

416DV82

## Speakers' presentations

# EU DISABILITY LAW AND THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Seminar for policy practitioners

Trier, 13-14 October 2016



Funded by  
the European Union

**This seminar series has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult: [ec.europa.eu/social/easi](https://ec.europa.eu/social/easi)**

With the support of the EFC European Consortium of Foundations on Human Rights and Disability and the EDF European Disability Forum, and in cooperation with the European Commission (Contracting Authority). The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

## Table of contents

### **UNCRPD: Key features**

*Nadia Hadad*

### **(Implementing) European and national disability policies: challenges and best practices**

*Ursula Naue*

### **(Dis)Able? The Legal Capacity of Persons with Disabilities under Article 12 UNCRPD**

*Andrea Broderick*

### **The Right to Inclusive Education: Article 24 CRPD**

*Andrea Broderick*

### **FALLSTUDIEN**

#### **My human rights through independent living?**

*Nadia Hadad*

#### **European Accessibility Policies**

Inmaculada Placencia Porrero

#### **Accessibility: ICT and built environment**

*Chiara Giovannini*

#### **Das Recht auf inklusive Bildung**

*Andrea Broderick*

#### **Le droit à une éducation inclusive**

*Andrea Broderick*

#### **ZUR UMSETZUNG EUROPÄISCHER UND NATIONALER BEHINDERTENPOLITIK: HERAUSFORDERUNGEN UND BEST PRACTICE BEISPIELE**

*Ursula Naue*

#### **LES POLITIQUES EUROPÉENNES ET NATIONALES SUR LE HANDICAP ET LEUR MISE EN OEUVRE: DÉFIS ET MEILLEURES PRATIQUES**

*Ursula Naue*

# ERA Academy of European Law

Event: **EU DISABILITY LAW AND  
The UN CONVENTION ON THE RIGHTS OF  
PERSONS WITH DISABILITIES:  
“SEMINAR FOR POLICY PRACTITIONERS”**

13-14 October 2016 Trier- Germany

Nadia Hadad

Board member

European Network on Independent Living - ENIL



**STIL**  
Personlig assistans och politisk påverkan

**GIL**



# Summary

---

## ENIL

- **Who are we ENIL?**
- **What is and does ENIL?**
- **What does Independent Living means?**
- **ENIL's advocacy work in the area of disability rights?**

## The CONVENTION on the RIGHTS of PERSONS with DISABILITIES

- **The UN CRPD in general:**
  - **1) Realizing the rights of persons with disabilities**
  - **2) The focus of the Convention**
  - **3) Why the Convention was needed?**
  - **4) Rights specified in the Convention**
- **The UN CRPD:**
  - **1) Purpose of the Convention:**
  - **2) General principles**
  - **3) The Rights enumerated:**
  - **4) International cooperation**
- **Obligations of States parties under CRPD**
  - **1) Duties of States parties**
  - **2) Generale obligations**
  - **3) Concrete obligations**

# Summary

---

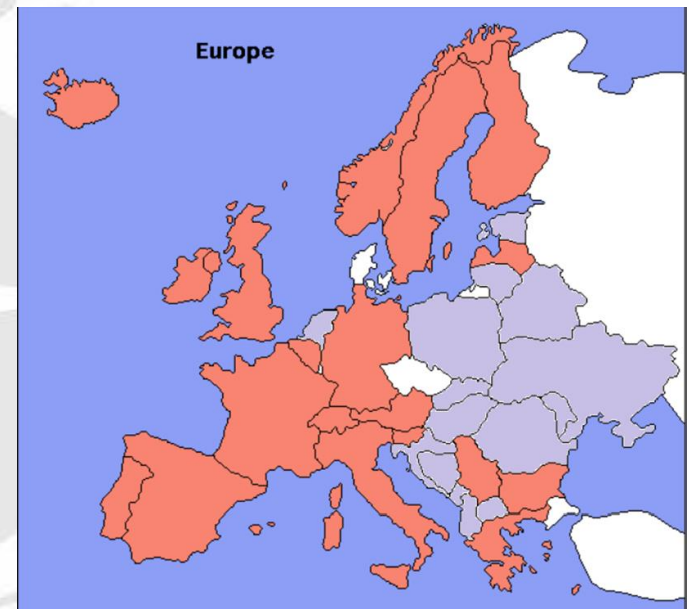
## The CONVENTION on the RIGHTS of PERSONS with DISABILITIES

- **Monitoring mechanism:**
  - 1) At national level
  - 2) At international level
- **Reporting to The CRPD Committee**
  - 1) **State Reporting: initial report**
  - 2) **State reporting: follow periodical reports**
  - 3) **Purpose of periodic reporting**
  - 4) **The Conference of States parties**
  - 5) Other mechanisms to monitor the rights of PwD
  - 6) **Reporting process**
- **Optional protocol to the Convention**
- **Joining the Convention: What does signing the treaty mean?**
- **Difference between signing, ratifying, formally confirming and acceding**
- **The importance of involving the DPO'S**
- **CHALLENGES to implement the UN CRPD**

# Who are we ENIL?

---

- The European Network on Independent Living (ENIL) is a non-governmental organization working in the disability field promoting independent living through human and civil rights.
- Grassroots organization
- Cross-disability for Independent Living
- ENIL **promotes and supports** the Independent Living Movement in Europe since 1989.
- Started in Strasbourg with about 80 persons from 18 countries
- 2016:  
Members in more than 30 countries  
from Georgia to Iceland!



# What is and does ENIL?

---

- Values:
  - Self-determination,
  - Self-representation,
  - Choice and Control,
  - De-institutionalisation
- Access to society - social services, personal assistance, barrier-free environment, housing options, technical aids, paradigm-shift
- Transition to community based services in order to realize the “Closing of Institutions”
- ENIL Freedom Drive

## Disabled people protest for more rights

30/09 16:10 CET | updated at 30/09 - 17:41



# What is and does ENIL?

---

The core element of ENIL is promoting :

- Independent Living (IL),
- self-determination and
- human and civil rights,  
→ through Independent Living and anti-discrimination legislation and empowerment of disabled people.

ENIL advocates and lobbies for Independent Living by promoting the values, principles and practices to enable full citizenship of all disabled people.

The goal is to improve full participation of people with disabilities in society and to increase involvement of disabled people within the Independent Living Movement throughout Europe.



# What does Independent Living mean?

---

Independent Living is

- the daily demonstration of human rights-based disability policies.
- possible through the combination of various environmental and individual factors that allow disabled people to have control over their own lives.
- Dr Adolf Ratzka's definition: Independent Living is having the same range of options and same degree of self-determination taken for granted by non-disabled.

This includes the opportunity to make choices and decisions regarding where to live, with whom to live and how to live.

➔ The right to just be ordinary!

# ENIL's advocacy work in the area of disability rights?

---

## 1) EU policy development:

- Training Session Peer support & Study peer support
- Survey Hate Crime & Hearing Hate Crime
- Deinstitutionalization – European Expert Group work
- Alliance against the cuts
- Briefing Structural funds and Expert group Structural funds
- Comment article 19
- Meetings MEPs – barriers and IL definitions
- Meetings EC – barriers study and work and cuts

# ENIL's advocacy work in the area of disability rights?

---

## 2) Building Network and training

- Youth Study Session
- Study Visit Sweden – DI
- Training leadership and advocacy
- Webinar IL
- May 5th
- Fact sheet IL
- Press Release
- Raising Awareness Optional Protocol
- Promoting CRPD & concluding observations

**UNITED NATIONS (CRPD)**

**The CONVENTION on the  
RIGHTS of PERSONS  
with DISABILITIES**



# The UN CRPD in general:

## 1) Realizing the rights of persons with disabilities

---

### The convincing reasons:

- Over **650 million** persons around the world having a disability
- Their extended families and network gives easily **two billion people** daily live with disabilities.
- They often live on the margins of society, **deprived of some of life's fundamental experiences.**
- The world's **largest and most disadvantaged minority.**
- 20 % of the world's poorest persons are disabled.
- 80% of them lives in development countries.

→The result of ignorance and neglect that is reinforced in government and development policies and programmes that ignore, exclude, are not accessible to or do not support the rights of persons with disabilities to be included in the socio-economic life of the country.

# The UN CRPD in general:

## 2) The focus of the Convention

---

The term **“persons with disabilities”** applies to all persons who have long-term physical, mental, intellectual or sensory impairments that, in the face of various negative attitudes or physical obstacles, may prevent those persons from participating fully in society.

In this Convention it's clear that disability:

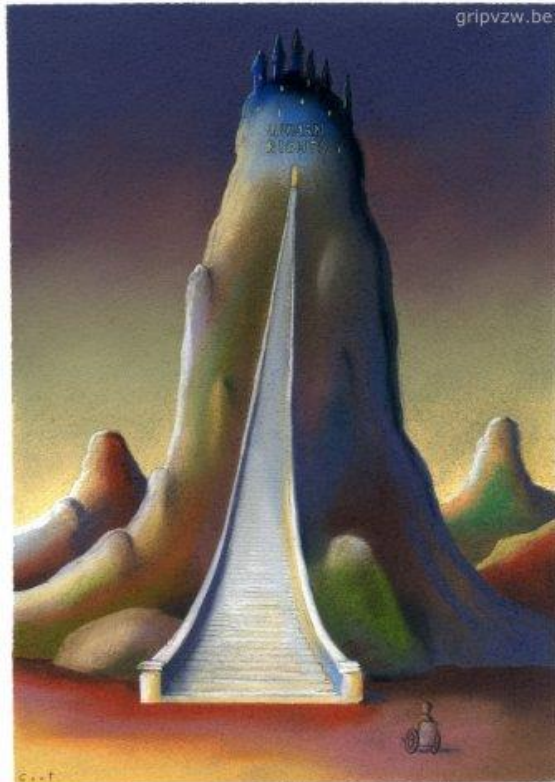
- should be seen as **the result of the interaction between a person and his/her environment,**
- is not something that resides in the individual as the result of some impairment.

The Convention recognizes that **disability is an evolving concept** and that legislation must be adapted to reflect positive changes within society.

# The UN CRPD in general:

## 3) Why the Convention was needed

---



- Persons with disabilities are still considered firstly as “objects” of welfare or medical treatment rather than “holders” of rights.
- Shift from medical model to human rights model
- Despite being theoretically entitled to all human rights, persons with disabilities are still, in practice, denied those basic rights and fundamental freedoms that most people take for granted.
- To enforce anti-discrimination thinking with Human rights awareness in all areas.

# The UN CRPD in general:

## 4) Rights specified in the Convention

---

The Convention:

- **Is a complement** to existing international human rights treaties.
- **Do Not recognize** any **new human rights**,
- **Clarifies** the obligations and legal duties of States to respect and ensure the equal enjoyment of all human rights by all persons with any kind of disabilities.



- 13 December 2016: The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted



# The UN CRPD:

## 1) Purpose of the Convention:

**Article 1 of the Convention is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”**

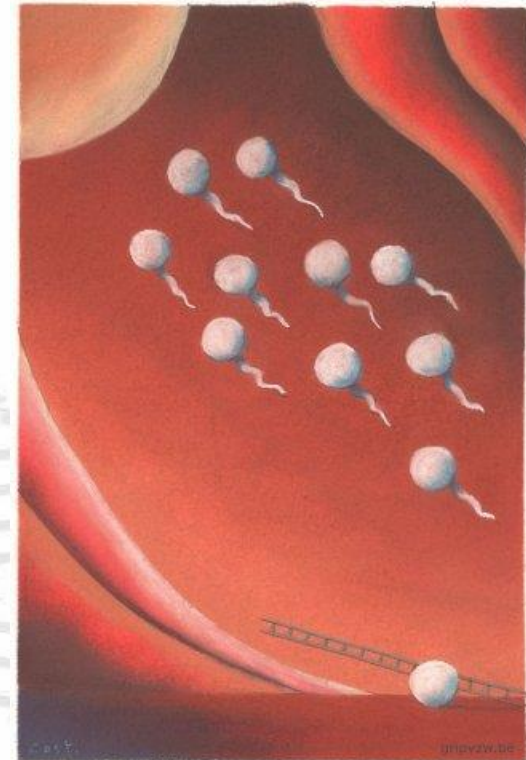
- The Convention **promotes and protects** the human rights of persons with disabilities in economic, social, political, legal and cultural life.
- It **calls for non-discriminatory treatment and equality** in access, in treatment, in undertaking administrative tasks, in education, in health care, in the work-place, in family life, in cultural and sporting activities, and when participating in political and public life.
- The Convention **ensures that all persons with disabilities are recognized before the law** .
- It also **prohibits** torture, exploitation, violence and abuse, and protects the life, liberty and security of persons with disabilities, their freedom of movement and expression, and respect for their privacy.

# The UN CRPD:

## 2) General principles

---

- **Respect for the inherent dignity, autonomy**, including the freedom to make one's own decisions, and independence of persons
- **Non-discrimination**
- Full and effective **participation and inclusion** in society
- **Respect for difference and acceptance of** PwD as part of human diversity and humanity
- **Equality** of opportunity between men & women
- **Accessibility**
- **Respect for the evolving capacities** of children with disabilities and for their rights to preserve their identities



# The UN CRPD:

## 3) The Rights enumerated:

---

- Equality before the law without discrimination
- Right to life, liberty and security of the person
- Equal recognition before the law and legal capacity
- Freedom from torture
- Freedom from exploitation, violence and abuse
- Right to respect physical and mental integrity
- Freedom of movement and nationality
- Right to live in the community
- Freedom of expression and opinion
- Respect for privacy, for home and the family
- Right to education, Right to health, Right to work
- Right to an adequate standard of living
- Right to participate in political and public life
- Right to participate in cultural life

## 4) International cooperation

---

The Convention obliges States parties to cooperate with other States and/or with relevant international and regional organizations and civil society in:

- Building capacity, including through the exchange and sharing of information, experiences, training programmes and best practices
- Research programmes and facilitating access to scientific knowledge
- Technical and economic assistance, including facilitating the use of accessible and assistive technologies

# Obligations of States parties under CRPD

## 1) Duties of States parties

---

The Convention obliges States parties to provide the appropriate enabling environment so that persons with disabilities can fully enjoy their rights on an equal basis with others.

These provisions relate to:

### **raising awareness & accessibility**

Implicit in the Convention are 3 distinct duties of all States parties:

1. The obligation to **respect**
2. The obligation to **protect**
3. The obligation to **fulfil**

# Obligations of States parties under CRPD

## 2) General obligations

---

- Adopt legislation and administrative measures to promote the human rights of persons with disabilities
- Adopt legislative and other measures to abolish discrimination
- Protect and promote the rights of persons with disabilities in all policies and programmes.
- Stop any practice that breaches the rights of persons with disabilities
- Ensure that the public sector respects the rights of persons with disabilities
- Ensure that the private sector and individuals respect the rights of persons with disabilities

# Obligations of States parties under CRPD

## 3) Concrete obligations

---

- Undertake research and development of accessible goods, services and technology for persons with disabilities and encourage others to undertake such research
- Provide accessible information about assistive technology to persons with disabilities
- Promote training on the rights of the convention to professionals and staff who work with persons with disabilities
- Consult with and involve persons with disabilities in developing and implementing legislation and policies and in decision-making processes that concern them

# Monitoring mechanism:

## 1) At national level

---

- 1) States parties must appoint one or more focal points within government to handle matters relating to implementation
- 2) Consider establishing or designating a coordinating body within government to facilitate implementation
- 3) Maintain, strengthen or establish an **independent institution**, such as a national human rights institution, **to promote, protect and monitor** the Convention.



# Monitoring mechanism

## 2) At international level

---

The Convention provides for monitoring through the creation of a committee of 18 independent experts, called the **Committee on the Rights of Persons with Disabilities**. They are representatives from different countries, voted in for maximum two mandates of four years,

This Committee reviews reports submitted periodically by States parties, their independent mechanism and civil society organisations DPO's,

On the basis of these reports, the Committee works with the States parties concerned and makes concluding observations and recommendations to those States parties.

# Reporting to The CRPD Committee

## 1) State Reporting: initial report

---

Each State party to the Convention must submit to the Committee an initial comprehensive report on measures taken to implement the Convention after the two first years.

The initial report should:

- **Establish** the constitutional, legal and administrative **framework** for the implementation of the Convention
- **Explain the policies and programmes** adopted to implement each of the Convention's provisions
- **Identify any progress** made in the realization of the rights of persons with disabilities as a result of the ratification and implementation of the Convention

# Reporting to The CRPD Committee

## 2) State reporting: follow periodical reports

---

Each State party must submit subsequent reports at least every 4 years or whenever the Committee requests one.

Subsequent reports should:

- **Respond to the concerns** and other issues highlighted by the Committee in its concluding observations in previous reports
- **Indicate progress** made in the realization of the rights of persons with disabilities over the reporting period
- **Highlight any obstacles** that the Government and other actors might have faced in implementing the Convention over the reporting period

# Reporting to The CRPD Committee

## 3) Purpose of periodic reporting

---

- **Provides an instrument** through which Governments, national human rights institutions and civil society can better understand the objectives and rights included in the Convention;
- **Raises awareness** about the Convention and the country-situation
- Allows the Government to **benefit from the expertise** of an independent, international committee to improve it's implementation
- **Highlights good practices** and experiences in the country
- Allows Governments to **benefit from the good practices** and experiences of other Governments, as all periodic reports and concluding observations by the committees are public documents
- **Provides authoritative guidance** to Governments, national human rights institutions and civil society for future action, including legislation, policies and programmes
- **Indicates areas** where international cooperation, particularly through the United Nations, might be desirable

# Reporting to The CRPD Committee

## 4) The Conference of States parties

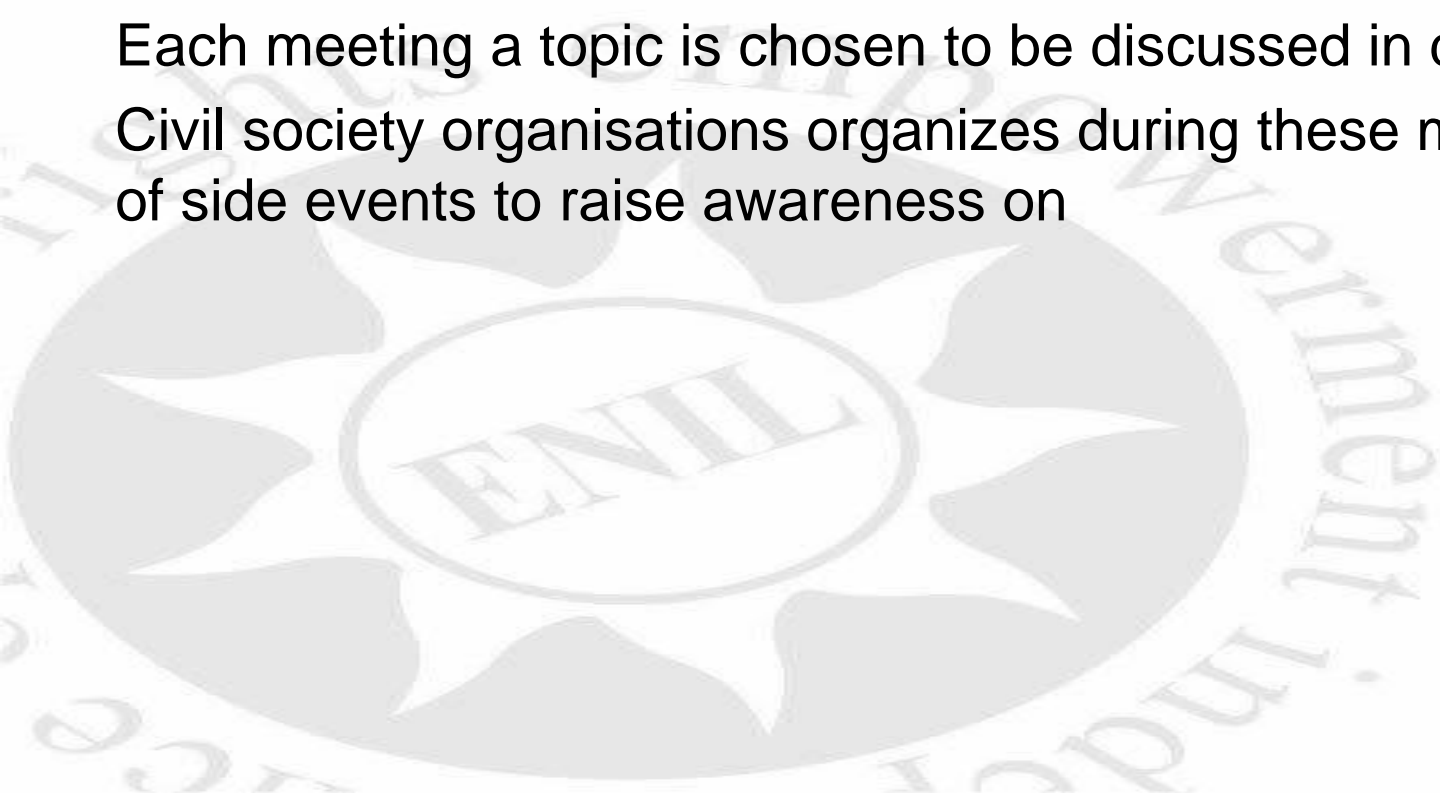
---

States that have ratified the Convention will meet regularly in a Conference of States parties to consider any matter relating to the implementation of the Convention.

New resolutions are adapted here.

Each meeting a topic is chosen to be discussed in details,

Civil society organisations organizes during these meeting a lot of side events to raise awareness on



# Reporting to The CRPD Committee

## 5) Other mechanisms to monitor the rights of PwD

---

- The National Independent monitoring mechanism, under her controlling role, realizes an alternative report based on the official state report
- Civil society organisations, DPO's also allowed to submit shadow-reports to reflect their concerns and highlight the barriers they are confronted with.

Under the “**Nothing about us without us**” principle

- **All human rights treaties protect the rights of persons with disabilities**, which means that the independent committees of experts established under other United Nations human rights treaties also have a role in monitoring the rights of persons with disabilities within the scope of each specific treaty.

