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**Analytical report on the Draft Law of Ukraine
“On Amendments to the Law of Ukraine “On the
Fundamentals of Social Protection for Persons with
Disabilities in Ukraine’ regarding the improvement of the
mechanism for ensuring reasonable accommodation”
from the perspective
of its compliance with European standards**

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The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe.

List of abbreviations

Draft Law	The Draft Law of Ukraine “On Amendments to the Law of Ukraine ‘On the Fundamentals of Social Protection for Persons with Disabilities in Ukraine’ regarding the improvement of the mechanism for ensuring reasonable accommodation” No. 14389 dated 21 January 2026
Law № 4219-IX	Law of Ukraine “On Amendments to Certain Laws of Ukraine on Ensuring the Right of Persons with Disabilities to Work” No. 4219-IX dated 15 January 2025
CJEU	The Court of Justice of the European Union
CoE	Council of Europe
Charter	European Social Charter (Revised)
ECSR, Committee	European Committee of Social Rights
ILO	International Labour Organization
PES	Public Employment Services
SES	State Employment Services
UN CRPD	United Nations Convention on the Rights of Persons with Disabilities
SMEs	small and medium-sized enterprises

Executive summary

This pre-adoption review of the draft Law of Ukraine “On Amendments to the Law of Ukraine ‘On the Fundamentals of Social Protection for Persons with Disabilities in Ukraine’ regarding the improvement of the mechanism for ensuring reasonable accommodation” from the perspective of its compliance with European standards was commissioned as part of [the Council of Europe project “Strengthening the social dimension in Ukraine”](#) which is being implemented within the framework of the Council of Europe Action Plan for Ukraine “Resilience, Recovery and Reconstruction” for the period 2023-2026. The project aims to ensure that the general public and persons from vulnerable groups, including the war-affected population in Ukraine, benefit from targeted social protection and support.

The Draft Law proposes a comprehensive reform of the legal framework governing reasonable accommodation for persons with disabilities in employment, vocational training, and related areas. It introduces detailed procedural obligations for employers, expands the scope of reasonable accommodation measures, establishes mechanisms for the provision of state compensation and grants, and strengthens enforcement and appeal procedures.

The adoption of the Draft Law will contribute to the fulfilment of Ukraine’s obligations to the Council of Europe and the European Union concerning the prohibition of discrimination against a person, in particular on the grounds of their health condition or disability. It will also ensure the rights of persons with disabilities to independence, social and professional integration, and participation in the life of the community, etc.

The analysis focuses on:

- the legal quality and coherence of the Draft Law,
- its compliance with international and European standards,
- the identification of systemic risks and implementation challenges,
- the formulation of recommendations and possible amendments to improve effectiveness and legal certainty.

The Draft Law introduces amendments to the Law of Ukraine ‘On the Fundamentals of Social Protection for Persons with Disabilities in Ukraine’ with a view to strengthening the right of persons with disabilities to work. In particular, it significantly enhances employment guarantees for persons with disabilities through:

- the introduction of a **clear and enforceable right to reasonable accommodation at all stages of the employment relationship**, supported by procedural safeguards, defined timelines, and access to administrative and judicial remedies;
- the establishment of a **comprehensive financial support framework**, including compensation mechanisms and grants aimed at facilitating the implementation of reasonable accommodation in practice.

As regards the existing gaps, most of them relate to:

- **procedural complexity and fragmentation**, resulting from multi-layered decision-making processes involving several authorities, which may affect the timeliness and accessibility of accommodation measures;

- **uncertainties regarding the design and accessibility of financial mechanisms**, including dependence on budgetary allocations, lack of coordination between funding sources, and potential indirect shifting of costs to employers.

Important questions also remain regarding the **operationalisation of key concepts**, such as the assessment of whether a measure imposes a disproportionate burden, the interaction between employer obligations and public funding, and the extent to which documentation requirements may affect access to accommodation in practice.

Another unresolved issue concerns the **balance between procedural safeguards and accessibility**, particularly the risk that formal requirements and strict deadlines may disproportionately affect certain groups of persons with disabilities.

In summary, the adoption of the Draft Law is a crucial step in the right direction. However, it should be understood that the Draft Law constitutes a **framework that requires careful implementation and further refinement**. Its ultimate effectiveness will depend on the clarity of secondary legislation, the capacity of institutions, and the development of a consistent and rights-based practice that ensures the **practical and effective realisation of the right to work for persons with disabilities**.

Methodology

The expert analysis of the Draft Law was conducted using an integrated legal and human rights-based methodology aimed at assessing both the normative quality of the proposed amendments and their practical effectiveness. In addition, the assessment was informed by a gender-sensitive and intersectional approach, taking into account the potentially differentiated impact of the proposed measures on women and men with disabilities.

Normative legal analysis

A doctrinal legal analysis was applied to examine the internal coherence, clarity, and legal certainty of the Draft Law. This included an assessment of definitions, rights and obligations related to reasonable accommodation, procedural safeguards, enforcement mechanisms, and consistency with existing Ukrainian labour, employment, administrative, and social protection legislation.

International human rights compliance assessment

The Draft Law was assessed against relevant **Council of Europe standards**, with particular emphasis on the **European Social Charter (revised)**, including:

- **Article 1** (Right to work),
- **Article 15** (Right of persons with disabilities to independence, social integration and participation in the life of the community),
- **Article 20** (Right to equal opportunities and equal treatment in matters of employment and occupation).

This assessment considered the evolving interpretation of the Charter by the European Committee of Social Rights, especially regarding the positive obligations of the State to promote the inclusion of persons with disabilities in employment and remove structural barriers.

In parallel, a structured compliance assessment was carried out against the **UN CRPD**, focusing on Articles **2 (reasonable accommodation)**, **5 (equality and non-discrimination)**, **9 (accessibility)**, and **27 (work and employment)**, as well as the relevant **EU acquis**. The analysis examined whether the Draft Law effectively recognises the denial of reasonable accommodation as a form of discrimination and ensures substantive equality in access to employment, job retention, and career development.

Risk and feasibility assessment

A risk-based analysis was undertaken to evaluate the feasibility of implementation and identify potential unintended consequences. This included an assessment of legal predictability, administrative complexity, institutional capacity, and the potential burden on employers and public authorities, with particular attention to procedural timeframes and financing mechanisms.

Stakeholder impact perspective

Finally, the analysis incorporated a stakeholder-oriented perspective, examining the expected impact of the Draft Law on:

- **persons with disabilities**, in terms of accessibility, autonomy, and effective enjoyment of rights;
- **employers**, including the proportionality of obligations and legal clarity;
- **public authorities**, focusing on coordination requirements, administrative resources, and budgetary implications.

This combined methodology was applied to ensure that the Draft Law is assessed not only for formal compliance with international standards, but also for its practical capacity to deliver meaningful and sustainable improvements in employment inclusion of persons with disabilities.

Introductory remarks

Legislative context

On 15 January 2025, Law No. 4219-IX was adopted. With certain exceptions, the Law entered into force and became applicable from 1 January 2026. Its primary objective is to strengthen the protection of the labour rights of persons with disabilities and facilitate their integration into the labour market.

The Law No. 4219-IX introduces amendments to a number of legislative acts, including the Labour Code of Ukraine and the Law *“On the Fundamentals of Social Protection for Persons with Disabilities in Ukraine”*. Structurally, it consists of two main components: (1) amendments to the Labour Code aimed at prohibiting discrimination on the ground of disability in employment and the exercise of labour rights; and (2) amendments to special legislation concerning employment quotas, adapted workplaces, reasonable accommodation, and related compensation mechanisms.

Key innovations include the removal of excessive employment restrictions for persons with disabilities; replacement of fines for quota non-compliance with targeted contributions; new incentives for employers to create adapted workplaces beyond mandatory quotas; strengthened employer responsibility; recognition of reasonable accommodation and compensation for its provision; expanded guarantees related to employment and job retention; and the inclusion of State and municipal bodies in fulfilling employment obligations.

Law No. 4219-IX represents an important step towards aligning Ukraine’s employment framework with European standards. While employment rates for persons with disabilities in many European countries exceed 50%¹, in Ukraine they remain at approximately 16%, highlighting both the significance of the reform and the continuing challenges ahead.

Council of Europe needs assessment (2020)

In 2020, the Council of Europe published the [*“Report on the Needs Assessment with Respect to Policy and Legal Framework Revision in the Area of the Rights of People with Disabilities in Ukraine”*](#). The report assessed Ukraine’s compliance with **Article 15 of the European Social Charter** and identified significant gaps in the legal framework governing the employment and social inclusion of persons with disabilities.

The report concluded that Ukrainian legislation did not fully meet the requirements of the Charter and recommended, inter alia:

- revising legal definitions of disability in line with international and Council of Europe standards;
- reforming the quota system by redirecting resources from fines towards measures supporting the employment of persons with disabilities, including through a dedicated fund;
- introducing the principle of reasonable accommodation;
- promoting flexible forms of employment, such as remote and distance work;
- strengthening the role of civil society organisations of persons with disabilities in law-making, in line with the principle *“Nothing about us without us”*.

¹ European Commission, Employment of Persons with Disabilities: Statistics (Data 2022), European Disability Expertise, 2025, available at: <https://ec.europa.eu/social/BlobServlet?docId=27960&langId=en>.

These recommendations provide an important contextual framework for assessing both the progress achieved through Law No. 4219-IX and the remaining challenges addressed by the proposed amendments analysed in this report.

Ukraine's obligations under Article 15§2 of the European Social Charter

Ukraine ratified the Revised European Social Charter in 2006, making it part of domestic law. Under **Article 15§2**, Ukraine is obliged to promote effective and equal access to employment for persons with disabilities, primarily in the open labour market, through anti-discrimination legislation, reasonable accommodation, and support measures enabling hiring, retention, and career continuity. The State must ensure employer obligations to adjust working conditions, provide effective remedies for discrimination, and adopt active employment and rehabilitation policies, with sheltered employment permitted only as an exception. These obligations apply at all times, including during crises, and require coordinated responsibility of the State, employers, and social partners to achieve substantive equality and labour-market inclusion.

Conclusions of the ECSR concerning Ukraine's commitments under Article 15§2

The European Social Charter requires States parties to provide effective access to the open labour market for persons with disabilities. Unfortunately, according to the conclusions of the European Committee of Social Rights adopted in 2020, Ukraine has not ensured this.

Between 2008 and 2025, Ukraine has submitted 15 national reports on the application of the Charter. The [12th report](#), submitted on 21 January 2020, concerns Article 15§1, 15§2 and 15§3. The [conclusions](#) with respect to these provisions were published in March 2021.

With reference to Article 15§2 establishing the right of persons with disabilities to independence, social integration and participation in the life of the community from the perspective of employment, the Committee found that the situation in Ukraine was not in conformity with the Charter on the basis that:

- the employment of persons with disabilities was not effectively guaranteed;
- it had not been established that the obligation to provide reasonable accommodation was effectively guaranteed.

