

PROMOTING EQUALITY AND NON-DISCRIMINATION FOR PERSONS WITH DISABILITIES

Contribution to the Council of Europe Strategy on the Rights of Persons with Disabilities



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PROMOTING EQUALITY AND NON-DISCRIMINATION FOR PERSONS WITH DISABILITIES

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Introduction

Ensuring equal opportunities for persons with disabilities is an important facilitator of participation and inclusion in society. Both the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Council of Europe Disability Strategy 2017-2023 address equality and equalisation of opportunities for persons with disabilities. Article 5 of the UNCRPD requires States to adopt positive measures aimed at ensuring equality across the substantive rights in the Convention. The Council of Europe Disability Strategy aims at guiding and supporting the activities of Council of Europe member States in their implementation of the UNCRPD and Council of Europe standards regarding disability, and similarly addresses equality and non-discrimination.

The overall goal of this study is to analyse the obligations contained in the UNCRPD regarding equality and non-discrimination, and to provide examples of good national practices regarding equality and non-discrimination.¹ The report pays particular attention to non-discrimination legislation and initiatives in the context of employment and education. As noted by the Office of the High Commissioner for Human Rights (OHCHR), enjoyment of the rights to work and employment and to inclusive education are key factors in promoting equality of persons with disabilities on the whole.² The study also provides a checklist for implementing Article 5 of the UNCRPD in light of the Council of Europe Disability Strategy, 2017-2023.

Part 1 of the study contains a description of the nature of the obligations contained in Article 5 UNCRPD with respect to guaranteeing equality and non-discrimination for persons with disabilities.

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1. Without prejudice to the monitoring of the implementation of the UNCRPD by the Committee on the Rights of Persons with Disabilities and its Parties-specific recommendations, this study aims at identifying ways and means with which to implement Article 5 of the UNCRPD on the equality and non-discrimination principle and for the full and equal enjoyment of all human rights and fundamental freedoms for all persons with disabilities.
 2. Office of the United Nations High Commissioner for Human Rights (December 2010), "Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities", UN Doc. A/HRC/34/26, para. 14.

Part 2 of the study is divided into three sections addressing non-discrimination legislation, employment initiatives and education. This section of the study pays particular attention to the obligation to provide reasonable accommodation.

Finally, Part 3 of the study contains a checklist to assist States Parties in implementing Article 5 of the UNCRPD in light of the Council of Europe Disability Strategy 2017-2023.

Part 1: Article 5 of the UNCRPD: Equality and Non-discrimination

The purpose of Article 5 of the UNCRPD is to ensure the exercise and enjoyment by persons with disabilities of all human rights without any discrimination, and to guarantee equality of opportunities for persons with disabilities. Article 5 has a broad and far-reaching remit. The duty to prohibit discrimination and to provide reasonable accommodation contained in Article 5 spans all human rights in the UNCRPD. Council of Europe member States must therefore ensure that the prohibition of discrimination, and the duty to accommodate, are implemented in numerous fields, including in the context of employment, education, the provision of healthcare, and the supply of services.

Article 5 of the UNCRPD is broken into four sub paragraphs, each of which deals with a different aspect of the equality/non-discrimination norm. On the whole, Article 5 reflects the fact that equality for persons with disabilities requires more than prohibition of discrimination. It involves the development of strategies to underpin the participation and inclusion of persons with disabilities in society on an equal basis with others. This entails the adoption of positive measures to ensure that persons with disabilities are afforded truly equal opportunities.

The social model of disability and its implications for law and policy making in the Council of Europe

The social model of disability underlies the UNCRPD and reflects the move at the international level towards viewing persons with disabilities as subjects of rights, as well as holding governments accountable for ensuring those rights. The social model views the inability of persons with disabilities to participate in society as arising from discriminatory barriers. The social model contrasts with the medical model, which focuses on the functional limitations (physical, psychological, or other) of persons with disabilities.

The social model is evident in Article 1 of the UNCRPD, and in the Preamble, which views disability as an interactive process “between persons with

impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”³

Article 1 of the UNCRPD

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The fact that the social model underpins the rights in the UNCRPD has consequences for law and policy making in member States of the Council of Europe. On the whole, the UNCRPD seeks to target structural discrimination embedded in institutional behaviour, cultural practices, norms, laws and other political and economic structures in society. All Council of Europe member States should ensure that existing laws and policies are modified in accordance with the social model of disability, and that new laws and policies are designed to follow its guiding tenets. States should no longer focus solely on measures of rehabilitation and welfare for persons with disabilities. Rather, law and policy making should target deep-rooted inequalities in society and should aim at removing barriers which result in disadvantages for persons with disabilities. The primary way in which States can remove such barriers is by means of legal tools, such as positive obligations, including reasonable accommodation measures.

Article 5 of the UNCRPD⁴

Article 5(1) of the UNCRPD

Article 5, para. 1 of the UNCRPD

States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

Ensuring “equality before the law” requires Council of Europe member States to prohibit discrimination on the basis of disability by members of the judiciary

3. UNCRPD, preamble, para. (e).

4. The interpretation of the obligations contained in Article 5 of the UNCRPD draws on Broderick A (2015), *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities*, Cambridge/Antwerp: Intersentia.

or law-enforcement officers in the application or enforcement of the law. A person with disabilities must therefore be treated in an equal manner to others when taking part in a court case, and judges should not apply the law arbitrarily to persons with disabilities. The requirements of “equality under the law” and “equal protection of the law” require States to ensure that national legislation does not contain discriminatory provisions with respect to persons with disabilities – in other words, the same rules which allow access to court for persons without disabilities should apply to persons with disabilities. Finally, ensuring equal benefit of the law requires Council of Europe member States to ensure that persons with disabilities can enjoy the rights guaranteed by legislation in practice, including by adopting positive measures, where necessary. Such measures might include accessibility measures or putting in place reasonable accommodations, or other individualised supports so that, for instance, the right to education can be enjoyed by children with disabilities on an equal basis with others.

Article 5(2) of the UNCRPD

Article 5, para. 2 of the UNCRPD

States Parties shall prohibit all discrimination on the basis of disability and shall guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

The prohibition of disability-based discrimination

The UNCRPD requires States Parties to prohibit all discrimination on the basis of disability. Notably, it includes within the definition of disability “all forms of discrimination, including denial of reasonable accommodation”⁵

Article 2, para. 3 of the UNCRPD

“Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”

5. UNCRPD, Article 2(3).

Other than specifying that a denial of reasonable accommodation is a form of discrimination, the UNCRPD does not provide further information on the kinds of discrimination which should be prohibited by States. Nevertheless, it clearly prohibits direct discrimination. Moreover, the concept of indirect discrimination, whereby laws, policies or practices appear neutral at face value, but have a disproportionately negative impact on persons with disabilities, is implicit in Article 2. In addition, since the definition of discrimination under the UNCRPD covers “all forms of discrimination”, it can be taken to mean that harassment is covered, as well as an instruction to discriminate. The following list provides a summary of the kinds of discrimination explicitly or implicitly covered by the UNCRPD⁶:

- ▶ Denial of reasonable accommodation
- ▶ Direct discrimination
- ▶ Indirect discrimination
- ▶ Harassment
- ▶ Instruction to discriminate

In addition to being experienced by a person with disabilities, these five forms of discrimination can take more complex forms. For example, a person can experience direct or indirect disability discrimination because they associate with a person with a disability, or experience harassment because they are perceived to have a disability. The UNCRPD Committee has confirmed that the definition of “discrimination on the basis of disability” can be construed as including not only those who have, in fact, an impairment, but also those who are discriminated against on account of their association with a person with a disability, or those who encounter discrimination as a result of a perceived impairment or multiple disabilities.⁷ Therefore the following forms of disability discrimination are also explicitly or implicitly covered by the Convention:

- ▶ Discrimination by association
- ▶ Multiple discrimination
- ▶ Discrimination based on perceived or past disability

6. Based on either the drafting history of the UNCRPD, or the comments of the UNCRPD Committee.

7. UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Spain (2011), UN Doc. UNCRPD/C/ESP/CO/1, para. 20.

This expansive conceptualisation of disability-based discrimination will have implications for Council of Europe member States when implementing the UNCRPD, and also when drafting domestic non-discrimination laws.

Effective legal protection from discrimination on all grounds

The obligation in Article 5(2) of the UNCRPD to guarantee equal and effective legal protection against discrimination differs from the mere prohibition of discrimination. It imposes a positive duty of protection on States to take active measures to combat discrimination,⁸ and it entails a consequent reallocation of resources, specifically with regard to ensuring protection after a discriminatory act has happened. Council of Europe member States should establish effective redress mechanisms and sanctions in circumstances where persons with disabilities have been discriminated against. Such remedies and sanctions may be established through criminal, civil or administrative processes, as appropriate. This will mean that Council of Europe member States should remove all barriers (environmental, legal and structural) experienced by persons with disabilities in accessing justice to complain about a discriminatory act. Attitudinal barriers in the judicial system should also be eliminated, by means of awareness-raising programmes and training sessions for law enforcement officials. According to the OHCHR, “lawyers, judges and agents of justice should be targeted in capacity-building efforts to ensure their understanding of the human rights-based approach to disability, particularly of the unconditional application of the principle of non-discrimination to persons with disabilities”⁹

Article 5(3) of the UNCRPD

Article 5, para. 3 of the UNCRPD

In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

8. Nowak M. (2005), *UN Covenant on Civil and Political Rights: CCPR commentary*, N.P. Engel, Kehl, at page 630.
9. Office of the United Nations High Commissioner for Human Rights (December 2010), “Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities”, UN Doc. A/HRC/34/26, para. 74, citing UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Belgium (2014), UNCRPD/C/BEL/CO/1, para. 12.

The provision of reasonable accommodation and limitations on the duty

The reasonable accommodation duty is an individualised response to the particular needs of an individual with disabilities to ensure equal opportunities. Article 5(3) of the UNCRPD defines the objectives of the reasonable accommodation duty as the promotion of equality and the elimination of discrimination. A denial of a reasonable accommodation is a form of discrimination. The definition of reasonable accommodation itself can be found in Article 2(4) of the UNCRPD:

Article 2, para. 4 of the UNCRPD

“Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”

The duty to provide reasonable accommodation should be distinguished from legal obligations to achieve accessibility. The latter duties are generalised and anticipatory (not triggered by an individual request), and usually require compliance with set standards, e.g. installing ramps or providing certain information in Braille or large print.¹⁰ The OHCHR has compiled the following non-exhaustive list of examples of reasonable accommodations: making existing facilities and information accessible for the person concerned in a particular situation; adapting or acquiring equipment; reorganising activities; re-scheduling work; customising learning materials; adapting curricula to the capabilities of the person; adjusting medical procedures; implementing specific communication modalities; and enabling access of support personnel to facilities restricted to the public.¹¹

The duty to reasonably accommodate persons with disabilities under the UNCRPD is not absolute. It is subject to the limitation that a duty bearer is not

10. See further European Network of Legal Experts on Gender Equality and Non-Discrimination, Waddington L. and Broderick A. (2016), “Disability law and the duty to reasonably accommodate beyond employment: A legal analysis of the situation in EU Member States”, Publications Office of the European Commission, Luxembourg, available at: http://ec.europa.eu/justice/discrimination/files/reasonable_accommodation_beyond_employment_final2.pdf.