# Reporting to The Committee

## 6) Reporting process

---



1. State report
2. List of issues
3. Pre-sessional preparation meeting
4. Constructive dialogue to consider the report
5. Concluding observations
6. Follow-up

# Optional protocol to the Convention

---

The **Optional Protocol to the Convention**, if ratified separately by a State, enables the Committee to undertake two additional forms of monitoring:

- an individual complaint procedure, through which the Committee receives complaints from an individual claiming that the State breached his/her rights under the Convention;
- an inquiry (audit) procedure, through which the Committee investigates gross or systematic violations of the Convention and, with the agreement of the State party concerned, undertakes field missions to deepen the cross-examination.



# Joining the Convention: What does signing the treaty mean?

---

The Convention and Optional Protocol provide for a simple signing procedure. That means that there are **no legal obligations imposed** on a signatory State or regional integration organization **immediately after the treaty is signed**.

However, by signing the Convention or Optional Protocol, States or regional integration organizations **indicate their intention to take steps** to be bound by the treaty at a later date.

Signing also **creates an obligation**, in the period between signing and ratification or consent to be bound, **to refrain from acts that would defeat the object and purpose of the treaty**.

# Difference between signing, ratifying, formally confirming and acceding

---

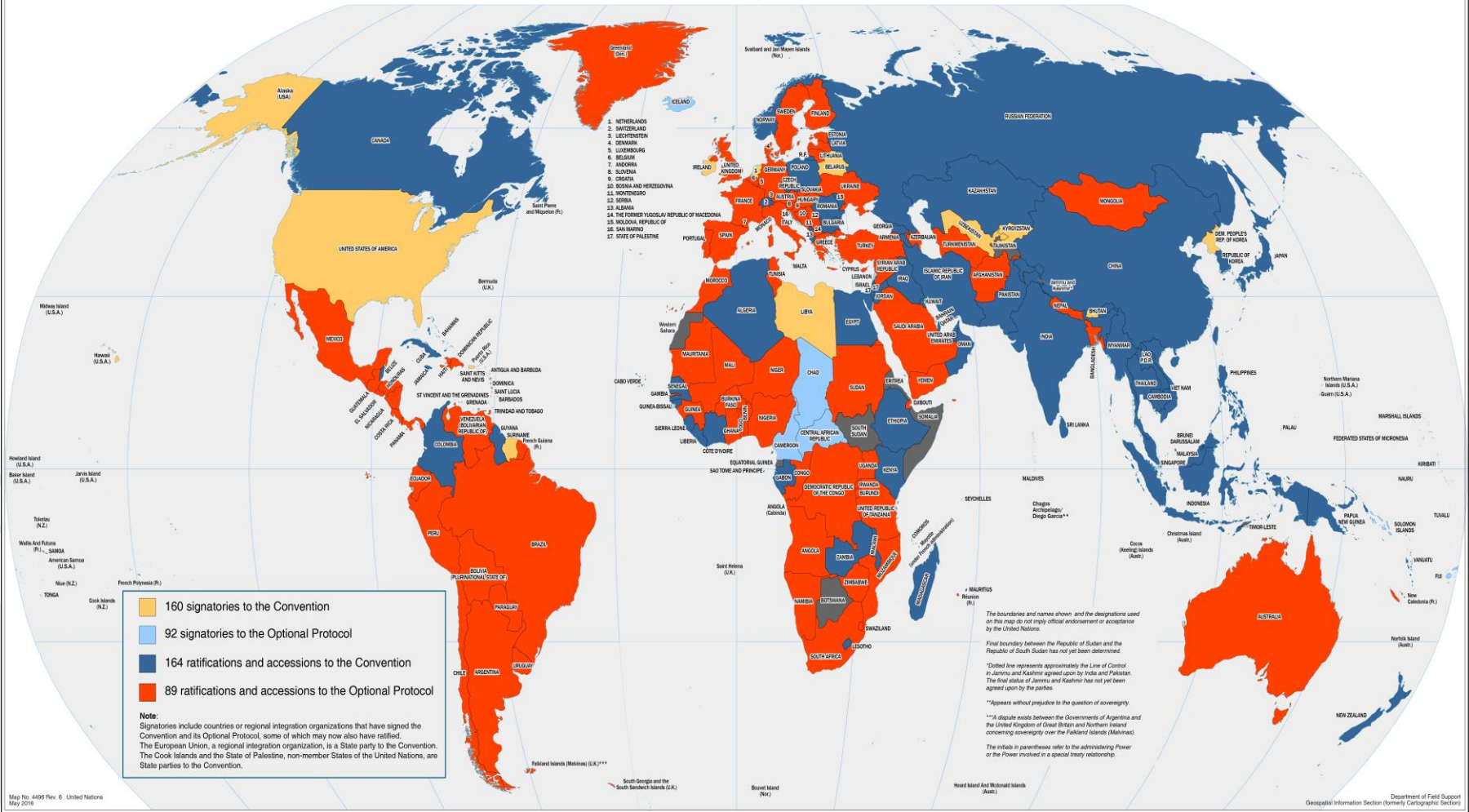
- **Signing** indicates the intention of a state to take steps to express its consent to be bound by the convention and/or optional protocol at a later date. signing also creates an obligation, in the period between signing and consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty
- **Ratification** legally binds a State to implement the convention and /or optional protocol, subject to valid reservations, understandings and declarations.
- **Formal confirmation** legally binds a regional integration organization to implement the convention and/or optional protocol
- **Accession** legally binds a state or regional integration organization to implement the convention and/or optional protocol.



# CRPD and Optional Protocol Signatures and Ratifications

Not Signed    
  Signed Convention    
  Signed Convention & Protocol    
  Ratified Convention    
  Ratified Convention & Protocol

As of 11 May 2016



Ratifications: 167  
 Signed the Convention and its Optional Protocol: 160

# The importance of involving the DPO'S

---

Article 4.3:

*“In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to PwD, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”*



**“Nothing about us without us!”**

# The importance of involving the DPO'S

---

- Self-determination
- Self-representation
- Choice and Control
- Experience expertise

→ **Basic principles to realize the convention to arrive real inclusion**

# CHALLENGES to implement the UN CRPD

---

- Problems
  - Translation of concepts
  - Need of legislation change – HR legislation
  - Meaning of Independent Living
  - Lack of funding for the implementation (monitoring bodies)
- Convention in our work
  - Cuts = situation going backwards
  - Article 19 and institutions: Choice of where to live With whom
  - PA – people with intellectual impairment living at home
  - Highest level of unemployment
  - Lowest level of education
  - Worse health conditions

# CHALLENGES to implement the UN CRPD in EU

---

- Transmit key information on the CRPD, etc (via newsletters, or at events)
- Campaigning on the human rights of PwD in society
- Informing PwD on their rights
- Establish and promote an accessible control mechanism
- Investigating individual complaints
- Creating EU resolutions in order to implement the CRPD
- Making enquiries into the rights of persons with disabilities  
& Including persons with disabilities into general enquiries

## CHALLENGES to implement the UN CRPD in EU

---

- Role of the ombudsman of EU is different in relation to the CRPD depending on national context
- Contact the Ombudsman and communicate about what the DPOs do
- Transmit individual cases of discrimination
- Inform Ombudsman about existing discriminatory practices
- Participate on request in the work of the Ombudsman, in trainings, conferences, legislative reviews, etc
- Keep Ombudsman informed when sending important letters to Ministries on issues of discrimination towards persons with disabilities,
- Ensure that information from the Ombudsman is disseminated throughout our networks and directly to members



# The sources used and important links:

---

- WHO – World Bank publications
- [www.enable.org](http://www.enable.org);
- <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>;
  - CRPD -- Handbook for parliamentarians – State reports
- [www.enil.eu](http://www.enil.eu);
- [www.mhe-sme.org](http://www.mhe-sme.org);
- [www.edf.eu](http://www.edf.eu);
- [www.fra.europe.eu](http://www.fra.europe.eu);
- <http://www.disabilityaction.org>

# Thank you for your attention & see you in the movement!

[www.enil.eu](http://www.enil.eu)



ENIL Brussels Office at Mundo J,  
Rue de l'Industrie 10, 1000 Brussels, Belgium  
Tel: 0032 (0)2 893 25 83



**STIL**  
Personlig assistans och politisk påverkan

**GIL**



# (IMPLEMENTING) EUROPEAN AND NATIONAL DISABILITY POLICIES: CHALLENGES AND BEST PRACTICES

EU DISABILITY LAW AND THE UN CONVENTION ON THE RIGHTS OF  
PERSONS WITH DISABILITIES  
SEMINAR FOR POLICY PRACTITIONERS  
ERA Trier, 13-14 October 2016

DDr. Ursula Naue,  
University of Vienna/ANED (Academic Network of European Disability Experts)/Viennese  
monitoring body for the implementation of the UNCRPD/Disability Studies Austria

## Outline

*Understanding the UNCRPD*  
*Society, politics, and persons with disabilities*  
*European and National Disability Policies before the UNCRPD*  
*Enter UNCRPD: 'Harmonising' disability policies*  
*Implementing the UNCRPD: Challenges*  
*European and National Disability Policies and the UNCRPD*  
*Best practice examples: Challenges, but also their importance*  
*Implementing European and National Disability Policies*  
*What for, and why?*  
*Work to be done*  
*Conclusion*

---

To start with the basics:  
Understanding the UNCRPD (1)

*Necessary to be able to understand the impact of the UNCRPD on potential 'harmonisation'/convergence of European disability policies*

**(A) The social model of disability as the reference point for the UNCRPD**

*Individual/medical model of disability:  
Focus on need of the individual to overcome his/her 'deficits'*

*Social model of disability:  
Focus on societal change, need to remove barriers*

---

To start with the basics:  
Understanding the UNCRPD (2)

**(B) No definition of disability in the UNCRPD**

*Preamble (e) "... disability is an evolving concept ..."*

*Art 1:  
"... Persons with disabilities **include those** who have long-term physical, mental, intellectual or sensory impairments which in **interaction** [social model, see (A)] with various barriers may hinder their full and effective participation in society on an equal basis with others."*

*Broadens the concept of disability, referring to society as such, but also to one's life course*

---

To start with the basics:  
Understanding the UNCRPD (3)

**(C) General principles refer to 'Nothing about us without us!'**

*Art 3 (c) Full and effective participation and inclusion in society  
(also: Art 29)*

*What is necessary for participation and inclusion?*

*Non-discrimination (Art 3 (b))*

*Equality of opportunity (Art 3 (e))*

*Accessibility (Art 3 (f), Art 9)*

*Independent Living (Art 19), Education (Art 24); Work and  
employment (Art 27)*

---

The UNCRPD in a nutshell

*The focus of the UNCRPD is on removing **barriers** and on **changing society**, not changing people*

*The UNCRPD's focus is on acceptance of **diversity***

***Disability** is not defined in the UNCRPD, it is an open and **flexible concept***

*The UNCRPD makes clear: Persons with disabilities are **holders of rights** (not recipients of charity)*

*The UNCRPD is about **choice** and **options**, not about predetermined paths (special school → sheltered workshop)*

---

Enter challenges:

Society, politics, and persons with disabilities

***Interaction within society:***

*Negative attitudes towards persons with disabilities (i.a. expressed in applied models of disability):*

*Recipients of charity*

*Fear, pity, disgust*

***Policymaking in general:***

*In which way are disability related issues part of policymaking?*

*Does disability mainstreaming take place?*

***Participatory practices in policymaking:***

*Who is involved, who is not involved, and why?*

---

The UNCRPD and the main challenge for implementation

*Obvious tensions between socio-political practices and the UNCRPD:*

*Much-quoted **paradigm shift** necessary in many societies...*

*Why?*

*Regarding the UNCRPD, in many countries the **goals** are at the same time the **preconditions***

*→ Challenge for implementing the UNCRPD!*

***How to achieve inclusion when lived inclusion is necessary for achieving inclusion?...***

---

## European and National Disability Policies *before* the UNCRPD: A brief summary (1)

*During the 90s:*

*Changing attitudes in accordance with the social model approach  
→ reforms of disability policies in most of the EU Member States*

*Important context:*

- Focus on efficiency and effectiveness to avoid 'cost explosion'*
  - Political initiatives and changes in legal framework to increase the employment rate of persons with disabilities (e.g. via quota, support services)*
  - Enactment of anti-discrimination legislation*
  - Increased research on disability policies (Maschke w.y.)*
- 

## European and National Disability Policies *before* the UNCRPD: A brief summary (2)

*Important before the ratification of the UNCRPD (and still relevant):*

- Social budgets and social policies under (financial) pressure*
  - Questions of 'fair' distribution of provision of support*
  - Debates about who should be eligible for social support (focus on persons who have already made their contribution to society – what about persons with congenital impairments who never participated in the labour market?...)*
  - Definition of disability/persons with disabilities: Who are the persons with disabilities who should be eligible?*
-

## European and National Disability Policies *before* the UNCRPD: A brief summary (3)

*Similar situation in European Union Member States/European states before the UNCRPD (and this is also still relevant):*

*-Nearly no explicit focus in social policies on persons with disabilities, usually subsumed under the term 'disadvantaged groups'*

*-Much worse educational status of persons with disabilities than average*

*-Much lower employment rate of persons with disabilities than average*

*-Much higher poverty rate of persons with disabilities than average*

---

## European and National Disability Policies *before* the UNCRPD: A brief summary (4)

*Regarding the applied model of disability in policymaking, and hence, the **'targets' of policymaking** (focus on compensation (e.g. Austria), rehabilitation (e.g. Germany) or participation (e.g. Sweden)):*

*Some European countries*

*...quite early started to refer to the social model of disability (e.g. United Kingdom),*

*... tried to do so, but still with a quite pronounced focus on the individual model (e.g. Austria),*

*...explicitly referred to a 'mixed approach' (providing support on the basis of the individual model, but with a strong background of a social model approach) (e.g. Sweden)*

*(Maschke 2008, Naue 2008)*

---



## European and National Disability Policies *before* the UNCRPD: A brief summary (5)

*Before the UNCRPD:*

*Summing up, in nearly all European Member States/European states, persons with disabilities had to face severe barriers with regard to support and assistance to be able to participate in everyday life*

*Different approaches were applied to change this situation, leading to a confusing mixture of measures, focusing on the persons themselves, the barriers that hinder those persons to participate in society, or on both*

---

## Enter UNCRPD: 'Harmonising' disability policies

*Introduction of the UNCRPD:*

*The confusing situation of different approaches towards ameliorating the lives of persons with disabilities – on a fundamental level – started to change*

*E.g. efforts by the European Commission to fund research on the question how the status quo looks like in different countries and in which way 'best practice' examples can help to change disability policies in accordance with the UNCRPD (important for potential policy changes)*

*This obviously took/takes place in the context of certain challenges – regarding applied models and diverse socio-political-cultural contexts*

---

## Implementing the UNCRPD: Some new challenges (1)

*-Translation of the UNCRPD: In many (not only European) countries with no official UN language, certain important concepts and terms were mistranslated, leading to debates about the content of the UNCRPD (e.g. with regard to inclusion, independent living, accessibility, participation)*

*-How to re-frame legislation and policy practices in accordance with the UNCRPD, when legislation/practices on a national level does/do not refer to the social model of disability?*

*-No definition of disability in the UNCRPD, but definitions in legal framework on national level (e.g. how to define eligible groups?)*

---

## Implementing the UNCRPD: Some new challenges (2)

*-How to measure change? Remarkable lack of indicators in many European Union Member States/European states*

*-Diverse approaches to monitor the implementation of the UNCRPD in accordance with Art 33 (new committees, committees as part of other institutions that monitor anti-discrimination, committees on a federal level, on a regional level etc.)*

*-Monitoring by the UN Committee in Geneva: Do the concluding observations lead to sustainable implementation or do they just lead to political rhetorics?*

---

## European and National Disability Policies and the UNCRPD: Interlinking political levels (1)

*The ratification of the UNCRPD by the European Union (23 Dec 2010; not the Optional Protocol which allows for individual complaints) was an important step by the EU to implement a UN Convention in general and the UNCRPD in particular*

*Besides this positive effect, it is a challenge for policymaking when it comes to the implementation of the UNCRPD:*

*Concluding observations by the UN Committee in Geneva on European Union Member States and also, on the European Union as such: What exactly is the reference point for changes?*

---

## European and National Disability Policies and the UNCRPD: Interlinking political levels (2)

*Obviously, it is very important that the European Union as such accepts the responsibility for the situation of persons with disabilities within the European Union!*

*But with regard to Member States, in the end, it depends*  
*a) on their own concluding observations by the UN Committee in Geneva*  
*and*  
*b) and most of all, on the willingness of Member States to implement European Union-level policies*

---

## Implementing European and National Disability Policies: Best practices and their challenges

*From a political scientific point of view but also from a practical point of view, 'best practices' are quite problematic, because we need to solve this tricky task:*

***What works in context A, does not necessarily work in context B!***

*And context means a lot:*

*It means social, political, religious, cultural, etc. context, which is relevant for the success or failure of implementing certain policies*

*We have to consider the challenges of policy transfer – place and time! (cf. Prince 2010; McCann & Ward 2012)*

---

## Implementing European and National Disability Policies: Best practices – linking place and time?

*Importance of policy development within a certain place and time:*

*Austria, draft law: 'Erwachsenenschutzgesetz' (Adult protection law), based upon the idea of supported decision-making, to facilitate autonomous and independent decision-making*

*If taken as a best practice example, we need to keep in mind that Austria already has a quite elaborated guardianship law (2006)*

*So then, what do we learn for European-wide policymaking by using this best practice example besides the obvious (the UNCRPD focuses on supported decision-making)?*

*How and in which way can other countries follow this example?*

---

## Implementing European and National Disability Policies: Resistance against best practice examples

*Another example, again with a focus on Austria:*

*Quite an evidence for the success of inclusive schools/education in Scandinavian countries (besides the current finance-driven tendency to decrease the number of students in inclusive environments)*

*Nevertheless, Austria decided not to refer to these best practice examples but to establish its own so-called model regions for inclusive education and try to find out whether it works in Austria or not (but: again, problem of transferring a model region in one of the nine Länder to another...)*

---

## Implementing European and National Disability Policies in the light of the UNCRPD: The importance of best/good practice examples

*To sum up, best – or better: good – practice examples are very helpful to show **that** certain policies work and that the UNCRPD can really be implemented (...), but they do **not** necessarily tell us **exactly how** to implement certain policies in accordance with the UNCRPD, because this depends on context (time and place).*

*Important to mention, debates about the UNCRPD sometimes focus on the Convention as something '**utopian**' – a kind of a state that will never be achieved – and hence, it is indeed important to show via best/good practice examples that it is possible and what it practically means to implement the UNCRPD.*

---

## Implementing European and National Disability Policies: European Disability Strategy 2010-2020 (1)

*Coordinated policy implementation in the context of the European Disability Strategy 2010-2020 (A renewed commitment to a barrier-free Europe):*

*"This Strategy provides 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. ...The economic downturn has had an adverse impact on the situation of people with disabilities, making it all the more urgent to act. This Strategy aims to improve the lives of individuals, as well as bringing wider benefits for society and the economy without undue burden on industry and administrations."*

---

## Implementing European and National Disability Policies: European Disability Strategy 2010-2020 (2)

*European Disability Strategy 2010-2020 (A renewed commitment to a barrier-free Europe):*

*"This Strategy focuses on eliminating barriers. The Commission has identified eight main areas for action: **Accessibility, Participation, Equality, Employment, Education and training, Social protection, Health, and External Action.**"*

*→ Cross-cutting issues – so, the European Disability Strategy comprises literally every policy field!*

---

## Implementing European and National Disability Policies: Assessing the implementation of the UNCRPD

*ANED (Academic Network of European Disability Experts),  
[www.disability-europe.net](http://www.disability-europe.net)*

*Created by the European Commission in 2007 to support policy  
development in collaboration with the Commission's Disability Unit*

*Country reports plus synthesis reports on specific issues – approach  
to link national policies with European Union policies and to  
provide an overview of political practices*

*DOTCOM (Disability Online Tool of the Commission), public  
database*

---

## Implementing European and National Disability Policies: ANED European Semester 2015/2016 fiche on disability – European Union overview (1)

*"This European overview and synthesis builds on country fiches prepared  
by members of Academic Network of European Disability experts (ANED)  
in response to the 2015 National Reform Programmes and Country  
Specific Recommendations relating to the 28 EU Member States. Key  
points from these country fiches are combined with relevant statistical  
indicators using EU level data and policy analysis. The report is presented  
in the context of the Annual Growth Survey priorities in order to support  
the Commission's input to the revised European Semester process, from a  
disability perspective."*

*European Semester: No disability-specific targets or quantifiable  
measures*

---

## Implementing European and National Disability Policies: ANED European Semester 2015/2016 fiche on disability – European Union overview (2)

Table 1: Europe 2020 and the significance of disability issues

	Europe 2020 targets	Headline issues
<b>Employment</b>	75% of the 20-64 year-olds to be employed	People with disabilities continue to be disproportionately economically inactive, unemployed or under-employed. These inequalities persist across the life course but vary considerably between Member States.
<b>Education</b>	Reducing the rates of early school leaving below 10%	Young people with disabilities are consistently more likely to be early leavers than the general population and this begins a cumulative cycle of career disadvantage.
	At least 40% of 30-34-year-olds completing third level education	People with disabilities are less likely to complete a tertiary education
<b>Fighting poverty and social exclusion</b>	At least 20 million fewer people in or at risk of poverty and social exclusion	People with disabilities of working age are at high risk of household poverty and social exclusion across the EU and this is closely linked to low work intensity as well as the effectiveness of social protection measures.

## Implementing European and National Disability Policies: ANED European Semester 2015/2016 fiche on disability – European Union overview (3)

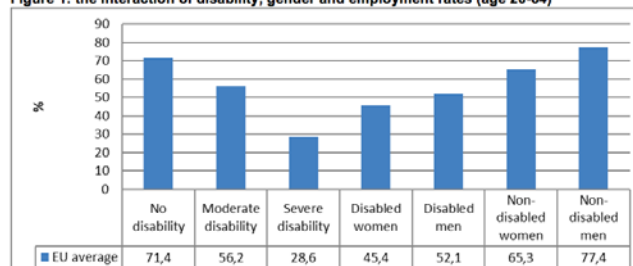
Need for a disability mainstreaming approach: One short example:

### Employment rate

This headline target fiche should refer prominently to the employment gap experienced by disabled persons, providing evidence of this and identifying disability equality as a key challenge for Member States in meeting their overall employment target. It may be useful to refer to Article 27 CRPD and to the EU's Disability Strategy in this context.