The same conclusions were reached by the Committee in 2016. The Committee noted with reference to the [Concluding Observations of the UN Committee on the Rights of Persons with Disabilities](#) (CRPD/C/UKR/CO/1, September 2015) that the UN Committee was concerned that the majority of persons with disabilities in Ukraine remain unemployed. In addition, the Committee was concerned about the lack of employment opportunities for persons with intellectual and psychosocial disabilities and the absence of policies or programmes for supported employment in the open labour market.

Council of Europe Post-adoption review of the Law of Ukraine № 4219-IX

The [Post-adoption review](#) of Law No. 4219-IX from the perspective of its compliance with European standards, concluded that Law No. 4219-IX represents a significant and positive step towards aligning Ukrainian legislation with European standards in the field of disability rights and employment. It confirmed that Law No. 4219-IX strengthens compliance with Ukraine's obligations under the Council

of Europe and the European Union, particularly by enhancing non-discrimination guarantees and the right of persons with disabilities to work, participate, and integrate socially and professionally.

The analysis highlighted that the reform introduces important systemic improvements, including expanded employment guarantees, financial support mechanisms (e.g. compensation for workplace adaptation and assistant services), strengthened employment quotas, and new national and local employment promotion measures. These elements collectively reflect a clear transition toward a more inclusive, rights-based approach to labour market integration.

At the same time, the review identified key remaining gaps and challenges, notably:

- insufficient clarity regarding the principles and limits of reasonable accommodation;
- complexity and uncertainty in procedures for accessing financial support;
- weaknesses in enforcement mechanisms;
- and outstanding issues related to tax-law amendments.

Overall, the Post-adoption review concluded that the Law is a well-founded framework reform, but one that requires further legislative development, detailed secondary regulation, and effective implementation measures to ensure that the rights it establishes become fully practical and effective in reality.

Review of the Draft Law specific provisions

Conceptual and legal framework

1. Reasonable accommodation as a legal concept

The Draft Law adopts an **understanding of reasonable accommodation that broadly aligns with Article 2 of the UN CRPD and Article 15 of the Charter**, defining it as necessary and appropriate modifications and adjustments, not imposing a disproportionate or undue burden, and are intended to ensure the equal participation of persons with disabilities. The emphasis on individual needs, consultation with the person concerned, and assessment of proportionality reflects the proper rights-based (not charity-based) approach.

Article 2 of the UN CRPD defines reasonable accommodation as “necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden... to ensure the enjoyment or exercise of rights on an equal basis with others.”

Reasonable accommodation is distinct from accessibility. The UN CRPD’s General Comment No. 2 (2014) on Accessibility² specifies that accessibility relates to groups, whereas reasonable accommodation relates to individuals.

Two key elements emerging from the UN CRPD jurisprudence and practice are decisive:

- **Individualised obligation**: accommodation must respond to the needs of a specific person in a concrete situation.

- **Equality-based function**: it is not a welfare measure but a **non-discrimination requirement** - a failure to provide it amounts to discrimination.

The Committee on the Rights of Persons with Disabilities has reinforced this approach in its views on individual communications, consistently treating the denial of reasonable accommodation as a **distinct form of disability discrimination**, separate from indirect discrimination.

2. Transition toward a human-rights model of disability

The Draft Law demonstrates a clear **shift away from a purely medical model of disability toward a human rights-based approach**, as reflected in modern international disability law. This transition aligns with the conceptual framework of the UN CRPD and the European Social Charter, which understand disability as the result of the interaction between impairments and environmental barriers rather than as an individual medical deficit.

However, the continued reliance on individual rehabilitation programmes and supplementary medical documentation creates a risk of perpetuating elements of the medical model if not carefully applied.

The Draft Law demonstrates a positive shift toward a human rights-based approach model by:

- **placing primary responsibility on employers**

² UN CRPD Committee, *General Comment No. 2 (2014) on Accessibility*, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0>.

Under the medical model, access to work is typically conditioned on a person's functional capacity as certified by medical authorities. By contrast, the Draft Law places the primary responsibility for providing reasonable accommodation on employers, requiring them to adapt working conditions unless this would impose a disproportionate or undue burden.

This reflects the UN CRPD and the Charter understanding that equality is achieved through positive obligations imposed on duty-bearers, not through the exclusion of individuals deemed "unfit" to work³.

- **recognising persons with disabilities as active decision-makers**

A key feature of the human-rights model is the recognition of persons with disabilities as **subjects of rights** capable of defining their own needs. The Draft Law reflects this by granting the person with a disability the **primary right to determine the types and forms of reasonable accommodation required**, with employer consultations serving to identify appropriate solutions.

This approach is consistent with the UN CRPD and the Charter principles of autonomy, participation, and inclusion, which require persons with disabilities to be actively involved in decisions affecting them⁴.

- **linking reasonable accommodation to equality and non-discrimination**

The Draft Law treats the **denial of reasonable accommodation** as an issue of equality and non-discrimination, rather than of welfare or benevolence. This reflects the CRPD's and the Charter's recognition that the failure to provide reasonable accommodation constitutes discrimination.

This conception aligns with both the UN CRPD jurisprudence⁵ and the interpretation of Article 15 of the European Social Charter by the European Committee of Social Rights, which emphasises substantive equality in access to employment⁶.

3. Relationship between reasonable accommodation and accessibility

The Draft Law attempts to distinguish between **general accessibility obligations**, and **individualised reasonable accommodation measures**. This distinction is conceptually correct, but the broad list of accommodation measures risks overlapping with general accessibility obligations, which may lead to interpretative difficulties in practice.

Accordingly, while the Draft Law should be acknowledged as a significant step forward, it continues to rely to a considerable extent on individual rehabilitation programmes and allows for the use of supplementary medical or professional documentation to substantiate the need for reasonable accommodation. Although such documentation may play a legitimate evidentiary role, its rigid or overly formalistic application risks reintroducing elements of the medical model. In particular, where

³ ECSR, *International Association Autisme-Europe v France*, Complaint No. 13/2002; *Mental Disability Advocacy Centre (MDAC) v Bulgaria*, Complaint No. 41/2007; [CoE, Digest of the Case Law of the European Committee of Social Rights](#), Article 15, pp. 138–140.

⁴ ECSR Conclusions 2020 Serbia; ECSR Conclusions 2005 Norway; [CoE, Digest of the Case Law of the European Committee of Social Rights](#), pp. 140–141.

⁵ UN CRPD, General Comment No. 6 (2018) on Equality and Non-Discrimination, paras. 23–25 and 66–67, available at: [General comment No.6 on equality and non-discrimination | OHCHR](#).

⁶ ECSR Conclusions XIX-1 (2008) Czech Republic; ECSR Conclusions 2012, ECSR Conclusions Russian Federation; ECSR Conclusions 2003 Slovenia; [CoE, Digest of the Case Law of the European Committee of Social Rights](#), p. 138.

employers or competent authorities treat medical documentation as a precondition for accommodation—rather than as supportive information—the focus may shift from the removal of barriers in the working environment back to the assessment of individual impairments.

International disability standards, as reflected in the UN CRPD and the European Social Charter, caution against an over-reliance on medical certification in determining access to reasonable accommodation. The UN CRPD’s human-rights model—particularly Articles 2, 5 and 27—emphasises autonomy, participation, and the removal of environmental and attitudinal barriers, rather than the assessment of individual impairments. Similarly, the interpretation of Article 15§2 of the Charter stresses that employment inclusion must be achieved through positive obligations and workplace adaptation, not through medical gate-keeping. Excessive or rigid dependence on medical documentation therefore risks undermining personal autonomy and re-medicalising accommodation processes, contrary to these human rights-based approaches⁷.

Positive aspects and progressive amendments

1. Strengthening the enforceability of the right to reasonable accommodation (Article 17.1)

The Draft Law **significantly strengthens the enforceability** of the right to reasonable accommodation **by introducing clear, justiciable obligations and evidentiary safeguards**.

First, Article 17¹, paragraph 1 establishes an **explicit, comprehensive, and continuous obligation on employers** to provide reasonable accommodation at all stages of the employment relationship, including access to employment, vocational training, and career advancement. This formulation ensures that reasonable accommodation is not limited to job retention, but also applies to recruitment, promotion, and professional development, addressing both horizontal and vertical forms of discrimination.

Second, Article 17¹, paragraph 5 expressly **places the burden of proof on the employer** in cases where reasonable accommodation is refused on the grounds of a disproportionate or undue burden. This represents a crucial shift from a formal equality approach to substantive equality, reducing evidentiary barriers for persons with disabilities and aligning with international non-discrimination standards. By requiring employers to substantiate refusals, the provision enhances legal certainty, deters unjustified denials, and strengthens the practical enforceability of the right.

Taken together, these provisions transform reasonable accommodation from a discretionary or declaratory principle into an operational and enforceable right, supported by clear employer duties and procedural safeguards. This approach is fully consistent with **Article 15§2 of the European Social Charter**, as interpreted by the **European Committee of Social Rights**, which requires States to impose positive, enforceable obligations on employers and to ensure effective remedies where reasonable accommodation is denied, in order to achieve substantive equality in access to employment⁸.

⁷ ECSR, Conclusions XIV-2 (1998), Statement of Interpretation on Article 15; [CoE, Digest of the Case Law of the European Committee of Social Rights](#), pp. 135–140.

⁸ ECSR, Conclusions 2007, Statement of Interpretation on Article 15§2; [CoE, Digest of the Case Law of the European Committee of Social Rights](#), p. 138.

2. Increasing procedural clarity and access to remedies (Article 17.1)

Article 17¹ introduces **clear procedural obligations** that enhance transparency, accountability, and access to remedies:

- the right to submit requests in **written or electronic form (par. 2)**;
- a **short and defined deadline** (five days) for employer review (**par. 2**);
- a **mandatory duty to consult** with the person concerned (**par. 2**);
- the obligation to adopt a **written, reasoned decision** and communicate it in the same form as the request (**par. 2**);
- the requirement that such **reasoned decisions be subject to appeal (par. 4)**;
- **access to administrative and judicial review** of refusals to provide reasonable accommodation (**par. 4**).

These procedural safeguards collectively ensure that the right to reasonable accommodation is not only formally recognised, but also practically enforceable, in line with substantive equality and due-process standards. They contribute directly to the effective exercise of the **right to work (Article 1 of the Charter)** by preventing procedural barriers to access and retention of employment; give concrete effect to **Article 15 of the Charter** by promoting independence, labour-market inclusion, and participation in the life of the community for persons with disabilities; and reinforce **Article 20 of the Charter** by ensuring equal opportunities and equal treatment of men and women in employment through transparent, reviewable accommodation decisions, as required by the consistent case law of the **European Committee of Social Rights**.