11. Office of the United Nations High Commissioner for Human Rights (December 2010), “Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities”, UN Doc. A/HRC/34/26, para. 28.

required to provide an accommodation where such accommodation would result in a disproportionate or undue burden. If there are two (or more) accommodation options, both of which can achieve the same result, the duty bearer may opt for the less burdensome accommodation.

The duty to reasonably accommodate persons with disabilities imposes a positive duty on Council of Europe member States. It requires that States establish the duty in national laws and policies, and ensure compliance with the duty by public and private entities. This will mean, for instance, ensuring that effective remedies are in place so that persons with disabilities can obtain redress where reasonable accommodations have been unfairly denied to them. It will also mean providing access to financial aid in order to support the provision of reasonable accommodations on the part of public and private entities.

Non-discrimination, reasonable accommodation and universal design

There is a link between non-discrimination and reasonable accommodation in particular, and the UNCRPD duty to universally design products.

The UNCRPD contains a clear duty in Article 2(5) to ensure the design of products, environments, programmes and services in a manner that is accessible or usable to all individuals, without the need for adaptation. Universal design has the objective of ensuring maximum accessibility for all individuals, regardless of their type of impairment, age, etc. Council of Europe member States should therefore undertake and support research into the development of universally designed goods, services, equipment and facilities,¹² as defined under Article 2 of the UNCRPD. Although the obligation to universally design products is not the same as the duty to provide reasonable accommodation, there is a clear link between the two duties. While the reasonable accommodation duty usually requires the adaptation of structures in an individualised manner on the request of a person with a disability, universal design seeks to ensure that structures in society are accessible to all individuals. Universal design should reduce the need for individualised measures, such as reasonable accommodations. However, Article 2 of the UNCRPD also States that the concept of universal design does not exclude assistive devices for particular groups of persons with disabilities, where this is needed.

12. See UNCRPD, Article 4(1)(f).

Some jurisdictions link the lack of accessibility with the equality norm by providing specifically in their legislation that the lack of accessibility is a form of discrimination.

Good Practice: Norway

Norway's Anti-Discrimination and Accessibility Act¹³ contains the obligation of universal design, as well as the obligation to reasonably accommodate persons with disabilities (referred to as "individual accommodation"). Breach of the duty to ensure universal design (pursuant to section 13) or the duty to ensure individual accommodation (in sections 16, 17 and 26 of the Act) is a form of discrimination under the Act.¹⁴

Article 5(4) of the UNCRPD: Positive Measures

Article 5, para. 4 of the UNCRPD

Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Positive action measures involve favourable treatment taken in respect of disadvantaged or marginalised groups. They seek to "correct or compensate for past or present discrimination [...] prevent discrimination from recurring in the future."¹⁵ Article 5(4) of the UNCRPD permits the adoption of positive action measures with a view to achieving, or accelerating *de facto* equality between persons with disabilities and others, and enabling persons with disabilities to participate in mainstream society.

The UNCRPD does not include a time limit for positive action measures. Therefore, measures adopted by member States of the Council of Europe can be both temporary and permanent. Some of the most common types of positive action measures targeted at persons with disabilities are employment quotas or subsidies to promote employment. Employment quotas are used widely in the

13. Norway, Act relating to a prohibition against discrimination on the basis of disability (the Anti-Discrimination and Accessibility Act) (2008), available at: <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20130621-061-eng.pdf>.

14. Section 12 of the Anti-Discrimination and Accessibility Act.

15. O'Brien J., "Affirmative action, Special Measures and the Sex Discrimination Act" (2004) 27(3) *University of New South Wales Law Journal* 840.

context of persons with disabilities in several Council of Europe member States¹⁶ and in some countries fines are applied if quotas are not met.¹⁷ Positive action can also take the form of setting quotas in political institutions specifying the percentage or number of persons with disabilities to be included in the institution. Other examples of positive action measures which target persons with disabilities include the preferential treatment of candidates with disabilities in the education sector (i.e. allowing access to university courses), even where the qualifications of the candidate with disabilities are not equal to those of the candidate without disabilities; establishing goals and timetables for the advancement of persons with disabilities in social and political institutions; providing extra assistance to persons with disabilities to enable them to gain educational qualifications; and targeted recruitment campaigns raising awareness about employment opportunities among persons with disabilities.

According to the OHCHR, any measures adopted by States under Article 5(4) “must be consistent with all the principles and provisions of the Convention.”¹⁸ For instance, measures taken in the field of education must not lead to segregated practices while quota systems should not include reserved working positions or tasks exclusive to persons with disabilities, which reproduce stereotypes and stigmatisation.¹⁹

Disability-specific measures and mainstreaming disabilities

The UNCRPD seeks to promote equality and non-discrimination, and to guarantee the inclusion and participation of persons with disabilities in society, through a twin-track approach. In that regard, States Parties are required to integrate disability-sensitive measures into the delivery of mainstream services, as well as to provide targeted, disability-specific services and facilities (for example, sign language interpretation, mobility and adaptive devices). This twin-track approach is evident in the Preamble of the UNCRPD,²⁰ as well as throughout the substantive UNCRPD articles.²¹

16. For example: Austria, Belgium, Hungary, France, Germany, Italy, Poland, Romania, Serbia, Slovakia and Slovenia. Information taken from Equinet (2014), ‘Positive action measures: The experience of equality bodies’, available at http://www.equineteurope.org/IMG/pdf/positive_action_measures_final_with_cover.pdf.

17. For example: Austria, Germany, Poland, Romania, Serbia, Slovakia and Slovenia. Ibid.

18. Office of the United Nations High Commissioner for Human Rights (December 2010), “Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities”, UN Doc. A/HRC/34/26, para. 20.

19. Ibid.

20. UNCRPD, preamble, para. (g).

21. See, for example, Article 24 of the UNCRPD (Part 2: Education).

Mainstreaming is a holistic organisational approach which seeks to prevent, and redress, disability-based discrimination. It entails a wide framework for action on equality, and requires systematic integration of an equality perspective into all laws, policies, services and programmes. This can be achieved by equality action planning, equality committees, equality reviews and impact assessments. In conjunction with the mainstreaming approach, it is very important that member States of the Council of Europe ensure access for persons with disabilities to a variety of disability-specific services, addressing individual needs, at the community level. This will increase participation and inclusion in society and, together with disability mainstreaming, is intended to result in equal opportunities and *de facto* equality.

Multiple/intersectional discrimination

Article 6 of the UNCRPD

1. States Parties recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.²²

Article 6 of the UNCRPD prohibits discrimination on the basis of gender and disability.²³ It is the first binding equality provision in international human rights law to address multiple discrimination explicitly. In addition to Article 6, the Preamble of the UNCRPD emphasises the need for gender mainstreaming in all efforts by States to implement the UNCRPD.²⁴

The UNCRPD seeks to tackle multiple discrimination, which refers to situations whereby 'individuals, or groups of individuals, face discrimination on more

22. This also has been recognised by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), available at www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210.
23. For an interpretation of the obligations contained in Article 6 of the UNCRPD, see UN Committee on the Rights of Persons with Disabilities, General Comment no. 3 on the Rights of Persons with Disabilities (2016), UN Doc. UNCRPD/C/GC/3.
24. See UNCRPD, preamble, para. (s).

than one of the prohibited grounds' and it often produces 'compounding or aggravating effects'.²⁵ In addition to Article 6 of the UNCRPD, the Preamble of the UNCRPD refers to "the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status".²⁶

Multiple discrimination often manifests itself as intersectional discrimination, whereby the grounds for discrimination are inextricably linked²⁷ and produce a unique discriminatory experience or new forms of discrimination.²⁸ In those Council of Europe member States where victims of discrimination can presently only bring a complaint of discrimination with respect to one ground, complaints concerning multiple forms of discrimination should be provided for in the law.

Good Practice: Bulgaria

The Protection Against Discrimination Act prohibits multiple discrimination, which it defines as "discrimination on the grounds of more than one of the characteristics under [the Act]".²⁹ The Act also places a statutory duty on public authorities to give priority to positive measures for the benefit of victims of multiple discrimination.³⁰ The Protection Against Discrimination Commission hears multiple discrimination cases sitting in an extended panel of five members, as opposed to the usual three.³¹

25. UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 (2009), non-discrimination in economic, social and cultural rights, UN Doc E/C.12/GC/20, at para. 17.

26. UNCRPD, preamble, para. (p).

27. UN Committee on the Elimination of Discrimination against Women, General recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010), UN Doc. CEDAW/C/GC/28, para.18

28. UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 (2004) on Article 4, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women on temporary special measures, para. 2 & 3.

29. Protection Against Discrimination Act (закон за защита от дискриминация), SG 86/30 September 2003, para. 1(11). Unofficial English translation available at: <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=52848ab24> (accessed 8 December 2016).

30. Ibid, Article 11(2).

31. Ibid, Article 48 (3).

Remedies provided by domestic authorities should be tailored to multi-dimensional forms of discrimination. National laws should take into account the aggravating circumstances of findings of multiple discrimination and ensure that awards of damages reflect this.³²

Good Practice: Austria

Austrian disability non-discrimination legislation sets out some specific rules concerning damages in cases of multiple discrimination. Article 9(4) of the Federal Disability Equality Act³² provides as follows: “In assessing the amount of the immaterial damages, the duration of the discrimination, the gravity of guilt, the relevancy of the adverse effect and multiple discrimination have to be taken into account”.

32. “Bundes-Behindertengleichstellungsgesetz”; available in German at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004228&ShowPrintPreview=True>.

Part 2: Overview of National Practices Concerning Equality and Non-Discrimination

Whilst the adoption of wide-ranging disability non-discrimination legislation is a key obligation flowing from Article 5 of the UNCRPD, it is certainly not the only measure which States should take.

Given that most national constitutions contain a clause prohibiting discrimination and/or guaranteeing equality before the law, it is important that these provisions also apply on the ground of disability. Since disability has only been recognised relatively recently as a ground of discrimination at both the international and national level, it is not uncommon for national constitutional clauses to fail to refer to disability explicitly in this context. Nevertheless, where non-discrimination clauses are open-ended they should now be interpreted as covering disability discrimination. Moreover, where such clauses contain an illustrative list of protected grounds, consideration should be given to adding disability to that list, as has happened, for example, in Finland and Germany. Where the list of covered grounds is closed (i.e. only the grounds listed are covered under the constitution), it is even more important to introduce a constitutional amendment incorporating disability within the list of protected grounds.

A second important obligation flowing from the UNCRPD as a whole is the adoption of a broad disability strategy to implement the UNCRPD in full. This should naturally include measures to promote equality and combat discrimination. These issues can be addressed both as a separate strand within the strategy, and as a cross-cutting issue. For example, Finland's Disability Programme VAMPO (2010-2015), entitled "A Strong Basis for Inclusion and Equality",³³ has the overall objective of ensuring the equal status, participation

33. See: Ministry of Social Affairs and Health, Finland (2012), "A Strong Basis for Inclusion and Equality, Finland's disability policy programme VAMPO" 2010-2015.

and non-discrimination of persons with disabilities in society. The aims of combating discrimination and ensuring accessibility across all areas, and in all fields, are given a high profile in the Programme.

