

# EASPD's position on the draft general comment on Article 27 of the *United Nations Convention on the Rights of Persons with Disabilities*

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

Submission in response to the draft general comment

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## 1. Introduction

EASPD is the **European Association of Service providers for Persons with Disabilities**. EASPD aims at promoting equal opportunities for persons with disabilities through effective and high-quality service systems across Europe, in line with the principles of the UN Convention on the Rights of Persons with Disabilities.

EASPD is a **European not-for-profit organisation** representing **over 20,000 service providers in 34 European countries**. Over a **third of our members provide employment-related services** to persons with disabilities across the continent. This includes a **full spectrum of services**, ranging from Supported Employment and Individual Placement and Support to Work Integration Social Enterprises, Inclusive Companies, Vocational Education and Training services and Sheltered Workshops. Given the broad diversity of situations and legal contexts across the European continent, it is important to also recognise the **diverse ways and models in which each type of service is implemented**.

EASPD is **member of the European Disability Forum (EDF)**. We participate to the **Conference of State Parties** to the *United Nations Convention on the Rights of Persons with Disabilities* (hereinafter UN CRPD). EASPD is also member of the **European Commission's High-Level Group on Disability**. Last but not least, EASPD is a founding member of the "**Inclusive Labour Market Alliance**" (ILMA).

It is on the basis of the **contribution of our sector** towards the implementation of the UN Convention on the Rights of Persons with disabilities that **EASPD provides our comments and suggested amendments** to the Draft General Comment on article 27 (hereinafter DGC27) proposed by the UN Committee on the Rights of Persons with Disabilities.



## 2. EASPD's Overarching Position on the Draft General Comment on Article 27 UN CRPD

EASPD **welcomes the Draft General Comment on article 27 (DGC27)** as providing considerable insight and clear recommendations towards the implementation of the right to work and employment for persons with disabilities.

In many ways, it re-enforces EASPD's belief that **every individual has the right to decent work in an open and inclusive labour market**. EASPD advocates for an **inclusive labour environment**. To put an end to the situation of exclusion from the labour market of persons with disabilities and to tackle their persistent situation of unemployment, **immediate action must be undertaken, much of which is suggested in DGC27**. This is even more important given the expected impact of the COVID-19 pandemic on the employment of persons with disabilities, as well as the impact of digitalisation on jobs and labour markets. In our view, support measures are key to unlock job potential and shift the focus from the medical approach to the disability to the skills and competences. This particularly requires far more additional investment (political and financial) into supported employment models and similar systems. The unemployment rates of persons with disabilities remains significantly higher than for persons without disabilities. Many persons with disabilities of working age are also inactive, meaning that they do not seek employment at all. It is also true that amongst the persons with disabilities who are job holders, too many are underemployed, underpaid and/or hired with the systematic use of temporary contracts and reportedly have poor career perspectives.

The **right to a decent job** is another objective equally pursued by EASPD, which we define as providing for equal remuneration for work of equal value, safe and health working conditions, labour rights, training, opportunities for career advancement and reasonable accommodation based on Article 27 of the UN CRPD. **We welcome that the DGC27 goes very much among the same lines as our vision.**

In particular, **we agree to the significant majority of the proposed DGC27**; namely the parts related to:

- I. Introduction (except point 3).
- II. Human rights model of disability (in full)
- III. Normative content
  - a. except point 14, 16, 17, 18, 31
  - b. In full to the rest



- IV. States Parties Obligations
  - a. General Obligations (in full)
  - b. Core Obligations
    - i. except point 72 & 73
    - ii. In full to the rest
- V. Relationship with other specific articles of the Convention (in full)
- VI. Implementation at the national level
  - a. Except point 97.g.
  - b. In full to the rest

For the points in which we disagree, **EASPD proposes concrete suggested amendments**. These suggested amendments relate primarily to the topic of sheltered workshops, which – in **the proposed DGC- insufficiently considers the nuance and diversity of sheltered workshop models** in Europe today. In doing so, we do not seek to defend or protect outdated models of Sheltered Workshops – too many of which continue to exist. EASPD acknowledges that there are still many Sheltered Workshop models in the EU and beyond that operate in conditions that are not in line with the UN CRPD and taking little to no steps in doing so; for instance, not providing real wages and working conditions, not providing transitions to the open labour market, not ensuring career paths, not ensuring inclusive workplaces, etc. These Sheltered Workshops should indeed be transitioned away.

Instead EASPD seeks to encourage the UN Committee **to consider the advances, contribution and diversity of the Sheltered Workshops models** across Europe today who contribute to creating decent jobs for persons with disabilities on the open and inclusive labour market in line with the UN Committee on the Rights of Persons with Disabilities. In fact, alongside other important measures promoted by the DGC, Sheltered Workshops can be an **important instrument** in the toolbox required to **create real, open and inclusive labour market opportunities for all** persons with disabilities. This is particularly the case for ensuring that **persons with more significant support needs are not left behind** and are not excluded from open and inclusive labour market opportunities.

