developed in the 1960s to support persons with disabilities who could not find employment in the open labour market – offer a working environment adapted to people with disabilities, and have been developed to support workers in learning professional skills and enhance personal development.<sup>6</sup> These workshops are one of the main policy responses to international and EU legal frameworks in ensuring the equal treatment of people with disabilities in (access to) employment.

Sheltered workshops in across the EU, however, differ on many aspects, as evidenced both by the present study (see [Chapter 3](#)) as well as older ones. Some of these differences are highlighted here:

- **Approach.** While it is not always possible, in practice, to differentiate between types of sheltered workshops, in theory sheltered workshops in EU Member states can be categorised according to two different types: **traditional ones**, which employ people with severe disabilities who cannot be integrated into mainstream employment and are long-term / permanent places of employment for the participants (virtually all Member States have at least one category of sheltered workshop-type organisation that absolves this function); and **transitional sheltered workshops**, which aim to support the transition of participants into the open labour market (e.g., post-Participation Act sheltered workshops in the Netherlands; some cooperatives in Italy).

There is a move towards the transitional model of sheltered workshops in the EU, with an increasing focus on vocational education and training. In many cases, for example among Italian cooperatives, these approaches may coexist in the same organisation. The same sheltered workshop may have a "caring" function (for permanent users with high support needs) and a function to prepare more motivated and capable users to work in the open labour market (e.g., in Finland). Thus, sometimes the transition may depend on each client's capabilities and motivation (this is the case in the more progressive organisations in Finland and Germany). Nonetheless, a study commissioned by the Directorate-General for Internal Policies within the European Parliament in 2015 reports that only 3% of people in transitional workshops move on to the open labour market.<sup>7</sup> Added to this, countries like Greece do not have legislation on sheltered workshops; the only option is the open labour market.<sup>8</sup>

<sup>6</sup> Group of the European People's Party (EPP Group). 2013. *Sheltered workshops: a new approach needed*. Available: <https://www.eppgroup.eu/newsroom/news/sheltered-workshops-new-approach-needed>

<sup>7</sup> Mallender, J. et al (European Parliament). 2015. *Reasonable accommodation and Sheltered Workshops for People with Disabilities: Costs and Returns of Investments*. Available: [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536295/IPOL\\_STU%282015%29536295\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536295/IPOL_STU%282015%29536295_EN.pdf)

<sup>8</sup> EASPD/PIL Validation Workshop 18.11.22



- **Type & degree of disability.** Both at EU-level and internationally, the definition of ‘disability’ and ‘person with disability’ eludes consensus. Similarly, the ‘degree’ of disability (e.g. whether it be moderate, severe, or the percentage of disability) differs across Member States. This evidently presents a challenge in comparing the types of disability which are catered for in sheltered workshops across Member States.

Furthermore, sheltered workshops cater to different types of disability in different countries. For example, in Malta and Spain, they are open to people with intellectual, physical and psychosocial disabilities.<sup>9</sup> On the other hand, in Germany, sheltered workshops generally cater for people with intellectual and psychosocial disabilities. There are also differences in the severity of impairment which qualifies the person to work in a sheltered workshop. For example, in Greece, Hungary and Italy, participants must have their work capacity reduced by half; while in France, people eligible to work in such workshops must have a working capacity amounting to one-third of that of a person without disability.<sup>10</sup> In some countries such as Spain, informal mechanisms ensure that sheltered workshops cater disproportionately to persons with mild to moderate disabilities; while in other countries (e.g. Poland) different organisations target different groups of persons with disabilities.

- **Employment status and remuneration.** There are significant gaps with regard to the employment status and remuneration of persons with disabilities working in sheltered employment. For example, in Austria, such workers are considered as service users and thus not protected by employment protection laws nor entitled to social security. On the other hand, France, Ireland, Portugal and Greece define people working in sheltered workshops as employees and provide persons employed in sheltered workshops a legal status as employees, though without a minimum wage guarantee. In Belgium (Flanders), Spain, and the Netherlands, sheltered workshop employees also have the right to a minimum wage.<sup>11</sup> In some Member States (Italy, Poland), persons with disabilities can be included either as (unpaid) users or as (paid) employees, depending on the type of organisation that provides sheltered workshop-type services.
- **Type of organisation providing sheltered employment.** The type of organisations providing sheltered employment across the EU also differ. For example, as Table 1 indicates, sheltered workshops across different Member States are provided by a range of entities:
  - Any entity (e.g. Czech Republic)
  - Both profit and non-profit entities (e.g. Spain, Poland)
  - For-profit entities (e.g. Netherlands)
  - Cooperatives (e.g. Italy)
  - In-patient facilities / independent companies (e.g. Germany).
- **State of play vis-à-vis the UNCRPD.** Views on whether sheltered workshops work towards the goals of the UNCRPD differ. Some studies maintain that such workshops seek to create employment opportunities that would not exist for certain persons with disabilities;<sup>12</sup> this is in line with the views of civil society organisations

<sup>9</sup> The Government of Malta. 2020. *European Social Charter. Addendum to the 13<sup>th</sup> National Report on the implementation of the European Social Charter*. Available: <https://rm.coe.int/rap-cha-mlt-13-2019-add/16809ee80a>

<sup>10</sup> Mallender, J. et al (European Parliament). 2015.

<sup>11</sup> Mallender, J. et al (European Parliament). 2015.

<sup>12</sup> Mallender, J. et al (European Parliament). 2015.

(CSOs) such as Access to Work – a cooperation of organisations of service providers throughout Europe representing sheltered workshop services – which states, in its submission to the UNCRPD Committee regarding the General Comment on Article 27, that an inclusive labour market has not yet been achieved, and sheltered workshops are therefore necessary to provide an opportunity to work for those who otherwise would not be able to.<sup>13</sup> Inclusion Europe – representing people with intellectual disabilities and their families – however, reports that in many cases, workers in sheltered workshops do not earn a minimum wage or have access to labour rights on the same grounds as the general population. Furthermore, many persons with disabilities lose their social benefits when they start working, benefits which are essential to meet the higher costs of life persons with disabilities normally face. Compounding this situation, the recent pandemic worsened the already poor conditions of work of such workshops in some EU countries: in Germany, for example, several sheltered workshops cut the wages of their employees.<sup>14</sup> The high inflation rates and energy crisis may deepen the already-existing issues.

## Why this Study?

The diversity in the status, approach, definition, target groups and other factors of sheltered workshops across the EU (see Chapters 2 and 3) points to the immediate need of exploring the current status quo of these workshops in the different Member States. Studies such as the 2015 one commissioned by the European Parliament<sup>15</sup> are now outdated, not only in terms of time elapsed (seven years at the time of writing, December 2022), with some data being sourced from much previously), but also in terms of new developments taking place in the last five years, including the impact that the COVID-19 pandemic has had – and is having – on the employment of persons with disabilities.

As EASPD itself points out,<sup>16</sup> there is a need to consider the advances, contribution and diversity of sheltered workshop models across the EU. This study thus comes at an important juncture in the road towards the inclusion of persons with disabilities in the mainstream labour market in the EU. The aim of the study to assess the situation and type of sheltered workshops across the EU is a crucial starting point. This is necessary in order to then continue to explore the effectiveness of such workshops, as well as their state of play with regard to the UNCRPD, including the developments that have been made in the different EU Member States in their transition towards full compliance with the Convention.

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<sup>13</sup> Access to Work Europe. 2022. *Submission of Access to Work Europe to the future General Comment on Art. 27 UNCRPD*. Available: <https://www.ohchr.org/en/calls-for-input/2021/call-submissions-draft-general-comment-article-27-right-persons-disabilities>

<sup>14</sup> Inclusion Europe. 2020. *Employment of people with intellectual disabilities: Before, during and after the COVID-19 pandemic*. Available: [http://www.inclusion-europe.eu/wp-content/uploads/2021/01/Covid-report-design-finalised\\_accessible.pdf](http://www.inclusion-europe.eu/wp-content/uploads/2021/01/Covid-report-design-finalised_accessible.pdf)

<sup>15</sup> Mallender, J. et al (European Parliament). 2015.

<sup>16</sup> European Association of Service providers for Persons with Disabilities (EASPD). 2021. *EASPD's position on the draft general comment on Article 27 of the United Nations Convention on the Rights of Persons with Disabilities*. Available: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CallCommentsDraftGeneralComments.aspx>

## Research Questions

In view of the above, this research study aimed at answering the following research questions:

### 1) Sheltered Workshop Characteristics

- i. What kind of organisations are qualified as sheltered workshops across the EU?
- ii. How are they structured & organised (similarities & differences)?
- iii. What are their goals (similarities & differences)?
- iv. What types of disabilities do they cater for?

### 2) State of Play vis-à-vis UNCRPD

- i. What is the state of play of sheltered workshops across the EU with regard to the UNCRPD?
- ii. What is the progress made by sheltered workshops in Member States towards full compliance with the UNCRPD? *To be explored from the perspective of:*
  - national legislation;
  - UN Committee on the Rights of Persons with Disabilities observations to State Parties; and State Parties' reports to the Committee;
  - General Comment on Article 27 of UNCRPD (compliance with);
- iii. Are there any barriers preventing sheltered workshops from completing the transition to full compliance?

### 3) State of Play vis-à-vis ILO Agenda on Decent Jobs

- i. How effective are sheltered workshops in generating decent jobs as defined by the ILO?
- ii. What are the disparities in the different geographical regions of the EU in generating decent work as defined by the ILO?

## Methodology

This study was conducted using a mixed methodology consisting of **desk research** (review of legal documents, literature review and statistical data), **qualitative interviews** with EU-level and Member State-level stakeholders, and a collaborative approach based on a **validation workshop** for the policy recommendations:

**Desk research.** Desk research facilitated extrapolation of key findings, key gaps, and key points of disagreement in the literature orienting the researchers' in the qualitative interviews. The desk research was used to achieve the following key objectives:

- Through a study of Member States' legal documents and their relation with the relevant UN conventions, the researchers mapped the types of organisations that qualify as 'sheltered workshops' under EU Member States' law, analysed how their structure and organisation is regulated, and what EU-level provisions exist that (seek to) harmonise their work.
- Exploring in depth seven countries across the EU as case studies: here the researchers also used country statistics relevant to persons with disabilities' employment / sheltered employment to assess the level of coverage that sheltered workshops provide.
- By looking at legal, academic, CSO reports and government reports, the researchers determined what are the key similarities and differences in terms of target: what groups of persons with disabilities are included, and what are the goals of the organisations (particularly insofar as the reception of the transitional model is concerned).
- Once the legal aspect was defined, the researchers determined the actual state of play of sheltered workshops across the EU in terms of transition towards compliance with the UNCRPD. For this the researchers used:
  - National reports and shadow reports to UNCRPD;
  - Academic studies and expert opinions such as the Academic Network of European Disability (ANED) experts' reports and European Disability Expertise (EDE) studies;
  - Policy documents such as recommendations from national institutions and NGOs, as well as EU-wide organisations like EASPD, EDF (European Disability Forum), EPR (European Platform for Rehabilitation), Inclusion Europe and Access to Work Europe;
  - UN Committee on the Rights of Persons with Disabilities recommendations to State Parties;
  - ILO country reports.

**Qualitative interviews.** Interviews with key stakeholders were used to update the picture from the literature and collect data on the situation of sheltered workshops in practice in the seven countries selected as case studies (see [below](#)) and across the EU. The researchers then proceeded to use the qualitative interviews to validate the findings, fill the gaps – especially when the literature was outdated – and generate a consensus on the current state of play whenever the literature lacks one. The researchers sought to achieve the following:

- Define the most up-to-date picture of the state of play on sheltered workshops, integrating and updating the existing literature on the existing gaps / achievements across the EU in general, and in the Member States selected as case studies in particular.
- Gain a clear idea of the plans of the Member States to fully comply with the guidelines provided by the UN Committee on the rights of persons with disabilities, and with the general comment on article 27 of the UNCRPD.
- Obtain views from stakeholders about the situation on the ground insofar as sheltered workshop's ability to create decent jobs (as defined by art. 27 of the UNCRPD and by the International Labour Organisation (ILO)) is concerned.

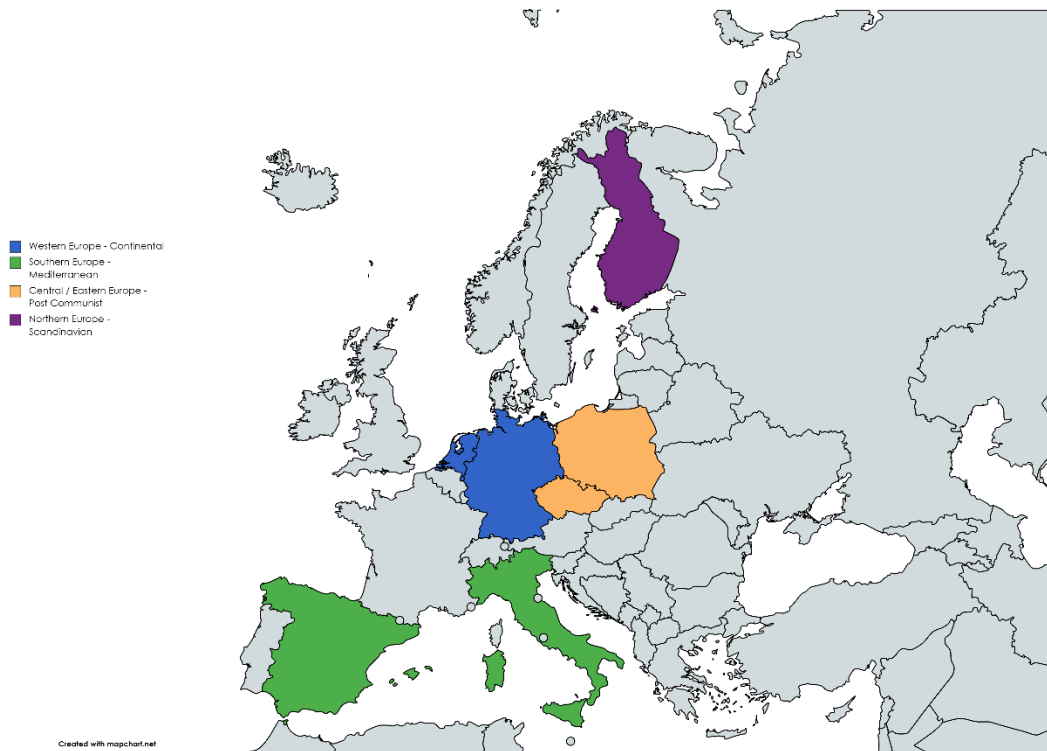
- Map the existing disparities in the different areas of the EU, the barriers preventing the EU and the Member States in particular from completing the transition, the reasons for this, and the possible solutions. This constitutes the backbone of the policy recommendations.

In total, 40 interviews were held, consisting of the following types of stakeholders:

- **EU-Level:**
  - 5 interviews with pan-European disability networks
  - 2 interviews with EU-level decision makers
- **Country-level:**
  - 4 national-level decision makers
  - 15 representatives of civil society organisations, organisations of persons with disabilities, and academic / policy experts on work inclusion policies.
  - 14 sheltered workshop providers, managers, supporting staff and workers.

**Country Case Studies.** Seven countries were selected as case studies, each of which were delved into and explored in detail vis-à-vis the situation of sheltered workshops. The countries were selected in a manner which represents, as much as possible, different regions of the EU, different population sizes and different welfare regimes. Figure 1 lays out these criteria for each country.

Figure 1. Overview of Case Study Countries: Regions and Welfare Regimes



As indicated above, a range of stakeholders were interviewed in each of the seven countries. The stakeholders targeted at national level consisted of:

- national decision-makers;
- sheltered workshop providers;
- organisations of persons with disabilities (OPDs);
- civil society organisations / researchers.

**Analysis & Report writing.** Following the desk research and interviews, the research team developed the country case studies and conducted a qualitative analysis of the data which was collected. A Comparative Criteria Table (Table 1) was developed in order to visualise and compare the similarities and divergences between the seven different countries based on criteria identified through the fieldwork phase as well as the research questions. Based on this analysis, the present report was then developed. Both case studies as well as the main report were validated with the interviewees.

**Validation workshop.** A validation workshop with members of the EASPD Member Forum on Employment and some of the interviewed participants (see [Annex II](#) for list of participants) was held before finalising the study report, in order to validate policy recommendations by discussing with the relevant stakeholders both findings as well as the emerging recommendations. Further amendments and recommendations were received by non-participants following the workshop. The proposed recommendations and modifications to existing ones were then incorporated in the final report.

[Figure 2](#) provides a visual illustration of the research process followed in the preparation of this report.

## Challenges and Mitigation Measures

As with any research study, challenges presented themselves in the course of its implementation, some of which are highlighted below together with the mitigation strategies employed by the researchers:

**Lack of response from interviewees.** The research team commenced outreach to relevant stakeholders in August 2022 in order to be able to conduct all the interviews necessary. Nonetheless, a number of interviewees could either not be reached (whether via email or phone) or did not accept to be interviewed (due to lack of time amongst other reasons). This was mitigated by reaching out to stakeholders in similar positions in order to collect the information needed.

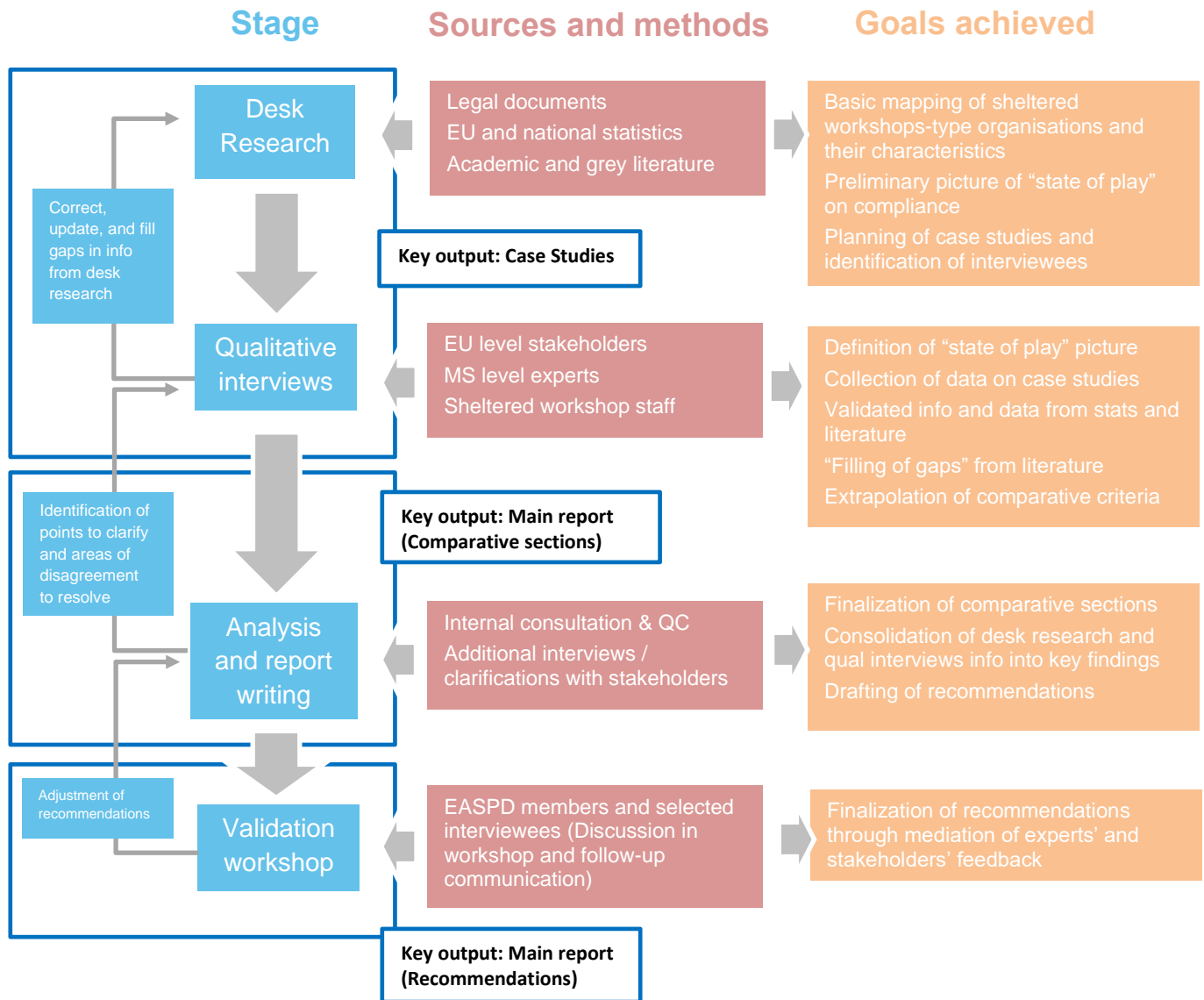
**Limited perspectives of persons with disabilities.** Due to the complexity and fragmentation of the sheltered workshop system, it is not feasible to conduct a sufficient number of interviews to guarantee representativeness of the lived experience of all users / employees of sheltered workshops. Instead, the consultant has interviewed stakeholders from umbrella organizations representing persons with disabilities, to gain as much of a “bird-eye”

view of the issue as feasible, and conducted in-depth case studies whenever possible – with the caveat that accessing staff of sheltered workshops is sometimes challenging due to various practical reasons, including linguistic and technical barriers and lack of available mediators.

**Lack of data.** As the sections about [recommendations](#) and [legal frameworks](#) note, the lack of reliable, up-to-date, disaggregated data on this topic is a major issue in all EU member states. In some of the case studies, there are order of magnitude-wide differences between sets of statistics from the same state, or between them and those from EU institutions.

**Topic controversy.** Due to the controversy surrounding the sheltered employment topic, as well as due to the disparity in the definition of sheltered workshops, some of the feedback received from the EASPD Member Forum on Employment members were in conflict with the research findings or recommendations from other members. The research team sought to achieve a balance in presenting their findings and propose recommendations in order to reflect the reality and current state of sheltered workshops across Europe.

Figure 2. Illustration of the research process





## 2 Legal Frameworks on Sheltered Workshops

This chapter provides a brief overview of the legal frameworks regulating sheltered workshops and sheltered workshop-type organisations. It begins by detailing the international legal framework at UN level that informs the policies of Member States; it then proceeds to detail the EU legal instruments that play a similar role for Member States' legislations, explaining how they relate (or fail to do so) with UN regulations. Lastly, it details some of the key features and issues in Member States' national legislations, and delineates some future trends.

### Overview of International Regulations

A number of international instruments (conventions, treaties, protocols, and the like) contribute to shaping the legal frameworks through which EU Member States regulate employment for persons with disabilities, and the role of sheltered workshops therein. The **International Labour Organization**, the **United Nations**, the **Council of Europe** and the **European Union** are the main sources of relevant international regulations.

Figure 3 provides a visual representation of the way in which legal instruments at different levels interact with one another in influencing national legislation. The subsequent sections in this chapter describe the role of individual instruments in detail.

### International Labour Organization

As work environments, sheltered workshops and other forms of sheltered employment are subject to the requirement set out by the International Labour Organization (ILO)'s principles of **participation in the labour market**, and its definition of **decent work**:

**Participation in the labour market:** The ILO, emphasising the core deliverables of the Addis Ababa Action Agenda<sup>17</sup> in its Implementation Plan<sup>18</sup> on the 2030 Agenda, sets for its members the overarching goal to "encourage the full and equal participation of women and men, **including persons with disabilities**, in the formal labour market."

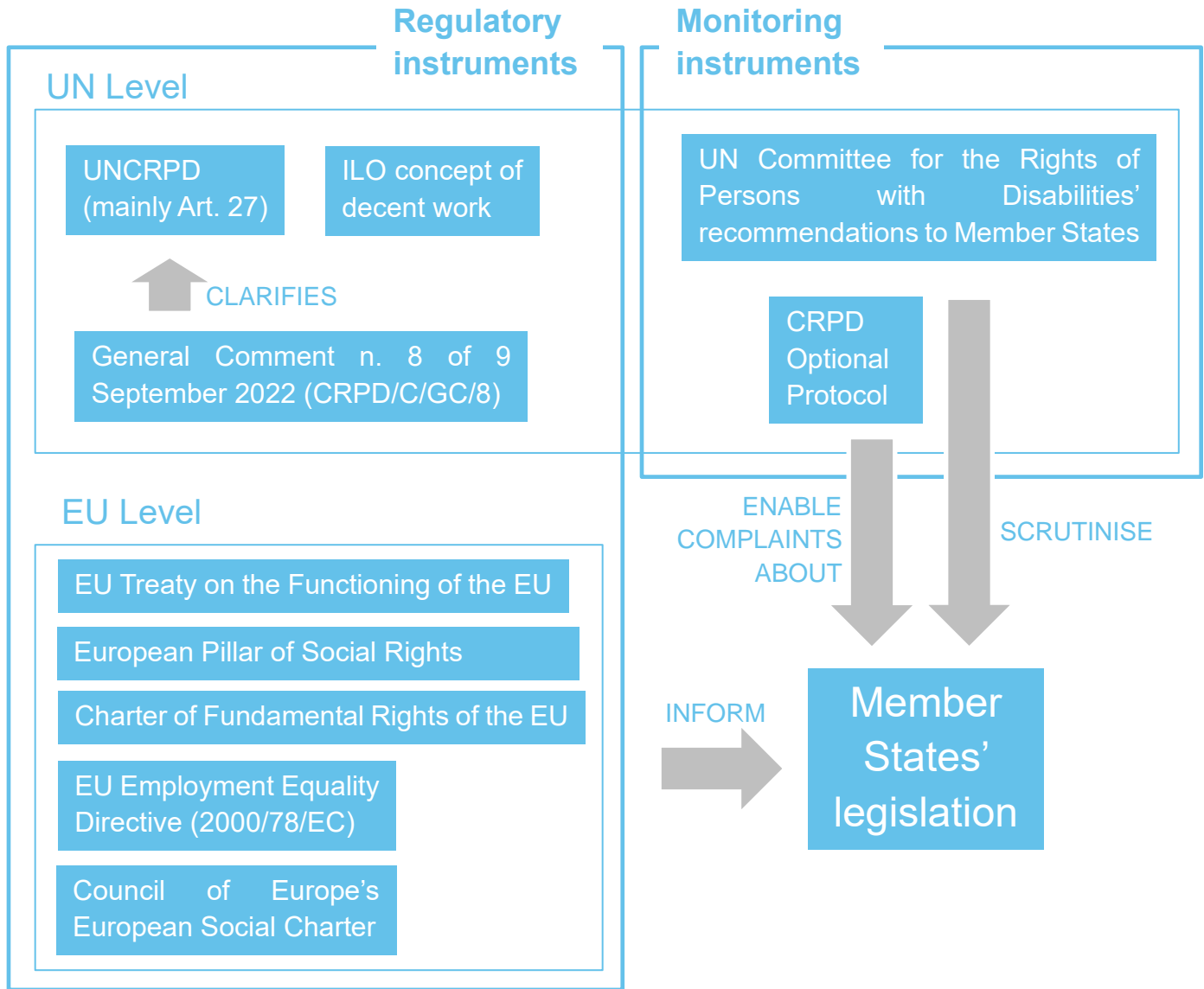
**Decent work:** Member States are not only expected to encourage participation, but required to do so by following the ILO concept of "**decent work**". Decent work is work (regardless of its forms: formal or informal,

<sup>17</sup> United Nations. 2015. *Addis Ababa Action Agenda of the Third International Conference on Financing for Development*. Available:

<https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=2051&menu=35#:~:text=The%20Action%20Agenda%20establishes%20a,economic%2C%20social%20and%20environmental%20priorities.>

<sup>18</sup> International Labour Organization. 2016. *ILO Implementation Plan – 2030 Agenda for Sustainable Development*. Available: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms\\_510122.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_510122.pdf)

Figure 3. Relations between legal instruments on sheltered employment



permanent or temporary) conducted “in conditions of freedom, equity, security and human dignity”<sup>19</sup> with the following characteristics:<sup>20</sup>

- Paying a fair income;
- Guaranteeing a secure form of employment and safe working conditions;

<sup>19</sup> ILO 2012. *Gender equality and decent work: Selected ILO Conventions and Recommendations that promote gender equality as of 2012*. Geneva: International Labour Office, Bureau for Gender Equality, International Labour Standards Department.

<sup>20</sup> European Commission 2022. *Employment and Decent Work*. Available: [https://international-partnerships.ec.europa.eu/policies/sustainable-growth-and-jobs/employment-and-decent-work\\_en](https://international-partnerships.ec.europa.eu/policies/sustainable-growth-and-jobs/employment-and-decent-work_en)

- Ensuring equal opportunities and treatment for all;
- Including social protection for the workers and their families;
- Offering prospects for personal development;
- Encouraging social integration;
- Giving workers the freedom to express their concerns and to organise.

As “decent work” is a dominating principle that relates to *any* form of work, even in informal, unregulated or under-regulated sectors, all Member States should ensure that work and work-like relations in sheltered workshops fulfil the requirements of “decent work.” The performance of the investigated case studies in this area will be discussed in [Chapter 3](#) of this report.

## United Nations documents

The United Nations have long operated as the main source of international regulation on and monitoring of the rights of persons with disabilities. The main instruments include:

- The UN’s **Convention on the Rights of Persons with Disabilities**, and especially **Article 27**, as the key *regulatory* framework;
- **General Comment n.8 of 9 September, 2022 (CRPD/C/GC/8)** as an additional *regulatory* instrument, clarifying the requirements of Article 27;
- The **recommendations to Member States** from the UN’s Committee on the Rights of Persons with Disabilities, as a key *monitoring* instrument of Member States’ performance;
- The **Optional Protocol** to the UNCRPD, which allows to lodge complaints against Member States, as a parallel *monitoring* instrument.

## Key ideas and issues in UN regulatory instruments

The different UN instruments have taken different positions vis-à-vis sheltered employment, but undeniably, **the general pattern over the years has seen an increasingly negative view of “sheltered workshops” take hold**. As the following sections will show, though, this is not without contradictions, mainly because **UN instruments lack an effective definition and categorization** of what constitutes a “sheltered workshop”.

Figure 4 hereunder provides a schematic overview of the evolution of the UN’s position on sheltered workshops.

*Figure 4. Evolution of UN Instruments’ positions on sheltered workshops*

## UNCRPD (mainly Art. 27)

Establishes the right to open, freely chosen employment.

Lacked clarity in definition and role of sheltered employment.

## UN Committee Recommendations to Member States

Confirmed a negative view on sheltered employment.

Still lacked an unambiguous, standard definition.

## General Comment n. 8 of 9 September 2022 (CRPD/C/GC/8)

Came out strongly against sheltered employment, to be expeditiously phased out.

Defines sheltered employment with numerous, but clearer criteria. **However:**

A sheltered workshop is such if at least *some* criteria fulfilled.

Applicability of the term is now extremely vast.

Nuanced and differences between organisations can get lost

The following sections provide a detailed explanation of the dynamics outlined in Figure 4.

### The UNCRPD and sheltered workshops

Article 27 details the state parties to the UNCRPD's obligations in the area of employment stating that "*States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.*" Moreover, the UNCRPD also forbids all forms of discrimination against persons with disabilities, including **denial of reasonable accommodation and harassment** (Article 2), which are especially important for employment, especially in the open market.

This, however, did not explicitly clarify what role **sheltered employment** should or should not play in employment for persons with disabilities. The UNCRPD has been noted to lack clarity on this point: it does not make any explicit mention of "sheltered employment" or "protected employment"; it establishes the right to work "freely chosen" in an environment that is "open", which establishes the **right to open market employment**, but does not in itself *forbid* sheltered employment. The UNCRPD is thus unclear as to:

- What exactly constitutes a “sheltered workshop”;
- The extent to which they are a forbidden or discouraged practice.

### Recommendations to Member States

Even though the above points remained unclear, in its practice, the **UN Committee on the Rights of Persons with Disabilities** (henceforth: the UN Committee) that oversees the implementation of the UNCRPD has often taken the position that it sees sheltered employment as an **obstacle** to open market employment, and has recommended **phasing out sheltered employment** in its recommendations to Member States.<sup>21</sup>

This, however, **has not been enough to clarify the issues** as in some cases the recommendations are too generic to understand which specific *types* of organisations in a given country the Committee is referring to when it mentions “sheltered workshops”, and whether they are all segregated in nature.<sup>22</sup> As the section on national legislation [below](#) will illustrate, and as [Chapter 3](#) describes in detail, variation within Member States can in fact be quite considerable.

### General Comment n.8

The UNCRPD’s provisions were expected to be partly clarified with the **General Comment n.8 of 9 September, 2022 (CRPD/C/GC/8)**.<sup>23</sup> The UN Committee on the Rights of Persons with Disabilities defined as “segregated” any work place that fulfils “**at least some**” of the following characteristics (General Comment, Sect. III.A, par. 14): “*The Committee observes that segregated employment, such as sheltered workshops, **includes a variety of practices and experiences, characterised by at least some of the following elements:***

- a) they segregate persons with disabilities from open, inclusive and accessible employment;*
- b) they are organized around certain specific activities that persons with disabilities are deemed to be able to carry out;*
- c) they focus on and emphasise medical and rehabilitation approaches to disability;*
- d) they do not effectively promote transition to the open labour market;*
- e) persons with disabilities do not receive equal remuneration for work of equal value;*
- f) persons with disabilities are not remunerated for their work on an equal basis with others;*
- g) persons with disabilities do not usually have regular employment contracts and are therefore not covered by social security schemes.”*

<sup>21</sup> See for example recommendations to France (CRPD/C/FRA/CO/1. Available: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD/C/FRA/CO/1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD/C/FRA/CO/1&Lang=en)) or Germany (Available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/096/31/PDF/G1509631.pdf?OpenElement>)

<sup>22</sup> For example, in its recommendations to Poland (Available: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD/C/POL/CO/1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD/C/POL/CO/1&Lang=en)) from 2018, it expresses concerns over “the promotion of sheltered workshops” (point 47(b)), but there are several types of organisations in Poland that work as “sheltered workshops”, and their share as employers for persons with disabilities is overall decreasing (see case study about [Poland](#)), including as a result of state policies.

<sup>23</sup> United Nations Committee on the Rights of Persons with Disabilities. 2022. *General comment No. 8 (2022) on the right of persons with disabilities to work and employment*. Sept 9, 2022. Available: [https://www.ohchr.org/sites/default/files/2022-09/CRPD\\_C\\_GC\\_8-ENG-Advance-Unedited-Version.docx](https://www.ohchr.org/sites/default/files/2022-09/CRPD_C_GC_8-ENG-Advance-Unedited-Version.docx)

The new definition, while more detailed than the original wording in the UNCRPD, and recognising that sheltered employment includes “a variety of practices and experiences”, takes an approach **far broader** than in any previous legislative document from the UN.

**Key implications for the sheltered workshops sector.** In legal terms, “some” can mean two or more, though it may also mean “at least one, possibly all”.<sup>24</sup> Thus, in light of the General Comment, *any* organisation with at least two, or potentially even one, of the above-mentioned characteristics is a “sheltered workshop”; this means that even organisations that are not commonly classified as “sheltered workshops” **would in fact qualify as such** and should, according to the text of the General Comment, be phased out.

An exception is made for **organisations “managed and led by persons with disabilities, including those that are jointly owned and democratically controlled”**: these can have the characteristics above and still be considered non-segregated “if they provide just and favourable conditions of work on an equal basis with others”. (Sect. III.A, par. 15). This category covers organisations such as some smaller sheltered workshops in Croatia, identified by some CSOs as examples of good practices.<sup>25</sup> However, even cooperatives in EU Member States do not consistently manage to involve persons with disabilities in decision making and management, and though they may be “jointly owned”, are not “democratically controlled”.

Some CSOs still see the definition of “segregation” in the General Comment as vague, while noting that the definition of “sheltered workshops”, which has been broadened to include organisations that do not work as *traditional* sheltered workshops, does not sufficiently take into account good practices from EU countries.<sup>26</sup>

Broadness of definitions notwithstanding, Committee representatives have made it clear that:

- The Committee now encourages Member States to **phase out sheltered employment**.
- It **does not see it as a “step” towards full employment**, nor does it consider the **transitional forms** as compliant.
- Sheltered workshop are to be phased out “**expeditiously**” (General Comment, Sect. VI, par. 81, point (i)) by Member States “to the maximum of their available resources” (Sec. IV.A, par. 53).
- This needs to be done through the implementation and enforcement of **clear policy objectives and benchmarks** to measure progress in this area.
- Member States should *proactively and deliberately working to dismantle the sector*, rather than relying on market forces or organic change.<sup>27</sup>

<sup>24</sup> Killoran, D. 2019. “Quantity Terminology: Some, Few, Several, and Many”. *LSAT and Law School Admission Blog*. Available: <https://blog.powerscore.com/lsat/bid-153449-lsat-quantity-terminology-some-few-several-and-many/>

<sup>25</sup> Interview with CSO representative.

<sup>26</sup> Interview with CSO representative.

<sup>27</sup> Comment from representative of the UN Committee on the Rights of Persons with Disabilities. EASPD Policy Café “The EU Package of Initiatives on Improving Labour Market Outcomes for Persons with Disabilities”. November 9, 2022.

**Additional obligations and implications.** Besides the key implications listed above, the Committee also lists a few areas that require action from Member States:<sup>28</sup>

- The Committee sees discrimination, **which includes denial of reasonable accommodation in employment**, as a key issue to be resolved.
- To resolve this and ensure compliance, Member States should promote and strengthen **supported employment schemes**.
- Employment should be encouraged **without causing a loss of income from social protection** schemes such as disability pensions.
- **Data** should be collected by Member States on the basis of **human rights-based indicators**.

The previous sections have detailed the key implications for the sector deriving from the General Comment and the UNCRPD; it is however important to note that the two documents display lack of clarity in some areas, and have a tendency to **simplify some aspects** of the operations of sheltered workshops – at least in Europe. The following section explores these shortcomings, which need to be kept in mind to be able to assess Member States compliance.

**“Blind spots” in the UNCRPD / General comment provisions.** The overarching principle behind the UNCRPD is the rejection of the medical model of disability and the endorsement of the human rights and socio-contextual model instead;<sup>29</sup> accordingly, the UN’s legal provisions focus on the removal of societal obstacles to the full enjoyment of the right to work. This however leads to some discrepancies between the practicalities of sheltered workshops and the text of the law. The UNCRPD and the General Comment discuss sheltered and open market as **clearly separated**, with the former functioning as an obstacle, due to ableist and medical approaches underpinning its functioning (General Comment, Sect. I, par. 3), to the much **more desirable participation in the latter**. Yet, some sheltered workshop-type organisations (for example many [cooperatives in Italy](#)) are seen as falling somewhere between open and sheltered employment; and some organisations offer “mixed” opportunities for employment: interviewed stakeholders note that several EU countries (Netherlands, Belgium (Flanders), Sweden, Spain) have systems of secondments, work enclaves, mobile units or other forms of open/sheltered market interaction. These effectively make the distinction **far less clear-cut in practice**. To make matters more complex, the UNCRPD calls for the guarantee of the right to freely chosen *open* employment, but, as the interviews with persons with disabilities in the [case studies section](#) illustrates, persons with disabilities **do not always prefer open market employment** as the default option, especially when sheltered employment is in **social economy enterprises**, which qualify as good practices, offering good working conditions and high wages

<sup>28</sup> Comment from representative of the UN Committee on the Rights of Persons with Disabilities. EASPD Policy Café. November 9, 2022

<sup>29</sup> European Parliament 2021. *Equal treatment in employment and occupation in light of the UNCRPD European Parliament resolution of 10 March 2021 on the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in light of the UNCRPD (2020/2086(INI))*. Official Journal of the European Union C 474/48.

(as is the case in some organisations in Spain).<sup>30</sup> In turn, many persons working in sheltered workshops **are not in the position to express a clear preference due to lack of exposure to both systems.**

While the UNCRPD and the General Comment in particular take the position that sheltered employment is necessarily bad, some CSOs believe that the focus should rather be on whether *employee status is recognised* (something which is lacking in Greece and Germany, for example), and whether *employee rights are protected*, more than on the format of work inclusion.<sup>31</sup> Most of the sheltered workshops which they see as representing good practice are those whose primary goal is supporting the **transition** of persons with disabilities into the open labour, market **rather than those whose only goal is lucrative.**

Most of such good practices are found in the social economy (that is, social enterprises). However, the Committee in its discussions with social actors has expressed the view that transitional sheltered workshops also need to be phased out; and in any case, not all social economy good practices fulfil the requirements of being “managed and led by persons with disabilities” or being “jointly owned and democratically controlled” that would grant them exception from UNCRPD / General Comment provisions. The inability to account sufficiently well for good practices in the social economy is seen by many stakeholders as a major issue in the current UN regulations.<sup>32</sup>

CSOs have raised **additional concerns about lack of clarity as to the extent to which it should be read as a categorical guidance.** Responses from representatives of the Committee, describing the Comment as a “roadmap” and a set of criteria to be weighed comprehensively, contrast with the difference between the way the text is presented, and the categorical *legal reading* it calls for.<sup>33</sup> **Additional issues remain insufficiently addressed:** CSOs have further noted that the definition of what is “segregation” remains too vague; that there are no clear thresholds or types of activities that are clearly and unambiguously identified as “segregated”;<sup>34</sup> that the criterion that sheltered workshops are uncompliant if they “are organized around certain specific activities that persons with disabilities are deemed to be able to carry out” (General Comment, Sect. III.A, par. 14, point b) clashes with the fact that most work duties, including on the open labour market and even for persons without disabilities, are determined by employers on the basis of what they deem the employee to be able to carry out. They have also raised questions about the guiding ability of the Comment given that the categorical tone of the document clashes with the lack of clarity in the provisions.<sup>35</sup>

<sup>30</sup> Interview with CSO representative. In Spain, for example, the social economy company ILUNION has built a position as market sector leader that can guarantee competitive salaries and good working conditions: employees of the company prefer remaining in its employment rather than entering open market.

<sup>31</sup> Interview with CSO representative.

<sup>32</sup> Feedback from CSOs and service providers provided during the validation workshop. November 18, 2022.

<sup>33</sup> Comment from CSO representatives and representative of the UN Committee on the Rights of Persons with Disabilities. EASPD Policy Café. November 9, 2022

<sup>34</sup> For example, in terms of ratio of persons with disabilities to persons without disabilities in an establishment for it to be considered segregated.