The remainder of this Part explores three fields: non-discrimination legislation, employment and education.

Non-discrimination legislation

As a result of ratification of the UNCRPD, Council of Europe member States are under an obligation to adopt wide-ranging disability non-discrimination legislation, or to review and, if necessary, amend existing disability non-discrimination legislation. Those Council of Europe member States which are also members of the European Union (EU) were already under an obligation to adopt legislation prohibiting disability discrimination in the field of employment as a result of the Employment Equality Directive.³⁴ In addition, many States outside the EU, such as Montenegro, Norway and “the former Yugoslav Republic of Macedonia” have also adopted non-discrimination legislation covering disability, sometimes drawing inspiration from EU law. Nevertheless, it should not be assumed that all such legislation is fully compliant with the UNCRPD, and the obligations flowing from Article 5 of the UNCRPD with regard to non-discrimination legislation are much wider than those found under current EU law. The sub-sections below explore in more detail some of the obligations flowing from the UNCRPD in this respect.

Forms of discrimination including denial of reasonable accommodation

Council of Europe member States should take action to prohibit all forms of disability discrimination as identified in Part 1 of this report, including a denial of a reasonable accommodation. In general, the reasonable accommodation duty is reactive – this means that a duty bearer, such as an employer or school, is only under an obligation to provide accommodation if they are aware, or ought to be aware, of the fact that an individual has a disability and is facing a barrier. This generally requires some degree of disclosure on the part of the individual, particularly where the individual has an invisible disability. However, where an individual with an invisible disability discloses her or his disability, the person may risk exposure to additional discrimination, disadvantage and

34. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L303/16 2.12.2000.

prejudice. Therefore, individuals may feel uncomfortable revealing that they have a disability. However, non-disclosure means that they will not be able to access the reasonable accommodation that they may need. Member States of the Council of Europe should attempt to address these issues through campaigns designed to combat discrimination, prejudice and stigma, particularly with regard to persons with disabilities who are especially prone to stigma, such as persons with psychosocial disabilities. States can organise such campaigns themselves, or support civil society and private initiatives.

Good Practice: International

The Global Anti-Stigma Alliance was set up in 2012.³⁵ The aim of the Alliance is to share learning, best practice and the latest research to achieve better outcomes for people facing mental health stigma and discrimination. The Alliance includes members, or programmes, from Australia and New Zealand, Canada, Denmark, England, Northern Ireland, the Republic of Ireland, the Netherlands, Scotland, Spain, Sweden, Switzerland, United States of America and Wales. These campaigns are running significant mental health anti-stigma programmes, i.e. delivering activities, and making available resources and knowledge to share with others.

Whilst reasonable accommodation duties are usually reactive, and triggered by an individual with a disability indicating in some way that they need an accommodation, there is also scope for anticipatory reasonable accommodation obligations. Such obligations require duty bearers to consider in advance the kind of accommodations that persons with disabilities may require – such as a ramp allowing access to a building or printed information in a large font, Braille or easy-to-read text – and to have made those accommodations prior to a specific request by a person with disabilities. This does not remove the duty to make a reactive accommodation, where the accommodation needs of a particular individual have not been foreseen. This anticipatory duty has the advantage of embracing a proactive approach and reducing or eliminating the need for disclosure by the person with disabilities in order to benefit from an accommodation. Where there is a need for disclosure, the OHCHR has recommended that “in addition to establishing confidentiality measures, those responsible for providing accommodation should also work to create inclusive

35. Global Anti-Stigma Alliance, available at: <http://www.time-to-change.org.uk/globalalliance>.

environments and to address such issues as stigmatisation, bullying, exclusion and unconscious bias towards persons or measures.”³⁶

Good Practice: United Kingdom

The reasonable accommodation duty in United Kingdom (UK) is partially anticipatory. The anticipatory duty is found in the Equality Act 2010³⁷ and covers all fields falling under the Act, with the exception of employment and housing (where the accommodation duty is reactive). Waddington and Lawson have argued:

“The duty therefore requires providers of education, healthcare, transport, [...], public functions and other goods and services to monitor the accessibility of their services on a continual basis. Once triggered, the duty requires duty-bearers to take reasonable steps to remove the disadvantage [...]”³⁸

The UK Parliament established a Select Committee on the Equality Act 2010 and Disability which published a report in 2016.³⁹ In the context of reasonable accommodation (referred to as reasonable adjustment under British law) the report States as follows:

“The duty in employment

... The duty is ‘reactive’: it requires there to be an identified applicant or employee, and for the employer to know, or be reasonably expected to know, that a person with disabilities, and that they are likely to be at the substantial disadvantage without the adjustment.

The duty also applies in respect of some other types of work, such as contract work and barristers.

36. Office of the United Nations High Commissioner for Human Rights (December 2010), “Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities”, UN Doc. A/HRC/34/26, para. 43.

37. Equality Act 2010 available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents> (accessed 8 December 2016).

38. European Network of Legal Experts in the non-discrimination field, Waddington L. and Lawson A. (2009) “Disability and non-discrimination law in the European Union: An analysis of disability discrimination law within and beyond the employment field”, European Network of Legal Experts in the non-discrimination field, Publications office of the European Union, Luxembourg, at page 53.

39. The Equality Act 2010: the impact on disabled people, Report of session 2015-16 - published 24 March 2016 - HL Paper 117, available at: <http://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11708.htm> (accessed 28 November 2016) (footnote excluded).

The duty in respect of premises

Similarly, a controller of let premises or of premises to let is required to react to the needs of tenants, but not to anticipate them. They may be required to provide a rent agreement in an alternative format such as large print, but are not required to plan for this themselves. Nor do the controllers of premises have to make adjustments to physical features, other than certain auxiliary aids that might otherwise be classified as physical features, such as an entry phone system.

The duty in the provision of services and public functions

[...] The key difference with employers is that in the case of services and public functions the duty is 'anticipatory': it is owed to persons with disabilities generally and requires service providers and those exercising public functions to proactively remove barriers that could put persons with disabilities at a substantial disadvantage without waiting for a person with disabilities to seek to use their services first.

The duty in schools and further and higher education

The duty on schools and in further and higher education is again 'anticipatory'. Schools, universities, and higher and further education institutions are required not only to respond to the needs of pupils with disabilities, but to anticipate access needs of persons with disabilities. Schools are not subject to the requirement to adjust physical features, but they must prepare accessibility strategies and plans to address disadvantages associated with physical features. The only exception is in respect of qualifications and competence standards, which are not subject to the duty to make reasonable adjustments, but instead may need to be justified if they are indirectly discriminatory."

The reasonable accommodation requirement is quite complex and, because it is relatively new, it may be unfamiliar to, or not well understood by, employers and other duty bearers, persons with disabilities, lawyers and judges. The situation can be even more confusing where the duty is set out in several pieces of legislation, which may not use the same terminology, as can happen in a federal system where the competence to establish reasonable accommodation duties is shared between various levels of government. For this reason, it can be helpful to set out further guidance on the concept of reasonable accommodation, and to provide examples of common kinds of accommodation.

Good Practice: Belgium

A compulsory Cooperation Agreement was agreed by the relevant public authorities in order to set out a common understanding of the notion of reasonable accommodation.⁴⁰ This was important because the duty is found in different pieces of legislation at different levels of government. The Agreement defines an accommodation as a “concrete measure aimed to neutralise the limitative impact of a non-appropriate environment on the participation of a person with disabilities”. The agreement gives examples of accommodations, provides further guidance on how to assess what a reasonable accommodation is and includes a non-comprehensive list of criteria to determine if the measure is reasonable or not. The Agreement also establishes a monitoring mechanism, requiring each authority to collect information on reasonable accommodation and examples of best practice.

The Federal Government has also published an accessible brochure on reasonable accommodation in the field of employment in French and Flemish.⁴¹ Meanwhile the equality body, UNIA, has published practical booklets on reasonable accommodation, covering ten areas including culture, public services, hotels, restaurants, housing and sport. The booklets aim to increase the awareness of persons with disabilities and suppliers of goods and services about reasonable accommodation.⁴²

Scope of legislation

The scope of the UNCRPD is very broad, and requires the prohibition of discrimination on the basis of disability with regard to ‘all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’ (Article 2). This means that national non-discrimination laws must adopt a very broad approach. Moreover, since many of the fields covered by the UNCRPD, such as employment, accessibility, public transport and access to information involve private actors, it is essential that the obligation to

40. “Protocole du 19 juillet 2007 entre l’État fédéral, la Communauté flamande, la Communauté française, la Communauté germanophone, la Région wallonne, la Région de Bruxelles-Capitale, la Commission communautaire commune, la Commission communautaire française en faveur des personnes en situation de handicap, OJ (Moniteur belge)”, 20 September 2007.

41. “Cel Publicaties van de Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg, Weigwijs in de Redelijke Aanpassingen ten Behoeve van Personen met een Handicap op het Werk” (2005), available at: http://www.werk.be/sites/default/files/Diversiteit_Redelijkeraanpassingen_federaalvademecum_versie0907.pdf.

42. The booklets (in French and Flemish) can be found via the equality bodies homepage: www.UNIA.be.

discriminate is not only imposed on public bodies and actors, but also on private parties. The OHCHR advises that “States should seek active collaboration with the non-State sector, including by increasing co-operation with chambers of commerce, labour unions, private school federations and religious institutions, among others”. In that regard, States should provide “technical assistance, guidelines and information, in particular on reasonable accommodation, accessibility and universal design” as this “is crucial to advance equality and to reduce dependency on legal actions to enforce rights”.⁴³

Other areas where the non-discrimination obligation must apply include education and health care.

Good practice: United Kingdom

Disability discrimination is prohibited in United Kingdom by the Equality Act 2010.⁴⁴ The Act takes a broad approach, prohibiting discrimination in the fields of employment (which is defined to include occupation, vocational training, etc.); education; housing; provision of goods, facilities and services; membership of organisations; and functions of public authorities. A public sector equality duty also applies under the Act, requiring public authorities to pay due regard to the requirement to eliminate disability discrimination and to promote equality for persons with disabilities in all areas.

The broad scope of non-discrimination legislation required by the UNCRPD can present complexities in the case of federal States, where competences are shared between central government and the constituent parts of the State (such as regions or provinces). In such instances, a co-ordinated approach is required, and non-discrimination legislation must be adopted at both the federal and regional level. For example, in Austria, federal legislation prohibits disability discrimination in various fields, including employment, whilst the nine provinces have also each adopted one or more separate non-discrimination acts prohibiting disability discrimination in their sphere of competence, including the employment of provincial civil servants, social benefits, nursing homes and nursery education. A similar situation exists in Belgium, where there is both federal and regional/provincial legislation prohibiting disability discrimination.

43. Office of the United Nations High Commissioner for Human Rights (December 2010), “Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities”, UN Doc. A/HRC/34/26, para. 17.

