



Ambitions. Rights. Belonging.

Unpaid Work of People with Intellectual Disabilities

Policy Briefing

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Inclusion Europe

Avenue des Arts 3, 1210 Brussels, Belgium

Telephone: +32 25 02 28 15

secretariat@inclusion-europe.org

www.inclusion-europe.eu



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Introduction

People with intellectual disabilities face a multitude of barriers when trying to access employment. **Only 50.8%** of people with disabilities work in Europe, compared to **74.8%** for people without disabilities.¹

If statistics say only just a bit more than half of people with disabilities are employed, it does not mean they do not work.

Of course, people with disabilities are often victims of discrimination when it comes to accessing work, they are put aside of the society from a young age in institutions, day care centres, and segregated educational settings.

Especially people with intellectual disabilities as they are often seen as non-educable and then of low economical value for the society.

In some of these places, they do work. They also work as volunteers or at home.

But it is unpaid work.

When labour rights are supposed to guarantee minimum standards, and were generally acquired through difficult historical struggles to protect workers, and especially the most vulnerable, why don't they apply to people with intellectual disabilities?

After an examination of this legal and political framework on employment, an examination of places of unpaid employment will follow to understand why these rights are not applied there, thus leading to situation where people with intellectual disabilities work without being paid.

¹ Inclusion Europe, "Employment of people with intellectual disabilities. Before, during and after the Covid-19 pandemic", https://www.inclusion-europe.eu/wp-content/uploads/2021/01/Covid-report-design-finalised_accessible.pdf

Legal framework and policies

International level

United Nations' Convention on the Rights of People with disabilities (CRPD)

Article 27 of the CRPD mentions the obligation for State Parties to “**prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment**, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions”. Article 27 goes way beyond the sole prohibition of discrimination and includes positive actions such as, amongst others, the **obligation to provide reasonable accommodation**, do awareness-raising actions and take incentives to promote the employment of persons with disabilities.

Sustainable Development Goals (SDGs)

The SDGs target all regions of the world and include more specific references to persons with disabilities.

Goal 8 focuses on a full and productive employment and decent work for all.

One of the targets under goal 8 is to “*achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value*”

Disability Inclusion Strategy (UNDIS)

In 2018, the United Nations decided to develop a Disability Inclusion Strategy (UNDIS) “*to strengthen system-wide accessibility and mainstreaming of the rights of persons with disabilities.*” The strategy includes an evaluation mechanism with an indicator on employment.

Council of Europe level

The European Convention on Human Rights refers to civil and political rights.

Whereas the European Social Charter guarantees **fundamental social and economic rights** such as employment, social protection, welfare.²

For instance, Article 15 focuses the right of people with intellectual or physical disabilities to vocational training, rehabilitation and social resettlement.

Collective complaints can be lodged by NGOs and social partners to the European Committee of Social Rights who monitors the compliance with the Charter.³

European Union level

Competences of the EU in the field of employment

The European Union can only regulate in areas which it has competences to do so.

Some competences are shared with States, where the EU can complement to the activities, such as **working and employment conditions, social protection of workers, integration of person excluded from the labour market, combating of social exclusion.** (Article 153 of the Treaty on the Functioning of the EU (TFEU))

The EU is also competent to “**combat discrimination** based on sex, racial or ethnic origin, religion or belief, **disability**, age or sexual orientation” (Article 6.a of the Amsterdam Treaty).

This means the EU has its role when it comes to combatting discrimination to access to work for people with intellectual disabilities.

The CRPD became part of EU legislation in 2011. The CRPD Committee follows the implementation of the Convention by the EU and its Concluding Observations the CRPD Committee is concerned about the *“high unemployment rates [of] persons with disabilities,*

² <https://www.coe.int/en/web/european-social-charter>

³ <https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights>

especially women with disabilities and persons with intellectual and/or psychosocial disabilities, in comparison with other population groups in the European Union”.

Legal Framework on employment

Directives and regulations were adopted to fulfil those duties.