3. Flexibility and non-mandatory, open list of supporting documents (Article 17.2 par. 1)

Article 17.2 provides that **the need for reasonable accommodation „may“** be confirmed by an individual rehabilitation programme and, **where necessary and where available**, by additional documents. The non-exhaustive list of possible documents, combined with the reference to its future determination by the Cabinet of Ministers, introduces a degree of **flexibility** into the evidentiary framework. This approach avoids strict formalism and, if applied correctly, **allows accommodation to be supported by a variety of professional sources**, reflecting the diverse nature of disabilities and workplace contexts.

From the perspective of the **European Social Charter**, this flexible evidentiary approach is particularly relevant to **Article 15§2**, read in conjunction with **Article E (non-discrimination)**. The European Committee of Social Rights has consistently emphasised that States must ensure that access to employment for persons with disabilities is **practical and effective**, and that procedures linked to employment inclusion must not create unnecessary or disproportionate barriers.

In Article 15§2, the Charter states that States are required:

“to promote access to employment through all measures tending to encourage employers to hire persons with disabilities in the ordinary working environment and to adjust working conditions to their needs.”

The ECSR has further clarified, in the context of **Article E**, that **indirect discrimination** may arise where formally neutral rules or practices fail to take positive account of relevant differences and thereby prevent the effective enjoyment of rights in practice⁹. Excessive or rigid documentary requirements may therefore constitute an indirect barrier to employment inclusion if they delay or obstruct access to reasonable accommodation.

4. Primacy of the person with disability (Article 17.2 par. 2)

The second paragraph of Article 17.2 is of particular normative importance. By stating that a **person with a disability has the primary right to determine the types and forms of reasonable accommodation measures** required, the Draft Law strongly aligns with a human rights-based model of disability.

This formulation:

- recognises persons with disabilities as rights holders and active participants in decision-making;
- shifts the focus from medical assessment to lived experience and practical needs;
- reinforces the participatory nature of reasonable accommodation, complementing the consultation duty in Article 17.1.

The provision further strengthens this approach by requiring employers to ensure reasonable accommodation **on the basis of the request made by the person concerned**, while merely *taking into account* the individual rehabilitation programme. This wording clearly indicates that rehabilitation documentation is intended to play a **supportive and advisory role**, rather than serving as a determinative or binding prerequisite for accommodation.

From the perspective of the **European Social Charter**, this explicit recognition of individual autonomy is closely aligned with **Article 15§2**, read together with **Article E (non-discrimination)**. In the context of Ukraine, this emphasis is particularly relevant. In its **Conclusions 2020 on Ukraine under Article 15§2**, the ECSR identified shortcomings related to the effectiveness of employment inclusion measures¹⁰. By placing the person with a disability at the centre of the accommodation process, Article 17.2 par. 2 directly addresses these concerns and reflects the Charter’s and the UN CRPD’s emphasis on individualised and participatory approaches, under which persons with disabilities are recognised as active participants in decisions affecting them, with measures being tailored to their individual circumstances and aimed at promoting independence, inclusion and equal participation.¹¹ Overall, Article 17.2 par. 2 constitutes a **key normative provision** ensuring that reasonable accommodation is grounded in autonomy, dignity, and equality, thereby strengthening compliance with Articles 15 and E of the European Social Charter as interpreted in the ECSR’s settled case-law.

⁹ CoE, *Digest of the Case Law of the European Committee of Social Rights*, p. 35.

¹⁰ ECSR, *Conclusions 2020, Ukraine*, p.38-39 available at: <https://rm.coe.int/rapport-ukr-en/1680a1c815>

¹¹ CoE, *Digest of the Case Law of the European Committee of Social Rights*, pp. 138–140; UN CRPD, *General Comment No. 6 (2018) on Equality and Non-Discrimination*, CRPD/C/GC/6, paras. 20–25 and 58–61, available at: [General comment No.6 on equality and non-discrimination | OHCHR](#).

5. Expanded and open catalogue of reasonable accommodation measures (Article 17.3)

The Draft Law introduces a **broad and open catalogue of reasonable accommodation measures**, reflecting an individualised, flexible, and needs-based approach. Article 17.3 explicitly states that reasonable accommodation “*shall include, in particular, but not exclusively*” a wide range of measures, thereby avoiding an exhaustive or rigid regulatory model.

The listed measures cover, inter alia:

- adaptation or acquisition of equipment and assistive devices;
- relocation of the workplace, including home-based or remote work;
- preparation of work-related information in accessible formats;
- adjustment of duties without a reduction in remuneration;
- flexible working time arrangements, including additional breaks regarded as working time;
- adaptation of recruitment procedures, production processes, curricula, and standards;
- transfer to another position with the employee’s consent;
- provision of assistants, personal assistance services, or workplace communication support;
- provision of sign-language interpretation;
- refurbishment or adaptation of premises to ensure accessibility.

This **non-exhaustive structure** allows accommodation measures to be tailored to the individual circumstances of persons with disabilities and to changing workplace environments, thus strengthening the practical effectiveness of the right.

Article 17.3 gives concrete effect to **Article 15 §2 of the Charter**, which obliges States to **promote access to employment for persons with disabilities in the open labour market through the adjustment of working conditions**. The European Committee of Social Rights has consistently emphasised that this obligation requires more than formal guarantees and must be effective in practice. As stated by the Committee:

“Article 15 §2 requires States Parties to adopt all appropriate measures to ensure that persons with disabilities can effectively exercise their right to work in the ordinary working environment, in particular through adapting working conditions and removing barriers to employment.”¹²

By providing a broad range of possible accommodation measures and explicitly rejecting an exhaustive list, Article 17.3 aligns with this interpretation, ensuring that the duty to adapt working conditions can respond to concrete needs rather than being constrained by predefined categories. This enhances compliance with Articles 1 and 15 of the Charter as understood in the case law of the ECSR.

6. Direct and explicit inclusion of the recruitment stage (Article 17.1, 17.3)

The recruitment stage is directly and explicitly covered by the Draft Law.

¹² ECSR, Factsheet: “Rights of Persons with Disabilities – Article 15 of the Revised European Social Charter”, Council of Europe, 2023, available at: <https://rm.coe.int/factsheet-esc-people-with-disabilities-eng/1680abde03>.

This follows from:

- Article 17.1, which obliges employers to provide reasonable accommodation “*at all stages of the employment relationship*”, and
- Article 17.3(1), seventh indent, which expressly lists “*the adaptation of recruitment procedures*” as a form of reasonable accommodation.

As a result, the employer’s duty to provide reasonable accommodation clearly applies prior to the conclusion of an employment contract, encompassing job announcements, selection criteria, interviews, testing procedures, and other pre-employment assessments. This significantly strengthens protection against discrimination at the point of labour-market entry, where persons with disabilities frequently face structural exclusion.

This explicit inclusion of the recruitment phase is of particular importance in light of **Article 15§2 of the European Social Charter**, read in conjunction with **Article E (non-discrimination)**. The European Committee of Social Rights has consistently held that effective compliance with Article 15§2 requires States not only to promote access to employment in general terms, but also to ensure that **all stages of access to employment, including recruitment, are free from direct and indirect discrimination and supported by appropriate adjustments.**

As the Committee has stated:

“The effective exercise of the right to employment of persons with disabilities requires that access to employment, including recruitment procedures, be organised in a manner that removes barriers and ensures genuine equality of opportunity in the open labour market.”¹³

Failure to adapt recruitment procedures may therefore amount to indirect discrimination within the meaning of Article E, where apparently neutral selection methods disproportionately disadvantage persons with disabilities and no reasonable accommodation is provided.

The relevance of the explicit inclusion of the recruitment stage in the Draft Law must be assessed in light of the European Committee of Social Rights’ findings concerning Ukraine under Article 15§2 of the European Social Charter, read together with Article E (non-discrimination).

In its Conclusions 2020 on Ukraine¹⁴, the ECSR found non-conformity with Article 15§2, noting structural deficiencies in ensuring effective access to employment in the open labour market for persons with disabilities, particularly due to insufficient adaptation measures and barriers at entry points to employment. The Committee emphasised that legal guarantees must ensure practical and effective access, not merely formal rights.

Against this background, **the explicit inclusion of recruitment procedures in Articles 17.1 and 17.3 of the Draft Law directly addresses a systemic shortcoming previously identified by the ECSR in respect of Ukraine**, by ensuring that reasonable accommodation obligations apply from the very first point of access to employment. This development therefore constitutes a concrete and targeted response to the Committee’s findings of non-conformity under Article 15§2 of the Charter in earlier monitoring cycles and strengthens compliance with Article E by preventing indirect discrimination at the recruitment stage.

¹³ ECSR, Factsheet: “Rights of Persons with Disabilities – Article 15 of the Revised European Social Charter”, Council of Europe, 2023, available at: <https://rm.coe.int/factsheet-esc-people-with-disabilities-eng/1680abde03>

¹⁴ ECSR, Conclusions 2020, Ukraine, p.31 available at: <https://rm.coe.int/rapport-ukr-en/1680a1c815>

7. Inclusion of career advancement (Article 17.1, 17.3)

While **career advancement is not listed as a separate measure in Article 17.3**, it is indirectly but clearly covered by the combined effect of several provisions. First, Article 17.1 expressly identifies “career advancement” as one of the protected areas for which reasonable accommodation must be ensured. Second, several accommodation measures listed in Article 17.3 directly support career progression, including:

- adjustment of duties without reduction in remuneration (fifth indent);
- adaptation of production processes, curricula, and standards approved by the employer (seventh indent);
- provision of assistants, personal assistance services, or workplace communication support (ninth indent);
- transfer to another position with the employee’s consent (eighth indent).

Taken together, these measures enable promotion, movement to more complex roles, and professional development, thereby embedding career advancement protection through **functional accommodation tools**, rather than through a separate formal category.

This approach is consistent with Article 15§2 of the European Social Charter, which requires States not only to facilitate access to employment, but also to ensure that persons with disabilities can remain in employment and progress within the open labour market. The European Committee of Social Rights has repeatedly stressed that effective compliance with Article 15§2 entails removing barriers that prevent persons with disabilities from making full use of their skills throughout their working lives, which includes obstacles to promotion and professional development. In its monitoring practice, the European Committee of Social Rights has consistently emphasised that measures limited to job entry or mere retention are insufficient where persons with disabilities remain unable to participate fully and effectively in the ordinary working environment. Barriers to occupational mobility and professional development undermine genuine equality in employment and are incompatible with the requirements of Article 15§2 of the European Social Charter, read in conjunction with Article E¹⁵.

8. Financial support (Article 17.4)

Recognition of shared financial responsibility (Article 17.4)

Article 17⁴ correctly establishes a **mixed-funding model**, combining employer resources with public funding (state and local budgets, dedicated disability and employment funds, and employment promotion programmes). This approach reflects international human-rights standards, according to which reasonable accommodation is an immediate equality obligation, but its costs should, where appropriate, be shared by society as a whole rather than being borne solely by individual employers.