44. Equality Act 2010, available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

It is also important for Council of Europe member States to ensure that a wide range of individuals are protected from discrimination on the ground of disability. The UNCRPD does not contain a definition of disability, but it provides guidance on who is to be regarded as a person with a disability: All those who have long-term physical, mental, intellectual or sensory impairments, which hinder participation in interaction with various barriers (Article 1 of the UNCRPD).

Any definition of disability included within non-discrimination legislation should be broad. There should be no link between such a definition and definitions of disability used for other legal purposes. In particular, protection from discrimination, and entitlement to claim a reasonable accommodation, should not be restricted to persons who have been officially recognised as having a disability for the purposes of claiming a disability pension or other disability-related benefit. Moreover, protection from discrimination on the ground of disability should be extended to persons who experience discrimination because they had a disability in the past, may acquire a disability in the future, are perceived to have a disability or because they associate with another person who has a disability.

Good Practice: Ireland - Protection from Discrimination

The two Irish non-discrimination statutes which prohibit disability discrimination protect a broad group of people from disability discrimination:

The Employment Equality Act 1998⁴⁵ provides in Part I, Article 2(1) that “‘disability’ ... shall be taken to include a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person”.

The Equal Status Acts 2000-2004⁴⁶ prohibits discrimination:

(a) “Where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on [the ground of disability] which

- (i) exists,
- (ii) existed but no longer exists,
- (iii) may exist in the future, or
- (iv) is imputed to the person concerned,

45. Employment Equality Acts 1998 and 2004, available at: <http://www.justice.ie/en/JELR/EmpEqActsConsltdt.pdf/Files/EmpEqActsConsltdt.pdf>.

46. Equal Status Acts 2000 to 2004, available at: https://www.tcd.ie/wiser/about/what/EqualStatusActsConsltdt_00_04.pdf.

- (b) where a person who is associated with another person:
- (i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and
 - (ii) similar treatment of that other person on any of the discriminatory grounds [constitutes discrimination]" (Article 3(1))

Case law can also play an important part in determining who is protected from discrimination on the ground of disability.

Good Practice: Council of Europe and European Union

*Case C-303/06 Coleman v. Attridge Law*⁴⁷

In this case, the Court of Justice of the European Union held that the Employment Equality Directive prohibits direct disability discrimination and harassment by association. As a result, all EU member States are obliged to prohibit this form of discrimination with regard to employment and occupation.

Guberina v Croatia, No. 23682/13, 22 March 2016

In this case, the European Court of Human Rights held that Article 14 of the European Convention on Human Rights (ECHR) (on non-discrimination) also protects individuals against discrimination by association on the ground of disability. The European Court of Human Rights referred to the above mentioned judgment in *Coleman* and, in *Guberina*, held that protection against discrimination by association applied in the context of indirect discrimination on the ground of disability. This meant that a father of a child with disabilities could claim protection from discrimination on the ground of disability under Article 14 of the ECHR. The ECHR should now be interpreted in this light by courts in member States of the Council of Europe.

Lastly, disability discrimination can either be prohibited in non-discrimination legislation which covers a variety of grounds, including disability, or in a disability-specific statute. Examples of both approaches are found in European states. In both cases, it is important that the legislation is sufficiently wide-ranging. Moreover, in the case of multi-ground non-discrimination legislation, the specificities of disability discrimination, such as the need for reasonable

47. Judgment of the CJEU (Grand Chamber) of 17 July 2008, *S. Coleman v Attridge Law and Steve Law*, ECLI:EU:C:2008:415, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>.

accommodation, should be adequately addressed. In contrast, it is not appropriate for disability discrimination to be addressed in a large number of separate instruments covering specific fields, such as healthcare, consumer protection, public transport, etc. Such an approach risks being intransparent and allows for the inclusion of different definitions of disability discrimination, and different levels of protection, across different fields, thereby leading to incoherence.

Mechanisms to support victims of discrimination to make a complaint

People who feel that they have been the victim of disability discrimination must be able to bring a court action under non-discrimination law. However, initiating legal action can be difficult, expensive and intimidating. There are several mechanisms available to reduce this burden and to support victims of discrimination in making a complaint. These mechanisms vary from State to State and include legal support and advice agencies, local Trade Unions or professional associations, and Non-Governmental Organisations including Organisations of persons with disabilities. Legal systems in many Council of Europe member States not only allow organisations, associations and trade unions to assist alleged victims of discrimination, but also to act on their behalf in legal action.

Good Practice: Malta

In Malta, associations, organisations and trade unions are entitled to act on behalf or in support of a victim of discrimination and have legal standing in court for this purpose.⁴⁸ They must have the approval of the alleged victim to do this. The National Commission for Persons with Disability (NCPD) is also empowered by law to assist an alleged victim of disability discrimination.⁴⁹ The NCPD can provide assistance, including legal and financial assistance to enforce an individual's rights under the Equal Opportunities (Persons with Disability) Act. The NCPD also has the duty to provide assistance to individuals with disabilities who need help in formulating a complaint orally or in writing.⁵⁰

48. Malta, Equal Treatment in Employment Regulations, regulation 11, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11229>; See also The Equal Treatment of Persons Order, Article 16 available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11800&l=1>.
49. Malta, Equal Opportunities (Persons with Disability) Act, available at: <http://www.justiceservices.gov.mt/downloaddocument.aspx?app=lom&itemid=8879>.
50. Malta, Article 32(3) Equal Opportunities (Persons with Disability) Act, available at: <http://www.justiceservices.gov.mt/downloaddocument.aspx?app=lom&itemid=8879>.

If the Commission receives a complaint of disability discrimination it shall first try and find an amicable solution. If that is not possible, it may refer the matter to the Civil Court.

In addition to legal action, many Council of Europe member States allow for people who feel they have been the victim of disability discrimination to bring complaints before equality bodies or ombuds institutions. Such bodies are often easier to access than courts, procedures are more informal, costs are low or non-existent and formal legal representation is not required. In addition, such bodies often have other tasks, such as providing advice and assistance to victims of discrimination, awareness raising and making recommendations.

Good Practice: Bulgaria

The Protection Against Discrimination Act (PADA) provides for the establishment of the Protection Against Discrimination Commission (PADC), which is a specialised equality body with the task of promoting and enforcing non-discrimination on a variety of grounds, including disability.⁵¹ PADC assists victims of discrimination, carries out independent research and publishes independent reports. It can make recommendations to public authorities, including with regard to legislation and give opinions on draft legislation. It also informs the public about non-discrimination legislation.

PADC is also competent to hear individual complaints of discrimination by victims and third parties. If it finds that discrimination has occurred, it can issue legally binding findings, impose fines, and issue mandatory instructions for remedial or preventative redress. It has the power to initiate proceedings at its own discretion against any alleged perpetrator.

An alleged victim of discrimination can choose to bring a complaint before the PADC, but can also opt to bring a case before a court.

51. All relevant provisions are contained in Chapter 3 (Articles 40-49) of the Bulgarian, Protection Against Discrimination Act (“закон за защита от дискриминация”), SG 86/30 September 2003. Unofficial English translation available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=52848ab24>.

In some States the task of hearing complaints of discrimination and providing advice to victims of discrimination is split between two bodies. This can happen to ensure that the equality body is able to act independently when adjudicating.

Good Practice: The Netherlands

The Netherlands Institute for Human Rights can investigate and hear complaints of discrimination and issue non-binding Opinions.⁵² In addition, it can investigate instances of structural discrimination of its own accord and advise (government) organisations on whether their policies or practices are in compliance with non-discrimination law. The Institute can also advise the government on issues concerning discrimination, including with regard to proposals for legislation, and can carry out research on specific issues.

The task of assisting and advising victims of discrimination and monitoring discrimination is carried out by Anti-Discrimination Bureaus (ADVs).⁵³ All municipalities in the Netherlands are obliged to establish and fund ADVs. The ADVs work together through a national association and are supported by an expert institution, Art. 1 (named after the non-discrimination article in the constitution).

The legal status of findings or opinions of equality bodies varies. In some cases, as in the case of the Bulgarian PADC, the findings are legally binding, but in other instances, as in the case of the Netherlands Human Rights Institute, the opinions are not legally binding – although they may well be respected in practice and they may also be taken into account by courts if the complaint is later brought before a court.

Equality bodies also play a role in raising awareness of important issues, and providing information to the general public.

52. See the Netherlands, Law on the Institute for Human Rights (“Wet College voor de Rechten van de Mens”), available in Dutch at: <http://wetten.overheid.nl/BWBR0030733/2013-01-01> (accessed 8 December 2016). See also Law on Equal Treatment on Grounds of Disability or Chronic Illness (Wet gelijke behandeling op grond van handicap of chronische ziekte), available in Dutch at: <http://wetten.overheid.nl/BWBR0014915/2012-10-01>. For general information in English see: <http://www.mensenrechten.nl/publicaties/detail/35931>.

53. The Netherlands, Act on Local Anti-Discrimination Bureaus (“Wet gemeentelijke antidiscriminatievoorzieningen”), available in Dutch at: <http://wetten.overheid.nl/BWBR0026168/2009-07-28>.

Monitoring: Collection of data and statistics

Legislation prohibiting disability discrimination, and action to promote equality, must be complemented by monitoring activities to see what impact measures are having in practice. Statistical and other empirical evidence can also help to reveal the existence, and patterns, of discrimination, and can provide evidence on which to base further action. Equality data and statistics serve a variety of purposes:

- ▶ Equality data facilitates policy development and implementation. It can help to identify inequalities and discrimination and suggest appropriate policy responses.
- ▶ Equality data can help courts identify if discrimination has taken place, and provide evidence of the existence or absence of both direct and indirect discrimination.
- ▶ Collecting equality data is a way of monitoring the realisation of equality and non-discrimination, as well as other human rights.
- ▶ Equality data helps organisations, such as private sector employers, schools and other public bodies, to ensure that their recruitment, dismissal and other practices comply with non-discrimination law.
- ▶ The availability of equality data facilitates sensitising and awareness-raising activities.
- ▶ Equality data helps researchers understand the phenomenon of disability discrimination and inequality.⁵⁴

Public bodies working on disability issues can collaborate with national statistical offices to collect equality data on the situation of persons with disabilities. For example, in Russia the notion of “reasonable accommodation” has been included as an “accessibility indicator” in ministerial decrees aimed at implementing the UNCRPD since 2012.⁵⁵

54. Makkonen T., *European Handbook on equality data – 2016 revision*, European Commission, Directorate General Justice and Consumers, Publications Office of the European Union, Luxembourg, forthcoming, pp.19-22.

55. Ministry of Labour and Social Protection of the Russian Federation, *Methods for rating and classification of objects and services for their objective assessment for developing measures of their accessibility. Methodological manual*, 18 September 2012.

Good Practice: Italy

The Italian National Observatory of Disability has, as one of its tasks collection of statistical data on disability in line with Article 31 of the UNCRPD.⁵⁶ The National Observatory cooperates with the National Statistical Office, Istat. A homepage has been set up on disability issues, which shows the main activities carried out. In particular the website contains official statistics on disability produced by Istat and institutions belonging to the National Statistical System, with the aim of documenting the living conditions and the level of social inclusion of persons with disabilities and providing support for the planning of the policies and monitoring of the UNCRPD.⁵⁷

Individual organisations can also collect equality data and public authorities can play a role in encouraging or supporting this.