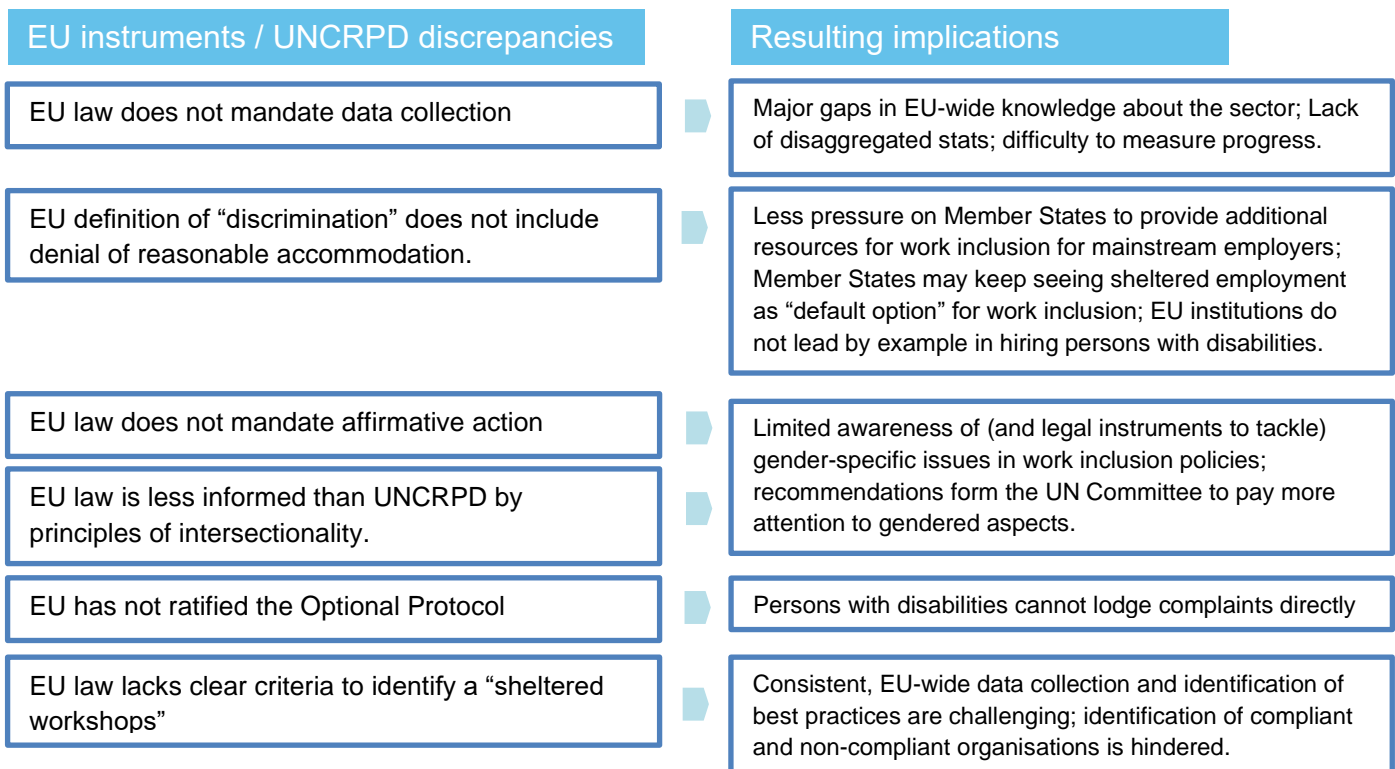
<sup>35</sup> Comment from CSO representatives and representative of the UN Committee on the Rights of Persons with Disabilities. EASPD Policy Café. November 9, 2022



## EU legal instruments

EU Member States must fulfil UNCRPD obligations in coordination with existing EU regulations; theoretically, these should themselves be compliant with the UNCRPD since the EU is a party to the Convention. However, as most EU legal instruments pre-date the UNCRPD, discrepancies exist between the provisions in the two legal systems. Figure 5 illustrates the main areas where EU legal instruments diverge from the UNCRPD and the General Comment, while the following sections detail the stance of EU law and its shortcomings.

Figure 5. Discrepancies (and key implications thereof) between UNCRPD & EU law<sup>36</sup>



The legal backbone of work inclusion policies for persons with disabilities in the EU are the **Treaty on the Functioning of the EU**; the **Charter of Fundamental Rights of the EU**, which establishes the right to engage in work; and **Principle 17 of the European Pillar of Social Rights**, which establishes that persons with disabilities “have the right to income support that ensures living in dignity, **services that enable them to participate in the labour market and in society**, and a **work environment adapted to their needs**”.<sup>37</sup>

<sup>36</sup> Anglmayer, I., Ex-Post Evaluation Unit, 2020. *Implementation of the Employment Equality Directive in the light of the UNCRPD. European Implementation Assessment*. Available:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654206/EPRS\\_STU\(2020\)654206\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654206/EPRS_STU(2020)654206_EN.pdf)

<sup>37</sup> European Commission 2022. *Employment, Social Affairs & Inclusion. Persons with Disabilities*. Available: <https://ec.europa.eu/social/main.jsp?catId=1137>

Furthermore, the EU has ratified the **UNCRPD**, which entered into force for the EU in January 2011, introducing the CRPD's human rights approach to disability into EU law: **the Convention is therefore binding both for EU institutions and for its Member States.**<sup>38</sup>

Equality in employment across the EU is guaranteed by the **Employment Equality Directive 2000/78/EC** (Henceforth: **EED**),<sup>39</sup> which "established the framework for prohibiting discrimination, inter alia on grounds of disability, in the field of employment and occupation, setting EU-wide minimum standards".<sup>40</sup>

All EU Member States are also members of the Council of Europe, and therefore bound by its European Social Charter,<sup>41</sup> which allows sheltered workshops as a residual option in cases where the employer is unable to hire the person with disability in the open labour market.<sup>42</sup>

## The issue of definition

As the European Parliament recognises, despite the progress made in recent years, so far the **implementation of the UNCRPD in the area of work is insufficient.**<sup>43</sup> As Figure 5 detailed, in some areas, the EED and the UNCRPD pursue **different objectives**. In order to address issues of compliance, though, the EU and its Member States first need to solve the underlying issue of *defining* sheltered workshops. While the General Comment may present issues due to the broad applicability of its definition, the challenge with EU legal instruments is that **they cannot rely on any single definition of what constitutes a "sheltered workshop"**. This is due to the sensitivity of the issue and the vast discrepancies in national legislations,<sup>44</sup> and although this topic was brought up in the European Parliament in 2020,<sup>45</sup> the new EU Disability Strategy (discussed in further detail in the following [section](#)) **still does not put forward a clear definition of such workshops.**

Instead, using the term 'sheltered employment', the latest EU Strategy simply states that "A large number of persons with severe disabilities do not work in the open labour market, but in facilities offering so-called sheltered employment. **Such schemes are diverse** and not all ensure adequate working conditions or labour-

<sup>38</sup> European Parliament 2021. *REPORT on the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in light of the UNCRPD*. Available: [https://www.europarl.europa.eu/doceo/document/A-9-2021-0014\\_EN.html#section1](https://www.europarl.europa.eu/doceo/document/A-9-2021-0014_EN.html#section1).

<sup>39</sup> European Union. 2000. *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*. Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>

<sup>40</sup> Anglmayer, I., Ex-Post Evaluation Unit, 2020. *Implementation of the Employment Equality Directive*.

<sup>41</sup> Council of Europe. 1996. *European Social Charter (revised) (ETS No. 163)*. Available: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=163>

<sup>42</sup> Member States should "Promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services"

<sup>43</sup> European Parliament 2021. *REPORT on the implementation of Council Directive 2000/78/EC*. This is without considering the impact that the General Comment will have, which cannot at this stage be assessed as it was issued only in September 2022.

<sup>44</sup> Interview with CSO representative.

<sup>45</sup> European Parliament. 2020. *Parliamentary questions*. Available: [https://www.europarl.europa.eu/doceo/document/E-9-2020-004786\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-004786_EN.html)

related rights for persons with disabilities, nor pathways to the open labour market”.<sup>46</sup> This phrasing only notes the existence of diversity but does not do enough to account for the existence of best and worst practices in the sector in a nuanced way.

## Future trends in EU policies

The latest EU framework for the promotion of rights of persons with disabilities is the “**Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030.**” (Henceforth – the Strategy) Published on 3 March, 2021, it builds upon the Disability Strategy 2010-2020 and is meant to contribute to the European Pillar of Social Rights, rests on the principles of the UNCRPD, and sees **employment** as the basis for decent quality of life and independent living.<sup>47</sup> Specifically, it proposes, as one of its Flagship Initiatives, to explore the **quality of jobs in sheltered employment.**<sup>48</sup> This is one of the aspects tackled by a package<sup>49</sup> to improve labour market outcomes for persons with disabilities in 2022 in cooperation with the European Network of Public Employment Services (PES Network).<sup>50</sup> It is not yet clear, however, how this will work in conjunction with the much more restrictive view of sheltered employment that the General Comment mandates in its interpretation of the UNCRPD.

Among the other key provisions for employment, the Strategy also calls on Member States to establish the denial of reasonable accommodation (including at work) as a form of discrimination, support cooperation between social economy stakeholders, use assistive technology to improve employability, and coordinate more with equality monitoring bodies to ensure UNCRPD compliance.<sup>51</sup> The pressure to **recognise the denial of reasonable accommodation as a form of discrimination** is especially significant as this is a major gap in EU law compliance with the UNCRPD.<sup>52</sup>

Recognising the above-mentioned issues of lack of data and lack of definition, as part of the Strategy the EC commits to support Member States by providing, between 2023 and 2024:

1. a study on improving rate and quality of employment through alternative employment models. This will seek to better classify sheltered employment and sort out the difference across Member States between

<sup>46</sup> European Commission. 2021.

<sup>47</sup> Gómez Campos, A. 2022. *Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030. EPR Annual Conference 22 September 2022* (Available from EPR upon request); European commission 2022. *Employment, Social Affairs & Inclusion*; DWISE Network 2022. *Measuring the D-WISE Social Impact Capturing the difference we make*. Document obtained from authors.

<sup>48</sup> European Commission. 2021. *Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*. Available: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8376&furtherPubs=yes>

<sup>49</sup> A practitioner toolkit was launched in September 2022, aiming at supporting PES in better supporting vulnerable social groups and the integration of persons excluded from the labour market. Available at:

<https://ec.europa.eu/social/main.jsp?langId=en&catId=1100&furtherNews=yes&newsId=10387>

<sup>50</sup> European Commission. 2021. *Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*. Available: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8376&furtherPubs=yes>

<sup>51</sup> Elizondo-Urrestarazu, J. 2021. *#UnionOfEquality: Strategy for the Rights of Persons with Disabilities 2021- 2030 A view from Equality Bodies*. Equinet. Available: <https://equineteurope.org/wp-content/uploads/2021/03/Disability-Strategy-Summary-1.pdf>

<sup>52</sup> So far the discriminatory nature of denial of reasonable accommodation had only been argued for at the European Court of Justice. An attempt to resolve the issue was made with the proposed 2008 horizontal equal treatment Council directive, which the Council has so far failed to approve. See Anglmayer, I., Ex-Post Evaluation Unit, 2020, p. 13-14 for the jurisprudence on denial of reasonable accommodation.

services and organisations that conduct sheltered employment, and those that have a pure rehabilitative function;

2. guidance on how to improve accessibility and inclusiveness of employment;
3. catalogues of positive actions to combat stereotypes and promote affirmative action;
4. guidelines for reasonable accommodation at work for employers;
5. manuals on the management of chronic illness and preventing risks of acquiring disabilities;
6. guidelines on effective vocational rehabilitation services.<sup>53</sup>

All six commitments focus heavily on **collection and dissemination of information and good practices**. The information collected will directly relate to the area of work of sheltered workshops, and will result in the sector being put under scrutiny in preparation of best practices and models to follow across the EU.<sup>54</sup>

## National regulations and related issues

Sheltered workshops across the EU differ in both practice, definition, approaches and legal regulation.<sup>55</sup> Furthermore, their regulation needs to be seen in coordination with the legal instruments that each Member State has adopted to promote **open employment**, which affects the role and activity of sheltered workshops. Theoretically, all Member States recognise the need to prioritise open employment in line with the UNCRPD, and ascribe a residual role to sheltered employment. However, **in practice**, sheltered employment can play a very central role in work inclusion at national level. This can either be due to legal instruments' own design, which may fail to advance the nominal goal of prioritizing open employment; but it can also due to the existence of informal practices in their application, or due to the presence of loopholes in interpretation.

Although generalisations are difficult, **five key observations apply** when it comes to national legal frameworks and their interrelation with the UNCRPD and EU law. These are detailed in Figure 6, while the following sections explore the features of national legal frameworks more in detail.

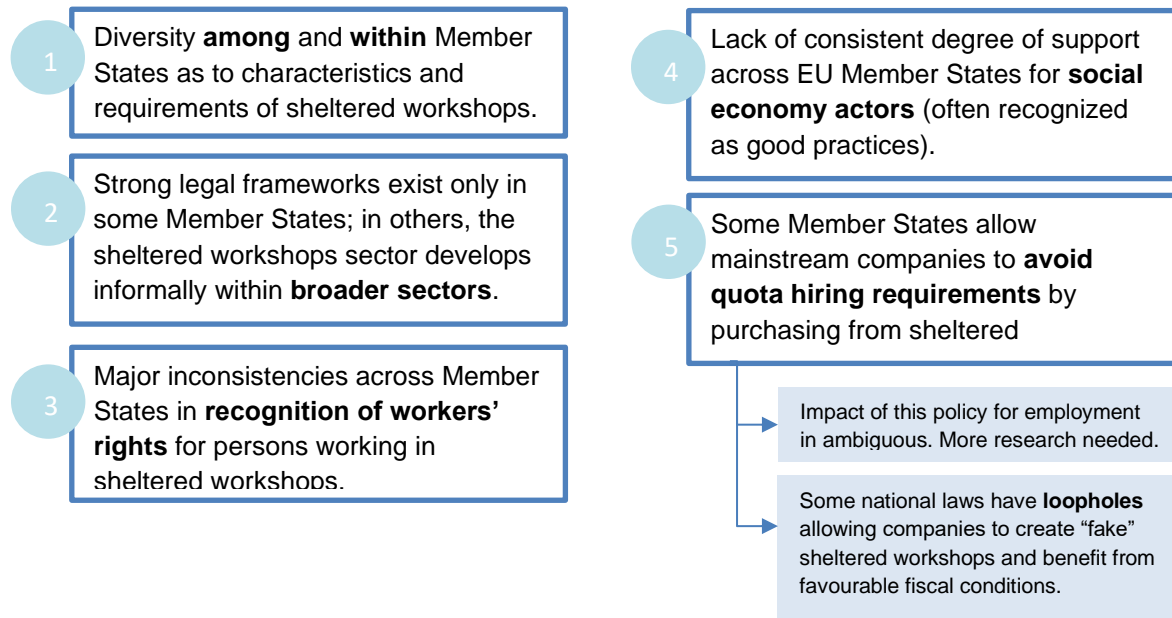
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<sup>53</sup> Comments from European Commission representatives, EASPD Policy Café “The EU Package of Initiatives on Improving Labour Market Outcomes for Persons with Disabilities”; Gómez Campos, A. 2022. *Union of Equality*.

<sup>54</sup> Comments from European Commission representatives.

<sup>55</sup> Group of the European People’s Party (EPP Group). 2013.

Figure 6. Key observations about national legal frameworks on sheltered workshops



## Characteristics of national regulations

### Diversity among and within Member States

All EU Member States have transposed into national legislation the EED, and have ratified the UNCRPD itself, whose provisions should in turn inform Member States' implementation of the EED.<sup>56</sup> However, as CSO representatives note, it is sometimes difficult to find points of contact between the provisions of the UNCRPD and the practice in EU countries, whose legal frameworks are too different.

As following chapters detail, the types of organisations, mandate, type of activities conducted in sheltered workshops, type of support, qualifications of supporting staff, and employment status provided to persons with disabilities working in sheltered workshops across the EU can be profoundly different **even among different organisations within the same Member State**, with resulting discrepancies in terms of compliance with the UNCRPD.

Existing studies that try to quantify the phenomenon of sheltered employment face the issue that there is no common definition of sheltered workshops at Member State level.<sup>57</sup> Relatedly, sheltered workshops are called by different names in different Member States, for example 'adapted work enterprises' (Belgium), 'workshops for adapted work' (Germany) or 'help-through-work establishment and services' (France).

<sup>56</sup> Anglmayer, I., Ex-Post Evaluation Unit, 2020. *Implementation of the Employment Equality Directive*.

<sup>57</sup> Anglmayer, I., Ex-Post Evaluation Unit, 2020. *Implementation of the Employment Equality Directive*.

## Legal frameworks regulating the sector

Generally speaking, it is possible to differentiate between Member States that regulate and define sheltered workshops as part of **strong legal frameworks**, and others in which they are regulated as part of **support schemes not defined by law**.<sup>58</sup>

An example of the former are countries like Croatia, Belgium, Spain, Czech Republic, Germany, the Netherlands and Greece, where there are clear legislative instruments providing indications on the mandate, organisation and required characteristics of sheltered workshops at a national level.<sup>59</sup> An example of the latter are countries like Malta, where the law does not specifically provide for sheltered employment for workers with disabilities,<sup>60</sup> or like Italy, where the law defines the requirements and obligations of **broader** categories (“cooperatives”), and it is within this category that some organisations start operating as sheltered workshop-*type* actors, without an explicit recognition of their nature as such in national law.

Outside of these two broader categories, there are other Member States, such as Poland, where there is a considerable amount of **legal fragmentation** leading to the development of multiple categories of organisations that operate as sheltered workshops, each with slightly different features defined by the law. Legal fragmentation can cause “grey areas”, though, which is how some organisations in Poland (called “post-ZPChs” by some experts; [see relevant case study](#)) nominally operate as mainstream companies, but act as *unregulated* sheltered workshops.

## Recognition of workers’ rights or lack thereof

Another major difference in national legislation pertains to the **recognition of workers’ rights**. This is discussed in more detail in the [case studies section](#), but at this stage it is worth mentioning that inapplicability of labour law is a general feature across EU Member States for **organisations that focus on rehabilitation** and do not involve persons with disabilities as employees. This is the case for example in Germany or Austria - although in Austria’s case, provincial laws against discrimination may apply (furthermore, since Austria is a federal state, different rules can apply to each Bundesländer).<sup>61</sup>

Furthermore, the existence of a strong legal framework does not always translate in consistent **monitoring**: in Estonia, for example, a major reform of work inclusion services was launched in 2012, consisting of a wide range of services including temporary placement in sheltered employment, and significant funding for workplace

<sup>58</sup> Mallender, J. et al (European Parliament). 2015.

<sup>59</sup> Mallender, J. et al (European Parliament). 2015.

<sup>60</sup> The Government of Malta. 2015. *European Social Charter: 9<sup>th</sup> National Report on the implementation of the European Social Charter*. Available: <https://rm.coe.int/16804894f3>. This situation changed in 2016 when the Ministry for the Family and Social Solidarity funded the Positive Supported Employment programme to promote open employment as the priority option (The Malta Independent. *Reflections on the issue of employment of persons with disability*, February 12, 2019. Available: <https://www.independent.com.mt/articles/2019-02-12/local-news/Reflections-on-the-issue-of-employment-of-persons-with-disability-6736203559>)

<sup>61</sup> DOTCOM: The Disability Online Tool of the Commission 2022. Available: <https://ec.europa.eu/social/main.jsp?catId=1542&langId=en> pdf version p.1

adaptation in mainstream work settings.<sup>62</sup> Yet, scandals soon emerged as exploitative organisations were able to secure access to this funding.<sup>63</sup>

### Social economy actors

National legal frameworks are also **inconsistent in the definition of social economy actors** (the term “usually coexists with other terms, such as enterprises with social goals (Belgium), social cooperatives (Italy), cooperative enterprises serving the general interest (France) etc. and has been used interchangeably with some of these terms”),<sup>64</sup> as well as in the **level of support assigned to social economy actors**. Social economy actors are recognised by CSOs as **examples of good practices and compliance**, as long as they 1) prioritise social goals; 2) reinvest revenues within the company; 3) are transition-oriented, rather than profit-oriented; and 4) are participatory and democratic.<sup>65</sup> Legal differences in the definition and unequal level of support for such organisations, however, results in inequalities in the way Member States tap into the potential of compliant good practices embodied by social economy actors.

### How laws for open market inclusion affect sheltered workshops

National legislation often envisages quota systems of compulsory hirings of persons with disabilities for open market employers (currently only Bulgaria is missing a legal framework to encourage employment in the open market).<sup>66</sup> These can consist of:

- hard quotas, proportional to the size of the company (as in Italy);
- homogenous (fixed percentages) quotas regardless of company size with systems of bonuses for any extra hiring (as in Poland, Czech Republic);
- homogenous quotas without mechanisms to encourage additional employment (Croatia);
- gradual targets of overall employment across sectors (as in the Netherlands).

These mechanisms – in combination with state support for workplace adaptation and job coaching – constitute a crucial component of open labour market inclusion policies. Quotas are not, however, consistently implemented and monitored – an issue that the UN Committee sees as an area of urgent intervention as per the General Comment.<sup>67</sup>

The role that sheltered workshops play in systems where quotas are in place can vary: in some countries, such as the Netherlands and Sweden, **sheltered workshops are expected to play a role in facilitating the fulfilment of open market inclusion targets** by promoting transition or providing job coaching services. In Sweden, in

<sup>62</sup> These included generous compensations (up to 100% of costs) by the government for employers to adjust workplaces to PWDs’ needs - as long as they employ them with an open-ended contract. OTCOM 2022. *The Disability Online Tool of the Commission 2022*. <https://ec.europa.eu/social/main.jsp?catId=1542&langId=en> pdf version p. 22;

<sup>63</sup> Ohlrich 2017. „Sheltered Workshops Increasingly under Public Scrutiny.” *NP*, June 14, 2017. Available: <https://nonprofitquarterly.org/sheltered-workshops-increasingly-public-scrutiny/>

<sup>64</sup> Zolyomi, E., Birtha, M. 2020. *Towards inclusive employment of persons with disabilities A comparative study of six social economy organisations and companies in Europe*. Available: <https://www.euro.centre.org/downloads/detail/4102>

<sup>65</sup> Interview with CSO representative.

<sup>66</sup> DOTCOM: The Disability Online Tool of the Commission 2022. Available: <https://ec.europa.eu/social/main.jsp?catId=1542&langId=en> pdf version p.7 and 9

<sup>67</sup> Comment from representative of the UN Committee on the Rights of Persons with Disabilities. EASPD Policy Café. November 9, 2022.

particular, a joint public-private enterprise has quotas on the number of persons with disabilities that have to move to the open market.

In other countries, sheltered workshops are not expected to provide services such as job coaching to help the private sector reach its quotas. However, in such systems a common provision includes the possibility for mainstream employers to avoid compulsory hiring by **paying fees** (something seen as an inefficient mechanism at best, or an outright undermining the goal of work inclusion at worst),<sup>68</sup> or by **purchasing products from sheltered workshops**.<sup>69</sup> These provisions in national legislation lend themselves to **contradictory outcomes**:

- The **impact of the possibility to purchase products from sheltered workshops is unclear**. On the one hand, it can result in lost opportunities for employment in the open market and failure to generate the best work inclusion outcome. At the same time, in the absence of sheltered workshops to purchase products or services from, open market employers would not automatically hire persons with disabilities: they may instead simply pay a fee, resulting in the failure to create *any* job place, sheltered or otherwise.
- The obligation to purchase products from sheltered workshops creates **pressure to conduct economically meaningful work** – as opposed to only rehabilitative activities. This, however, often takes the form of alienating, low value-added contracted work, with limited possibilities for career advancement for persons with disabilities concerned.
- On a purely negative side, **loopholes in the national legislation of several Member States** can allow companies to create “fake” sheltered workshops to contract part of their own work, as sometimes happens in Romania, Spain, and Italy.<sup>70</sup>

## New trends in national legislation

Although it is not possible to generalise about national legal frameworks due to their sheer variety, and due to the fact that EU authorities have not yet reacted on a legal level to the General Comment, it is possible to anticipate that the insistence of the new EC Strategy on tackling the denial of reasonable accommodation will allow to **bridge the significant gap between the provisions of the UNCRPD and the implementation of the EED at Member State level**.

The implications for sheltered workshops is considerable, as the recognition of denial of reasonable accommodation as a form of discrimination would considerably strengthen the obligations for mainstream employers to create the conditions to hire persons with disabilities, and **place increased pressure on Member States to provide better funding and services for workplace adaptation**, creating more opportunities for work inclusion in the open market.

<sup>68</sup> Comments from European Commission representatives, EASPD Policy Café “The EU Package of Initiatives on Improving Labour Market Outcomes for Persons with Disabilities”. November 9, 2022; European Parliament 2021. *REPORT on the implementation of Council Directive 2000/78/EC*.

<sup>69</sup> Not all countries allow purchase as an alternative to quotas: for several years, Romania and Bulgaria did not (Interview with CSO representative).

<sup>70</sup> Interview with CSO representative.



## Conclusions

As this chapter has detailed, there exist discrepancies between UNCRPD provisions, EU norms, and national legislative instruments. This has partly to do with a lack of willingness or ability of Member States to conform their legal systems with UN and EU regulations, but has at least just as much to do with long-standing issues of **lack of clarity** in international regulations **categories** and **provisions**. There is also an issue of inconsistencies between the text of international regulations and the spirit with which they have been implemented through **recommendations**, which have generally tended to be more categorical than the text of the law itself. On the national level, this reverberates into **legal fragmentation**; a generalised difficulty in **determining what falls within the category** of “sheltered workshops”; and **inconsistencies in workers’ rights protection, support for potential best practices, and implementation and effectiveness of compulsory hiring systems** in the open labour market. These challenges need to be kept in mind as they contribute to explaining why many observations about compliance with international regulations produce a somewhat contradictory picture and do not lend themselves to clear-cut conclusions.

## 3 Main Findings across EU Member States

As part of this research study, the research team conducted seven national-level case studies about sheltered employment, analysing the state of play in the **Czech Republic, Finland, Germany, Italy, Netherlands, Poland and Spain**. The selection of these EU Member States allows to cover different regions, country sizes, levels of economic development and welfare state models (see [Methodology section in Chapter 1](#)). [Section 3.1](#) presents an overview of the size of the sheltered labour market in the selected countries, as well as the drivers influencing the growth (or persistence) of it. [Section 3.2](#) provides a comparison between different governance practices and characteristics of sheltered workshops across the selected countries. [Section 3.3](#) discusses the compliance within UNCRPD and ILO's definition of decent work, while the [last section](#) provides the conclusions and identifies future trends. While this chapter presents an overview of the case studies in a more horizontal fashion, their full versions can be found in [Annex I](#) of this report.

### Overview

Across all EU Member States, **persons with disabilities have a lower rate of employment** than persons without disabilities. However, there is a lack of reliable statistics to determine the actual employment level of persons with disabilities. For example, many inactive persons with disabilities do not figure in unemployment statistics, since they are not registered as jobseekers. The issue of inactivity is particularly relevant for countries in Central and Eastern Europe, where the majority of persons with disabilities are neither working in the open labour market nor sheltered workshops (e.g., in the Czech Republic, around 270,000 persons with disabilities in the working age group are not looking for a job).<sup>71</sup> The **different categorisation of “disability” across Member States** also leads to incomplete and incomparable data (e.g. Finland does not collect statistics on “persons with disabilities” and only refer to persons with *partial work capacity*). Despite potential inaccuracies in data, several trends on the size of the sheltered labour market can be noticed across the EU Member States.

### Size of the sheltered labour market

It is not clear how many persons with disabilities participate in sheltered workshops across the EU due to the lack of recent and accurate data. Many interviewed stakeholders express the view that sheltered workshops remain an important measure and, in some cases, the only realistic possibility for persons with disabilities to participate in working life and avoid unemployment, social isolation and further marginalisation. **In some countries, the size of the sheltered labour market is growing** (this particularly applies to **Germany, the Czech Republic, Italy, Finland and Spain**). The growth trends vary between countries:

- In Finland, the number of clients of sheltered workshops and day care centres has increased from 15,805 in 2011 to 17,871 in 2021. Only the region of Helsinki is witnessing a decrease.<sup>72</sup>

<sup>71</sup> Government Board for Persons with Disabilities. 2020. *National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021-2025*.

<sup>72</sup> Based on statistics provided by The Finnish Institute for Health and Welfare. Available at: <https://sotkanet.fi/sotkanet/en/taulukko?indicator=sw4sBAA=&region=s06xsDbRMwQA&year=sy5zsk7S0zUEAA==&gender=t>

- In Spain, the number of persons with disabilities in sheltered employment almost doubled between 2009 and 2021, from 56,332 to 98,551.<sup>73</sup>
- In Germany, the number of persons with disabilities in sheltered workshops stands at around 320,000 as of 2022. The number of workshops increased from 668 in 2002 to 734 in 2019.<sup>74</sup>
- In Italy, recent research indicates that only 31.3% of persons with disabilities are employed: over 50% of them work in sheltered employment, and the trend is growing.<sup>75</sup>
- In the Czech Republic, around 41% of employed persons with disabilities that participated in a survey in 2018 reported working in the so-called protected (sheltered) labour market.<sup>76</sup> The amount of entities in the sheltered labour market is around 3,700; the number of individuals with disabilities employed in these entities increased by around 14,500 between 2016 and 2021 and currently stands at around 63,000.<sup>77</sup>

In the **Netherlands** and **Poland**, the number of persons in the sheltered sector is shrinking, but there are some caveats:

- In the Netherlands, the number of persons in sheltered workshops, secondment positions from sheltered workshops, or receiving job coaching from sheltered workshops for open labour market employers, has been decreasing overall from slightly over 100,000 in 2014 to slightly below 100,000 in 2021.<sup>78</sup> This trend is influenced by the fact that the policy is now driven mainly by open labour market inclusion, while public funding for sheltered employment has been decreasing and conditions to enter sheltered workshops are now more rigid. More persons with disabilities are now entering the open labour market directly, without ever going through a sheltered workshop. However, **the financial situation of younger persons with disabilities actually worsened, as they are increasingly employed only temporarily in the open labour market.**<sup>79</sup>
- In Poland, the number of persons with disabilities working in the main type of sheltered workshops (mostly for-profit companies, *Zakład Pracy Chronionej*, ZPCh) has decreased by almost 46% between 2004 and 2022 (from 172,597 to 93,720). The decline was mainly caused by policy changes that transferred many of the benefits previously aligned to sheltered workshops to mainstream companies. However, **this led some sheltered workshops to simply change their denomination to be able to operate as regular companies, but de facto still run their activities as traditional and segregated sheltered workshops.** This means that part

<sup>73</sup> SEPE data provided to the authors.

<sup>74</sup> More information available at: <https://www.bagwfbm.de/page/25>

<sup>75</sup> Malo, M., Rodriguez, V. 2022. "Sheltered employment for people with disabilities: An international appraisal with illustrations from the Spanish case". MPRA Paper No. 111861. Available: [https://mpra.ub.uni-muenchen.de/111861/1/MPRA\\_paper\\_111861.pdf](https://mpra.ub.uni-muenchen.de/111861/1/MPRA_paper_111861.pdf)

<sup>76</sup> Government of the Czech Republic. 2020. *Combined II and III periodical report of the Czech Republic on the fulfillment of obligations arising from the Convention on Rights of Persons with Disabilities*. Available: <https://www.mpsv.cz/umluva-osn-o-pravech-osob-se-zdravotnim-postizenim>

<sup>77</sup> Česke Noviny (2022). Jurečka: Allowance for employment of persons with disabilities will increase to CZK 14,200 from October. Available: <https://www.ceskenoviny.cz/zpravy/jurecka-prispevek-na-zamestnavani-postizenych-vzroste-od-rijna-14-200-kc/2256773>

<sup>78</sup> Elaboration of data from Netherlands Institute for Human Rights 2018 and corresponding years' data from Cedris, 2022. *Sector informatie*. Available: <https://cedris.nl/app/uploads/Cedris-Sector-informatie-2021-RGB-DEF-digi-toegankelijk-v2.pdf>

<sup>79</sup> Van Waveren, B. 2020. "Dutch Participation Act not (yet) a success". ESPN Flash Report 2020/01. Available: <https://ec.europa.eu/social/BlobServlet?docId=22284&langId=en>

of the workforce in open market employment is still, in practice, working in traditional sheltered employment. Moreover, a smaller category of sheltered workshops (*Zakład Aktywności Zawodowej, ZAZ*), catering to persons with more severe disabilities, has seen a growth in recent years.

## Drivers influencing the growth of the sheltered labour market

The main factors behind the growth (or persistence) of the sheltered labour market can be summarised as follows:

***Unfavourable conditions and discrimination in the open labour market*** remain the reality in most countries across the EU and for most types of disabilities. However, this aspect is particularly relevant for a growing number of persons with psychosocial disabilities, who sometimes even transition from regular workplaces into sheltered workshops due to harassment, discrimination or stress (see [case studies on Germany](#), [Czech Republic](#)). Hiring persons with intellectual disabilities is also perceived as too complicated. Furthermore, mainstream employers are reportedly reluctant to offer part-time work, which was often indicated by interviewed stakeholders as a desirable option for many persons with disabilities.

***Insufficient or poorly suited policy measures to encourage mainstream employers to hire persons with disabilities.*** In all investigated countries employers are entitled to subsidies to compensate for the lower level of productivity at which some employees with disabilities work, as well as to adapt the workplace to suit such employees' needs (job coaching costs can also be covered in some cases). The sizes of the wage subsidies vary, covering around 50-70% of the wage costs. However, interviewed stakeholders across different countries point out that many employers are unaware of these instruments, while those who do know of such instruments are reluctant to use them due to the bureaucratic procedures and high administrative costs involved (this is particularly true to the Netherlands and the measures foreseen in its new Participation Act, as well as Germany's "Budget for Work" initiative). This means that **the existence of financial incentives alone is not enough** and that such instruments should be coupled with "soft" measures as e.g. developing stronger ties between employers, employment agencies and service providers of persons with disabilities; providing informational support, consulting services, and organising awareness-raising campaigns.

Moreover, among the investigated countries, public and private entities in Germany, the Czech Republic, Italy, Spain and Poland are obligated to employ at least a specific percentage of employees with disabilities. **Failing to meet the set quota results in mandatory contributions to compensation levy schemes. However, the levy can be (and often is) circumvented** by purchasing goods or services from sheltered workshops; in other cases, companies simply choose to pay the levy. In the Czech Republic, the levy system applies to public sector entities, which means that failing to meet the quota simply means transferring state funds from one budget component to another. Even if the obligations are met, employers often hire highly capable individuals with low degrees of disability, while the employment rates of persons with high support needs (e.g., persons with intellectual disabilities) remain negligible. Although such mechanisms aim to increase inclusion of persons with disabilities, they may, in fact, contribute to widening the gap between the open and sheltered labour markets.

***Extensive financial support from the state for sheltered labour market participants.*** Employers in the sheltered labour market enjoy generous subsidies (often more generous than those for employers in the open labour

market) and preferential treatment that boosts the demand for their products and services (e.g., through the above-mentioned mechanism of mainstream employers subcontracting sheltered workshops to avoid paying a compensation levy for not meeting the quota of persons with disabilities hired). **These benefits enable the sheltered labour market to expand.** The absolute majority of public funds, dedicated to supporting the employment of persons with disabilities, are allocated to sheltered workshops (and other sheltered labour market actors). Meanwhile, funds dedicated to supported employment measures targeted towards integration and inclusion in the open labour market remain marginal. In the Czech Republic, 96% of the money dedicated to the system of support for the employment of persons with disabilities went to employers in the sheltered labour market between 2010 and 2015;<sup>80</sup> in Spain, out of almost EUR 461.2 mln of public funds dedicated to labour market integration of persons with disabilities in 2021, 98% were allocated to protected employment. While state authorities claim that the funding “follows the client” rather than a particular type of employment, it should be noted that sheltered employment positions are often the “default” or the only realistically available option for persons with disabilities. Without systematic, operational funding from the state (as opposed to only project-based funding), supported employment schemes linked to the open labour market are likely to reach only incremental results.

## Governance and Characteristics of Sheltered Workshops

There are significant variations in the governance and characteristics of sheltered workshops in the seven Member States that were studied in-depth, not only *between* the countries but also *within* them (see Table 1). The main differences can be found among sheltered workshops that have for-profit goals and those that do not, or have to maintain a minimum amount of revenue to sustain their activities.

### Sheltered workshops run by for-profit entities

For-profit entities that run sheltered workshops create the opportunity for persons with disabilities to participate in working life as competitive employees and have working conditions that are similar to those in mainstream companies. Due to economic pressures and lack of resources, work activities in such establishments are rarely coupled with any other activities, such as rehabilitation, socialisation, occupational activities, life skills training, etc. Moreover, the managers of for-profit sheltered workshops do not focus on helping their employees transition to the open labour market, since this would go against their business interest and require additional resources. Work-centred (rather than person-centred) approaches are prioritised. For-profit sheltered workshops tend to hire persons with mild to moderate disabilities who have low support needs and are quite productive (e.g., see [case studies on Spain](#), the [Czech Republic](#), [Poland](#), [Italy](#) (most Type B cooperatives)). Nevertheless, these employers receive generous benefits from the state (e.g., wage subsidies of 50-75%; advantageous market positions created via schemes that allow businesses who do not meet the quota of persons with disabilities in their workforce to avoid fines if they buy products or services from sheltered workshops). In a minority of cases, employers abuse the support system by enlisting persons with disabilities as “ghost workers”,

<sup>80</sup> Supreme Audit Office. 2017. *Support for the employment of people with disabilities cost almost 22.4 billion crowns. But it did not help people with disabilities to enter the open labor market.* Available at: <https://www.nku.cz/cz/pro-media/tiskove-zpravy/podpora-zamestnavani-osob-se-zdravotnim-postizenim-stala-temer-22-4-miliardy-korun--na-volny-trh-prace-jim-ale-nepomohla--id8451/>

reselling goods that were not produced by their own company and engaging in other fraudulent behavior (see [case studies on Poland, Czech Republic](#)).

## Sheltered workshops run by not-for-profit entities

Sheltered workshops that are financed and run by local authorities (e.g., as is the case in the Netherlands, Finland) or not-for-profit organisations, such as churches, foundations, cooperatives or NGOs are usually more oriented towards rehabilitative goals, such as ensuring that the person has basic professional and life skills (such as punctuality, personal hygiene, etc.) necessary in the workplace. In many cases, work activities are combined with other activities, such as occupational and social therapy, leisure, sports, skills' development, etc. (see, for example, [cases on Germany](#) and [Finland](#), type A [cooperatives in Italy](#) and ZAZ-type sheltered workshops in [Poland](#)). Person-centred (rather than work-centred) approaches are prioritised (at least in theory). The state reimburses the sheltered workshop per user/client and does not create economic pressure to generate revenues, or does so only to a minimal extent. Sheltered workshops of this type are organised not as a workplace but as a service for persons with disabilities. Therefore, national legislation across Member States does not grant sheltered workshop users/clients an employee status (with the exception of the Netherlands). While full transition to the open market is one of the aims of such sheltered workshops, this rarely happens in practice and users/clients often remain in their sheltered positions semi-permanently. In contrast to for-profit sheltered workshops, the users/clients usually have high support needs and highly reduced work capacity.

## Sheltered workshops working in collaboration with for-profit entities

Sheltered workshops can in some cases organise individual or group secondments within other public or private companies. This is the case mainly for not-for-profit organisations running sheltered workshops, but there can be cases when organisations that have at least a nominal mandate to sustain themselves on the market (such as Dutch or German sheltered workshops) organise secondments. Secondments blur the for-profit/not-for-profit divide as the profit deriving from a person with disabilities' work may not benefit the organisation of which they are nominally employees.

## Activities performed in sheltered workshops

Across Europe, the activities performed by persons with disabilities in sheltered workshops or even outside of them (e.g., in secondment positions in regular companies) are more or less similar. The most common activities can be categorised as follows:

- **Handiwork/ manufacturing** usually involves various assembly, sorting and packaging work, which can be subcontracted by other companies. Sometimes it involves more creative tasks, such as sewing, knitting, crafting souvenirs, which are sold to the general public via shops (this is usually a less economically viable, but more person-centred work). While these are often menial, simple tasks (see [Box 1](#) about a social cooperative that produces custom packages and stationary in the Czech Republic), more complex, sophisticated products are also created at sheltered workshops (see [Box 4](#) about a sheltered workshop in Germany which produces high-quality cable drums). More independent persons with disabilities sometimes also work in secondment positions in manufacturing companies (e.g., the automotive sector).
- **Mobile work** can be hired by public authorities or external organisations, who perform tasks such as cleaning, maintenance of real estate, gardening in public areas, etc.

- **On-site work**, usually in the service sector, may involve contact with the general public, such as working in grocery shops, cafes, restaurants, kitchens, retirement homes, laundries, copy centres.
- As mentioned above, work activities are sometimes coupled with additional activities, which are linked with medical rehabilitation that promotes working life skills and inclusion, as well as various leisure and sports activities (e.g., Box 2 describes how work and day activities are combined in sheltered workshops in Finland). Depending on individual capacities/needs, persons with disabilities can engage in these non-work-related activities for several hours a day.