The 1989 Charter of Fundamental Social Rights for Workers⁴, says that people with disabilities are entitled to **“additional concrete measures aimed at improving their social and professional integration”**.

Then, there was legislation specifically referring to employment of people with disabilities and mentioning the **obligation for employers to provide reasonable accommodations** for workers with disabilities (article 5 of the Council Directive 2000/78/EC).

There is also a reference made to the CRPD in **public procurement** (Directive 2014/24/EU on public procurement).

The EU Charter of Fundamental Rights reflects the European Social Charter (see previous section). Its article on disability (Article 26) refers to Article 15 of the European social charter and point 26 of the Community Charter of the Fundamental Social Rights of Workers.⁵

In 2017, EU institutions proclaimed the **European Pillar of Social Rights**. The 20 principles are classified in 3 categories: equal opportunities and access to the labour market, fair working conditions, social protection, and **inclusion**. There are for instance:

- active support to employment (principle 4),
- fair and equal working conditions (principle 5),
- fair wages (principle 6),

⁴ “The Community Charter of Fundamental Social Rights for Workers”, <http://aei.pitt.edu/4629/1/4629.pdf>

⁵ <https://fra.europa.eu/en/eu-charter/article/26-integration-persons-disabilities#TabExplanations>

- social protection (principle 11) a
- the right of people with disabilities to inclusion (principle 17).

The **Social Scoreboard** was developed to measure performances of EU Member States during the process of the **European Semester**. However, they do not capture the situation of people with disabilities that is one of the 20 principles of the Social Scoreboard.

Policies

“Europe 2020” is a strategy for smart, sustainable and inclusive growth. The strategy was delivered with guidelines for employment policies, and namely the **removal of barriers to labour market participation for people with disabilities**.

The 2010-2020 European Disability Strategy put employment as a top priority. Some of the objectives were make **workplaces more accessible**, paying particular attention to **young people with disabilities** in their transition from education to employment, fight **disability benefit traps** that discourage people from entering the labour market.

The new disability strategy 2021-2030 shows the European Commission’s support towards EU Member States to create employment opportunities and facilitating the entry of people with disabilities in the open labour market.

Unpaid or unregulated workplaces

Sheltered workshops

Where?

Over the totality of employed persons with intellectual disabilities⁶, half work in sheltered workshops.

There is a large variety of sheltered workshops.

Originally, they were created by *“charities, religious group or groups of concerned parents”*⁷ and progressively fell under State regulations or management.

The therapeutic concept came in the 20th century, with the idea that sheltered workshops would be a temporary platform to train people to enter the open labour market after. However, *“only 3 % of people in transitional sheltered workshops move on to the open labour market (including supported employment)”*⁸.

If the philosophy behind their creation, and if some manage to include people with intellectual disabilities in the open labour market, sheltered workshops are still places where people with disabilities are only with people with disabilities, apart from a whole part of the society.

What?

In the European Union (EU) the application of labour law and minimum wages depends on the national law.

⁶ Richard Sarah, “Beyond Identity Consciousness: Human Resources Management Practices and Mental Health Conditions in Sheltered Workshops”, March 22nd, 2021

⁷ International Labour Office, 2015, https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_430935.pdf

⁸ European Parliament, “Reasonable Accommodation and Sheltered Workshops for People with Disabilities: Costs and Returns of Investments”, 2015, p.32

Sheltered workshop don't always fall under the scope of labour law because they are not defined as companies or places where work is performed, but by the therapeutic or training aspects they carry out.

In fact, most of the sheltered workshops in the European Union are not subjected to the national labour law.⁹

However, people with intellectual disabilities work there.

Their working conditions, including pay conditions, are not regulated by labour law.

Sometimes, they are not paid because it is believed to be compensating the costs of training/ accommodation/ therapy.

This is problematic when their chances of moving to the open labour market are very low.

This can create situations of economical abuse.

Institutions

Where?

Residential institutions are place where people with disabilities, often intellectual disabilities, live. Where they have to follow rules, are segregated from the community and are many altogether. Where the focus is put on treatment and disability rather than the person.