Good Practice: Austria

In early 2014, the University of Vienna conducted an online survey to identify the level of diversity within their student body.⁵⁸ The survey aimed to obtain a better picture of students' backgrounds - with a focus on ethnic affiliation, disability and educational background of students' parents - and the relevance of those factors for the selection of studies and advancement at university. The data will be used as a starting point to increase the number of students with disabilities among others. The goal of better inclusion of students with disabilities and/or chronic diseases is included in the performance agreement between the University of Vienna and the Federal State of Austria and the online survey provides the basis for working towards that.⁵⁹

56. Italy, Legislative Decree 18/2009 Ratification and execution of the UNCRPD with its Optional Protocol and institution of the National Observatory on the Situation of Persons with Disability ("Ratifica ed esecuzione della Convenzione delle Nazioni Unite sui diritti delle persone con disabilità", con Protocollo opzionale, fatta a New York il 13 dicembre, 2006 e istituzione dell'Osservatorio nazionale sulla condizione delle persone con disabilità), available in Italian at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2009-03-03;18>.
57. Istat homepage, available in Italian at: "Disibilità in Cifre", [http://dati.disabilitaincifre.it/dawinciMD.jsp?a1=u2i4Y4Y&a2=_-&n=\\$\\$\\$1\\$\\$\\$\\$\\$\\$&o=&p=hm&sp=null&l=1&exp=0](http://dati.disabilitaincifre.it/dawinciMD.jsp?a1=u2i4Y4Y&a2=_-&n=$$$1$$$$$$&o=&p=hm&sp=null&l=1&exp=0).
58. "Universität Wien" (2015), "Zentrale Ergebnisse der Diversity-Studierendenbefragung an der Universität Wien" (Key results of the student survey on diversity at the University of Vienna), available in German at: https://diversity.univie.ac.at/fileadmin/user_upload/p_diversity_management/Bilder_neu/UniversitätWien_DiversitätStudierendenumfrage2014_zentraleErgebnisseZusammenfassung.pdf.
59. "Universität Wien, Bundesministerium" (2013) "Leistungsvereinbarung 2013-2015" (Performance Agreement 2013-2015), p.62, available in German at: http://www.univie.ac.at/mtbl02/2012_2013/2012_2013_77.pdf.

Employment initiatives

Positive measures to promote equality and non-discrimination in the labour market

While non-discrimination legislation is a key tool in encouraging the elimination of disability discrimination, positive action measures can also promote the equal participation of persons with disabilities in the labour market.

Financial measures

A key financial instrument to support equality in the field of employment is the provision of financial support to offset any additional costs related to the employment of persons with disabilities. It should be stressed that, in many cases, no such costs arise. However, on occasions employers or workers with a disability may incur such costs, for example through the purchase of specialised equipment. Other costs can relate to the provision of a job coach, additional training, or adaptation of a workplace. These are all reasonable accommodations, and the availability of public funding to offset such costs means that it is highly unlikely that making such accommodation will amount to a disproportionate financial burden for the employer.

Good Practice: Estonia

The Labour Market Services and Benefits Act⁶⁰ provides for targeted support for unemployed persons with disabilities, including the adaptation of working premises and the provision of specialised equipment. The support is granted on the basis of a contract between the Unemployment Insurance Fund and the employer, and the Fund compensates the employer for between 50 and 100% of the cost of making the necessary adaptation. The Fund can also provide the individual with disabilities with free use of technical equipment if this is needed to carry out employment. Two other services which are provided are communication support at a job interview and the assistance of a support person. These services are granted to individuals if they are necessary to overcome disability-related obstacles to employment and if other employment services will not be effective.

60. Estonia, Labour Market Services and Benefit Act (2006). Available in English at: <https://www.riigiteataja.ee/en/eli/506062014001/consolidate>.

Non-financial measures

Non-financial measures have the potential to contribute significantly to ensuring equality and non-discrimination. One approach embedded in legislation in both Finland and the United Kingdom is the obligation to take positive measures to promote equality. In Finland, this equality duty is imposed on employers as well as public authorities and the providers of education.

Good Practice: Finland

In Finland, the Non-Discrimination Act (1325/2014)⁶¹ obliges all employers who employ more than 30 people to take steps to foster equality. This “equality duty” also applies to all public authorities and private sector organisations which exercise public power or perform public administrative tasks and providers of education. An “equality duty” of this nature not only requires that discrimination is prohibited, but that active steps are taken to promote equality.

Section 7 of the Non-Discrimination Act (1325/2014)

Employer’s duty to promote equality:

(1) The employer must assess the realisation of equality in the workplace and, taking into account the needs of the workplace, develop the working conditions as well as the methods complied with in the selection of personnel and in making decisions concerning the personnel. These measures shall be effective, expedient and proportionate, taking into account the operating environment, resources and other circumstances.

(2) An employer who regularly employs at least 30 persons must have a plan for the necessary measures for the promotion of equality. These measures and their effectiveness must be discussed with the personnel or their representatives.

(3) A shop steward elected on the basis of a collective agreement or a collective agreement for central government, or if one has not been elected, an elected representative as referred to in the Employment Contracts Act, or other representative of the personnel who participated in the planning of non-discrimination measures, has a right to access information, on request, on what actions the employer has taken to promote equality in the workplace. The occupational safety delegate has the same right.³¹

61. Finland, Non-discrimination Act (1325/2014). Available in English at: <http://www.finlex.fi/en/laki/kaannokset/2014/en20141325.pdf>.

62. Section 5 of the Act addresses authorities’ duty to promote equality while section 6 addresses the duty of the education provider to promote equality.

Awareness-raising measures can also help to combat discrimination. Such measures can be targeted at employers and aim to make them aware of the potential of workers with disabilities; at persons with disabilities, encouraging them to apply for employment; or they can be targeted at both groups, and aim to bring together potential employers and employees with disabilities. The State can play a part in running such campaigns, and can work with employer's organisations and organisations for persons with disabilities in order to ensure that the needs of all relevant parties are considered and incorporated.

Good Practice: Italy

A project entitled "Diversity at work" (diversitalavoro)⁶³ was launched in 2008. The project had the motto "We are looking for talents to offer equal opportunities in the world of work" and was organised by the Italian equality body UNAR, Sodalitas, Synesis and the Adecco Foundation for equal opportunities. The project was designed to create an opportunity for businesses to meet persons with disabilities and foreign nationals, thus allowing for contact between employers and persons who often experience discrimination. Participants had the opportunity to apply for a job interview. The event was publicised in the media and was an effective recruitment tool.⁶⁴

Good Practice: Germany⁶⁵

The Federal Anti-Discrimination Agency (FADA) and the Commissioner for Matters relating to Disabled Persons named 2013 a thematic year for persons with disabilities and chronically ill persons. In the course of that year FADA, in co-operation with relevant stakeholders, presented good practice awards to companies integrating persons with disabilities and chronically ill persons in an exemplary manner.

Employer's organisations can also play a key role in providing guidance and advice related to the type of industry in which a particular company operates.

63. Project "Diversity at work", available in Italian at: <http://diversitalavoro.it/>.

64. Information taken from Equinet (2014), "Positive action measures: The Experience of equality bodies", Equinet Secretariat, Brussels at page 37. Available at http://www.equineteurope.org/IMG/pdf/positive_action_measures_final_with_cover.pdf.

65. Information taken from Equinet (2013), Equality bodies supporting good practice on making reasonable accommodation for people with disabilities in employment and service provision, an Equinet good practice guide, Equinet Secretariat, Brussels, available at: http://www.equineteurope.org/IMG/pdf/final_guide.pdf.

Good Practice: United Kingdom – Business Disability Forum³⁵

The Business Disability Forum is a not-for-profit member organisation, which brings together business people, persons with disabilities and government agents to discuss reforms necessary to achieve workplace equality in order that persons with disabilities can contribute to business success, to society and to economic growth. The forum provides support by sharing expertise, giving advice, providing training and facilitating networking opportunities.

Education

Member States of the Council of Europe can adopt various measures and approaches to support non-discrimination and equality, and to ensure the provision of inclusive education.

Measures to support inclusive education

What is inclusive education?

A process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education.³⁶

Inclusive education targets the inclusion not only of students with disabilities, but also minorities generally, Roma*, students who lack proficiency in the language of instruction, and furthermore all those excluded from mainstream education. The goals of inclusive education include non-discrimination and equality of opportunities, as well as achieving accessibility of structures, facilities and processes and individualised learning. Article 24 of the UNCRPD accords students the right to be educated in a manner which is best suited to their needs and abilities.⁶⁸

66. Example taken from the International Labour Organization (2016), "Promoting diversity and inclusion through workplace adjustments: A practical guide" International Labour Office, Geneva.

67. UNESCO (2005), "Guidelines for inclusion: ensuring access to education for all", UNESCO, available at <http://unesdoc.unesco.org/images/0014/001402/140224e.pdf>.

* The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "Gens du voyage", as well as persons who identify themselves as Gypsies.

68. See for more extensive coverage of UNCRPD education obligations: Waddington L. and Toepke C. (2014), "Moving towards inclusive education as a human right: An analysis of international legal obligations to implement inclusive education in law and policy", Maastricht Faculty of Law Working Paper No. 2014-7, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2535198 (accessed 16 December 2016).

Article 24 of the UNCRPD: Education

Summary of key obligations related to equality/non-discrimination

- ▶ Persons with disabilities are not excluded from the mainstream education system and children with disabilities are not excluded from free and compulsory primary education or secondary education, on the basis of disability;
- ▶ Access to inclusive education on an equal basis with others.
- ▶ Access to vocational training without discrimination.
- ▶ Lifelong learning through provision of reasonable accommodation.
- ▶ Reasonable accommodation of the individual's requirements.
- ▶ Effective individualised support measures.

Article 24 of the UNCRPD demonstrates the twin-track approach to disability rights. It requires States Parties to develop an inclusive education system at all levels, as well as ensuring the provision of reasonable accommodation to meet individual needs, and other effective individualised support measures to maximise academic and social development in the mainstream. These requirements promote equality and non-discrimination, through requiring that the individual needs of persons with disabilities are catered for within the mainstream education system, as well as requiring that the system as a whole is made accessible to all individuals.

There are numerous measures and approaches that can be adopted to increase equality and ensure non-discrimination for persons with disabilities in mainstream schools⁶⁹:

- ▶ Ensuring that no person is denied access to education on the basis of disability.
- ▶ Ensuring an individualised approach to education based on the student's particular needs (e.g. the development of individual education plan);

69. Some of these approaches have been informed by the Council of Europe Report from The 1st SchoolNet Study Visit To Greater Region, "Region to region – exchange of educational experience". The OHCHR confirms these measures by stating that: "The right to education requires equality measures, such as the provision of accessible learning materials, support and teachers' training, and is complemented by anti-discrimination measures, such as reasonable accommodation and the prohibition of exclusion from general education, followed by system reform". Office of the United Nations High Commissioner for Human Rights (December 2010), "Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities", UN Doc. A/HRC/34/26, para. 14.

development of a personal student portfolio; development of a personalised assessment scheme).