Table 1. Differences in governance and characteristics of sheltered employment in selected EU Member States

Country	Sheltered workshop / employment types	Support from State	Structure	Goals / approaches	Types / degree of disabilities	Employee status & minimum wage?
<b>Czech Republic</b>	Any entity, formally recognised by the Labour Office as an employer in the protected labour market	<ul style="list-style-type: none"> <li>Wage subsidies up to 75% or up to ~EUR 579/month (2022);</li> <li>Subsidies/compensations for workplace adaptation/training costs;</li> <li>Preferential market position due to compensation levy scheme.</li> </ul>	<ul style="list-style-type: none"> <li>Entities with over 50% of employees with disabilities as their total workforce are considered employers in the protected labour market;</li> <li>No requirements for support staff/additional activities.</li> </ul>	<ul style="list-style-type: none"> <li>Work inclusion (provides employment but no aims toward transition to OLM);</li> <li>Lucrative goals in for-profit entities;</li> <li>No requirements for rehabilitation.</li> </ul>	<ul style="list-style-type: none"> <li>Typically, mild to moderate disabilities and/or low support needs;</li> <li>Persons with high support needs are usually employed either in NGOs, social enterprises, or are clients of social services.</li> </ul>	Yes
<b>Germany</b>	Vocational rehabilitation facilities, which can be established as part of inpatient facilities or independently as companies; non-profit-organisations but have to generate revenue	<ul style="list-style-type: none"> <li>Reimbursement per workshop user depending on type and amount of support needed (~EUR 1,466 monthly in 2020). Subsidies make up ~73.3% of total income of sheltered workshops, while ~26.7% come from sale of products and services.</li> <li>Preferential market position due to compensation levy scheme/ public tenders</li> </ul>	<ul style="list-style-type: none"> <li>Organised as a service</li> <li>Have vocational education and work departments;</li> <li>Temporary or permanent secondments in the OLM are possible;</li> <li>Support staff/additional activities are present.</li> </ul>	<ul style="list-style-type: none"> <li>Rehabilitation;</li> <li>Social integration;</li> <li>Work inclusion (transition to the OLM is at least a theoretical goal);</li> <li>Lucrative goals (must generate revenue)</li> </ul>	Typically, persons with intellectual disabilities, but also some persons with psychosocial and multiple disabilities; very little people with physical disabilities.	No
<b>Spain</b>	Special Employment Centres (SECs) can take on almost any legal form, public or private,	<ul style="list-style-type: none"> <li>Wage subsidies of around 50% of the minimum wage;</li> <li>Subsidies for job creation and workplace adaptation;</li> </ul>	<ul style="list-style-type: none"> <li>Need to have at least 70% persons with disabilities in their total workforce;</li> </ul>	<ul style="list-style-type: none"> <li>Work inclusion (provides employment in SECs, sometimes aims at transition to</li> </ul>	Almost 60% of persons with disabilities employed in SECs have mild to moderate disabilities (For-profit SECs	Yes*



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	for-profit or not-for-profit, and can be included within larger social or commercial structures. Around 2/3 are for-profit.	<ul style="list-style-type: none"> <li>Exemptions from social security contributions.</li> </ul>	<ul style="list-style-type: none"> <li>Support staff/additional activities are mandatory as a matter of principle only, there are no penalties for non-compliance</li> <li>Temporary (up to 6 years) secondments in the OLM are possible via labour enclaves.</li> </ul>	<p>the OLM via labour enclaves)</p> <ul style="list-style-type: none"> <li>Social inclusion (esp. in non-profit SECs)</li> <li>Lucrative goals (must generate revenue)</li> </ul>	tend to hire them as they are more productive).	
Italy	Type A cooperatives for the provision of social services (function as rehabilitation centres or day care centres)	Directly funded by local authorities.	Focus on occupational therapy purely for persons with disabilities.	Rehabilitation/ provision of social services.	There are no specifications of what type/degree of disability persons need to have to enter. Some cooperatives specialise on specific types of disabilities.	No
	Type B cooperatives	Preferential market position due to public tenders (the state supports them by contracting them for the provision of goods or services).	<ul style="list-style-type: none"> <li>Must have at least 30% "disadvantaged persons" as part of their workforce. The percentage of persons with disabilities working in cooperatives can vary considerably depending on the organisation.</li> <li>Secondment positions in OLM are possible through supported employment schemes.</li> </ul>	<ul style="list-style-type: none"> <li>Work inclusion (through direct employment or supported transition to OLM);</li> <li>Lucrative goals (pressure to run based on productivity imperatives);</li> <li>No requirements for rehabilitation.</li> </ul>		Yes

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<b>Netherlands</b>	For-profit organisations (or, in rare cases, foundations) with municipalities as main shareholders.	Support from municipalities to compensate for budgetary losses.	<ul style="list-style-type: none"> <li>Employ almost exclusively persons with disabilities;</li> <li>Long-term secondment positions in the OLM are possible for teams, with the support of job assistants/ team leads.</li> </ul>	Work inclusion (through direct employment or supported transition to OLM).	<ul style="list-style-type: none"> <li>Persons with an earning potential of at least 20% are certified as suitable either for inclusion in a sheltered workshop or the OLM;</li> <li>Below 20% work capacity, persons with disabilities are redirected to state-funded day care centres.</li> </ul>	Yes
<b>Poland**</b>	For profit and not-for-profit companies (ZPCHs)	<ul style="list-style-type: none"> <li>Wage subsidies (lump sum contributions depending on type/severity of disability);</li> <li>Subsidies/compensations for workplace adaptation/training costs;</li> <li>Preferential market position due to compensation levy scheme.</li> </ul>	<ul style="list-style-type: none"> <li>Must have at least 50% of persons with disabilities in their total workforce;</li> <li>No requirements for support staff/additional activities.</li> </ul>	<ul style="list-style-type: none"> <li>Work inclusion (through direct employment)</li> <li>Lucrative goals (full economic risk of their activity)</li> </ul>	Typically, persons with mild to moderate disabilities.	Yes
	Local authorities-run organisations or not-for-profit organisations run by NGOs, foundations, or churches (ZAZs).	<ul style="list-style-type: none"> <li>Coverage of 75% of the cost needed for setting up;</li> <li>Public funding available to cover up to 90% of their operational costs.</li> </ul>	<ul style="list-style-type: none"> <li>Organised as a service;</li> <li>Reserved for persons with disabilities only;</li> <li>Provide social inclusion activities, independent living, leisure activities</li> </ul>	<ul style="list-style-type: none"> <li>Rehabilitation</li> <li>Social inclusion</li> <li>Work inclusion (through vocational training)</li> </ul>	Typically, persons with severe and moderate disabilities.	Yes
<b>Finland</b>	Job training centres organised by municipalities, joint municipal authorities or outsourced to private entities.	Directly funded by local authorities.	<ul style="list-style-type: none"> <li>Organised as a service;</li> <li>Reserved for persons with disabilities only (could be organised around particular types/degrees of disability).</li> </ul>	<ul style="list-style-type: none"> <li>Rehabilitation;</li> <li>Social inclusion;</li> <li>Work inclusion (through secondments or supported</li> </ul>	Typically, persons with intellectual, psychosocial disabilities and/or high support needs.	No

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			<ul style="list-style-type: none"> <li>▪ Support staff/additional activities are present.</li> <li>▪ Secondment positions in OLM are possible in some cases.</li> </ul>	employment schemes).		
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Notes: \*SECs are allowed to draw up the so-called low-performance contract, which allows the employer to reduce the salary by up to 25%. Nonetheless, this kind of contract is rarely carried out in practice.

\*\*Not all types of entities which may share some features of sheltered workshops (WTZ, CIS and KIS) are mentioned in the table; for a detailed description, see case study (see [Annex I](#)).

## UNCRPD & ILO Compliance

This section provides an overview of the situation in the selected countries vis-à-vis the General Comment No. 8 (2022) on the right of persons with disabilities to work and employment of the Committee on the Rights of Persons with Disabilities and the ILO definition of decent work. The following sub-sections reflect how well the countries comply with the “ideal scenario”, i.e., the obligations that arise from the UNCRPD and ILO’s principles.

### The state effectively ensures the right to freely chosen employment

**Employment choices of persons with disabilities are often guided not by preference, but by what is available and considered the “default” option.** In principle, all investigated countries legally ensure that persons with disabilities can freely choose their place of employment. Various measures exist to help persons with disabilities exercise this right, for example, they can receive professional orientation at schools and consult with employment agencies, whereas employers can receive quite generous subsidies (around 50-70%) to compensate for the lower productivity of some potential employees with disabilities. However, in practice, sheltered workshops are often seen as the “default” or the only realistically available employment option for some persons with disabilities, especially those with intellectual disabilities and mental health conditions.<sup>81</sup> On the one hand, this indicates that too many mainstream employers are prejudiced or not ready to accommodate the needs of such employees. On the other hand, the system dedicated to supporting the needs of persons with disabilities can also create bottlenecks. According to the UNCRPD, one of the core obligations for States parties is to promote the right to supported employment, including to work assistance, job coaching and vocational qualification programmes.<sup>82</sup> Although supported employment schemes do exist in the selected countries, currently they are small-scale, project-based and insufficiently applied in practice (see examples of [Germany](#), [Czech Republic](#), [Finland](#)). Overly protective attitudes of some disability service providers and families were also identified as an issue by some interviewees. Lastly, the welfare system (disability pension schemes in particular) can influence the person’s decision not to pursue employment in the open labour market (see below for elaboration).

It should be noted that **some persons with disabilities prefer working in sheltered workshops**, which the UNCRPD considers a form of segregated employment that is inconsistent with the right of freely chosen employment.<sup>83</sup> Interviewed representatives of sheltered workshop users in Germany expressed that persons with disabilities appreciate the support they get at sheltered workshops, job safety, accommodation of their needs, as well as being in a safe, welcoming environment. In a recent survey of sheltered workshop users, 80% reported being satisfied or very satisfied with their working conditions (excluding the aspect of remuneration).<sup>84</sup> On the other hand some CSOs<sup>85</sup> contend that **persons with disabilities might not be aware of their choices vis-**

<sup>81</sup> Note: Regional discrepancies exist in this respect (for example, in the capital region of Finland is more advanced with applying supported employment methods than others).

<sup>82</sup> CRPD/C/GC/8, para. 63 (b)

<sup>83</sup> CRPD/C/GC/8, para. 12

<sup>84</sup> The survey was implemented as part of a research project: ISG & infas (2021). *Studie zu einem transparenten, nachhaltigen und zukunftsfähigen Entgeltsystem für Menschen mit Behinderungen in Werkstätten für behinderte Menschen und deren Perspektiven auf dem allgemeinen Arbeitsmarkt.*

<sup>85</sup> Interview with CSO representatives.

**à-vis the labour market.** There is **no evidence** (statistics or qualitative information), apart from anecdotal ones, that persons with disabilities prefer to work in sheltered workshops rather than the open labour market.

## Persons with disabilities are not segregated

The element of **segregation is inevitably present in the settings of a sheltered workshop.** Many of such facilities are dedicated exclusively for persons with disabilities (especially not-for-profit facilities run by local authorities with rehabilitative aims). However, not all persons with disabilities work inside the facilities: they can work in mobile units, on-site (e.g., in grocery stores or cafes), as well as in secondment positions in other companies where interactions with persons without disabilities (clients or co-workers) are possible. In Germany, for example, sheltered workshops are de-centralising and offer increasingly more positions in the service sector for those who feel comfortable with leaving the workshop. In the Netherlands, a reform aimed at open labour market inclusion led to increasingly more persons with disabilities in prolonged secondment positions within mainstream companies.

In cases of companies that are considered employers in the sheltered labour market (e.g., entities where people with disabilities make up a certain percentage of the total workforce), segregation is also possible in practice. The actual percentage of staff with disabilities can vary vastly between organisations, meaning that elements of segregation may appear in some of them (e.g., in Poland, the Czech Republic or Spain, some companies fill all their menial positions with persons with disabilities; in Italy some lines of work (assembly) in otherwise non-segregated cooperatives can be segregated).

## Persons with disabilities do not lose the benefit of disability allowances when they start to work

**The way disability pension systems are designed may contribute to the low employment levels of persons with disabilities:**

- In Finland, Spain and Italy, disability pension beneficiaries who start working remain eligible to the pension only if they satisfy certain conditions (or else, the pension is cut off). For example, in Italy their annual earnings should not exceed the amount of the pension; in Finland, it should not exceed EUR 855.48 per month; in Spain, the yearly income should be less than EUR 5,899.60. Such limitations may dissuade some persons from seeking full-time employment or entering higher paying jobs. In Poland, the system is more balanced: the pension is proportionately reduced only if the wage exceeds 70% of the average monthly salary in the country and cut entirely only if it exceeds 130% of the average monthly salary.
- In the Netherlands, welfare benefits are cut when a person starts working; they can also be reduced if the person refuses to work. Such conditions were influenced by austerity measures.
- In the Czech Republic, the earnings of disability pension beneficiaries are not restricted in any way. However, granting of a disability pension does not have to be permanent, depending on the state of health of the person concerned. This means that persons with disabilities (especially those without prior work experience) are afraid of losing their pension if they find a job and their “ability to work” (on which the size of the pension depends) is reassessed. Some experts in Poland, too, believe that the fear of losing the pension upon entering the job market creates a “benefit trap”, acting as a major disincentive for persons with disabilities to seek work.

- In Germany, the issue relates more to sheltered workshop users who become eligible to a generous special pension after they spend 20 years in a sheltered workshop. Persons with disabilities may be discouraged from seeking employment, since the special pension may be more generous than a regular retirement pension after leaving a low-paying job in the open labour market.

While significantly reducing (or cutting) pensions in case of employment is an efficient policy from a budgetary perspective, such measures fail to account for the additional living costs (in healthcare, transportation, care, etc.) that persons with disabilities face due to their impairments or individual needs.

Persons with disabilities are paid no less than the minimum wage / Persons with disabilities receive pay on an equal basis with employees without disabilities

**In most investigated countries** (Czech Republic, Poland, Netherlands, Spain and, in some cases, Italy), **persons with disabilities who are working in the sheltered labour market are entitled to at least the minimum wage and remuneration on an equal basis with others. In practice, however, they do not always have the chance to maximise their potential earnings.** The states extensively subsidise the sheltered sector to compensate for the lower than average productivity of their employees. However, persons with disabilities tend to be employed in low-skill jobs and receive lower wages than the general population (paying the statutory minimum wage or slightly above it is standard practice in sheltered employment). CSOs emphasise that, due to their vulnerable position, persons with disabilities often feel like they have no other choice but to accept the conditions offered by the employer, which may not correspond to the job difficulty and the market salary of similar jobs in mainstream companies. In the case of Poland, it was also reported that municipal sheltered workshops, in order to offer employment opportunities to as many people as possible, are often forced to employ persons with disabilities with only half-time shifts, which results in underpayment. In Italy, many cooperatives struggle to pay a full minimum wage to their employees with disabilities, which means that some of them work there informally or stay in prolonged unpaid internship positions. Use of unpaid internships was also mentioned in Poland's case. Overall, stakeholders often identified financial struggles of sheltered employment organisations as a key issue, calling for more generous financial support from the state.

**Sheltered workshops with a rehabilitative focus typically do not pay wages.** In the case of Germany, sheltered workshop users (and those in secondment positions within mainstream companies) receive remuneration which consists of a basic lump sum and an additional bonus depending on productivity. They receive, on average, EUR 212/month, which makes them dependent on additional financial support from the state. Moreover, sheltered workshop users sometimes work full shifts and have to meet deadlines, which makes some interview respondents argue that sheltered workshops are not purely rehabilitation and training-oriented. All interviewed stakeholders agree that the financial situation of sheltered workshop users should be urgently improved, but it is not yet clear what kind of remuneration model will be chosen.<sup>86</sup> In Finland, sheltered workshop clients receive an allowance of EUR 0-12 per day, since their work is considered a rehabilitative activity and has no profitability purpose. However, some interviewed stakeholders are critical of such arrangements for unjustifiably excluding

<sup>86</sup> The Federal Ministry of Labour and Social Affairs has commissioned a study which will help to identify the most suitable option for the reform. ISG & infas (2021). *Studie zu einem transparenten, nachhaltigen und zukunftsfähigen Entgeltsystem für Menschen mit Behinderungen in Werkstätten für behinderte Menschen und deren Perspektiven auf dem allgemeinen Arbeitsmarkt. First interim report.*

work from labour law. The work performed by persons with disabilities usually takes at least several hours per day and, in many cases, results in sellable products and services. Some disability service providers have already stopped offering their clients unpaid secondment positions in mainstream companies for this reason.

## Safe working conditions are ensured in sheltered workshop settings

Sheltered workshops are expected to follow the same occupational safety and health regulations. These regulations are generally respected; in fact, some interview respondents claimed that persons with disabilities even prefer working in sheltered settings due to pressure to perform, stress and discrimination they faced in the open labour market; in the meantime, sheltered workshops are perceived as more welcoming, provide person-tailored support and put less pressure on productivity and working time. For example, in Spain, collective agreements between Special employment centre (SEC)-type employers and employees with disabilities determine fewer annual working hours than for the general workforce.

However, some CSOs argue that the necessity to generate revenue (especially in cases of for-profit companies) can lead to excessive demands on workers and create an incentive to cut corners on workers' rights and safety (see, for example, [case studies on Poland](#), at least for ZPCh organisations (a type of for-profit sheltered workshops, see [dedicated section](#) for definition), and [Czech Republic](#)). Productivity imperatives may also deprive persons with disabilities from other meaningful activities, such as socialisation and rehabilitation.

## Persons with disabilities have opportunities for career advancement

**Career advancement opportunities are available in principle; however, their practical existence depends on the workplace and the capacities of the individual.** Various types of work are available in sheltered workshops, which is assigned in accordance with the person's wishes and abilities. Representatives of sheltered workshops in Germany report that they are concerned with offering high-quality vocational education for persons with disabilities and provide a wide range of more demanding and multifaceted work.

However, **sheltered workshops are often criticised for providing work limited to menial, repetitive tasks with low career advancement opportunities** (see section [above](#) regarding activities offered in sheltered workshops). Even in for-profit companies, where no restriction exists as to the level of seniority of positions, career progression is unlikely. On the one hand, this may be linked to the fact that entities in the sheltered labour market operate mostly in low-added-value industries and provide jobs that are considered low-skill, as well as the type/severity of disability of individuals, for whom it would be unrealistic to reach a managerial position. On the other hand, these issues can be linked to paternalistic approaches towards persons with disabilities or lack of individual support to realise their full potential and maximise their career advancement opportunities.

## Persons with disabilities perform meaningful work

**While the UN Committee on the Rights of Persons with Disabilities emphasises the importance of meaningful work as an essential component to a person's economic security physical and mental health, personal well-being and sense of identity,<sup>87</sup> it is not entirely clear what exactly "meaningful work" entails.** Many sheltered workshops produce goods and services that are valuable to society, meaning that they are purchased by other

<sup>87</sup> CRPD/C/GC/8, para. 3

businesses or customers. The range of activities available for persons with disabilities varies vastly depending on the organisations, although it tends to be low value-added (sometimes repetitive and alienating) contracted work. On the other hand, many persons without disabilities also engage in such types of work. Moreover, interviewed persons with disabilities across different countries were generally satisfied with their work and felt like it is meaningful. The fact that persons with disabilities engage in “real work” (as opposed to what happens in day care centres) is often seen as a major positive aspect and a sufficient indicator of self-realisation in itself (especially in the Netherlands).

CSOs, however, note that the managers and support staff of sheltered workshops sometimes tend to over-focus on the production side of things, when they should be more concerned with the personal and professional development of the person. Some interviewees in Finland believe that some “traditional” sheltered workshops are too limited to monotonous tasks or simply “imitate” work activities instead of providing versatile and fulfilling activities to the client. Some clients could benefit from a wider variety of activities that would foster a sense of self-realisation (e.g., in day care centres or volunteering). This was also recognised as an important issue by stakeholders in the Netherlands. The focus of job assistants and team leads in Dutch sheltered workshops was recently re-orientated towards person’s needs, rather than work needs. Job assistants are now hired mainly among social workers, and their main task is to ensure a positive experience at work for persons with disabilities (especially psycho-social ones), while sector experts of the “old type” of assistants are only brought in for additional assistance when the tasks performed required more pronounced technical expertise.

## Transition from sheltered workshops to the open labour market is encouraged

**Although sheltered workshops (especially those with rehabilitative focus) have the legal mandate to encourage transition to the open labour market, transition is extremely rare in practice and is sometimes seen as a purely theoretical goal.** For example, in Germany, persons who are entitled to the services of a sheltered workshop and are offered an employment contract on the open labour market can benefit from the “Budget for Work” or “Budget for Apprenticeship” programmes. The “Budget for Work” programme was introduced on a federal level in 2018 and includes a wage subsidy of up to 75%, incentivising employers to hire former sheltered workshop users. However, by September 2022, only 1,679 people have benefited from this programme. While government representatives consider the legal possibility for persons with disabilities to use this alternative an achievement in itself, CSOs criticise it for being insufficiently applied in practice. Some sheltered workshop representatives themselves admit that they should develop closer ties with local businesses and offer them extensive support to integrate former sheltered workshop users in their companies. Currently, attempts to integrate persons with disabilities in mainstream workplaces mostly result in secondments or internships that do not always lead to actual job contracts. In Finland, too, the transition level from sheltered workshops to the open labour market is insufficient and partially limited by the lack of encouragement/support by service providers. Interviewed stakeholders report about a general care-oriented culture among service providers, lack of ties with local businesses, as well as a lack of resources (not enough job coaches among disability service providers and work ability coordinators in the Employment offices). Few municipalities (mostly larger and urban



ones) offer individual job coaching services that would guide clients to paid work.<sup>88</sup> In Poland, the organisational culture among some of the rehabilitative-type sheltered workshops (ZAZs) was also identified as a bottleneck preventing higher transition rates.

In **profit-oriented sheltered employment settings, employers are not incentivised to support transition to the mainstream labour markets.** Economic pressure and subsidies-per-employee mean that letting go of employees would go against their business logic (this is particularly relevant for Czech businesses, Polish ZPCh-type organisations, Spanish sheltered employment centres and Italian Type B cooperatives). There are no real requirements for employers to offer support for transition, too. Persons with disabilities (or their carers) can turn to NGOs that can assist them in making the transition, but such supported employment schemes are small-scale and must be sought individually.

Some positive examples can be identified in the Netherlands, Germany and Spain. In the Netherlands, leaving a sheltered workshop-type organisation and getting hired by a mainstream company is rare, but prolonged secondment positions in open labour market companies are frequent. The system of prolonged secondment in open market companies while receiving a minimum wage offers an interesting option for persons with disabilities to *de facto* work in mainstream employment while maintaining the “safety net” of sheltered employment and to fall back to in case of failure to transition. The German “Budget for Work” programme also allows workers to go back to a sheltered workshop if the transition is unsuccessful. The possibility to return creates a sense of safety for persons with disabilities and their families, who might otherwise be afraid to try out alternative options. Another example are the Spanish labour enclaves, which promote an intermediate situation between sheltered and open employment and the transition of workers with severe disabilities into mainstream companies. The SECs can create a group of at least three workers (at least 60% of whom should be workers with severe disabilities) to work in a collaborating company. Such secondments can take from three months to three years (up to six years in some cases) and are meant to gradually result in a full transition to regular employment.

## Social dialogue is present between the sheltered workshop users (employees) and management

In rehabilitative-type sheltered workshops, workers are considered service users or clients, therefore labour law (including collective bargaining) does not apply to them. In Germany, however, sheltered workshops are required to form representative bodies (workshop councils, women’s representatives) which resemble those in regular companies (though no collective bargaining rights are granted). This is a unique arrangement which creates the conditions to have at least a basic level of social dialogue. While some workshop councils are quite strong, not all of them have real influence on decision making, indicating that additional efforts are needed to increase real participation and co-determination. In Finland, some elements of social dialogue may be present in an informal sense (e.g., clients can themselves decide what kind of activities they want to do, etc.).

<sup>88</sup> Some promising results have already been reached in Pirkanmaa region, where an effective job coaching model was developed: Pirkanmaa's Employment services estimates that about 4–5% of the adults with intellectual disabilities covered by disability services in the Pirkanmaa region are in paid work, which is around 2-3% higher than the country's average. More information on the project available at: <https://kvps.fi/tyohonvalmennuksen-kehittamisessa-huimia-edistysaskeleita-pirkanmaalla/>

When formally employed, persons with disabilities have equal labour rights, including collective bargaining. Although social dialogue is legally possible, it is not specifically encouraged and no specific trade unions that represent sheltered labour market employees were identified by stakeholders in the investigated countries.

## Conclusions and Future Trends

Most stakeholders (except for certain CSOs) in all investigated countries perceive **sheltered employment as a necessary reality that will remain relevant for the foreseeable future**. Sheltered employment is, in some cases, perceived as an achievement in itself, when compared to inactivity and social isolation of persons with disabilities. Some representatives of persons with disabilities believe that abolishment of sheltered workshops would be an unnecessary and even harmful goal, since individuals should be able to decide for themselves where they want to work, and some prefer working in sheltered workshops.<sup>89</sup> **While the UNCRPD identifies working in segregated sheltered workshops a “false choice” of employment,<sup>90</sup> others perceive it as an important part of an inclusive labour market, providing satisfying opportunities to participate in working life.** However, stakeholders agree that there should be more meaningful alternatives to choose from, while ensuring that there are no elements of exploitation in sheltered work settings in the meantime. The following future trends can be identified in the selected Member States:

### Offering more employment opportunities in the open labour market

- **Emphasising the transitional role of sheltered workshops.** For example, the Finnish Disability Forum even suggests repurposing sheltered employment centres as training facilities to prepare persons with disabilities for the open labour market.<sup>91</sup> CSOs agree that some of the already-existing personnel in sheltered workshops could become job coaches, start “speaking the business language” and engage their clients more actively in supported employment. Similar attitudes were expressed in Germany, especially given the now favourable legal conditions for transition under the “Budget for Work” programme. In Spain, given the increasingly inclusive nature of the labour system, the role of special employment centres could be repurposed as resource centres for supported employment. In the Netherlands, under the new Participation Act, sheltered workshops are expected to focus on job coaching for new employees; municipalities are required to provide sheltered work for categories of persons with very severe support needs, while more young people with lower support needs are joining the mainstream workforce directly without entering a sheltered workshop altogether.<sup>92</sup>
- **Strengthening the resources and competencies of employment services/ agencies.** In many cases, employment services/ agencies are perceived as lacking the necessary competences to assist jobseekers with disabilities. Some Employment services in Finland have already introduced work ability coordinators (experts who can assist jobseekers with disabilities and understand the multidisciplinary nature of the services they

<sup>89</sup> See, for example, Submission of the workshop council of the Ledder Werkstätten gGmbH to the Draft General Comment on Art. 27 UNCRPD.

<sup>90</sup> CRPD/C/GC/8, para. 13

<sup>91</sup> Finnish Disability Forum. 2021. *Input to the Draft General Comment on Article 27 by the Finnish Disability Forum*.

<sup>92</sup> Van Waveren, B. 2020. “Dutch Participation Act not (yet) a success”. *ESPN Flash Report 2020/01*. Available: <https://ec.europa.eu/social/BlobServlet?docId=22284&langId=en>, p. 1; Netherlands Institute for Human Rights 2018. *Inclusion of Persons with Disabilities*.

need), but this is not yet commonplace. Policymakers are already taking steps to even out regional differences in this respect. In the Czech Republic, training for personnel at local Labour Offices is implemented, aimed at improving the services for jobseekers with disabilities and offering them more employment opportunities, preferably in the open labour market.

- **Boosting social responsibility and motivation of employers in the open labour market.** In some countries, this means positively increasing the financial incentives for employers to hire persons with disabilities (e.g., raising the maximum pay subsidy in Finland is going to be raised from 50% to 70%<sup>93</sup>), whereas in other cases, penalties for not meeting the required quotas of employing persons with disabilities are raised (e.g., in Germany, companies with 0% of employees with disabilities instead of the required 5% will have to pay double the sum of the current EUR 360/month levy per each unfulfilled place).
- **Public sector leading by example and acting as a trendsetter.** Inspired by a similar initiative in Sweden, Finland is creating an intermediate labour market actor in the form of a state-owned company (Työkanava Oy) to improve the possibilities of persons with partial work ability and others in a vulnerable situation to enter the open labour market. It will also provide subsidised jobs of a sufficiently long duration for those disadvantaged individuals for whom all other attempts to find employment have failed<sup>94</sup>. This will help to address labour shortages in the public sector (e.g., a group of persons with disabilities, employed through the state-owned company, could work as cleaners in hospitals, schools, etc.). However, similar public sector-oriented measures were not identified in other countries: Quite the opposite, in the Netherlands the public sector has failed to fulfil employment targets where the private one has succeeded.

## Creating better conditions for persons with disabilities in sheltered employment settings

- **Ensuring better remuneration.** This issue is particularly relevant for Germany, where the financial situation of persons with disabilities must be urgently improved and made less dependent on a plethora of welfare benefits. An intermediate report analysing the potential alternatives of payment systems for sheltered workshop users is already published and will be to determine the new model.<sup>95</sup>
- **Removing elements of exploitation and abuse of the state support system.** Interviewees in several countries indicated cases when persons with disabilities work (almost) full shifts, have to meet deadlines and maintain a certain level of productivity, but are not remunerated adequately (or at all). Policymakers agree that clearer boundaries of what is considered rehabilitation and work must be established. Moreover, employers in the sheltered labour market are constantly calling for higher subsidies or other kinds of financial support, but stakeholders identify a need to improve transparency of how such money is used and tailor the support system to avoid fraudulent behaviour and exploitation. For example, in the Czech Republic, government and employer representatives believe that the subsidies should be somehow differentiated, as some employers receive high profit margins while others focus on their social mission.

<sup>93</sup> Ministry of Economic Affairs and Employment provides more information at: <https://tem.fi/en/-/pay-subsidy-reform-simplifies-regulation-and-promotes-the-employment-of-people-in-a-vulnerable-labour-market-position>

<sup>94</sup> Ministry of Economic Affairs and Employment provides more information at: <https://tem.fi/valtion-erityistehtavayhtio>

<sup>95</sup> ISG & infas (2021). *Studie zu einem transparenten, nachhaltigen und zukunftsfähigen Entgeltsystem für Menschen mit Behinderungen in Werkstätten für behinderte Menschen und deren Perspektiven auf dem allgemeinen Arbeitsmarkt. First interim report.*

- **Person-centredness instead of work-centredness.** Producing products and services that are useful to society is seen as important; however, providing versatile and fulfilling activities to persons with disabilities that are useful for their personal and professional development is increasingly seen as the priority by disability service providers (see case studies on the [Netherlands](#) and [Germany](#)).
- **Openness, decentralisation and closer ties with the open labour market.** Stakeholders in Germany are trying to change the image of sheltered workshops “as a building”; instead, they suggest perceiving them rather as services that a person with disability chooses himself/herself, forming an integral part of the inclusive labour market. Sheltered workshops are starting to offer a wider spectrum of activities (esp., social- and community-based services, such as shops, restaurants, integrated workplaces in the open labour market, etc.) and develop stronger links with the open labour market. In the future, the services of sheltered workshops will be increasingly delivered wherever a person with disability works and will not be tied to a specific workshop.

It is not yet clear how fast (and whether) these transformations will take place across the EU. It was often emphasised by stakeholders that the employment of persons with disabilities is not seen as a political priority, especially in the current context of war in Ukraine, high levels of inflation and energy crisis in Europe. Quite decisive, large-scale policy measures are currently implemented in the Netherlands and Finland, while policymakers in other countries have focused on incremental changes. The recommendations provided in the following chapter are meant to assist different stakeholder groups with respect to improving the employment situation of persons with disabilities.

## 4 Recommendations

Based on the findings and their subsequent analysis as detailed in this report, the following recommendations<sup>96</sup> for stakeholders (at national and EU-level) involved (in practice or in policy-making) in sheltered workshops, emerge:

### Entities operating Sheltered Workshops

While sheltered workshops might still be a necessity for a while longer – phasing them out will take time, due to planning and implementation of other supporting measures (see below) – there are measures which sheltered workshops can, in the meantime, implement and which some are already implementing, in order to safeguard and promote the rights of persons with disabilities, namely:

- Sheltered workshops should **consider their workers' transition to the open labour market as one of their main goals**, rather than just a theoretical possibility.
- Sheltered workshops need to adopt a **person-centred approach** in pursuing work inclusion goals (i.e. focus on professional and personal development of their clients/users; supporting their individual needs and aspirations).<sup>97</sup>
- Sheltered workshops and their staff should **prioritise people over benefits**, i.e. their statute should have social goals as their main objective; rather than a purely work-centred one (i.e. focus on the production of products and services). The need to generate revenues to sustain themselves in some sheltered workshops may lead to an over-focus on work duties and productivity of persons with disabilities.
- Sheltered workshops should **explore how their revenues/profits can be reinvested in order to upgrade technologically and offer more multifaceted, meaningful work**, as well as support for their workers.
- Sheltered workshops should be **democratic and participatory** in nature, i.e. persons with disabilities themselves should be included in decision-making.
- Sheltered workshop management should provide their **staff** working with persons with disabilities with training on how to support service users / employees in the **transition** to the open labour market, including through the provision of **soft skills, independent living skills, and relevant professional skills**.
- Staff working with persons with disabilities in sheltered workshops should **encourage awareness among the service users / employees of the workshop on the options of jobs in the open labour market**.<sup>98</sup>
- Sheltered workshops providers need to strive at **developing closer ties with businesses** in the area, **maintaining dialogue** with employers regarding **which professional and soft skills are needed in the open labour market**. Providers should also consult with them on how they could change their structure/operations in order to incorporate more persons with disabilities (especially persons with intellectual

<sup>96</sup> It is to be noted that these recommendations are general ones, and thus not necessarily applicable to all types of sheltered workshops across the EU.

<sup>97</sup> Interviews with CSO representatives.

<sup>98</sup> Interview with Committee on Employment and Social Affairs (EP) representative.

disabilities) in their workforce. Most open labour market companies rarely seek such support themselves; thus service providers working directly with persons with disabilities **should be the first ones to approach businesses** on this matter. Sheltered workshops should act increasingly as resource and knowledge-sharing centres.

## Country-level Policy Makers

The **ultimate objective should be to not need sheltered workshops**. In order to achieve this, national decision-makers need to put measures in place including:

- Dedicating more resources to **early intervention initiatives, especially in education**, and mandating to educational institutions and other service providers for persons with disabilities to clearly present all possible alternatives of participating in working life, not just sheltered workshops.
- **Widespread and accessible supported employment services.**<sup>99</sup> Currently, the absolute majority of state funds, dedicated to the work inclusion of persons with disabilities, is allocated to sheltered workshops. One of the arguments in favour of keeping sheltered workshops centres on the fact that the open labour market is not ready for persons with (intellectual, multiple, severe) disabilities. One of the ways in which this is mitigated is by legally recognising and systematically investing in supported employment (in terms of job coaching, job guidance, etc.) to support persons with such disabilities in the open labour market while giving the opportunities to employers to recognise the value of employees with disabilities. Sheltered workshops should have the option of acting as supported employment/job coaching service providers.
- Ensuring that **the capacities of employment services are strengthened** in order to better address the needs of jobseekers with disabilities (e.g. in Finland, employment services have dedicated experts (work ability coordinators) who can assist jobseekers with disabilities, and understand the multidisciplinary nature of the services they need). A system of cooperation between different actors (employment services, disability service providers, job coaches, potential employers, etc.) should be ensured.
- Strong financial incentives for employers in the open labour market to employ persons with disabilities should be accompanied by **“soft” support measures (information, awareness raising, consultation, continuous job coaching)**. This may be a role that sheltered workshops could fill, since they are already familiar with accommodating the needs of persons with disabilities in the workplace.
- Ensuring that **vocational education** provided to persons with disabilities is **relevant for employers in the open labour market**. Possibilities to attend regular vocational schools should be enhanced. This could be supported by providing formal or informal certifications that persons with disabilities could present to potential employers, clearly specifying what they are skilled at (including soft skills).
- Ensure that persons with disabilities **still receive financial support for additional living costs related to their disability**. Thus, any decrease in disability pensions should not hinder them from joining the open labour market. A **linear/ gradual model** (such as the ones being implemented in Poland and proposed in Finland)

<sup>99</sup> Interview with CSO representative.

that **allows the gradual decreasing of the disability pension (depending on earnings)** when one starts working in the open labour market could be a good practice mitigating this.

- **Closely monitor abuse** of the financial support system for sheltered workshops as well as the **exploitation of workers** in the sheltered labour market. One of the challenges surrounding sheltered workshops in several countries is the **lack of transparency** of the operations of such facilities. Special attention should be given to **clamping down on legal loopholes** that allow private, for-profit economic actors to benefit from registering their economic activities – or parts of it – as a sheltered workshops or other type of service providing organisation in order to access state subsidies or preferential fiscal conditions.
- **Ensure that work activities are legally treated as such and that labour law (including fair remuneration) applies to them.** Clear boundaries of what is considered a rehabilitative activity or a work activity should be established and monitored. Accordingly, remuneration for persons working in sheltered workshops should **at least equal minimum wage** (even if the person’s productivity is relatively low), unless the activities performed by persons with disabilities in such workshops are purely rehabilitative.<sup>100</sup>
- Ensure that **persons with disabilities are employed in the public sector.** Not all Member States currently live up to this requirement, enshrined under the UNCRPD, even though the public sector should act as a trendsetter for private businesses too (Finland provides an example of good practice in this field). Public authorities should include persons with disabilities in public service positions (schools, hospitals, maintenance of environment, etc.). Public organisations should have quota requirements, and attention should be given to reasonable accommodation.
- **Devise and fund programmes to make sure that professional and personal development of persons with disabilities does not stop once they become employed.** States should ensure that persons with disabilities remain entitled to services such as **community-based services, rehabilitation, ongoing support from a job coach**, for as long as they feel these services are meaningful to them. Meanwhile, (potential) employers of persons should have access to the support of skilled specialists (e.g., psychosocial service providers, job coaches) throughout the employment relationship.

## EU-Level Policy-Makers

- The key recommendations pertain primarily to **data collection**. This is an obligation under UNCRPD Art 31 which both the EU and Member States are falling short of. The European Parliament’s own report noted that “with regard to the main employment objectives of the 2010- 2020 European disability strategy [...], the data available **do not allow any progress to be measured**, as EU-wide data do not cover the protected and open labour markets separately and coherently.” To mitigate this, several steps need to be taken at EU-level:
  - As a first step, **clearly define both “disability”** (one option recommended by stakeholders could be the WHO’s International Classification of Functioning, Disability and Health, or ICF)<sup>101</sup> – including

<sup>100</sup> Interviews with CSO representatives.

<sup>101</sup> One advantage of the ICF system is that it is not only a definition of disability, but also a useful tool for the evaluation of needs of persons with disabilities.

arriving at a consensus on the ‘degrees’ of disabilities - **as well as “sheltered workshops”** across the EU Member States. One of the challenges hindering accurate data collection in this area is the clear definition of these two crucial terms and their consistency across the different Member States.

- In harmonising the definition of “disability” across the EU, attention needs to be given to the practical repercussions of this, as a change in classification may alter the number of people who qualify for support by services for persons with disabilities, and, accordingly, funding for such services.
  - It is also acknowledged that the **traditional definition of sheltered workshops as does not allow for the variety of such workshops** across the EU or the additional services that a number of sheltered workshops are providing to persons with disabilities in supporting their entry in the open labour market. A more updated definition needs to be applied, taking into account the progress that has been made so far.
  - While consistency is important, there is also the need to **differentiate between different types of what are currently classified as sheltered employment**, including social enterprises, etc.; as well as to acknowledge that not all sheltered workshops equal segregation. A set of criteria can be put in place to ‘measure’ the level of sheltered workshops’ compliance with the UNCRPD, where such workshops can be classified according to their progress in this path.
- Equally importantly, a clear definition and classification of what constitutes **rehabilitative** versus **work** activities should be devised, not just to enable the application of labour law but also to inform data collection.
  - Urgently address the need for **up-to-date and accurate data**, including **statistics**, on **persons with disabilities in sheltered workshops and jobseekers with disabilities**. Such data also needs to be **disaggregated according to disability type**.
  - Besides quantitative data, **qualitative research** on the **lived experiences of persons with disabilities** both within sheltered workshops as well as those who have transitioned into the open labour market is needed, as it would **provide a clearer picture of the actual aspirations and choices** of persons with disabilities vis-à-vis employment, on which to base policies and directives on employment for persons with disabilities.
  - Significantly increase the **amount of funding dedicated to data collection and research**, which is seen as insufficient by stakeholders, who note that even countries with cutting edge data collection *procedures* do not have the needed resources to carry out data collection *processes* to the level of disaggregation and detail needed.
- EU authorities should make sure, **through research and monitoring**, that EU policies and Member States’ policies incorporate the social model of disability **while fully adopting a human rights-based approach**. For example, the practice of cutting disability pensions if a person with disability found employment might be consistent with a social model, but violates the individual’s human rights. Pensions need to be kept in place to allow a person with disabilities to cover the costs deriving from their practical needs, regardless of whether they also receive a salary for work activity.
  - The EU should enter into discussions with service providers and CSOs to carefully weigh the pros and cons of ratifying the **Optional Protocol** of the UNCRPD. The Protocol would allow persons with disabilities to hold



the EU and its members accountable towards their commitments, but it can also create problems due to the vast differences in national legislation on disability in different Member States.

## Civil Society Organisations

**Civil society plays a vital role** in the promotion and protection of persons with disabilities' rights, including in the employment area. Currently **CSOs are divided into the pro-sheltered workshops and the anti-sheltered workshops camps**. Nonetheless, both sides often present arguments – such as the need to provide adequate accommodation and support in the open labour market – which are similar in nature. It is generally agreed that sheltered workshops cannot – and should not – be closed down **without having other measures in place**. Finding common points between the two camps to promote (transition to/and) employment in the open labour market and persons with disabilities' independence would ultimately benefit persons with disabilities themselves. Moreover, both sides agree that any solution to ensure work inclusion, whether in the open labour market or in sheltered workshops, **requires considerable additional funding**.

## Relevant to all actors

This study observes that across countries, the **traditional / transitional divide in the categorisation of sheltered workshops is of limited use**: transition success rates are noted to vary widely even among organisations that are nominally mandated to guarantee it, which in some cases are “transitional” only in theory. EU institutions, civil society organisations, and service providers themselves should propose a different way to categorise sheltered workshops based on the quality of working conditions, degrees of segregation, work satisfaction, type of activities conducted (to be supported by the better data collection actions described above).

## Annex I. Country Case Studies

### Case Study on Sheltered Workshops: Czech Republic

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#### At a Glance

- The number of persons with disabilities in protected employment increased by 30% between 2016-2021.
- The protected labour market targets persons with all types and degrees of disabilities.
- Persons with disabilities in protected employment are guaranteed an employment status and receive at least the minimum wage.
- The term “sheltered workshops” is not used in legislation; instead, the term “protected labour market” is used to describe entities with over 50% of employees with disabilities as their total workforce.
- The protected labour market is extensively supported by the state, while incentives to boost participation in the open labour market remain insufficient.
- Employment choices of persons with disabilities are often guided by what is available, rather than by what an individual prefers.

