**Submission relating to the draft General Comment on article 27**

**of the Convention on the Rights of Persons with Disabilities**

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| **Submission by Unia (Interfederal Centre for Equal Opportunities), Belgium**  *Unia is an independent public institution that fights discrimination and promotes equal opportunities. We have interfederal competence, which means that, in Belgium, we are active at the federal state level as well as the level of the Regions and Communities.*  *As an Equality body, Unia is responsible for assisting victims of discrimination based on the protected grounds (one of which is disability) of the anti-discrimination laws that implement the European directives 2000/43 and 2000/78.*  *As an independent mechanism based on article 33.2 of the Convention on the Rights of Persons with Disabilities (CRPD), Unia is also responsible for promoting, protecting and monitoring the implementation of the CRPD in Belgium.*  Unia warmly welcomes the opportunity to give its input on the draft General Comment on article 27 of the CRPD. |

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# §§ 22 and 50 - Denial of reasonable accommodation

*§22:“(…) The duty to provide reasonable accommodation is applicable from the moment a request for accommodation is received”.*

*§50 : “The duty to provide reasonable accommodation is a cooperative and interactive process applicable from the moment a request for accommodation is received (…)”.*

The Committee stresses that the duty to provide reasonable accommodation is applicable “from the moment a request for accommodation is received”.

The related footnotes (17 and 43) refer to paragraph 24 b) of the Committee’s General Comment No. 6 *Equality and non-discrimination* (art.5) which includes *:*

« (…) It is important to note that the duty to provide reasonable accommodation is not limited to situations in which the person with a disability has asked for an accommodation or in which it could be proved that the alleged duty bearer was actually aware that the person in question had a disability. It should also apply in situations where a potential duty bearer should have realized that the person in question had a disability that might require accommodations to address barriers to exercising rights”.

Belgian case law considers that the request for reasonable accommodation does not have to be made explicitly but may be implicit. When the disability can reasonably be known by the employer, any request to adapt the work setting (via, for example, documents as medical certificates[[1]](#footnote-2)) is to be considered as requests for reasonable accommodation[[2]](#footnote-3).

In education, the Belgian Council of State (Supreme Administrative Court) has considered that the school has an obligation to provide reasonable accommodation even if no request was made by the student whose disability was known[[3]](#footnote-4).

Unia would like to see a clarification in the General Comment on article 27 about the circumstances in which a duty to provide reasonable accommodation may be applicable. **Unia recommends the Committee to clearly remind, in the body of the General Comment, that the duty to provide reasonable accommodation “*should also apply in situations where a potential duty bearer should have realized that the person in question had a disability that might require accommodations to address barriers to exercising rights*”.**

# § 97. g. – State’s obligations for workers in sheltered workshops

*§97. g. ”Expeditiously phase out sheltered workshops, by adopting concrete action plans, with resources, timeframes and monitoring mechanisms that ensure the expeditious transition from sheltered workshops to inclusion in the labour market. For persons with disabilities who remain in sheltered workshops, the States parties should: I.(…) II. (…) III. (…)”.*

**Unia suggests the Committee to clarify that the resources allocated to sheltered workshops should be gradually shifted to support employment in the mainstream sector**. In Belgium, Unia observes that policy makers still prefer to invest a lot of money in sheltered employment for persons with disabilities instead of opting for inclusive solutions. Sheltered workshop employment is encouraged, promoted and reinforced, while policies for employment in mainstream settings are practically non-existent*.*

**Unia recommends the Committee to add the two following obligations for State Parties :**

* ensure the provision of reasonable accommodation for workers with disabilities in sheltered workshops;
* pay attention to the vulnerable situation of women in these enterprises (e.g. protection from harassment).

# Contact for this submission

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1. Cour du travail de Bruxelles (Brussels Labour Court of Appeal), 23 October 2017, <https://www.unia.be/files/Documenten/Rechtspraak/2017_10_23_C._Trav._Bruxelles.pdf>,

   « L'abstention de mettre en place des aménagements raisonnables n'est constitutive, par elle- même, de discrimination que pour autant qu'elle puisse être qualifiée de refus, ce qui suppose qu'une demande d'aménagement ait été exprimée. Aucune forme particulière n'est requise pour l'énoncé de cette demande. (…).Ces deux avis médicaux, remis à l'employeur, constituent une demande d'aménagement (…) Par la communication de ces documents médicaux, monsieur (…) a demandé, implicitement mais certainement, l'aménagement de son travail ». [↑](#footnote-ref-2)
2. Tribunal du travail de Liège (Labourt Court of Liège), 24 September 2019, <https://www.unia.be/files/Documenten/Rechtspraak/Tribunal_de_travail_Namur__24_septembre_2019.pdf>,

   « Il n'est pas requis du travailleur en situation de handicap que la demande d'aménagement raisonnable soit formulée explicitement. Elle peut parfaitement être implicite et découler de documents transmis par le travailleur à son employeur. La charge de la preuve d'une demande d'aménagement raisonnable peut être remplie, à titre d'exemple, par la transmission de l'avis médical du médecin traitant ou du médecin du travail, ou d'un certificat médical d'un médecin spécialiste excluant, par exemple, des travaux lourds.(…) En l'espèce, des demandes d'aménagements raisonnables ont clairement été formulées (…), sous la forme d'un aménagement du poste de travail et du rythme de travail ». [↑](#footnote-ref-3)
3. Conseil d’Etat (Council of State), n°242.794, 25 October 2018, <https://www.unia.be/fr/jurisprudence-alternatives/jurisprudence/conseil-detat-25-octobre-2018>. [↑](#footnote-ref-4)