By being so **categorical in its assessment** of Sheltered Workshops – yet rather **vague in its definition** - EASPD is concerned that the **current phrasing will reduce access to decent jobs** and an inclusive labour market rather than deliver on the ambitions it seeks to do: 1) implementing the right to work and employment for persons with disabilities and 2) turning the impact this has on the quality of life of those concerned. We also re-affirm our belief that **every individual has the right to decent work in an open and inclusive labour market. We simply believe that Sheltered Workshops – if built under the principles of the UN CRPD – can be a considerable tool in achieving such a right. Sheltered Workshops that do not adhere to or take steps towards these principles should be transformed or phased out.**



### 3. EASPD's Suggested Amendments

EASPD suggests to the UN Committee on the Rights of Persons with Disabilities to consider the following amendments to the draft General Comment on Article 27 (DGC27) as proposed. **In Red:** additions. ~~In Red:~~ removals.

#### A. Suggested Amendment to 3. of the DGC27:

*“Ableism is the foundation of social prejudice and leads to inequality and discrimination against persons with disabilities, as it informs legislation, policies and practices **that leads to exclusion from the open labour market such as segregated employment, for example ‘sheltered workshops’**, or can result in involuntary participation in the informal economy.”*

#### **EASPD motivation for the amendment:**

Sheltered Workshops are a consequence of ableism by the open labour market; but it would be very inaccurate to describe all sheltered workshops of having the same sense of ableism when they very often exist to precisely provide persons with disabilities with opportunities to work. Furthermore, today many sheltered workshops offer concrete and effective transitions to the open labour market through a broad diversity of services. This must be recognised and supported.

In the last years sheltered employment has evolved into more modern and inclusive structures, which provide conditions increasingly in line with the principles established by the UN CRPD as they offer decent employment conditions to persons with disabilities (in line with our above definition of decent jobs) and include transitions and opportunities on the open labour market. Thus it is inaccurate to paint all sheltered workshops models as segregating by nature. Sheltered workshops is no longer just a single model. What matters more importantly here is to tackle ableism within existing spheres of the open labour market and segregation.

#### B. Suggested Amendment to 14. Of the DGC27:

*“Despite some progress, **the lack of employment opportunities, the exclusionary dynamics of the labour market**, access to the open labour market and segregation continue to be greatest challenges for persons with disabilities. Denial of reasonable accommodation, inaccessible workplaces and harassment **and unequal access to education and training** pose further obstacles to employment in an open labour market and work environment leading **sometimes** to a false choice of employment in a closed workplace on the basis of disability. The notion of freely chosen employment is also contained in ILO Convention No. 122 concerning Employment Policy (1964) and speaks of “full, productive and freely chosen employment”,*



*linking the obligation of States parties to create the conditions for full employment with the obligation to ensure the absence of forced labour.”*

**EASPD motivation for the amendment:**

EASPD would propose adding the lack of employment opportunities and the exclusionary dynamics of the labour market as also important challenges for persons with disabilities. This is also the case due to the impact of the 2008 economic crisis on employment and inequality, especially in some European countries. The COVID-19 pandemic also risks bringing similar challenges. Other issues such as digitalisation also risks affecting the transformation and polarisation of jobs and the labour market as a whole.

EASPD believes the proposed draft of this article to be inaccurate given that it depends very much on the national, regional or even local context. Whilst we recognise that the proposed text is true in some cases, this is not always the case. In Europe, there are many situations where persons with disabilities can choose and have access to a range of different employment types; thus not always leading to a false choice between closed settings and nothing. Consequently, for the sake of accuracy, we recommend some nuance to the proposed article.

Challenges around the existing barriers to education for people with disabilities are also a significant contributor to concerns around the false choice of employment.

**C. Suggested Amendment to 16. Of the DGC27:**

*“sheltered workshops remain in existence in many places as **supposedly** a way of addressing unemployment challenges for persons with disabilities, **despite very mixed results**. The Committee is concerned that they **too often** reflect the medical approach to disability, and therefore are incompatible with the Convention.”*

**EASPD motivation for the amendment:**

Whilst we accept that sheltered workshops – alone – have not fully managed to address all unemployment challenges for persons with disabilities; many have been successful in offering decent jobs and transitions to the open labour market. This process is also made harder by the challenges addressed above, for instance, the “denial of reasonable accommodation, inaccessible workplaces and harassment” which continue to not be tackled. It is essential to not blame lack of progress of open labour market solely on sheltered workshops.

As referred to above, many sheltered workshops reflect the human rights approach to disability around choice, control, equality, non-discrimination, and others. It is important to acknowledge the developments made by many sheltered workshops in the past years and the ambitions they set out.