#### A. Introduction

In the Czech Republic, the employment rates of persons with and without disabilities are close to the EU averages. According to EU-SILC survey, in 2018, 51,9% of people with disabilities were employed, in comparison to 80,6% of the population without disabilities in the country (however, the actual employment gap is actually wider, given methodological issues of the survey).<sup>102</sup> In the same year, around 41% of employed persons with disabilities reported working in the so-called protected (sheltered) labour market.<sup>103</sup> There are around 3,700 entities operating in the protected labour market, which consists of employers with over 50% of employees with disabilities as their total workforce. In its strategic documents, the government of Czech Republic continuously reiterates its goal of employing persons with disabilities primarily in the open labour market, however, a trend

<sup>102</sup> Source: EU-SILC 2018. Employment rates, by disability and gender (aged 20-64).

<sup>103</sup> Government of the Czech Republic. 2020. *Combined II and III periodical report of the Czech Republic on the fulfillment of obligations arising from the Convention on Rights of Persons with Disabilities*. Available: <https://www.mpsv.cz/umluva-osn-o-pravech-osob-se-zdravotnim-postizenim>

is observed where more and more people with disabilities shift towards protected employment.<sup>104</sup> The number of individuals employed in these entities increased by around 14,500 between 2016 and 2021 and currently stands at around 63,000.<sup>105</sup>

The share of unemployed persons with disabilities registered as jobseekers decreased from 41,000 in 2018 to 34,500 thousand in 2019,<sup>106</sup> mostly due to favourable economic conditions, particularly in the protected labour market. However, a large share of persons with disabilities in the working age group (around 270 thousand) are inactive, i.e., not looking for a job due to the severity of their disability or subjective reasons,<sup>107</sup> which is not reflected in the official unemployment statistics.

## B. Governance and Characteristics of Sheltered Workshops

The term “sheltered workshops” does not figure in Czech legislation; instead, the term “protected employment” is used exclusively in connection with the employment, in one entity, of more than 50% of persons with disabilities as a share of the total workforce.<sup>108</sup> These employers must be formally recognised by the Labour Office as entities in the protected labour market. Due to negative connotations, the term “sheltered workshops” has not been in use since 2012 at the request of the Association of employers who employ over 50% of persons with disabilities (*Asociace zaměstnavatelů zdravotně postižených ČR* or the AZZP). However, the conditions of, and subsidies for, a protected job position remained *de facto* the same as the ones that used to be for sheltered workshops. The entities in this category are very diverse: large industrial companies with hundreds or even thousands of employees, small social enterprises, non-profits, cooperatives, etc. These entities employ mostly persons with disabilities, as well as persons without disabilities or persons with less severe impairments who can perform more difficult tasks and supervise the work process (see Box 1). Employers in the protected labour market provide various types of work, such as property maintenance, IT, sewing, packaging, and generally accept employees with any type or degree of disability. In the Czech Republic, disability is categorised in three degrees based on severity. According to the AZZP, most employees in protected employment have a 1<sup>st</sup> degree disability (least severe), especially in companies that are more oriented towards profitability. 2<sup>nd</sup> and 3<sup>rd</sup> degrees are more common among NGOs, cooperatives and social enterprises, that also form part of protected employment.

<sup>104</sup> Government Board for Persons with Disabilities. 2020. *National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021-2025*. Available: <https://www.vlada.cz/assets/ppov/vvozp/dokumenty/National-Plan-for-the-Promotion-of-Equal-Opportunities-for-Persons-with-Disabilities-2021-2025.pdf>

<sup>105</sup> České Noviny. 2022. Jurečka: Allowance for employment of the disabled will increase to CZK 14,200 from October. Available: <https://www.ceskenoviny.cz/zpravy/jurecka-prispevek-na-zamestnavani-postizenych-vzroste-od-rijna-na-14-200-kc/2256773>

<sup>106</sup> Government of the Czech Republic. 2020. *Combined II and III periodical report of the Czech Republic on the fulfillment of obligations arising from the Convention on Rights of Persons with Disabilities*.

<sup>107</sup> Government Board for Persons with Disabilities. 2020. *National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021-2025*.

<sup>108</sup> There are no official statistics on the actual (in practice) percentage of persons with disabilities making up protected employment entities’ workforce.

## **Status of Persons with Disabilities in Protected Employment**

Persons with disabilities have an equal employee status, are entitled to social security and minimum wage.<sup>109</sup> Previously, minimum wage was differentiated for persons with and without disabilities, but since 2017 it was equalised in order to improve compliance with the UN CRPD. The AZPP, as well as representatives of other stakeholder groups, report that most jobs in the protected labour market are low-skilled and salaried at the minimal wage or slightly above it.

### **Support and Obligations for Employers in the protected employment sector**

The protected labour market is extensively supported by the state. In 2021 alone, the Czech government allocated more than CZK 9.2 bn (~EUR 373.4mln) to subsidise employers in this segment.<sup>110</sup> In line with the Employment Act,<sup>111</sup> state subsidies are provided to compensate for the lower work productivity of persons with disabilities (up to 75% of the wage costs, limited to CZK 14,200 (~EUR 579) per month). Moreover, the Labour Office may award employers in the protected labour market a contribution towards the creation of a protected work position, as well as a full compensation for training costs. A protected work position must be maintained for at least 2 years for employers to be eligible for the contribution. Entities in the protected labour market may also gain some competitive advantage through a mechanism that incentivises mainstream companies to buy products or services from them. The legislation requires entities employing 25 or more employees to either: a) employ at least 4% of persons with disabilities; b) pay a compensatory levy; c) buy products or services from the companies that mostly employ persons with disabilities; d) combine the above. The third option is rather popular among businesses; there is even a public register where one can find a list of protected employment providers to collaborate with.<sup>112</sup> However, the legitimacy of this mechanism was compromised when it became apparent that some companies in the protected labour market resell goods that were not produced by their employees with disabilities but simply purchased from other businesses.<sup>113</sup> The first option (hiring persons with disabilities) is often circumvented, since mainstream companies remain reluctant to hire individuals who require a complex accommodation of needs, e.g., persons with intellectual or psychosocial disabilities. The reasons for this reluctance, identified during interviews with stakeholders, include prevailing prejudice, insufficient financial incentives (lower than those in the protected labour market), overly-bureaucratic procedures and lack of information and advice. Moreover, the mechanism fails to incentivise public sector entities to hire persons with disabilities, since paying the levy only means transferring state funds from one budget component to another.

<sup>109</sup> CZK 16,200 or ~EUR 660 in 2022.

<sup>110</sup> České Noviny. 2022. *Jurečka: Allowance for employment of persons with disabilities will increase to CZK 14,200 from October.*

<sup>111</sup> Act No. 435/2004 Coll.

<sup>112</sup> Register of entities in the protected labour market is available at: <https://nahradniplneni.cz/>.

<sup>113</sup> Supreme Audit Office. 2017. *Support for the employment of people with disabilities cost almost 22.4 billion crowns. But it did not help people with disabilities to enter the open labor market.* Available at: <https://www.nku.cz/cz/pro-media/tiskove-zpravy/podpora-zamestnavani-osob-se-zdravotnim-postizenim-stala-temer-22-4-miliardy-koron--na-volny-trh-prace-jim-ale-nepomohla--id8451/>

While public organisations should be leading by example, recent research shows that they employ only 2.5% of persons with disabilities on average.<sup>114</sup>

*Box 1. In focus: Prague-based production cooperative Drutěva*

Drutěva was founded in 1950 and is one of the oldest establishments dedicated to the employment of persons with disabilities in the Czech Republic. It specialises in producing custom packages and stationery, as well as textile products for other businesses. Drutěva currently has 150 employees (cooperative members), 85% of which have some kind of disability. The majority of employees have psychosocial disabilities (caused, for example, by schizophrenia) but there are also some employees with intellectual disabilities (such as Down syndrome), as well as physical ones (e.g., persons with reduced mobility due to back problems). The management team consists of persons both with and without disabilities. The cooperative has a training programme and offers work rehabilitation for new employees, as well as tries to adjust the work tasks to each employee's abilities. The cooperative does not encourage its members to transition to the open labour market. According to the chairperson of Drutěva, most employees could not find employment elsewhere due to the severity of their disability (e.g., some of them do not know how to count and can only do simple assembling at a slow pace). Furthermore, the employees often fall ill and take sick leave for several months at a time, which would be undesirable by most employers. According to representatives of persons with disabilities, employees report enjoying their jobs at Drutěva. It is the first (and only) job for many of them and they have no intention of leaving. The chairperson argues that the biggest challenge is maintaining the financial viability of the cooperative, which got especially difficult during the pandemic. The business must offer competitive prices to keep its already-shrunken clientele while struggling to get money for paychecks. She believes that state contributions per employee should be higher and more in line with the labour costs, in order not to start downsizing.

Interviewed government representatives and CSOs agree that such a system may deepen the divide between the open and protected labour markets. This is also reflected in the growth of the latter, as some entrepreneurs perceive the establishment of sheltered workshops as a profitable business opportunity. CSOs active in the field of employment of persons with disabilities, such as Fokus Praha (interviewed) and RYTMUS,<sup>115</sup> claim that employers in the protected labour market are too heavily subsidised and that a greater share of this money should be targeted towards integration and inclusion in the open labour market. A similar recommendation was made by the Supreme Audit Office, given that 96% of the money dedicated to the system of support for the employment of persons with disabilities went to employers in the protected labour market between 2010 and 2015.<sup>116</sup>

It should be noted that some social services, usually organised by CSOs, may resemble sheltered workshops but are "social-therapeutic" in nature (*sociálně terapeutické dílny*). These outpatient workshops are regulated under the Social Services Act<sup>117</sup> and are aimed at persons with reduced self-sufficiency due to a disability, who cannot be placed on the open or protected labour market. The activities include long-term and regular support for

<sup>114</sup> More information available at:

[https://www.ochrance.cz/aktualne/stat\\_neumi\\_zamestnat\\_lidi\\_s\\_postizenim\\_ukazal\\_vyzkum\\_zastupkyne\\_ombudsmana/](https://www.ochrance.cz/aktualne/stat_neumi_zamestnat_lidi_s_postizenim_ukazal_vyzkum_zastupkyne_ombudsmana/)

<sup>115</sup> RYTMUS. 2021. *Written submission to the General Discussion on "The Right of Persons with Disabilities to work and employment" of the Committee on the Rights of Persons with Disabilities*. Available at:

<https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRPD/DGD/2021/RYTMUS.docx> [Accessed 12/09/2022].

<sup>116</sup> Supreme Audit Office. 2017.

<sup>117</sup> Act No. 108/2006 Coll.

creating and improving skills such as maintaining personal hygiene, food preparation, basic work habits and skills, etc. Employment relationships are not established, and the users are not entitled to regular remuneration (they may receive one-time rewards to boost their motivation, e.g., when their handmade products are sold).<sup>118</sup> Interviewed representatives of a CSO argue that such workshops are not oriented towards job-specific skills but rather pleasant, meaningful activities within the local community (e.g., painting, crafting handmade souvenirs, socializing). Therefore, they do not perceive the lack of remuneration as an issue.

### C. UNCRPD & ILO Compliance

The rights of persons with disabilities enshrined in the UN CRPD and other international principles are formally ensured in the Czech legal code. However, in specific cases these rights are not being fully lived up to, due to the following factors:

- **The disability pension system and overall systematic attitudes contribute to the low economic activity of persons with disabilities.** Disability pension beneficiaries may work if their health permits so and their earnings are not restricted in any way. Persons who have a 3<sup>rd</sup> degree disability are entitled to a disability pension, irrespective of prior work experience. However, the granting of disability pension does not have to be permanent, depending on the state of health. Some of these people are afraid of losing part of their income if they find a job (esp. in the open labour market) and their disability level is reassessed (i.e., it is decided that their ability to work increased and their payments become lower). Therefore, they remain inactive or resort to the informal economy. Moreover, patronising attitudes from medical professionals, institutionalisation, inadequate provision of social services are still common issues in Czech Republic,<sup>119</sup> which disempowers persons with disabilities and, consequently, reduces their motivation to participate in working life.
- **In theory, persons with disabilities have a choice of which kind of employment to enter into, but sheltered work is often the only available opportunity in practice.** Mainstream companies lack the incentives or willingness to accommodate the needs of persons with disabilities. Also, they rarely offer part-time work opportunities, which, according to interviewed stakeholders, is the desirable option for most persons with disabilities. Secondly, representatives of the AZZP and a CSO note that the support offered by Labour Offices is poorly tailored to the jobseekers' individual needs. Although there exists several NGOs that focus on supported employment in the open labour market and provide complex services (e.g., *Fokus* or *Rytmus*), these are rather small-scale initiatives. In many cases, persons with disabilities are left with no choice but to turn to sheltered workshops in order to receive social security benefits and cover their basic expenses.
- **Persons with disabilities are entitled to remuneration of at least the minimum wage, but some stakeholders claim that the pay is not always fair.** The interviewed employers and government representatives believe that the wages adequately correspond with the job difficulty and level of

<sup>118</sup> Ministry of Internal Affairs and Communication, Department of Social Services and Social Work (2012). *Social rehabilitation and social therapy workshops*. Available at: <https://www.mpsv.cz/socialni-rehabilitace-70-a-socialne-terapeuticke-dilny-67->

<sup>119</sup> Tichá, R. et al. 2020. "Choices, Preferences, and Disability: A View from Central and Eastern Europe." In: Stancliffe, R., Wehmeyer, M., Shogren, K., Abery, B. (eds) *Choice, Preference, and Disability. Positive Psychology and Disability Series*. Springer, Cham. [https://doi.org/10.1007/978-3-030-35683-5\\_6](https://doi.org/10.1007/978-3-030-35683-5_6).

responsibility. However, representatives of persons with disabilities and CSOs argue that, due to their vulnerable position, (potential) employees with disabilities often feel like they have no choice but to accept the conditions offered by the employer. This includes agreeing with a minimum wage, irrespective of the job difficulty. In fact, the absolute majority of employees in the protected labour market receive the minimum wage. Moreover, there are known cases of abuse of the wage subsidy system, when an employer was keeping a part of the salary of employees with disabilities.<sup>120</sup> Service providers to persons with disabilities also mentioned a case when their client (a potential job candidate) was asked by a social enterprise manager to work without pay for six weeks as part of a “prolonged trial period”. Government representatives claim that such cases are rare and that there are mechanisms in place to prevent abuse. Conversely, one of the interviewed CSOs believe that they simply remain unreported and undiscovered by responsible institutions which lack the resources to do regular checks.

- **Employers are not required to provide any additional services to their employees with disabilities.** Employers who employ over 50% of persons with disabilities as their workforce are not obliged to provide vocational and/or professional training, neither to hire a social worker, psychologist, etc. Representatives of the AZZP argue that providing such services is often impossible due to low profit margins. Some companies report struggling to even pay the minimum wages to their employees, while remaining competitive in the market (see Box 1). Their technological upgrading is also minimal, which limits the opportunities of employee upskilling. Additional services and support are more commonly available in non-profit entities, cooperatives and social enterprises that tend to employ persons with more severe disabilities and mainly focus on a social mission.
- In connection to the above, **persons with disabilities lack the support to transition to the open labour market.** Employers have no incentives to let go of their employees, since then they would lose their productive workforce and subsidies. The Labour Offices mainly focus on finding jobs for the unemployed, rather than those who want to shift from one job to another. Interviewed CSOs, government representatives and the AZZP report that companies in the open labour market are not ready to accommodate the needs of employees with disabilities. Due to these circumstances, people often remain permanently employed in sheltered workshops, or return to them after bad experiences in mainstream companies. However, they (or their caretakers) can turn to CSOs that can assist them in making the transition. Some state-funded supported employment schemes (such as those offered by Fokus Praha or RYTMUS) do exist but are small-scale and must be sought individually.

<sup>120</sup> More information about a subsidy fraud case: <https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-ustavni-soud-potvrdil-tresty-za-dotacni-podvod-s-prispevky-na-postizene-203521> .

[Table 2](#) below provides an overview of the situation in the Czech Republic vis-à-vis the General Comment No. 8 (2022) on the right of persons with disabilities to work and employment of the Committee on the Rights of Persons with Disabilities and the ILO definition of decent work.

## D. Future Trends in the Czech Republic

Since 2009, when the Czech Republic ratified the UN CRPD, the fulfilment of rights of persons with disabilities was significantly strengthened. Every five years, the government issues a National Plan for the Promotion of Equal Opportunities for Persons with Disabilities, which is fundamentally influenced by the Convention and draws on its individual articles. The implementation of the National Plans has led to positive changes, particularly in the field of education and accessibility of public buildings, transport, information and services. However, employment issues are not the key focus of these strategic documents and the measures suggested in them are mostly incremental. In the period of 2021-2025, the most attention is dedicated to:<sup>121</sup>

- **Strengthening the resources and competencies of Labour Offices** in order to provide tailored support to persons with disabilities and to offer them employment opportunities, preferably, in the open labour market.
- **Improving transparency and tailoring the support system of the protected labour market.** Since 2018, employers in this segment now must provide annual reports to the Labour Office regarding their activities. In the near future, these reports should be analysed by a working group in the Ministry of Labour and Social Affairs to map out the structure of these employers and provide any legislative or non-legislative proposals. Interviewed government and employer representatives believe that the subsidies should be somehow differentiated, as some employers receive high profit margins while others focus on their social mission.
- **Boosting the social responsibility and positive motivation of employers in the open labour market** to hire persons with disabilities. Most stakeholders emphasise insufficient financial incentives but also the lack of willingness, education and “know-how” as key barriers preventing the inclusion of persons with disabilities in the open labour market. Until these issues are overcome, the system of protected employment will remain relevant and, perhaps, even more so in the future.

## E. Conclusions

In the Czech Republic, sheltered workshops fall under the diverse segment of protected labour market, which may include any entity employing over 50% of persons with disabilities. **Many persons with disabilities work in extensively subsidised companies that compete on the market, focusing on efficient delivery of products and services, as well as profitability.** Thanks to that, persons with disabilities can participate in the working life as competitive employees and have working conditions that are similar to those in mainstream companies. On the other hand, **economic pressures can lead to problems in generating decent jobs and complying with international standards.** Furthermore, the **current legislation and institutions provide little incentives to boost**

<sup>121</sup> Based on information obtained during interviews and: Government Board for Persons with Disabilities. 2020. *National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021-2025.*



**the transition from protected to open labour market.** Overall, the life trajectories of persons with disabilities are often guided by what is available, rather than by what an individual prefers<sup>122</sup>. Therefore, state funds should be allocated more purposefully, not to maintain the *status quo*, but to offer a wider spectrum of open, inclusive and accessible employment opportunities to persons with disabilities.

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<sup>122</sup> Tichá, R. et al. 2020.

Table 2: Compliance of Protected Employment in the Czech Republic with UNCRPD General Comment & ILO

Elements of Good Practice acc. to UNCRPD & ILO	Protected Employment in the Czech Republic: In Theory	Protected Employment in the Czech Republic: In Practice	Assessment
The state effectively ensures the right to freely chosen employment	In principle, persons with disability can choose their place of employment.	Protected employment is often the only available option: supported employment schemes are small-scale and insufficient; over 90% of state funds dedicated to the employment of persons with disabilities are allocated to the protected labour market.	The employment choices are usually guided by what is available; if companies in the protected labour market were to be eliminated, the unemployment rate of persons with disabilities may increase significantly.
Persons with disabilities are not segregated	Protected employment is defined as entities where people with disabilities make up over half of their workforce.	There are no official statistics on the actual percentage of persons with disabilities making up protected employment entities' workforce but it is estimated do be around 70%.	Since entities in the protected labour market are very diverse, elements of segregation may appear in some of them.
Persons with disabilities do not lose the benefit of disability allowances when they start to work	Disability pension beneficiaries may work if their health permits so. Their earnings are not restricted in any way. Persons who have a 3 <sup>rd</sup> degree disability are entitled to a disability pension, irrespective of prior work experience. The granting of disability pension does not have to be permanent, depending on the state of health.	Persons with disabilities (esp. 3 <sup>rd</sup> degree) are afraid of losing (part of) their pension if they find a job and their ability to work is reassessed.	The disability pension system contributes to the low employment levels of persons with disabilities.
Persons with disabilities are paid no less than the minimum wage	Persons with disabilities are entitled to remuneration of at least the minimum wage and this is what the majority of employees in protected employment earn.	While employers maintain that the pay is optimal (given the productivity of the employees) CSOs argue that the pay is not always fair and that persons with disabilities feel like they	While persons with disabilities are paid at least the minimum wage, this does not always mean fair wages.
Persons with disabilities receive pay on an equal basis with employees without disabilities	Persons with disabilities are entitled to remuneration of at least the minimum wage on an equal basis with the population without disabilities	have no other choice but to accept the conditions offered by employer, irrespective of job difficulty.	While persons with disabilities are entitled to remuneration on an equal basis with the population without disabilities, statistically they tend to receive lower wages.

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for Persons with Disabilities

<p><b>Safe working conditions are ensured in sheltered workshop settings</b></p>	<p>The subsidies allow to compensate for lower productivity of employees with disabilities and accommodate their needs (e.g. longer break times are allowed).</p>	<p>CSOs report that a minority of profit-oriented employers make excessive demands on their employees.</p>	<p>The safety of working conditions varies in different settings.</p>
<p><b>Persons with disabilities have opportunities of career advancement</b></p>	<p>Various types of work are available in the protected labour market. While these entities are entrepreneurial and profit-oriented, they may create similar career advancement opportunities as in mainstream companies.</p>	<p>Except for a few large companies, the entities in the protected labour market are mostly limited to low-added-value industries and provide jobs that are considered low-skill and do not pay well. Employers are not obliged to offer additional services (such as rehabilitation, social services, psychological support etc.), which may limit the potential of career advancement of persons with disabilities employed.</p>	<p>Career advancement opportunities are available in principle; however, it depends on the workplace and the capacities of the individual. Additional support is not always available to realise the full potential of employees.</p>
<p><b>Persons with disabilities perform meaningful work</b></p>	<p>Entities in the protected labour market must generate revenues and produce goods/services that are valuable to society. Many of them work as subcontractors for other companies and are business-oriented.</p>	<p>Due to a legal loophole, some companies in the protected labour market make profits by reselling goods that were not produced by their employees with disabilities but simply purchased from other businesses.</p>	<p>Entities in the protected labour market enable their employees to create revenue and contribute to the economy; however, this system is abused in some cases.</p>
<p><b>Transition from sheltered workshops to the open labour market is encouraged</b></p>	<p>Employers in the protected labour market are not incentivised to support transition to mainstream companies. Persons with disabilities (or their carers) can turn to CSOs that can assist them in making the transition, but such supported employment schemes are small-scale and must be sought individually.</p>	<p>Persons with disabilities lack the support to transition to the open labour market and often remain permanently employed in sheltered workshops. Employers have no incentives to let go of their employees, since then they would lose their workforce and subsidies.</p>	<p>Requiring employers in the protected labour market to lose their employees would go against their business logic. Organisations that could support the transition lack resources. Transitions are virtually impossible in some cases since mainstream companies are not ready to accommodate certain needs (esp. of persons with intellectual or mental disabilities).</p>
<p><b>Social dialogue is present between the sheltered workshop users (employees) and management</b></p>	<p>Employees in the protected labour market have equal labour rights, including collective bargaining.</p>	<p>There are no known labour unions of persons with disabilities; if present, social dialogue is informal.</p>	<p>Although social dialogue is legally possible, it is not specifically encouraged.</p>

Source: Author's elaboration based on literature review and qualitative interviews

## F. Conducted Interviews

Name	Designation	Organisation	Date	Methodology
Václav Krása	Chairman	Czech National Disability Council	25/08/2022	Written interview
Pavel Ptáčník	Head of Secretariat and lawyer	Government Committee for Persons with Disabilities	01/09/2022	Online interview
Kateřina Augustová & Karel Rychtář	Member of the Executive Board / Co-founder (retired)	Association of Employers of Disabled People in Czech Republic (AZZP)	05/09/2022	Online interview
Petr Špaček and Zuzana Biondi	Team lead, job consultant/ Job consultant	FOKUS-Praha	07/09/2022	Online interview
Kristýna Kilič Bukovská	Chairperson	Drutěva	15/09/2022	Online interview

# Case Study on Sheltered Workshops: Finland

Author: Justina Žutautaitė

## At a Glance

- There is a lack of reliable statistics on the employment situation of persons with disabilities in Finland. The number of persons with disabilities in sheltered workshops and day care centres has increased in recent years, standing at 17,871 in 2021.
- Sheltered workshops (termed as job training centres) are considered a part of the “intermediate” labour market.
- Sheltered workshops’ activities are organised as services and do not guarantee an employment status or a minimum wage for its clients.
- Despite proven effectiveness, the adaptation of supported employment methods is still not commonplace across the country; therefore, many clients of sheltered workshops lack transition opportunities to the open labour market.
- Promising new policy initiatives may help disability service providers (incl. sheltered workshops) find new pathways and improve access to employment for their clients.

## A. Introduction

In Finland, the employment rate of persons with disabilities is above the EU average. In 2018, 58.3% of persons with disabilities were employed, compared to 75.9% for other persons. This results in an estimated employment gap of ~18%, while the EU27 average gap is 24.2%<sup>123</sup>. These statistics, however, should be seen with caution, since Finland does not keep a register of persons with disabilities. Therefore, the proxy of “persons with partial work ability” (which is a broader category than disability) is used in various reports. Moreover, the actual employment and unemployment rates of persons with disabilities is difficult to determine since many of them do not register as jobseekers. The Ministry of Economic Affairs and Employment uses the results of the Labour Force Survey (2011) which showed that 65,000 persons with disabilities are not in employment but would like to work. Since the results of the survey are over 10 years old, the Ministry is planning to gather new statistical information about the employment situation of persons with disabilities.

The number of persons with disabilities (particularly, those with intellectual disabilities or multiple disabilities) in sheltered workshops and day care centres is more or less steady, but, overall, has increased from 15,805 in 2011 to 17,871 in 2021 (only the capital region is witnessing lowering numbers of clients in these facilities)<sup>124</sup>. Most persons with intellectual disabilities of working age participate in day activities at day care centres or work

<sup>123</sup> Source: EU-SILC 2018. Employment rates, by disability and gender (aged 20-64).

<sup>124</sup> Based on statistics provided by The Finnish Institute for Health and Welfare. Available at:

<https://sotkanet.fi/sotkanet/en/taulukko?indicator=sw4sBAA=&region=s06xsDbRMwQA&year=sy5zsk7S0zUEAA==&gender=t>

at sheltered workshops (around 6,000 in each type of setting); around 2,300 participate in outsourced work activities (differences between these are explained in [Section B](#)). Meanwhile, merely around 600 people with intellectual disabilities have salaried employment contracts in the open labour market.<sup>125</sup>

## B. Governance and Characteristics of Sheltered Workshops

### ***Support and obligations of disability service providers and employers***

In Finland, provision of work and other activities that support the access of persons with disabilities to employment are regulated under the Social Welfare Act (710/1982) and the Act on Intellectual Disabilities (519/1977). The intermediate labour market bridges the gap between unemployment and the open labour market. It can be separated into two categories, according to their aims (however, in practice, the lines between them are quite blurred):

- *Transitional labour market*, when the focus is on improving a person's chances of entering the open labour market;
- *Caring labour market*, when the focus is on promoting life management and inclusion.<sup>126</sup>

Although the term “sheltered workshop” does not figure in Finnish legislation, they do exist in the form of job training centres (which are usually organised on the same physical grounds as day care centres, e.g. in the same building complex). Day care centres are orientated towards stimulating activities such as learning digital skills, singing, spending time outdoors, arts and crafts, etc., whereas job training centres (referred to as sheltered workshops henceforth) are focused on productive activities, such as subcontracted work for companies (assembling and packaging), cleaning, cooking, serving food, as well as making more complex handicrafts (woodworking, carpet-knitting). The day and work activities are publicly funded and can be organised by the municipalities, joint municipal authorities, or purchased from private service providers. These activities must systematically support clients in self-determination and provide them with opportunities to participate in society. Clients of these social services can participate in both day and work activities throughout the day, depending on their abilities and preferences. The same service providers who run day care centres and sheltered workshops can maintain their own shops, cafes, cantinas, etc. (see Box 2). The income generated by selling products and services, produced by the persons with disabilities, is usually quite small and goes back to the municipality which reinvests it into the provision of disability services.

Regular employers can also take part in the intermediate labour market. For the most capable and motivated clients, disability service providers can arrange outsourced workplaces in the community (e.g., in publicly owned facilities such as retirement homes or kindergartens, as well as private grocery shops, restaurants). Employers do not need to sign employment contracts with these workers and have no obligation of remunerating them (they may pay a small amount of money to the municipality). Since this option rarely results in actual employment

<sup>125</sup> Information obtained from Inclusion Finland. Available at:

<https://www.fduv.fi/sv/information/arbetsochdagverksamhet/>

<sup>126</sup> Ministry of Social Affairs and Health. 2021. *Right to social inclusion and equality: National Action Plan on the UN Convention on the Rights of Persons with Disabilities (2020–2023)*. Available at:

[https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/163217/STM\\_2021\\_22\\_J.pdf?sequence=1&isAllowed=y](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/163217/STM_2021_22_J.pdf?sequence=1&isAllowed=y)

contracts, stakeholders report that organising outsourced workplaces is quite seldom nowadays (see [Section C](#) for elaboration). However, if they do decide to actually hire persons with disabilities (or persons with partial work ability, more generally), employers are entitled to a wage subsidy of up to 50%, as well as a subsidy for arranging working conditions (such subsidies may also be granted to compensate for the assistance given by another employee). They can also be consulted and supported by a job coach (if possible) during the integration period.

Although helping clients get paid employment is one of the goals of disability service providers, few of these organisations have job coaches. The first supported employment schemes in Finland were introduced in the 1990s, but such opportunities remain small-scale, based mostly in the capital region and highly dependent on project-based funding. On the other hand, interviewed stakeholders report that there has been some slow progress with respect to supported employment, since more stakeholders are becoming in favour of the “place and train” rather than the traditional “train then place” approach (see [Section D](#)). Some civil society organisations are actively advocating for increased use of supported employment methods, such as the Service Foundation for People with an Intellectual Disability (KVPS), Association for Developmental Disabilities (FAIDD) or the Inclusion Finland (Tukiliitto). These organisations are meeting with disability service providers and municipal decision-makers in order to change their attitudes and promote the introduction of quality criteria for job coaching.<sup>127</sup>

### ***Status of persons with disabilities in sheltered workshops, outsourced workplaces and employment***

The clients of sheltered workshops and day care centres can stay there indefinitely, as well as stay in an outsourced workplace for an unlimited period of time, given that the employer agrees with that. Usually, these centres are organised with respect to different types of disabilities (however, in some cases, persons with intellectual and psychosocial disabilities can participate in the same group). They do not receive a wage, only a small tax-free daily allowance of 0-12 Euros (on average, around EUR 5 per day and a EUR 100 per month). In some cases, lunch may cost more than the daily allowance. Since these work activities are organised as a service, labour law does not apply to them. The main income source of persons with disabilities is usually the disability pension (they may be also entitled to housing allowances, transportation, interpretation services, etc.). In 2013-14, the average working hours in sheltered workshops or outsourced workplaces was around 20-21 hours per week; however, there is a lot of variation, and 42.9% of sheltered workshop clients in fact reported working more than 25 hours per week.<sup>128</sup>

Persons with disabilities who manage to get a job through a regular employment contract in the open labour market receive (at least) the minimum wage. During their employment, they can receive support of a job coach (meeting with them once in a while), and may continue using disability services, such as day care centres, when they are not at work. In 2013-14, the average monthly income of those in paid work was slightly below EUR 743. The weekly working hours of persons with disabilities are usually around 20 hours, since going over a certain

<sup>127</sup> More information on Quality criteria for activities promoting inclusion and employment:

<https://verneri.net/yleis/osallisuuden-ja-tyon-laatuksiteerit>

<sup>128</sup> H. T. Vesala, S. Klem and M. Ahlsten. 2015. *Employment situation of people with developmental disabilities 2013-2014*.

Available at: <https://www.vates.fi/media/tutkimustietoa/muiden-tutkimukset/kehitysvammaisten-ihmisten-tyollisyystilanne.pdf>

earnings limit would result in losing eligibility to a disability pension. In 2022, a person who receives a disability pension was allowed to earn EUR 855.48; above this level, the pension is not paid.<sup>129</sup>

*Box 2. In focus: Supporting inclusion and employment in South Karelia*

Eksote is a joint municipal authority of the South Karelia region, providing health services, family and social welfare services, and services for the elderly. It is also responsible for organising disability services across different municipalities. This involves activities supporting inclusion and employment which are implemented across several day care centres and sheltered workshops (job training centres). According to a manager of job training centre and supported employment unit, the clients can practice job skills such as cooking, baking, serving food, being a cashier, cleaning, gardening and renovating. The clients of these services are usually paid 1 Euro per hour, or 2 Euros if they are also supporting their peers. The work activities are mixed with day care activities throughout the day; clients can offer their own ideas for the activities (e.g., improving their digital skills). According to the manager, Eksote is trying to offer real employment opportunities to some of their more motivated and talented clients. Around 40 clients with disabilities are employed with the help of job coaching in positions such as assistants, kitchen workers or cleaners. The employer can be Eksote itself, or other public or private organisations. For example, an interviewed person with intellectual disability was working in the cleaning team at Eksote's job training centre and, after his talent and ability to work independently was noticed by his job coach, he got a job in a private nursing home. He enjoys his current part-time job and gets checked in by his job coach once in a while. In order to further increase supported employment opportunities, Eksote is piloting a group-based employment model, an initiative implemented under the nation-wide Work Ability Programme. A cleaning team of five persons got an employment contract through this project. The model suits those persons with disabilities who perform their tasks better in a group with the support of a job coach, rather than independently. The cleaning team has a leader who can assist other workers; thus, this model gives less-independent persons with disabilities a chance of employment.

The manager believes that more clients could become employees eventually, but Eksote needs to develop closer ties with the companies in the region, which currently lack awareness and information about the available support and subsidies. The manager also notes that around 50 clients of the job training centre are rather slow and have high support needs. She believes that most of them would not make it in the open labour market. She thinks that such clients are attached to their places of work and like being there (in sheltered workshops or outsourced workplaces). She shares an example of one client who works at an outsourced workplace for 20 years, but never got offered a real employment contract; however, he refuses to leave this workplace because of his emotional attachment to the company. Lastly, the manager notes that some clients could benefit from spending more time away from the monotonous productive activities in the workshops and engage in fulfilling occupational activities more (e.g., in the day care centres); however, the day care centres run by Eksote are already quite full.

## C. UNCRPD & ILO Compliance

Since the ratification of the UN CRPD in 2016, the right to employment is seen as the one that has materialised the least for persons with disabilities in Finland.<sup>130</sup> Several aspects of the labour market policy and its enforcement are hindering compliance with the CRPD and the principles of ILO:

- **It is potentially unjustified to exclude work activities, which are organised as a service, from the protection of labour law.** Currently, persons with disabilities in sheltered workshops and outsourced workplaces

<sup>129</sup> More information on the employment situation of persons with intellectual and developmental disabilities: <https://www.kehitysvammaliitto.fi/in-english/intellectual-disability/employment/>

<sup>130</sup> European Commission. 2021. *European Semester 2020-2021 country fiche on disability – Finland*. Available: <https://data.europa.eu/doi/10.2767/522391>



remain outside of the employment relationship, since, theoretically, there is no element of a gainful purpose in their work activities (they are considered rehabilitative).<sup>131</sup> However, interviewed representatives of CSOs and disability service providers report that some clients with intellectual disabilities believe they are employees. They refer to their activities as “going to work” and believe they are getting a salary (although it is only tax-free pocket money). An interviewed person with disability used to work at a small restaurant for 6 hours per day and believes that his work ability and performance was similar to his colleagues without disabilities; however, he was only paid 1 EUR per hour and believes that it was unfair. Interviewed stakeholders believe that the personnel at sheltered workshops should clearly explain their clients the difference between their situation and real employment. An interviewed representative of the Ministry of Social Affairs and Health claims that the Ministry is aware of this issue and believes that service providers should make sure that rehabilitative activities do not turn into work. Some service providers have already stopped providing outsourced workplaces in regular companies for their clients, since the work performed there cannot really be considered “rehabilitation”. There are plans to establish clearer boundaries of what is considered a service and a gainful work activity in the legislation.

- **The development of job coaching models that lead to paid employment is uneven across Finland.** Although the Social Welfare Act stipulates that the employment of persons with disabilities is a function of the municipality, this goal is usually implemented solely by organising work activities in job training centres or outsourced workplaces. Few municipalities (mostly larger ones) offer individual job coaching services that would guide persons with disabilities to paid work. Interviewed CSOs and government representatives emphasise the need to change the attitudes and culture among service providers, who should re-orient their services towards finding real employment opportunities for their clients. This also applies to consultants at local employment services (Job Market Finland, *Työmarkkinatori*), who often do not know how to deal with jobseekers with disabilities and how to assist them in finding employment. Some Employment services have already introduced work ability coordinators (experts who can assist jobseekers with disabilities and understand the multidisciplinary nature of the services they need), but this is not yet commonplace. Some promising results have already been reached in Pirkanmaa region, where an effective job coaching model was developed: Pirkanmaa's Employment services estimates that about 4–5% of the adults with intellectual disabilities covered by disability services in the Pirkanmaa region are in paid work, which is around 2–3% higher than the country's average<sup>132</sup>.
- Another bottleneck preventing a higher transition rate to the open labour market is **a lack of job coaches across the country.** On the one hand, there is a need to attract more human resources to sheltered workshops, in order to better address the needs of each client (see Box 2). However, CSOs believe that some of the already-existing personnel could get training to become job coaches. Currently, the staff of the disability services is not used to “speaking in the business language” and needs additional encouragement from the municipalities to leave the facilities and actually meet with local businesses. The Finnish Disability Forum even suggests repurposing sheltered employment centres as training facilities to prepare persons with disabilities for the open labour market.<sup>133</sup>

<sup>131</sup> H. T. Vesala, S. Klem and M. Ahlsten. 2015. *Employment situation of people with developmental disabilities 2013-2014*. Available: <https://www.vates.fi/media/tutkimustietoa/muiden-tutkimukset/kehitysvammaisten-ihmisten-tyollisyystilanne.pdf>

<sup>132</sup> More information on the project available at: <https://kvps.fi/tyohonvalmennuksen-kehittamisessa-huimia-edistysaskeleita-pirkanmaalla/>

<sup>133</sup> Finnish Disability Forum. 2021. *Input to the Draft General Comment on Article 27 by the Finnish Disability Forum*. Available: [https://www.ohchr.org/sites/default/files/2021-12/Finnish\\_Disability\\_Forum.docx](https://www.ohchr.org/sites/default/files/2021-12/Finnish_Disability_Forum.docx)

- **Several interviewees agree that attitudes of various stakeholder groups are still quite conservative:** Government representatives note that both the personnel of disability services as well as family members often have patronising attitudes and focus mostly on the safety and security of persons with disabilities (including financial security by receiving the disability pension). It was also mentioned that the personnel of Employment services may sometimes discourage jobseekers with disabilities from looking for employment.
- There are **incentive traps relating to partial work ability.** In Finland, earning over a certain limit of money immediately means losing the full amount of the disability pension. This makes working longer hours financially not worthwhile. For instance, the interviewed person with disability said that he can only work for 18 hours per week in order to keep the pension; however, he would like to work longer hours. Disability organisations proposed a 'linear model', which would allow to decrease the pension gradually as earnings increase<sup>134</sup>. However, the implementation process of this legislative amendment has been lagging.

[Table 3](#) below provides an overview of the situation in Finland vis-à-vis the General Comment No. 8 (2022) on the right of persons with disabilities to work and employment of the Committee on the Rights of Persons with Disabilities and the ILO definition of decent work.

## D. Future trends in Finland

According to interviewed CSOs and government representatives, Finland is increasing its efforts to create more employment opportunities for persons with disabilities. By 2025, Finland hopes to have an overall employment rate of 75%. To achieve this ambitious goal, the government must focus on vulnerable groups and help them find employment. Finland is implementing a wide-scope health and social services reform, which includes transferring the responsibility of organising disability services from municipalities to regional governments. CSOs are hoping that the reform will bring about positive changes with respect to the working life of persons with disabilities. The Ministry of Social Affairs and Health believes that the reform will allow to centralise and modernise disability services, as well as increase professional cooperation between providers. Together with the Ministry of Economy and Employment, it is implementing a wide-scope Work Ability Programme aimed at people with disabilities and partial work capacity. The most significant measures, identified in the National Action Plan on the UN CRPD (2020-2023) as well as by interview respondents, include:

- **Integrating support for work ability and access to employment into the services of future health and social services centres.** Recently, the Ministry of Social Affairs and Health has awarded EUR 17mIn worth of grants to 22 projects, implemented by municipalities and joint municipal authorities<sup>135</sup>.
- **Increasing the use of supported employment methods.** This includes developing stronger ties between actors, increasing the competences of professionals, and raising the number of job coaches and work ability coordinators. Moreover, according to the representative of the Ministry of Economic Affairs and Employment, policymakers are currently trying to solve the issue of revealing personal medical data about the clients' disabilities to the Employment services.