Table 3

Figure 1: the interaction of disability, gender and employment rates (age 20-64)



Source: EUSILC UDB 2013 – version 2 of August 2015



## Implementing European and National Disability Policies: European Semester country reports by ANED (1)

### *Austria: Struggling with data*

- General lack of specific data, measures in the National Action Plan Disability 2012-2020 are vague and hence, difficult to evaluate status quo and changes
- Persons with disabilities are not visible as a distinct 'target group' for policymaking
- Fragmentation of the Austrian political system, question of responsibilities in the context of Austrian federalism

### *UK: Struggling with austerity policies*

- Excellent official statistics on disability and employment
- Disproportionate consequences of austerity policies for persons with disabilities

## Implementing European and National Disability Policies: European Semester country reports by ANED (2)

### *Sweden: High level of support, but need for new initiatives*

- No major changes with regard to (un)employment rates of persons with disabilities
- Gradually increasing level of education of persons with disabilities

### *Portugal: Struggling with resources*

- Significantly lower employment rates of persons with disabilities compared to persons without disabilities
- legislation on inclusive education (2008) under pressure (budgetary constraints)

Implementing European and National Disability Policies:  
European Semester country reports by ANED (3)

*Hungary: Conflicting strategies*

- Central aim of government to increase the employment rate
- Reduction of disability benefits
- Income of persons with disabilities has decreased, and employment rate has not increased

*Croatia: Starting to implement the UNCRPD*

- Quite new regulations with regard to social transfers, incentives, employment opportunities
- Changes in education strategies just started

Implementing European and National Disability Policies:  
European Semester country reports by ANED (4)

*Ireland (has not yet ratified the UNCRPD):*

- Few substantive changes that would improve the situation of persons with disabilities (e.g. with regard to employment)
- Reports of extensive abuse of older persons with intellectual disabilities in congregated settings

*Iceland (just ratified the UNCRPD (23 Sept); no EU Member State):*

- Action plan for persons with disabilities does not contain quantified targets as EU2020, vague and ill-defined assessment procedures
- Very little data on education and disability

## Implementing European and National Disability Policies: What can we learn from this 'tour de force' through some European countries? (1)

*History and 'tradition' how to treat certain 'groups' in society matters!*

*Nearly everywhere, persons with disabilities are the first 'group' to be affected by austerity measures (due to the fact that in history, persons with disabilities have been the ones without lobbying and without being perceived as holders of rights)*

*'Good performers'/'Bad performers': To a large extent, this depends on how countries performed before the UNCRPD...*

*Missing or incomplete data and statistics (no data → no need to political action; Stone 2002)*

---

## Implementing European and National Disability Policies: What can we learn from this 'tour de force' through some European countries? (2)

*A lot of work has to be done, to implement the UNCRPD and its approach towards disability related issues!*

*Mandatory:  
Information for all persons in society that inclusion addresses all of us, not just some persons who need to be included (...)*

*Training for policymakers in the broadest sense (to be aware of necessary changes in policymaking) – takes us back to best/good practices*

*Participation of 'affected persons', i.e. persons with disabilities*

---

Implementing European and National Disability Policies:  
Best – or better: good – practices (1)

*In the context of the above briefly discussed national contexts:*

*Best/good practice examples as a way to show how the implementation of the UNCRPD in national contexts **might** work*

*E.g. examples of services, measures, but also of specific persons*

*Example 1:*

*Austria, [arbeitundbehinderung.at](http://arbeitundbehinderung.at), 70 persons with disabilities who made it into the first labour market*

---

Implementing European and National Disability Policies:  
Best – or better: good – practices (2)

*Example 2:*

*Finland, via [zeroproject.org](http://zeroproject.org), services for persons with (learning) disabilities to find sustainable employment*

*Example 3:*

*Europe, via [zeroproject.org](http://zeroproject.org), cooperation of a wide range of DPOs/EEG (European Expert Group on the transition from institutional to community-based care), measures for training, guidance about the need of community-based care and the risks of institutional care for persons with disabilities*

---

## Implementing European and National Disability Policies: Best – or better: good – practices (3)

*The list of best/good practice examples is long and refers to diverse disability related issues (e.g. transportation, education, development)*

*This shows – as already mentioned above – that policies work when it comes to implementing the articles in the UNCRPD!*

*Best/good practice examples should not be carbon-copied, but re-framed within a certain (national) context – then, they serve as an important basis for information/knowledge how to formulate policies*

---

## Implementing European and National Disability Policies: Best/good practices and a change of perspective

*Best/good practices highlight especially one important aspect of implementing the UNCRPD – namely participation:*

*The UNCRPD's focus on active participation and involvement of persons with disabilities is reflected in best practices, as best practices show in which way the lives of persons with disabilities can be ameliorated – certainly and reasonably from the perspective of persons 'affected' by certain policies!*

*But this – at the end of my talk – leads to some provocative questions...*

---

Provocative questions:

What for, and why? Why should we implement the UNCRPD?

*Not the answers to these questions are complicated, but the reasoning behind them is ....*

*Because:*

*Some people do not care about – or at least relativise – Human Rights (and the UNCRPD is exactly about Human Rights!)*

*But also:*

*Some people do not care about the positive economic effects it would have on societies not to exclude on average 15-20 % of their population from education and hence, from labour market (but: pushiness in times of (post-)crisis...)*

Conclusion: Work to be done: Implementing the UNCRPD within the European Union and on the national level

- Need to develop a disability mainstreaming approach*
- Need for disaggregated disability data collection*
- Indicator development at the European Union level supporting the EU2020 process*
- Policy trends such as reducing eligibility for disability benefits need to be highlighted by monitoring the disability dimension*
- And most of all: Action has to be taken!*

*“Without a disability equality perspective in policy monitoring and impact assessment there is a danger that people with disabilities will continue to be disproportionately impacted by consolidation and austerity policies, as has been demonstrated in some individual Member States.”*

*(cf. ANED/Priestley 2016)*

## Conclusion – Why we should comply with the UNCRPD? (1)

### **Personal approach** (which is quite powerful...):

*...because we realised that disability is a matter of barriers and that barriers literally affect all of us during our life course (from pram to wheeled walker)*

*...because we realised that acting in accordance with the dimensions of diversity yields (not only economic) benefits for all of us and that the assumptions made on persons with disabilities (disability = inability) have to be reconsidered fundamentally in this context*

### **Rights-based approach:**

*...because we as societies have decided to have principles for living together – (Human) Rights*

---

## Conclusion – Why we should comply with the UNCRPD? (2)

### **Challenges for a (Human) rights-based approach:**

*“... globally, the implementation of human rights lags far behind their articulation. Our objective must be to help bridge the gap between the lofty rhetoric of human rights in the halls of the United Nations [comment Naue: not only there...] and the sobering realities on the ground.” (59<sup>th</sup> Session of the United Nations General Assembly, 26.5.2005, p. 5)*

*So, it is our task to pave the way from normative requirements (what is said/written) to political practice (what is done)*


---

Thank you very much for your attention!

For further information, please contact me via email:

[ursula.naue@univie.ac.at](mailto:ursula.naue@univie.ac.at)






*(Dis)Able?*  
*The Legal Capacity of Persons with Disabilities*  
*under Article 12 UNCRPD*

---

**Andrea Broderick**

**Assistant Professor  
Maastricht University**

**(Ph.D., Licensed Attorney)**



*“Imagine if someone else was making decisions for you. They could decide to take you away, lock you up, not listen to you, give you medication, block you from doing your work and living your life with your body and mind the way they are.*”

*WOULD YOU WANT THIS TO HAPPEN TO YOU? Wouldn't you have the feeling that you have lost your dignity and want it back?”*

---

Citation from the International Disability Caucus' advocacy paper during Ad Hoc Committee on a Comprehensive and Integral International Convention on and Promotion of the Rights and Dignity of Persons with Disabilities, Jan. 31, 2006.

## Structure of the Presentation

- Introduction to the notion of legal capacity
- Various approaches to legal capacity
- Article 12 CRPD and the paradigm shift
- General Comment on legal capacity
- Synergy between legal capacity and other rights
- Legal capacity and the wider European context/regional protection of legal capacity
- Examples of best practice
- Summary of key points

## Introduction to the notion of ‘Legal Capacity’

- Mental Capacity: Decision making ability
- Legal capacity: The capacity to be both a holder of rights and an actor under the law (recognising the person as an agent with the power to engage in transactions and create, modify or end legal relationships)
- The right of persons with disabilities to make choices and enjoy legal capacity on an equal basis with others is one of the most significant human rights issues in Europe today

### Status Approach

- Rests on a binary concept of legal capacity
- Being labelled “disabled” (in particular having an intellectual disability) means an assumption under the law that a person lacks legal capacity.
- This status is enough to deprive a person of legal capacity
- Authority for decision-making is given to another (substituted decision-making; plenary or partial guardianship)

### Outcome Approach

- Based on the maxim that in circumstances where a person makes a bad decision or a number of bad decisions, that person should lose the right to continue making decisions

### Functional Approach

- Entails a decision on a person’s legal capacity on an issue-specific basis
- The functional approach presumes that a person has capacity unless the opposite is proven
- The ‘modern’ functional approach involves the provision of supports in order for people to exercise decision-making
- Key values of equality, dignity and autonomy

## Article 12 CRPD – Equal Recognition before the Law

- **Article 12(1):** Persons with disabilities have the right to recognition everywhere as persons before the law
- **Article 12(2):** Enjoyment of legal capacity on an equal basis with others in all aspects of life
- **Article 12(3):** Access to support in exercising legal capacity (such as peer support, advocacy, including self-advocacy support, or assistance with communication)
- **Article 12(4):** Appropriate and effective safeguards, ensuring that measures relating to the exercise of legal capacity respect the will and preferences of the person
- **Article 12(5):** The equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property

## CRPD's Approach to Capacity: The Paradigm Shift

- **Social and Human Rights Model:** Moving away from a “deficits” approach to disability towards increasing the individuals’ capabilities
- Moving away from treating persons with disabilities as ‘objects’ to ‘subjects’

## **CRPD's Approach to Capacity: The Paradigm Shift**

- Article 12 CRPD rejects the 'status' and 'outcome-based' approaches to legal capacity
- Under the CRPD, the focus of the 'functional approach' is on the provision of supports (often not resource-intensive) enabling persons to exercise legal capacity

## **Supported Decision Making**

- Peer support, advocacy (including self advocacy support), or assistance in communication
- Universal design and accessibility
- Diverse methods of communication, for those who use non-verbal communication to express their will and preferences.

## Will and Preferences

- Focus on the ‘will and preferences’ of the individual as the determining factor in all decisions under Article 12 CRPD
- Move away from the paternalistic ‘best interests’ approach
- Reduction of plenary guardianship laws and reduction, or elimination if possible, of all substitute decision-making systems
- Reduced interventions by the court system, but must ensure safeguards

## 3 Different Approaches to Will and Preferences

- **Case 1:** Capacity to form will and preferences (with assistance)
- **Case 2:** Capacity to form will and preferences (but difficulty expressing the will and preference)
- **Case 3:** A person who cannot form their own will and preference – emphasis on sparking the expression of their will and preference over time and the role of law and regulation is vital

## General Comment: Article 12 CRPD

- States Parties must abolish denials of legal capacity that are discriminatory on the basis of disability in purpose or effect
- States Parties must review the laws allowing for guardianship and trusteeship
- States Parties have an obligation to replace substitute decision-making regimes by supported decision-making

## General Comment: Article 12 CRPD

- (a) A person's level of support needs should not be a barrier to obtaining support in decision-making;
- (b) All forms of support based on 'will and preferences';
- (c) A person's mode of communication must not be a barrier;
- (d) Legal recognition of the support person(s) formally chosen by a person must be available and accessible, including a mechanism for third parties to verify the identity of a support person and to challenge the action of a support person;
- (e) Lack of financial resources must not be a barrier;
- (f) Support in decision-making must not be used as justification for limiting other fundamental rights of persons with disabilities
- (g) The person must have the right to refuse support and terminate or change the support relationship at any time;
- (h) Safeguards must be set up;
- (i) The provision of support to exercise legal capacity should not hinge on mental capacity assessments

## Specific Substantive Rights of the CRPD



## Synergy between Article 12 and Article 19 CRPD

Article 19 obliges States Parties to the CRPD to ensure:

- That persons with disabilities have the opportunity to choose where and with whom they live, and that they are not obliged to live in any particular living arrangement
- Disabled individuals have access to the residential and community supports they need to support living and inclusion in community
- Generic community services and facilities will be available on an equal basis to disabled people and that the services are responsive to their needs



## **Synergy between Article 12 and Article 19 CRPD**

- Living independently in the community requires recognition of the legal capacity of individuals
- Experience of living independently and being included in the community and forming relationships is essential in order to be able to develop one's legal capacity
- The right to make decisions about financial and legal matters, health care decisions and having control over one's income

## **Legal Capacity and the European Context**

- European Union ratified the CRPD in 2010
- All EU institutions are now obliged to uphold the rights of persons with disabilities
- The EU is in the process of mainstreaming disability rights across all areas of EU competence
- EU member states have begun sharing best practice on CRPD implementation, including the introduction of mechanisms of support in light of Article 12

## Legal Capacity and the European Context

- *The European Disability Strategy 2010-2020* of the European Commission
- Actions at the EU level have been identified, with a view to supplementing national measures
- Support measures identified in the areas of funding, research, awareness-raising, statistics and data collection
- The objectives of the strategy have been influenced, in part, by the CRPD

## Legal Capacity and the European Context

- Both the EU institutions and the Council of Europe should work together towards developing a coherent understanding of Article 12 and its implications on regional human rights instruments
- The Council of Europe Commissioner for Human Rights has highlighted the importance of ensuring legal capacity of people with disabilities is protected

## Regional Protection of Legal Capacity

The Committee for the Elimination of All Forms of Discrimination Against Persons with Disabilities (in the Organisation of American States) issued a general observation in May 2011, which states as follows:

*“The rules regarding capacity or incapacity to exercise rights under particular circumstances should not be confused with the quest for a different way of representing persons with disabilities, one that supports their autonomy, recognizes them fully as persons before the law with legal capacity, and proposes support and safeguards only when they are necessary. That means starting from what people are able to do, what they can do for themselves, and only then determining the circumstances under which they do need support, along with safeguards”*

## Regional Protection of Legal Capacity

➤ The Committee (in the OAS) has recommended that States:

1. Train the general public, and justice system on disability
2. Recourse to support systems for decision-making
3. Adopt urgent measures of a regulatory nature to disallow new declarations of legal incompetence and to foster the gradual development of decision-making support systems
4. Regulation and implementation of institutions and mechanisms to safeguard against abuse
5. Facilitate the review of cases in which persons with disabilities have been declared legally incompetent (in light of the new paradigm)

## Legal Capacity Decisions of the European Court of Human Rights

- Article 5 (right to liberty and security) Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the ECHR are frequently raised in cases that involve issues of capacity
- *Shtukatorov v Russia*
- *DD v Lithuania*
- *Sykora v Czech Republic*
- *Stanev v Bulgaria*
- *Lashin v Russia*
- *Ivinović v. Croatia*

**EXAMPLES OF BEST PRACTICE**

## British Columbian Representation Agreements

- British Columbia's *Representation Agreement Act 1996* is an example of best practice in this area
- It facilitates individuals to decide in advance on issues
- Presumption of capacity in respect of persons with intellectual disabilities and mental illness
- No court involvement - nomination of a person to make decisions in different aspects of a person's life

## British Columbian Representation Agreements

- Section 8 of the Act provides for a test of incapability, taking into account the following factors:
  - i. Whether the adult communicates a desire to have a representative;
  - ii. Whether the adult demonstrates choices and preferences and can express feelings of approval or disapproval of others;
  - iii. Whether the adult is aware that making the representation agreement or changing or revoking any of the provisions means that the representative may make, or stop making, decisions or choices that affect the adult;
  - iv. Whether the adult has a relationship with the representative that is characterised by trust

## Swedish Personal Ombudsman

- The 'personligt ombud' support model was developed in Sweden
- The ombudsman is a professional (often from a social work or legal background) who works for the individual and on the basis of their 'will and preferences'
- No assessment of capacity before support is provided
- The ombudsman has no links with medical professionals, social services or any other authority
- Enhances individuals' autonomy and reduces the level of in-patient hospital stays

## Summary of Key Points

- CRPD is a driver of real law reform and policy change
- Capacity to hold rights involves capacity to exercise them with supports
- States parties must abolish denials of legal capacity that are discriminatory on the basis of disability in purpose or effect
- Obligation to replace substitute decision-making regimes by supported decision-making requires
- 'Best interests' must be replaced with the 'will and preferences' of the individual
- Correct balance between protection and autonomy: Role of the court to safeguard individuals against deprivation of legal capacity and protect against abuse



CONCLUSION

THANK YOU FOR YOUR ATTENTION

Contact: [andrea.broderick@maastrichtuniversity.nl](mailto:andrea.broderick@maastrichtuniversity.nl)



## **The Right to Inclusive Education: Article 24 CRPD**

---

**Andrea Broderick**

**Assistant Professor  
Maastricht University**



### **Structure of the Presentation**

- The right to education for persons with disabilities
- The shift from exclusion to integration to inclusion
- Characteristics of Inclusive Education
- Article 24 of the CRPD
- Reasonable accommodation/accessibility measures
- Inclusive education in the European context
- Examples of good practice and CRPD Concluding Observations
- General Comment on the Right to Inclusive Education




## **The Right to Education for Persons with Disabilities**

- The right to education is both an end in itself, as well as a means towards attaining all other human rights
- Education has been described as ‘the primary vehicle by which economically and socially marginalized adults and children can [...] obtain the means to participate fully in their communities’

*The Shift from Exclusion to Integration to Inclusion*

Exclusion	Integration
<ul style="list-style-type: none"> <li>➤ Disabled people viewed as different from the 'norm'</li> <li>➤ Deficit-based approach</li> <li>➤ Unable to cope with mainstream educational systems</li> <li>➤ Education in segregated settings</li> </ul>	<ul style="list-style-type: none"> <li>➤ Gradual realisation that disabled people should be allowed to be educated in the mainstream</li> <li>➤ However, the system of integration did not focus on alterations to the norm</li> <li>➤ Instead, the disabled individual had to adapt to the learning environment</li> <li>➤ Can lead to exclusion in practice</li> </ul>

Inclusion	
 <p>The illustration shows a diverse group of stylized human figures in various colors (red, blue, green, purple, orange) holding hands in a circle. The word 'Inclusion' is written in a large, green, cursive font across the center of the circle. The background is a light, textured surface with some faint, illegible text.</p>	<ul style="list-style-type: none"> <li>➤ The international law reform trend is focused on inclusion</li> <li>➤ Social model and human rights model of disability: Removal of barriers, adaptation and modification of systems to ensure effective participation</li> <li>➤ Disabled learner not required to simply 'fit in'</li> <li>➤ A competing 'discourse of difference' continues to have some support in Europe</li> </ul>

## Inclusive Education

- A diversity of learning conditions, not only for children with disabilities, but all students
- The World Report on Disability acknowledges that inclusion in mainstream schools 'promotes universal primary completion, is cost-effective and contributes to the elimination of discrimination'
- Former UN Special Rapporteur on the Right to Education, Mr. Vernor Muñoz Villalobos, acknowledges that the inclusion of learners with disabilities in mainstream schools 'confers significant psychological advantages, as well as greater fulfilment of intellectual and, especially social and emotional needs through regular and natural interaction with a diverse group of learners'
- Inclusive education is often wrongly perceived to be prohibitively expensive



## INCLUSIVE EDUCATION



## Article 24 CRPD

- Persons with disabilities **not excluded** from general education system and children with disabilities **not excluded from free and compulsory primary education** or secondary education, on the basis of disability
- **Access to inclusive education** on an equal basis with others;
- **Access to vocational training without discrimination**, lifelong learning through provision of reasonable accommodation
- **Reasonable accommodation** of the individual's requirements
- Provision of support required to facilitate **effective education within the general education system**;
- Effective individualised **support measures that maximise academic and social development, consistent with full inclusion**

## Article 24 CRPD (continued)

- **States must enable persons with disabilities to learn life and social development skills to facilitate participation in society by:**
  - Facilitating the learning of Braille, alternative methods of communication, sign language
  - Providing education in the most appropriate setting for blind, deaf and deafblind
  - Employing teachers, including teachers with disabilities, who are qualified in the use of sign language
  - Providing training to teachers on disability awareness and the use of appropriate forms of communication

## Reasonable Accommodation

- “Reasonable accommodation” is defined in **Article 2 of the UN CRPD as:**

*Necessary and appropriate modification and adjustments **not imposing a disproportionate or undue burden**, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with other of all human rights and fundamental freedoms.*

- **Article 2 of the UN CRPD** includes a denial of reasonable accommodation as a form of discrimination
- **Article 5(3) of the UN CRPD:**

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

## Accessibility Obligations in the UN CRPD

- **States Parties shall also take appropriate measures to:**
  - Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
  - Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
  - Provide training for stakeholders on accessibility issues facing persons with disabilities;
  - Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
  - Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public

## Inclusive Education in the European Context

- **The Europe 2020 strategy** is based on the principles of smart, sustainable and inclusive growth
- Target of reducing the number of early school leavers from 15% to 10%, whilst increasing the share of the population aged 30-34 who have completed tertiary education from 31% to at least 40%
- **The European Disability Strategy 2010-2020** notes that disabled people are much less likely to participate in post-school education and to obtain employment than non-disabled people
- Removing barriers and improving outcomes for disabled people is critical to the overall economic and social objectives of the EU