Protection against disproportionate financial burden (Article 17.4)

¹⁵ ECSR, Factsheet: “Rights of Persons with Disabilities – Article 15 of the Revised European Social Charter”, Council of Europe, 2023, available at: <https://rm.coe.int/factsheet-esc-people-with-disabilities-eng/1680abde03>; ECSR, Conclusions 2020, Ukraine, p.28 available at: <https://rm.coe.int/rapport-ukr-en/1680a1c815>

The explicit rule that an employer's co-financing share must not constitute a **disproportionate or undue burden** is a significant safeguard, especially for small and medium-sized enterprises. This provision reinforces the proportionality principle and reduces the risk that reasonable accommodation obligations are perceived as economically punitive.

Flexible and open list of funding sources (Article 17.4)

The open formulation ("*may include... any other sources not prohibited by law*") allows adaptability and innovation in financing, including the use of grants, co-financing arrangements, and entrepreneurial support schemes. This flexibility increases the practical feasibility of accommodation measures.

In summary, Article 17.4 provides a **solid financial framework** for supporting reasonable accommodation and demonstrates an awareness that cost-sharing is essential to sustainable implementation. Its effectiveness, however, will depend largely on **clear, rights-oriented secondary regulation** and administrative practice that prevent financial uncertainty from undermining the practical accessibility of reasonable accommodation.

From the perspective of Article 15§2 of the European Social Charter:

In principle, Article 17.4 is compatible with the Charter and reflects its social-inclusion objectives.

In practice, its conformity will depend heavily on the design and implementation of secondary regulations governing access to funding, proportionality assessments, and reimbursement mechanisms.

Without such safeguards, there is a risk that financial uncertainty may undermine the effective exercise of the right to employment for persons with disabilities, contrary to **the Charter's requirement of practical and effective protection**.

9. Inclusion of self-employed persons and independent professionals (Article 17.5)

Article 17.5 allows persons with disabilities who are self-employed or engaged in independent professional activities to directly apply for compensation or grants. The inclusion of self-employment corresponds to the European best practices and standards, recognising that **States must adapt employment policies to diversified labour market realities, ensuring equal access to income generating activity for persons with disabilities**.

This approach reflects an advanced understanding of the right to work under Article 1 of the Charter, which extends beyond standard employment relationships¹⁶.

10. Compensation mechanisms (Article 17.5)

Procedural guarantees, transparency, and access to remedies

Article 17.5 introduces:

¹⁶ ECSR, *Syndicat national des professions du tourisme v France*, Complaint No. 6/1999, decision on the merits of 10 October 2000, §24; Conclusions XVI-1 (2002), Iceland; [CoE, Digest of the Case Law of the European Committee of Social Rights](#), pp. 47–48.

- **defined time limits** for administrative assessment (20 working days);
- a requirement to issue **written, reasoned opinions**;
- an explicit **right to administrative and judicial appeal**.

Safeguards against abuse and double funding

The detailed regulation preventing 1) repeated funding of identical measures, 2) misuse of universal adaptations already financed, 3) compensation in cases of bankruptcy or unpaid wages, reflects a legitimate public-interest approach aimed at ensuring the efficient and fair use of public resources. European standards allow such conditions, provided they do not undermine access to the right itself.

Overall, Article 17.5 strikes a generally appropriate balance between rights protection and public-resource management, **consistent with the proportionality principles recognised by the ECSR, while its Charter conformity will ultimately depend on rights-oriented and non-deterrent implementation in practice.**

11. Register of Reasonable Accommodation Measures and Institutional Coordination (Article 17.6)

Article 17.6 introduces an obligation on the competent employment authority to maintain a centralised register of:

- employers and self-employed persons with disabilities who have received compensation or grants for reasonable accommodation under Article 17.5; and
- workplaces, places of business, or places of independent professional activity adapted for persons with disabilities, including a specification of the types of reasonable accommodation measures implemented.

The provision further establishes mechanisms for **inter-institutional information exchange between employment and social-protection authorities**, primarily through electronic systems, with paper-based communication as a fallback where necessary.

This article does not create new substantive entitlements. Rather, it constitutes an institutional and administrative measure designed to support the implementation, monitoring, and effectiveness of the rights introduced elsewhere in the Draft Law.

Article 17.6 carefully limits the scope of data processing to information directly linked to the fact of compensation or grant receipt and to the nature of the accommodation measures implemented. It does not provide for the registration of medical diagnoses or sensitive health data. This is consistent with European standards requiring that administrative measures supporting social rights remain proportionate and purpose-bound.

From the perspective of the European Social Charter, Article 17⁶ contributes to the practical effectiveness of the right to work (Article 1) and the right of persons with disabilities to independence, social integration and participation through employment (Article 15§2). The ECSR has consistently emphasised that States must put in place not only legal entitlements, but also administrative and

institutional arrangements capable of making rights effective in practice¹⁷. Reliable information systems enabling monitoring of employment-support measures are an important element of such arrangements.

The establishment of a register introduces elements of transparency and consistency into the system of public support for reasonable accommodation. Such transparency supports equal treatment in practice, which is a core concern of the ECSR under Article E (non-discrimination). The Committee has recognised that **discrimination may arise not only from differential treatment, but also from failures to take adequate account of relevant differences or to ensure that rights are genuinely accessible in practice**¹⁸. In this context, shortcomings in implementation, coordination, or monitoring mechanisms may undermine the effective enjoyment of rights and contribute to unequal outcomes, even where legal guarantees formally exist.

12. Employment continuity and reintegration following the onset of disability (Article 18)

Article 18 reflects a high level of convergence with European social rights standards, particularly in terms of:

- the explicit right to return to employment with the same employer following the onset of disability, combined with the obligation to provide reasonable accommodation subject only to the principle of proportionality,
- the integration of reasonable accommodation as a binding condition for return to work, reinforced by clear time limits and enforceable compensation for non-compliance,
- the explicit inclusion of remote and home-based work as legitimate modalities of employment,
- the subsidiary role assigned to public employment services—activated only where accommodation is not provided— which preserves the primary obligation of the employer, in line with the ECSR’s insistence that alternative employment measures must not replace or weaken the duty to maintain persons with disabilities in ordinary employment.

Article 18 demonstrates a structurally European approach: **prioritising reintegration over displacement, accommodation over exclusion, and enforceable rights over discretionary support**, in line with the ECSR’s core jurisprudence under Articles 1, 15§2 and E of the European Social Charter. It **reflects a modern, inclusive interpretation of the right to work under Article 1 of the Charter**, consistent with the ECSR’s acceptance of flexible work arrangements as tools for effective labour-market participation, provided they are rights-based and non-segregative.

13. Strengthening the role of public employment services in supporting persons with disabilities (Article 18.1)

The amendments to Article 18.1 move beyond a general placement function and establish a rights-based entitlement to personalised employment support.

¹⁷ [CoE, Digest of the Case Law of the European Committee of Social Rights](#), Fundamental Principles of Interpretation and Article E (Non-discrimination), pp. 33–36. The Committee consistently emphasises that the effective enjoyment of Charter rights requires not only formal legal recognition, but also practical measures and institutional arrangements capable of ensuring their realisation in practice. The Digest further indicates that States must take adequate steps to ensure that rights and collective advantages are genuinely accessible to all.

¹⁸ [CoE, Digest of the Case Law of the European Committee of Social Rights](#), pp. 33–36.

The amendments are fully consistent with **Article 15§2** of the European Social Charter, which obliges States to **promote access to employment for persons with disabilities in the open labour market through active, individualised support measures**.

The European Committee of Social Rights has repeatedly stressed that compliance with Article 15§2 requires **the availability of specialised measures and support services facilitating access to employment for persons with disabilities, including vocational guidance, training, placement services and workplace support, so as to ensure effective participation in the open labour market**¹⁹. By expressly linking employment services to the identification of suitable workplaces and to reasonable accommodation, the amended Article 18¹ directly addresses this requirement.

Key challenges and risks identified

The Draft Law introduces a strong, rights-oriented framework for reasonable accommodation. However, its broad scope and procedural intensity give rise to several **notable implementation challenges and interpretative risks** that require careful consideration.

1. Lack of procedural clarity (Article 17.1)

Article 17.1 par. 2 does not clearly specify whether the five-day time limit applies to:

- the entire decision-making process (including consultation and adoption of a reasoned decision), or
- only the initial examination or initiation of the procedure.

This ambiguity may lead to inconsistent application in practice and uncertainty for both employers and persons with disabilities.

2. Potentially unrealistic timeframe (Article 17.1)

If interpreted as covering the entire decision-making process of the provision of reasonable accommodation, the five-day deadline in Article 17.1 par 2 appears unrealistic, particularly for:

- small and medium-sized enterprises, and
- cases involving complex or resource-intensive accommodations.

This may result in formal or precautionary refusals, rather than meaningful engagement and dialogue, and may also increase the likelihood of disputes and litigation.

3. Limited accessibility of procedural requirements (Article 17.1, 17.5)

The requirement that **requests and applications be submitted in written or electronic form may not fully take into account the needs of certain groups of persons with disabilities**, including:

- persons with intellectual or psychosocial disabilities, and
- persons with visual impairments who may face barriers in written communication without adequate support.

¹⁹ [CoE, Digest of the Case Law of the European Committee of Social Rights](#), pp. 138–140.

This issue arises in particular in:

- Article 17.1 par. 2 – concerning the submission of accommodation requests, and
- Article 17.5 par 1 – concerning applications for compensation by self-employed persons.

Such procedural formalities may unintentionally restrict access to rights, contrary to the principle of accessibility and equal participation and to the goal of the Draft Law.

4. Risk of documentary prerequisites (Article 17.2)

Despite its progressive intent, Article 17.2 raises significant **implementation risks if not supported by clear guidance**. In particular, **the provisions concerning documentation** (e.g. rehabilitation programmes and supplementary reports) may, in practice, be interpreted as:

- creating implicit preconditions for access to reasonable accommodation, or
- shifting the focus from individual needs to medical verification.

This may lead to re-medicalisation and undermine the intended human rights-based approach.

Although the provision uses permissive language (“*may be confirmed*”, “*where necessary*”, “*where available*”), there is a practical risk that employers or public authorities may treat rehabilitation programmes or medical documentation as mandatory prerequisites for providing reasonable accommodation.

Such an approach would:

- re-centre decision-making on impairment assessment rather than barrier removal;
- delay or block access to accommodation for persons lacking updated documentation;
- inadvertently reintroduce elements of the medical model of disability.

5. Potential tension between the two paragraphs (Article 17.2)

If improperly interpreted, the first paragraph (documentation) may overshadow the second paragraph (individual choice). This would undermine the internal logic of the provision and weaken the normative significance of recognising the person with a disability as the primary determinant of accommodation needs.