<sup>134</sup> Ministry of Social Affairs and Health. 2021. *Right to social inclusion and equality: National Action Plan on the UN Convention on the Rights of Persons with Disabilities (2020–2023)*. Available at:

[https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/163217/STM\\_2021\\_22\\_J.pdf?sequence=1&isAllowed=y](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/163217/STM_2021_22_J.pdf?sequence=1&isAllowed=y)

<sup>135</sup> Project descriptions available at: <https://thl.fi/fi/tutkimus-ja-kehittaminen/tutkimukset-ja-hankkeet/tyokykyohjelma/tyokykyohjelman-hankkeet>

- **Creating an intermediate labour market actor in the form of a state-owned company** (*Työkanava Oy*) to improve the possibilities of persons with partial work ability and others in a vulnerable situation to enter the open labour market. It will also provide subsidised jobs of a sufficiently long duration for those who disadvantaged individuals for whom all other attempts to find employment have failed. The goal is to have about 1,000 people employed once the operation is established.<sup>136</sup> Interviewed government representatives note that this model (inspired by a similar model in Sweden) will help to address labour shortages in the public sector (e.g., a group of persons with disabilities, employed through the state-owned company, could work as cleaners in hospitals, schools, etc.). The state and the public sector will, hopefully, act as a trendsetter and, through this example, encourage private businesses to hire more persons with disabilities, too.
- **Increasing the financial incentives for employers** to hire persons with disabilities. The government is implementing a reform to significantly increase the use of pay subsidies in companies and to simplify them by reducing employer bureaucracy. This will be achieved by increasing the maximum pay subsidy for people with impaired capacity for work by raising the pay subsidy granted on the basis of disability or illness to 70% (currently 50%).<sup>137</sup>

## E. Conclusions

In Finland, sheltered workshops (otherwise termed as job training centres) fall under the segment of the intermediate labour market. In legislative terms, the activities of sheltered workshops are rehabilitative in nature; therefore, **employment relationships are not established in these settings, and wages are not paid**. However, CSOs raise the question whether the work performed by persons with disabilities should really be completely excluded from labour law. Moreover, **transition opportunities to the open labour market are insufficient**. Currently, many rural, smaller municipalities are not implementing supported employment methods and do not have dedicated job coaches. However, the recent government initiatives, supported by CSOs active in the field, may help re-orient the intermediate labour market and make it more proactive in terms of increasing transition opportunities to mainstream employment.

<sup>136</sup> More information available at: <https://tem.fi/valtion-erityistehtavyhtio>

<sup>137</sup> Ministry of Economic Affairs and Employment. <https://tem.fi/en/-/pay-subsidy-reform-simplifies-regulation-and-promotes-the-employment-of-people-in-a-vulnerable-labour-market-position>

Table 3: Compliance of Finland within the UN CRPD General Comment & ILO

Elements of Good Practice acc. to UNCRPD & ILO	Intermediate labour market in Finland: In Theory	Intermediate labour market in Finland: In Practice	Assessment
<b>The state effectively ensures the right to freely chosen employment</b>	In principle, persons with disability can choose their place of employment, as well as use employment services.	In the absence of equal opportunities in the open labour market, many persons with disabilities are driven to sheltered workshops.	The employment chances of persons with intellectual or multiple disabilities are especially low, not only due to severity of their disability but also lack of support services. Only several hundred persons with intellectual disabilities are employed in the open labour market.
<b>Persons with disabilities are not segregated</b>	Sheltered workshops operate on the basis of disability. Persons with different types of disabilities are usually grouped separately. Work activities can be implemented outside the unit of a workshop. A newly established state-owned company employs the most disadvantaged people, mostly persons with disabilities.	Most persons with disabilities work inside sheltered workshops alongside other clients or work in groups outside the unit (with the presence of a staff member). A smaller share of clients is placed in regular companies and work alongside employees without disabilities.	Elements of segregation are present in sheltered workshop settings, since they are meant for persons with disabilities only.
<b>Persons with disabilities do not lose the benefit of disability allowances when they start to work</b>	Disability pension beneficiaries may work if their health permits so. However, their earnings must not exceed a limit of EUR 855.48 per month.	Persons with disabilities work mostly part-time and/or in low-paid jobs, in order not to lose eligibility for the disability pension.	The disability pension system discourages persons with disabilities to seek employment that is not part-time and to maximise their earnings.
<b>Persons with disabilities are paid no less than the minimum wage</b> <b>Persons with disabilities receive pay on an equal basis with employees without disabilities</b>	Sheltered workshop clients and those in outsourced workplaces receive an allowance of EUR 0-12 per day, since their work is considered a rehabilitative activity and has no purpose of profitability.  In employment relationships, persons with disabilities are paid no less than the minimum wage (which can be subsidised).	The work performed by sheltered workshop clients and those in outsourced workplaces is, at least in some cases, productive and results in sellable products and services.  In an employment relationship, disability pension recipients may choose lower-paid and part-time positions in order not to lose their pension.	It is potentially unjustified to exclude work activities, which are organised as a service, from the protection of labour law.  While employed persons with disabilities are entitled to remuneration on an equal basis with the population without disabilities, they are demotivated to maximise their earnings.

European Association of Service providers  
for Persons with Disabilities

<p><b>Safe working conditions are ensured in sheltered workshop settings</b></p>	<p>Occupational safety and health conditions and insurance apply to sheltered workshops. Accommodation of needs is assessed for each client in sheltered workshop settings. During work activities, staff members are present to ensure safety.</p>	<p>Interview respondents did not identify any cases of unsafe working conditions or excessive demands on sheltered workshop users. However, the amount of productive working hours may be too long in some cases (given that the work performed in sheltered workshops is supposed to be rehabilitative).</p>	<p>Working conditions are generally safe but working hours may be longer than is necessary for purely rehabilitative/training purposes.</p>
<p><b>Persons with disabilities have opportunities of career advancement</b></p>	<p>Career advancement opportunities are encouraged by disability service providers (e.g., job coaches) and work ability consultants at Employment services. The most talented and motivated clients of shelter workshops receive support to get hired.</p>	<p>Inside sheltered workshops, clients are dedicated work responsibilities according to their abilities and motivations (e.g., some of them may assist less-capable peers). Opportunities to find jobs through supported employment schemes are usually given only to the most talented/motivated clients, since disability service providers lack the resources/do not know how to help clients with high support needs.</p>	<p>Individual support to maximise career advancement opportunities and to realise the full potential of persons with disabilities is not always available.</p>
<p><b>Persons with disabilities perform meaningful work</b></p>	<p>Sheltered workshops produce goods/services that are valuable to society. Many of them work as subcontractors for other companies.</p>	<p>The work available at sheltered workshops, outsourced workplaces and even the open labour market are mostly limited to kitchen work, cleaning, assembly, maintenance of buildings and the environment. CSOs share that some sheltered workshops are limited to only monotonous tasks or “imitate” work activities. CSOs believe that some clients could benefit from a wider variety of activities that would foster a sense of self-realisation (e.g., in day care centres or volunteering).</p>	<p>While it is important that the work performed is actually needed in the market, the activities assigned to persons with disabilities in sheltered workshops should be versatile and fulfilling to the client, rather than focused on producing a particular product/service.</p>
<p><b>Transition from sheltered workshops to the open labour market is encouraged</b></p>	<p>One of the functions of the intermediate labour market is to improve a person’s chances of entering the open labour market. On the other</p>	<p>Only a small percentage of disability service clients transition to the open labour market. This is partially due to the general care-oriented</p>	<p>The transition level from sheltered workshops to the open labour market is insufficient and partially limited by the lack of</p>

	hand, for those whose chances are particularly low, the intermediate labour market focuses on promoting life management skills and inclusion in social and working activities.	culture among service providers, lack of ties with local businesses, as well as a lack of resources (not enough job coaches, work ability coordinators). Few municipalities (mostly larger ones) offer individual job coaching services that would guide clients to paid work.	encouragement/support by service providers.
<b>Social dialogue is present between the sheltered workshop users (employees) and management</b>	Clients at sheltered workshops do not have an employment relationship with the service provider, therefore, they are not participating in social dialogue.	Some elements of social dialogue may be present in an informal sense (e.g., clients can themselves decide what kind of activities they want to do, etc.).	The law does not mandate social dialogue inside sheltered workshops (since employment relationships are absent), leaving up to the management to decide if they want to involve clients in decision-making.

Source: Author's elaboration based on literature review and qualitative interviews

## F. Conducted Interviews

Name	Designation	Organisation	Date	Methodology
Simo Klem and Jenni Kujansivu	Employment expert; Project coordinator, job coach	Finnish Association on Intellectual and Developmental Disabilities (KVL); Service Foundation for People with an Intellectual Disability (KVPS)	30/09/2022	Online interview
Mari Hakola	Coordinator	Inclusion Finland KVTL (Tukiliitto)	26/09/2022	Online interview
Hanna Lange and Tonni Jurmaa	Manager of job training centre and supported employment unit; client of disability services (employed)	Eksote	07/10/2022	Online interview
Marianne Keyriläinen and Jaana Heinonen	Senior Specialist, Employment and Well-Functioning Markets; Specialist, Service system unit	Ministry of Economic Affairs and Employment; Ministry of Social Affairs and Health	26/10/2022	Online interview

# Case Study on Sheltered Workshops: Germany

Author: Justina Žutautaitė

## At a Glance

- There are around 320,000 persons with disabilities working in sheltered workshops; the number of users (especially with psychosocial disabilities) is increasing.
- Sheltered workshop users are considered “incapacitated to work”, usually with severe or multiple disabilities.
- They are not considered employees, but have an “employee-like status”; they do not receive minimum wage and their remuneration is, on average, EUR 211/month (2019). Coupled with additional support from the state, their net income is similar to that of a person receiving a minimum wage.
- Although sheltered workshops emphasise their rehabilitative function, they must also function like a business and generate revenues (e.g., through subcontracted work).
- Sheltered workshops are extensively supported by the state; recent legal reforms meant to boost participation in the open labour market are only used on a small-scale.
- The level of compliance with UN CRPD has to be optimised, especially due to potentially discriminatory remuneration and close-to-zero transition rates to the open labour market.

## A. Introduction

In Germany, the employment rate of persons with disability remains significantly lower than that of persons with no disability (50,8% and 81,4%, respectively).<sup>138</sup> According to a government representative, there are around 1.1mln persons with severe disabilities (with 50% or higher degree of disability) participating in the open labour market. In addition, around 320,000 persons with severe disabilities work in sheltered workshops, established in roughly 3,000 locations across the country.<sup>139</sup> Sheltered workshops serve as highly specialised vocational rehabilitation facilities and are a key instrument to enable people with disabilities to access work. Despite growing efforts to create more jobs in the open labour market in the recent decade, sheltered workshops remain a permanent option to their users in around 99% of cases. In fact, the number of sheltered workshop users has grown significantly in recent years<sup>140</sup>.

## B. Governance and Characteristics of Sheltered Workshops

### *Support and Obligations for Sheltered Workshops*

<sup>138</sup> Source: EU-SILC, 2018.

<sup>139</sup> BAG WfbM. 2022. *The system and services of sheltered workshops in Germany*. Sent to author.

<sup>140</sup> BAG WfbM. 2022.

In Germany, the term “workshop for disabled people” (*Werkstatt für behinderte Menschen*) is used to describe sheltered workshops. Sheltered workshops are considered as vocational rehabilitation facilities, which can be established as part of inpatient facilities or independently as companies; they are non-profit-organisations but have to generate revenue. The legislation (Social Code (SGB IX) on Rehabilitation and Participation of people with disabilities) foresees several functions for sheltered workshops:

- *Rehabilitative function.* They offer persons with reduced earning capacity the opportunity to participate in working life via vocational training and employment (including in outsourced placements in the open market), with the support of professional staff and accompanying services.
- *Social function.* Sheltered workshops should provide a daily routine to its users and promote social integration.
- *Economic function.* Although sheltered workshops are not profit-oriented, they nevertheless must provide specific services or products in line with market requirements and generate revenue. The remuneration of workshop users is paid from their work results (a basic amount and a top-up allowance based on performance).
- *Inclusion function.* Sheltered workshops should promote the transition to the open labour market for persons who become ready to join it. Despite this legal mandate, transition to the open labour market is extremely rare in practice (see [Section C](#) for elaboration).

In addition to the income generated from economic activity, sheltered workshops receive a reimbursement per workshop user, which depends on their type and amount of support needed. The average sum per user is around EUR 1,466 monthly (EUR 17,593 per year) in 2020. Sheltered workshops can also obtain financial means for their buildings and technical equipment from public funds, if they can prove the need of the investment. The average income by turnover is 26.7% and the income by subsidies is 73.3%.<sup>141</sup>

The services of sheltered workshops are divided into three departments or phases:

- 1) the **entry procedure** (~3 months, during which it is decided whether a sheltered workshop is suitable for the person);
- 2) the **department of vocational education** (~2 years), where people can attend courses in a specific work field as well as develop their practical life skills (e.g. societal norms, personal care, etc.);
- 3) the **department of work**, where persons transfer after obtaining vocational training and can stay in indefinitely. A broad range of work opportunities are possible (ICT, customer services, handiwork, community services, producing and selling products). Placements in the open labour market are possible via integrated workplaces (temporary or permanent secondments) as well as mobile units (i.e., external organisations, such as large industrial enterprises in the automotive sector, can hire a small team of workers to work at an assembly line). During these placements, the worker maintains the status of a sheltered workshop user and receives the remuneration of a sheltered workshop user (not a full salary).

<sup>141</sup> BAG WfbM. 2022.



## ***Rights of Persons with Disabilities in Sheltered Workshops***

The legal status of people with disabilities in sheltered workshops in Germany is complicated. Sheltered workshops are meant for persons with disabilities who are able to achieve a minimum level of economic output and do not pose a danger to themselves or others (predominantly, persons with intellectual disabilities, but also some persons with psychosocial, physical or multiple disabilities). They are legally entitled to a place in a sheltered workshop, do not have to wait in waiting lists and have a right to indefinitely stay in the department of work. Legally, sheltered workshop users are not employees but have an employee-like status which grants them most of the rights foreseen in labour law (decent working conditions, social security, vacation time, health and safety rights, etc.) without the duties of an employee (to perform a specified workload within a specified time). According to government representatives, the minimum wage does not apply because of the vastly rehabilitative character of the sheltered workshops. Instead, they receive remuneration from the workshop which amounts to about EUR 211 per month (2019), based on their level of productivity. Coupled with additional financial support from the state, a workshop user had a net income of EUR 973 per month in 2019. Coupled with the pension after 20 years, they had a net income of EUR 1,046 per month. In comparison, the net income of a person with minimum wage in 2019 was EUR 1,030 per month.<sup>142</sup>

Uniquely to Germany, the interests of sheltered workshop users are represented by workshop councils (*Werkstatträte*)<sup>143</sup>. The workshop councils monitor legal compliance, take complaints from other users, have certain rights of participation and co-determination in decision making, e.g., regarding working hours, reasonable accommodation or wages. An interviewed workshop councilor also mentions event-organising as part of his responsibilities. The councils are funded by public financing dedicated to sheltered workshops and may be supported by a designated staff member. They are also organised at regional and federal levels. The German Association of Workshop Councils (*Werkstatträte Deutschland e.V.*)<sup>144</sup> is actively engaged in political advocacy and awareness-raising. However, a recent study has shown that strong, autonomous and influential workshop councils (at the workshop level) are not yet commonplace and can be found in almost every fifth sheltered workshop; around 40% of the councils have virtually no influence on operations.<sup>145</sup> Since 2017, every sheltered workshop is also required to appoint a women's representative, who is tasked with fostering gender equality, reconciliation of work and family life, as well as interlocation in cases of violence.<sup>146</sup> They also have a network at the federal level<sup>147</sup>. While this legal requirement is a positive development, its impact in practice is not clear.

<sup>142</sup> ISG & infas. 2021. *Studie zu einem transparenten, nachhaltigen und zukunftsfähigen Entgeltsystem für Menschen mit Behinderungen in Werkstätten für behinderte Menschen und deren Perspektiven auf dem allgemeinen Arbeitsmarkt. First interim report.* Available: <https://nbn-resolving.org/urn:nbn:de:0168-ss0ar-75737-6>

<sup>143</sup> *Werkstätten-Mitwirkungsverordnung (WMVO).*

<sup>144</sup> <https://www.werkstattraete-deutschland.de/>

<sup>145</sup> Schachler. 2022. *Partizipation durch Werkstatträte.* SpringerLink. Available at: <https://link.springer.com/book/10.1007/978-3-658-35383-4>

<sup>146</sup> *Bundesteilhabegesetz (BTHG).*

<sup>147</sup> <https://frauenbeauftragte.weibernetz.de/>

Persons with disabilities have alternatives to choose from apart from working in a sheltered workshop. The most important recent measure is the so-called “Budget for Work” (Budget für Arbeit) programme, which was introduced in 2018 across Germany. People who are considered “fully incapacitated for work” and are therefore entitled to the services of a sheltered workshop, can benefit from “Budget for Work”. It includes a wage subsidy of up to 75%, as well as support for job coaching, incentivising employers to hire former sheltered workshop users. The “Budget for Apprenticeship” scheme was introduced soon afterwards, in order to create vocational training opportunities outside of a sheltered workshop. The duration of the “Budget for Work” depends on the individual case and may be granted permanently. The person maintains the option of going to a sheltered workshop if the employment relationship ends. In addition to mainstream companies, persons with disabilities can work in the so-called inclusive companies, employing at least 30% and no more than 50% of people who have a great difficulty finding or keeping work on the general market. In inclusion companies, persons with disabilities are paid at least the minimum wage and work alongside persons without disabilities.<sup>148</sup> In addition, persons with disabilities can participate in supported employment schemes<sup>149</sup> or become users of the so-called Other Service Providers<sup>150</sup> (which, in many aspects, resemble sheltered workshops but have less stringent requirements).

### ***Support and obligations for employers in the open labour market***

In Germany, public and private companies with a minimum of 20 employees have to employ at least 5% of people with severe disabilities. If the quota is not met, the company has to pay a compensation levy per each work place not occupied by a person with disability. Some of the money can be subtracted from the levy if a company awards a contract to a sheltered workshop.

Employers are supported with various cash benefits if they create new jobs for persons with disabilities: these are usually temporary subsidies (lasting 24-60 months) to compensate for the lower working performance or subsidies to cover workplace equipment costs. As mentioned above, the “Budget for Work” programme, meant for employing persons who are considered fully incapacitated for work (such as former sheltered workshop users) employers can be granted a subsidy of up to 75% and it may last until the retirement of the person.<sup>151</sup> This programme creates relatively better financial incentives for employers, compared to temporary subsidies, since persons with disabilities may have an ongoing need of support even after several years on the job.

Box 3 and Box 4 below describe the activities of two sheltered workshops, which contain many characteristics typical to Germany. In both cases, the workshops are established as part of larger non-profit organisations that provide various services to persons with disabilities at different life stages.

<sup>148</sup> More information on Inclusive companies available at: <https://www.betanet.de/inklusionsbetriebe.html>

<sup>149</sup> More information on Supported Employment available at: <https://www.betanet.de/unterstuetzte-beschaefigung.html>

<sup>150</sup> More information on Other service providers available at: <https://www.bag-ub.de/seite/428579/andere-leistungsanbieter.html>

<sup>151</sup> BAG WfbM. 2018. *The German quota system and forms of financial support for the employment of persons with disabilities*. Available at: <http://www.bagwfbm.eu/page/quota>; Betanet. 2022. *Budget for Work*. Available at: <https://www.betanet.de/budget-fuer-arbeit.html>

*Box 3. In focus: sheltered workshop Vitus in Lower Saxony*

Vitus is a non-profit organisation, supporting and assisting people with disabilities of all ages. It incorporates sheltered workshops based in 50 locations across the rural district of Emsland, with around 900 employees (staff members). 1,600 people with disabilities take advantage of its various services (schools, living facilities, community-based services, the sheltered workshop, etc.) to participate in education, work and social life. The sheltered workshop has around 700 users, predominantly people with intellectual disabilities but more often with additional health conditions and complex disabilities; a small share of users have psychosocial disabilities. The sheltered workshop offers a widely differentiated and decentralised portfolio of workplaces: there are “classic” settings in working groups (e.g. wood processing, metal working, packaging) inside the sheltered workshop, mobile gardening groups, service-oriented positions in Vitus-owned cafés, a zero waste shop or the bicycle station in Meppen, as well as placements in regional companies with the assistance by Vitus’ job coaches. The latter option is used by around 60 sheltered workshop users. Another 15 users have been granted employment contracts through the “Budget for Work” programme. The CEO of Vitus hopes that more users can achieve this in the future. The managers of sheltered workshops in the region, with the support of local officials, started an initiative of granting “Company of Inclusion” badges for businesses that cooperate with them. The CEO argues that such PR initiatives, as well as active involvement of local governments, could help make the “Budget for Work” programme more popular in other regions as well. However, he notes that it is mostly relevant for recent school graduates, while the persons who are already working in a sheltered workshop for many years will not find the transition to the open labour market attractive. In fact, there are more and more people with mental or physical disabilities coming to sheltered workshops after bad experiences in mainstream companies. Therefore, he believes that sheltered workshops are the most suitable option for some users. With respect to challenges, the CEO of Vitus claims that biggest issue in upcoming years will be the lack of human resources. Each group of sheltered workshop users requires the presence 1-12 staff members, depending on the users’ needs. In some cases, personnel have to de-escalate aggressive behaviour of some sheltered workshop users.

*Box 4. In focus: sheltered workshop Mariaberg in Baden-Württemberg*

Mariaberg offers a wide range of support for people with learning disabilities and people living with from social deprivation, from early childhood to advanced age. This includes assisted living, schooling and vocational education, sheltered workshops, a psychiatric hospital, and care facilities for seniors. Overall, Mariaberg has around 1,700 employees (including medical staff, teachers, etc.). The organisation’s headquarters are located in an old monastery, secluded from the rest of the town, but over the years it opened new facilities in the area, including a shop, café and a bakery. Mariaberg’s sheltered workshop has around 400 users and is focused on manufacturing; it even has an ISO-9001-2015 quality management certificate and is subcontractor to over 80 corporate clients across the globe. Their main client is the multinational company Würth, a market leader in assembly and fastening materials, for which the workshop produces cable drums. Sheltered workshop users work in groups of 15-20 people. Each group has a support team of several staff members. Working hours may vary, but the usual shift at the production line is 8 hours. The staff ensures that the workers have other activities apart from work. For instance, if somebody cannot concentrate, they can switch to organic farming, going for a walk or exercising. Special attention is dedicated to workers with more severe support needs, who are reluctant to perform any proposed activities and may demonstrate aggressive behavior. The manager of human resources at Mariaberg claims that it is becoming difficult to find personnel who can fulfill the required qualifications, especially given that the organisation is located in a rural location. With respect to transitions to the open labour market, he believes that more could be done from the management’s side. Although some clients work in mobile units in mainstream companies (e.g., 7 persons work in a laser company TRUMPF), these placements are unlikely to result in an employment contract. The staff recently met with an IT company to discuss hiring an autistic client; however, this is only the beginning and relations with businesses in the region are not sufficiently developed.

## C. UNCRPD & ILO Compliance

The sheltered workshop system in Germany has received criticism from the UN Committee of Rights of Persons with Disabilities,<sup>152</sup> - as well as some CSOs<sup>153</sup> - for lack of compliance with the Convention. The criticised features of sheltered workshops are discussed below; responses from interviewed stakeholders, who disagree with some of the comments of the Committee, are also provided:

- **The remuneration system is seen as potentially discriminatory.** Sheltered workshop users receive on average EUR 211/month, even though some of them work similar hours and perform similar tasks as regular employees in the open labour market. For example, an interviewed CSO representative describes cases when sheltered workshop users must comply with excessive demands or work full shifts in mobile units at large industrial firms. The Federal Association of Sheltered Workshops (BAG WfbM) and interviewed sheltered workshop managers claim that although most employees spend around 8 hours in sheltered workshops or in the mobile units, they work productively up to several hours per day and are often engaged in other activities (relaxation, sport, rehabilitation, etc.). Nevertheless, all interviewed stakeholders agree that the financial situation of sheltered workshop users should be urgently improved. For example, a representative of one sheltered workshop perceives the remuneration system as an issue: he believes that instead of receiving “pocket money” and getting free services, living facilities and meals, sheltered workshop users could get a fair salary and pay for the services themselves. The Federal Ministry of Labour and Social Affairs has commissioned a study,<sup>154</sup> which will help identify the most suitable option for reform.
- **Sheltered workshops contribute to the segregation of persons with disabilities.** Many interviewed stakeholders agree that sheltered workshops have become a default option for anyone that does not quite fit employers’ expectations. One CSO (*Sozialhelden eV*) stresses that, particularly in Germany, more and more highly capable, educated members of society (e.g., persons who have developed mental health conditions while working in the open labour market) are entering sheltered workshops, simply because regular employers do not consider them employable. BAG WfbM representatives, however, claim that phasing out sheltered workshops completely would not be the right answer to this issue. Instead, it would limit the existing choices for these persons, since, anyway, companies in the open labour market do not want to hire even well-trained people without ongoing need for support who are not the clientele of sheltered workshops.
- Meanwhile, interviewed representatives of the German Association of Workshop Councils notice that there are **increasingly more options for sheltered workshop’ clients to work outside the traditional settings of a sheltered workshop if they feel comfortable with it.** These options include workplaces in the service sector,<sup>155</sup> where interactions with colleagues without disabilities and customers are possible (e.g., in cafes, shops, retirement homes). Interviewed staff members of sheltered workshops also report that their

<sup>152</sup> UN Committee on the Rights of Persons with Disabilities. 2015. *Concluding observations on the initial report of Germany, CRPD/C/DEU/CO/1.*

<sup>153</sup> See, for example, Sozialhelden. 2021. Sozialhelden e.V. (2021). *Submission for the General Discussion on Article 27 CRPD.*

<sup>154</sup> ISG & infas (2021). *Studie zu einem transparenten, nachhaltigen und zukunftsfähigen Entgeltsystem für Menschen mit Behinderungen in Werkstätten für behinderte Menschen und deren Perspektiven auf dem allgemeinen Arbeitsmarkt. First interim report.*

<sup>155</sup> Such workplaces can be either owned by the same organisation operating the sheltered workshop, or be another company contracting the services of sheltered workshop users.

organisations transformed their services over time, becoming more decentralised and offering a wider range of jobs in dispersed locations (see Box 3 and Box 4). On the other hand, some of these mobile units are still quite segregated from the rest of the workers (persons with disabilities work in small groups on their own, rather than side-by-side with employees without disabilities).

- **Sheltered workshops have the legal mandate to offer transition opportunities to the open labour market but this rarely happens in practice.** After entering a sheltered workshop, one can decide whether it is the right place for them, or would they like to explore their opportunities in the open labour market (e.g., after completing the entry phase or vocational training). An interviewed government official also emphasises that there are now more alternatives for persons with disabilities to choose from, e.g., inclusive companies, supported employment schemes or so-called Other Service Providers. The “Budget for Work” programme, dedicated specifically for sheltered workshop users, was launched in 2018 across Germany. However, by September 2022, only 1,679 people have benefited from this programme. People working in sheltered workshops rarely express a wish to leave them and the transition is rarely ever made. Interviewed stakeholders identify several potential reasons for that:
  - Firstly, **sheltered workshop users are satisfied with their status.** This was indeed reported by both representatives of workshop councils, as well as portrayed in the results of a survey of sheltered workshop users, 80% of which reported being satisfied or very satisfied with their working conditions (excluding the remuneration aspect).<sup>156</sup> An interviewed person with disability said that he was happy with the support he got from the sheltered workshop and appreciated the job safety, accommodation of his needs, as well as being in a safe, welcoming environment. He notes that some of his colleagues prefer working in a sheltered workshop and do not want to return to the open labour market because of prejudice, pressure and stress. Similar observations were made by women’s representatives, who feel that there is more safety from harassment, discrimination and violence in sheltered workshops than in the open labour market.<sup>157</sup>
  - Secondly, **not enough potential employers are ready to accept employees with disabilities.** Although sheltered workshops have contracts with mainstream companies, placements in them can go on for many years without resulting in actual employment. Given that even persons with lower degrees of disabilities struggle to find jobs, it is especially hard for sheltered workshop users with continuing support needs. One of the interviewed sheltered workshop managers believes that the “Budget for Work” programme is well-designed and a good way forward; however, employers are yet to overcome their prejudices and realise the value of hiring persons with disabilities. The interviewed CSO adds that employers are insufficiently informed about the programme and may be discouraged to engage in it due to excessive bureaucracy and lack of support during the process.
  - Thirdly, in some cases, **sheltered workshop managers and staff may not be proactive enough with respect to encouraging their clients’ transition to the open labour market.** Persons with disabilities may lack information, understanding or encouragement to try out alternative options. For example, the interviewed CSO mentions receiving complaints that the staff of some sheltered workshops have a paternalistic view of the users and are convinced that jobs in the open labour market would not be suitable (or would even be damaging) for them. A representative of one of the sheltered workshops observes that its management team is too passive when it comes to advocacy. He believes they could

<sup>156</sup> The survey was implemented as part of the study about remuneration system (ISG & infas, 2021).

<sup>157</sup> Starke.Frauen.Machen. e.V. 2021. *Opinion on draft Article 27 on the rights of people with disabilities to work and employment.*

develop stronger ties with businesses in their region, raising awareness and educating them about hiring persons with disabilities. He argues that it would be unrealistic to expect business owners to start hiring persons with disabilities without additional encouragement from sheltered workshops.

- Lastly, sheltered workshop users may be dissuaded from seeking employment in the open labour market because they are **guaranteed a relatively good pension after 20 years in a workshop**. The special pension may be higher than what persons with disability might receive after retiring from a low-paying job after more years in the open labour market<sup>158</sup>. The Committee has also noted that persons with disabilities should not face any reduction in social protection and pension insurance currently tied to sheltered workshops<sup>159</sup>.

[Table 4](#) below provides an overview of the situation in Germany vis-à-vis the General Comment No. 8 (2022) on the right of persons with disabilities to work and employment of the Committee on the Rights of Persons with Disabilities and the ILO definition of decent work.

## D. Future Trends in Germany

The Federal Government does not conform with the Committee's recommendation to gradually abolish sheltered workshops. However, policymakers and other stakeholders are discussing ways to improve them, including these aspects:

- As mentioned above, there is an ongoing study regarding the **remuneration system of sheltered workshop users**. Several options of the reform are considered (e.g., introducing minimum wage; keeping the same remuneration system but increasing the base amount that is not tied to performance). Overall, the financing of sheltered workshops appears to be the most pressing issue, especially given the rising costs of electricity and inflation.
- It is expected that persons with disabilities will have **more alternative options of occupation** in the future. Recent legislative reforms (introducing "Budget for Work", "Budget for Apprenticeships") are meant to expand person-centred services and the persons with disabilities' chances to freely choose from a wider network of services.
- Sheltered workshops are expected to become more **open, flexible and modernised**. They should offer a wider spectrum of activities (esp., social- and community-based services, such as shops, restaurants, integrated workplaces in the open labour market, etc.) and develop stronger links with the open labour market. The German Federation of Workshop Councils have recently published a position paper regarding this transition. They believe that a sheltered workshop should be perceived not as a building but rather as services, forming an integral part of the inclusive labour market. The BAG WfbM also share a vision that, in the future, the services of sheltered workshops will be increasingly delivered wherever a person with disabilities works and will not be tied to a specific workshop. While some of the sheltered workshops have already modernised (see Box 3 and Box 4), all interviewed stakeholders agree that there is a lot of room for improvement legally but also practically.

<sup>158</sup> Sozialhelden e.V. (2021).

<sup>159</sup> UN Committee on the Rights of Persons with Disabilities. 2015.

- There is a proposal to **raise the compensation levy for companies that do not employ any persons with disabilities**. Currently, companies with over 20 employees that fail to employ at least 5% of persons with disabilities have to pay a compensation levy. Those with 0% of employees with disabilities must pay EUR 360/month per each place unfulfilled by a person with a disability. The government believes that doubling this sum would encourage companies to take (at least some) action in this respect.
- **Bringing vocational education closer to the needs of the open labour market.** The government also considers separating the vocational education component from sheltered workshops. Currently, the interviewed government and CSO representatives argue that, in many cases, the training prepares the person for a specific job in a sheltered workshop, rather than the open labour market. On the other hand, BAG WfbM argues that sheltered workshops increasingly work together with public vocational schools and academia in order to improve the vocational education.<sup>160</sup> The ongoing study about sheltered workshops<sup>161</sup> should allow to decide if transferring vocational education to other service providers would be a good solution.

## E. Conclusions

Despite efforts to provide more alternatives to sheltered workshops in Germany, they still serve as the default option for persons with disabilities who do not fit employers’ expectations. There are increasingly more workshop users with psychosocial disabilities who, in, many cases, dropped out from the open labour market. On the one hand, it indicates that mainstream employers are prejudiced or not ready to accommodate the needs of employees with disabilities. On the other hand, the system dedicated to support the needs of persons with disabilities can **contribute to segregation**. Although the legislation ensures alternative options to (potential) sheltered workshop users, **the transition rate to the open labour market remains below 1%**, partially due to lack of incentives (e.g., they may lose eligibility to a special pension) and encouragement from the staff. Internally, sheltered workshops are undergoing a transformation and are becoming more open, flexible and decentralised. While workshop users are generally satisfied with their working conditions and receive person-centred support, **remuneration remains a critical and urgent issue**.

Table 4: Compliance of Sheltered Workshops in Germany with UNCRPD General Comment & ILO

Elements of Good Practice acc. to UNCRPD & ILO	Sheltered Workshops in DE: In Theory	Sheltered Workshops in DE: In Practice	Assessment
<b>The state effectively ensures the right to freely chosen employment</b>	In principle, persons with disability can choose their place of employment. If they are deemed fully incapacitated for work, they are eligible to a position in a sheltered	Persons with disabilities receive professional orientation at school and can be advised to enter a sheltered workshop. While opportunities of supported employment in the	Persons with disabilities have the right to freely chosen employment; however, some of them are directed to a sheltered workshop as this is

<sup>160</sup> More information on vocational education in sheltered workshops available at:

[https://www.bagwfbm.de/page/bildung\\_evabi](https://www.bagwfbm.de/page/bildung_evabi)

<sup>161</sup> ISG & infas. 2021.

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	workshop. However, if a person with disability is offered a contract by a regular company, the federal employment agency has to make every effort to realise this.	open labour market do exist (at least technically), sheltered workshops remain the default option.	perceived as the most suitable option for them.
<b>Persons with disabilities are not segregated</b>	Sheltered workshop users who work side-by-side with other persons with disabilities can be considered segregated; integrated workplaces are possible outside the workshop and are more inclusive.	Sheltered workshops remain segregated, but there are increasingly more integrated workplaces outside the traditional settings of a sheltered workshop for those who feel comfortable with leaving the workshop.	Sheltered workshops are a form of segregated employment, but many of them are becoming more open (e.g., users can interact with co-workers without disabilities or clients).
<b>Persons with disabilities do not lose the benefit of disability allowances when they start to work</b>	Sheltered workshop users lose their right to the so-called work incapacity pension if they work there less than for 20 years and become employed in the open labour market.	The special pension for sheltered workshop users may be more generous than a regular pension; this may dissuade sheltered workshop users from seeking employment elsewhere.	The disability pension system contributes to persons with disabilities' low employment levels in the general market. There should be ways of taking this right into employment on the open labour market, so they don't lose their pension in case of transition.
<b>Persons with disabilities are paid no less than the minimum wage</b>	Persons with disabilities who are sheltered workshop users are not entitled to a minimum wage due to a largely rehabilitative character of the workshops; instead, they receive remuneration which consists of a basic amount and a varying amount depending on productivity.	Sheltered workshop users receive, on average, EUR 211/month, which makes them dependent on additional financial support from the state. In many cases, they perform productive work for the most part of the day, calling the "rehabilitative character" of the workshops into question.	The remuneration system of sheltered workshop users is potentially discriminatory.
<b>Persons with disabilities receive pay on an equal basis with employees without disabilities</b>			
<b>Safe working conditions are ensured in sheltered workshop settings</b>	The subsidies allow to compensate for lower productivity of employees with disabilities and accommodate their needs. Only those users who do not pose a danger to themselves or others can work in a sheltered workshop. Self-representative bodies (workshop councils, women's representatives) participate in decision-making together with the management of the workshop.	80% of sheltered workshop users report being satisfied with their working conditions (except remuneration). They generally perceive sheltered workshops safer than mainstream companies. However, CSOs report that the necessity to generate revenue can lead to excessive demands on sheltered workshop users. Some workshop users may demonstrate aggressive behaviour which leads to	The working conditions in sheltered workshops are generally safe, especially in comparison to mainstream companies.



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		violence. Self-representative bodies are not always effective.	
<b>Persons with disabilities have opportunities of career advancement</b>	Various types of work are available in sheltered workshops, which is assigned in accordance with the person's wishes and abilities; persons with disabilities can try out different professions.	Vocational education at sheltered workshops is often tied to the job positions available inside the sheltered workshop. Sheltered workshops are criticised to often provide work limited to menial, repetitive tasks. On the other hand they provide a wide range of more demanding and multifaceted work and collaborate increasingly with public vocational schools.	Sheltered workshops provide a wide range of working opportunities. However, career advancement opportunities can be limited and may not be sufficient for persons with psychosocial or physical disabilities.
<b>Persons with disabilities perform meaningful work</b>	Sheltered workshops must generate revenues and produce goods/services that are valuable to society. Many of them work as subcontractors for other companies and are business-oriented.	Sheltered workshop users are generally satisfied with their work and feel like it is meaningful.	Sheltered workshops allow persons with disabilities to perform meaningful work.
<b>Transition from sheltered workshops to the open labour market is encouraged</b>	Sheltered workshops have the legal mandate to offer transition opportunities to the open labour market. Persons who are entitled to the services of a sheltered workshop and are offered an employment contract on the open labour market can benefit from the "Budget for Work" and "Budget for Apprenticeship" programmes.	Less than 1% of sheltered workshop users transition to the open labour market, partially due to lack of incentives and encouragement.	The current efforts to increase transition rate to the open labour market are insufficient.
<b>Social dialogue is present between the sheltered workshop users (employees) and management</b>	Sheltered workshops are required to form representative bodies (workshop councils, women's representatives) which resemble those in regular companies.	Workshop councils are formed in most sheltered workshops, but not all of them have real influence on decision-making.	The conditions to social dialogue are present, however, additional efforts are needed to increase real participation and co-determination.

Source: Author's elaboration based on literature review and qualitative interviews

## F. Conducted Interviews

Name	Designation	Organisation	Date of Interview	Methodology
Katharina Bast	Head of European Affairs	Federal Association of Sheltered Workshops (BAG WfbM)	19/08/2022	Online interview
Silke Georgi	Project manager, JOBinklusive	Sozialhelden e.V.	31/08/2022	Online interview
Jan Brocks	Coordinator of political advocacy	German Association of Workshop Councils (Werkstatträte Deutschland e.V.)	16/09/2022	Online interview
Lulzim Lushtaku	Board member	German Association of Workshop Councils	26/09/2022	Online interview
Michael Korden	Managing Director	St.-Vitus-Werk (Sheltered workshop)	23/09/2022	Online interview
Michael Backhaus	Manager of Human Resources, Coordinator of European projects	Mariaberg e.V. (Sheltered workshop)	20/09/2022	Online interview
Peter Mozet	Head of unit, participation of severely disabled persons, Workshops for Persons with Disabilities and the rehabilitation fund	Federal Ministry of Labour and Social Affairs	27/09/2022	Online interview

# Case Study on Sheltered Workshops: Italy

Author: Fabio Belafatti

## At a Glance

- The term “sheltered workshops” is used inconsistently by local and regional authorities, experts, and providers of work inclusion services.
- Organisations de facto operating as a sheltered workshops include Type B cooperatives, tasked with the work inclusion of marginalised groups.
- Recent research indicates that only 31.3% of persons with disabilities are employed: over 50% of them work in sheltered employment, and the trend is growing.
- The protected labour market targets persons with all types and degrees of disabilities. Persons with physical disabilities or mild intellectual / psycho-social ones have better chance to be employed in the open market.
- Only in some sheltered workshop-type organisations do persons with disabilities enjoy employment status and receive at least the minimum wage.
- Public authorities do not sufficiently support the cooperatives sector, and incentives to boost participation in the open labour market have loopholes that reduce their effectiveness.

## A. Introduction

As of 2021, among working-age persons with disabilities in Italy, only 31.3% are employed (with a considerable gender disparity: 26.7% for women, 36.3% for men); 18.1% are in search of employment; 16.2% are unable to work either because still in school (3.6%) or because of very severe impairments (12.6%); and as many as 34.4% are not active: neither formally employed, nor looking for employment (usually due to loss of hope to find employment).<sup>162</sup>

Employment of persons with disabilities in the open labour market is managed by regional placement offices in collaboration with cooperatives that offer job coaching, train-and-place or place-and-support services, and other “active employment policies” (*politiche attive del lavoro*) to assist persons with disabilities in job searching.<sup>163</sup> Mainstream employers are expected, as per Law 68/1999, to make “compulsory hirings” (*assunzioni*

<sup>162</sup> D’Amico, F. 2021. *I disabili e il mondo del lavoro, limitazioni e svolgimento delle abituali attività*. ANMIL. Available: <https://www.anmil.it/il-blog-diamo-i-numeri/i-disabili-e-il-mondo-del-lavoro>.

<sup>163</sup> Ministero del Lavoro e delle Politiche Sociali. 2016. *Norme sul collocamento al lavoro dei disabili*. Available: <https://www.lavoro.gov.it/temi-e-priorita/disabilita-e-non-autosufficienza/focus-on/norme-sul-collocamento-al-lavoro-delle-persone-disabili/Pagine/default.aspx>; Il Margine. 2022. *Politiche attive del lavoro. La crisi e non solo*. Available: <https://www.ilmargine.it/aree/politiche-attive-del-lavoro-pal/>.

*obbligatorie*).<sup>164</sup> In practice, however, many companies cover their obligations by hiring persons with *physical* disabilities, which leaves those with intellectual or psycho-social ones at a disadvantage, as interviewed stakeholders note. Furthermore, various legal loopholes often allow employers to avoid compulsory hirings.<sup>165</sup> Moreover, employers can hire persons with disabilities indirectly by purchasing services from organisations that provide work inclusion services, including sheltered workshops; others prefer to pay fines to a regional fund, rather than absolve their compulsory hiring obligations. As a result, employment in the open market remains a challenge, and sheltered employment remains a crucial component of work inclusion in Italy: research published in 2022 estimates that over 50% of employed persons with disabilities in Italy work in sheltered employment, and that the trend is growing.<sup>166</sup> However, the action of dedicated organisations can significantly improve the picture for certain groups of persons with disabilities. For example, around 70% of persons with Down syndrome assisted by one of their main national associations (AIPD), and who are currently employed, work in the open market at the moment.