## Inclusive Education Trends and Examples of Good Practice

- Important legislative initiative in **Slovenia**, influenced by the CRPD. Under Section 11 of the 2010 Act on Equal Opportunities of People with Disabilities there is a duty to ensure to people with disabilities inclusion into educational programmes at all levels
- In **Denmark**, the Act on State School has recently been amended with the aim of including more students with special needs in mainstream education
- In March 2015, the **Czech** Parliament endorsed a new definition of pupils with special educational needs under Section 16(1) of the Schools Law. The new definition focuses on the provision of support measures to ensure equal educational opportunities for persons with disabilities

## CRPD Committee Concluding Observations and Other Concerns

- The CRPD Committee has noted that the number of children in special schools in **Austria** is on the increase and that ‘insufficient effort has been made to support the inclusive education of children with disabilities’
- The 2010 shadow report prepared for the CRPD Committee by the Hungarian Disability Caucus strongly criticises the provision of education for disabled students in **Hungary**
- In **Cyprus**, the Ombudsman and the Commissioner for the Rights of the Child have criticised the inadequate structures and the support provided to children with disabilities
- In **Romania**, case law and NGO reports indicate that fundamental problems remain with the implementation of the legal framework in order to ensure inclusive education

## General Comment on the Right to Inclusive Education

### ➤ Barriers to Inclusive Education:

- Failure to understand or move towards the human rights model of disability
- Persistent discrimination against persons with disabilities
- Lack of disaggregated data and research
- Lack of awareness of the measures required, together with inappropriate and inadequate funding mechanisms

## General Comment on the Right to Inclusive Education

- **Availability** - functioning educational institutions and programmes must be available in sufficient quantity within the jurisdiction of the State Party, including, for example, a requirement to have accurate data on persons with disabilities
- **Accessibility** - consistent with article 9 of the Convention, and with the Committee's General Comment No. 2, educational institutions and programmes must be accessible to everyone, without discrimination. States parties must commit to the prompt introduction of Universal Design

## General Comment on the Right to Inclusive Education

- **Acceptability** - is the obligation to design and implement all education-related facilities, goods and services taking full account of and respecting the requirements, cultures, views and languages of persons with disabilities
- **Adaptability** - the Committee encourages States parties to apply the Universal Design for Learning (UDL) approach



*“If we are to achieve a richer culture, we must weave one in which each diverse human gift will find a fitting place”*

~ Margaret Mead ~

CONCLUSION

THANK YOU FOR YOUR ATTENTION

Contact: [andrea.broderick@maastrichtuniversity.nl](mailto:andrea.broderick@maastrichtuniversity.nl)

## FALLSTUDIEN

*Bitte gehen Sie davon aus, dass alle Staaten der Behindertenrechtskonvention beigetreten sind*

(a) Im Land Krania bringen die Kläger (Eltern dreier Kinder mit Gehörschäden, die eine Regelschule besuchen) vor einem Amtsgericht vor, dass die von der Schule im Umfang von 5-9 Stunden pro Woche zur Verfügung gestellte interpretative Assistenzleistung für ihre Kinder nicht ausreicht, um den für ihre Ausbildung erforderlichen Kursen zu folgen. Die Schule bringt vor, dass der Staat nicht über genügend Mittel verfügt, um die erforderliche Assistenzleistung zu erbringen, obwohl das BIP des Landes im letzten Jahr sehr hoch war und sehr viel Geld für Privatflugzeuge für Minister ausgegeben wurde. Die Schule sagt jedoch auch, dass sie die geforderte Assistenzleistung gerne erbringen wird, wenn die Eltern die Kosten dafür übernehmen. Glauben Sie, dass das Gericht auf einen Verstoß gegen die Behindertenrechtskonvention erkennen wird? Falls ja, welche Artikel der Konvention sind diesbezüglich maßgebend?

(b) Im Land Utopia besucht Frau Schmidts Sohn (der unter einem schweren Aufmerksamkeitsdefizitsyndrom leidet) die örtliche Schule. Die Schule weigert sich, dem Sohn Zugang zu den in der Schule verfügbaren Unterstützungsleistungen (darunter die Betreuung durch einen Schulpsychologen) zu gewähren, und will auch keinen individuell angepassten Ausbildungsplan bzw. einen Plan zur psychologischen Führung (Behaviour Management) für das Kind entwickeln. Zudem wird Frau Schmidt der Zutritt zu den Elternabenden an der Schule verweigert, da ihr Sohn behindert ist und die Eltern der Schule daher der Meinung sind, dass sie zu Elternabenden nicht wirklich etwas beitragen kann. Um welche Verstöße gegen die Behindertenrechtskonvention geht es hier?

(c) Einige EU-Mitgliedstaaten haben gesetzliche Bestimmungen erlassen, die die Anzahl der zur Unterstützung behinderter Schüler eingesetzten Lehrer beschränken und die Anstellung neuer sonderpädagogisch ausgebildeter Lehrer für Schüler mit besonders schweren Behinderungen untersagen. Verstößen diese Regelungen gegen die Behindertenrechtskonvention?

Des Weiteren haben mehrere EU-Mitgliedstaaten Bestimmungen erlassen, die eine Beurteilung des Leistungsvermögens erfordern, bevor das Kind in eine Regelgrundschule aufgenommen wird. Verstößen diese Regelungen gegen die Behindertenrechtskonvention?

(d) Im Land Linata werden alle blinden und gehörlosen Kinder außerhalb der Regelschule erzogen. Zudem gelten Kinder mit schweren Lernbehinderungen als nicht geeignet für die Regelschule und werden daher in Sonderschulen untergebracht. Die Begründung dafür ist (laut den Regelschulen), dass es im besten Interesse der Kinder ist, sie an Sonderschulen individuell zu betreuen, und dass ihnen dies vom pädagogischen Standpunkt aus gesehen bei der Entwicklung hilft. Entspricht diese Regelung der Behindertenrechtskonvention?

(e) Im Land Tyrka weigert sich die tyrkanische nationale Musikhochschule, Myra in die Hochschule aufzunehmen, da sie blind ist und daher von der an der Hochschule angebotenen Ausbildung nicht profitieren kann. Auf die Frage von Myra an die Schule, ob sie mit Ihrem Blindenhund aufgenommen werden kann, erklärt die Schule das für unmöglich, da der Hund die anderen Studenten behindern wird. Darüber hinaus beantragt Myra für ihren Versuch, eine Beschwerde bei ihrem örtlichen Gericht einzureichen, Assistenzleistungen während des Gerichtsverfahrens, die ihr von der Geschäftsstelle des Gerichts verweigert werden. Entspricht dies der Behindertenrechtskonvention?

(f) Im Land Nizalia kann ein körperbehinderter Student (der einen Rollstuhl benutzt) seine Ausbildung am Gymnasium nicht fortsetzen, weil das Schulgelände der Schule, an der er Unterricht hat, keine geeigneten Einrichtungen besitzt. Bei der Schule handelt es sich um eine Privatschule. Hat sie gemäß der Behindertenrechtskonvention Verpflichtungen? Hat der Staat seine Verpflichtungen gemäß der Behindertenrechtskonvention verletzt?

## ERA Academy of European Law

Event: **EU DISABILITY LAW AND  
The UN CONVENTION ON THE RIGHTS OF  
PERSONS WITH DISABILITIES:**

**“SEMINAR FOR POLICY PRACTITIONERS”**

**My human rights through independent living?**

13-14 October 2016 Trier- Germany

Nadia Hadad  
Board member

European Network on Independent Living - ENIL



## Summary

---

- What is and does ENIL do?
- What does we mean by Independent Living?
- Who am I? Who I was? Who I became?
- My human rights trough Independent living?
- Why only Independent living leads to inclusion?
- Challenges and Hopes to be part of society

## What is and does ENIL do?

---

The European Network on Independent Living is:

- Cross - disability civil right society organization working in all EU countries for the spreading of independent living and the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD).
- No matter the disability all are welcome to join us in challenging the discrimination, isolation and exclusion that we face.

ENIL works through networks at local, regional, national and international levels.

ENIL works with the European Commission, universities and other NGOs. We seek partnership with academia, government agencies, law associations, and human rights organizations.

## What is and does ENIL?

---

Two main goals

1) In promoting independent living and human rights we:

- Promote self-determination and control over your own life through personal assistance and community based services
- Promote de-institutionalization
- Challenge discrimination
- Promote equal opportunities
- Promote universal design and accessibility
- Promote democracy and selfrepresentation

2) In promoting empowerment through peer support we:

- Increase sharing of information, experiences and insights among people with disabilities
- Raise awareness of discrimination
- Increase empowerment and emancipation of people with disabilities

## What does Independent Living means?

Independent Living is

- the daily demonstration of human rights-based disability policies.
- possible through the combination of various environmental and individual factors that allow disabled people to have control over their own lives.
- Dr Adolf Ratzka's definition: Independent Living is having the same range of options and same degree of self-determination taken for granted by non-disabled.

This includes the opportunity to make choices and decisions regarding where to live, with whom to live and how to live.

→ The right to just be ordinary!

## What does Independent Living means?

- IL requires that the built environment and transport are accessible, that there is availability of technical aids, access to personal assistance and/or community-based services.
- It is necessary to point out that IL is for all disabled persons, regardless of the level of their support needs.
- Personal assistance PA
- Peer Support
- Peer Counseling
- De-institutionalisation DI
- Community Based Services
- Effects of Cuts

## **Article 19 Living independently and being included in the community**

**Article 19 – Living independently and being included in the community** States Parties to the present Convention recognize the equal right of all persons with disabilities

- to live in the community,
- with choices equal to others,
- and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

## **Article 19 Living independently and being included in the community**

- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs

## The importance of the CRPD Article 19

- Article 19 is of key importance because it sets out what steps States are required to take to ensure that people with disabilities are able to live in the community as equal citizens.
- Although it has links to other human rights, such as Article 26 of the EU Charter of Fundamental Freedoms ('Integration of people with disabilities'),
- Article 19 CRPD stands out because it is the first time that an explicit right to live independently is set out in a human rights treaty.
- It requires States to take concerted action to ensure that people with disabilities are able to exercise their right to community living.

## The importance of the CRPD Article 19

- States must recognize the right of people with disabilities 'to live in the community, with choices equal to others' and take steps to facilitate their 'full enjoyment of this right' and 'their full inclusion and participation in the community'.
- The Importance of Article 19 CRPD In particular States are required to take action in three main areas, by ensuring that people with disabilities have:
  - A choice on where and with whom to live, on an equal basis with others "and are not obliged to live in particular living arrangements",
  - Access to a range of community support services,
  - Equal access to mainstream services, which are responsive to their needs.



## Example: Who I am?

Nadia Hadad: a woman, a sister, an aunt, a friend,  
a “culture-freak” .... Beside still A hard worker



**A person with a disability**

## Who I was before?

A world-citizen, An engineer, A developer-worker

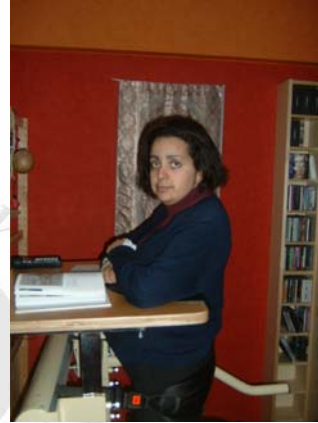


**Only a poor can work with and for those in need**

## Who I became right after?

Stuc in rehabilitation- in search – in wait – depending

- How can I lead an as normal as possible life?
- How can I organize to not rely on my family? friends? Network? Sometimes? A lot off time?  
-> What about the rest of my life?



**Identification faze on how to restart living**

## My human rights trough IL?

- As I refused to go to an institution I landed on a waiting list to get a personal assistance budget, for weeks, months, years...
- No specialized support nor adaptions, no budget
- Excluded, isolated, not functional, prisoner
- Only when someone had time and wanted to do something good I could escape from my reality
- Intellectually I was regressing

Deprived from my own human rights to have a descent life, being part off the society

## My human rights trough IL?

- 2007 Friends offered me a trip with them to Barcelona, my sister assisted me



- I decided to stop “Charity” on me, form me, on myself
- Joined lobby organizations, saw three ministers, reached the media
- September 2008: the big relieve I got a PAB
- October 2008: I got a job and started back living

## My human rights trough IL?



**I went back to development cooperation but  
With and for persons with disabilities**

## My human rights trough IL?

So I started as a humanright activist to:

- Lobby for a change at all levels, here gender & disability & DC
- Promote self-determination, control over your own life through PA and community based services
- Challenge discrimination
- Reclaiming equal opportunities
- Asking for real democracy and selfrepresentation
- Work on inclusion

→ only possible trough my PAB



## Why only IL leads to inclusion?

Once I had a PAB:

- \* I employed PA to support me there where and when I needed them
- \* I went back to work as an engineer,
- \* I got my salary so I could permit myself to pay adaptable transport and have that freedom of movement
- I could become a sister, a daughter, a friend again without being “ a charge ”
- I took up my relationship so he became my lover again and not my nurse or assistant
- My colleagues were released to take care of me and treat me now as one of them
- I can arrive by myself at appointments

→ **I HAVE A DECENT LIFE AGAIN**

## Today's Reality

---

- Institutions – building and renovation
- Lack of community services
- Lack of accessible housing
- Lack of personal assistance
- Lack of involvement of PWD
- Attitudes – PWD seen as burden, no potential

## Challenges & Hope to be part of society

---

In order that all persons with a disability can be a part of society and have the right on independent living a lot of barriers need to be overpassed.

We need at least to:

- Make disability a cross-cutting matter
- Realize a Paradigm shift
- Provide Integral accessibility

Only then we can enjoy, at equal base as others, our basic human rights and live independently inside the society,

## The sources used and important links:

---

- WHO – World Bank publications
- [www.enable.org](http://www.enable.org);
- [www.enil.eu](http://www.enil.eu);
- [www.fra.europa.eu](http://www.fra.europa.eu); FRA: Human rights indicators on **CRPD Article 19**
- Getting a Life – Living Independently and Being Included in the Community
- Personal Assistance and Independent Living: art 19 of CRPD Debbie Jolly
- Deinstitutionalization: Unfinished Business Companion Paper to Unfinished Business Toolkit, National Council on Disability
- HUMAN RIGHTS INDICATORS A Guide to Measurement and Implementation, UN Human Right Council
- Deinstitutionalization and CRPD: JAN PFEIFFER CPT COMMITTEE COUNCIL OF EUROPE

**Thank you for your attention  
&  
Let's go together  
for an inclusive society for all!**

**[www.enil.eu](http://www.enil.eu)**



# European Accessibility Policies

Inmaculada Placencia Porrero  
Senior Expert  
Unit C3 Disability and Inclusion  
European Commission  
DG EMPL

Inmaculada.placencia\_porrero@ec.europa.eu



## ACCESSIBILITY EC European Disability Strategy 2010- 2020

*"The Commission proposes to **use legislative and other instruments as standardisation**, to optimise the **accessibility** of the built environment, transport and ICT [...]. Based on smarter regulations principles, **it will explore the merits of adopting regulatory measures** to ensure accessibility of products and services, including measures to step up the use of **public procurement**[...]. Following further consultations with Member States and stakeholders, the Commission will consider whether to **propose a European Accessibility Act.**"*

Justice



## Accessibility in the UN CRPD

- *Accessibility is a general principle of the UN CRPD (Art. 3)*
- *Article 9 Accessibility*

*State parties to undertake appropriate measures **to ensure equal access** for persons with disabilities to:*

- **the physical environment**
- **transportation**
- **information and communications, including information and communications technologies and systems & internet**
- **other facilities and services open or provided to the public, both in urban and in rural areas**

Justice



## Diverging national approaches to accessibility legislation

- Different approaches: technical, discrimination, procurement
- Different material scope of the various legislations, built environment, ICT
- Different level of detail of legislation
- Different level of jurisdiction: national, regional, local

Justice





## Accessibility at EU Level approaches

### *-Thematic*

- **Transport: Regulations on Rights of persons with reduced mobility, Rail –TSI**
- **Ict: eAccessibility Policy, eComm Legislation**
- **Built environment: National and local, Construction Products**

### *-Legislation*

### *-Funding*

- **Public Procurement**
- **Structural Funds**

### *-Research*

### *-Standardization*

### *-Awareness*

Justice



## Concepts

*Rights - >Non-discrimination -> **equal access!!!!***

### **Accessibility**

*(following design for all)*

+

### **reasonable accommodation**

*(assistive technologies  
assistance)*

Justice



## European legislation on accessibility

- **Draft Antidiscrimination legislation** ????
- **Public Procurement Directives**
- **Structural Funds regulations**
- **Trans European Networks**
- **Sector-specific legislation** (Low platform buses; Lifts; TSI-PRM, etc.)
- **Common Implementing Regulation External Action** and contract procedures
- **Web Accessibility** – proposed Directive
- **European Accessibility Act**: proposed Directive
  
- Policy, Research, incentives, awareness raising

Justice



## Why an European Accessibility Act? Legal obligations and economic reasons

- The UN Convention on the Rights of Persons with Disabilities (UNCRPD) entered into force for the EU in 2011
- Its obligations increase the risk of divergent accessibility legislations in MS
- The EAA helps to implement the obligations of article 9 on Accessibility
- Free circulation of accessible products & services ⇨ more accessible and cheaper products/services for 80M of EU citizens
- Divergence of national legislations ⇨ fragmentation of the EU Market ⇨ counterproductive for enterprises
- Opening markets for being ready for global competitiveness

8

## What is covered under the EAA?

- Accessibility requirements for carefully selected products and services
- Same accessibility requirements to be used in other EU law (for example Public Procurement)

9

## What does the European Accessibility Act propose?

- **Functional accessibility requirements**
- **Free movement of products and services** meeting the accessibility requirements
- **Self-declaration of conformity** (lightest option)
- **Market surveillance**
- **Defines accessibility** under already existing obligations in other EU law

10

## What the EAA does NOT do?

- **does not prescribe** to the level of technical details how to render a product or service accessible.
- **does not set obligations** for **all** manufacturers and service providers
- **does not impose burdensome requirements**
- **does not amend** existing EU sectorial legislation on accessibility

11

## Structure of the EAA

	Demand side	Supply side
<b>Obligations on:</b>	Public authorities	Private sector
<b>Material scope:</b>	Purchases via public procurement and public funding (ESIF, TEN-T)	Certain Products and services
<b>Obligations:</b>		Free circulation of products and services
		Functional Accessibility Requirements
<b>Possibility:</b>	Use standards	Standards presumption of Conformity
<b>Safeguards:</b>	Disproportionate Burden	Disproportionate Burden and Fundamental Alteration
<b>Other Key elements:</b>		Self-Declaration of Compliance Market surveillance Committee
<b>Enforcement:</b>	PP Directives and other legal Acts	Action under National Courts
<b>Penalties:</b>	PP Directives and other legal Acts	Member States



## Products and services in the scope of the proposed Directive

- Computers and operating systems;
- ATMs; ticketing and check-in machines;
- Telephones and smartphones;
- TV equipment related to digital television services;
- Telephony services and related equipment;
- Audiovisual media services (AVMS) and related equipment;
- Air, bus, rail and waterborne passenger transport services;
- Banking services;
- E-books;
- E-commerce.

Justice



## How does the EAA interact with other EU law?

- **Same accessibility requirements as in existing EU law:**
  - Public procurement
  - Structural and investments funds
  - Tenders for public passenger transport services
  - Transport infrastructure

14

Justice



## Is the EAA linked with art 19 Directive?

- Complementary instruments with different objectives and different legal basis
  - ✓ **Protection from discrimination**
  - ✓ **Internal market harmonization**
- Accessibility definitions of the EAA can be used in the art. 19 Directive

15

Justice



## How is the EAA linked with the Web Accessibility Directive?

- Complementary personal scope focusing on Public sector websites
- Same functional accessibility requirements for the web
- Use of harmonized standards

16

Justice



## What is the timeline for implementation?

- Transposition period -> Two years after entry into force
- Enter into application -> Six years after entry into force
- Implementation report -> Five years after application

17

Justice



## Accessibility related standardization work at EU level

**Mandate 376:** *Accessibility requirements for public procurement of products and services in the **ICT** domain*  
EN 301 549

**Mandate 420:** *Accessibility requirements for public procurement in the **Built Environment** (including **transport infrastructures**)*

**Mandate 473** to:

- include Accessibility following Design For All in relevant standardization activities
- Develop standards addressing accessibility following Design for all in the manufacturing and service delivery processes.

*Cooperation with the US*

Justice



# Accessibility: ICT and built environment

*Chiara Giovannini, ANEC Senior Manager, Policy & Innovation  
ERA seminar on EU disability law and the UNCRPD  
13-14 October 2016*



*Raising Standards for Consumers*

1



## Content

- About ANEC in a nutshell
- UNCRPD and the EU Single Market legislation: standards as a tool to foster accessibility
- Accessibility concepts, consumers vulnerabilities and innovation
- Accessibility ICT legislation: Web Accessibility Directive and Radio Equipment Directive
- Accessibility of the built environment legislation: Lifts Directive and Public Procurement Directive
- Discussion and exchange of national experiences

*Raising Standards for Consumers*

2



Part 1



# About ANEC

*Raising Standards for Consumers*

3

The Single Market



The New Approach

*Raising Standards for Consumers*

4

## *The Legislative Environment*



- The European legislator sets essential safety requirements through horizontal and sectoral European laws ('directives')
- The European Standards Organisations (CEN, CENELEC, ETSI) are invited (through a 'mandate/request') to develop the European Standards (ENs) that can provide the technical detail to support implementation of the directives
- These 'mandated/requested' ENs are called 'harmonized standards' when their references are published in the Official Journal of the European Union
- Although the use of harmonized standards remains voluntary, a manufacturer can presume that his product complies with the law if he complies with the harmonized standard(s)
- A product in compliance with the law is free to circulate throughout the European Economic Area (or 'Single Market')

*Raising Standards for Consumers*

5

## *The Problem*



- The New Approach is a model of 'co-regulation' (a private/public partnership). So too is the New Legislative Framework that incorporated the New Approach from 1 January 2010.
- European standardisation is a private activity and is based on national delegations (as in ISO & IEC)
- Yes, participation of all national stakeholders is encouraged in the development of European Standards . . . but (bigger) business has most to gain from influencing the content of standards and has the knowledge and resources to participate
- Moreover, national consumer expertise in standardisation is fragmented in many countries or simply does not exist

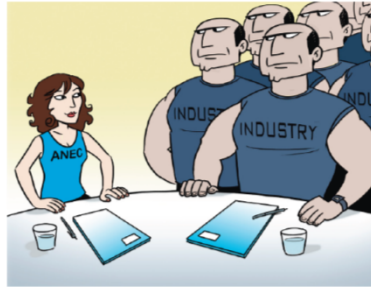
*Raising Standards for Consumers*

6

So consumer participation...



has been centralised at the European level since 1995:



*'The European Association for the Co-ordination of Consumer Representation in Standardisation'*

*(or 'The European consumer voice in standardisation')*

*Raising Standards for Consumers*

7

Part 2



# UNCRPD and the EU Single Market

*Raising Standards for Consumers*

8

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



### **Art.9 Accessibility**

To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the **physical environment**, to transportation, to information and communications, including **information and communications technologies and systems**, and to other facilities and services open or provided to the public, both in urban and in rural areas.