- ▶ Adaptation of the curriculum (its content and instructional strategies) and adaptation of materials to suit students with different types of disabilities.
- ▶ Adapted forms of learning (additional lessons, small group work, pedagogic assistants, collaborative learning/problem-solving).
- ▶ Specialised training for staff.
- ▶ Co-operation with other professionals in the design and implementation of additional support (e.g. social workers, school co-ordinators, special education teachers, psychologists/pedagogues, parents, etc.).
- ▶ Awareness-raising campaigns promoting the capabilities of students with disabilities, their equal rights to mainstream education and inclusive educational tools.
- ▶ Interpretative assistance for persons with hearing impairments.
- ▶ Allocation of extra time to students with disabilities (or other facilities) in order to allow them to complete an examination.
- ▶ Collection of data/statistics in order to identify special educational needs within the student population.

Approaches to inclusive education in Council of Europe member States

Council of Europe member States demonstrate wide variations in their approaches to inclusive education, in particular with regard to ensuring non-discrimination and reasonable accommodations for students with disabilities. Some member States have enacted legislative provisions providing for a complete duty to reasonably accommodate persons with disabilities in the field of education on the basis of non-discrimination or specialist disability legislation.⁷⁰ Other member States have enacted legislative provisions containing a *de facto* reasonable

70. The majority of EU member States have adopted measures of reasonable accommodation in the context of education. It is noteworthy that the German obligation of reasonable accommodation in the educational context derives from the constitution. Information taken from Waddington L. and Broderick A. (2016), "Disability law and the duty to reasonably accommodate beyond employment: A legal analysis of the situation in EU Member States", Publications Office of the European Commission, Luxembourg, available at http://ec.europa.eu/justice/discrimination/files/reasonable_accommodation_beyond_employment_final2.pdf.

accommodation duty.⁷¹ However, there are also member States whose laws do not contain an explicit duty to reasonably accommodate persons with disabilities, but which provide for measures to ensure integrated/inclusive education.⁷² In practice, many Council of Europe member States have quite some way to go in achieving inclusive education systems; however there is evidence of good practice.

The UNCRPD Committee has commended Sweden for its education system, in which only 1.5% of children are instructed outside inclusive, mainstream schools.⁷³

Good Practice: Sweden

The principal Swedish law providing for education, the School Act,⁷⁴ is based on the philosophy that all students have the same right to personal development and learning experiences (Article 1 of the Act). The Act promotes inclusion in the mainstream where possible. If inclusion is not possible, then the given school must indicate very clearly why other educational options for pupils should be considered.

The Portuguese government has also been praised by the UNCRPD Committee for its enactment of Decree Law No. 3/2008, amended by Law No. 12/2008 of 12 May,⁷⁵ which is intended to ensure the implementation of the right to inclusive education for persons with special educational needs. As a result of the Decree Law, 98% of students with disabilities in Portugal attended regular schools in 2015.⁷⁶

71. For example, in the Czech Republic, Denmark, France, Greece, Hungary, as well as in Malta and Romania, there are what might be termed *de facto* reasonable accommodation duties. Ibid.

72. For example in Estonia, Italy, Latvia, Lithuania and Poland. Ibid.

73. UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Sweden, U.N.Doc. UNCRPD/C/SWE/CO/1 (2014), para. 4

74. Sweden, Skollag, 2010:800 (2010), available in Swedish at http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/skollag-2010800_sfs-2010-800.

75. Portugal, Decree Law No. 3/2008 (2008), as amended, available in Portuguese at <https://www.mindbank.info/item/5672>.

76. UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Portugal, UN Doc. UNCRPD/C/PRT/CO/1 (2016), para. 6(b).

Good Practice: Portugal

There are no public special education schools and no secondary special schools (private or public) in Portugal. Decree Law No. 3/2008,⁷⁸ as amended, lists the specialised supports to be provided in pre-school, primary and secondary education, in the public, private and co-operative sectors in Portugal. Under that law, students with disabilities are entitled to support services and to receive materials adapted to their disability.

The UNCRPD Committee has also commended Italy, which for the last three decades has been striving to implement an inclusive education system, free from segregation.⁷⁸

Good Practice: Italy

In Italy, Law 517/1977⁷⁹ requires that support teachers have to be qualified in inclusive educational provision. Under Law 104/1992,⁸⁰ appropriate individualised support necessary to achieve inclusion must be provided to persons with disabilities, with the number of hours of support for each individual being dictated by the needs of the individual in question.

There are numerous examples of awareness-raising and capacity-building measures throughout the Council of Europe. These aim at increasing participation of (among others) persons with disabilities in education.

Good Practice: Joint EU/Council of Europe Project, “Regional Support for Inclusive Education”⁸¹

In December 2013, the Council of Europe joined the EU-supported Instrument for Pre-accession Assistance (IPA) to launch the project “Regional Support for Inclusive Education”.

77. Portugal, Decree Law No. 3/2008 (2008), as amended, available in Portuguese at <https://www.mindbank.info/item/5672>.

78. UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Italy, UN Doc. UNCRPD/C/ITA/CO/1 (2016), para. 4.

79. “Legge n. 517 04/08/1977 (Norme sulla valutazione degli alunni e sull’abolizione degli esami di riparazione nonché altre norme di modifica dell’ordinamento scolastico)”. Link to the legislation in Italian: <http://www.integrazionescolastica.it/article/645>.

80. “Legge n. 104 05/02/1992 (Legge quadro per l’assistenza, l’integrazione sociale e i diritti delle persone handicappate)”. Link to the legislation in Italian: <http://www.integrazionescolastica.it/article/577>.

81. Joint European Union/Council of Europe Project, Regional Support for Inclusive Education in South East Europe, information available at: <http://pjp-eu.coe.int/en/web/inclusive-education/>.

The project seeks to ensure a regional approach to inclusive education in South East Europe. These countries present similar social, political and economic contexts, as well as facing similar challenges regarding educational provision. The joint project aims to help 49 schools across South East Europe to develop inclusive cultures, policies and practices. It also has as its objective to increase knowledge and understanding of inclusive education across the region through awareness-raising, mutual learning and capacity-building measures.

Some States have specifically linked awareness raising in education to opportunities in the workforce for persons with disabilities.⁸²

Good Practice: Spain, “Your Education Has No Limits: Develop Your Future”⁸²

This project aims to raise awareness about disability issues, and to promote the active participation of persons with disabilities in universities through educational awareness campaigns targeted at students in compulsory secondary education.

The main goal of this project is to create a significant increase in the number of students with disabilities attending Spanish universities. The medium-term objectives of the project are:

- ▶ Raising awareness throughout society, and in the educational community, with regard to the importance of equal opportunities in higher education for persons with disabilities.
- ▶ Promoting the participation of persons with disabilities in the workforce.
- ▶ Increasing the percentage of persons with disabilities who continue to upper secondary education (16 to 18 years).
- ▶ Making recommendations to improve the higher educational environment for students with disabilities, and as a result, to reduce drop-out rates.

82. Information taken from European Network on Inclusive Education and Disability, Includ-ed (2012), *Inclusive education and disability: Good practices from around Europe*, P.A.U. Education, Barcelona, available at http://www.includ-ed.eu/sites/default/files/documents/inclusive_education_disability_good_practices_from_around_europe.pdf. For information in Spanish on the project, see: <http://www.fundacionrepsol.com/es/areas-actuacion/formacion-sin-limites>.

There are also examples of national projects promoting equality by seeking to ensure barrier-free learning environments

Good Practice: Finland⁸³

The Finnish government has implemented a national higher education accessibility project (abbreviated as ESOK in Finnish), which started in 2006, with the objective of promoting barrier-free learning and equal opportunities in higher education institutions for students with disabilities, illnesses or learning difficulties, and those belonging to a linguistic and cultural minority. The project was facilitated by the Finnish Ministry of Education from 2007 to 2009, and it was further developed by representatives from universities and organisations, as well as individuals.

The project seeks to ensure equal opportunities and barrier-free environments in relation to student selection, accessible entrance exam design, accessibility in evaluations and study, taking into account individual needs.

Persons with disabilities participated in ESOK from the beginning of the project (2006), through until its completion in 2011. They participated, for instance, as experts in working groups and teams that produced the guidelines and recommendations for the project.

The influence of the UNCRPD

The UNCRPD has had a discernible influence in several Council of Europe member States. Certain member States have incorporated the social model of disability into their domestic laws and have included a duty to provide support measures to students with disabilities and/or special education needs.

Good Practice: Czech Republic⁸⁴

In March 2015, the Czech Parliament adopted an amendment to Section 16 of the School Act,⁸⁵ which resulted in a new definition of pupils with special education needs under Czech law. The new definition focuses on

83. Ibid. For information in Finnish see: <http://www.esok.fi/>

84. Information taken from Waddington L. and Broderick A. (2016), "Disability law and the duty to reasonably accommodate beyond employment: A legal analysis of the situation in EU Member States", Publications Office of the European Commission, Luxembourg, available at http://ec.europa.eu/justice/discrimination/files/reasonable_accommodation_beyond_employment_final2.pdf.

85. Czech Republic, Law on pre-school, primary, secondary and higher vocational and other education (Education Act) ("O předškolním, základním středním, vyšším odborném a jiném vzdělávání"), No. 561/2004 Col, available in Czech at <http://aplikace.msmt.cz/Predpisy1/sb190-04.pdf>.

the provision of support measures to ensure equal educational opportunities for persons with disabilities. This results in a shift away from the medicalised or functional approach to disability, towards a social model of disability, in accordance with the UNCRPD.

The UNCRPD is also affecting the judicial interpretation of domestic norms regarding education in some Council of Europe States.

Good Practice Example: Spain, National High Court (*Audiencia Nacional*), Appeal 160/2007, 2 November 2009⁸⁶

On 2 November 2009, the Spanish National High Court ruled in a case concerning disability discrimination in the field of education. The case came to court following the denial by the Education Ministry of a scholarship to the applicant, a person with physical and intellectual disabilities, who wanted to study law. In denying the scholarship, the Ministry applied the same criteria to the applicant as to all other students. The Court decided that the regulations governing the particular scholarships should be subject to the provision of reasonable accommodation and ordered that the scholarship be granted to the applicant. In its judgment, the Court took into account the UNCRPD duty to ensure reasonable accommodation in education (despite the fact that the UNCRPD had not been transposed into domestic law at the time of the case).

86. ECLI:ES:AN:2009:5337, Audiencia Nacional (Madrid), available in Spanish at: <http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=AN&reference=4989963&links=%22160%2F2007%22&optimize=20091217&publicinterface=true> (accessed 16 November 2016).

Part 3: Checklist for Achieving Non- Discrimination and Equality

Many different kinds of action, both legislative and policy-based, are needed to achieve equality and combat discrimination on the ground of disability. The following checklist can be of help in prioritising, designing and implementing measures to combat discrimination and promote equality.

