



Unit 2: European reference regulations on human rights, disability and ASD

European context

Before we discuss the topic of EU legislation in the framework of disability and specifically the employment of persons with disabilities we need to make an overview of the bases on which the EU legislative and executive competences lay on.

Treaty on European Union (2007)

Defines the two fundamental **principles** on which the European Union is based:

Proportionality: the content and scope of EU action may not go beyond what is necessary to achieve the objectives of the Treaties;

Subsidiarity: in the area of its non-exclusive competences, the EU may act only if — and in so far as — the objective of a proposed action cannot be sufficiently achieved by the EU countries, but could be better achieved at EU level.

Treaty of Lisbon (2007)

Clarifies the division of **competences** between the EU and EU countries:

Exclusived

Shared

Supporting

Thus, the EU has competences with relation to disability rights only in those areas in which the Treaties have conferred competences. For instance, EU has competences to legislate in the area of employment; however, it does not have the permission to legislate in the area of education and training.

European legal references on Human Rights and Disability

Treaty of Amsterdam (1997) art. 13

Recognized the problem of disability discrimination and expressly gave the European Community (former EC, now EU) competence in the disability field for the first time.

Charter of Fundamental Rights of the European Union (2000) arts.1, 21 and 26



Includes two explicit references to disability and contains other provisions, which are of interest for persons with disabilities.

UN Convention on the Rights of Persons with Disabilities (2009)

In practical terms, it is inferior to the provisions of the Treaty on the Functioning of the European Union (and the Treaty on European Union), but superior to secondary EU law.

European Pillar of Social Rights (2017)

Represents the inspiring axis on which the new European Union is being structured. It consists of giving citizens more effective social rights, and is based on twenty principles to make a more inclusive Europe a reality.

European legal context on Employment and Disability

EU adopts laws (directives) that set minimum requirements for working and employment conditions, informing and consulting workers. The member countries incorporate these directives in national law and implement them. It is national authorities - labour inspectorates and courts, for example - that enforce the rules.

The European Union counts with a European center of expertise in the field of labour law, employment and labour market policies that assists the Commission in its role of ensuring a correct application of EU-law across all Member States and monitor reforms in labour legislation.

The earliest initiatives addressed at disabled people were in form of action programs, which aimed at exchanging information between Member States, or were soft law documents. The most representative regarding employment and disability are:

Council Recommendation on the employment of disabled people

Council Recommendation on access to social protection for workers and the self-employed

2000/78/EC Employment Equality Directive (2000) art.5

Prohibits discrimination on the basis of religion and belief, age, disability and sexual orientation in the fields of employment and employment occupation, vocational training and membership in employers 'or employees' organizations.

Regarding disability, **article 5** of the directive establishes that employers are obliged to take appropriate measures to enable a person with a disability to have access to



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participate, advance employment, or receive training, unless such measures impose a disproportionate burden on the employer.

Treaty on the Functioning of the European Union 2012/C 326/01 (2012) arts. 10 and 19

Defining its policies and actions and taking appropriate actions to combat discrimination based on disability.

Commission Regulation (EU) 651/2014 (2014) art. 31 and 34

Declaring certain categories of aid compatible with the internal market.

Directive 2014/24 / EU of the European Parliament and of the Council (2014) arts. 20 and 42

Defines the rules for the award of public contracts and the obligation of accessibility that serves as a lever in a general way for the incorporation of this group within the Union.

General Block Exemption Regulation (2014)

Defines the conditions of the aid granted to facilitate the employment of people with disabilities.

Express European recognition and awareness of the Autistic Disorder Spectrum

The Charter of Rights of People with Autism includes rights to be defended by the legislation of each country. It was presented at the fourth Autism-Europe Congress in The Hague in 1992 and adopted in the form of **Declaration on the rights of people with autism** by the European Parliament on May 9, 1996.

European Strategy on Employment and Disability

In 2010, the European Commission adopted the **European Disability Strategy 2010-2020** that provided a framework for action at European level, as well as with national action to address the diverse situation of men, women and children with disabilities for the last decade. Member States were obliged to follow-up on the Strategy's actions only



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when those actions have a binding nature, according to the EU competences. The Strategy is closely linked with the UNCRPD. The Commission adopted the Strategy shortly before the EU ratified the UNCRPD in 2010.

The Strategy identified eight key areas for improvement with the following specific objectives, among which were:

Equality: Eradicate discrimination on grounds of disability in the EU

Employment: enabling many more persons with disabilities to earn their living on the open labor market

In March 2021, the European Commission adopted the **Strategy for the rights of persons with disabilities 2021-2030**.

This new and strengthened Strategy takes account of the diversity of disability comprising long-term physical, mental, intellectual or sensory impairments (in line with Article 1 of the United Nations Convention on the Rights of Persons with Disabilities), which are often invisible.

The new strategy therefore contains an ambitious set of actions and flagship initiatives in various domains and has numerous priorities, such as:

Accessibility

Quality of life

Equal participation

EU role leading by example

EU's commitment on strategy

Positive measures to promote the employment of disabled people in Europe

In some cases, the reason that discrimination is found to occur is due to the fact that the same rule is applied to everyone without consideration of relevant differences. In order to remedy and prevent this kind of situation, EU defines positive measures to promote inclusive employment, such as:

The quota system



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One of the most significant positive discrimination measures is the quota system which seeks to achieve disabled people's employment by means of an obligation to employ a proportion of disabled people.

Supported employment

Supported employment is defined as individualized guidance and accompaniment actions in the workplace, provided by specialized labor trainers, which aim to facilitate the social and labor adaptation of workers with disabilities with special difficulties of labor insertion in companies of the ordinary labor market in similar conditions to the rest of the workers who carry out equivalent positions.

Sheltered employment

The term 'sheltered workshop' generally refers to an organisation or environment that employs people with disabilities separately from others. These workshops usually involve people with disabilities working in manual labour jobs.

They can take various forms, such as day care centers where people with disabilities participate in occupational therapy programs that involve producing goods and services or non-profit purposes, or where people with disabilities participate in employment activities from which they receive an income.

Other EU tools with an impact on the field of disability

European Social Fund

It is the main and first instrument of the EU to invest in people. The three key principles guiding the ESF are:

Collaboration.

Shared management.

Co-financing.

European accessibility act

Is a Directive that aims to improve the functioning of the internal market for accessible products and services.



Advisory resources

- **The Academic Network of European Disability Experts (ANED)** analyzes national situations, policies and data and is supported by the European Commission.

High Level Group on Disability (HLGD) whose mission is to establish close cooperation between the institutions of the Member States, the Commission and civil society on issues related to disability and facilitate the exchange of information, experiences and good practices.

European Association of Service Providers for Persons with Disabilities which main objective is promoting equal opportunities through effective and high-quality service systems.

European Disability Forum (EDF) that acts as a single platform that brings together representative organizations of people with disabilities from all over Europe.

Report on human rights and democracy in the world and the European Union's policy on the matter. This report shows decision-makers and organizations of persons with disabilities the link between the CRPD and the SDGs in Europe and in international cooperation.

Alternative report to the UN Committee. Its purpose is to inform the Committee on how the European Union has implemented the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Proposal for a Council Recommendation On the integration of the long-term unemployed into the labor market, 2015 (not binding) The STAR recommendations, based on success factors, address issues such as:

Stakeholder cooperation

Targeted actions

Availability of support

Research