(..) State Parties shall take appropriate measures to develop, promulgate and monitor the implementation of **minimum standards and guidelines** for the accessibility of facilities and services open or provided to the public.

*Raising Standards for Consumers*

9

## *EU Single Market*



Area without internal frontiers in which free movement of **goods, services**, persons and capital is ensured (art.26.2 TFEU)

In defining and implementing its policies and activities, the Union shall aim to **combat discrimination based** on sex, racial or ethnic origin, religion or belief, **disability**, age or sexual orientation (art.10 TFEU)

*Raising Standards for Consumers*

10

## Harmonisation



Done with measures for the **approximation** of the provisions laid down by law in Member States which have as their object the establishment and functioning of the internal market (art. 114 TFEU)

Legislative technique of '**New Approach to technical harmonization and standardization**' (Lord Cockfield, 1985)

New Legislative Framework (Regulation (EC) 765/2008):

- common legal framework for industrial products
- market surveillance rules
- CE marking
- accreditation and conformity assessment.

Non-harmonised sectors are not subject to common EU rules and may come under the national rules but still benefit from Treaty provisions governing free movement of goods according 'mutual recognition' (ECJ *Cassis de Dijon* jurisprudence 1979)

*Raising Standards for Consumers*

11

## Role of standards



Many goods and services in Europe fall under Single Market regulations

Example: Legislator defines basic safety requirements in directives

Technical solutions are left to the European standards bodies

**Voluntary standards complement European legislation**

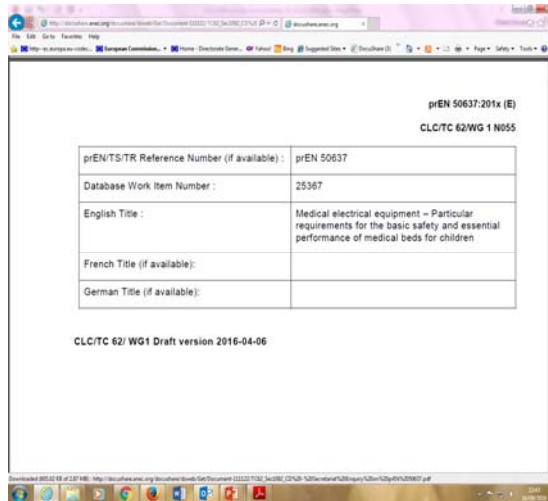
*Raising Standards for Consumers*

12

## Standard



- document
- voluntary agreement based on consensus amongst economic actors
- approved by recognised body (CEN-CENELEC-ETSI)
- establishes important criteria for products, services and processes



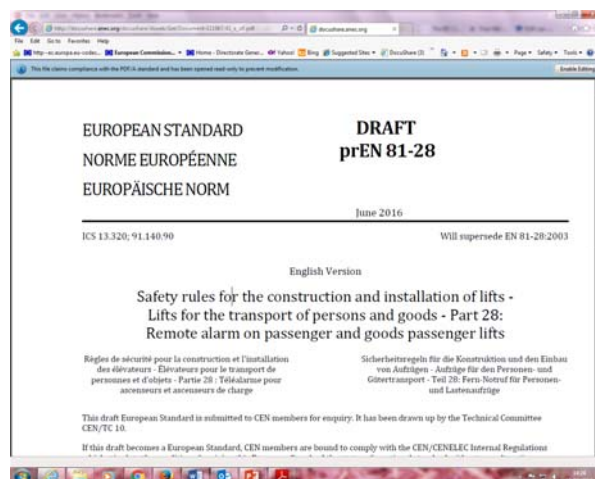
*Raising Standards for Consumers*

13

## Standardisation process



- Formal request
- Technical Committee
- Draft standard
- Public enquiry & Voting (national representation)
- Publication



*Raising Standards for Consumers*

14

## Standardisation Regulation



- **Regulation (EU) 1025/2012**
- Entered into force in **1 January 2013**
- Scope: rules with regard to the cooperation between European standardisation organisations, national standardisation bodies, Member States and the Commission, the establishment of European standards and European standardisation deliverables for products and for services **in support of Union legislation and policies** (..) and stakeholder participation in European standardisation.
- Recital 24: 'The European standardisation system should also fully take into account the **United Nations Convention on the Rights of Persons with Disabilities** (...)'.

*Raising Standards for Consumers*

15

**Thank you for your attention!**

**Please ask your questions!**



*Raising Standards for Consumers*

16

## Accessibility and innovation

### Accessibility

“extent to which products, systems, services, environments and facilities can be used by people from a **population with the widest range of characteristics and capabilities** to achieve a specified goal in a specified context of use”.

[CEN-CENELEC GUIDE 6/ISO-IEC GUIDE 71]

Accessibility is about avoiding and removing obstacles that prevent people with disabilities from participating fully and on equal terms in society.

Accessibility rests on the adoption of Design for All principles for the design of products, services and built environment and the use of specific assistive solutions/technologies.



## *Design for All*



**Barrier-free design**

**Inclusive design**

**Trans-generational design**

**Universal design**

*Raising Standards for Consumers*

19

## *Design for All*



Designing products, services and environments that are readily **usable by most users without any modification.**



*Raising Standards for Consumers*

20

## *Assistive Products*



**Piece of equipment**

**Product system**

**Hardware or software**

used by or for persons with disability for participation, to protect, support, train, measure or substitute for body functions/structures and activities, or to prevent impairments, activity limitations or participation restrictions

[CEN-CENELEC GUIDE 6/ISO-IEC GUIDE 71]

*Raising Standards for Consumers*

21

## *Social model of disability*



Disability is an evolving concept  
and

Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others

**Different from medical concept of disability!**

*Raising Standards for Consumers*

22

## What is consumer vulnerability?



Vulnerability can put consumers at a **greater risk of detriment** when choosing and using products and services.

Consumer vulnerability isn't always visible and is not limited to specific 'groups' of consumers. It can have many causes. **Anyone can be vulnerable at any time** due to illness, disability or personal circumstances. In some cases the systems and communications used by organisations can place consumers in vulnerable situations.

A person who is 'vulnerable' is capable of being easily or quickly harmed or injured, as **vulnerability implies an association with the concept of risk**. The concept of vulnerability is also linked to age (children and the elderly) as well as ability (physical and mental).

## How to address consumer vulnerability?



**Standards can be used to protect and support vulnerable consumers** if key principles to minimize consumer vulnerability are followed when developing new standards.

If consumer policy is to be effective, it is a prerequisite for **products and services to be both safe and accessible** before they are placed on the market, while recognising the necessity of specific legal and policy provisions on the protection of vulnerable consumers in specific markets (e.g. financial services and energy contracts).

## **Accessibility and Innovation**



Innovation is seen as one of the main drivers of the EU economy recovery

Innovation means competitiveness

Innovative ideas can be turned into new products and services that create growth, quality jobs and help address European and global societal challenges

Innovative products and services can have a different design and can be disruptive

Accessible products and services can have a different design and can be disruptive!

*Raising Standards for Consumers*

25

**Thank you for your attention!**

**Please ask your questions!**



*Raising Standards for Consumers*

26

## Accessibility ICT legislation

### *Radio Equipment Directive*

- Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment
- Applicable as of 13 June 2016

Scope: regulatory framework for the making available on the market and putting into service in the Union of **radio equipment** (eg: smart phones).

Art. 3.3.h): (...) Radio equipment within certain categories or classes shall be so constructed that it (...) supports certain features in order to **facilitate its use by users with a disability**.

Art. 17: The manufacturer shall perform a conformity assessment of the radio equipment (...). The conformity assessment shall take into account all intended operating conditions and (...), shall also take into account the **reasonably foreseeable conditions**.

## *The concept of foreseeable use*



Most of the consumer relevant product safety legislation referred to the concept of '**intended use**'. From the point of view of a consumer, and especially a vulnerable consumer, the concept of 'intended use' does not correspond with real-life situations and neglects the expectations of consumers in modern society. In particular, 'intended use' does not address the specific risks that vulnerable consumers may face.

If manufacturers are allowed to rely on the concept of 'intended use' of the product as laid down in the instruction for use, consumers who are too young to read or can not read, are at a higher risk of being exposed to harm or injury.

*Raising Standards for Consumers*

29

## *The concept of foreseeable use*



ANEC lobbied for the concept of **foreseeable use** to be included in the legislation in order to have the needs of all consumers taken into account.

We are of the opinion that consumers can be effectively protected only if their (foreseeable) behaviour is duly taken into account by manufacturers when designing and drafting products standards.

In February 2014, the Parliament and Council adopted several product safety directives under revision ('recast') such as the Low Voltage Directive and the Lifts Directive to align them to the New Legislative Framework (NLF) as well as the RED. The concept of 'foreseeable use' was accepted.

The Directives are applicable as of June 2016.

*Raising Standards for Consumers*

30

## Web Accessibility Directive



- Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites COM/2012/0721 final - 2012/0340 (COD)
- Published on 3 December 2012, EP and Council political agreement in May 2016, awaiting formal approval and publication this year.

Scope: approximating the laws, regulations and administrative provisions of the Member States related to the **accessibility of the content of public sector bodies' websites to all users, in particular people with functional limitations including persons with disabilities**.

Recital 6: By ratifying the **United Nations Convention on the Rights of Persons with Disabilities**, the majority of the Member States and the Union, by its conclusion, have committed themselves "to ensure to persons with disabilities access, on equal basis with others, to inter alia information and communication technologies" and "to take appropriate measures [...] to promote access for persons with disabilities to new information and communications technologies and systems, including the Internet."

*Raising Standards for Consumers*

31

## Web Accessibility Directive



### Article 3: Requirements for web-accessibility

1. Member States shall take the necessary measures to ensure that the websites concerned are made accessible

(a) in a consistent and adequate way for users' perception, operation and understanding, including adaptability of content presentation and interaction, when necessary, providing an accessible electronic alternative;


(b) in a way which facilitates interoperability with a variety of user agents and assistive technologies at Union and international level. (...)

### Article 4: Presumption of conformity with harmonized standards

1. The websites concerned that meet harmonized standards or parts thereof the references of which have been drawn up and published by the Commission in the Official Journal of the European Union, in accordance with Regulation (EU) No 1025/2012, shall be presumed to be in conformity with the web-accessibility requirements covered by those standards or parts thereof, set out in Article 3.

*Raising Standards for Consumers*

32

**Council & EP on Web Accessibility** 

Scope: extended to include mobile apps; list of excluded web-sites (eg: broadcasters).

Definitions:

**'public sector body'** means the State, regional or local authorities, bodies governed by public law, as defined in point (4) of Article 2(1) of Directive 2014/24/EU, or associations formed by one or more such authorities or one or more such bodies governed by public law, if those associations are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

**'mobile application'** means application software designed and developed, by or on behalf of public sector bodies, for use by the general public on mobile devices such as smartphones and tablets. It does not include the software that controls those devices (mobile operating systems) or hardware;

*Raising Standards for Consumers* 33

**Council & EP on Web Accessibility** 

**Article 5: Disproportionate burden**

1. Member States shall ensure that public sector bodies apply the accessibility requirements set out in Article 4 to the extent that those requirements do not impose a disproportionate burden on the public sector bodies for the purposes of that Article.

2. In order to assess the extent to which compliance (...) imposes a disproportionate burden, Member States shall ensure that the public sector body concerned takes account of relevant circumstances, including the following:

**(a) the size, resources and nature of the public sector body concerned; and**

**(b) the estimated costs and benefits for the public sector body concerned in relation to the estimated benefits for persons with disabilities, taking into account the frequency and duration of use of the specific website or mobile application.**

3. Without prejudice to paragraph 1 of this Article, the public sector body concerned shall perform the initial assessment of the extent to which compliance with the accessibility requirements set out in Article 4 imposes a disproportionate burden.

*Raising Standards for Consumers* 34



## **Standardisation Mandate 376**



### **'Accessibility requirements for ICT to be used in public procurement'**

#### Phase 1:

- Report with inventory of standards
- Report on conformity assessment

#### Phase 2:

- Accessibility standard for ICT
- Testing methods
- Conformity assessment method
- Conformance template for declaration
- Toolkit

*Raising Standards for Consumers*

35

## **Standardisation Mandate 376**



EN 301 549 'Accessibility requirements suitable for public procurement of ICT products and services in Europe'

TR 101 550 'Documents relevant to EN 301 549 Accessibility requirements suitable for public procurement of ICT products and services in Europe'

TR 101 551 'Guidelines on the use of accessibility award criteria suitable for public procurement of ICT products and services in Europe'

TR 101 552 'Guidance for the application of conformity assessment to accessibility requirements for public procurement of ICT products and services in Europe'

On-line toolkit for public procurers, made available in October 2014

*Raising Standards for Consumers*

36

## EN 301 549



- EN 301549 – published February 2014
- Date of withdrawal of any conflicting National Standard (dow): 31 October 2014

Scope: functional accessibility requirements applicable to ICT products and services, together with a description of the test procedures and evaluation methodology for each accessibility requirement in a form that is suitable for use in public procurement within Europe but also in the private sector.

To help public procurers to identify the requirements for their purchases, and manufacturers to design products

Basis for an accessible ICT procurement toolkit as public bodies do not have a specialist knowledge related to accessibility

*Raising Standards for Consumers*

37

**Thank you for your attention!**

**Please ask your questions!**



*Raising Standards for Consumers*

38

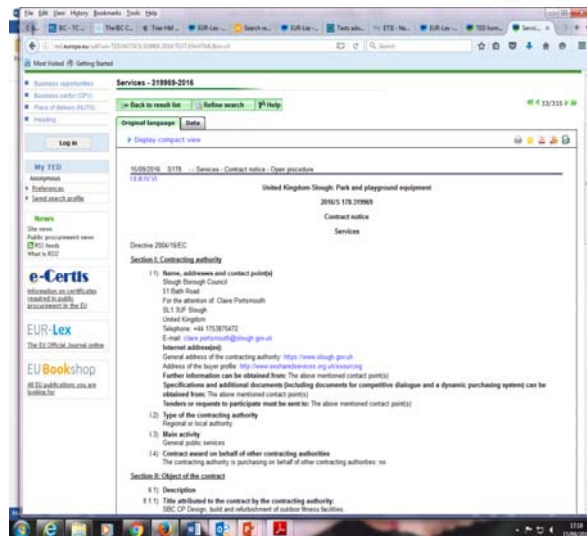
# Accessibility of the built environment legislation

## Public procurement

Public procurement – 15-20% of EU GDP

Purchasing best value for tax-payers money

Snow-ball effect as public authorities are the biggest consumers




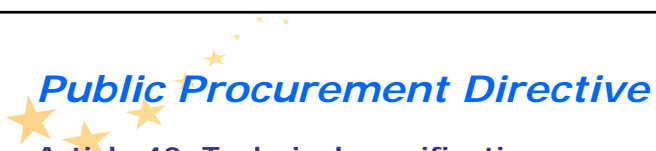


Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement  
Applicable as of 18 April 2016

Scope: establishes rules on the procedures for procurement by contracting authorities with respect to **public contracts** as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.

Recital 3: When implementing this Directive, the **United Nations Convention on the Rights of Persons with Disabilities** should be taken into account, in particular in connection with the choice of means of communications, technical specifications, award criteria and contract performance conditions.

*Raising Standards for Consumers* 41



**Article 42: Technical specifications**

1. The technical specifications as defined in point 1 of Annex VII shall be set out in the procurement documents. The technical specification shall lay down the characteristics required of a works, service or supply.

For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications shall, **except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.**

Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

*Raising Standards for Consumers* 42

**Public Procurement Directive**



**Article 42: Technical specifications**

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Union law, the technical specifications shall be formulated in one of the following ways:

b) by reference to technical specifications and, in order of preference, **to national standards transposing European standards**, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or - when any of those do not exist - national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words 'or equivalent'.

*Raising Standards for Consumers* 43

**Standardisation Mandate 420**



**Accessibility requirements for public procurement in the Built Environment**

Scope: European Accessibility requirements for public procurement in the built environment

Phase I: inventory of existing accessibility standards, codes, regulations and guidance documents for the built environment (buildings, public places and transport related facilities) used in EU MS and internationally; information on their use in public procurement

*Raising Standards for Consumers* 44

## Standardisation Mandate 420



Phase 2 (just starting)

**1 European Standard** at the level of common functional requirements that contains a set of functional European accessibility requirements of the built environment to be used as either technical specifications or as criteria for awarding public contracts (in the sense of the Public Procurement Directives)

**1 Technical Report** describing **technical performance criteria** to be able to fulfil the above mentioned functional accessibility requirements

**1 Technical Report** containing reference documents needed to **assess conformity**

**Additional guidance and support material** for use by a procurer wishing to buy accessible built environment elements

An **online toolkit** which assists public procurers, public authorities, industry, public authorities and experts in accessibility

*Raising Standards for Consumers*

45

## Lifts Directive



Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts

Applicable as of 13 June 2016

Scope: This Directive shall apply to **lifts** permanently serving buildings and constructions and intended for the transport of (...) persons and goods.

Recital 20: The **harmonised standards relevant to this Directive should also take into account the United Nations Convention on the Rights of Persons with Disabilities**.

*Raising Standards for Consumers*

46

## **Lifts Directive**



### ANNEX I

#### ESSENTIAL HEALTH AND SAFETY REQUIREMENTS

##### 1.2. Carrier

The carrier of each lift must be a car. This car must be designed and constructed to offer the space and strength corresponding to the maximum number of persons and the rated load of the lift set by the installer.

**Where the lift is *intended* for the transport of persons, and where its dimensions permit, the car must be designed and constructed in such a way that its structural features do not obstruct or impede access and use by disabled persons** and so as to allow any appropriate adjustments intended to facilitate its use by them.

**1.6.1 The controls of lifts *intended* for use by unaccompanied disabled persons must be designed and located according**

*Raising Standards for Consumers*

47

## **Standardisation request on Lifts**



### Annex

Requested harmonised standard shall take into account **usability and accessibility in line with the United Nations Convention on the Rights of Persons with Disabilities.**

*Raising Standards for Consumers*

48

## **prEN 81-70**



**Safety rules for the construction and installation of lifts. Particular applications for passenger and goods passenger lifts. Accessibility to lifts for persons including persons with disability.**

Currently under revision, to undergo Formal Vote by end 2016

Scope: This European Standard specifies the minimum requirements for the safe and independent access and use of lifts by a wide range of persons, including persons with disabilities.

(...)

NOTE 1 For guidance on solutions for increased accessibility and usability see Annex D.

*Raising Standards for Consumers*

49

## **Future European Accessibility Act**



The European Commission adopted on 2 December 2015 the long-awaited proposal for a **Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services.**

Aim: contribute to improve the proper functioning of the EU Internal Market and remove and prevent barriers for the free movement of accessible products and services.

*Raising Standards for Consumers*

50



## EAA



### What it is:

- Directive (defines the objectives, Member States to identify the means with national transposition)
- Similar to New Approach/harmonization legislation (standards provide presumption of conformity with legal requirements)
- Covers only certain products and services (mainly digital)
- Relies on manufacturers/service providers compliance and ex-post market surveillance checks

### What it is not:

- A regulation (directly applicable)
- An anti-discrimination act (human rights)
- Covering all products and services
- Ex-ante controls

*Raising Standards for Consumers*

51



**Thank you for your attention!**



**Please ask your questions!**



*Raising Standards for Consumers*

52

## Key learning points



- **UNCRPD linked to EU Single Market** (harmonisation legislation)
  - When accessibility is an **essential requirement** in harmonisation legislation, standards can provide a presumption of conformity to the legal requirements and help mainstream accessibility in the Single Market
- **Standards implementing harmonisation legislation and the standardisation system have to respect the UNCRPD**
- **ICT Accessibility**: radio equipment products standards have to take into account the foreseeable use by consumers (RED); public services websites and apps shall be accessible, with standards providing presumption of conformity (Web Accessibility Directive)
- **Access to the built environment**: accessibility criteria in technical specification of public tenders under certain conditions (Public Procurement Directive), obligation of accessibility of lifts under certain conditions (Lifts Directive)
- Future Accessibility Act to cover a wider range of products, services and environments with accessibility as an essential requirement?