- ▶ Does the constitution contain a non-discrimination or equality clause?
 - Does that clause refer explicitly to disability?
- ▶ Is there a wide ranging action plan or strategy to implement the UNCRPD?
 - Does this pay specific attention to combating discrimination and promoting equality, as well as addressing this as a cross-cutting issue?
 - Is the achievement of equality/non-discrimination mainstreamed across a range of legal and policy areas?
 - Does the strategy pay specific attention to multiple discrimination affecting, for example, women with disabilities and older persons with disabilities?
- ▶ Is there non-discrimination legislation in place which prohibits disability discrimination across a wide field? Specifically, are the following fields, among others, covered:
 - Employment and occupational training?
 - Access to goods and services?
 - Education?
 - Health care?
 - Social security?
 - Access to justice?
 - Participation in political and public life?
- ▶ Does the non-discrimination legislation impose duties on both the public and private sector?

- ▶ Does the non-discrimination legislation prohibit all forms of discrimination experienced on the ground of disability? Including:
 - Denial of reasonable accommodation?
 - Direct discrimination?
 - Indirect discrimination?
 - Harassment?
 - Instruction to discriminate?
- ▶ Does the non-discrimination legislation prohibit:
 - Discrimination by association?
 - Multiple discrimination?
 - Discrimination on the ground of perceived disability?
 - Discrimination on the ground of past disability?
- ▶ In federal States, where competences to legislate are spread across different levels of government:
 - Are there multiple pieces of disability non-discrimination legislation at different levels of government, thereby ensuring that discrimination across the full scope of the UNCRPD is addressed?
 - Is there co-ordination between different levels of government when legislating, in order to reduce disparities and differences by agreeing on common terms and definitions and create a common understanding and approach?
- ▶ If disability discrimination is prohibited in a non-discrimination law which addresses multiple grounds, does that law pay sufficient attention to the specificities of disability discrimination, such as by providing for a reasonable accommodation duty?
- ▶ Is there assistance available for victims of discrimination in bringing a complaint?
 - Does an independent and well-resourced National Human Rights Institute, Equality Body or Ombuds institution exist to ensure equality and non-discrimination at the national and regional levels?
 - Is the independent and well-resourced National Human Rights Institute, Equality Body or Ombuds institution able to hear complaints of disability discrimination and does it offer easy access to extra-judicial complaint mechanisms?

- Does the relevant body provide assistance, including legal and financial assistance, and assistance in formulating complaints, to help individuals with disabilities enforce their rights?
- Is the relevant body empowered, and adequately funded, to engage in public awareness raising regarding non-discrimination for persons with disabilities?
- ▶ Is discrimination and inequality of persons with disabilities monitored and recorded?
 - Does the monitoring take factors such as age and gender into account?
 - Does the monitoring seek to identify differences in the situation of persons with different kinds of disability?
 - Does the monitoring consider the impact of disability non-discrimination legislation and measures to promote equality?
 - Does the monitoring include empirical evidence, involving adequately disaggregated quantitative and qualitative data?
 - Is all the data collected used to inform policy and legislation?
 - Do the monitoring structures take into account active involvement of persons with disabilities?
- ▶ Are positive measures taken to promote equality and non-discrimination specifically in the field of employment?
 - Are financial measures, such as support to offset the cost of reasonable accommodations and other disability-related adaptations, available?
 - Are non-financial measures, including awareness-raising measures, adopted in the context of employment?
- ▶ Are positive measures taken to promote equality and non-discrimination specifically in the context of education?
 - Are education systems inclusive at all levels?
 - Are reasonable accommodations and other individualised support measures provided in order to ensure academic and social development in the mainstream?
 - Are these measures enforceable through national laws?
- ▶ Do public authorities support awareness-raising campaigns to help combat disability discrimination and promote equality?

Key Resources

Internet links were active and last consulted last on 8 March 2017.

A range of documents published by the Council of Europe, the European Commission, and other international, European and regional bodies and institutions, serve as key resources in promoting equality and non-discrimination for persons with disabilities. The resources highlighted below represent a non-exhaustive list of the types of documents which the Council of Europe member States can look to for guidance in combating discrimination and promoting equality for persons with disabilities.

Council of Europe

The guiding framework for the Council of Europe member States on disability actions:

- ▶ The Council of Europe Disability Strategy 2017-2023: Human Rights - A Reality for All, available at <http://www.coe.int/en/web/disability/home>.
- ▶ The Council of Europe Disability Action Plan 2006-2015: Quality of Life and Full Participation in Society, available at <http://www.coe.int/en/web/disability/home>.
- ▶ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), available at <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>
- ▶ Søren Ginnerup in co-operation with the Committee of Experts on Universal Design (2009), 'Achieving full participation through Universal Design', Council of Europe Publishing, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?docuementId=09000016805a2a1e>

European Court of Human Rights

Guberina v Croatia, nr. 23682/13, 22 March 2016. Available at: [http://hudoc.echr.coe.int/eng#{"fulltext":\["guberina"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-161530"\]}](http://hudoc.echr.coe.int/eng#{).

European Commission

- ▶ European Disability Strategy 2010-2020, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>, which includes equality, employment, education and training as key priority areas.
- ▶ The website of the European Commission's Directorate-General for Employment, Social Affairs and Inclusion often contains relevant resources related to equality/non-discrimination for persons with disabilities. Available at: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2699&furtherNews=yes>.

European Network of Legal Experts in Gender Equality and Non-Discrimination

The following reports, and many others, prepared by the European Network of Legal Experts in Gender Equality and Non-Discrimination, analyse the measures taken mainly in EU member States related to non-discrimination and equality for persons with disabilities, including in the fields of employment and education. They can be accessed at <http://www.equalitylaw.eu/publications/thematic-reports>:

- ▶ European Network of Legal Experts in Gender Equality and Non-Discrimination (2016), written by Anna Lawson and Delia Ferri, "Reasonable accommodation for disabled people in employment: A legal analysis of the situation in EU Member States in Iceland, Liechtenstein and Norway", Publications Office of the European Commission, Luxembourg.
- ▶ European Network of Legal Experts in Gender Equality and Non-Discrimination (2016), written by Lisa Waddington and Andrea Broderick, "Disability Law and the Duty to Reasonably Accommodate Beyond Employment: A Legal Analysis of the Situation in EU Member States", Publications Office of the European Commission, Luxembourg.
- ▶ European Network of Legal Experts in Gender Equality and Non-Discrimination (2016), written by Mark Bell and Lisa Waddington, "The Employment Equality Directive and supporting people with psychosocial disabilities in the workplace, A legal analysis of the situation in the EU Member States", Publications Office of the European Commission, Luxembourg.

- ▶ European Network of Legal Experts in Gender Equality and Non-Discrimination, (2016), written by Sandra Fredman, “Intersectional discrimination in EU gender equality and non-discrimination law”, Publications Office of the European Commission, Luxembourg.

The Network also publishes extensive country reports presenting non-discrimination law, including on the ground of disability in 35 European countries (including all EU member States). The reports, which are updated annually, are available at: <http://www.equalitylaw.eu/country>.

The Academic Network of European Disability Experts

The Academic Network of Disability Experts (ANED) supports the European Commission and EU member States by providing independent scientific advice, analysis and information on EU and national disability policies and legislation. Thematic priorities for ANED’s annual work programmes include the fields of equality, employment and education. Measures adopted at the national level can be accessed in ANED’s country reports at: <http://www.disability-europe.net>.

Equinet

Among other things, Equinet serves as a knowledge centre on equal treatment and fosters innovative approaches among equality bodies. It regularly publishes reports outlining good practices in the field of equality/non-discrimination, such as:

- ▶ Equinet (2013), “Equality bodies supporting good practice on making reasonable accommodation for people with disabilities in employment and service provision”, An Equinet Good Practice Guide, Equinet Secretariat, Brussels. Available at: http://www.equineteurope.org/IMG/pdf/final_guide.pdf.

Other European resources related to promoting equality in employment, vocational training and education

The resources below give an overview of measures adopted by States in the fields of equality, employment, vocational training and education, and they detail good practice measures in those areas:

- ▶ European Foundation for the Improvement of Living and Working Conditions (2006), written by Richard Wynne, Donal Mc. Ananey and

Caroline O’Kelly, ‘Supporting employability: Guides to good practice in employment counselling and guidance’, Office for Official Publications of the European Communities, Luxembourg, available at <https://bookshop.europa.eu/en/employment-guidance-services-for-people-with-disabilities-pbTJ7606128/>.

The report above examines case studies in 10 member States, and identifies examples of good practice in employment services for people who have become disability claimants in the course of their working lives.

- ▶ The European Network on Inclusive Education and Disability, IncluD-ed (2012), “Inclusive education and disability: Good practices from around Europe”, P.A.U. Education, Barcelona, available at http://www.includ-ed.eu/sites/default/files/documents/inclusive_education__disability._good_practices_from_around_europe.pdf.

The goal of the European Network on Inclusive Education and Disability is to promote equal opportunities in the educational context, with the aim of improving the employability and inclusion in employment for persons with disabilities. The report above provides examples of good practice within Europe related to the provision of education for persons with disabilities.

United Nations and international resources

In its concluding observations to States, the Committee on the Rights of Persons with Disabilities has provided guidance for implementing Article 5 of the UNCRPD in connection with the substantive rights contained in the Convention. These concluding observations are a key resource for States.

In addition, the UN institutions have published various key resources related to the UNCRPD, and specifically related to equality/non-discrimination, including in the fields of employment and education and training:

- ▶ The International Labour Organization (2016), “Promoting diversity and inclusion through Workplace adjustments: A practical guide”, International Labour Office, Geneva.
- ▶ UNESCO, The Flagship on Education for All and the Rights of Persons with Disabilities: Towards Inclusion, represents a joint effort among UN organisations, NGOs and donor countries acting together in the process of achieving Education for All. The Flagship seeks to unite all partners, and come up with solutions, towards achieving inclusive education.

- ▶ UNESCO (2003), “Overcoming exclusion through inclusive approaches in education: A challenge and a vision (conceptual paper)”, UNESCO, available at <http://unesdoc.unesco.org/images/0013/001347/134785e.pdf>.
- ▶ United Nations (2007), “From exclusion to equality: Realizing the rights of persons with disabilities: Handbook for parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol”, Inter-Parliamentary Press, Geneva, available at <http://www.ohchr.org/Documents/Publications/training14en.pdf>.
- ▶ United Nations (2010), Report of the United Nations expert group meeting on accessibility: innovative and cost-effective approaches for inclusive and accessible development, United Nations Department of Economic and Social Affairs in co-operation with the World Bank, available at <https://www.un.org/development/desa/disabilities/about-us/expert-group-meetings/united-nations-expert-group-meeting-on-accessibility-innovative-and-cost-effective-approaches-for-inclusive-and-accessible-development.html>.
- ▶ Office of the United Nations High Commissioner for Human Rights (December 2010), “Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities”, UN Doc. A/HRC/34/26.

In this study, the Office of the United Nations High Commissioner for Human Rights sets forth the standards contained in Article 5 of the UNCRPD with respect to equality and non-discrimination of persons with disabilities. The study’s objective is to provide guidance in the implementation of Article 5 of the UNCRPD. In that regard, the study identifies good practices and makes recommendations.