## B. Governance and Characteristics of Sheltered Workshops

The term “sheltered workshops” (*Laboratori protetti*) is used inconsistently in Italian practice: it is not used in national legislation, but widely employed by local and regional authorities.<sup>167</sup> The lack of consistent use of the term or its translation leads some sources and experts to use it regularly, while others claim that they do not exist in Italy,<sup>168</sup> or disagree as to what constitutes “sheltered workshops”, or whether cooperatives qualify as such. However, in practice there are organisations – including many cooperatives – that openly embrace the

<sup>164</sup> The requirements are: one person with disabilities for companies with 15-35 employees; two persons with disabilities for companies with 36-50 employees; and 7% of employees for companies with more than 50 employees. See Business Online, 2022. *Obbligo assunzioni disabili 2022 quando scatta e cosa comporta per l'azienda*. Available: <https://www.businessonline.it/articoli/obbligo-assunzioni-disabili-quando-scatta-e-cosa-comporta-per-lazienda.html>.

<sup>165</sup> Many employers prefer to pay fines rather than hiring persons with disabilities. Moreover, numerous types of employees (among which apprentices, temporary workers, trainees, *dirigenti* (i.e., executives or high ranking managers), home workers, replacement workers, workers in installation or maintenance of systems) are excluded from the headcount of a company when calculating compulsory hiring obligations. Thus, for example, a company with 20 employees of which 6 are from any of these categories will nominally have only 14 employees and will not be required to hire any persons with disabilities. See Atorino, G. 2018. “Disabilità in azienda, obblighi e agevolazioni per i datori di lavoro.” *People&Numbers*. Available: <https://www.peopleandnumbers.it/disabilita-in-azienda-obblighi-e-agevolazioni-per-i-datori-di-lavoro/>; Assoenologi. 2019. *Cooperative Sociali e Lavoratori Disabili e Svantaggiati*. *GF Legal*. Available: <https://gflegal.it/rassegna-stampa/410-cooperative-sociali-e-lavoratori-disabili-e-svantaggiati-nel-settore-vitivinicolo>.

<sup>166</sup> Malo, M., Rodriguez, V. 2022. *Sheltered employment for people with disabilities: An international appraisal with illustrations from the Spanish case*. MPRA Paper No. 111861. Available: [https://mpra.ub.uni-muenchen.de/111861/1/MPRA\\_paper\\_111861.pdf](https://mpra.ub.uni-muenchen.de/111861/1/MPRA_paper_111861.pdf)

<sup>167</sup> See for recent examples: Gazzetta Ufficiale. 2022. *Contratti Pubblici*. January 31, 2022. Available: <https://www.gazzettaufficiale.it/eli/gu/2022/01/31/13/s5/pdf> [Accessed Sept 20, 2022]; Gazzetta Ufficiale. 2022a. *Contratti Pubblici*. Jun 10, 2022. Available: <https://www.gazzettaufficiale.it/eli/gu/2022/06/10/67/s5/pdf>; Gazzetta Ufficiale. 2022b. *Contratti Pubblici*. August 1, 2022. Available: <https://www.gazzettaufficiale.it/eli/id/2022/08/01/TX22BFF16612/s5>.

<sup>168</sup> EBU. 2022. *Italy - Article 27*. Available: <https://www.euroblind.org/convention/article-27/italy#5>. Research using it include Fioritti, A., D’Alema, M., et al. 2014. “Social Enterprises, Vocational Rehabilitation, Supported Employment. Working on Work in Italy”. *The Journal of Nervous and Mental Disease*, 202(6).

term,<sup>169</sup> or that use other denominations but still fulfil the criteria of sheltered employment as “employment in an enterprise operating in a commercial market, with or without public support, and established specifically for the employment of persons with disabilities or other working limitations, but which may also employ persons without disabilities in a limited proportion”.<sup>170</sup> Authorities indeed do refer to sheltered workshops as an instrument for work inclusion of persons with disabilities, aimed at promoting social integration and autonomy through three key principles: work support, monitoring of work activities, and socialisation.<sup>171</sup>

### **Type A & Type B Cooperatives**

Two main groups of organisations conduct sheltered workshop-like activities. **The first is rehabilitation centres, which have a focus purely on the medical and rehabilitative aspect of disability** through occupational therapy. These are often organised as associations, foundations, medical centres, or as “Type A cooperatives”, i.e., cooperatives tasked with the provision of social services. The second and most important are “**Type B cooperatives**”, whose mandate is the direct work inclusion of “disadvantaged persons” (*persone svantaggiate*), which can include persons with disabilities, former convicts, victims of VAW, refugees, and other groups.<sup>172</sup> Type B cooperative’s work inclusion goals can be absolved either through direct employment or, less frequently, through supported employment programmes in coordination with open market companies.

Rehabilitation centres are regulated by Law 833/1978, Art. 26. Cooperatives (A and B) were created by Law 381/1991 and are further regulated by Legislative Decree 112/2017, according to which they can also operate as social enterprises and enter in collaboration with for-profit companies.<sup>173</sup> As service providers, rehabilitation centres and Type A cooperatives receive public funding and charge families a fee (which can be partly or entirely covered by regional or local authorities depending on their available budget); Type B cooperatives, on the other hand, operate on the market, while also enjoying advantageous conditions to access some public tenders.<sup>174</sup> **Type B cooperatives are the most commonly-found employer for persons with disabilities**, which alongside other “disadvantaged persons” should **constitute at least 30% of their staff**.<sup>175</sup> In practice, the percentage of

<sup>169</sup> E.g.: Cooperativa Laboratorio Sociale (<http://www.laboratoriosociale.it/>); Laboratorio Protetto XY1 Coop. Sociale (<https://www.xy1.it/>); Gruppo Polis ([www.gruppopolis.it/](http://www.gruppopolis.it/)); Cooperativa Totem (<http://www.cooperativatotem.it/>); SolcoCivitas (<https://solcocivitas.it/>).

<sup>170</sup> Zolyomi, E., Birtha, M. 2020. *Towards inclusive employment of persons with disabilities*. Vienna, European Centre for Social Welfare Policy and Research

<sup>171</sup> See for example: Azienda Servizi alla Persona del Circondario Imolese, 2020. *Centri socio-occupazionali e Laboratori protetti*. Available: <https://aspcircondarioimolese.bo.it/disabili/interventi-al-domicilio-e-semiresidenziali/centri-socio-occupazionali>, and Provincia di La Spezia. 2016. *Progetto SOCIALABS - Laboratori Protetti*. Available: <https://www.provincia.sp.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/4621>.

<sup>172</sup> See for example Cooperativa Solidarietà, [www.solidarietacoop.it](http://www.solidarietacoop.it)

<sup>173</sup> Bottà, M. 2018. “Inclusione lavorativa e cooperative sociali di tipo B”. *Welforum*. Available: <https://welforum.it/inclusione-lavorativa-e-cooperative-sociali-di-tipo-b/>

<sup>174</sup> Bottà, 2018. “Inclusione lavorativa”.

<sup>175</sup> Bottà, 2018. “Inclusione lavorativa”.

persons with disabilities working in cooperatives can vary considerably depending on the organisation, as noted by an interviewed academic expert on the topic.<sup>176</sup>

### **Services Offered in Sheltered Workshops**

It is also worth mentioning that some Type A cooperatives and some rehabilitation centres also offer day care centre services (which can also be run by municipal authorities): These generally include manual / creative and work-like activities, as well as basic daily skills training, but they are organised more as *socialisation* activities for persons with severe disabilities, rather than work or preparation for it, as a realistic path to employment of any kind is not considered possible.<sup>177</sup> Some Type B cooperatives can simultaneously operate as Type A cooperatives: in these cases, they may run such day care services alongside their proper work inclusion activities of the sheltered workshop type.<sup>178</sup>

Interviewed experts comment that the “sheltered” component in all types of organisations consists of providing protection for persons with disabilities against the difficulties that an open labour market position would entail, in particular strict productivity requirements that they may struggle to fulfil: In all organisations, activities are thus organised around the person with disabilities’ skills and impairments, and are often *occupational* rather than *working* activities, especially for persons with more severe disabilities, with lower productivity requirements, and assisting figures to support. Theoretically, the goal of sheltered workshop-type organisations in Italy is to ensure transition to the open market or at least provide skills to seek employment there; this may not be a realistic goal, thus some providers see the *maintenance* of skills (autonomy, ability to interact with others) as a valuable objective per se.<sup>179</sup> These organisations share at least some of the characteristics deemed by the UN Committee on the Rights of Persons with Disabilities to constitute a sheltered workshop,<sup>180</sup> particularly: being organised around certain specific activities that persons with disabilities are deemed to be able to carry out; focusing on and emphasising medical and rehabilitation approaches to disability; not effectively promoting transition to the open labour market; not offering remuneration and/or regular employment contracts to persons with disabilities.

It is important to note however that organisations such as cooperatives and rehabilitation centres tend to work on the basis of *individual* programmes based on personalised assessment of needs and prospects: In practice, as noted by an interviewed academic expert and educator, this means that the same organisation can provide

<sup>176</sup> In Italy, healthcare services are regionally-funded and organised. Sheltered workshops-type organisations are normally funded and accredited by provincial or supra-municipal authorities, but those that are seen as having a rehabilitative component can fall at least in part under region’s jurisdiction.

<sup>177</sup> See for example Cooperativa Sociale L’Arcobaleno (<https://www.cooperativalarcobaleno.it/servizi-offerti/disabilita/centro-addestramento-disabili-diurno.html>).

<sup>178</sup> See for example Consorzio SINAPSI (<https://www.conorziosinapsi.it/>)

<sup>179</sup> See for example Cooperativa ITER (<https://cooperativa-iter.it/>).

<sup>180</sup> UN Committee on the Rights of Persons with Disabilities. 2022. *General comment No. 8 (2022) on the right of persons with disabilities to work and employment*. Available: [https://www.ohchr.org/sites/default/files/2022-09/CRPD\\_C\\_GC\\_8-ENG-Advance-Unedited-Version.docx](https://www.ohchr.org/sites/default/files/2022-09/CRPD_C_GC_8-ENG-Advance-Unedited-Version.docx).

radically different services, with entirely different outcomes, to different users: training and clear paths to employment in the open market for some; certification of ability to work (ability to respect working hours, fulfil tasks), (paid) sheltered employment, or “placement” services, more akin to respite care services for families, for others.<sup>181</sup> This can lead to a “hybrid”, traditional and simultaneously transitional approach to sheltered workshops.

Generally, day care centres, rehabilitation centres have, theoretically, a more transitional approach, as their mandate is to teach how to work, whereas Type B cooperatives may take a more traditional approach, as their goal is employment per se, at least for some of the users. In practice, however, the traditional / transitional division is largely irrelevant, because A) transition can also be *to a Type B cooperative*, not necessarily to the open labour market, and B) even the more explicitly transition-oriented organisations often become permanent places of work: An interviewed rehabilitation centre director and expert on the topic notes that rehabilitation centres often cater to users with more severe disabilities, for whom the likelihood of transition, even to other cooperatives, is recognised as minimal or non-existent, or often fails after protracted periods. In turn, work inclusion goals are not always seen as gradual, entailing a transition from cooperatives to the open market. One interviewed AIPD work inclusion expert notes that persons with Down syndrome with real work potential are placed, depending on their abilities and aptitudes, either in the open market or in type B social cooperatives; the choice of context depends on the abilities of the persons and the characteristics of the territories.

In this context, it is also important to consider that some cooperatives offer mainstream employers the possibility to absolve their “compulsory hiring” obligation by contracting work to the cooperatives instead of hiring persons with disabilities themselves.<sup>182</sup> The positive impact of this practice is that it facilitates employment, and often in a partially de-segregated environment, as the person with disability conducts tasks at a mainstream company’s location. However, it also gives mainstream employers an opportunity to avoid hiring persons with disabilities outright, thereby reinforcing the separation between the job markets for persons with and without disabilities, a risk that early critiques of the “cooperatives model” by CSOs had pointed out in the early-2000s.<sup>183</sup> In some cases, private companies’ owners themselves set up “cooperatives” to offshore the lowest-value-added activities of their companies while benefiting from public funding to cut costs.<sup>184</sup>

### **Employment Status**

In general, rehabilitation centres and day care centres do not offer salaries or pay only symbolic amounts. Conversely, type B cooperatives include persons with disabilities as *employees*, and sometimes as cooperative workers-members (*soci lavoratori*), both of which enjoy workers’ rights and, in theory, minimum salary; this,

<sup>181</sup> See also Provincia di La Spezia. 2011. *Progetto SOCIALABS - Testimonianza CIS*. Available: <https://www.provincia.sp.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/4622>

<sup>182</sup> See for example Cooperativa Opera (<https://www.operaonlus.it/>), EMC2 ONLUS (<https://www.emc2onlus.it/>)

<sup>183</sup> Selleri, G. 2003. “SBATTI IL DISABILE IN COOPERATIVA. Le cattive intenzioni della Sestini”. *ANIEP*. Available: <http://www.didaweb.net/fuoriregistro/documenti/disabile.htm>

<sup>184</sup> Bottà, 2018. “Inclusione Lavorativa”

interviewees note, tends to be feasible only for persons with “mild” disabilities. The actual salary conditions can vary vastly depending on the cooperative: larger cooperatives with enough corporate or public clients and sufficient public funding can afford to pay minimum salaries; however, as an interviewed cooperative manager notes, many smaller cooperatives struggle to cover their costs due to lack of funding (especially if they sell products to the public directly rather than to corporate clients), and have to enlist support from family members of persons with disabilities as supporters-members (*soci sostenitori*) of the cooperative, while offering persons with disabilities a remuneration that falls below the minimum salary. Moreover, a minority of the persons with disabilities in Type B cooperatives work through *internship* programmes (training to enter the open market or gain certifications of the ability to work), for which they do not receive salaries: In theory, internship programmes are temporary and conclude upon the achievement of training objectives, but an interviewed academic expert notes that in many cases they need to be repeatedly prolonged and can sometimes become de facto permanent, resulting in unpaid positions.

Whenever the person with disabilities is not included as a salaried employee, or receives only a partial salary, they are referred to – with some inconsistency - as “users”, “clients”, “operators”,<sup>185</sup> “craftspersons”,<sup>186</sup> or, in cooperatives initiated by family members, as “ragazzi” (boys and girls).<sup>187</sup> Once a person with disability is included in a sheltered workshop, the duration of the service they receive can vary considerably: if the staff of the organisation believes that a realistic chance of transition to the open market exists, a fixed-term training programme of several months will be agreed upon, with a “transitional” outlook in mind; usually, however, training programmes are longer and often renewed indefinitely, effectively becoming semi-permanent arrangements, both in cooperatives and rehabilitation centres, *de facto* turning them into traditional sheltered workshop settings.

Some Italian sheltered workshop-type organisations conduct a vast range of activities. At a bare minimum, organisations usually offer at least a couple of areas of relatively simple work, e.g., assembly line tasks, artisanal work, cleaning, or gardening; a random sampling of 70 Type A, B or A+B cooperatives providing work inclusion services for persons with disabilities indicates that on average, cooperatives offer at least three different work activities; 24% of the sample offers only one activity, while 15% offer as many as five or more different activities to choose from.<sup>188</sup>

*Box 5. In focus: Rome-based Type B Cooperative.*<sup>189</sup>

The cooperative was established in 1985, during a period of boom for the cooperative movement in Italy, upon the initiative of family members of persons with disabilities who were looking for ways to provide employment opportunities to their children. Its size, activities, foundation history, financial model and challenges faced are reflective of the situation of many Type B Italian cooperatives. The cooperative operates an artisanal workshop with eight workers-members (*soci*

<sup>185</sup> Interviewees mention different terms; at least one official document claims that “operators” should be the default definition, but this is not always used (Provincia di La Spezia. 2016)

<sup>186</sup> See for example Cooperativa La Stelletta (<http://www.lastelletta.it/gliartigiani.html>).

<sup>187</sup> See for example Cooperativa Iter (<https://www.cooperativa-iter.it/chi-siamo/noi/ragazzi>)

<sup>188</sup> Sampling of cooperatives conducted by the consultant in Oct 2022.

<sup>189</sup> Interviewed anonymously for confidentiality reasons; interviews with educator and workers-members (*soci lavoratori*) .



*lavoratori*) with disabilities, and five managers, and also hosts a variable number of non-member persons with disabilities as trainees (currently five). Employees produce high-quality artisanal items (pottery and baskets), sold both to the general public and to corporate clients. The cooperative seeks to teach and retain practical skills and encourage autonomy in everyday life through work. The approach educators follow rejects paternalist or patronizing attitudes: As a Type B cooperative, the main goal of the organisation is production. Employees, which are all persons with Down syndrome with mild or moderate intellectual disability, work seven hours per day (including lunch break), five days a week, with the support of educators who act as job coaches. Employees interviewed report a very high level of satisfaction, a strong sense of fulfilment from the work they conduct, and considerable pride in the products they manufacture. The cooperative does not actively encourage transition to the open market, nor do employees express desire to do so. Managers are sceptical about the quality of open market employment, commenting that persons with disabilities are often relegated to unskilled, alienating jobs with insufficient assistance. Employees join the cooperative on their own initiative, and one reports becoming aware of the opportunities that the cooperative provides from school activities. This confirms the view expressed by other stakeholders about the importance of schools in organising a successful transition to the labour market. The cooperative's main challenge is economic viability, as its position on the market is not solid enough to afford to pay full salaries to workers-members with disability, or hire all educators and managers full-time. As a result, families of workers-members have to contribute to the activities of the cooperative with donations. The future of the cooperative is uncertain, and its managers would like public authorities to take a more proactive step in supporting organisations like theirs.

## C. UNCRPD & ILO Compliance

The right to work is not only protected by Italy's ratification of the UN CRPD, but also by the importance bestowed to work at constitutional level, as the very foundation of the Italian state, and as a right and duty for all citizens.<sup>190</sup> Despite this, the picture for persons with disabilities in sheltered workshops is inconsistent:

- **The ability of Italian sheltered workshop-type organisations to guarantee transition to the open market is limited**, and the overwhelming majority of users remain in sheltered employment. Successful transition generally depends more on whether persons with disabilities have been included in cooperative education programmes or other work inclusion schemes,<sup>191</sup> during or immediately after school years, rather than on the performance of sheltered workshop-type organisations, which are thus expected to have a residual function in job integration policies.<sup>192</sup>
- The performance of sheltered workshop-type organisations in this regard needs to be assessed keeping in mind that **they often operate on the basis of an individualised approach**. Thus, the same organisation can have a **vastly different track record of success** depending on the users and the set goals. Since many organisations can operate multiple services at once (direct employment and open market inclusion programmes as Type B cooperatives; day care centres as Type A cooperatives; all of the above for mixed-type cooperatives), the same organisation can be simultaneously compliant and non-compliant, traditional and transitional, depending on the service, making the Italian "cooperative model" more diverse than is often assumed.

<sup>190</sup> See Art 1 and Art 4, Constitution of the Italian Republic.

<sup>191</sup> These may include the individual scholarships for training in companies or cooperatives that pupils with disabilities receive upon finishing school, or the training programmes that their schools organise in collaboration with cooperatives.

<sup>192</sup> Fioritti, A., D'Alema, M., et al. 2014; Bottà, M. 2018a. "Dalla scuola al mondo del lavoro". *Welforum*, May 15, 2018. Available: <https://welforum.it/dalla-scuola-al-mondo-del-lavoro/>.

- **No strict requirements exist regulating the activities allowed in sheltered workshops-type organisations.** Choice of activities for persons with disabilities depends entirely on the capabilities and the range of activities that the organisation offers: This in turn depends on the size of the organisation, its location (organisations are more likely to organise agricultural or horticultural activities if they are based in a rural or semi-urban setting), amount of funding available, and the number of agreements with private or public sector partners that can contract goods or services or ask for employees with disabilities to be seconded for specific tasks. Generally, however, activities tend to be simple and menial.
- **The presence of numerous, small-scale cooperatives results in relative freedom in the range of activities to choose from – but also vastly different working conditions.** While it is difficult to generalise, experts recognise that organisations that were created on the initiative of family members of persons with disabilities are better suited to provide innovative, good quality services with more accommodating working conditions, better respect of workers' rights, and better assistance for persons with disabilities, while cooperatives that become self-sustaining by charging fees to families often have less incentive to innovate and improve efficiency; the trade-off is, however, that the former can struggle to remain sustainable and require considerable entrepreneurial skills to remain on the market while maintaining their social inclusion focus, as noted by interviewed cooperative educators and managers.
- **Even when optimal conditions are present, successful employment tends to be achieved only for persons with mild disabilities, or severe but *physical* ones,** while employing persons with intellectual or psychosocial disabilities is much more challenging. The need to secure funding via public or private contracts for the regular supply of goods or services has created an additional incentive to prefer hiring persons with mild disabilities, or even move away from employment of persons with disabilities and towards different, easier to employ target groups.<sup>193</sup>
- **Type B cooperatives are usually non-segregated or not entirely so,** as persons with disabilities work alongside persons without disabilities as colleagues, although the ratio may vary deeply from cooperative to cooperative. However, the **assembly line services run by many cooperatives are seen as more segregated** by experts, as persons with disability often conduct alienating, individual work with limited interaction with anyone except for other persons with disabilities. Some of these cooperatives operate, de facto, as private companies, with scarce interaction with local social services, dubious motives for operation, and in the words of one expert, “repropose the sheltered workshop [model] as it had already been overcome in the 1970s”.<sup>194</sup>
- **Rehabilitation centres and day care centres are inevitably “segregated”, in the sense that their (medical-centred) services are only for persons with disabilities.** However, they usually grant a good degree of freedom in the choice of activities for users and provide high standards of care (Type B cooperatives, as *work cooperatives*, are not required to have psychologists or educators in their staff).<sup>195</sup>
- **Crucially, even more segregated organisations can at least provide occupational activities to persons with more severe disabilities,** who would have virtually no chance of being employed, and would otherwise

<sup>193</sup> Bottà, M. 2018. “Inclusione lavorativa”.

<sup>194</sup> Bottà, M. 2018. “Inclusione lavorativa.”

<sup>195</sup> Provincia di La Spezia. 2011. *Progetto SOCIALABS - Testimonianza CIS*. Available:

<https://www.provincia.sp.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/4622>. The ratio of assistants-to-persons with disabilities is usually 1-to-4 to 1-to-6, and can be up to 1-to-1 in exceptional cases.

regress into social isolation and further marginality.<sup>196</sup> As one interviewed stakeholder comments, this is especially important in a society where many families of persons with disabilities face massive stigma and a strong social pressure to simply self-segregate their children at home.

[Table 5](#) provides an overview of Italian sheltered workshop-type organisations' performance in light of the requirements of the UN CRPD, the General Comment, and ILO's requirements.

## D. Future Trends in Italy

Regardless of the track record of the organisation in training and ensuring transition to the open market, there is a **lack of consensus among civil society organisations** as to what constitutes a "successful" outcome: one large national association representing persons with disabilities includes day care centres conducting unpaid occupational or training activities as "best practices";<sup>197</sup> another leading association considers employment in cooperatives as genuinely satisfactory employment; conversely, for other CSO representatives, working in cooperatives signals a relegation to a separate and non-inclusive job market,<sup>198</sup> and a missed opportunity to transition to work in a company.<sup>199</sup>

There is lack of consensus also regarding the assessment of the sustainability of the "cooperative model". One expert view contends that austerity policies put cooperatives at risk, forcing many of them to focus more on mere survival, a challenge reported also by our interviewees in the Rome-based cooperative (See [Box 5](#)); this is in turn made challenging by the fact that due to technological innovations, mainstream companies have decreasing demand of low-value-added manufacturing steps such as assembly and packaging to outsource to cooperatives.<sup>200</sup>

Other research, however, indicates that the years following the global financial crisis have in fact seen a steep rise in the number of cooperatives across all sectors, with a corresponding rise in the number of employees, suggesting that they are more resilient to crises than mainstream companies and provide a viable, sustainable solution for employment.<sup>201</sup> More recent data confirm this trend, but as statistics do not use disaggregated data, it is not possible to know if this positive trend affects cooperatives that employ persons with disabilities as much as others.<sup>202</sup> On another positive note, one work inclusion expert from AIPD notes that despite vast regional

<sup>196</sup> Bottà, M. 2018. "Inclusione lavorativa".

<sup>197</sup> ANFFAS 2020. *Le buone prassi e servizi di Anffas*. Available:

<http://www.anffas.net/dld/files/Documenti%20Anffas/Buone%20Prassi%20Lavoro%20Anffas.pdf> [Accessed Oct 7, 2022]

<sup>198</sup> Selleri, G. 2003. "SBATTI IL DISABILE IN COOPERATIVA"

<sup>199</sup> Bottà, M. 2018. "Inclusione lavorativa."

<sup>200</sup> Bottà, M. 2018. "Inclusione lavorativa".

<sup>201</sup> ISTAT and Euricse 2019. *STRUTTURA E PERFORMANCE DELLE COOPERATIVE ITALIANE*. Jan 25, 2019. Available:

[https://www.istat.it/it/files//2019/01/Rapporto-cooperative\\_sintesi-per-la-stampa.pdf](https://www.istat.it/it/files//2019/01/Rapporto-cooperative_sintesi-per-la-stampa.pdf), p. 22-23

<sup>202</sup> As of Oct 2022, there are 11.013 Type A cooperatives, 6.083 Type B cooperatives, and 4.854 A+B ones, for a total of 21.950 – though only part of them work on disability-related issues. In 2015, the year used in the ISTAT and Euricse report, the total number of social cooperatives (including a small number not classified as Type A, B or A+B) was 14.263. ISTAT,

differences, the open market is becoming increasingly receptive of persons with disabilities, as many companies go beyond their legal requirement in hiring them, thanks also to tax breaks for employers who hire persons with disabilities with contracts of at least 12 months.<sup>203</sup>

## E. Conclusions

Although the term is used inconsistently, sheltered workshops de facto exist in Italy, mainly in the form of work inclusion cooperatives, and to a lesser extent as day care centres/rehabilitation centres. Work inclusion cooperatives, whose staff has to include at least 30% of “disadvantaged persons” (including persons with disabilities), operate **selling services or products to the private sector, the general public, and the public sector.** **The Italian sheltered workshop sector is highly fragmented and diverse:** cooperatives are small and number in the thousands; many of them have a mixed purpose, operate in several disparate sectors, and have vastly different track records in promoting transition to the open market. Some cooperatives, especially those set up by **family members of persons with disabilities**, focus on promoting social inclusion and autonomy, and offer accommodating working conditions, but **struggle to pay competitive salaries**, while others, especially when set up by **private companies to benefit from public incentives**, are oriented to productivity and pay scarce attention to social inclusion. The sheltered employment market **does not promote transition to the open market in a systematic way**, but some CSOs consider employment in cooperatives as a valuable result in itself, as far as work inclusion is concerned. The existence of numerous organisations across the territory allow relative **freedom of choice of activities, although these tend to be simple** and can in some cases be alienating.

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Euricse 2019; Ministero dello Sviluppo Economico 2022. *Albo cooperative*. Available: <https://dati.mise.gov.it/index.php/lista-cooperative> .

<sup>203</sup> For a summary of tax benefits, see International Routes of Law 2021. *Il Sistema delle quote di assunzione dei disabili in Italia*. Available: <https://www.irol.eu/il-sistema-delle-quote-di-assunzione-dei-disabili-in-italia/>.

Table 5: Compliance of Protected Employment in Italy with UN CRPD, General Comment &amp; ILO

Elements of Good Practice acc. to UNCRPD & ILO	Protected Employment in Italy: In Theory	Protected Employment in Italy: In Practice	Assessment
<b>The state effectively ensures the right to freely chosen employment</b>	In principle, every citizen has a constitutional right / duty to freely chosen work.	Even though inclusion in the open labour market is becoming more frequent, protected employment remains the main option for work inclusion for persons with disabilities. Significant difficulties exist in including persons with severe intellectual and psycho-social disabilities in either market. For these groups, occupational activities for skills retention are the only available service.	If sheltered workshop-type organisations were to be eliminated, the unemployment rate of persons with disabilities would likely skyrocket. Persons with more severe disabilities would lose access to occupational activities that play a crucial role for skills retention.
<b>Persons with disabilities are not segregated</b>	The main type of sheltered workshop-type organisations (Type B cooperative) have a requirement to hire at least 30% “disadvantaged persons”	The actual percentage of staff with disabilities can vary vastly between organisations.	Segregation can occur in organisations that provide medical-centred services and in some of the sectors of operation (assembly line) offered by some, but not all, work inclusion cooperatives.
<b>Persons with disabilities do not lose the benefit of disability allowances when they start to work</b>	Disability pensions beneficiaries are still eligible to receive their pension if they work and their annual income is lower than the annual amount of the pension itself. <sup>204</sup>	There is considerable difference in the level of salary paid to persons with disabilities depending on the organisation that employs them.	There is not enough research to confirm if the disability pension system contributes to low employment levels of persons with disabilities.
<b>Persons with disabilities are paid no less than the minimum wage</b>	Persons with disabilities conducting occupational activities in a day care / rehabilitation setting are not paid, while those working in Type B cooperatives should receive the minimum wage unless they are doing internships / training.	Many organisations struggle to pay a full minimum wage to their employees with disabilities.	Cooperatives need additional support from public authorities to be able to consistently offer the minimum wage.
<b>Persons with disabilities receive pay on an equal basis with employees without disabilities</b>			
<b>Safe working conditions are ensured in sheltered workshop settings</b>	All employers are expected to follow the same work safety regulations.	Many organisations that operate as sheltered workshops include activities to promote social inclusion of persons with disabilities, but	More support is needed to ensure that cooperatives can continue promoting the social inclusion of persons with disabilities, rather than

<sup>204</sup> INCA-CGIL 2021. *Disabilità: diritto all’assegno anche quando si lavora*. Available: <https://www.inca.it/notizie/1030-disabilita-dritto-all-assegno-anche-quando-si-lavora.html>

European Association of Service providers  
for Persons with Disabilities

		there is increasing pressure to raise productivity to remain on the market.	being driven purely by productivity imperatives.
<b>Persons with disabilities have opportunities of career advancement</b>	No restriction exists as to the level of seniority of positions for persons with disabilities.	Most of the times, persons with disabilities in sheltered employment contexts occupy menial positions. Managerial positions are hard to obtain.	The open labour market is better suited to offer opportunities for career advancement.
<b>Persons with disabilities perform meaningful work</b>	Sheltered workshop-type organisations must be able to sustain themselves on the market. There is no restriction to the type of activities that they can conduct.	The range of activities available for persons with disabilities varies vastly depending on the organisations, although it tends to be low value-added (sometimes repetitive and alienating) contracted work.	In practice, activities have to be in line with the skills of the employee. The presence of numerous, small organisations however allows relative freedom to choose meaningful work.
<b>Transition from sheltered workshops to the open labour market is encouraged</b>	All sheltered workshop-type organisations are expected to foster skills or offer services that can, at least in theory, be used to access the open market.	Access to the open market from sheltered workshop-type organisations is rare and often unsuccessful. Training and internship programmes do not always succeed and sometimes become semi-permanent. Work in Type B cooperatives is seen by at least some CSO as a satisfactory form of employment in itself.	Coordination between organisations that support employment in the open labour market and those that provide sheltered workshop-type employment is insufficient. Transition is in many cases an unrealistic goal due to the stricter productivity requirements on the open market.
<b>Social dialogue is present between the sheltered workshop users (employees) and management</b>	When formally employed, persons with disabilities have equal labour rights, including collective bargaining.	Dialogue between employees / users and management depends entirely on the internal structure and social mission of the organisation, with those run or established by family members providing better chances for persons with disabilities to voice their preferences and concerns.	Although social dialogue is legally possible, it is not specifically encouraged.

Source: Author's elaboration based on literature review and qualitative interviews

## F. Conducted Interviews

Name	Designation	Organisation	Date	Methodology
Dr Emanuela Zappella	Educator and Post-Doc researcher	Social Cooperative "L'Impronta" (Cooperativa Sociale L'Impronta); University of Bergamo	15/092022	Online interview and email exchange
Dr Fabrizio Fea	Medical Director	Association "Scuola Viva" (Associazione Scuola Viva ONLUS) rehabilitation centre	31/08 2022	Online interview
Monica Berarducci	Work inclusion specialist (Responsible for the "Labour markets observatory")	Italian Association for Persons with Down Syndrome (Associazione Italiana Persone Down, AIPD)	03/10/2022	Online interview
Alessandra (Interviewed anonymously)	Educator; sheltered workshop employee	Rome-based Type B cooperative (anonymous interview)	14/10/2022	Phone interview
Sara and Francesca (Interviewed anonymously)	Sheltered workshop employees	Rome-based Type B cooperative (anonymous interview)	14/10/2022	Phone interview

# Case Study on Sheltered Workshops: the Netherlands

Author: Fabio Belafatti

## At a Glance

- The number of persons with disabilities in protected employment is around 42% of the total of employed persons with disabilities.
- The protected labour market targets persons with all types and degrees of disabilities, which are measured on the basis of work capacity.
- Persons with disabilities in protected employment are guaranteed an employment status and receive at least the minimum wage as long as they have at least 20% work capacity.
- The term “sheltered workshops” is used in legislation and daily practice to refer to wage-paying organisations, but in some sources is also used to refer to (rehabilitation-focused) day care centres.
- Transition and work productivity are seen as key objectives for the sheltered sector, though in practice the former is often difficult to achieve.
- The protected labour market is extensively supported by the state, and there is a system of gradual targets and state benefits to facilitate inclusion in the open market.
- Employment choices of persons with disabilities is generally guided by public authorities’ assessment of persons’ work capacity, but is not entirely rigid and allows freedom to opt for the sheltered or open market.

## A. Introduction

As of the latest data (2017), the rate of unemployment among persons with disabilities in the Netherlands stands at 9.6%, more than double the percentage of the general population. The net participation rate in the labour market reflects this dynamic: 32.2% for persons with disabilities as opposed to 72.5% for persons without disabilities. Disaggregated data point to a constant trend in employment whereby persons with physical disabilities have a considerably higher rate of paid employment (36%) than persons with psycho-social disabilities (22%) or mild intellectual disabilities (21%).<sup>205</sup>

The Dutch work inclusion model is based on a combination of sheltered employment and wage support for mainstream employers to encourage them to hire persons with disabilities in mainstream employment. Wage subsidies are necessary because the Dutch system does not envisage compulsory hiring quotas for inclusion of persons with disabilities in the private sector, although it does so for public organisations, that have to fill a quota

<sup>205</sup> Netherlands Institute for Human Rights 2018. *Inclusion of Persons with Disabilities in the Labour Market – The Netherlands*. Available: [http://www.behindertenanwalt.gv.at/fileadmin/user\\_upload/Tagung\\_EU-Ombudsleute/R05\\_-\\_Inclusion\\_of\\_persons\\_with\\_disabilities\\_in\\_the\\_labour\\_market.pdf](http://www.behindertenanwalt.gv.at/fileadmin/user_upload/Tagung_EU-Ombudsleute/R05_-_Inclusion_of_persons_with_disabilities_in_the_labour_market.pdf).



of 1.93% of their staff with persons with disabilities.<sup>206</sup> The reason for this is that the Dutch government adopted in 2013 a **“carrot and stick” approach to compulsory employment**, setting *gradual targets* in the number of persons with disabilities that the private and public sectors have to employ, and using the *threat* of imposing quotas - and fines in case of failure to fulfil quotas – should the targets be missed: so far the private sector has been able to fulfil the target, whereas the public one has failed.<sup>207</sup>

The sheltered sector is mostly state-run and strongly centralised, with a small number of large organisations that operate under a single umbrella association, and absorb the vast majority of employees in sheltered employment. Sheltered workshops however **operate in coordination with private companies** and offer their employees ample possibilities to work there in **secondment** positions, especially since reforms were introduced in the mid-2010s which, among other things, facilitate secondment. They also work to facilitate employment in the open labour market by providing **job coaching services**.

Combining the last available data for the overall employment rate of persons with disabilities with historical data about the number of persons employed in the sheltered sector, it is possible to conclude that roughly 41.8% of persons with disabilities were employed in sheltered employment.<sup>208</sup>

## B. Governance and Characteristics of Sheltered Workshops

The term “sheltered workshop” is commonly used in the Netherlands to refer to organisations where persons with disabilities work and are paid, receiving at least minimum salary and no disability benefit; institutions that carry out work activities but do not pay a salary are sometimes referred to by some sources and interviewees as day care centres, while other sources include them in the category of “sheltered workshops”. Users in the latter institutions receive a state disability pension that amounts to 75% of the minimum salary, but no payment for work per se.<sup>209</sup>

### **Regulatory Frameworks**

The main regulatory framework for sheltered workshops in the Netherlands was, until 2015, the 1969 Sheltered Employment Act (*Wet sociale werkvoorziening*, or Wsw): this used to be the main instrument for state-supported work inclusion and regulated the creation of the first sheltered workshops in the country.<sup>210</sup> Based on this system, a person with disability deemed able to work was either allocated to sheltered or open employment. Sheltered

<sup>206</sup> Disability:IN. 2022. *The Netherlands*. Available: <https://disabilityin.org/country/the-netherlands/>.

<sup>207</sup> Netherlands Institute for Human Rights 2018. *Inclusion of Persons with Disabilities*

<sup>208</sup> Elaboration of data from Netherlands Institute for Human Rights 2018 and corresponding years’ data from Cedris, 2022. *Sector informatie*. Available: <https://cedris.nl/app/uploads/Cedris-Sector-informatie-2021-RGB-DEF-digi-toegankelijk-v2.pdf>. There were approximately 90.000 persons with disabilities working in various titles in sheltered workshops out of a total of roughly 215.000 employed persons with disabilities in 2017.

<sup>209</sup> Sebrechts, M. 2018. *When doing your best is not enough. Shaping recognition in sheltered workshops: The interplay of activating institutions, professionals, co-workers and a sociologist*. Amsterdam: University of Amsterdam Press, p. 50-52

<sup>210</sup> Netherlands Institute for Human Rights 2018. *Inclusion of Persons with Disabilities*.

employment was nominally expected to train in preparation for transition, but effectively became the norm for persons with disabilities as the possibilities even for secondment in the open market were limited.<sup>211</sup>

In 2015 the Participation Act (*Participatiewet*) was approved, with the overarching principle to “guarantee a minimum income for everyone who is living legally in the Netherlands and has insufficient means to maintain themselves”.<sup>212</sup> Under this act, a mechanism of subsidies for wage compensation was created to support mainstream employers in hiring persons with disabilities and facilitate inclusion in the open labour market: mainstream employers can now apply for funding for workplace adaptation from the municipalities or the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen*, henceforth UWV); sheltered workshops are now expected to focus on job coaching for new employees; and municipalities are required to provide sheltered work for categories of persons with very severe support needs.<sup>213</sup>

As a result, persons with disabilities already included in work inclusion initiatives under the Wsw continue to work according to the previous rules, but more categories have been created for persons with disabilities that newly enter the workforce, to make their transition to the open labour market easier: A) Employment with wage support in sheltered workshops; B) In sheltered workshops but with the possibility to secondment to private companies; C) In regular companies.<sup>214</sup> Sheltered workshops still operate on the basis of the Wsw and, partially, the Participation Act.<sup>215</sup> As of 2021, around 67.500 persons with disabilities worked in sheltered workshops according to the Wsw scheme (down from 100.000 in 2015);<sup>216</sup> around 11,100 work in sheltered workshops under the Participation act.<sup>217</sup> Of these, 5.600 work only in sheltered workshops, while 5,500 work with possibility of secondment.<sup>218</sup> The main difference between the two schemes relates to the possibility of transition to the open market.

Persons with disabilities are assessed not on the basis of their level of occupational *impairment* (*arbeidsongeschiktheidsklasse*), but based on their *earning potential* (*loonwaarde*) / *work capacity* (*arbeidsvermogen*). The assessment is conducted by the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringe*, or UWV). **Anyone with an earning potential of at least 20% is eligible for work and will be certified as suitable either for inclusion in a sheltered workshop or in the open market**, though this is not a binding assessment. **Below 20% work capacity, persons with disabilities are redirected to state-funded**

<sup>211</sup> Netherlands Institute for Human Rights 2018. *Inclusion of Persons with Disabilities*.

<sup>212</sup> European Commission. 2022. *Netherlands - Social assistance benefits*. Available: <https://ec.europa.eu/social/main.jsp?catId=1122&langId=en&intPageId=4995>.

<sup>213</sup> Van Waveren, B. 2020. “Dutch Participation Act not (yet) a success”. *ESPN Flash Report 2020/01*. Available: <https://ec.europa.eu/social/BlobServlet?docId=22284&langId=en>, p. 1; Netherlands Institute for Human Rights 2018. *Inclusion of Persons with Disabilities*.

<sup>214</sup> Cedris, 2022, *Sector informatie*, p. 5

<sup>215</sup> Cedris, 2022, *Sector informatie*, p. 6

<sup>216</sup> Cedris, 2022. *Sector informatie*, p. 11

<sup>217</sup> Cedris, 2022. *Sector informatie*, p. 8

<sup>218</sup> Cedris, 2022. *Sector informatie*, p. 8

**day care centres**, whose activities, interviewees note, are mainly oriented to towards socialization, creativity and occupational activities.<sup>219</sup>

### ***Structure of sheltered workshops***

Sheltered workshops are usually large establishments of up to 1.000 workers. Most of these establishments are represented by the national association for an inclusive labour market *Cedris*: around 95% of its members are for-profit companies (or, in rare cases, foundations) whose main shareholders are municipalities, and whose funding originates from the central government (around 5% are private enterprises). Even though they are legally allowed to register profits and reinvest them back into the company, or redistribute them among their shareholders, **in practice they are virtually never able to make profits**: The salaries they pay are disproportionately high compared with the average employee's productivity, and the simple work performed tends to be of limited added value, interviewed providers note. Consequently, the system has been operating at a constant loss since 2015.<sup>220</sup>

### ***Activities conducted in sheltered workshops***

The working tasks conducted in sheltered workshops are usually relatively uncomplicated assembly work or other manufacturing tasks, such as packaging, contracted by private or public companies.<sup>221</sup> The national organisation director interviewed for this study notes that persons with disabilities generally work four or five days per week at assembly or manufacturing tables with around 10 other persons with disabilities (only in rare cases persons without disabilities may work alongside them) and one job assistant / team lead every table or two - though the actual number varies vastly depending on the type of activity and level of impairment of the persons with disabilities. Sheltered workshops' employees may also do cleaning or cafeteria work, in which case the interaction with the public is higher. If persons with disability have a higher or close-to-full level of productivity they can be seconded individually or in groups to regular companies: secondment periods are long, lasting multiple years in many cases, making them a good option to guarantee non-segregated employment in a context in which regular employers are often wary of hiring persons with disabilities outright.