*Raising Standards for Consumers*

53

## Conclusions





### So is everything perfect?

- No general accessibility obligation/requirement
- As often in legislation, the 'devil is in the detail' (e.g.: 'intended use')
- As often in EU legislation, the problem is implementation and enforcement at the national level (e.g.: directives)
- As often in the use of standards linked to legislation, lack of coherent approach/knowledge of standards in the legislative process (e.g.: Web Accessibility)
- As often in standardisation, difficulty to change mind-sets and preconceptions (e.g.: 'accessibility is expensive')


*Raising Standards for Consumers*

54





**Thank you for your attention!**

**Please ask your questions!**



*Raising Standards for Consumers*

55



**Part 6**

**Discussion and  
exchange of national  
experiences**

*Raising Standards for Consumers*

56



[www.anec.eu](http://www.anec.eu)

 [www.facebook.com/ANEC.Standards](https://www.facebook.com/ANEC.Standards)

 @anectweet



*ANEC is supported financially by the European Union & EFTA*

*Raising Standards for Consumers*

57

## Accessibility: ICT and built environment

**Chiara Giovannini, ANEC Senior Manager, Policy & Innovation**

**ERA seminar on EU disability law and the UNCRPD**

**13-14 October 2016**

### Draft Outline

Time		Document ref.
11h30	<b>1</b> UNCRPD and the EU Single Market legislation: standards as a tool to foster accessibility Q&As	UN Convention on the Rights of Persons with Disabilities Treaty on the functioning of the European Union Standardisation Regulation
11h40	<b>2</b> Accessibility concepts, consumers vulnerabilities and innovation Q&As	CEN/CENELEC Guide 6 ECCG opinion on consumers vulnerability
11h50	<b>3</b> Accessibility ICT legislation: Radio Equipment Directive and Web Accessibility Directive Q&As	Web Accessibility Directive RED Directive M/376
12h10	<b>4</b> Accessibility of the built environment legislation: Public Procurement Directive and Lifts Directive Q&As	Lifts Directive Draft Lifts standardisation request Public procurement Directive M/420 EAA
12h30	<b><i>Discussion and exchange of national experience</i></b>	
	<ul style="list-style-type: none"> <li>- What have we learned today?</li> <li>- How to know more</li> <li>- Any questions left?</li> </ul>	
13h00	<b>End of seminar</b>	

September 2016

**Background information:**

- UN Convention on the Rights of Persons with Disabilities (<http://www.un.org/disabilities/convention/conventionfull.shtml>)
- Treaty on the functioning of the European Union, 2009 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>
- Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R1025>
- [ECCG Opinion on consumers and vulnerability, February 2013](#)
- European Parliament Resolution a strategy for strengthening the rights of vulnerable consumers of May 2012  
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0209&format=XML&language=EN>
  - Vulnerable consumers in the energy sector  
<https://ec.europa.eu/energy/en/topics/markets-and-consumers/consumer-rights-and-protection>
- CEN/CENELEC Guide 6 "Guide for addressing accessibility in standards"  
[ftp://ftp.cencenelec.eu/EN/EuropeanStandardization/Guides/6\\_CENCLCGuide6.pdf](ftp://ftp.cencenelec.eu/EN/EuropeanStandardization/Guides/6_CENCLCGuide6.pdf)
- Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1461168255241&uri=CELEX:32014L0033>
- Draft standardisation request as regards lifts and safety components for lifts  
<http://ec.europa.eu/DocsRoom/documents/15862/attachments/1/translations>
- Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0053>
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>
- EN 301 549 'Accessibility requirements suitable for public procurement of ICT products and services in Europe' <http://www.etsi.org/news-events/news/754-new-european-standard-on-accessibility-requirements-for-public-procurement-of-ict-products-and-services>

September 2016

- European Parliament legislative resolution of 26 February 2014 on the proposal for a directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites (COM(2012)0721 – C7-0394/2012 – 2012/0340(COD))  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0158+0+DOC+XML+V0//EN>
- Position of the Council at first reading with a view to the adoption of a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the accessibility of the websites and mobile applications of public sector bodies <http://data.consilium.europa.eu/doc/document/ST-9389-2016-INIT/en/pdf>
- M/376 STANDARDISATION MANDATE TO CEN, CENELEC AND ETSI IN SUPPORT OF EUROPEAN ACCESSIBILITY REQUIREMENTS FOR PUBLIC PROCUREMENT OF PRODUCTS AND SERVICES IN THE ICT DOMAIN  
<http://ec.europa.eu/growth/tools-databases/mandates/index.cfm?fuseaction=search.detail&id=333>
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>
- M/420 Standardisation mandate to CEN, CENELEC and ETSI in support of European accessibility requirements for public procurement in the built environment  
<http://ec.europa.eu/growth/tools-databases/mandates/index.cfm?fuseaction=search.detail&id=392>
- COM(2015)615: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services  
[http://eur-lex.europa.eu/procedure/EN/2015\\_278](http://eur-lex.europa.eu/procedure/EN/2015_278)
- M/473 Standardisation mandate to CEN, CENELEC and ETSI to include "Design for All" in relevant standardisation initiatives  
<http://ec.europa.eu/growth/tools-databases/mandates/index.cfm?fuseaction=search.detail&id=461>
- European Standards Bodies:
  - [www.cen.eu](http://www.cen.eu)
  - [www.cenelec.eu](http://www.cenelec.eu)
  - [www.etsi.org](http://www.etsi.org)
- More information about ANEC: [www.anec.eu](http://www.anec.eu)



## **Das Recht auf inklusive Bildung**

---

**Andrea Broderick**

**Dozentin  
Universität Maastricht**



## **Aufbau der Präsentation**

- Das Recht auf Bildung für Menschen mit Behinderungen
- Erst Exklusion, dann Integration und jetzt Inklusion
- Merkmale inklusiver Bildung
- Artikel 24 der Behindertenrechtskonvention
- Angemessene Vorkehrungen/Ermöglichung des Zugangs
- Inklusive Bildung im europäischen Kontext
- Beispiele bewährter Verfahren und abschließende Bemerkungen zur Behindertenrechtskonvention
- Fallstudie



## **Das Recht auf Bildung für Menschen mit Behinderungen**

- Das Recht auf Bildung ist sowohl Selbstzweck als auch Mittel zum Erwerb aller anderen Menschenrechte
- Bildung wird beschrieben als „das primäre Vehikel, durch das wirtschaftlich und sozial marginalisierte Erwachsene und Kinder [...] sich die Mittel zur vollen Teilhabe an ihren Gemeinschaften aneignen können“

*Erst Exklusion, dann Integration  
und jetzt Inklusion*

Exklusion	Integration
<ul style="list-style-type: none"> <li>➤ Behinderte Menschen gelten als von der „Norm“ abweichend</li> <li>➤ Defizitbasierter Ansatz</li> <li>➤ Unvermögen, das allgemeine Bildungssystem zu durchlaufen</li> <li>➤ Bildung in Sondereinrichtungen</li> </ul>	<ul style="list-style-type: none"> <li>➤ Allmähliche Erkenntnis, dass behinderte Menschen Zugang zum allgemeinen Bildungssystem erhalten müssen</li> <li>➤ Jedoch konzentrierte sich das System der Integration nicht auf Änderungen der Norm</li> <li>➤ Stattdessen musste sich der behinderte Mensch an die Lernumgebung anpassen</li> <li>➤ In der Praxis kann dies zur Exklusion führen</li> </ul>

Inklusion
<ul style="list-style-type: none"> <li>➤ Die Entwicklung der internationalen Reformgesetzgebung konzentriert sich auf Inklusion</li> <li>➤ Soziales Modell der Behinderung: Beseitigung von Hindernissen, Anpassung und Änderung der Systeme, um eine wirksame Teilhabe zu gewährleisten</li> <li>➤ Von behinderten Lernenden wird nicht gefordert, dass sie sich einfach „integrieren“</li> <li>➤ Ein konkurrierender „Differenzdiskurs“ findet nach wie vor gewisse Unterstützung in Europa</li> </ul>

## Inklusive Bildung

- Eine Vielfalt von Lernbedingungen, nicht nur für Kinder mit Behinderungen, sondern für alle Schüler
- Der Weltbericht Behinderung bestätigt, dass die Inklusion an Regelschulen „den universellen Abschluss der Primarstufe fördert, kosteneffektiv ist und zur Beseitigung von Diskriminierung führt“
- Der frühere UN-Sonderberichterstatler Vernor Muñoz Villalobos bestätigt, dass die Inklusion von Lernenden mit Behinderungen in Regelschulen „einen beträchtlichen psychologischen Nutzen sowie durch den regelmäßigen und natürlichen Austausch mit einer vielfältigen Gruppe von Lernenden auch eine größere Erfüllung der geistigen und vor allem der sozialen und emotionalen Bedürfnisse mit sich bringt“
- Inklusive Bildung wird häufig fälschlicherweise als unerschwinglich wahrgenommen

## Artikel 24 Behindertenrechtskonvention

- Menschen mit Behinderungen werden **nicht** vom allgemeinen Bildungssystem **ausgeschlossen**, und Kinder mit Behinderungen werden **nicht** aufgrund von Behinderung **vom unentgeltlichen und obligatorischen Grundschulunterricht oder vom Besuch weiterführender Schulen ausgeschlossen**
- **Zugang zu inklusiver Bildung** gleichberechtigt mit anderen
- **Zugang zu beruflicher Bildung ohne Diskriminierung**, lebenslanges Lernen durch die Bereitstellung angemessener Vorkehrungen
- **Angemessene Vorkehrungen** für die Bedürfnisse des Einzelnen
- Leistung der notwendigen Unterstützung zur Erleichterung ihrer **erfolgreichen Bildung**
- Wirksame individuell angepasste **Unterstützungsmaßnahmen**

## Artikel 24 Behindertenrechtskonvention (Fortsetzung)

- Die Vertragsstaaten sind verpflichtet, Menschen mit Behinderungen den Erwerb lebenspraktischer Fertigkeiten und sozialer Kompetenzen zu ermöglichen, um ihre Teilhabe an der Gesellschaft zu erleichtern, und zwar durch:
  - Erleichtern des Erlernens von Brailleschrift, alternativen Methoden der Kommunikation, Gebärdensprache
  - Vermittlung von Bildung in der für blinde, gehörlose und taubblinde Menschen am besten geeigneten Form
  - Einstellung von Lehrern, einschließlich solcher mit Behinderungen, die in der Gebärdensprache ausgebildet sind
  - Schulung von Lehrern: Schärfung ihres Bewusstseins für Behinderungen und Verwendung geeigneter Formen der Kommunikation

## Angemessene Vorkehrungen

- „Angemessene Vorkehrungen“ wird in **Artikel 2 der UN-Behindertenrechtskonvention** folgendermaßen definiert:

*(...) notwendige und geeignete Änderungen und Anpassungen, die keine unverhältnismäßige oder unbillige Belastung darstellen und die, wenn sie in einem bestimmten Fall erforderlich sind, vorgenommen werden, um zu gewährleisten, dass Menschen mit Behinderungen gleichberechtigt mit anderen alle Menschenrechte und Grundfreiheiten genießen oder ausüben können.*

- **Artikel 2 der UN-Behindertenrechtskonvention** schließt ein, dass eine Verweigerung angemessener Vorkehrungen als Form der Diskriminierung gilt

- **Artikel 5 Absatz 3 der UN-Behindertenrechtskonvention:**

Zur Förderung der Gleichberechtigung und zur Beseitigung von Diskriminierung unternehmen die Vertragsstaaten alle geeigneten Schritte, um die Bereitstellung angemessener Vorkehrungen zu gewährleisten

## Pflichten in Bezug auf Zugänglichkeit in der UN-Behindertenrechtskonvention

### ➤ Die Vertragsstaaten treffen außerdem geeignete Maßnahmen:

- um Mindeststandards und Leitlinien für die Zugänglichkeit von Einrichtungen und Diensten, die der Öffentlichkeit offenstehen oder für sie bereitgestellt werden, auszuarbeiten und zu erlassen und ihre Anwendung zu überwachen;
- um sicherzustellen, dass private Rechtsträger, die Einrichtungen und Dienste, die der Öffentlichkeit offenstehen oder für sie bereitgestellt werden, anbieten, alle Aspekte der Zugänglichkeit für Menschen mit Behinderungen berücksichtigen;
- um betroffenen Kreisen Schulungen zu Fragen der Zugänglichkeit für Menschen mit Behinderungen anzubieten;
- um in Gebäuden und anderen Einrichtungen, die der Öffentlichkeit offenstehen, Beschilderungen in Brailleschrift und in leicht lesbarer und verständlicher Form anzubringen;
- um menschliche und tierische Hilfe sowie Mittelspersonen, unter anderem Personen zum Führen und Vorlesen sowie professionelle Gebärdensprachdolmetscher und -dolmetscherinnen, zur Verfügung zu stellen mit dem Ziel, den Zugang zu Gebäuden und anderen Einrichtungen, die der Öffentlichkeit offenstehen, zu erleichtern;

## Inklusive Bildung im europäischen Kontext

- **Die Strategie Europa 2020** basiert auf dem Grundsatz eines intelligenten, nachhaltigen und integrativen Wachstums
  - Die Schulabbrecherquote soll von 15 % auf 10 % reduziert und gleichzeitig der Anteil der Bevölkerung im Alter zwischen 30 und 34, der ein Hochschulstudium abgeschlossen hat, von 31 % auf mindestens 40 % gesteigert werden
- **Die europäische Strategie zugunsten von Menschen mit Behinderungen 2010-2020** stellt fest, dass behinderte Menschen mit weit geringerer Wahrscheinlichkeit eine weiterführende Ausbildung durchlaufen und in den Beruf gehen als nichtbehinderte Menschen
- Die Beseitigung von Hindernissen und die Verbesserung der Ergebnisse für Menschen mit Behinderungen ist von entscheidender Bedeutung für die wirtschaftlichen und sozialen Ziele der EU insgesamt

## Trends in der inklusiven Bildung und Beispiele für bewährte Verfahren

- Eine wichtige Gesetzesinitiative in **Slowenien**, die von der UN-Behindertenrechtskonvention beeinflusst ist. § 11 des Gesetzes über gleiche Chancen für Menschen mit Behinderungen von 2010 schreibt verpflichtend vor, dass für Menschen mit Behinderungen die Inklusion in Bildungsprogramme auf allen Ebenen gewährleistet sein muss
- In **Dänemark** wurde das staatliche Schulgesetz kürzlich mit dem Ziel geändert, mehr Schüler mit besonderen Bedürfnissen in die Regelschulen aufzunehmen
- Im März 2015 stimmte das **tschechische** Parlament einer neuen Definition von Schülern mit besonderen Bedürfnissen nach Absatz 16(1) des Schulgesetzes zu. Die neue Definition konzentriert sich auf die Bereitstellung von Unterstützungsmaßnahmen, um gleiche Bildungschancen für Menschen mit Behinderungen zu gewährleisten

## Abschließende Bemerkungen des Ausschusses für die Rechte von Menschen mit Behinderungen

- Der Ausschuss für die Rechte von Menschen mit Behinderungen stellt fest, dass die Anzahl der Kinder in Sonderschulen in Österreich ansteigt und dass „die Bemühungen um eine inklusive Bildung von Kindern mit Behinderungen unzureichend sind“
- Der für den Ausschuss für die Rechte von Menschen mit Behinderungen im Jahr 2010 vom **ungarischen** Disability Caucus erstellte Schattenbericht kritisiert die Vermittlung von Bildung an behinderte Schüler in **Ungarn** scharf
- In **Zypern** haben der Ombudsmann und der Beauftragte für die Rechte des Kindes die unzureichenden Strukturen und die Unterstützung für Kinder mit Behinderungen kritisiert
- In **Rumänien** zeigen die Rechtsprechung und die Berichte von Nichtregierungsorganisationen, dass bei der Umsetzung des Rechtsrahmens zur Sicherstellung einer inklusiven Bildung noch fundamentale Probleme bestehen

*„Wenn wir unsere Kultur bereichern wollen, müssen wir eine Kultur errichten, in der die menschlichen Gaben des Einzelnen in ihrer Vielfalt ihren Platz finden“*

~ Margaret Mead ~

FAZIT

VIELEN DANK FÜR IHRE  
AUFMERKSAMKEIT

Kontakt: [andrea.broderick@maastrichtuniversity.nl](mailto:andrea.broderick@maastrichtuniversity.nl)



# **Le droit à une éducation inclusive**

---

**Andrea Broderick**

**Professeur assistant  
Université de Maastricht**



# Sommaire

- Le droit à l'éducation des personnes handicapées
- L'évolution de l'exclusion à l'intégration et à l'inclusion
- Caractéristiques d'une éducation inclusive
- Article 24 de la CDPH
- Aménagements raisonnables/Mesures pour l'accessibilité
- L'éducation inclusive dans le contexte européen
- Exemples de bonnes pratiques et observations finales sur la CDPH
- Étude de cas

# Le droit à l'éducation des personnes handicapées

- Le droit à l'éducation est à la fois une fin en soi et une des clefs de l'exercice des autres droits inhérents à la personne humaine
- Il a été affirmé que l'éducation est « le principal outil qui permette à des adultes et à des enfants économiquement et socialement marginalisés (...) de se procurer le moyen de participer pleinement à la vie de leur communauté »



*L'évolution de l'exclusion à l'intégration et  
à l'inclusion*

## Exclusion

- Personnes handicapées perçues comme différentes de la « norme »
- Approche fondée sur les déficiences
- Incapacité à s'adapter aux systèmes éducatifs ordinaires
- Éducation dans des milieux cloisonnés

## Intégration

- Prise de conscience progressive qu'il faut permettre aux personnes handicapées de recevoir une éducation dans le système ordinaire
- La méthode d'intégration n'envisageait toutefois pas d'assouplissement de la norme
- Les personnes handicapées devaient au contraire s'adapter à l'environnement d'apprentissage
- Au final, risque concret d'exclusion

# Inclusion

- Les réformes législatives menées sur la scène internationale tendent à mettre l'accent sur l'inclusion
- Approche sociale du handicap : suppression des barrières, adaptation et modification des systèmes afin d'assurer une participation effective
- Les apprenants handicapés ne sont pas simplement sommés d'« entrer dans le moule »
- Un « discours de la différence » antagoniste continue de recueillir un certain soutien en Europe

# L'éducation inclusive

- Diversité des conditions d'apprentissage, pas seulement pour les enfants handicapés, mais pour tous les étudiants
- Il est reconnu dans le Rapport mondial sur le handicap que l'inclusion dans les écoles ordinaires « favorise la scolarité primaire complète, a un bon rapport coût-efficacité et contribue à éliminer les discriminations »
- L'ancien Rapporteur spécial des Nations unies sur le droit à l'éducation, M. Vernor Muñoz Villalobos, a admis que l'inclusion des élèves handicapés dans les écoles ordinaires « a des avantages psychologiques importants et permet de mieux satisfaire les besoins intellectuels et surtout sociaux et émotionnels des élèves en leur donnant la possibilité de communiquer régulièrement et naturellement avec les autres »
- Beaucoup pensent à tort que l'éducation inclusive a un coût prohibitif

## Article 24 de la CDPH

- Les personnes handicapées **ne peuvent être exclues** du système d'enseignement général et les enfants handicapés **ne peuvent être exclus de l'enseignement primaire gratuit et obligatoire** ou de l'enseignement secondaire sur le fondement de leur handicap
- **Accès à un enseignement inclusif** sur la base de l'égalité avec les autres
- **Accès sans discrimination à la formation professionnelle** et à la formation continue par la réalisation d'aménagements raisonnables
- **Aménagements raisonnables** en fonction des besoins de chacun
- Fourniture de l'accompagnement nécessaire pour faciliter l'**éducation effective**
- **Mesures d'accompagnement** individualisé efficaces

## Article 24 de la CDPH (suite)

- **Les États doivent donner aux personnes handicapées la possibilité d'acquérir les compétences pratiques et sociales nécessaires pour faciliter leur participation à la société :**
  - En facilitant l'apprentissage du braille, des modes de communication alternative et de la langue des signes
  - En organisant l'éducation dans le milieu le plus adapté pour les personnes aveugles, sourdes ou sourdes et aveugles
  - En employant des enseignants, y compris des enseignants handicapés, qui ont une qualification en langue des signes
  - En formant les enseignants sur la sensibilisation aux handicaps et l'utilisation des modes de communication adaptés



# Aménagements raisonnables

- Le concept d'« aménagement raisonnable » est défini à l'**article 2 de la CDPH** comme :

*Les modifications et ajustements nécessaires et appropriés n'imposant pas de charge disproportionnée ou induue apportés, en fonction des besoins dans une situation donnée, pour assurer aux personnes handicapées la jouissance ou l'exercice, sur la base de l'égalité avec les autres, de tous les droits de l'homme et de toutes les libertés fondamentales*

- L'**article 2 de la CDPH** cite le refus d'aménagement raisonnable comme une forme de discrimination

- **Article 5, paragraphe 3, de la CDPH :**

Afin de promouvoir l'égalité et d'éliminer la discrimination, les États Parties prennent toutes les mesures appropriées pour faire en sorte que des aménagements raisonnables soient apportés.

# Obligations d'accessibilité prévues dans la CDPH

- **Les États Parties prennent également des mesures appropriées pour :**
  - Élaborer et promulguer des normes nationales minimales et des directives relatives à l'accessibilité des installations et services ouverts ou fournis au public et contrôler l'application de ces normes et directives ;
  - Faire en sorte que les organismes privés qui offrent des installations ou des services qui sont ouverts ou fournis au public prennent en compte tous les aspects de l'accessibilité par les personnes handicapées ;
  - Assurer aux parties concernées une formation concernant les problèmes d'accès auxquels les personnes handicapées sont confrontées ;
  - Faire mettre en place dans les bâtiments et autres installations ouverts au public une signalisation en braille et sous des formes faciles à lire et à comprendre ;
  - Mettre à disposition des formes d'aide humaine ou animalière et les services de médiateurs, notamment de guides, de lecteurs et d'interprètes professionnels en langue des signes, afin de faciliter l'accès des bâtiments et autres installations ouverts au public ;

# L'éducation inclusive dans le contexte européen

- La **stratégie Europe 2020** s'appuie sur les principes d'une croissance intelligente, durable et inclusive
- Objectif de réduire le taux d'abandon scolaire à 10 % au lieu de 15 % et d'augmenter la part de la population âgée de 30 à 34 ans ayant achevé un cursus universitaire à au moins 40 % au lieu de 31 %
- La **stratégie européenne 2010-2020 en faveur des personnes handicapées** remarque que les personnes handicapées ont une probabilité nettement inférieure aux personnes non handicapées de participer à une éducation postscolaire et d'obtenir un emploi
- Il est fondamental d'éliminer les barrières et d'améliorer les résultats pour les personnes handicapées dans la perspective des objectifs économiques et sociaux de l'UE dans leur ensemble

# Tendances d'éducation inclusive et exemples de bonnes pratiques

- Importante initiative législative en **Slovénie** sous l'impulsion de la CDPH. La Section 11 de la Loi de 2010 sur l'égalité des chances pour les personnes handicapées établit une obligation d'assurer l'inclusion des personnes handicapées à tous les niveaux des programmes éducatifs.
- Au **Danemark**, la Loi sur l'école publique a récemment été modifiée de façon à inclure davantage d'étudiants ayant des besoins particuliers dans l'éducation ordinaire.
- En mars 2015, le parlement **tchèque** a approuvé une nouvelle définition des élèves ayant des besoins éducatifs particuliers au titre de la Section 16(1) de la Loi sur l'école. Cette définition met désormais l'accent sur la fourniture de mesures d'aide permettant d'assurer l'égalité des chances des personnes handicapées en matière d'éducation.