Useful resources on equality mainstreaming, participation and gender and disability

- ▶ Leonard Cheshire International (2006), “A practical tool for effective disability mainstreaming in policy and practice”, UK edition.
- ▶ Wellesley Centers for Women (2008), “Disability rights, gender, and development: A resource tool for action”, available at http://www.un.org/disabilities/documents/Publication/UNWCW_MANUAL.pdf

The toolkit above provides insights on the theory and practice of human rights-based approaches to development and puts forward innovative

approaches to the implementation of the UNCPRD in gender development activities, among others.

- ▶ Leonard Cheshire Disability and Inclusive Development Centre (2013), “Research toolkit for Disabled People’s Organisations: How to undertake and use applied research”, available at <https://www.leonardcheshire.org/about-us/publications/latest-publications-download/research-toolkit-for-disabled-peoples>.

The toolkit above provides practical information for organisations for persons with disabilities regarding how to use research knowledge in their programmes, campaigns and advocacy work.

Bibliography

Internet links were active and last consulted last on 8 March 2017.

Broderick A (2015), *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities*, Cambridge/Antwerp: Intersentia.

“Cel Publicaties van de Federale Overheidsdienst Werkgelegenheid” (2005), “Arbeid en sociaal overleg, wegwijs in de redelijke aanpassingen ten behoeve van personen met een handicap op het werk”, Cel Publicaties, Brussels, available at: http://www.werk.be/sites/default/files/Diversiteit_Redelijkeaanpassingen_federaalvademecum_versie0907.pdf.

Council of Europe (2014), “Region to region – exchange of educational experience” (Report from the 1st school net study visit to greater region), available at: <http://pjp-eu.coe.int/documents/1473702/5781644/SchoolNet+report+Study+Visit+FINAL.pdf/75f9438d-61d7-4774-8cbe-49c256522fe1>.

Equinet (2011), “Positive action measures: The experience of equality bodies” Equinet Secretariat, Brussels, available at http://www.equineteurope.org/IMG/pdf/positive_action_measures_final_with_cover.pdf.

European Network on Inclusive Education and Disability Includ-ed (2012), “Inclusive education and disability: Good practices from around Europe”, P.A.U. Education, Barcelona, available at http://www.includ-ed.eu/sites/default/files/documents/inclusive_education__disability._good_practices_from_around_europe.pdf.

European Network of Legal Experts in Gender Equality and Non-Discrimination, written by Waddington L. and Broderick A. (2016), “Disability law and the duty to reasonably accommodate beyond employment: A legal analysis of the situation in EU Member States”, Publications Office of the European Commission, Luxembourg, available at http://ec.europa.eu/justice/discrimination/files/reasonable_accomodation_beyond_employment_final2.pdf.

European Network of Legal Experts in the Non-Discrimination Field, written by Waddington L. and Lawson A. (2009), 'Disability and non-discrimination law in the European Union: An analysis of disability discrimination law within and beyond the employment field', Publications office of the European Union, Luxembourg.

International Labour Organization (2016), 'Promoting diversity and inclusion through workplace adjustments: A practical guide', International Labour Office, Geneva.

Makkonen T., *European Handbook on equality data – 2016 revision*, European Commission, Directorate General Justice and Consumers, Publications office of the European Union, Luxembourg, forthcoming.

Ministry of Labour and Social Protection of the Russian Federation (2012), 'Methods for rating and classification of objects and services for their objective assessment for developing measures of their accessibility' Methodological manual.

Ministry of Social Affairs and Health, Finland (2012), "A Strong Basis for Inclusion and Equality, Finland's disability policy programme VAMPO 2010-2015", Helsinki, available at: <https://www.julkari.fi/bitstream/handle/10024/112339/URN%3aNBN%3afi-fe201504224874.pdf?sequence=1>.

Nowak M. (2005), *UN Covenant on Civil and Political Rights: CCPR commentary*, N.P. Engel, Kehl.

Office of the United Nations High Commissioner for Human Rights (December 2010), 'Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities', UN Doc. A/HRC/34/26.

O'Brien J. (2004), "Affirmative Action, Special Measures and the Sex Discrimination Act" *University of New South Wales Law Journal*, vol. 27, issue no. 3.

Select Committee on the Equality Act 2010 and Disability (2016), 'The Equality Act 2010: The impact on disabled people', Report of Session 2015-16, HL Paper 117, available at <http://www.publications.parliament.uk/pa/ld201516/ldselect/ldselect/117/11702.htm>.

"Protocole du 19 juillet 2007 entre l'État fédéral, la Communauté flamande, la Communauté française, la Communauté germanophone, la Région wallonne, la Région de Bruxelles-Capitale, la Commission communautaire commune, la Commission communautaire française en faveur des personnes en situation de handicap, OJ (*Moniteur belge*)", available at http://www.ejustice.just.fgov.be/doc/rech_f.htm.

UNESCO (2005), "Guidelines for inclusion: Ensuring access to education for all", UNESCO, Paris, available at <http://unesdoc.unesco.org/images/0014/001402/140224e.pdf>.

"Universität Wien" (2013), "Performance agreement between the University of Vienna and the Federal State of Austria" Bundesministerium (*Leistungsvereinbarung 2013-2015* (Performance Agreement 2013-2015), p.62, Universität Wien, Wien, available at: http://www.univie.ac.at/mtbl02/2012_2013/2012_2013_77.pdf.

"Universität Wien" (2015), *Zentrale Ergebnisse der Diversity-Studierendenbefragung an der Universität Wien* (Key results of the student survey on diversity at the University of Vienna), available at: https://diversity.univie.ac.at/fileadmin/user_upload/p_diversity_management/Bilder_neu/UniversitätWien_Diversität_Studierendenumfrage2014_zentraleErgebnisseZusammenfassung.pdf.

Waddington L. and Toepke C. (2014), "Moving Towards Inclusive Education as a Human Right: An Analysis of International Legal Obligations to Implement Inclusive Education in Law and Policy", Maastricht Faculty of Law Working Paper No. 2014-7, Maastricht University, Maastricht, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2535198.

United Nations Treaty Body Jurisprudence, General Comments/Recommendations

UN Committee on Economic, Social and Cultural Rights

UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, UN Doc E/C.12/GC/20.

UN Committee on the Elimination of Discrimination against Women

UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 (2004) on Article 4, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women on temporary special measures.

UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 (2010) on the core obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. CEDAW/C/GC/28.

UN Committee on the Rights of Persons with Disabilities

UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Spain (2011), UN Doc. UNCRPD/C/ESP/CO/1.

UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Sweden (2014), U.N.Doc. UNCRPD/C/SWE/CO/1.

UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Belgium (2014), UNCRPD/C/BEL/CO/1.

UN Committee on the Rights of Persons with Disabilities, General Comment no. 3 on the Rights of Persons with Disabilities (2016), UN Doc. UNCRPD/C/GC/3.

UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Portugal (2016), UN Doc. UNCRPD/C/PRT/CO/1.

UN Committee on the Rights of Persons with Disabilities, Concluding Observations to Italy (2016), UN Doc. UNCRPD/C/ITA/CO/1.

National Legislation

Austria

Bundes-Behindertengleichstellungsgesetz (2016), available in German at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004228&ShowPrintPreview=True>.

Bulgaria

Protection Against Discrimination Act (*закон за защита от дискриминация*), SG 86/30 (2003). Unofficial English translation available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=52848ab24>.

Czech Republic

Law on pre-school, primary, secondary and higher vocational and other education (Education Act) (*O předškolním, základním středním, vyšším odborném a jiném vzdělávání*), No. 561/2004 Col, available in Czech at <http://aplikace.msmt.cz/Predpisy1/sb190-04.pdf>.

Estonia

Labour Market Services and Benefit Act (2005), RT I 2005, 54, 430, available in English at: <https://www.riigiteataja.ee/en/eli/506062014001/consolide>.

Finland

Non-discrimination Act (1325/2014), available in English at: <http://www.finlex.fi/en/laki/kaannokset/2014/en20141325.pdf>.

Ireland

Employment Equality Acts 1998 and 2004, available at: <http://www.justice.ie/en/JELR/EmpEqActsConsltdtd.pdf/Files/EmpEqActsConsltdtd.pdf>.

Equal Status Acts 2000-2004, available at: https://www.tcd.ie/wiser/about/what/EqualStatusActsConsltdtd_00_04.pdf.

Italy

Legge n. 517 04/08/1977 "Norme sulla valutazione degli alunni e sull'abolizione degli esami di riparazione nonché altre norme di modifica dell'ordinamento scolastico". Available in Italian at <http://www.integrazionescolastica.it/article/645>.

Legge n. 104 05/02/1992 "Legge quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate". Link to the legislation in Italian: <http://www.integrazionescolastica.it/article/577>. Available in Italian at <http://www.integrazionescolastica.it/article/577>.

Legislative Decree 18/2009, Ratification and execution of the UNCRPD with its Optional Protocol and institution of the National Observatory on the Situation of Persons with Disability (*Ratifica ed esecuzione della Convenzione delle Nazioni Unite sui diritti delle persone con disabilità, con Protocollo opzionale, fatta a New York il 13 dicembre 2006 e istituzione dell'Osservatorio nazionale sulla condizione delle persone con disabilità*), available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2009-03-03;18>.

Malta

Equal Opportunities (Persons with Disability) Act, 2000, available at: <http://www.justiceservices.gov.mt/downloaddocument.aspx?app=lom&itemid=8879>.

Equal Treatment in Employment Regulations (2004), available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11229>.

The Equal Treatment of Persons Order, 2007, available at: <http://www.justice-services.gov.mt/DownloadDocument.aspx?app=lom&itemid=11800&l=1>.

Netherlands

Law on the Institute for Human Rights (Wet College voor de Rechten van de Mens) (2011), available in Dutch at: <http://wetten.overheid.nl/BWBR0030733/2013-01-01>.

Law on Equal Treatment on Grounds of Disability or Chronic Illness (Wet gelijke behandeling op grond van handicap of chronische ziekte) (2003), available in Dutch at: <http://wetten.overheid.nl/BWBR0014915/2012-10-01>. For general information in English see: <http://www.mensenrechten.nl/publicaties/detail/35931>.

Act on Local Anti-Discrimination Bureaus (Wet gemeentelijke antidiscriminatievoorzieningen), (2009), available in Dutch at: <http://wetten.overheid.nl/BWBR0026168/2009-07-28>.

Norway

Act relating to a prohibition against discrimination on the basis of disability (the Anti-Discrimination and Accessibility Act) (2008), available at: <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20130621-061-eng.pdf>.

Act No. 71 relating to Planning and the Processing of Building Applications (the Planning and Building Act) (2008), available at <https://www.regjeringen.no/en/dokumenter/planning-building-act/id570450/>.

Portugal

Decree Law No. 3/2008 (2008), available in Portuguese at: <https://www.mind-bank.info/item/5672>.

Sweden

Skollag, 2010:800 (2010), available at: http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/skollag-2010800_sfs-2010-800.

United Kingdom

Equality Act (2010), available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

National Case Law

ECLI:ES:AN:2009:5337, National High Court (*Audiencia Nacional*, Madrid), Appeal 160/2007, 2 November 2009.

EU Legislation

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L303/16 2.12.2000.

EU Case Law

Judgment of the CJEU (Grand Chamber) of 17 July 2008, *S. Coleman v Attridge Law and Steve Law*, ECLI:EU:C:2008:415. Available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>.

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