6. Lack of explicit reference to career advancement (Article 17.3)

Although career advancement is:

- expressly protected in **Article 17¹**, and
- indirectly supported through several functional measures (e.g. adaptation of duties, training, transfer, support services),

it is **not directly articulated** as a distinct accommodation domain in Article 17.3. This stands in contrast to the explicit inclusion of recruitment, where “adaptation of recruitment procedures” is expressly listed as a separate accommodation measure. The clear and specific reference to recruitment ensures legal visibility, interpretative certainty, and direct applicability at the entry stage of employment. By comparison, the absence of a similarly explicit reference to career advancement creates an asymmetry in the regulatory framework, whereby access to employment is strongly protected, while progression within employment remains only implicitly covered.

From the perspective of Article 15§2 of the Charter, this omission is not merely technical. The European Committee of Social Rights has consistently emphasised that the right to employment for persons with disabilities extends to full and effective participation in working life, including the ability to develop skills and progress professionally in the open labour market²⁰.

7. Financial uncertainty and budget dependence (Article 17.4)

A central weakness of Article 17.4 lies in its **dependence on available public funding**. Although the provision provides for multiple sources of financial support—including State and local budgets and dedicated funds—**access to such support remains contingent on annual budget allocations and funding limits**. This introduces a degree of **financial uncertainty**, which may:

- weaken the predictability of the system;
- delay or limit access to accommodation measures; and
- reduce confidence among employers in the availability of support.

Additionally, although **the multiplicity of funding sources** reflects a positive model of diversified financing, **Article 17.4 leaves essential aspects of coordination entirely to secondary legislation, without establishing core principles at the legislative level**.

In particular, the provision does not clarify:

- which funding source should be considered primary;
- how funding applications should be sequenced or coordinated;
- whether refusal by one funding body affects entitlement to support from another.

The European Committee of Social Rights has consistently held that rights under Article 15§2 must be practical and effective, and that budgetary constraints cannot justify systemic ineffectiveness. Where funding shortages limit access to accommodation, there is a risk of de facto non-compliance, even in the presence of formally adequate legislation. Legal frameworks should be sufficiently clear and operational to ensure effective access to rights. Fragmented or unclear funding arrangements may create indirect barriers, contrary to Articles 15§2 and E of the Charter.

8. Potential indirect shifting of the financial burden to employers (Article 17.4)

Article 17.4 attempts to mitigate financial pressure on employers by stating that their contribution must not constitute a **disproportionate or undue burden**. However, the provision does not include:

- **clear criteria** for assessing proportionality;
- safeguards against **front-loading of costs**;
- explicit rules on **advance payments or reimbursement timing**.

Therefore, in practice, employers may be required to:

- finance accommodation measures upfront;
- wait for reimbursement through complex procedures;
- bear the risk of delayed or denied compensation.

²⁰ [CoE, Digest of the Case Law of the European Committee of Social Rights](#), pp. 138–140.

From a UN CRPD- and European Social Charter-oriented perspective, Article 17⁴ generally reflects the principle that **cost considerations cannot nullify the right to reasonable accommodation**, but may limit its scope in proportionate ways. However, for this balance to function in practice, funding mechanisms must be **accessible, predictable, and timely**. Otherwise, financial complexity may indirectly restrict the effective enjoyment of the right.

The ECSR has emphasised that **the cost of inclusion cannot be borne disproportionately by individual employers** where it undermines access to employment. If employers are effectively required to absorb costs due to funding delays or uncertainty, the system may fail to meet the requirement of genuine and effective inclusion under Article 15§2.

9. Multi-stage and fragmented decision-making process (Article 17.5)

Article 17.5 establishes a **comprehensive but highly complex compensation mechanism**, characterised by multiple authorities, layered procedures, and extensive control elements. It creates a **multi-actor and sequential decision-making model**, involving:

1. **Application submission**
 - Employer or self-employed person submits an application to the **employment authority** (Art. 17.5(1)).
2. **Transmission to social protection authority**
 - For certain measures (indent 11 Art. 17.3(1), the application is forwarded to the **social protection authority** (Art. 17.5(2)).
3. **Request for expert assessment**
 - The social protection authority must request a **reasoned opinion** from the **labour inspection authority** (Art. 17.5(2)–(3)).
4. **Inspection and evaluation phase**
 - The labour authority may: conduct **on-site visits**, request documents, question employers/employees (Art. 17.5(7)).
5. **Issuance of an opinion**
 - Within up to **20 working days** (Art. 17.5(4)).
6. **Final decision on funding**
 - Taken by the social protection authority, taking into account (but not bound by) the opinion (Art. 17.5(10)).

This structure results in **multiple handovers of responsibility between authorities**, the lack of a single decision-making body, and increased procedural time, even in urgent accommodation cases.

10. Absence of explicit data-use and safeguard rules (Article 17.6)

Article 17.6 introduces a **useful but administratively heavy monitoring mechanism**, which is conceptually justified but insufficiently integrated into the broader system of rights and support.

The provision creates a **data-driven control and monitoring tool**, but:

- without clear functional integration,
- without guaranteed technical capacity, and
- without explicit safeguards governing its use.

Furthermore, the system creates risks of:

- duplication of administrative tasks;
- inconsistencies between datasets;
- increased workload for authorities and employers providing information.

11. Broad exclusion clause based on “culpable conduct” (Article 18)

Article 18 excludes its application where disability results from: breach of occupational safety rules, or from being under the influence of substances (para. 7). This introduces a **moral culpability-based exclusion** from employment protection and creates a **risk of a** disproportionate impact on vulnerable workers and individuals with addiction or psychosocial conditions. This risks **over-exclusion** and the weakening of reintegration guarantees.

The Charter and ECSR case law emphasise **universal access to employment protections**, exclusions must be **strictly necessary and narrowly interpreted**.

12. Overlapping and duplicative compensation provisions (Article 18.1)

Article 18 contains **two largely identical compensation clauses**:

- one in paragraph 8,
*„An employer who, without valid reasons, fails to fulfil the obligations set out in paragraphs 2 and 3 of this Article **shall be required to compensate the employee for loss of earnings in an amount equivalent to three times the average wage of employees of the relevant employer in a comparable position (profession or speciality), for the entire period during which those obligations to ensure the return to employment (or service) of a person with a disability have not been fulfilled, but not exceeding six months.** Such liability shall arise from the day following the expiry of the period established by this Article for the employer to provide reasonable accommodation.”*
- And another repeated later (paragraph 10)
*“Where an employer fails to fulfil their obligations to ensure the return to employment (or service) of a person with a disability, that person shall be entitled **to compensation for loss of earnings in an amount equivalent to three times the average wage of employees of the relevant employer, for the entire period of non-compliance, but not exceeding six months.** Such liability shall arise from the day following the expiry of the period established by this Article for the employer to provide reasonable accommodation.”*

Such a situation creates legal uncertainty and may cause divergent interpretation in practice or litigation.

Gender-Related Impact of The Draft Law

The Draft Law is **formally gender-neutral**, but **not fully gender-responsive**, and therefore risks insufficiently addressing the specific barriers faced by women with disabilities.

1. Risk of Intersectional Disadvantage

Women with disabilities are widely recognised as facing multiple and intersecting forms of discrimination in the labour market, including:

- lower employment rates compared with both to men with disabilities and women without disabilities;
- concentration in lower-paid and less secure occupations;
- additional barriers related to care responsibilities.

While the Draft Law adopts a formally gender-neutral approach, it does not explicitly address these intersectional disadvantages. As a result, there is a risk that its benefits may not be evenly distributed in practice, and that existing gender gaps may persist.

The issue of intersectional disadvantage is of particular relevance when assessing the Draft Law in light of **Article E of the European Social Charter**, read in conjunction with **Article 15§2**. The European Committee of Social Rights has consistently interpreted these provisions as requiring not merely formal equality, but **substantive and effective equality in practice**, especially for groups exposed to multiple and overlapping forms of disadvantage.

Within this framework, women with disabilities represent a paradigmatic case of **intersectional vulnerability**, as they are simultaneously affected by structural inequalities related to both gender and disability. The ECSR's monitoring practice has increasingly recognised that the enjoyment of social rights cannot be assessed in abstract or homogeneous terms, but must take account of **differentiated impacts across sub-groups**. In this sense, a formally neutral legislative framework that does not explicitly address such compounded inequalities may risk producing **unequal outcomes in practice**, even where legal rights are broadly defined.

From a Charter perspective, the absence of explicit recognition of these dynamics may therefore have implications for compliance, insofar as it affects the **practical effectiveness of access to employment**. The Charter system requires that States not only prohibit discrimination but also address **structural patterns of disadvantage that hinder equal participation**, particularly in the labour market.

2. Absence of explicit gender mainstreaming

The Draft Law does not include an explicit gender equality clause, references to intersectional discrimination, or targeted measures for women and men with disabilities.

This contrasts with good European practice, where disability and gender equality policies are increasingly integrated.

The absence of an explicit gender-mainstreaming dimension in the Draft Law is equally relevant when assessed against **Article E of the Charter**, which imposes a **horizontal obligation of non-discrimination across all substantive rights**, including the right to work and employment inclusion under Article 15.

In the interpretative practice of the European Committee of Social Rights, the principle of equality is not limited to prohibiting direct discrimination but extends to ensuring that **legislative frameworks are designed and implemented in a manner that prevents indirect discrimination and structural exclusion**. In this context, the concept of **gender mainstreaming**, as developed within the Council of Europe, plays a crucial role in ensuring that ostensibly neutral measures do not reproduce systemic inequalities.

The lack of explicit reference to gender equality or intersectionality within the Draft Law therefore constitutes a **normative gap in relation to contemporary European standards**, where disability

policies are increasingly understood within a broader equality framework. The absence of such integration may limit the capacity of the Draft Law to fully reflect the **inclusive and preventative approach to discrimination** required under the Charter, particularly in labour-market contexts characterised by entrenched gender disparities.

3. Lack of gender-sensitive monitoring and data

Article 17.6 introduces a register of accommodation measures, but it **does not require gender-disaggregated data collection**, nor does it provide for monitoring of different outcomes by gender. This creates a gap in the ability to identify gender disparities, evaluate policy impact, and adjust measures accordingly.

The absence of gender-disaggregated data requirements in Article 17.6 is particularly significant in light of the **methodological approach of the European Committee of Social Rights**, which places strong emphasis on the **empirical assessment of rights in practice**.

In its monitoring of compliance with **Articles 15§2 and E of the Charter**, the ECSR has consistently relied on **quantitative and qualitative indicators**, including employment rates, access to support measures, and the effectiveness of inclusion policies. Within this framework, **data disaggregation** is an essential tool for identifying whether rights are being realised equally across different groups.

From a gender perspective, the lack of explicit provisions requiring such data limits the ability to:

- detect **systemic disparities between women and men with disabilities**;
- assess whether accommodation and employment measures are **equally effective in practice**;
- ensure that policy implementation evolves in response to identified inequalities.

The Council of Europe's gender-mainstreaming standards further underline that **the absence of gender-sensitive data may obscure patterns of disadvantage**, thereby undermining both policymaking and accountability. In this sense, the gap identified in Article 17⁶ is not merely technical, but has direct implications for the **capacity to evaluate and ensure compliance with the non-discrimination requirement under Article E of the Charter**.