# Observations finales du Comité de la CDPH

- Le Comité de la CDPH a noté qu'en Autriche, le nombre d'enfants fréquentant des établissements spécialisés est en augmentation et « peu d'efforts seraient consentis pour encourager l'éducation inclusive des enfants handicapés »
- Le rapport fictif 2010 préparé par le Disability Caucus **hongrois** pour le Comité de la CDPH critiquait vivement l'organisation de l'éducation pour les étudiants handicapés en **Hongrie**
- À **Chypre**, le Médiateur et le Commissaire aux droits de l'enfant ont critiqué les structures inadéquates et l'aide dont peuvent bénéficier les enfants handicapés
- En **Roumanie**, la jurisprudence et les rapports d'ONG font apparaître que de graves problèmes persistent dans la mise en œuvre du cadre juridique pour parvenir à une éducation inclusive

*« Si nous voulons une culture plus riche, nous devons imaginer un monde où les dons de chaque être humain, aussi divers soient-ils, peuvent s'exprimer dans un lieu bienveillant »*

*~ Margaret Mead ~*



## CONCLUSION

MERCI POUR VOTRE ATTENTION !

Contact : [andrea.broderick@maastrichtuniversity.nl](mailto:andrea.broderick@maastrichtuniversity.nl)

# ZUR UMSETZUNG EUROPÄISCHER UND NATIONALER BEHINDERTENPOLITIK: HERAUSFORDERUNGEN UND BEST PRACTICE BEISPIELE

EU DISABILITY LAW AND THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES  
SEMINAR FOR POLICY PRACTITIONERS  
ERA Trier, 13-14 October 2016

DDr. Ursula Naue,  
Universität Wien/ANED(Academic Network of European Disability Experts)/Wiener  
Monitoringstelle zur Umsetzung der BRK/Disability Studies Austria

## Aufbau

*Die UNCRPD verstehen  
Gesellschaft, Politik und Menschen mit Behinderungen  
Europäische und nationale Behindertenpolitik vor der UNCRPD  
Die UNCRPD und die 'Harmonisierung' von Behindertenpolitik  
Die UNCRPD umsetzen: Einige neue Herausforderungen  
Europäische und nationale Behindertenpolitik und die UNCRPD  
Best Practice Beispiele: Herausforderungen, aber auch deren  
Bedeutung  
Zur Umsetzung europäischer und nationaler Behindertenpolitik  
Wozu, und warum?  
Was zu tun ist  
Zusammenfassung*



Um mit den Grundlagen zu beginnen:  
Die UNCRPD verstehen (1)

*Notwendig, um den Einfluss der UNCRPD auf potentielle  
'Harmonisierung'/Annäherung europäischer Behindertenpolitik zu  
verstehen*

**(A) Das soziale Modell von Behinderung als Grundlage und  
Ausgangspunkt der UNCRPD**

*Individuelles/medizinische Modell von Behinderung:  
Fokus auf das Individuum, um seine/ihre 'Defizite' auszugleichen*

*Soziales Modell von Behinderung:  
Fokus auf gesellschaftlichen Wandel, auf den notwendigen Abbau von  
Barrieren*

---

Um mit den Grundlagen zu beginnen:  
Die UNCRPD verstehen (2)

**(B) Keine Definition von Behinderung in der UNCRPD**

*Preamble (e) "... disability is an evolving concept ..."*

*Art 1:  
"... Persons with disabilities **include those** who have long-term  
physical, mental, intellectual or sensory impairments which in  
**interaction** [social model, see (A)] with various barriers may hinder  
their full and effective participation in society on an equal basis with  
others."*

*Erweitert das Konzept von Behinderung, bezieht sich auf die  
Gesellschaft als solche wie auch auf den Lebensverlauf eines  
Menschen*

---

Um mit den Grundlagen zu beginnen:  
Die UNCRPD verstehen (3)

**(C) Die allgemeinen Grundsätze beziehen sich auf 'Nichts über uns ohne uns!'**

Art 3 (c) *Full and effective participation and inclusion in society*  
(ebenso: Art 29)

*Welche Voraussetzungen gibt es für Partizipation und Inklusion?*

*Nicht-Diskriminierung (Art 3 (b))*

*Chancengleichheit (Art 3 (e))*

*Barrierefreiheit (Art 3 (f), Art 9)*

*Selbstbestimmtes Leben (Art 19), Bildung (Art 24); Arbeit und Beschäftigung (Art 27)*

Die UNCRPD kurz gefasst

*Der Fokus der UNCRPD liegt auf dem Abbau von **Barrieren** und auf einem **gesellschaftlichen Wandel**, nicht auf einer Änderung von Menschen*

*Der Fokus der UNCRPD liegt auf der Akzeptanz von **Vielfalt***

**Behinderung** wird in der UNCRPD nicht definiert, es ist ein offenes und **flexibles Konzept**

*Die UNCRPD macht deutlich: Menschen mit Behinderungen sind **InhaberInnen von Rechten** (keine EmpfängerInnen von Wohltätigkeit)*

*In der UNCRPD geht es um **Wahlmöglichkeiten** und **Optionen**, nicht um vorgegebene Pfade (Sonderschule → geschützte Werkstätte)*

Herausforderungen:  
Gesellschaft, Politik und Menschen mit Behinderungen

**Interaktion innerhalb der Gesellschaft:**

*Negative Haltungen gegenüber Menschen mit Behinderungen (u.a. ausgedrückt in den angewendeten Modellen von Behinderung):  
EmpfängerInnen von Wohltätigkeit  
Ängste, Mitleid, Abscheu*

**Generelle Politikgestaltung:**

*In welcher Weise sind Themen in Bezug auf Behinderung Teil von Politikgestaltungsprozessen?  
Findet Disability Mainstreaming statt?*

**Partizipative Praktiken im Zuge von Politikgestaltung:**

*Wer ist involviert, wer nicht, und warum?*

Die UNCRPD und die wesentlichste Herausforderung in  
Bezug auf deren Umsetzung

*Offensichtliche Spannung zwischen sozio-politischen Praktiken  
und der UNCRPD:  
Oft-zitierter **Paradigmenwechsel** in vielen Gesellschaften  
notwendig...*

*Warum?*

*In etlichen Staaten sind die **Ziele** der UNCRPD zugleich auch die  
**Voraussetzung!***

*→ Herausforderung für die Umsetzung der UNCRPD!*

**Wie kann Inklusion erzielt werden, wenn gelebte Inklusion die  
Voraussetzung für das Erzielen von Inklusion ist?...**

## Europäische und nationale Behindertenpolitik vor der UNCRPD: Eine sehr kurze Zusammenfassung (1)

*Während der 90er Jahre:*

*Haltungswandel im Einklang mit dem sozialen Modell von Behinderung  
→ Reformen von Behindertenpolitik in den meisten EU Mitgliedsstaaten*

*Wichtiger Kontext:*

- Fokus auf Effizienz und Effektivität, um eine 'Kostenexplosion' zu verhindern*
- Politische Initiativen und Änderungen im rechtlichen Kontext, um die Beschäftigungsrate von Menschen mit Behinderungen zu erhöhen (z.B. über Quoten, Unterstützungsleistungen)*
- Inkrafttreten von Anti-Diskriminierungsgesetzgebung*
- Zunehmende Forschung zum Thema Behindertenpolitik (Maschke o.J.)*

## Europäische und nationale Behindertenpolitik vor der UNCRPD: Eine sehr kurze Zusammenfassung (2)

*Wichtig für die Zeit vor der Ratifikation der UNCRPD (und immer noch relevant):*

- Sozialbudgets und Sozialpolitik unter (finanziellem) Druck*
- Fragen einer 'gerechten' Verteilung von Unterstützungsleistungen*
- Debatten, wer Sozialleistungen in Anspruch nehmen soll/darf (Fokus auf Menschen, die bereits ihren Beitrag zur Gesellschaft geleistet haben – Was ist mit Menschen mit angeborenen Beeinträchtigungen, die noch nie zum Arbeitsmarkt beigetragen haben?...)*
- Definition von Behinderung/Menschen mit Behinderungen: Wer sind die Menschen mit Behinderungen, die Ansprüche auf Leistungen haben sollen?*

## Europäische und nationale Behindertenpolitik vor der UNCRPD: Eine sehr kurze Zusammenfassung (3)

*Ähnliche Situation in EU Mitgliedsstaaten/europäischen Staaten vor der UNCRPD (und auch dies ist immer noch relevant):*

- Kaum expliziter Fokus in Sozialpolitiken auf Menschen mit Behinderungen, üblicherweise subsummiert unter dem Begriff 'benachteiligte Gruppen'*
  - Viel schlechterer Bildungsstatus von Menschen mit Behinderungen im Vergleich zum Durchschnitt*
  - Viel schlechtere Beschäftigungsrate von Menschen mit Behinderungen im Vergleich zum Durchschnitt*
  - Viel höhere Armutsrate von Menschen mit Behinderungen im Vergleich zum Durchschnitt*
- 

## Europäische und nationale Behindertenpolitik vor der UNCRPD: Eine sehr kurze Zusammenfassung (4)

*In Bezug auf die angewandten Modelle bei der Politikgestaltung und daher in Bezug auf die **Ziele der Politikgestaltung** (Fokus auf Kompensation (z.B. Österreich), Rehabilitation (z.B. Deutschland) oder Partizipation (z.B. Schweden)):*

- Einige europäische Staaten*
- ...begannen recht früh damit, das soziale Modell umzusetzen (z.B. Vereinigtes Königreich)*
  - ...einige Staaten versuchten dies ebenso, allerdings mit einem zugleich starken Fokus auf das individuelle Modell (z.B. Österreich)*
  - ...bezogen sich explizit auf einen 'gemischten Ansatz' (Unterstützungsleistungen auf der Basis des individuellen Modells, aber auf einer deutlich ausgebauten Grundlage des sozialen Modells) (z.B. Schweden) (Maschke 2008, Naue 2008)*
-

## Europäische und nationale Behindertenpolitik vor der UNCRPD: Eine sehr kurze Zusammenfassung (5)

*Vor der UNCRPD:*

*Zusammenfassend:*

*In fast allen EU Mitgliedsstaaten/europäischen Staaten hatten Menschen mit Behinderungen mit sehr stark ausgeprägten Barrieren zu kämpfen, was diverse Unterstützungsleistungen betrifft, um imstande zu sein, im alltäglichen Leben partizipieren zu können*

*Unterschiedliche Ansätze wurden angewendet, um diese Situation zu ändern, was jedoch zu einem konfusen Mix von Maßnahmen führte, die einerseits auf die Menschen selbst fokussierten, auf die Barrieren fokussierten, die diese Menschen am Partizipieren hinderten, oder auf beides fokussierten*

## Die UNCRPD und die 'Harmonisierung' von Behindertenpolitik

*Auf der Basis der UNCRPD:*

*Die konfuse Situation unterschiedlicher Ansätze in Bezug auf die Verbesserung der Lebenssituation von Menschen mit Behinderungen begann sich auf einem grundlegenden Niveau zu verändern*

*z.B. Anstrengungen der Europäischen Kommission, Forschung zu fördern, die sich Fragen des Status Quo in unterschiedlichen Staaten annimmt und die sich mit Best Practice Beispielen beschäftigt, die beitragen sollen, Politikwandel herbei zu führen, der im Einklang mit der UNCRPD steht (wichtig für potentiellen Politikwandel)*

*Dies geschah/geschieht offensichtlich im Kontext bestimmter Herausforderungen – bezüglich der angewandten Modelle wie auch diverser sozio-politisch-kultureller Kontexte*

## Die UNCRPD umsetzen: Einige neue Herausforderungen (1)

*-Übersetzung der UNCRPD: In etlichen (nicht nur europäischen) Staaten ohne offizielle UN-Sprache wurden wesentliche Konzepte und Begriffe falsch übersetzt, was zu Debatten über den Inhalt der UNCRPD führte (z.B. bezüglich Inklusion, Selbstbestimmtes Leben, Barrierefreiheit, Partizipation)*

*-Wie Gesetzgebung und politische Praktiken im Einklang mit der UNCRPD neu ausrichten, wenn sich Gesetzgebung und politische Praktiken nicht auf das sozialen Modell von Behinderung beziehen?*

*-Keine Definition von Behinderung in der UNCRPD, aber Definitionen in rechtlichen Rahmenwerken auf nationalstaatlicher Ebene (z.B. Wie jene Gruppen definieren, die Ansprüche haben?)*

---

## Die UNCRPD umsetzen: Einige neue Herausforderungen (2)

*-Wie Wandel messen? Auffallender Mangel an Indikatoren in vielen EU Mitgliedsstaaten/europäischen Staaten*

*-Diverse Ansätze des Überwachens der Umsetzung der UNCRPD in Einklang mit Art 33 (neue Komitees, Komitees als Teil bereits existierender Institutionen mit einem Fokus auf Anti-Diskriminierung, Komitees auf nationaler Ebene, auf regionaler Ebene etc.)*

*-Überwachung durch das UN Komitee in Genf : Führen die Abschließenden Bemerkungen zu nachhaltiger Umsetzung oder lediglich zu politischer Rhetorik?*

---

## Europäische und nationale Behindertenpolitik und die UNCRPD: Politische Ebenen verbinden (1)

*Die Ratifikation der UNCRPD durch die Europäische Union (23.12.2010; nicht das Optional Protocol, das Individualbeschwerden ermöglicht) war ein bedeutender Schritt der EU, eine UN Konvention grundsätzlich und die UNCRPD im Speziellen umzusetzen*

*Abgesehen von diesem positiven Aspekt stellt dies allerdings eine Herausforderung für Politikgestaltung dar, wenn es um die Umsetzung der UNCRPD geht:*

*Die Abschließenden Bemerkungen des UN Komitees in Genf für einzelne Mitgliedsstaaten wie auch für die EU selbst: Was genau ist der Referenzpunkt für Wandel?*

---

## Europäische und nationale Behindertenpolitik und die UNCRPD: Politische Ebenen verbinden (2)

*Es ist offensichtlich, wie wesentlich es ist, dass die Europäische Union ihre Verantwortung der Situation Menschen mit Behinderungen innerhalb der EU gegenüber akzeptiert!*

*Aber in Bezug auf Mitgliedsstaaten hängt es am Ende davon ab, ob*  
*a) sie ihre eigenen Abschließenden Bemerkungen des UN Komitees in Genf umsetzen*  
*und*  
*b) und vor allem, ob sie bereits und willens sind, Policies umzusetzen, die von der EU-Ebene kommen*

---



## Europäische und nationale Behindertenpolitik umsetzen: Best Practice Beispiele und deren Herausforderungen

*Aus politikwissenschaftlicher Sicht wie auch aus praktischer Sicht sind 'Best Practice Beispiele' einigermaßen problematisch, weil eine besondere Herausforderung zu lösen ist:*

***Was in Kontext A funktioniert, muss nicht notwendigerweise in Kontext B funktionieren!***

*Und Kontext bedeutet viel:*

*Es bedeutet sozialen, politischen, religiösen, kulturellen etc. Kontext, der relevant dafür ist, ob das Umsetzen bestimmter Policies gelingt oder misslingt*

*Wir müssen die Herausforderungen von Policy Transfer mit eindenken – Raum und Zeit! (vgl. Prince 2010; McCann & Ward 2012)*

---

## Europäische und nationale Behindertenpolitik umsetzen: Best Practice Beispiele – Verbindung von Raum und Zeit?

*Bedeutung von Policy-Entwicklung in einem bestimmten Raum und einer bestimmten Zeit:*

*Österreich, Gesetzesentwurf 'Erwachsenenschutzgesetz', basiert auf der Idee von unterstützter Entscheidungsfindung, um unabhängiges und selbstbestimmtes Treffen von Entscheidungen zu ermöglichen*

*Wenn dies als Best Practice Beispiel herangezogen wird, muss jedoch bedacht werden, dass Österreich bereits ein gut entwickeltes Sachwalterrecht hat (2006)*

*Also, was lernen wir für Europa weites Politikgestalten aus diesem Best Practice Beispiel außer dem Offensichtlichen (nämlich, dass die UNCRPD auf unterstützte Entscheidungsfindung fokussiert?)*

*Wie und in welcher Weise können andere Staaten diesem Beispiel folgen?*

---

## Europäische und nationale Behindertenpolitik umsetzen: Widerstand gegen Best Practice Beispiele

*Noch ein Beispiel, wiederum aus Österreich:*

*Ausreichende Evidenz für den Erfolg inklusiver Schulen/Bildung in den Skandinavischen Staaten (abgesehen von derzeit stattfindender finanziell angetriebener Tendenz, die Anzahl der SchülerInnen in inklusiver Umgebung zu reduzieren)*

*Nichtsdestotrotz hat Österreich entschieden, nicht auf diese Best Practice Beispiele Bezug zu nehmen, sondern eigene, so genannte Modellregionen für inklusive Bildung einzurichten, um herauszufinden, ob dies in Österreich funktioniert oder nicht (aber: wiederum ergibt sich dann das Problem des Übertragens einer Modellregion in einem Bundesland in ein anderes...)*

---

## Europäische und nationale Behindertenpolitik im Lichte der UNCRPD umsetzen: Die Bedeutung von Best/Good Practice Beispielen

*Um dies zusammen zu fassen, Best – oder besser: Good – Practice Beispiele sind sehr hilfreich, um zu zeigen, **dass** bestimmte Policies funktionieren und dass die UNCRPD tatsächlich umsetzbar ist (...), aber sie sagen uns **nicht notwendigerweise Genaueres** darüber, **wie** bestimmte Policies in Einklang mit der UNCRPD umzusetzen sind, da dies vom Kontext abhängt (Raum und Zeit).*

*Es ist hierbei wesentlich zu erwähnen, dass Debatten über die UNCRPD manchmal auf die Konvention als etwas '**Utopisches**' fokussieren – als ein Zustand, der niemals erreicht werden wird – und daher ist es besonders wichtig, auf der Basis von Best/Good Practice Beispielen zu zeigen, dass dies sehr wohl möglich ist und was es praktisch bedeutet, die UNCRPD umzusetzen .*

---

## Europäische und nationale Behindertenpolitik umsetzen: Die EU-Behinderten-Strategie 2010-2020 (1)

*Koordinierte Policy-Umsetzung im Kontext der European Disability Strategy 2010-2020 (A renewed commitment to a barrier-free Europe):*

*"This Strategy provides 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. ...The economic downturn has had an adverse impact on the situation of people with disabilities, making it all the more urgent to act. This Strategy aims to improve the lives of individuals, as well as bringing wider benefits for society and the economy without undue burden on industry and administrations."*

---

## Europäische und nationale Behindertenpolitik umsetzen: Die EU-Behinderten-Strategie 2010-2020 (2)

*European Disability Strategy 2010-2020 (A renewed commitment to a barrier-free Europe):*

*"This Strategy focuses on eliminating barriers. The Commission has identified eight main areas for action: **Accessibility, Participation, Equality, Employment, Education and training, Social protection, Health, and External Action.**"*

*→ Querschnittsmaterie – das bedeutet, dass die EU-Behinderten-Strategie tatsächlich jedes Politikfeld umfasst!*

---

## Europäische und nationale Behindertenpolitik umsetzen: Die Umsetzung der UNCRPD analysieren

*ANED (Academic Network of European Disability Experts),  
[www.disability-europe.net](http://www.disability-europe.net)*

*2007 von der Europäischen Kommission eingerichtet, um Policy-Entwicklung in Zusammenarbeit mit der Disability Unit der Kommission zu unterstützen*

*Länderberichte wie auch zusammenfassende Berichte zu bestimmten Themen – Ansatz, nationalstaatliche Policies mit EU-Policies zu verbinden und einen Überblick über politische Praktiken zu bieten*

*DOTCOM (Disability Online Tool of the Commission), öffentlich zugängliche Datenbank*

---

## Europäische und nationale Behindertenpolitik umsetzen: ANED Datenblatt zum Europäischen Semester 2015/2016 zu Behinderung – EU-Überblick (1)

*"This European overview and synthesis builds on country fiches prepared by members of Academic Network of European Disability experts (ANED) in response to the 2015 National Reform Programmes and Country Specific Recommendations relating to the 28 EU Member States. Key points from these country fiches are combined with relevant statistical indicators using EU level data and policy analysis. The report is presented in the context of the Annual Growth Survey priorities in order to support the Commission's input to the revised European Semester process, from a disability perspective."*

*Europäisches Semester: Keine spezifisch auf Behinderung ausgerichteten Ziele oder quantifizierbaren Maßnahmen*

---

## Europäische und nationale Behindertenpolitik umsetzen: ANED Datenblatt zum Europäischen Semester 2015/2016 zu Behinderung – EU-Überblick (2)

Table 1: Europe 2020 and the significance of disability issues

	Europe 2020 targets	Headline issues
<b>Employment</b>	75% of the 20-64 year-olds to be employed	People with disabilities continue to be disproportionately economically inactive, unemployed or under-employed. These inequalities persist across the life course but vary considerably between Member States.
<b>Education</b>	Reducing the rates of early school leaving below 10%	Young people with disabilities are consistently more likely to be early leavers than the general population and this begins a cumulative cycle of career disadvantage.
	At least 40% of 30-34-year-olds completing third level education	People with disabilities are less likely to complete a tertiary education
<b>Fighting poverty and social exclusion</b>	At least 20 million fewer people in or at risk of poverty and social exclusion	People with disabilities of working age are at high risk of household poverty and social exclusion across the EU and this is closely linked to low work intensity as well as the effectiveness of social protection measures.