A 2020 report on the transition from institutional to community-based care in the EU Member States reported that at least 1,438,696 children and adults still live in long-stay residential institutions¹⁰.

⁹ Bell Mark, "The myth of transition: contractualizing disability in the sheltered workshop", *Disability & Society*, Vol.20, No.6, October 2005, pp.613-623

¹⁰ Šiška, Jan and Beadle-Brown, Julie, 2020. Report on the transition from institutional care to community-based services in 27 EU Member States, European Expert Group on the Transition from Institutional to Community-based Care. Available from: <https://deinstitutionalisationdotcom.files.wordpress.com/2020/05/eeg-di-report-2020-1.pdf> (referred as "the Šiška study")

What?

In the institutional setting there is always a power imbalance and the requirements of the institution itself tend to take precedence over the residents' individualised needs. Indeed, **the residents are not able to exercise control over their lives** and over decisions that affect them and are completely dependent on support workers.

In families

Unpaid work in families frequently happens, often women carry out caring activities. Those activities, caring for a child, a person of old age or a person with disability, are not remunerated when carried out by family members. Sometimes they are also not recognised (no benefit, no allowance, no pension).

This can also happen to people with intellectual disabilities carrying caring activities.

Volunteering

Volunteering activities for people with disabilities exist and are often organised by organisations.

Such activities are good because it changes the way people with disabilities are seen. Not only as the want in need of services and support, but as the one giving. They are part of the civic society, building relationships and it can lead to employment.

However, it is also free labour, and becomes problematic if the situation becomes permanent, because it does suggest people with intellectual disabilities can do this job for free because they are not worth being paid.

Conclusion

Despite the rise in the employment rate of people with disabilities in the last years, there are very few solutions to guarantee the employability of people with disabilities in the open labour market.

Measures designed to protect vulnerable people don't actually function when they are "working" for places that don't depend on labour law, volunteering or carrying other type of activities in this grey area. Grey area that is neither the open labour market nor undeclared or concealed work, as people with intellectual disabilities don't seem to fit in the world of employment.

Tools and resources

Submission to CRPD General Comment [Employment](http://www.inclusion-europe.eu/wp-content/uploads/2015/03/Inclusion-Europe-submission-GC8-Employment.docx) (.docx) <http://www.inclusion-europe.eu/wp-content/uploads/2015/03/Inclusion-Europe-submission-GC8-Employment.docx>

European Commission Campaign Discrimination at work <https://www.inclusion-europe.eu/discrimination-at-work/>

Briefing on minimum income and on social benefits: <http://www.inclusion-europe.eu/wp-content/uploads/2015/03/Briefing-on-minimum-income-and-social-protection.docx>

Research about inclusive employment of people with intellectual disabilities:

- [Research on inclusive employment](#) (.pdf) by [AMS](#).
- [Law and policies for inclusive employment](#) (.pdf)

Training material about the employment of people with intellectual disabilities:

- [Guidelines for employers](#) (.docx) created by [Plena inclusión](#).

Employment and Covid-19

- [Employment and Covid-19 report](#)

Link to legal capacity

- Having a job means having freedom to make your own choices and to control your own life. <https://www.inclusion-europe.eu/having-job-means-having-freedom-to-make-your-own-choices-and-to-control-your-own-life/>


Inclusion Europe radio

- Podcast [Melanie Wimmer: Life and Work with a disability](#)
- Soufiane El Amrani on the importance for people with disabilities to have a job : https://youtu.be/rZbZLBUtu_Y


Articles about employment

- [This is Frederik: valued colleague and first regular employee with Down syndrome in Flanders](#)
- [“Employment is a way to inclusion”, a new edition of Europe for us magazine – Easy to read](#)

 www.inclusion-europe.eu

 Avenue des Arts 3, 1210
Brussels, Belgium


 [secretariat@inclusion-
europe.org](mailto:secretariat@inclusion-europe.org)

 +32 25 02 28 15

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**20 million people with Intellectual disabilities and their families from 39
countries.**



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