Compatibility with International and European Standards

UN CRPD²¹ compliance

The Draft Law strongly reflects the **UN CRPD human-rights model of disability**, particularly:

- **Article 27 (Work and employment)** – reasonable accommodation as an enforceable right;
- **Article 5 (Equality and non-discrimination)** – denial of accommodation treated as discriminatory;
- **Article 2 (Reasonable accommodation)** – proportionality and individualised assessment;
- **Article 26 (Habilitation and rehabilitation)** – support, not gatekeeping.

Overall, the Draft Law is broadly compatible with the UN CRPD and represents a significant step toward full compliance.

²¹ United Nations Convention on the Rights of Persons with Disabilities, adopted 12 December 2006, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

Potential concerns relate to:

1. *De facto* medicalisation contrary to UN CRPD's Articles 2 and 27

Although Articles 17.2 and 18 seek to ensure that documentation is supportive, **reliance on rehabilitation programmes and medical confirmation** may, in practice:

- delay accommodation;
- condition access to rights on medical authority;
- shift the focus from barrier removal to impairment assessment.

This would conflict with the UN CRPD jurisprudence (UN CRPD Committee, General Comment No. 6) according to which **reasonable accommodation must not depend on medical certification as a prerequisite**.

2. Exceptions for “culpable conduct” (Article 18)

The exclusion of return-to-work rights where disability results from culpable conduct risks **incompatibility with Article 27 of the UN CRPD**, which does not permit exclusion from employment protection based on cause of disability.

In conclusion, **no clear normative breach of the UN CRPD can be identified. However, there remains a risk of partial non-compliance in practice** unless:

- documentation requirements are explicitly non-mandatory and consistently applied as supportive rather than determinative;
- and any exclusions from protection are interpreted narrowly and in a manner consistent with the object and purpose of the Convention.

The compliance with the Charter

The Draft Law directly addresses **previous ECSR findings of non-conformity regarding Ukraine**, notably by:

- prioritising employment in the open labour market,
- ensuring job retention and return to work,
- providing enforceable accommodation rights,
- establishing funding, procedures, and remedies.

Main risks identified under ECSR standards relate to:

1. Effectiveness compromised by complexity (Article 15§2 of the Charter)

The ECSR consistently holds that rights must be **practical and effective**. There is a risk that:

- multi-layered procedures,
- inspections linked to funding,
- documentation requirements

create **indirect barriers**, especially for SMEs and self-employed persons.

2. Budgetary ceilings and prioritisation (Article 17.5)

While allowed in principle, the ECSR case law (e.g. *MDAC v Bulgaria*²²) is clear that lack of resources cannot justify ineffective enjoyment of rights. **If funding exhaustion becomes frequent or structural, non-conformity with Article 15§2 of the Charter could re-emerge.**

3. Exclusion clauses and sanctions (Article 18)

Broad exclusions or punitive interpretations may undermine employment continuity and reintegration principles emphasised by the ECSR.

In conclusion, the Draft Law framework is **structurally Charter-compliant and corrective of past deficiencies**, but **implementation must avoid deterrence, rigidity, and the budget-based erosion of rights.**

EU law alignment

The Draft Law is largely aligned with Directive 2000/78/EC and, in some respects, exceeds the minimum EU standards. Positive elements include:

- The explicit duty to accommodate (Art. 5 of the Directive);
- limitation of refusal to cases involving a disproportionate burden;
- employer burden of proof;
- coverage of recruitment, employment, and career advancement;
- inclusion of telework and flexible arrangements.

Several provisions go even beyond the minimum EU standards, especially with regard to:

- job retention after the onset of disability;
- access to public funding for accommodation;
- procedural deadlines and remedies.

Potential concerns relate to:

1. Five-day decision deadline (Article 17¹).

EU case law (e.g. *HK Danmark*²³, *HR Rail*²⁴) stresses reasonableness and dialogue. A rigid five-day deadline could:

- encourage formal refusals,
- undermine the interactive process.

2. Fixed co-financing thresholds (Article 175)

A mandatory 10% employer contribution, without explicit flexibility, risks conflicting with the EU standard that **proportionality must be assessed on a case-by-case basis, especially for small and medium-sized enterprises.**

²² ECSR, *Mental Disability Advocacy Centre (MDAC) v Bulgaria*, Complaint No. 41/2007, available at: <https://hudoc.esc.coe.int/eng?i=cc-41-2007-dmerits-en>.

²³ Court of Justice of the European Union, *HK Danmark (Ring and Skouboe Werge)*, Joined Cases C-335/11 and C-337/11, Judgment of 11 April 2013, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0335>.

²⁴ Court of Justice of the European Union, *HR Rail SA v XXXX*, Case C-485/20, Judgment of 10 February 2022, available at: <https://curia.europa.eu/juris/document/document.jsf?docid=253721&doclang=EN>.

In conclusion, while the framework is broadly EU-compatible and in several respects exceeds minimum EU standards, the combination of overly rigid procedural deadlines, and fixed financial thresholds may give rise to practical tensions with the proportionality test inherent in EU equality law and its emphasis on contextual assessment.

Conclusion

Overall, no structural incompatibility can be identified with the UN Convention on the Rights of Persons with Disabilities, the European Social Charter, or EU equality law.

The principal challenges arising from the proposed framework are **not normative in nature**, but relate rather to **implementation, interpretation, and administrative practice**, in particular:

- the risk of **re-medicalisation** through documentary and rehabilitation-based practices;
- potential **over-formalisation and procedural complexity**, which may hinder timely access to rights;
- the application of **rigid thresholds**, including fixed deadlines and minimum co-financing requirements;
- **exclusion clauses** that, if broadly interpreted, may affect the universality of protection; and
- **dependence on budgetary availability**, which may undermine the practical effectiveness of rights.

Subject to appropriate safeguards, clear guidance, and proportionate, rights-oriented implementation, the framework may be regarded as **fully compliant with European standards** and, in several respects, **representative of advanced and exemplary practice** in the field of employment inclusion for persons with disabilities.

Recommendations and Suggested Amendments

Recommendations concerning amendments to the Draft Law

1. Clarification of the procedural timeline and ensuring realistic and flexible timeframes (Article 17.1)

To address the ambiguity as to whether the five-day deadline covers the whole decision-making procedure or only its initiation, it shall be recommended to **clarify the scope of the deadline by distinguishing** between the **initial response**, and the **full decision-making process**.

The proposed amendment includes replacing the second part of Article 17.1 par. 2 with the following wording:

*“(...) the employer shall, within **five working days of receipt of the request**, confirm its receipt and initiate consideration of the request, including consultations with the person concerned with a view to identifying appropriate reasonable accommodation measures. The employer shall adopt a reasoned decision within a **reasonable time**, taking into account the complexity of the requested accommodation, but not exceeding **15 working days**, unless objective circumstances justify a longer period.”*

2. Improving accessibility of procedures (Articles 17.1 and 17.5)

To address the limited accessibility of procedural requirements (the limitation of requests and applications to written or electronic form) which may exclude some persons with disabilities from applying for reasonable accommodation support measures, it shall be recommended to **expand permissible forms of communication and require reasonable procedural accommodation**.

The proposed amendment includes rephrasing the first part of Article 17.1 par. 2 and Article 17.5 par. 1 and adding the following:

*“Requests and applications may be submitted **in written, electronic, or other accessible forms of communication**, including through a representative, assistant, or authorised service provider. Where necessary, the employer or competent authority shall provide **reasonable accommodation and support** to ensure the effective submission and processing of requests.”*

3. Preventing documentary preconditions (Article 17.2)

To address the risk that documentation becomes a *de facto* prerequisite it shall be recommended to explicitly confirm that **documentation is optional and non-determinative**.

The proposed amendment includes adding an indent to Article 17.2 stating that:

*“The absence of an individual rehabilitation programme or other supporting documentation **shall not constitute a ground for refusing or delaying** the provision of reasonable accommodation. Documentation may serve as supportive evidence but shall **not be a mandatory precondition** for exercising the right to reasonable accommodation.”*

4. Reinforcing primacy of the person with a disability (Article 17.2)

To address the risk that documentation overshadows individual choice, it shall be recommended to strengthen the normative hierarchy between the two paragraphs of Article 17.2.

The proposed amendment includes changing Article 17.2 par. 2 by adding, for example:

*“The types and forms of reasonable accommodation measures **shall be determined primarily on the basis of the expressed needs, preferences, and individual circumstances of the person with a disability.** Any supporting documentation shall be taken into account only **as complementary information**, without limiting or replacing the person’s assessment of their needs.”*

5. Structural clarification of Article 17.2 and 17.3

To improve legislative logic and readability of the Draft Law, it shall be recommended that **Article 17.2 par. 2** (establishing the primary role of the person with a disability in determining the types and forms of reasonable accommodation) **be moved and reformulated as Article 17.3 par. 1**. As Article 17.3 provides a non-exhaustive list of accommodation measures, introducing it with an explicit principle of individual choice would guide employers, authorities, and courts in interpreting the catalogue flexibly and in line with individual needs throughout recruitment, employment, and career development.

6. Explicit inclusion of career advancement measures (Article 17.3)

To address the lack of an explicit reference to career advancement, it shall be recommended to amend Article 17.3 par. 1 by inserting a new indent (preferably following the provision on recruitment procedures), worded as follows:

“the adaptation of procedures, criteria, and conditions relating to promotion, career advancement, performance evaluation, access to training, and professional development, including internal competitions and appraisal systems;”

Alternatively, or in addition, Article 17.3 may be supplemented with a clarifying paragraph:

“The reasonable accommodation measures referred to in this Article shall apply equally to all stages of the employment relationship, including recruitment, retention, career advancement, promotion, and access to professional development.”

7. Enhancing transparency and predictability of funding (Article 17.4, 17.5)

To address the problem of lack of predictability of funding, it is inevitable to enhance the transparency and predictability of funding. These may be achieved by amending Article 17.4 or 17.5 by adding a separate indent, worded as follows:

“Information on the availability of funding, applicable procedures, and criteria for allocation shall be made publicly available in a clear and accessible manner. The Cabinet of Ministers of Ukraine shall ensure that funding mechanisms operate on a predictable and transparent basis.”