**D. Suggested Amendment to 17. of the DGC27:**

*“The Committee observes that sheltered workshops include a variety of practices and experiences, with too many which continue to be ~~which are~~ characterised by at least some of the following elements:*

- a. They segregate persons with disabilities, that is, they separate them from the rest of the society and bring them together on their own.*
- b. They are organised around certain specific activities that persons with disabilities are deemed to be able to carry out.*
- c. They focus and emphasise medical and rehabilitation approaches.*
- 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, and*
- g. Persons with disabilities usually do not have regular employment contracts in sheltered workshops, and therefore are excluded from working relations schemes and social security schemes.”*

***EASPD motivation for the amendment:***

EASPD understands that the proposed definition of sheltered workshops may have been applicable several decades ago. It is also true that sheltered workshops functioning under these principles continue to be prevalent around Europe. However, sheltered workshops models remain fragmented and broad differences exist between those addressing the principles of the UN CRPD and those not.

We also believe the above definition of sheltered workshops to be too vague and insufficiently taking into account the considerable changes to many sheltered workshop models on all of the above points in many countries. Many sheltered workshops are successful at ensuring access on the open labour market, focus on developing skills, competences, and career paths, promote inclusion, promote human rights approaches and offer equal remuneration for equal work and regular employment contracts. This is the direction many sheltered workshops are taking and require support and encouragement in doing so; rather than being all put in the same category and criticised accordingly.

Alongside the suggested amendments to 18., we believe that nuance is required in the existing paragraph 17. so as to not undermine the very effective progress made in many European countries.



#### **E. Suggested Amendment to 18. of the DGC27:**

*“Sheltered workshops for persons with disabilities are not **always** to be considered as a measure of progressive realization of the right to work, which is **only** evidenced in employment in an open and inclusive labour market. It is important to note that many sheltered workshops are transitioning away from the above criteria and towards models which are in line with the principles of the UN CRPD. This includes a variety of different models, including social economy enterprises, inclusive companies and sheltered workshops organised or run by persons with disabilities. ~~It is important not to confuse sheltered workshops with cooperatives, or jobs organized or run by persons with disabilities in which labour laws are generally respected.~~”*

#### **EASPD motivation for the amendment:**

It is important to underline once again that many sheltered workshops are in line with the UN CRPD and not the criteria addressed in 17. Although it is not always the case, many sheltered workshops presently strive to provide decent job conditions and to apply the requirements established by the UN CRPD in that respect. If under the principles of the UN CRPD, EASPD believes sheltered workshops can be an important “measure of the progressive realisation of the right to work”. For this reason, the EASPD suggests that the addition of the term ‘not always’ will provide a more precise description of the current reality of sheltered employment across the EU.

EASPD recognises that the social economy, including cooperatives, and sheltered workshops led by persons with disabilities are part of those making significant on implementing the principles of the UN CRPD. EASPD does not view or accept that cooperatives and organisations led by persons with disabilities which are organised in the form of sheltered workshops are not to be considered sheltered workshops. EASPD also does not see any evidence pointing major differences in this regard between say a cooperative and -for example- an association or a foundation. As such, we suggest strongly re-wording the last sentence of this point.

#### **F. Suggested Amendment to 31. of the DGC27:**

*“Workers with disabilities have the right to receive equal remuneration when they perform the same or similar jobs as workers without disabilities. Further, their remuneration should also be equal even when their work is completely different but nonetheless of equal value. The value of work is assessed by objective criteria. States Parties should ensure that segregated workplaces in the process of transitioning are not exempt from paying the minimum wage and ensure they are not paying below the minimum wage. **Particular attention should be made to ensure that workers with disabilities going through this process do not experience diminished incomes.**”*



**EASPD motivation for the amendment:**

EASPD agrees with 31. We believe nonetheless it important to add that special attention is given to ensure that people with disabilities do not result in diminished incomes as a result of transitions to systems of minimum wage settings.

**G. Suggested Amendment to 72. of the DGC27:**

*“C. Promote—*

- i. the right to supported employment, including to work assistance, job coaching and vocational qualification programmes; protect the rights of workers with disabilities; and ensure the right to freely chosen employment. **Such support should not be time-limited.** »*

**EASPD motivation for the amendment:**

EASPD agrees with 72. We recommend adding that the right to supported employment should not be time-limited in nature but focus on ensuring effective and continuous access to the open labour market. We have seen that as supported employment measures are reduced, that this can put at risk the employment of the person with a disability at stake.

**H. Suggested Amendment to 97. Of the DGC27**

*“In the light of the normative content and obligations outlined above, States parties should take the following measures to ensure the full implementation of article 27 of the Convention:*

*(...)*

- g. Expediently phase out sheltered workshops **which follow characteristics of paragraph 17. of this General Comment**, by adopting concrete action plans, with resources, timeframes and monitoring mechanisms that ensure the expeditious transition **from sheltered workshops** to inclusion in the labour market. (...)*

**EASPD motivation for the amendment:**

As discussed above, EASPD believes that sheltered workshops operating in line with the principles of the UN CRPD are important instruments to the progressive realisation of the right to work. These sheltered workshops should not be phased out but should instead become part of the toolkit needed to transition to inclusion in the labour market. Those not in line with the principles of the UN CRPD and in line with 17. should be supported and encouraged to transition or be phased out.

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