### ***Transitioning into the Open Labour Market***

Interviewed stakeholders note that Dutch social policies are informed by the strong importance of productivity as a means for personal fulfilment and societal recognition, and have been oriented towards open market inclusion since at least the 1980s. Accordingly, sheltered workshops emphasise principles of individual

<sup>219</sup> Sebrechts, M. 2018. *When doing your best is not enough*.

<sup>220</sup> Losses grew constantly between 2015 and 2019 (when they reached around - €212mIn); they decreased in 2020 (when they stood at - €132mIn) thanks to the availability of COVID-19 resilience subsidies, but increased again in 2021 (- €148mIn). *Cedris*, 2022, *Sector informatie*, p. 30.

<sup>221</sup> Around 95% of *Cedris* sheltered workshops work as contractors: only a residual percentage sells products or delivers services directly.

responsibility, autonomy, and excellence modelled on the basis of the open labour market.<sup>222</sup> The training opportunities they offer are strongly oriented towards *productivity* and, crucially, towards *transition* to the open market, teaching persons with disabilities the skills needed to conduct work and retain it: typically, persons with disabilities are taught basic social skills (interpersonal relations with colleagues; hygiene practices; timeliness) and, in parallel, the practical skills needed to conduct their work activities. The fact that persons with disabilities engage in “real work” (as opposed to what happens in day care centres) is seen as a major positive aspect and a sufficient indicator of self-realisation in itself, in the words of interviewees. In fact, even sheltered workshops of the day care type for fully occupationally-disabled persons have a commitment to training for transition to the open market, even though it is often clear that this is an unrealistic prospect.<sup>223</sup>

### ***Status of Persons with disabilities in sheltered workshops***

Persons with disabilities in sheltered workshops are employees: they receive a remuneration equal to at least the minimum wage, regardless of their productivity (as long as it does not fall below 20% of work capacity), and enjoy the full range of social benefits, from sick leave to retirement pensions. The payment of salaries does impact the amount of welfare benefits that persons with disabilities receive, though: whatever the form of employment, welfare benefits are cut when a person starts working; they can also be reduced if the person refuses to work.<sup>224</sup> The minimum salary is slightly higher than the welfare benefits. The exact ratio may vary depending on the scheme, but the main type of pension, the *Wajong* (for persons who are born with a disability or acquire it before the age of 18) amounts to €1.231,44 or 75% of the legal minimum wage (€1.756,20 as of Jul 2022).<sup>225</sup> In line with the goal of transition, placement in sheltered workshops is agreed upon on the basis of a fixed-term individual plan, typically consisting of a training path of several years before attempting secondment or outright transition to the open market. In practice, as the interviewed representative of Cedris notes, the individual plans for employees with very limited productivity or worsening impairments tend to focus on skills *retentions* and preventing a regression into the day care system, and are often prolonged until they become semi-permanent or permanent.

## C. UNCRPD & ILO Compliance

The Netherlands signed the UN CRPD in 2007 and ratified it in 2016.<sup>226</sup> The legislation in the Participation Act is meant to incorporate the principles of international regulations, but the track record on compliance is not entirely positive:

<sup>222</sup> Sebrechts, M., Tonkens, E., Bröer, C. 2018. “Rituals of recognition: Interactions and interaction rules in sheltered workshops in the Netherlands.” *European Journal of Cultural and Political Sociology*, 5(4): 455-475, p. 471

<sup>223</sup> Sebrechts, M. 2018. *When doing your best is not enough*, p. 51

<sup>224</sup> Email conversation with national association representative.

<sup>225</sup> Sebrechts, M. 2018. *When doing your best is not good enough*, p. 51; Email conversation with national association representative; Government of the Netherlands, 2022. *Amount of the minimum wage*. Available:

<https://www.government.nl/topics/minimum-wage/amount-of-the-minimum-wage>

<sup>226</sup> See UN Treaty Bodies Database:

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en)

- **Unintended negative consequences in the application of the social model of disability in combination with austerity policies:** The Dutch system is receptive to international recommendations to move away from the medical model of disability, which is why it assesses persons with disabilities' employment perspectives based on **capacity to work**, regardless of medical condition and without preconceived assumptions of what a person can or cannot do given a certain impairment. This, however, can have negative consequences. Some persons with disabilities are deemed able to fulfil unrealistic standards by an often-overoptimistic UWV when determining their work capacity, and as a result, they fail in the open market and have to revert to sheltered workshops. This happens because - according to an interviewed scholar - **austerity policies create an incentive to overestimate work capacity**, for if a person with disability is deemed able to work, they are shifted away from *disability pensions* towards *general welfare subsidies*, which are lower and have stricter requirements to be retained (such as obligations to show that beneficiaries are actively looking for work).
- **The cutting of disability pensions poses an issue of compliance:** The UNCRP recommends that disability benefits are not cut if a person starts working; otherwise, an incentive trap is created. Furthermore, the limited difference between the current pension and the minimum salary may not be a sufficiently good incentive to pursue employment.
- **In terms of freedom of choice of employment, the Dutch system is quite well suited to guarantee compliance.** Except in the cases in which a person's work capacity has been assessed as lower than 20%, **the allocation to sheltered workshops or open market is not rigid:** persons with disabilities who were recommended to enter sheltered employment can and are known to find work on their own in the open market, with or without wage support, and on the contrary, employees working in the open market sometimes request to enter sheltered workshops if they struggle fulfilling their work obligations, for example due to worsening impairments. **Entering sheltered employment however requires authorisations** from a municipality that will bear the costs of the sheltered job place, and is not up to the free choice of individuals.<sup>227</sup>
- **Support in sheltered workshop is determined by the organisation, but across the sector, it is moving more and more towards persons' needs.** Job assistants and team leads used to be persons with experience in the line of work who would follow groups of persons with disabilities with the aim of ensuring as much productivity as possible. Recently, however, this approach focused on *work needs* has changed and support in sheltered workshops **now focuses on persons' needs:** job assistants are hired mainly among social workers, and their main task is to ensure a positive experience at work for persons with disabilities (especially psycho-social ones); sector experts of the "old type" of assistants are only brought in for additional assistance when the tasks performed required more pronounced technical expertise.
- **Employment in the open labour market is prioritised, while sheltered workshops are seen as the "last option" for persons with disabilities. However, transitions remain rare in practice, and the picture of work inclusion policies is inconsistent.**

From a positive point of view:

- The system of secondment and the existence of non-rigid allocation of persons with disabilities between sheltered and regular employment ensures that persons with disabilities have a concrete possibility to transition to the open market, **or at least to a long-term seconded position** at a regular company.

<sup>227</sup> Netherlands Institute for Human Rights. 2018. *Inclusion of Persons with Disabilities*.

- Moreover, sheltered workshops are **currently operating as a “residual” option**, and are recommended to persons of disabilities only when other options for supported employment in the open market are not feasible or available.
- Sheltered workshops **work in close coordination with regular employers** to facilitate transition in the framework of the Participation Act.

From a negative point of view:

- **The rate of transition from sheltered workshops to open market has increased only marginally** compared with the pre-2015 system: the main success of the shift to the Participation Act is a rise in the number of persons with disabilities **entering the open market directly** (with wage subsidies), as the interviewed Cedris representative notes.
  - Mainstream employers are still, however, **not sufficiently aware or willing to bear the administrative burden of the wage support schemes**;
  - Municipalities – which lack sufficient funding to address all work inclusion needs - tend to **use the allocated wage support funds for persons with disabilities that stand a higher chance of succeeding** in the open market, leaving other groups with more severe disabilities *de facto* excluded from the scheme.<sup>228</sup>
- **The priority on employment in the open labour market, in combination with the dynamics described above, may have caused a reduction in the options for some groups of persons with disabilities.** A 2019 report by the Netherlands Institute for Social Research concluded that **many persons with disabilities lost the opportunity to be employed through sheltered employment**, due to the interruption of new intakes into the “old” sheltered workshop system. In the last two years, the number of persons with disabilities employed in sheltered workshops, in secondment, or with sheltered workshops providing only job coaching for open market employers has actually been *decreasing* overall.<sup>229</sup>
  - **Although open labour market inclusion policies are now dominant, employers do not always offer job security and good working conditions:** While younger persons with disabilities’ chances of finding employment increased slightly between 2015 and 2019, **their financial situation worsened, as they are increasingly employed only temporarily.**<sup>230</sup>

## D. Future Trends in the Netherlands

As mentioned above, factors such as the administrative burden of wage support schemes or the selective allocation of funds for wage support by public authorities prevent some persons with disabilities from entering the open market. There are no plans to address these underlying issues (in fact, administrative burdens were already reduced following consultations with employers),<sup>231</sup> which in turn is **likely to keep sheltered workshops relevant for the foreseeable future.**

<sup>228</sup> Van Waveren, B. 2020, p. 1-2

<sup>229</sup> Cedris, 2021, p. 11

<sup>230</sup> Van Waveren, B. 2020, p. 1

<sup>231</sup> Netherlands Institute for Human Rights 2018. *Inclusion of Persons with Disabilities.*

Legislation is currently in the making to make it possible for persons with disabilities to continue receiving their welfare benefits even as they earn a salary in sheltered workshops. The interviewed representative of Cedris notes that the format of sheltered workshop employment, with persons with disabilities working only rarely alongside persons without disabilities, is also unlikely to change: creating a mixed workforce would be putting detrimental pressure on persons with disabilities due to the productivity difference with workers without disabilities.

In the immediate future, however, the main challenge for sheltered workshops is survival: due to the above-mentioned *de facto* impossibility to make profits, municipalities have to “fill the gap” left by insufficient government funding, and in order to do so often reduce the absolute number of places in sheltered workshops rather than increase municipal funding. Funding from the central government for the system decreased significantly following the approval of the Participation Act, but is being increased at the moment to support municipalities - though at a rate that sector stakeholders consider insufficient.

## E. Conclusions

The Dutch sheltered workshops system is characterised by a high level of centralization and by few, large-scale organisations. The underlying principle of sheltered workshop employment is that it should operate in conjunction with the mainstream labour market, **offering training and job coaching services useful for transition**. Following the introduction of the Participation Act, the system of secondment in private companies has been strengthened, to the point that around half of the persons with disabilities included in work inclusion programmes through sheltered workshops since the introduction of the Act are in secondment positions. This is an interesting solution that allows persons with disabilities to work often for prolonged periods in mainstream employment in all but name, offsetting the risks and uncertainties both for employees with disabilities (who can always return to sheltered employment) and for employers. Differently from persons in secondment systems in other countries, who risk getting stuck in “never ending internships”, their Dutch counterparts are **fully paid**; however the wage cost is borne by public authorities. The Dutch system is strongly based on the culturally-ascribed value of productive work, but also **ensures payment of full minimum salaries independently on the actual productivity level**. This allows to grant a good degree of economic independence to persons with disabilities, but also makes the system **intrinsically inefficient and dependent on public funding**. This in turn creates uncertainties about the future as the sector requires the constant commitment of political will to continue operating at a loss. Several factors prevent a more decisive intake in the open market, and keep sheltered employment a necessary reality for at least some groups: This makes it very urgent to address the issue of their financial sustainability.

Table 6: Compliance of Protected Employment in the Netherlands with UN CRPD, General Comment & ILO

Elements of Good Practice acc. to UNCRPD & ILO	Protected Employment in the Netherlands: In Theory	Protected Employment in the Netherlands: In Practice	Assessment
<b>The state effectively ensures the right to freely chosen employment</b>	In principle, every citizen has a constitutional right / duty to freely chosen work. The state subsidises workplace adaptation to encourage open market employment.	Persons with disabilities are free to pursue work in the open market, whereas sheltered employment placement is decided by public authorities.	Inclusion in the open labour market is increasingly frequent, though mainly through direct inclusion rather than transition. The system of gradual targets appears to provide an effective mechanism to increase the number of open market jobs available.
<b>Persons with disabilities are not segregated</b>	Sheltered workshops operate as segregated institutions, but since the changes introduced by the Participation Act they operate in closer coordination with mainstream employers.	The segregated nature of sheltered workshops is offset by the concrete possibility of prolonged secondment positions with mainstream companies.	A well-developed secondment system combined with concrete measures for open market inclusion can provide a valid solution to the issue of segregation, while giving persons with disabilities the additional support they need.
<b>Persons with disabilities do not lose the benefit of disability allowances when they start to work</b>	Welfare benefits are cut when a person starts working; they can also be reduced if the person refuses to work.	Austerity mechanisms create an incentive to over-estimate the work potential of some persons with disabilities in order to shift them to general welfare subsidies and save on welfare benefits.	The above-mentioned cost-saving priorities result in unrealistic expectations for some persons with disabilities and should be thoroughly reconsidered.
<b>Persons with disabilities are paid no less than the minimum wage</b> <b>Persons with disabilities receive pay on an equal basis with employees without disabilities</b>	Persons with disabilities in sheltered workshops are paid the minimum wage; they work in facilities that run as for-profit companies with funding from the government.	Minimum salaries are guaranteed regardless of productivity level. This however makes sheltered workshops inherently inefficient and requiring municipal funding to survive.	The guarantee of full minimum salary regardless of the reduction in productivity due to employees' impairments ensures that persons with disabilities can reach economic independence.
<b>Safe working conditions are ensured in sheltered workshop settings</b>	All employers are expected to follow the same work safety regulations.	There are no known issues with systematic failures to guarantee safe working conditions in sheltered workshops.	Being state-funded and state-monitored, the Dutch network of sheltered workshops is subject to thorough checks. As indicated by the fact that the system constantly operates at a loss, pressing productivity requirements



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			that might result in a worsening of work safety are not present.
<b>Persons with disabilities have opportunities of career advancement</b>	No restriction exists as to the level of seniority of positions for persons with disabilities.	Most of the times, persons with disabilities in sheltered employment contexts occupy menial positions.	The open labour market is better suited to offer opportunities for career advancement.
<b>Persons with disabilities perform meaningful work</b>	There is no restriction to the type of activities that persons with disabilities can conduct in sheltered workshops.	The activities available for persons with disabilities tend to be low value-added (sometimes repetitive and alienating) work, but they are economically meaningful activities.	The Dutch system of sheltered workshops does not offer a very wide range of activities as it is centred on few, large organisations under public authorities' supervision. Day care centres offer more creative activities but these are unpaid, and occupational in nature.
<b>Transition from sheltered workshops to the open labour market is encouraged</b>	All sheltered workshop-type organisations are expected to foster skills that can be used to access the open market, and are requested to organise services for transition to the open market.	Access to the open market from sheltered workshop-type organisations is rare, but secondment positions in open labour market companies are frequent.	Differently from other countries where persons with disabilities working in sheltered employment are sent to perform individual tasks as part of contracted work for mainstream companies, the system of prolonged secondment in open market companies in the Netherlands offers an interesting option for persons with disabilities to <i>de facto</i> work in mainstream employment while maintaining the "safety net" of sheltered employment to fall back to in case of failure to transition.
<b>Social dialogue is present between the sheltered workshop users (employees) and management</b>	When formally employed, persons with disabilities have equal labour rights.	The Dutch government encouraged in the past dialogue and cooperation between employers, organisations of persons with disabilities and trade unions. However, sheltered workshop organisations themselves do not necessarily promote internal dialogue.	Although social dialogue is legally possible, it is not specifically encouraged.

Source: Author's elaboration based on literature review and qualitative interviews

## F. Conducted Interviews

Name	Designation	Organisation	Date	Methodology
Arend Pieterse	Director	National association for an inclusive labor market Cedris	28/9/2022	Online interview and email exchange
Dr Melissa Sebrechts	Assistant Professor	University of Humanistic Studies	28/9/2022	Online interview and email exchange

# Case Study on Sheltered Workshops: Poland

Author: Fabio Belafatti

## At a Glance

- The term “sheltered workshops” is translated in various ways and used to refer to vastly different types of organisations.
- Organisations *de facto* operating as sheltered workshops are of mainly two types: ZPCh and ZAZ.
- Recent research indicates that only 28.8% of persons with disabilities are employed: over 60% of them work in the open market.
- Employment in the open market is growing as sheltered employment decreases, but statistics provided may not account for “informal” phenomena of sheltered employment.
- The protected labour market targets persons with all types and degrees of disabilities.
- Sheltered employment is seen as a necessary solution at least for persons with severe disabilities that struggle to be employed in the open market.
- Most persons with disabilities employed in sheltered workshop-type organisations enjoy employment status and receive at least the minimum wage.
- There are deep differences in terms of compliance with international requirements between various types of sheltered workshop-type organisations.

## A. Introduction

Employment for persons with disabilities in Poland has improved in recent years: unemployment has decreased from 13% in 2015 to 7.2% in 2019 according to the latest statistics available, whereas employment has increased from 22.5% in 2015 to 26.8% in 2019 (compared to 78.4% among the general population; other figures for 2019 indicate 28.8%).<sup>232</sup> The figures however indicate that the majority of persons with disabilities are still not economically active, which confirms a long-term trend in Poland.<sup>233</sup> The Polish system offers abundant support for mainstream employers who seek to hire a person with disability: any company with more than 25 employees is expected to fill 6% of its positions with persons with disabilities, and receives a bonus for any hiring above the

<sup>232</sup> Rodacka, K. 2021. “Job market for people with disabilities in Poland”. *New Eastern Europe*, Jun 22, 2021. Available: <https://neweasterneurope.eu/2021/06/22/job-market-for-people-with-disabilities-in-poland/>; TVP World 2021. *Gov't adopts Strategy for People with Disabilities for 2021-2030*. Feb 16, 2021. Available: <https://tvpworld.com/52325014/govt-adopts-strategy-for-people-with-disabilities-for-20212030>; on the 2015 employment rate: United Nations 2018. *Committee on the Rights of Persons with Disabilities examines the initial report of Poland*. Available: <https://www.ohchr.org/en/press-releases/2018/09/committee-rights-persons-disabilities-examines-initial-report-poland>.

<sup>233</sup> Jabłońska-Porzuczek, L. Z., Kalinowski, S. M. 2018. “Analysis of the Labor Market Situation of People with Disabilities.” *Acta Universitatis Lodzianensis Folia oeconomica* 4(336), pp. 157-172. P. 162

6% requirement; the State Fund for Rehabilitation of Disabled People (*Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych*, henceforth: **PFRON**) covers all costs such companies face for training, workplace adaptation, and hiring of job assistants, on top of providing monthly co-financing of salaries in the order of zł 450, 1,125 or 1,800, with and an additional zł 600 bonus if an employee with disability is blind, has epilepsy, or has been diagnosed with a mental illness.<sup>234</sup>

Thanks to these policies of subsidised employment, and to the growing desire among persons with disabilities to work in the open market, the relative weight of *sheltered* employment for work inclusion for persons with disabilities has decreased over the years in favour of subsidised employment in the open labour market,<sup>235</sup> although this still tends to be in low-skilled sectors, or in jobs below the level of training and education for persons with disabilities, where they may end up as cheap workforce.<sup>236</sup> Employment in the subsidised open market now absorbs almost 60% of persons with disabilities in employment,<sup>237</sup> leading some scholars to talk of a “slow death of the protected labour market”.<sup>238</sup> Nevertheless, sheltered workshops are still an important component of work inclusion, although, as the next section will show, measuring the numbers of persons with disabilities employed there first requires solving **terminology challenges as to what, exactly, constitutes a “sheltered workshop”** in Poland. Furthermore, as the [section](#) about compliance will show, statistics may in fact hide a reality of **“underground” sheltered employment** that only nominally falls under “open market” employment but still operates according to traditional patterns, not compliant with international regulations. It is also important to note that statistics are seen by local experts and CSOs as severely lacking.

## B. Governance and Characteristics of Sheltered Workshops

### *Caveats on legal and terminological issues*

Sheltered employment in Poland is characterised by a considerable **fragmentation and inconsistency** in the use of the term “sheltered workshop” and its discussion. **Fragmentation** derives mainly from Poland’s “stratified” approach to legislation following the country’s transition to capitalism:<sup>239</sup> During the communist-era, state factories and workers cooperatives guaranteed work inclusion for persons with disabilities, although through

<sup>234</sup> Rodacka, K. 2021. *Job market for people with disabilities in Poland*.

<sup>235</sup> Jabłońska-Porzuczek, L. Z., Kalinowski, S. M. 2018. *Analysis of the Labor Market Situation*; Małecka, J., Czerkawski, D., Weber, G. 2021. *People with Disabilities in the Labour Market – Main Challenges, First Needs. Zeszyty Naukowe Politechniki Poznańskiej*. N.83; Czerkawski, D., Małecka, J. 2022. “Are the Sheltered Employment Workshops Still Necessary? - Change Factor and Market Conditions”. *European Research Studies Journal*, XXV(2), pp.387-407.

<sup>236</sup> Rodacka, K. 2021. “Job market for people with disabilities in Poland”.

<sup>237</sup> United Nations 2018. *Committee on the Rights of Persons with Disabilities examines the initial report of Poland*.

<sup>238</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. “Dilemmas of Sheltered Employment in Poland and Greece and the Concept of Supported Employment.” *Comparative Economic Research. Central and Eastern Europe*, 24(3), pp. 127-137, p.130

<sup>239</sup> During the communist era, state-run companies and workers’ cooperatives guaranteed to (non-institutionalized) persons with disabilities near-full employment (although often in poor and segregated working conditions).

mechanisms that fell considerably short of international human rights standards.<sup>240</sup> Employment was kept high by granting cooperatives the monopoly over the production of certain simple goods. With the disappearance or privatization of communist-era organisations, policy makers have *added* new types of organisations to address different issues and priorities in the area of work inclusion for persons with disabilities through legislative acts and amendments, but shying away from a general *overhaul* or consolidation of the system through legal reform, as noted by Professor Szarfenberg, a leading national academic expert from the University of Warsaw interviewed for this study. As of now, the main legal instruments regulating sheltered employment in Poland are the Act of April 20, 2004 on employment promotion and labor market institutions with relative amendments;<sup>241</sup> the Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities with its relative amendments,<sup>242</sup> most importantly the amendments in the Act of 5 December 2008;<sup>243</sup> the Regulation of the Minister of Labor and Social Policy of 19 December 2007 regarding the Company Fund for the Rehabilitation of the Disabled;<sup>244</sup> and the Act of June 13, 2003 on Social Employment.<sup>245</sup> These legal acts created several types of organisations in Poland that provide sheltered workshop-type employment for persons with disabilities; the names of these organisations are translated differently, resulting in **inconsistency** as to what is referred to when discussing “sheltered workshops” in the literature – an issue made worse by the fact that many sources do not specify at all which organisation they are referring to.<sup>246</sup>

### ZPChs

Most often, sources refer to *Zakład Pracy Chronionej* (henceforth: **ZPChs**) as “sheltered workshops”, “protected workforce plants”,<sup>247</sup> or more correctly, as “supported employment enterprises”;<sup>248</sup> these can be social enterprises or, more often, **for-profit companies** that operate on the market bearing the full economic risk of

<sup>240</sup> Mika, T. 2022. ZPZAZ POLAND – Polish Association of Employers of Sheltered Workshops. Available: <http://zazpolska.pl/in-english/>.

<sup>241</sup> Journal of Laws of 2004 No. 99, item 1001 with amendments [Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy (Dz.U. z 2004 r. Nr 99, poz. 1001 z późn. zm.)]

<sup>242</sup> Journal of Laws of 1997, No. 123, item 776 with amendments) [Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej osób niepełnosprawnych (Dz.U. z 1997 r. Nr 123, poz. 776 z późn. zm.)]

<sup>243</sup> Act of 5 December 2008 amending the Act on vocational and social rehabilitation and employment of disabled persons (Journal of Laws No. No. 237, item 1652)

<sup>244</sup> Regulation of the Polish Minister of Labor and Social Policy of 19 December 2007. See Kobus-Ostrowska, D., Papakonstantinou, D. 2021. *Dilemmas of Sheltered Employment*; Jabłońska-Porzuczek, L. Z., Kalinowski, S. M. 2018. *Analysis of the Labor Market Situation*.

<sup>245</sup> Journal of Laws of 2003 No. 122, item 1143 [Ustawa z dnia 13 czerwca 2003 r. o zatrudnieniu socjalnym]; Government of Poland 2022. *Podmioty Zatrudnienia Socjalnego - CIS i KIS*. Available: <https://www.gov.pl/web/rodzina/podmioty-zatrudnienia-socjalnego---cis-i-kis>

<sup>246</sup> See for example Jabłońska-Porzuczek, L. Z., Kalinowski, S. M. 2018. “Analysis of the Labor Market Situation”; Małecka, J., Czerkawski, D., Weber, G. 2021. *People with Disabilities in the Labour Market*.

<sup>247</sup> Kijak, R. [undated]. *Situation of persons with profound intellectual disability in Poland*. Pedagogical University in Cracow. Available: <https://slideplayer.com/slide/6656405/>.

<sup>248</sup> Szarfenberg, R., Szarfenberg, A., Krenz, R. (Forthcoming). *Country Fiche Template* [Poland]. Obtained through personal communication with authors.

their activity.<sup>249</sup> Potentially, any employer can apply to be classified as ZPCh as long as they have been operating for at least 12 months, have at least 25 employees, and satisfy the following key requirement: 50% of the workforce should be persons with disabilities (and 20% persons with severe or moderate disabilities); alternatively, 30% of the workforce can be persons with disabilities, as long as they all have moderate to severe disability, are blind, mentally ill, or have mental disabilities.<sup>250</sup>

Organisations that are granted ZPCh status can access PFRON funding through *województwa* (voivodeships, or provinces).<sup>251</sup> Originally, ZPCh status was reserved to communist-era cooperatives to guarantee their survival, but was later opened to regular companies to prevent unduly favouring such cooperatives, which lost their monopoly over simple goods manufacturing and are now expected to also compete on the market. Thus, nowadays only few ZPChs are former workers' cooperatives: Any company can register as a ZPCh, which, in the words of a leading national academic expert interviewed, is thus more of a **status than a characteristic as "sheltered workshop" strictly speaking**. Nominally, "employment in the ZPCh should improve [persons with disabilities'] *professional* skills and create the opportunity to enter the open labor market" (our emphasis),<sup>252</sup> and as for-profit companies, are expected to pay regular, competitive market salaries. In practice, as the sections about compliance will show, the reality is different.

ZPChs are often presented as the only form of sheltered workshops in the literature also because they remain the largest type of sheltered employment organisations, and the only one for which consistent and precise data exists. As of 2022, 780 ZPChs employed 93.720 persons with disabilities,<sup>253</sup> as opposed to a further 145.808 persons with disabilities were employed across almost 32.000 open market companies.<sup>254</sup>

The number of ZPChs is in decline, down from 2.463 in 2004.<sup>255</sup> While the number of persons with disabilities working in ZPChs has decreased by almost 46% between 2004 and 2022 (from 172.597), the number of individuals in the open labour market has increased by over 413% in a similar period for which data is available (2004-2019; from 28,130 to 145.808).<sup>256</sup>

<sup>249</sup> Mika, T. 2022. *ZPAZ POLAND*; Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.130

<sup>250</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.129-130. Some sources indicate that ZPChs can fill the quota requirements with employees from any marginalised group, but interviewees confirm that in practice they mainly employ persons with disabilities.

<sup>251</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.128

<sup>252</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.133

<sup>253</sup> Szarfenberg, R., Szarfenberg, A., Krenz, R. (Forthcoming). *Country Fiche Template*, p. 23-24.

<sup>254</sup> Czerkawski, D., Małeczka, J. 2022. "Are the Sheltered Employment Workshops Still Necessary?", p.399

<sup>255</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.130

<sup>256</sup> Czerkawski, D., Małeczka, J. 2022. "Are the Sheltered Employment Workshops Still Necessary?", p.399

This decline is mainly due to the fact that the benefits for ZPChs have progressively been aligned to those for mainstream companies.<sup>257</sup> Previously, ZPChs enjoyed a much more favourable public co-financing treatment, which created an incentive for regular companies to try to qualify as such, and, by the early 2000s, had created the conditions for widespread fraud as many ZPChs hired (and, in some cases, allegedly still hire) persons with disabilities as “ghost workers” only for the purpose of pocketing the public subsidies for wages.<sup>258</sup> The relative reduction in preferential treatment for ZPChs made the employment of persons with disabilities in such organisations less economically convenient, **pushing many of them to the limit of financial unsustainability**,<sup>259</sup> though more slowly than anticipated by their national association, the Polish Organisation of Employers of Disabled Persons (*Polskiej Organizacji Pracodawców Osób Niepełnosprawnych*, henceforth POPON).<sup>260</sup> ZPChs however still benefit from “indirect” subsidies: Mainstream companies that fail to fulfil the minimum hiring quota of persons with disabilities can avoid being fined or pay a lower fine if they purchase goods from ZPCh, a mechanism that artificially boosts demand for products and services sold by ZPChs according to a work inclusion expert and a CSO representative interviewed for this study. The combination of these mechanisms **disincentivised transition from ZPChs to the open market**: existing benefits still ensure that it is relatively advantageous for at least some employers to register their companies as ZPChs; this in turn requires maintaining the minimum threshold of 50% persons with disabilities; which then makes some ZPCh managers **reluctant to facilitate their transition to the open market**.

## ZAZs

Another type of organisation is *Zakład Aktywności Zawodowej* (henceforth: **ZAZs**), sometimes translated as “Vocational Activity Workshops”, “Workshops of Professional Activity”,<sup>261</sup> “Occupational Workshops”,<sup>262</sup> or “Professional Activity Establishments”,<sup>263</sup> however, their umbrella organisation **explicitly adopts the definition of “Sheltered Workshops”**.<sup>264</sup> There are 124 ZAZs as of 2022 (growing from 106 in 2016),<sup>265</sup> employing between

<sup>257</sup> The decision to align the subsidy level dates back to the 2008 Amendment but was postponed in subsequent budget years until 2013, and entered into force in Jan 2014 (Rędzia, B. 2013. “Zrównanie dofinansowań na szybko.” *Nie Pełno Sprawni*, Oct 24, 2013. Available: <http://www.niepelnosprawni.pl/ledge/x/173784>)

<sup>258</sup> Benefits included exemptions from several types of taxes, co-financing of salaries for up to 180%, far above the level of subsidies offered to open labour market companies, and co-financing of interests on loans taken for any costs related to the rehabilitation of employees with disabilities, and reimbursement of any operational costs incurred in from employing persons with disabilities. Czerkawski, D., Małeczka, J. 2022. “Are the Sheltered Employment Workshops Still Necessary? - Change Factor and Market Conditions”. *European Research Studies Journal*, XXV(2), pp.387-407. P. 388 and 397.

<sup>259</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. “Dilemmas of Sheltered Employment”, p.130

<sup>260</sup> Rędzia, B. 2013. “Zrównanie dofinansowań na szybko.”

<sup>261</sup> See for example Kobus-Ostrowska, D., Papakonstantinou, D. 2021. “Dilemmas of Sheltered Employment”; Mika, T. 2022. *ZPAZ POLAND*.

<sup>262</sup> Government of Poland 2022a. *Draft General Comment on article 27 on the right of persons with disabilities to work and employment. Poland’s comments*. Available: [https://www.ohchr.org/sites/default/files/2021-12/Republic\\_of\\_POLAND.docx](https://www.ohchr.org/sites/default/files/2021-12/Republic_of_POLAND.docx).

<sup>263</sup> Szarfenberg, R., Szarfenberg, A., Krenz, R. (Forthcoming). *Country Fiche Template*

<sup>264</sup> Mika, T. 2022. *ZPAZ POLAND*.

<sup>265</sup> Mika, T. 2022. *ZPAZ POLAND*; Kobus-Ostrowska, D., Papakonstantinou, D. 2021. “Dilemmas of Sheltered Employment”, p. 128

a minimum of 20 to a maximum of over a hundred persons with disabilities.<sup>266</sup> ZAZs can be set up by local authorities (*powiaty*, roughly equivalent to counties, or *gminy*, roughly equivalent to municipalities) or by non-governmental organisations such as foundations, associations or other social organisation; they are co-funded by PFRON, and their staff has to be at least 70% persons with disabilities.<sup>267</sup> ZAZs have access to more generous funding, including coverage of 75% of the cost needed to set them up,<sup>268</sup> and theoretically benefit from public funding to cover up to 90% of their operational costs, though in reality they are increasingly expected to survive independently, which they can do by selling products or services to local governments or private companies.<sup>269</sup> ZAZs' mandate is to give persons with disabilities the chance to gain "basic professional *and life skills* necessary in the workplace" (our emphasis) through vocational and social rehabilitation activities:<sup>270</sup> Differently from ZPChs, which are only tasked with fostering *professional skills*,<sup>271</sup> ZAZs provide more support, including social inclusion activities, support setting up independent living apartments, and leisure activities. Persons with disabilities in ZAZs are paid a minimum wage and work either with four or six hours shifts; workplaces have to be fully adapted to their needs, providing emergency medical care and rehabilitation services (60 minutes/day) alongside professional guidance.<sup>272</sup> ZAZs often employ persons with disabilities on a part-time basis in order to employ as many of them as possible, but this results in employees receiving a lower share of the minimum salary, as this is adjusted downwards proportionally to the worked hours: This provides only a marginal economic benefit compared to relying on disability pensions, thereby reducing the incentive to work according to a leading national academic expert.

### WTZs

ZAZs are meant to operate as a link between the open labour market and another type of organisation, the *Warsztat Terapii Zajęciowej* (henceforth: **WTZ**), which loosely translates as "Occupational Therapy Workshops" or "Activity Therapy Workshop",<sup>273</sup> but which essentially operate as day care centres. These are reserved entirely to persons with disabilities, and tasked with the first activation of working potential, mainly through basic social skills and professional training. Persons with disabilities are involved in WTZs' activities as *participants* rather than employees, and are therefore not paid, though some activists in CSOs argue that participants should receive a payment.<sup>274</sup> In theory, participants in WTZs' activities are supposed to transition to other forms of employment, but several interviewed experts note that persons with disabilities often remain in WTZs for many years, if not

<sup>266</sup> Mika, T. 2022. *ZPZAZ POLAND*.

<sup>267</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.128-129

<sup>268</sup> Mika, T. 2022. *ZPZAZ POLAND*; Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.128

<sup>269</sup> Mika, T. 2022. *ZPZAZ POLAND*.

<sup>270</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.133; Mika, T. 2022. *ZPZAZ POLAND*.

<sup>271</sup> It should however be noted that according to an interviewed specialist on open market inclusion, some ZPChs receive so many subsidies for medical care of their employees that they practically operate as rehabilitation centres.

<sup>272</sup> Mika, T. 2022. *ZPZAZ POLAND*.

<sup>273</sup> Definitions are those provided by Prof Ryszard Szarfenberg and used in Mika, T. 2022. *ZPZAZ POLAND*; Kijak, R. [undated]. *Situation of persons with profound intellectual disability*.

<sup>274</sup> Mika, T. 2022. *ZPZAZ POLAND*.



permanently – in which case they function as de-facto respite care providers for families of persons with disabilities.<sup>275</sup>

### ***CIS and KIS***

The other two organisations that share some of the features of a sheltered workshops are *Centra Integracji Społecznej* (henceforth: **CIS**) and *Kluby Integracji Społecznej* (henceforth: **KIS**): these translate as “Social Integration Centres” and “Social Integration Clubs”, respectively. They are state-funded social service providers tasked with providing social and professional reintegration services by fostering social, planning and income management skills and providing professional training (CIS), or by organising job seeking support activities, public works, socially useful works, internships, legal counselling (KIS).<sup>276</sup> Their beneficiaries are individuals from marginalised groups such as long-term unemployed persons, homeless people, persons with disabilities or mental illnesses, alcohol and drug addicts, former convicts and refugees. They can be established by local governments or non-governmental organisations, churches, or social cooperatives; currently, 221 CIS and 329 KIS operate across Poland.<sup>277</sup> Persons with disabilities constitute a minor component of their participants.

### ***Types of persons with disabilities employed***

ZPChs’ workforce of persons with disability is composed for 8.6% by persons with severe disabilities, 70.6% moderate disabilities, and 20.7% mild disabilities; ZAZs’ workforce on the other hand consists of 57.8% persons with severe disability, 41.5% moderate, and 0.6% mild disabilities; in practice, according to Prof. Szarfenberg, ZAZs mainly absorb workforce with disabilities that does not have a realistic chance of employment in the open market.<sup>278</sup> WTZs mainly provide services for persons with severe and moderate disabilities; there is insufficient data about the number of persons with disabilities – and the level of their impairment – in CIS and KIS.

### ***Activities conducted in sheltered workshops***

Activities conducted in ZPChs are usually simple tasks for the manufacturing sector, including assembly line work and warehousing – though the fact that any company can potentially be a ZPCh makes it very difficult to generalise. Activities conducted in ZAZs are easier to track, and according to their umbrella organisation, usually include artisanal work and other types of creative activities; sewing; laundry services; preparation and distribution of meals (gastronomy and catering); gardening and management of green areas; printing, designing and web services. Activities in WTZs are mainly *occupational* and oriented to skills activation and rehabilitation, rather than work activities. CIS and KIS activities primarily involve training for basic working skills.

<sup>275</sup> See also Mika, T. 2022. *ZPZAZ POLAND*.

<sup>276</sup> Another difference between CIS and KIS is that KIS are also eligible for EU funding. (Government of Poland 2022. *Podmioty Zatrudnienia Socjalnego*).

<sup>277</sup> Government of Poland 2022. *Podmioty Zatrudnienia Socjalnego*.

<sup>278</sup> Szarfenberg, R., Szarfenberg, A., Krenz, R. (Forthcoming). *Country Fiche Template*, p. 23-24.

Persons with disabilities initially work in ZAZs conducting simpler, assembly-type tasks to learn basic time-management and teamwork skills, and are then assigned to specific departments (when more than one activities are offered).<sup>279</sup>

### ***Transitioning into the Open Labour Market***

Despite existing assumptions that the presence of different types of sheltered workshop-type organisations in Poland allows for a gradual progress towards open market inclusion, research shows that this is not the case: **transition from the sheltered to open labour market is unlikely**, and the two sectors operate de facto separately. This issue is compounded by government habits to see the sheltered sector as *the* appropriate form of employment for persons with disabilities, as noted by a leading national expert and by a specialist in open market inclusion interviewed for this study. This is despite the fact that both ZAZs and ZPChs have a nominal mandate to favour transition. ZAZs are involved in organising preparatory and supporting activities to help mainstream employers who are about to welcome former ZAZ employees,<sup>280</sup> and this actually makes them **more effective at guaranteeing transition than ZPChs**, which are seen by interviewed experts as especially ineffective at guaranteeing transition. Some experts argue that there is in fact a lack of appropriate policies to facilitate transition at all in Poland at the moment, that the government focuses too much on a pensions-based welfarist approach.<sup>281</sup> The interviewed expert from the University of Warsaw notes that direct employment in the open market through the minimum required quota appears to be relatively effective, at least for persons with less severe disabilities. This however may owe more to NGOs' work in job skills activation and promotion of employment, as **public institutions are seen as ineffective and lacking in motivation in pursuing these goals**, a view expressed by interviewed CSO representatives and open market inclusion specialists.

Even transition from a user status in a WTZ to an employee one in a ZAZ is often hard, because the network of WTZs has better country-wide coverage than that of ZAZs, which are absent in many parts of Poland.<sup>282</sup> Furthermore, the range of skills taught in WTZs is often of limited practical use for employment, and, according to interviewed stakeholder, some WTZ managers see transition to any form of employment as a purely theoretical goal.

Transition from a ZAZ to the open market happens rarely, as the umbrella organisation of ZAZs itself recognises: success rates of transition of a yearly basis vary widely, ranging from single-digit figures to ten or more percent, and often depends more on the location of a ZAZ (those based in cities have a higher transition rate).<sup>283</sup> The increasing dependence on market dynamics instead of public funding puts many ZAZs in a difficult condition, as their financial survival often depends on the work of the most skilled employees, who are also the ones that they

<sup>279</sup> Mika, T. 2022. *ZPZAZ POLAND*

<sup>280</sup> Mika, T. 2022. *ZPZAZ POLAND*

<sup>281</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. "Dilemmas of Sheltered Employment", p.130

<sup>282</sup> Mika, T. 2022. *ZPZAZ POLAND*.

<sup>283</sup> Mika, T. 2022. *ZPZAZ POLAND*.

are more likely to successfully help transition to the open market.<sup>284</sup> ZAZs however operate on the basis of *individualised* plans based on an assessment of the capabilities of persons with disabilities: for some, this involves a clear plan to transition to another employer, often through internships, but for others, it is limited to rehabilitation-only services.<sup>285</sup> As to CIS and KIS, open market inclusion specialists at the moment do not see them as playing a significant role, while interviewed CSO and work inclusion experts comment that the services they offer would make them a valuable, albeit secondary, resource to promote employment for persons with disabilities.

*Box 6. In focus: ZPCh in the administrative region of Swarzędz, West-Central Poland.<sup>286</sup>*

The organisation operated as a ZPCh, until the change in benefits structure, which made it more logical from an economic standpoint to start operating as a regular company. This has been a very common trajectory for many ZPChs during the last decade. The company had a manufacturing line of work, and an administration sector with activities such as data management. As part of this research, an interview was conducted with a former employee with moderate degree of disability, who worked for almost ten years as a data controller at the organisation in question before it turned into a mainstream company in the early 2020s (the former employee is currently working in the academic sector). The company employed primarily persons with light or moderate disabilities, which were mainly concentrated in the manufacturing line within the company; the administrative sector absorbed a much smaller share of persons with disabilities. The former employee reported that his work satisfaction at the organisation was initially very high, and later decreased considerably, though on average they were overall satisfied with the experience. The most satisfactory aspect of work there was the possibility to interact with persons from other departments and the opportunity given by the company learn to use complex software in daily work; however the company's managers were not supportive of the employee's afterwork academic activity and the opportunities for short-term scholarships for studies abroad it offered. Other employers with disabilities had conflicting feelings about their work there: Most of them were unhappy because of the lack of perspectives, but on the other hand, they were happy to have any job. From conversations with other employees with disabilities, the informant reports that many of them wanted to change job, but knew that the options in the open labour market would be limited, and had scarce hopes that their work conditions could improve at another company. The former employee interviewed in preparation of this study also reports that there were no career advancement opportunities at the company.