8. Simplification and coordination of multi-stage decision-making procedures (Article 17.5)

To reduce administrative fragmentation and improve the efficiency of the compensation mechanism, it would be advisable to streamline the procedural architecture under Article 17.5, in particular, by introducing **clear coordination and simplification measures**, notably through the designation of a **single responsible authority or a “one-stop” procedural model** capable of managing the process end-to-end. Consideration could be given to limiting the number of mandatory procedural stages, for example by replacing sequential approvals with **parallel or integrated assessments**, and by clarifying the respective roles of employment authorities, social protection bodies, and labour inspection services in order to avoid duplication and repeated evaluation of the same factors. Furthermore, the procedure could be strengthened by establishing **shorter and cumulative time limits for the entire decision-making process**, particularly in cases where accommodation is required urgently, and by

ensuring that expert assessments are **used in a targeted and proportionate manner**, rather than as a default requirement in all cases. Such adjustments would help ensure that the compensation mechanism operates as a **facilitative and accessible support tool, rather than a complex multi-stage process** that may delay or discourage the effective implementation of reasonable accommodation. Although the procedural complexity exists only within the internal functioning of public administration and does not translate into additional obligations for applicants, nor does it impose any bureaucratic burden on employers or persons with disabilities, it may nevertheless affect the timeliness, predictability, and overall efficiency of the compensation mechanism. In particular, multiple layers of administrative coordination and sequential decision-making may increase the risk of delays, inconsistent assessments, and administrative bottlenecks, thereby reducing the ability of the system to provide prompt and effective support for the implementation of reasonable accommodation.

9. Clarifying data use and strengthening safeguards in the register system (Article 17.6)

To enhance legal certainty and ensure that the register functions as a supportive rather than burdensome mechanism, it would be advisable to introduce **explicit provisions governing the purpose, use, and protection of data collected under Article 17.6**. In particular, the Draft Law could clarify that the register serves strictly defined objectives—such as monitoring, policy evaluation, and coordination—and should not be used for unrelated supervisory or punitive purposes. It may also be beneficial to establish **clear rules on access, data minimisation, and confidentiality**, ensuring that only information necessary for the functioning of the system is processed, and that sensitive information relating to disability is adequately protected.

Furthermore, consideration could be given to strengthening **functional integration** between the register and the decision-making procedures under Articles 17.5 and 17.1, so that the system contributes meaningfully to improving implementation rather than creating an additional administrative layer.

10. Narrowing and clarifying the culpable conduct exclusion clause (Article 18)

In order to avoid the risk of disproportionate exclusion and to preserve the reintegration objective of the provision, it would be advisable to narrow and clarify the scope of the exclusion in Article 18 indent 7. In particular, the exclusion could be reformulated so that it applies only in exceptional circumstances where there is a direct and demonstrable causal link between the conduct and the impossibility of providing reasonable accommodation, and where the exclusion is strictly necessary and proportionate.

At the same time, consideration could be given to introducing a safeguard clause ensuring that the exclusion does not affect the essential right to return to employment where accommodation remains feasible, even if disciplinary or liability issues arise separately.

Such adjustments would help ensure that the provision does not result in over-exclusion or indirect discrimination, and that it remains aligned with the overarching aim of promoting sustained participation in employment, rather than restricting access to protection based on fault-based considerations.

These could be achieved, for example, by amending Article 18 indent 7, to read as follows:

*„The provisions of this Article shall not apply only in **exceptional circumstances** where:*

- *a direct and demonstrable causal link exists between the conduct of the person and the **objective impossibility of providing reasonable accommodation**, and*
- *the exclusion is **strictly necessary and proportionate** in light of all relevant circumstances. The mere fact that a disability arose in connection with a breach of occupational safety requirements or under the influence of alcohol, toxic substances or drugs shall **not, in itself, constitute sufficient grounds** for exclusion from the right to return to employment.”*

11. Reformulating compensation for failure to ensure return to work (Article 18)

In order to **prevent the unintended effect of incentivising termination of employment rather than reintegration**, it would be advisable to **reformulate the compensation mechanism in Article 18 in a way that it reinforces the primacy of continued employment rather than providing a de facto alternative to it.**

In particular, consideration should be given to **removing the current maximum cap of compensation (six months)**, as this may operate in practice as a predictable and limited “cost of dismissal,” thereby weakening the obligation to ensure return to work. Instead, the provision could introduce a minimum level of compensation.

12. Eliminating overlap and duplication in compensation provisions (Article 18.1)

To enhance legal clarity and prevent divergent interpretations, it would be advisable to eliminate the duplication of compensation provisions within Article 18 by consolidating them into a single, clearly formulated clause. In particular, the two substantively identical provisions currently appearing in paragraphs 8 and 10/11 should be merged into one comprehensive rule, with consistent wording and a clearly defined scope of application.

Such consolidation would reduce ambiguity and strengthen legal certainty, making it easier for employers, employees, and enforcement bodies to understand and apply the provision consistently. It would also help to minimise the risk of conflicting interpretations in administrative practice and litigation, thereby supporting the effective enforcement of the right to return to employment.

These can be reached by removal of paragraph 10.

13. Introducing gender-sensitive criteria in assessing reasonable accommodation

To include an explicit gender equality clause, references to intersectional discrimination, and targeted measures for both women and men with disabilities, it is recommended to introduce new indent into Article 17.1, worded as follows:

“The implementation of the Law shall take into account the needs of persons exposed to multiple and intersecting forms of discrimination, including women and men with disabilities”..”

Such gender-sensitive approach could be relevant when considering accommodation measures related to working arrangements, scheduling, remote work, flexible working time, return-to-work programmes, or other organisational measures where gender-related inequalities may be reflected in practice.

14. Ensuring gender-disaggregated data collection

To ensure gender-disaggregated data collection, it is recommended to introduce new indent into Article 17.6, worded as follows:

“Data collected under this Article shall, where appropriate, be disaggregated by gender and other relevant factors, in order to enable monitoring of the equal impact of measures under this Law.”

Recommendations concerning the secondary legislation

1. Establishing clear coordination rules between funding sources (Article 17.4)

Where multiple sources of funding are available, secondary legislation shall establish clear rules governing:

- the designation of a primary financing source;
- the coordination and sequencing of applications;
- the possibility of parallel or cumulative funding; and
- the procedure to be followed in the event of refusal by a funding body.”

Recommendations concerning implementation

1. Capacity enhancement

To ensure the effective and consistent application of the Draft Law, it would be advisable to introduce **systematic capacity enhancement measures targeting all relevant actors**. In particular, **mandatory training programmes should be developed for employers, labour inspectors, and employees of public employment services**, focusing on the concept of reasonable accommodation, the proportionality test, and the practical handling of requests.

In addition, consideration should be given to developing standardised models and practical guidance tools, including:

- indicative examples of accommodation measures across different sectors;
- cost benchmarks and typical funding scenarios;
- model procedures for consultation and decision-making.

Such instruments would enhance legal certainty, reduce administrative burden, and support more uniform implementation in practice.

2. Strengthening monitoring and enforcement

To ensure that the rights established by the Draft Law are effectively enforced in practice, it would be beneficial to strengthen monitoring and accountability mechanisms. In particular, the introduction of systematic statistical reporting on:

- the number of accommodation requests submitted;
- approval and refusal rates;
- grounds for refusal; and
- the duration of procedures,

would significantly improve transparency and enable evidence-based policy evaluation.

Furthermore, consideration could be given to introducing proportionate administrative sanctions in cases of unjustified refusal to provide reasonable accommodation. Such measures should be carefully calibrated to:

- deter non-compliance;
- reinforce the binding nature of the obligation; and
- remain proportionate, particularly with regard to small and medium-sized enterprises.

Together, these measures would strengthen the practical enforceability of the right to reasonable accommodation, in line with European standards, by ensuring that obligations are not merely formal but supported by effective oversight and accountability.

Targeted practical guidance based on best European and international practices

Guidance on balancing employee requests and employer obligations

1. Consultation mechanisms

A core element of good practice across EU law and UN CRPD implementation is the **interactive (consultative) process between the employer and the employee**. The recommended approach introduces a two-stage consultation model:

- Initial request stage – the employee identifies their needs (without excessive formalities);
- Interactive dialogue stage – the employer and the employee jointly explore possible solutions.

According to best European standards, consultations shall be conducted in good faith, in a timely manner, and shall be documented. The employee's perspective is treated as the primary evidence of need. The process is flexible and interactive (rather than a one-off exchange).

EU equality law, in particular Directive 2000/78/EC and the case law of the CJEU²⁵ emphasises dialogue and adaptation rather than unilateral employer decisions.

2. Limits of reasonable accommodation

The right to reasonable accommodation is not unlimited under international human rights treaties and other European regulations. Different systems of national law recognise several limitations:

- **Undue Hardship**

An employer can deny a request that would cause significant difficulty or expense relative to the organisation's size and resources. The factors include the cost of the accommodation, the employer's overall financial resources, the number of employees, and the impact on operations.

- **Direct Threat to Safety**

An employer can also deny an accommodation — or exclude someone from a position entirely — if the individual poses a significant risk of substantial harm to themselves or others that no reasonable accommodation can eliminate. This cannot be based on stereotypes or generalisations about a condition. The employer must make an individualised assessment based on current medical evidence, considering the nature, duration, severity, and probability of the risk. A blanket policy excluding everyone with a particular diagnosis fails this test.

- **Fundamental Alteration**

No accommodation is required if it would fundamentally change the nature of the service, program, or business.

²⁵ Court of Justice of the European Union, HK Danmark (Ring and Skouboe Werge), Joined Cases C-335/11 and C-337/11, Judgment of 11 April 2013, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0335>; Court of Justice of the European Union, HR Rail SA v XXXX, Case C-485/20, Judgment of 10 February 2022, available at: <https://curia.europa.eu/juris/document/document.jsf?docid=253721&doclang=EN>.

3. Criteria for undue and disproportionate burden

Article 5 of the Employment Equality Directive 2000/78/EC establishes an obligation to provide reasonable accommodation:

*„... employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to provide training for such a person, **unless such measure would impose a disproportionate burden on the employer.**”* The Directive does not include further guidance on the interpretation and scope of the term „disproportionate burden”. According to the CJEU, an accommodation which amounts to a disproportionate burden on the employer is unreasonable²⁶, however, no further detailed guidance can be found.

According to the UN Secretariat Reasonable Accommodation Guidelines (May 2023) *„An accommodation may be considered an undue burden to the Organization if it involves substantial administrative or financial resources, or if it involves altering essential aspects of a job.”*²⁷

European national courts have adopted differentiated approaches with regard to understanding of the term „disproportionate burden”. For example, the Danish Supreme Court allowed the employer a fairly wide discretion when deciding on how to organise operations in the context of reasonable accommodation largely deferring to the employer's assessment in a case concerning a request for part-time work²⁸. In contrast, the German Federal Labour Court was willing to require extensive reasonable accommodation, involving a redistribution of tasks, even though this resulted in disruptions to working practice (judgment 9 AZR 411/05, 14 March 2006).

European practice shows that one of the most important elements for balancing interests is a well-structured proportionality test.

Recommended criteria, that shall be clearly codified or guided include:

- financial capacity of the employer (especially SMEs vs large enterprises);
- the cost and nature of the measure;
- the availability of public funding or subsidies;
- the impact on organisation of work or productivity;
- the duration and reversibility of measures;
- the benefits for the employee and the broader workforce.

Best practices require the employer to demonstrate that all reasonable alternatives were explored and to justify any refusal with objective and verifiable reasoning.

²⁶ Court of Justice of the European Union, HK Danmark (Ring and Skouboe Werge), Joined Cases C-335/11 and C-337/11, Judgment of 11 April 2013, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0335>.

²⁷ United Nations Secretariat, Reasonable Accommodation Guidelines (2023), available at: https://policy.un.org/sites/default/files/2023-12/reasonable_accommodations_guidelines_english.pdf.

²⁸ Danish Supreme Court, Case 15/2015, Judgment of 13 April 2016, discussed in Lisa Waddington and Andrea Broderick, Exploring the Definition of Disability and the Reasonable Accommodation Duty through the Case Law of the CJEU and Member States (European Disability Forum, 2021), lecture given at the international conference of 10 June 2024, organised by ERA, on Current Reflections on EU Anti-Discrimination Law in Trier, Germany. Conference presentation available at: https://eu-anti-discrimination-law.era.int/oldoku/Adiskri/07_Disability/124DV40_Broderick_Waddington_EN.pdf.

According to the Irish Supreme Court, *“The test is one of reasonableness and proportionality: an employer cannot be under a duty entirely to re-designate or create a different job to facilitate an employee. It is, therefore, the duty of the deciding tribunal to decide, in any given case, whether what is required to allow a person employment is reasonable accommodation in the job, or whether, in reality, what is sought is an entirely different job”* (Nano Nagle School v Daly, 2019²⁹).

In several subsequent judgments, Irish courts found that accommodating workers would involve creating completely new jobs and therefore would go beyond the reasonable accommodation duty to provide reasonable accommodation. However, in *Nowak v Moriarty’s Food Markets Ltd T/A Moriarty’s Supervalu Skerries*³⁰, the Workplace Relations Commission recognised that appointment to another position could be a form of reasonable accommodation but found that this was not possible on the facts³¹.

In the Netherlands and Poland there is a case-law predating *HR Rail* (2022)³² which held that the obligation to provide a reasonable accommodation did not extend to appointing a worker to a completely new job³³. In Austria³⁴ and Denmark, courts have held that the creation of a completely new job which only consists of tasks that the worker can perform goes beyond the duty to provide reasonable accommodation³⁵.

A frequently cited example from the UK Employment Tribunal³⁶ concerns a request by a deaf diplomat. The employee requested full-time English lipspeaker support to enable her to work in an overseas posting. The cost of the requested accommodation was approximately £250,000 per year, which was significantly higher than the employee’s salary (about £50,000) and than the typical accommodation costs for other employees. The tribunal held that although the accommodation would have been effective, the exceptionally high financial cost made it disproportionate for the employer. The employer was not required to provide the accommodation, as it constituted a disproportionate burden.

²⁹ Supreme Court of Ireland, *Nano Nagle School v Daly* [2019] IESC 63, judgment of 31 July 2019, para. 89, available at: https://employmentrightsireland.com/wp-content/uploads/2021/02/2019_IESC_63_1-Supreme-Court-Nano-Nagle.pdf.

³⁰ *Nowak v Moriarty’s Food Markets Ltd T/A Moriarty’s Supervalu Skerries* (2023). Available at: [ADJ-00032391 - Workplace Relations Commission](https://www.wrc.ie/en/research-and-publications/cases-and-decisions/2023/2023-00032391-workplace-relations-commission/)

³¹ Workplace Relations Commission, *Nowak v Moriarty’s Food Markets Ltd t/a Moriarty’s SuperValu Skerries*, ADJ-00032391, Decision of 4 January 2023, available at: <https://ie.vlex.com/vid/adj-00032391-workplace-relations-921866840>.

³² Court of Justice of the European Union, *XXXX v HR Rail SA*, Case C-485/20, Judgment of 10 February 2022, ECLI:EU:C:2022:85, available at: <https://curia.europa.eu/juris/document/document.jsf?docid=253721&doclang=EN>.

³³ Waddington, L. and Broderick, A., *Court Practices Regarding Disability Discrimination, Including Reasonable Accommodation, at EU and Member State Level, and in Light of the UN CRPD* (European Commission, 2024), pp. 63–69, available at: https://www.migpolgroup.com/wp-content/uploads/2024/03/Court-Practices-Disability-Discrimination_web_Final.pdf.

³⁴ Austrian Supreme Court (Oberster Gerichtshof), Decision 9ObA45/21i (2021).

³⁵ Waddington, L. and Broderick, A., *Court Practices Regarding Disability Discrimination, Including Reasonable Accommodation, at EU and Member State Level, and in Light of the UN CRPD* (European Commission, 2024), pp. 63–69, available at: https://www.migpolgroup.com/wp-content/uploads/2024/03/Court-Practices-Disability-Discrimination_web_Final.pdf.

³⁶ Employment Appeal Tribunal (United Kingdom), *Cordell v Foreign and Commonwealth Office* [2012] UKEAT 0016_11_2902, judgment of 29 February 2012, , available at: [Employment Cases Update: Cordell v Foreign & Commonwealth Office UKEAT/0016/11/SM](https://www.employment-cases.co.uk/cases/cordell-v-foreign-and-commonwealth-office-ukeat-0016-11-sm/)

Globally, the most detailed case law has been developed in the United States of America. Pursuant to the *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (ADA)*³⁷, an employer does not have to provide a reasonable accommodation that would cause an "undue hardship" for the employer. However, generalised conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualised assessment of current circumstances demonstrating that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including:

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility providing the reasonable accommodation; the number of persons employed at this facility; and the effect on the expenses and resources of the facility;
- the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in providing the accommodation to the employer;
- the impact of the accommodation on the operation of the facility.

The ADA's legislative history indicates that Congress wanted employers to consider all possible sources of outside funding when assessing whether a particular accommodation would be too costly. Undue hardship is determined based on the net cost to the employer. Thus, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation. In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability whether they are willing to pay the difference.

If an employer determines that one reasonable accommodation will cause undue hardship, but a second type of reasonable accommodation will be effective and will not cause an undue hardship, then the employer must provide the second accommodation.

An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices towards the individual's disability. Nor can undue hardship be based on the fact that the provision of reasonable accommodation might have a negative impact on the morale of other employees. Employers, however, may be able to show undue hardship where the provision of reasonable accommodation would be unduly disruptive to other employees' ability to work.

4. The role of medical assessment

European and international standards emphasise that **medical evidence should be supportive, not determinative**. Medical or rehabilitation documents should **inform** the process and not function as a

³⁷ U.S. Equal Employment Opportunity Commission, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA, available at: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>.

precondition for accommodation. Automatic rejection due to the absence of medical documentation or the substitution of the employee's request with medical opinion should not be permitted and should be explicitly prohibited. Medical input shall be used to identify functional limitations or risks and propose possible adjustments. However, final decisions must be **contextual, workplace-based, and person-centred**.

Guidance on the register of employers and inclusive workplaces

In European countries, registers of employers and inclusive workplaces are typically administrative or policy tools designed to:

- identify and list employers who:
 - employ persons with disabilities, or
 - meet certain inclusion standards;
- facilitate matching between jobseekers with disabilities and employers;
- support monitoring and evaluation of policies;
- provide incentives or recognition for inclusive employers;
- collect data on workplace adaptations and accommodation measures.

From a European policy perspective, such mechanisms are increasingly linked to labour-market inclusion strategies, including the [EU Disability Employment Package](#), which promotes structured tools and databases to improve the participation of persons with disabilities in employment.

Based on comparative practice, registers of inclusive employers can be **divided into three main types**:

1. **Administrative registers** (most similar to Article 17.6) managed by public authorities, containing employer data and accommodation measures, mainly used for policy implementation and monitoring, e.g. Public Employment Service databases within the EU;
2. **Certification or recognition registers** based on voluntary participation, where employers are listed based on compliance with inclusion standards, for example, the [UK Disability Confident list](#);
3. **Knowledge and networking databases**, which are not strictly regulatory and provide profiles, best practices, and benchmarking tools, for example the [Disability:IN directory](#), the ILO employer networks, and the i-SME catalogue.

Registers of employers and inclusive workplaces are an **increasingly important instrument within European disability-employment policy**, functioning at the intersection of **data collection, labour-market coordination, and policy monitoring**. However, **their effectiveness depends to a large extent on:**

- **clear functional integration,**
- **limited administrative burden,**
- **user-oriented design.**

Successful models tend to combine **data collection with incentives or recognition** and avoid purely control-oriented approaches. Best practice systems are embedded within broader employment and inclusion mechanisms. For example, EU Public Employment Services integrate employer databases directly into job-matching systems, placement services, and labour-market programmes. Similarly, [ILO](#)

[Business & Disability Network](#) links employer data with policy guidance, partnerships and recruitment initiatives.

Guidance on the role of the state employment service in the process of providing reasonable accommodation

The evolving European approach to disability inclusion highlights that **SES** or PES should not merely act as passive intermediaries, but rather as **active coordinators, facilitators, and enablers of reasonable accommodation**. Their role is therefore both **functional (service delivery)** and **systemic (ensuring the effectiveness of rights in practice)**.

Traditionally, employment services were primarily responsible for job matching, registration of jobseekers, and basic labour-market intermediation. However, in contemporary European practice, their **role has significantly expanded to include active responsibility for enabling reasonable accommodation**. Accordingly, SES act as bridging institutions between persons with disabilities, employers and funding/support systems. Its main activities involve identifying accommodation needs at an early stage, mediating between employers and employees and supporting the design of practical solutions.

One of the key challenges in practice is that many employers—particularly SMEs—lack knowledge of reasonable accommodation and experience with disability inclusion. SES should therefore provide guidelines and advisory services, templates for accommodation planning, examples of good practice, and on-site or remote consultancy. **In advanced systems, SES functions as a centre of expertise on inclusion, not merely an administrative body.**

A critical systemic function is the coordination between the right to accommodation and access to funding (compensation, grants). SES should guide employers through funding procedures, reduce administrative burden, and ensure the synchronization between accommodation obligation timelines and financial approval processes. Without such coordination the system risks fragmentation.

Where accommodation cannot be provided by a particular employer, SES should identify alternative suitable employment, support transition to new roles and ensure continuity of employment opportunities. This function is already reflected in Article 18.1 of the Draft Law that requires active implementation capacity. Importantly, alternative placement must remain a subsidiary measure, not a substitute for accommodation.

SES should also contribute to the collection of data on accommodation needs and successful measures and provide feedback into policy development and system improvement. This links its role to the register system (Article 17.6).

Conclusion

The Draft Law constitutes a **progressive and comprehensive reform** aimed at strengthening the right to reasonable accommodation and aligning Ukrainian law with international disability-rights standards.

While its objectives and many of its provisions deserve strong support, the effectiveness of the Draft Law will depend on:

- the simplification of procedures;
- the reduction of excessive documentation requirements;
- the clarification of proportionality standards;
- adequate and predictable funding.

Subject to targeted amendments and careful implementation, the Draft Law has the potential to significantly enhance the labour-market inclusion, equality, and dignity of persons with disabilities in Ukraine.