## C. UNCRPD & ILO Compliance

Poland signed the UN CRPD in 2007 and ratified it in 2012, following extensive debates that, however, did not address well enough the issue of compliance of sheltered workshop-type organisations according to the interviewed national expert.<sup>287</sup> One independent work inclusion expert comments that in Poland organisations themselves often still function on the basis of traditional, slow to change models. Reportedly, there is limited interest in ensuring compliance from the part of public authorities: the need to secure EU funding for projects may be a more effective incentive to align practices to international standards than government initiatives, an interviewed open market inclusion specialist notes.

<sup>284</sup> Mika, T. 2022. *ZPZAZ POLAND*.

<sup>285</sup> Mika, T. 2022. *ZPZAZ POLAND*.

<sup>286</sup> To protect the confidentiality of the organisation and guarantee freedom of expression to the former employee, the interview has been kept anonymous (Interview with work inclusion expert and former ZPCh employee).

<sup>287</sup> See UN Treaty Bodies Database.

Prof Szarfenberg from the University of Warsaw notes that compliance-wise, given Poland's high overall rate of economic inactivity for persons with disabilities, employment of *any form* might already be considered a success. However, as the Polish system is fragmented into multiple types of organisations, it is worth presenting common issues in terms of compliance, before moving to detail organisation-specific ones.

### **Common issues in compliance**

- As far as freedom to choose employment is concerned, **theoretically Polish law does not restrict persons with disabilities' choice**, and confirms their right to access the open market.<sup>288</sup>
- The Polish government strongly emphasise the need to **respect the “conscious choice” of persons with disabilities** to work in a sheltered or open labour market when applying the UN CRPD.<sup>289</sup> However, interviewed experts note that these statements are **not based on a systematic measurement of the preferences** of persons with disabilities, who are often not even aware of the existence of alternatives to sheltered employment. The existing research and the feedback from beneficiaries of services for transition to the open market seems in fact to suggest that persons with disabilities **have a clear preference for open market inclusion**.<sup>290</sup>
- In practice, **sheltered employment is often the only feasible form of employment**, especially for persons with more severe – particularly mental or psycho-social – disabilities, many of whom opt for sheltered employment because it provides less pressing working conditions.<sup>291</sup>
- The presence of multiple types of organisations ensures that persons with disabilities have more choice; however, employment in the specific *type* of sheltered workshop organisation **does not entirely depend on the free choice** of persons with disabilities: whereas anyone can apply to join a ZPCh, it is up to the public Disability Assessment Board to determine whether a person with disability can access a ZAZ or a WTZ – which in turn often depends on regional coverage.<sup>292</sup> Decisions about the right to access CIS and KIS services on the other hand is the responsibility of regional authorities.<sup>293</sup> The assessment of disability is still **conducted on the basis of a medical and biological, rather than functional, model of disability**.<sup>294</sup>
- As to the choice in terms of level of support that persons with disabilities receive, this depends on **individual organisations' capabilities**.
- While interviewees agree that **all types of sheltered workshops organisations in Poland are to an extent segregated**, ZAZs and WTZs have practical reasons to do so as they provide rehabilitation and basic life skills training specifically dedicated to and designed for persons with disabilities.

<sup>288</sup> United Nations 2018. *Committee on the Rights of Persons with Disabilities examines the initial report of Poland*.

<sup>289</sup> Government of Poland 2022a. *Draft General Comment on article 27*.

<sup>290</sup> Czerwiak, G. M., Trela, R. 2015 “The evaluation of sheltered workshops by employed personnel with disabilities.” *Studia Medyczne* 31(1), pp.18–25; also noted by national stakeholder during interview.

<sup>291</sup> Kobus-Ostrowska, D., Papakonstantinou, D. 2021. “Dilemmas of Sheltered Employment”

<sup>292</sup> Mika, T. 2022. *ZPAZ POLAND*.

<sup>293</sup> Government of Poland 2022. *Podmioty Zatrudnienia Socjalnego*.

<sup>294</sup> Mika, T. 2022. *ZPAZ POLAND*.

### **Observations about specific types of organisations**

Among interviewed stakeholders, **ZAZ are seen generally positively**. CSO experts argue that ZAZs provide the best employment option for persons with disabilities, as their working practices are the most aligned to international standards and the UN CRPD in particular, and that the real issue with ZAZs is their **low number and insufficient geographic coverage**, which should be improved. **ZAZs also have a better record in involving persons with disabilities**, as the use of the organisations' revenues is decided *in coordination with employees with disabilities*: revenues can be used to improve working conditions, buy equipment needed for independent living, sponsor additional training or education, or promote participation in social and cultural life.<sup>295</sup> ZAZs also provide **better working conditions**, as they offer more creative activities, more relaxed working hours and productivity goals, and often a range of social inclusion, cultural, and leisure activities, while still paying salaries. One national academic expert adds the caveat that ZAZ managers in some cases may act over-protectively of their employees, under the assumption that only a ZAZ can be a realistic employment option for persons with more severe disabilities.

**Some experts see WTZs as partially non-compliant**: their managers are, according to several interviewees, often unwilling to abandon a paternalist view of persons with disabilities as “in need of care”, and strongly resist the idea of involving persons with disabilities through the creation of individual plans for rehabilitation. This situation may however change: Currently, a set of **internationally compliant, person-centred, choice-based standards** for rehabilitation services are being piloted in 72 WTZs, after advocacy and pressure from CSO organisations managed to break the initially strong opposition from sector representatives.

**ZPChs are seen by interviewed CSO stakeholders and work inclusion experts from as problematic**, being **segregated, unlikely to change, oriented exclusively to profit, and often inherently exploitative**. There is no full consensus on this point, though, as other experts - including one who is a former ZPCh employee - are slightly less critical of the ZPCh system, noting that at least they provide some employment to persons with disabilities. In some cases, ZPChs do not really provide employment, only enlisting persons with disabilities as “ghost workers”, while - as noted by an interviewed independent expert - in few, extreme cases ZPChs have even been found to involve persons with disabilities in promoting fraudulent multilevel marketing schemes. Interviewees note that ZPChs are often large companies with **considerable lobbying capability**, which still grants them a relatively preferential treatment even after the 2013 reduction in subsidies and benefits. Several interviewees comment that ZPChs' lobbying power results in a suboptimal allocation of resources that could be used for additional wage support for open market operators. An interviewed independent expert adds that the umbrella organisation of ZPChs allegedly also runs “workers' organisations” and “trade unions” to support its lobbying activity and present their requests for more subsidies as bottom-up rather than top-down.

Open market integration experts also note that after subsidies for ZPChs were aligned to those in the open market, and after additional oversight was introduced following previous fraud scandals, many ZPChs abandoned

<sup>295</sup> Mika, T. 2022. *ZPZAZ POLAND*.

the *denomination* to be able to operate as regular companies, but **de facto still run their activities as traditional and segregated sheltered workshops**. This allegedly creates a parallel sector of “post-ZPChs”, which operate “off the grid” in an **opaque way**; “post-ZPChs” are **severely understudied** (there may in fact be more of them than actual ZPChs in Poland at the moment), **unsupervised, and, therefore, at severe risk of non-compliance**. This also means that part of the workforce in open market employment is still, in practice, working in traditional, uncompliant sheltered employment.

## D. Future Trends in Poland

In Feb 2021, the Polish government approved its “Strategy for People with Disabilities for 2021-2030”, following discussions with several CSOs.<sup>296</sup> The Strategy is expected to strengthen social protection and intervention for social inclusion for persons with disabilities, and identifies the employment rate of persons with disabilities as the key indicator of social inclusion, with the goal of increasing it from 28.8% in 2019 to 35% by 2025 and to 45% by 2030 through an upcoming National Program for Employment of People with Disabilities.<sup>297</sup> **It is not clear to what extent this will be achieved through sheltered employment**. The government currently does not pursue a strategy of phasing out of the sheltered employment sector, but does not clearly define the role it should play in the future. Some scepticism remains among CSO representatives as they think the government does not see disability rights as a high priority, and is especially unreceptive of intersectional issues.

In its comment to the UN Committee, the Polish government notes that it expects “the protected labour market to focus on vocational activity centres, perhaps in a slightly modified formula in relation to the present one”.<sup>298</sup> However, it does not specify the type of changes envisaged. Instead, it mentions “instruments” it is developing to favour employment in the open market, without clarifying if these include new measures on top of the ones already in place.<sup>299</sup> It also confirms that “wherever possible, work in the open labour market is desirable” but also that the government sees the need to retain the sheltered sector, “respecting the choice, willingness and ability of certain groups of persons with disabilities to work in the so-called protected labour market”.<sup>300</sup> However, this emphasis on choice needs to be assessed having in mind the above-mentioned lack of a proper *assessment* of persons with disabilities’ preferences, and may in fact be more of a way to justify unwillingness to adopt more decisive policies, as a leading national academic expert notes in his interview.

Two relatively new categories of organisation may become more relevant for work inclusion of persons with disabilities: social enterprises, and social cooperatives. The former is a new category recently introduced and it is not yet clear what role they will play in employment, sheltered or otherwise, or whether they will simply operate as ZPChs; the latter are already active in employing persons with disabilities, but only in a marginal role

<sup>296</sup> Government of Poland 2021. *The first Polish Strategy for Persons with Disabilities*. Available: <https://www.gov.pl/web/family/the-first-polish-strategy-for-persons-with-disabilities>

<sup>297</sup> TVP World 2021. *Gov’t adopts Strategy for People with Disabilities for 2021-2030*.

<sup>298</sup> Government of Poland 2022a. *Draft General Comment on article 27*.

<sup>299</sup> Government of Poland 2022a. *Draft General Comment on article 27*.

<sup>300</sup> Government of Poland 2022a. *Draft General Comment on article 27*.

by all metrics, as only 20% of their staff are persons with disabilities, for a total of 1.714 or 0.7% of the total number of employed persons with disabilities.<sup>301</sup>

A key issue for sheltered workshop-type organisations in Poland is that their relative importance for work inclusion is declining, and that as mentioned above, they are not seen as succeeding in guaranteeing transition to the open market. However, while existing statistics about the steep rise in employment in the open market suggest that this is a highly promising venue for work inclusion, this should not lead to draw hasty conclusions about the impending disappearance of the sheltered sector. The above-mentioned data about the skyrocketing of open market employment between 2004 and 2019 and the parallel decline in the absolute number of ZPChs (and their employees) should be read **in combination with the figure of the pace of this decline**: This is far slower than the rate of onboarding in open market companies, suggesting that **there remains a core** of persons with disabilities that are not in the condition to be able to transition to the open market, and **for which employment in sheltered workshop-type organisations is likely to remain relevant for the foreseeable future**, either in ZPChs or ZAZs, the latter of whom address more severe forms of disabilities, and whose number has in fact been slowly growing. All interviewed stakeholders agree that full inclusion, especially for persons with severe disabilities, is not a realistic goal.

## E. Conclusions

Sheltered employment in Poland is extremely fragmented due to the presence of different types of organisations with vastly divergent goals and practices. Generally speaking, sheltered employment is losing relevance as inclusion policies in the open market appear to be succeeding in providing most employment opportunities – though this trend often excludes persons with more severe disabilities. Grey areas and blind spots in statistics and public authorities’ supervision allow the development of an unregulated and unmonitored sub-sector of sheltered employment that requires urgent investigation. There are serious issues with compliance especially as far as ZPChs are concerned, though most organisations are at least partially non-compliant. However, CSO actors do not see the segregated nature of organisations such as ZAZs and WTZs as the most serious issue, identifying instead the exploitative nature of many ZPChs as a more pressing and urgent problem.

Table 7: Compliance of Protected Employment in Poland with UN CRPD, General Comment & ILO

Elements of Good Practice acc. to UNCRPD & ILO	Protected Employment in Poland: In Theory	Protected Employment in Poland: In Practice	Assessment
The state effectively ensures the right to freely chosen employment	In theory Polish law grants freedom to choose the type of employment. Significant benefits are offered to facilitate open market employment.	Public authorities attitudes remain ambiguous as sheltered employment is often seen as the natural type of employment for persons with disabilities.	Many “grey areas” remain due to the issue of measuring underground forms of sheltered employment in “post-ZPCh” types of organisations. This

<sup>301</sup> Szarfenberg, R., Szarfenberg, A., Krenz, R. (Forthcoming). *Country Fiche Template* [Poland], p. 24

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			may lead to an over-estimation of the number of persons with disability actually employed in the open market.
<b>Persons with disabilities are not segregated</b>	Polish law sets thresholds of minimum percentage of employed persons with disabilities in the different types of organisations, but does not limit the maximum, resulting in segregated employment.	Even ZPChs, which are nominally expected to have at least 50% of employees with disabilities, generally fill all their menial positions with persons with disabilities.	Less segregated types of organisations, such as CIS, KIS and, potentially, social cooperatives in the future, should be given a more prominent role in employment of persons with disabilities.
<b>Persons with disabilities do not lose the benefit of disability allowances when they start to work</b>	Pensions are in some cases reduced or lost if a person with disability enters employment, sheltered or otherwise. Three scenarios may apply: 1) If the wage does not exceed 70% of the average monthly salary (zł 4.309,40 as of Sept 2022) the disability pension is still paid in full; 2) If the wage exceeds 70% of the average monthly salary, but does not go above 130% of that amount (i.e., zł 8.003,20) pensions are reduced proportionately; 3) If the wage exceeds 130% of the average monthly salary, pensions are cut entirely. <sup>302</sup>	Some experts believe that the current difference between the disability pension and the minimum wage is not significant enough to encourage employment, and that the fear of losing the pension upon entering the job market creates a “benefit trap”, acting as a major disincentive for persons with disabilities to seek work.	The reduction in pensions reduces the incentive for persons with disabilities to work; moreover, reducing (or cutting) pensions in case of employment is a policy that fails to account for the additional living costs (in healthcare, transportation, care, ...) that persons with disabilities face due to their impairments.
<b>Persons with disabilities are paid no less than the minimum wage</b>	Persons with disabilities conducting occupational activities in WTZs are not paid; those in CIS receive a cash benefit called “integration benefit” (120% of basic unemployment benefit) during reintegration training; those working in ZAZ are guaranteed the minimum wage; and those in ZPChs should receive market value salaries.	ZAZ are often forced to employ persons with disabilities part-time in order to offer employment opportunities to as many people as possible, but this results in underpayment; ZPChs rarely pay more than the minimum wage. The open market generally offers better wages.	The state should subsidise wages in sheltered employment organisations that are seen by CSOs as non-exploitative.
<b>Persons with disabilities receive pay on an equal basis with employees without disabilities</b>			
<b>Safe working conditions are ensured in sheltered workshop settings</b>	All employers are expected to follow the same work safety regulations. ZAZs are expected to provide additional medical support for their employees.	Some ZPChs offer a considerable amount of medical support, but many operate as regular companies, and their profit-oriented	Better supervision is needed, especially to clarify the exact state and working conditions in “post-ZPCh” organisations that may fall

<sup>302</sup> Figures provided by Prof Ryszard Szarfenberg in email communication



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		nature can create an incentive to cut corners on workers' rights and safety.	considerably short of required standards.
<b>Persons with disabilities have opportunities of career advancement</b>	No restriction exists as to the level of seniority of positions for persons with disabilities.	Career progression is unlikely in the protected sector, where sometimes a paternalist approach towards persons with disabilities dominates.	The open labour market is better suited to offer opportunities for career advancement. <sup>303</sup>
<b>Persons with disabilities perform meaningful work</b>	ZPChs must be able to sustain themselves on the market. There is no restriction to the type of activities that they can conduct. ZAZs and WTZs should perform activities that have a rehabilitative component.	The range of activities available for persons with disabilities varies vastly depending on the organisations, although it tends to be low value-added (sometimes repetitive and alienating) contracted work.	Even organisations like ZAZs, which are supposed to receive public funding, are increasingly put under productivity requirements; this increases the incentive to engage in profitable, but alienating, repetitive and uncreative work.
<b>Transition from sheltered workshops to the open labour market is encouraged</b>	All sheltered workshop-type organisations are expected to foster skills or offer services that can, at least in theory, be used to access the open market.	Access to the open market from sheltered workshop-type organisations is extremely rare. Some managers of sheltered workshop-type organisations consider it a purely theoretical goal, while other organisations actively hinder transition.	Mechanisms granting preferential market position to organisations like ZPCh should be reconsidered as they constitute a major obstacle to transition to the open market. Likewise, organisational culture in some ZAZs and WTZs needs to change and become more encouraging of transitioning.
<b>Social dialogue is present between the sheltered workshop users (employees) and management</b>	When formally employed, persons with disabilities have equal labour rights, including collective bargaining.	ZAZs actively involve persons with disabilities in discussions; WTZs tend to operate with a more paternalistic, top-down approach; ZPChs are seen as highly exploitative and unsuitable for dialogue between social actors.	Although social dialogue is legally possible, it is not specifically encouraged except in one type of organisation.

Source: Author's elaboration based on literature review and qualitative interviews

<sup>303</sup> Interview with national stakeholder.

## F. Conducted Interviews

Name	Designation	Organisation	Date	Methodology
Prof Ryszard Szarfenberg	Professor, national social inclusion expert and author	University of Warsaw; B-WISE, ATD Fourth World, European Social Policy Network; EAPN Poland (President of the Executive Board)	29/8/2022	Online interview and email communication
Dr Sylwia Daniłowska	Vice president, Director of Research and Development Department, Director of Services Department	Fundacja Aktywizacja	30/9/2022	Online interview
Dr Krzysztof Kurowski	President	Polskie Forum Osób z Niepełnosprawnościami (Polish Forum for Persons with Disabilities), CSO	30/9/2022	Online interview
Magdalena Kocejko	Consultant on disability policy and disability rights; PhD candidate	Independent expert on work inclusion	30/9/2022	Online interview and email communication
(Anonymous interview)	Work inclusion expert; PhD candidate; former sheltered workshop employee	PhD candidate at a large technological university	Oct-Nov 2022	Email exchanges

# Case study on Sheltered Workshops: Spain

Author: Antonio B. García Sabater

## At a Glance

- In Spain the only form of protected employment are the so-called "Special Employment Centres" that must hire at least 70% of workers with disabilities in their workforce.
- The number of persons with disabilities in protected employment almost doubled from 2009 to 2021, from 56,332 to 98,551.
- Workers with disabilities in protected employment have employee status and receive at least the minimum wage.
- Protected employment targets persons with all types and degrees of disability. Special Employment Centres decide whom to hire.
- Special Employment Centres are widely supported by the state with subsidies considerably higher than those regular employment and supported employment receive.
- In 2020 there were a total of 2,220 Special Employment Centres, of which two thirds were businesses and one third were social entrepreneurship initiatives.

## A. Introduction

In Spain, the activity rate of persons with disabilities (34.3%), is almost 40 percentage points lower than that of the general population (76.1%). As stated by the Instituto Nacional de Estadística's data,<sup>304</sup> labour market participation is greatly determined by the type and degree of disability:

- In 2020, persons with a degree of disability of 75% or more had an activity rate of only 12% compared to 53.1% of those with a degree of disability between a 33% and 44%.
- The type of disability also affects labour market participation: compared to the activity rate of persons with hearing disabilities at 59.9%, the activity rates of persons with intellectual disability or mental health conditions are almost half at 28.1% and 26.6% respectively.

In 2020, in Spain there were 1,933,400 working age (16-65y.o.) persons with disabilities, which represented a total of 6.3% of the population of the same age.<sup>305</sup> Persons with disabilities amount, on average, to 2% of the workforce of the private sector; companies with more than 50 workers have an average of 2.2% and companies with less than 50 workers have a percentage of 1.8%.<sup>306</sup> Thus, the population with disabilities is

<sup>304</sup> Instituto Nacional de Estadística (INE). 2020. *The Employment of Persons with Disabilities (EPD) Year 2020*. Available: [https://www.ine.es/prensa/epd\\_2020.pdf](https://www.ine.es/prensa/epd_2020.pdf)

<sup>305</sup> Fundación ONCE. [undated]. *Labour Integration and Labour Market Trends*. Available: <https://www.odismet.es/banco-de-datos/1integracion-laboral-y-tendencias-del-mercado-de-trabajo>

<sup>306</sup> Instituto Nacional de Estadística (INE). 2020. *Labour market. Employment of Persons with disabilities*. Available: <https://ine.es/jaxi/Datos.htm?tpx=49179>

underrepresented in the ordinary labor market. According to statistics from the same year, only 309,000 persons with disabilities were working in the open labour market and 92,326 at Special Employment Centres<sup>307</sup> - hereinafter SECs - the only form of protected employment in Spain. According to an interviewed stakeholder from ONCE Foundation, these figures represent a failure of labour market integration for persons with disabilities.

Historically, SECs were created in the 1980s to employ those persons with disabilities who could not work, either permanently or temporarily, in the open market. In regular employment, reasonable accommodations understood as simple adaptations or accessibility does not promote the employment of all persons with disabilities, especially those with severe disabilities. Most employees in SECs had intellectual disabilities, mental health conditions or severe physical or sensory disabilities (this will hereinafter be referred to as persons with severe disabilities, as per Spanish legislation). However, due to lack of legislation regulating the type of disabilities to be included in protected employment, alongside the economic interest of the company, the composition of SECs has been changing constantly since their creation, with the numbers of persons with severe disabilities working within SECs steadily decreasing.

In the beginning, most SECs were made up of non-profit entities, but by the end of the 1990s many commercial entities had begun to create protected employment companies. In the early 2000s the RD 364/2005, of April 8<sup>th</sup>, of regulations on alternative measures to provide a reserved quota in favor of workers with disabilities coupled with the severe financial recession which began in 2007-2008 changed the landscape. The creation of SECs by commercial entities doing business in protected employment accelerated, while the non-profit sector's share dropped due to bankruptcy of social entities.

In 2021, a total of 98,551 workers with disabilities were registered in SECs, 40,280<sup>308</sup> were considered persons with severe disabilities, whilst the remaining 58,271 employees (almost 60% of the total), had a mild disability, which does not give rise to particular difficulties in accessing the open labour market.

## B. Governance and characteristics of Protected Employment

Despite the RD 2273/1985, of December 4<sup>th</sup>, approving the Regulations of SECs, and establishing that these centres should fulfil a social purpose, providing both personal and social adjustments to their employees, as a means of achieving social integration, this is only in principle and not mandatory. Furthermore, the law requires them to have structures and organisational systems in place similar to regular companies, and to participate regularly in market operations. SECs have to offer productive work to their workers, who must be registered with social security and have the right to collect at least the minimum wage.

The workforce of SECs must be composed of at least 70% of workers with a disability certificate. As aforementioned, in practice persons with mild disabilities constitute the majority of this 70% as there are no specifications of what type of disability persons need to have in order to access SECs. Employees are not assigned by Public Administration, rather they are freely hired by SECs employers, based on SECs' business needs and preferences.

SECs can take on almost any legal form, namely public or private, for-profit or non-profit, and can be included within larger social or commercial structures. It is becoming increasingly common for business groups to create companies expressly to qualify them as SECs, in order to receive both market profits as well as government

<sup>307</sup> According to data from the Public Service of State Employment (SEPE).

<sup>308</sup> SEPE data provided to the authors.

subsidies directed at SECs. In order to operate as a SEC, organisations must be registered as such with their respective Autonomous Community: this allows them to access public funding, which is distributed on a regional basis since labour policies are the responsibility of Autonomous Communities.

SECs can be managed by persons with disabilities directly. Some SECs are non-profit organisations that provide comprehensive care integrated with the social and cultural life of local communities; these organisations are often promoted by the families of persons with disabilities. In some cases, these are jointly owned and run on the basis of democratic principles.

### ***Support and Obligations for Protected Employment***

SECs are entitled to subsidies and most significantly exemption from social security contributions and salary subsidies for all its workers with disabilities. The subsidies are allocated by the Public Service for State Employment (Servicio Público de Empleo Estatal, henceforth: SEPE), and distributed throughout the Autonomous communities. In 2021 this amounted to a total of € 461,168,853.22 for the labor integration of persons with disabilities of which 97.99% was allocated to protected employment, that is the SECs, and only 2.01% to promote regular employment and supported employment.<sup>309</sup>

Annual government subsidies offered in Spain for protected employment are much higher than those in the open labour market. In SECs there are minimum differences in subsidies for the employment of persons with mild disabilities or those with severe disabilities. Additionally, the amount of aid received by social interest entities versus companies with lucrative interest is almost identical.

- The exemption of social security contributions for the SEC is the same for all their workers with disabilities. In contrast, in the open labour market limited discounts are allocated based on whether the person to be hired has a severe disability or not, gender and age.
- Annually, SECs receive an amount of funding that covers around 50% of the minimum wage of all the persons with disabilities that they employ. SEC thus have have a larger percentage of their expenses covered by the state compared to open market employers.

The growth of the SECs workforce has generated an increase in the amount to be subsidised. Budget allocation in many Autonomous Communities, however, has not kept pace. As a result, many SECs do not receive all the aid to which they are entitled.

Despite the fact that in regular employment, the State allocates aid based on the work support needs, in protected employment, the Spanish system does not distinguish between different support needs. This skews employment in favour of persons with mild disabilities who, due to their reduced need for support on an ongoing basis, have fewer reasons to be in protected employment than persons with severe disabilities.

The unwillingness of ordinary companies to hire people with disabilities and the legal regulation and distribution of aid have generated a fourfold response within the labour market:

- Protected employment is being promoted over open market employment;
- The number of for-profit SECs is increasing as opposed to the number of not-for-profit ones;
- The workforce in protected employment in Spain has almost doubled in the last thirteen years;

<sup>309</sup> SEPE data provided to the authors.

- A growing number of persons with mild disabilities are working in SECs.

In Spain, commercial interest has become the focus rather than the right to work for persons with disabilities. Nevertheless, many social entities understand the need to promote a quality non-profit model, integrated in the community and focused on the needs of the person. They can be successfully managed and led by persons with disabilities and their families as Carles Campuzano comments.

#### *SECs and labor enclaves as a channel for future increased inclusion*

In 2004, RD 290/2004 of February 20, which regulates Labour Enclaves as a measure to promote the employment of people with disabilities developed a special type of contract for SECs, which allows the SEC to work for a "collaborating company", carrying out its own activities in their facilities and with their machinery. This is not generally permitted in Spain as it would be considered illegal assignment of workers, but is permitted for SECs to promote the growth of employment of persons with severe disabilities.

The SEC undertakes to make a group of at least three workers with disabilities available to the collaborating company, to work with their machinery. The group must be composed of at least 60% of workers with severe disabilities, and also promotes the inclusion of a high percentage of women with disabilities.

The contracts have a minimum duration of three months and a maximum duration of three years. In order to be able to extend them for a further three years, one or two workers with severe disabilities, depending on the number of workers in the group, will have to transition to regular employment. This contract promotes an intermediate situation between protected and open employment, promoting inclusion in general production processes, recognition of skills and social inclusion with the workers of the collaborating company, and transition of workers with severe disabilities. However, if none of the employees manages to transit to open labour market, is not possible to continue the enclave's work, and all employees have to return to positions within the SEC.

#### ***Rights of persons with disabilities in protected employment***

The employment status of all workers with disabilities working in SECs is regulated by the RD 1368/1985 of July 17. This legal instrument is seen by some experts as problematic in several ways: first, because it places the burden of a plethora of unnecessary regulations on SECs; secondly, because article 13 envisages the possibility for employers to cut employees' salaries by 25% if they are not fully productive. According to labour law and work inclusion expert Ricardo Legarreta, this provision creates the conditions for business abuse and undermines the right to a sufficient salary. It is important to remark that this provision is rarely implemented in practice, but its very existence undermines compliance with international regulations.

Aside from the abovementioned, workers in protected employment have the same labour rights, health and safety protection and trade union rights as other workers. These rights are monitored by the labour inspectorate in the same way they are monitored in the open labour market.

One interviewed stakeholder from the National Organization of Spanish Blind People (Organización Nacional de Ciegos Españoles, henceforth: ONCE) comments that people's freedom must be respected, as they cannot be forced to transition to or to choose an ordinary job if the person prefers a protected one. To promote such a transition, she proposes that SECs transition ratios be determined annually and that aid is received based on the achievement of targets.

*Box 7. In focus: Fundació Espurna*

Espurna Foundation, located in the Valencian Community, has a SEC that employs persons with intellectual disabilities. The foundation also provides occupational social services, support in sheltered housing, as well as leisure, cultural and sports services, among others. The SEC employs more than one hundred workers: 90% of its staff has a disability, and, of these, more than 70% have an intellectual disability.

The foundation ensures that the work carried out by its workers is meaningful work. It also works within the facilities of other companies through Labour Enclave contracts. The SEC also provides personal and social adjustment services and supports some of its workers to transition to the open labour market. However, according to Ana Puig, a worker at the Foundation, this number is significantly low because companies do not want to hire them.

Six years ago, Espurna opened a restaurant serving up to 200 diners. Various kinds of events, such as weddings and social gatherings, are held there. The Boga Restaurant is open every day of the year and is also a vocational training centre for kitchen assistants and floor and wait staff.

Ana Puig comments that individualised personal and social adjustments are promoted and jobs are assigned according to the needs of the companies and the preferences of the workers. She believes that non-profit SECs like Espurna, which focus on the person's capabilities, are inclusive and open, because *"we are open to society to include persons anywhere."*

## C. UNCRPD & ILO Compliance

The rights of persons with disabilities enshrined in the UNCRPD and other international principles are formally guaranteed in Spanish law, but require some adjustments.

- **The SECs do not always carry out segregated work:** on average, 70% of SECs' workforce is persons with disabilities, though there are some organisations where this percentage reaches 90%, and activities conducted at or under the aegis of SECs can be in services, restaurants, or work enclaves with significant contact with persons without disabilities – as clients or as colleagues.
- **SECs are not organised around certain specific activities that persons with disabilities are considered to be able to carry out: their activities and workplaces are generally similar to those of companies in the open labour market.** In Spain, SECs are dedicated to very diverse activities, from consultancy to distributing gas cylinders, although their most common sectors are the manufacturing industry and cleaning and gardening services. There is no obligation for SECs to carry out their work in separate facilities. The sector is in continuous evolution and in order to generate more visibility of the capabilities of persons with disabilities, jobs placements are increasing within the hospitality and catering industry.

- **In theory, persons with disabilities have the option to choose their employment. However, SECs and occupational social services are, in the majority of cases, the only opportunity available to persons with severe disabilities.** Despite their limitations, SECs are a reaction to a market failure. The employment system in the open labour market does not fully guarantee the right to work of persons with disabilities, and protected employment contribute to its solution. Despite their heavier “weight” in work inclusion policies in terms of absolute number of people they employ, in *relative* terms the open labour market does not absorb as much work demand as it should, as the figures provided in the introductory section illustrate. This is because mainstream companies often refuse to provide reasonable accommodations, and discriminate against persons with disabilities in general, and even more so against those with severe disabilities. In fact, many SECs themselves do not hire persons with intellectual disabilities or mental health conditions.
- **Persons with disabilities are entitled to remuneration of at least the minimum wage, but sometimes the same wage is not paid for work of equal value.** Aside from non-lucrative SECs, other companies can benefit from a specific collective agreement known as “Care of persons with disabilities”. Some business groups which have created a SEC in their commercial structures pay lower wages to workers in protected employment than to workers in their regular companies. This is due to the existence of a variety of collective agreements from which companies can cherry pick the one which best meet their financial interests. Spanish Courts accept this difference in treatment based on the RD 1368/1985 of July 17, which regulates the special employment relationship of Persons with disabilities who work in SECs. This line of jurisprudence may not meet the criteria of equal treatment.
- **Employers should make personal and social adjustments for their employees with disabilities.** In practice, employers do not always do so, since workers with low physical or sensory disabilities generally do not require these tasks of intervention, or guidance. The provision of personal and social adjustments is one of the pillars that motivates the existence of protected employment and should help overcome barriers, obstacles or difficulties in the process of work inclusion, as well as in the permanence and progression in work, and even promote their social, cultural and sports inclusion. Specialised personnel in the SECs must enhance the capacities of persons and their willingness to move to the open market, in addition to facilitating access to a social, cultural and sports life, more open and included in the local community. But that adjustments are only required for those with severe disabilities.
- **Failure to promote transition to the open labour market.** SECs are meant to have, as their primary objective, the transition of the greatest number of persons with disabilities into the open labour market. However, transitional obligation has never been determined by law. SECs are not obligated to transition, which thus merely remains unspecified and unenforceable as a principle. In Spain, from 1985 to 2013, the LISMI Law<sup>310</sup> established protected employment as subsidiary to regular employment. RDL 1/2013, November 29th, the General Law on the rights of persons with disabilities and their social inclusion, later deleted the principle of subsidiarity, whereby SECs were supposed to play a residual role in work inclusion secondary to open labour market inclusion. As Professor Legarreta states in his interview, this decision needs to be reverted to ensure the Spanish system is compliant. In Spain no data on transitions exists, but is estimated to be very low.
- **Employment enterprises run by persons with disabilities, including those jointly owned and democratically controlled, cannot be considered segregated employment if they provide fair and favorable working conditions on an equal basis with others.** The non-profit entity model, with comprehensive care and that participates in the life of the community, promoted by the families of persons

<sup>310</sup> Law 13/1982, of April 7, on the social integration of the disabled.



with disabilities, in which there are means of participation and is sensitive to the reality of the needs of support, is a model in accordance with the convention and is one of the models that exists in Spain.

## D. Future trends in Spain

The current model of protected employment requires modernization and clarity of objectives. Regular employers are biased and/or unprepared to meet the needs of employees with severe disabilities, but this is also the case in many entrepreneurial SECs, which have been accused of having a similar degree of prejudice and/or unpreparedness to meet the needs of employees with severe disabilities as some open labour market employers. This has created a recognised need to reform the functioning of the SECs' sector and reorganise aid for protected and open labour market. A White Paper is currently under development which aims to initiate a general reflection on the employment of persons with disabilities, in order to lay the ground for the following legislative amendments:

- **Promotion of social responsibility and positive motivation of employers in the open labor market:** work in the open market should be promoted, increasing or assimilating the aid of protected and regular employment. This objective is especially relevant for the group of persons with mild disabilities who do not require personal and social adjustments.
- **Modify the composition of the workforce.** Maintaining the requirement for SECs to employ at least 70% persons with disabilities, but with at least 60% having severe disabilities, while also promoting the inclusion of a high percentage of women with disabilities.
- **Strengthen the relations of protected employment companies with social services.** Promoting the employability of groups with higher rates of inactivity, generating work experience that brings them closer to the open labour market and supported employment.
- **Encourage SECs to get involved in supported employment.** Using the expertise and resources of SECs, their role in a new kind of work inclusion system could be to serve primarily as *resource centres* for supported employment.

## E. Conclusions

In Spain, SECs are the only type of protected employment. Among the key requirements, in order to be qualified as a special centre, SECs have to be registered with the Autonomous Communities and employ a minimum of 70% of persons with disabilities in their workforce. The SECs compete in the open market, providing all kinds of services and can be classified as any type of company, either with social or commercial interest. Any person with disabilities can work in protected employment, regardless of their difficulties in accessing employment. The transition to the open labour market is only a general principle, there are no obligations, nor sufficient incentives, to drive transition. State aid focuses on the support needs of final recipients and not on the type of employer. The transition to the open labour market of those who do not require personal and social adjustments due to the lack of need for special employment should be promoted in the first place, in order to accommodate more persons with severe disabilities in the labour market, thus reducing their high unemployment rates and participation in occupational services. Despite its shortcomings, sheltered employment provides a form, albeit incomplete, of inclusion in the world of work.

Table 8: Compliance of Sheltered Workshops in Spain with UNCRPD General Comment &amp; ILO

Elements of good practice in UNCRPD and ILO	Sheltered employment in ES: in theory	Sheltered employment in ES: in practice	Assessment
<b>The State effectively guarantees the right to freely chosen employment</b>	In principle, persons with disabilities can choose their employment.	Protected employment is, in many cases, the only option available especially for persons with intellectual disabilities and mental health conditions.	Access to protected employment should be limited for those who have mild disabilities.
<b>Persons with disabilities are not segregated</b>	In SEC at least 70% of the workforce must have a disability certificate.	Persons with disabilities work in contact with society, and carry out all kinds of work and services; they are not restricted to work in separate facilities.	There is no perception that it is segregated employment, but only highly subsidised.
<b>Persons with disabilities do not lose disability benefits when they start working</b>	Persons with disabilities with non-contributory benefits and/or places in social services lose these rights when they begin work in protected employment.	SECs are a form of employment, and the transition to employment entails losing the rights to social services. This creates fear among persons with disabilities of losing their place in occupational social services, where waiting lists are often long.	It would be necessary to ensure the right to return to the occupational social services work scheme.
<b>Persons with disabilities are paid no less than the minimum wage</b>	Persons with disabilities are entitled to remuneration of at least the minimum wage.	Persons with disabilities in protected employment rarely earn less than the minimum wage. However, in many cases they earn less than their colleagues due to their special employment status.	Persons with disabilities statistically tend to receive lower wages.
<b>Persons with disabilities are paid on an equal basis with employees without disabilities</b>	Salaries can be paid based on a special collective agreement of "care for persons with disabilities".		
<b>Safe working conditions are ensured in the Special Employment Centres.</b>	Legal obligations and aid make it possible to guarantee working conditions. Collective agreements determine fewer annual working hours than for the general workforce.	Protected employers conduct their activities according to the same requirements as regular employers.	Health and safety is guaranteed as in regular employment.
<b>Persons with disabilities have opportunities for career advancement</b>	There SECs behave like regular companies, there are no obligations to promote.	Most protected employment jobs have low added value and few possibilities for promotion.	There is usually little professional promotion.
<b>Persons with disabilities do meaningful work</b>	There is no difference between the sheltered and protected labour market in Spain.	Employees of SECs are generally satisfied with their work and generally feel it is meaningful.	Work should not only be a source of income, but also of collaboration with others and of social inclusion and participation.

<p><b>The transition from sheltered workshops to the open labor market is encouraged</b></p>	<p>The transition exists only in principle, it has no concrete obligations.</p>	<p>For-profit entities, having no obligations or incentives to generate transitions, do not promote these, instead they sometimes even penalise them, so as not to lose their "assets". Social entities on the other hand see transition as a success. The transition of persons with severe disabilities is very complicated.</p>	<p>The existing relationship between supported employment and the SECs should be encouraged. Transitional obligations should be established differentiating between the different degrees of disability.</p>
<p><b>Social dialogue is present between the users of the protected workshop (employees) and management</b></p>	<p>Employees in the protected labour market have the same labour rights, including collective bargaining, as those in the open market.</p>	<p>Trade unions, in general, are not interested in protected employment. Social dialogue between workers and management takes place in social entities promoted by families.</p>	<p>Trade unions and entities should foster a constructive dialogue focused on person's interests and support needs.</p>

Source: Author's elaboration based on literature review and qualitative interviews

## F. Conducted Interviews

Name	Designation	Organisation	Date	Methodology
Ana Puig	Worker	Espurna Foundation. (SEC).	12/09/2022	Face-to-face interview
Maria Hilla	Head of Employment Promotion Section	Generalitat Valenciana. (Government)	15/09/2022	Face-to-face interview
Carles Campuzano	Director	Dincat (Umbrella entity of social services and employment)	03/10/2022	Online Interview
Ricardo Legarreta	Professor specialist in Labor Law and employment for persons with disabilities.	University of Barcelona	21/10/2022	Face-to-face interview
Sabina Lobato	Director of Training and Employment	Director of Inserta Empleo/ ONCE Foundation	31/10/2022	Online Interview

## Annex II

### List of EU-Level Stakeholders interviewed<sup>311</sup>

Entity	Designation	Name(s)	Date of Interview
DG Employment, Social Affairs & Inclusion - Unit for Disability & Inclusion	Senior Expert	Inmaculada Placencia Porrero	19.10.22
	Policy Specialist	Monika Chaba	
European Parliament – Committee on Employment and Social Affairs	Vice-Chair	Katrin Langensiepen	1.9.22
Access to Work Europe	European Affairs	Katharina Bast	19.8.22
European Disability Forum (EDF)	Responsible for EU Policies	Álvaro Couceiro	5.10.22
European Platform for Rehabilitation (EPR)	Secretary General	Laura Jones	29.8.22
Inclusive Labour Market Alliance (ILMA)	Member		
European Union of Supported Employment (EUSE)	President	Luc Henau	29.9.22
	Treasurer	Robert Elston	

<sup>311</sup> This list does not include potential interviewees to whom the consultant team reached out but who did not accept to be interviewed.

List of Validation Workshop participants <sup>312</sup>

Entity	Designation	Name(s)
EASPD Forum on Employment	Co-Chair	Fabrizio De Angelis
EASPD Forum on Employment / Association School Viva Onlus (ASVO, Italy)	Co-Chair / Medical Doctor	Fabrizio Fea
EASPD Forum on Employment / Access to Work	Co-Chair / European Affairs	Katharina Bast
ADV Romania	Communication Expert	Ingrid Enache
BBRZ Group (Austria)	International Activities	Ingrid Pammer
European Platform for Rehabilitation (EPR)	Secretary General	Laura Jones
Inclusive Labour Market Alliance (ILMA)	Member	
European Union of Supported Employment (EUSE)	Vice-President	Karen Warson
Finnish Association on Intellectual and Developmental Disabilities (FIADD, Finland)	Employment Expert	Simo Klem
Fundació Espurna (Spain)	Board of Trustees Secretary	Dr Antonio B Garcia
Fundación ONCE (Spain)	Director of Training and Employment	Sabina Lobato

<sup>312</sup> The validation workshop was held on November 18, 2022.

European Association of Service providers  
for Persons with Disabilities

Galician Confederation of People with Disabilities (COGAMI, Spain)	Secretary General	Marta Gonzalez
MARGARITA v.t.c. (Greece)	Project Manager	Dimitris Turlidas
National Alliance for Social Responsibility (NASO, Bulgaria)	Information, Communications and Media Expert	Liana Petrova
National Confederation of Special Employment Centres (CONACEE, Spain)	Representative	
Plena inclusión España	Technical	Silvia Munoz
PLOES (Greece)	Representative	
Shekulo Tov Group (Israel)	CEO	Ophir Peleg
Theotokos Foundation (Cyprus)	Chairperson	Kaiti Katsouda
Umbrella Organisation for Vocational Integration (Dabei, Austria)	Labour Market and Social Policy Officer	Hannah Diry

**EASPD is the European Association of Service providers for Persons with Disabilities. We are a European not-for-profit organisation representing over 20,000 social services and disability organisations across Europe. The main objective of EASPD is to promote equal opportunities for people with disabilities through effective and high-quality service systems.**