## Europäische und nationale Behindertenpolitik umsetzen: ANED Datenblatt zum Europäischen Semester 2015/2016 zu Behinderung – EU-Überblick (3)

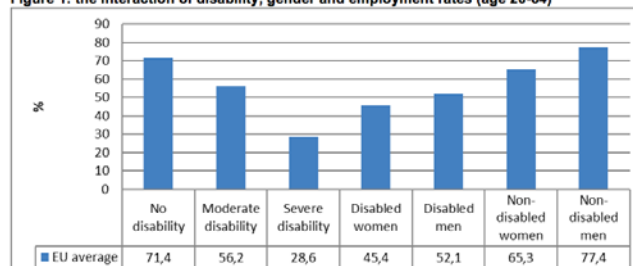
Notwendigkeit für einen Disability Mainstreaming Ansatz: Ein kurzes Beispiel:

[Employment rate](#)

This headline target fiche should refer prominently to the employment gap experienced by disabled persons, providing evidence of this and identifying disability equality as a key challenge for Member States in meeting their overall employment target. It may be useful to refer to Article 27 CRPD and to the EU's Disability Strategy in this context.

Table 3

Figure 1: the interaction of disability, gender and employment rates (age 20-64)



Source: EUSILC UDB 2013 – version 2 of August 2015

## Europäische und nationale Behindertenpolitik umsetzen: ANED Länderberichte zum Europäischen Semester (1)

*Österreich: Mit der Datenlage kämpfen*

*-Fehlen spezifischer Daten, Maßnahmen im Nationalen Aktionsplan  
Behinderung 2012-2020 sind vage formuliert und daher ist es schwer, den  
Status Quo wie auch Wandel zu evaluieren*

*-Menschen mit Behinderungen sind als eigene ‚Zielgruppe‘ von  
Politikgestaltung nicht sichtbar*

*-Fragmentierung des österreichischen politischen Systems, Frage der  
Zuständigkeiten im Kontext des österreichischen Föderalismus*

*UK: Mit der Austeritätspolitik kämpfen*

*-Ausgezeichnete offizielle Statistiken zu Behinderung und  
Arbeit/Beschäftigung*

*-Unangemessene Konsequenzen der Austeritätspolitik für Menschen mit  
Behinderungen*

---

## Europäische und nationale Behindertenpolitik umsetzen: ANED Länderberichte zum Europäischen Semester (2)

*Schweden: Hohes Niveau an Unterstützung, aber Notwendigkeit neuer  
Initiativen*

*-Kein grundlegender Wandel in Bezug auf Beschäftigungsrate von  
Menschen mit Behinderungen*

*-Schrittweise Erhöhung des Bildungsniveaus von Menschen mit  
Behinderungen*

*Portugal: Mit der Ressourcenlage kämpfen*

*-Signifikant niedrige Beschäftigungsrate von Menschen mit  
Behinderungen im Vergleich zu Menschen ohne Behinderungen*

*-Gesetzgebung in Bezug auf inklusive Bildung (2008) unter Druck  
(budgetäre Einschränkungen)*

---

Europäische und nationale Behindertenpolitik umsetzen:  
ANED Länderberichte zum Europäischen Semester (3)

*Ungarn: Konfligierende Strategien*

- Zentrales Ziel der Regierung ist es, die Beschäftigungsrate von Menschen mit Behinderungen zu erhöhen
- Reduktion von Leistungen auf der Basis von Behinderung
- Einkommen von Menschen mit Behinderungen hat abgenommen, Beschäftigungsrate hat nicht zugenommen

*Kroatien: Die UNCRPD umzusetzen beginnen*

- Relativ neue Regelungen in Bezug auf Sozialtransfer, Anreize, Beschäftigungsmöglichkeiten
- Wandel der Bildungsstrategien hat gerade begonnen

Europäische und nationale Behindertenpolitik umsetzen:  
ANED Länderberichte zum Europäischen Semester (4)

*Irland (hat die UNCRPD noch nicht ratifiziert):*

- Kaum substantieller Wandel, der die Situation von Menschen mit Behinderungen verbessern würde (z.B. bezüglich Beschäftigung)
- Berichte zu weit ausgedehntem Missbrauch älterer Menschen mit Lernschwierigkeiten in Einrichtungen

*Island (hat die UNCRPD kürzlich ratifiziert (23.9.); kein EU Mitgliedsstaat):*

- Aktionsplan für Menschen mit Behinderungen beinhaltet keine quantifizierbaren Ziele wie EU2020, vage und schlecht definierte Bewertungsverfahren
- Sehr wenige Daten zu Bildung und Behinderung

## Europäische und nationale Behindertenpolitik umsetzen: Was können wir aus dieser 'Tour de Force' durch europäische Staaten lernen? (1)

*Geschichte und 'Tradition' im Umgang mit bestimmten ,Gruppen' in der  
Gesellschaft hat Bedeutung!*

*Fast überall sind Menschen mit Behinderungen die erste 'Gruppe', die von  
Austeritätsmaßnahmen betroffen ist (aufgrund der Tatsache, dass historisch  
betrachtet Menschen mit Behinderungen am wenigsten für sich lobbyieren  
konnten und nicht als InhaberInnen von Rechten wahrgenommen wurden)*

*'Good performers'/'Bad performers': Dies hängt zu einem guten Teil davon  
ab, wie Staaten vor der UNCRPD aufgestellt waren...*

*Fehlende oder nicht umfassende Daten und Statistiken (keine Daten →  
keine Notwendigkeit politischen Handelns; Stone 2002)*

---

## Europäische und nationale Behindertenpolitik umsetzen: Was können wir aus dieser 'Tour de Force' durch europäische Staaten lernen? (2)

*Es ist noch viel Arbeit zu tun, um die UNCRPD und ihren Ansatz in Bezug  
auf das Thema Behinderung umzusetzen!*

*Unumgänglich:  
Information für alle Menschen in der Gesellschaft, dass Inklusion uns alle  
betrifft, nicht bloß einige Menschen, die inkludiert werden müssen (...)*

*Ausbildung für Policymaker im weitesten Sinn (um sich der notwendigen  
Veränderungen bewusst zu sein/werden) – bringt uns zurück zu den  
Best/Good Practice Beispielen*

*Partizipation von 'betroffenen Personen', i.e. Menschen mit Behinderungen*

---



## Europäische und nationale Behindertenpolitik umsetzen: Best – oder besser: Good – Practice Beispiele (1)

*Im Kontext der oben kurz diskutierten nationalstaatlichen Kontexte:*

*Best/Good Practice Beispiele als Weg, um zu zeigen, wie die Implementierung der UNCRPD in nationalstaatlichen Kontexten **funktionieren kann***

*z.B. Beispiele von Dienstleistungen, Maßnahmen, aber auch in Bezug auf einzelne Personen*

*Beispiel 1:  
Österreich, [arbeitundbehinderung.at](http://arbeitundbehinderung.at), 70 Personen mit Behinderungen, die es in den ersten Arbeitsmarkt geschafft haben*

---

## Europäische und nationale Behindertenpolitik umsetzen: Best – oder besser: Good – Practice Beispiele (2)

*Beispiel 2:  
Finnland, via [zeroproject.org](http://zeroproject.org), Dienstleistungen für Menschen mit Lernschwierigkeiten/Behinderungen, um nachhaltige Beschäftigung zu finden*

*Beispiel 3:  
Europa, via [zeroproject.org](http://zeroproject.org), Kooperation einer großen Anzahl von Organisationen von Menschen mit Behinderungen/EEG (European Expert Group on the transition from institutional to community-based care), Maßnahmen für Ausbildung, Anleitung für und Information in Bezug auf die Notwendigkeiten Gemeinde basierter Pflege und Unterstützung, und die Risiken institutioneller Pflege für Menschen mit Behinderungen*

---

## Europäische und nationale Behindertenpolitik umsetzen: Best – oder besser: Good – Practice Beispiele (3)

*Die Liste der Best/Good Practice Beispiele ist lang und bezieht sich auf diverse Themenfelder in Bezug auf Behinderung (z.B. Transportmittel, Bildung, Entwicklung)*

*Dies zeigt – wie bereits weiter oben erwähnt – dass Policies, die die Artikel der UNCRPD umsetzen, funktionieren!*

*Best/Good Practice Beispiele sollten nicht 1:1 kopiert werden, sondern an den jeweiligen (nationalstaatlichen) Kontext angepasst werden – dann dienen sie als wichtige Grundlage für Information und Wissen darüber, wie Policies formuliert werden sollen*

---

## Europäische und nationale Behindertenpolitik umsetzen: Best/Good Practice Beispiele und ein Perspektivenwechsel

*Best/Good Practice Beispiele heben vor allem einen wesentlichen Aspekt der Umsetzung der UNCRPD hervor - Partizipation:*

*Der Fokus der UNCRPD auf aktive Partizipation und Einbeziehung von Menschen mit Behinderungen spiegelt sich in Best/Good Practice Beispielen, weil diese Beispiele zeigen, auf welche Weise das Leben von Menschen mit Behinderungen verbessert werden kann – und zwar notwendiger- wie sinnvollerweise aus der Perspektive der Personen, die von bestimmten Policies ‚betroffen‘ sind!*

*Dies jedoch führt mich – am Ende meines Referats – zu einigen provokanten Fragen...*

---

Provokante Fragen:

Wozu, und warum? Warum sollten wir die UNCRPD umsetzen?

*Nicht die Antworten sind kompliziert, sondern die Argumentation dahinter...*

*Denn:*

*Einigen Menschen sind Menschenrechte egal – oder aber, sie relativieren sie zumindest (und in der UNCRPD geht es ja genau um Menschenrechte!)*

*Aber ebenso:*

*Einigen Menschen ist es egal, welche positiven ökonomischen Effekte es auf Gesellschaften haben würde, wenn diese nicht durchschnittlich 15-20 % ihrer Bevölkerung von Bildung und in der Folge davon vom Arbeitsmarkt ausschließen würden (aber: Ellbogentechnik in Zeiten der (Post-)Krise...)*

Zusammenfassung: Was zu tun ist: Die UNCRPD im Kontext der Europäischen Union und auf nationalstaatlicher Ebene umsetzen

- Notwendigkeit, einen Disability Mainstreaming Ansatz zu entwickeln*
- Notwendigkeit aufgeschlüsselter Datensammlung*
- Indikatorenentwicklung auf EU-Ebene, um den EU2020-Prozess zu unterstützen*
- Policy-Trends wie das Reduzieren der Zugangsmöglichkeiten zu Unterstützungsleistungen müssen durch das Überwachen der Behinderungsdimension hervorgehoben werden*
- Und vor allem: Es muss gehandelt werden!*

*“Without a disability equality perspective in policy monitoring and impact assessment there is a danger that people with disabilities will continue to be disproportionately impacted by consolidation and austerity policies, as has been demonstrated in some individual Member States.”*  
(vgl. ANED/Priestley 2016)

Zusammenfassung – Warum sollten wir entsprechend der UNCRPD handeln und sie erfüllen? (1)

**Persönlicher Ansatz** (der sehr wirksam ist...):

*...weil wir erkannt haben, dass Behinderung eine Frage von Barrieren ist und Barrieren buchstäblich uns alle im Zuge unseres Lebens betreffen können (vom Kinderwagen bis zum Rollator)*

*...weil wir erkannt haben, dass das Handeln in Diversitätsdimensionen (nicht nur ökonomische) Vorteile für uns alle bringt und die Annahmen über Menschen mit Behinderungen (Behinderung = Unfähigkeit) in diesem Kontext grundsätzlich zu überdenken sind*

**Rechtsbasierter Ansatz:**

*...weil wir uns als Gesellschaften entschlossen haben, nach bestimmten Prinzipien zusammen zu leben – (Menschen)Rechte*

---

Zusammenfassung – Warum sollten wir entsprechend der UNCRPD handeln und sie erfüllen? (2)

**Herausforderungen für einen (menschen)rechtsbasierten Ansatz:**

*“... globally, the implementation of human rights lags far behind their articulation. Our objective must be to help bridge the gap between the lofty rhetoric of human rights in the halls of the United Nations [comment Naue: not only there...] and the sobering realities on the ground.“ (59<sup>th</sup> Session of the United Nations General Assembly, 26.5.2005, p. 5)*

*Es ist also unsere Aufgabe, den Weg von normativen Erfordernissen (was gesagt/geschrieben wird) hin zu politischen Praktiken (was getan wird) zu ebnen*

---

Vielen Dank für Ihre Aufmerksamkeit!

Für weitere Informationen erreichen Sie mich über  
email:

[ursula.naue@univie.ac.at](mailto:ursula.naue@univie.ac.at)

# LES POLITIQUES EUROPÉENNES ET NATIONALES SUR LE HANDICAP ET LEUR MISE EN ŒUVRE : DÉFIS ET MEILLEURES PRATIQUES

DROIT DE L'UE SUR LE HANDICAP ET CONVENTION DES NATIONS UNIES  
RELATIVE AUX DROITS DES PERSONNES HANDICAPÉES  
SÉMINAIRE POUR LES DÉCIDEURS POLITIQUES  
ERA, Trèves, 13-14 octobre 2016

Dr Ursula Naue,  
Université de Vienne/ANED (Réseau d'études européen d'experts dans le domaine du  
handicap) /Organe de surveillance de Vienne sur la mise en œuvre de la CDPH/Disability  
Studies Austria

# Sommaire

*Comprendre la CDPH*

*Société, politique et personnes handicapées*

*Politiques européennes et nationales en matière de handicap avant la CDPH*

*Adoption de la CDPH : « harmonisation » des politiques en matière de handicap*

*Mise en œuvre de la CDPH : défis*

*Politiques européennes et nationales en matière de handicap et CDPH*

*Exemples de meilleures pratiques : les défis, mais aussi leur importance*

*Mise en œuvre des politiques européennes et nationales en matière de handicap*

*Pour quoi, pour qui ?*

*Travail encore à accomplir*

*Conclusion*

---

La base avant tout :

Comprendre la CDPH (1)

*Indispensable pour pouvoir comprendre l'influence de la CDPH sur l'« harmonisation »/la convergence potentielle des politiques européennes en matière de handicap*

***(A) Point de départ pour la CDPH : l'approche sociale du handicap***

*Approche individuelle/médicale du handicap :*

*Mettre l'accent sur la nécessité pour la personne de surmonter ses « déficiences »*

*Approche sociale du handicap :*

*Mettre l'accent sur le changement sociétal et la nécessité d'éliminer les barrières*

---



La base avant tout :  
Comprendre la CDPH (2)

***(B) Pas de définition du handicap dans la CDPH***

*Point e) du préambule : « ... la notion de handicap évolue ... »*

*Article premier :*

*« ... Par personnes handicapées on entend des personnes qui présentent des incapacités physiques, mentales, intellectuelles ou sensorielles durables dont l'**interaction** [approche sociale, cf. (A)] avec diverses barrières peut faire obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres. »*

*Élargissement de la notion de handicap par une référence à la société en général, mais aussi au parcours de vie personnel*

---

La base avant tout :  
Comprendre la CDPH (3)

***(C) Les principes généraux renvoient à « Rien qui nous concerne sans nous ! »***

*Article 3, point c) La participation et l'intégration pleines et effectives à la société (cf. également article 29)*

*Quelles sont les conditions de la participation et de l'intégration ?*

*Non-discrimination (article 3, point b))*

*Égalité des chances (article 3, point e))*

*Accessibilité (article 3, point f), article 9)*

*Autonomie de vie (article 19), Éducation (article 24), Travail et emploi (article 27)*

---

## La CDPH en bref

*La CDPH met l'accent sur la nécessité d'éliminer les **barrières** et de **changer la société**, et non de changer les individus*

*La CDPH accorde une attention prépondérante à la **diversité***

*Le **handicap** n'est pas défini dans la CDPH, il constitue une **notion flexible** et ouverte*

*La CDPH proclame un principe clair : les personnes handicapées sont des **personnes titulaires de droits** (et non bénéficiaires de la charité)*

*La CDPH met en exergue les **choix** et les **options** et rejette les parcours stéréotypés (école spéciale → atelier protégé)*

---

Quels sont les défis ?

Société, politique et personnes handicapées

***Interaction au sein de la société :***

*Attitudes négatives à l'égard des personnes handicapées (se manifestant notamment dans les approches appliquées du handicap) :*

*Bénéficiaires d'actions caritatives*

*Peur, pitié, dégoût*

***Formulation des politiques en général :***

*En quoi les questions liées au handicap font-elles partie de la formulation des politiques ? Le handicap est-il intégré dans toutes les réflexions ?*

***Pratiques participatives dans la formulation des politiques :***

*Qui est impliqué, qui ne l'est pas et pourquoi ?*

---

## La CDPH et le principal défi pour sa mise en œuvre

*Tensions manifestes entre les pratiques socio-politiques et la CDPH :*

*Le **changement de paradigme** si souvent évoqué est indispensable dans de nombreuses sociétés...*

*Pourquoi ?*

*S'agissant de la CDPH, dans de nombreux pays, les **objectifs** sont en même temps les **conditions***

*→ Défi pour mettre en œuvre la CDPH !*

***Comment parvenir à l'intégration quand la réalisation de l'intégration est indispensable pour parvenir à l'intégration ?***

---

# Politiques européennes et nationales en matière de handicap *avant* la CDPH : résumé succinct (1)

*Années 90 :*

*Évolution des attitudes dans le sillage de l'approche sociale*

*→ réformes des politiques en matière de handicap dans la plupart des États membres de l'Union*

*Contexte important :*

- Concentration sur l'efficacité et l'efficience pour éviter l'« explosion des coûts »*
  - Initiatives politiques et modifications du cadre juridique pour augmenter le taux d'emploi des personnes handicapées (p. ex. au moyen de quotas et de services d'aide)*
  - Adoption de lois contre la discrimination*
  - Intensification des recherches sur les politiques en matière de handicap (Maschke w.y.)*
-

## Politiques européennes et nationales en matière de handicap *avant* la CDPH : résumé succinct (2)

*Important avant la ratification de la CDPH (et toujours pertinent) :*

- *Pressions (financières) sur les budgets sociaux et les politiques sociales*
  - *Questions sur la répartition « équitable » des aides*
  - *Débats sur les critères d'éligibilité à une aide sociale (priorité aux personnes qui ont déjà apporté une contribution à la société – quid des personnes atteintes de déficiences congénitales qui n'ont jamais été actives sur le marché du travail ? ...)*
  - *Définition du handicap/des personnes handicapées : quelles sont les personnes handicapées qui doivent être éligibles ?*
-

## Politiques européennes et nationales en matière de handicap *avant* la CDPH : résumé succinct (3)

*Situation similaire dans les États membres de l'Union européenne/les États européens avant la CDPH (qui reste elle aussi pertinente) :*

- Dans les politiques sociales, rarement de prise en compte expresse des personnes handicapées, souvent noyées dans les « catégories défavorisées »*
  - Niveau éducatif des personnes handicapées sensiblement inférieur à la moyenne*
  - Taux d'emploi des personnes handicapées nettement plus faible que la moyenne*
  - Taux de pauvreté des personnes handicapées largement supérieur à la moyenne*
-



## Politiques européennes et nationales en matière de handicap *avant* la CDPH : résumé succinct (4)

*Considérant le modèle appliqué du handicap dans la formulation des politiques et, dans ce sillage, les « **objectifs** » de la formulation des **politiques** (insistance sur la compensation, p. ex. en Autriche, la réadaptation, p. ex. en Allemagne, ou la participation, p. ex. en Suède) :*

*Certains pays européens :*

*... ont commencé relativement tôt à utiliser l'approche sociale du handicap (p. ex. Royaume-Uni)*

*... ont essayé de le faire, mais en continuant d'accorder une grande importance à l'approche individuelle (p. ex. Autriche)*

*... ont expressément choisi une « approche mixte » (octroi d'une aide sur la base de l'approche individuelle, mais à l'intérieur d'un cadre fort d'approche sociale) (p. ex. Suède)*

*(Maschke 2008, Naue 2008)*

---

## Politiques européennes et nationales en matière de handicap *avant* la CDPH : résumé succinct (5)

*Avant la CDPH :*

*En résumé, dans presque tous les États membres de l'Union européenne/les États européens, les personnes handicapées étaient confrontées à des obstacles substantiels au niveau de l'aide pour pouvoir participer à la vie quotidienne*

*Différentes stratégies ont été appliquées pour changer les choses, aboutissant à un ensemble obscur de mesures axées sur les personnes elles-mêmes, sur les barrières qui les empêchaient de participer à la société ou sur les deux*

---

# Adoption de la CDPH : « harmonisation » des politiques en matière de handicap

*Introduction de la CDPH :*

*La situation des approches différentes combinées pour améliorer la vie des personnes handicapées à un niveau fondamental, qui suscitait la confusion, a commencé à évoluer.*

*Par exemple, la Commission européenne a financé des recherches pour comprendre à quoi correspondait le statu quo dans différents pays et comment les exemples de meilleures pratiques pouvaient contribuer à transformer les politiques en matière de handicap dans le sens de la CDPH (important pour les changements politiques potentiels)*

*À l'évidence, le tout a (eu) lieu dans un contexte de difficultés certaines quant aux approches appliquées et à la diversité des environnements socio-politico-culturels*

---

## Mise en œuvre de la CDPH : nouveaux défis (1)

- *Traduction de la CDPH : dans plusieurs pays (pas seulement européens) dont la langue n'est pas une langue officielle des Nations unies, certains concepts et termes importants ont été mal traduits, ce qui a donné naissance à des controverses sur la teneur de la CDPH (p. ex. en ce qui concerne l'intégration, l'autonomie de vie, l'accessibilité et la participation)*
  - *Comment réorienter la législation et les pratiques politiques sous l'angle de la CDPH lorsque la législation ou les pratiques nationales ne reposent pas sur l'approche sociale du handicap ?*
  - *Pas de définition du handicap dans la CDPH, mais définitions dans les ordres juridiques au niveau national (p. ex. comment définir les groupes éligibles ?)*
-

## Mise en œuvre de la CDPH : nouveaux défis (2)

- *Comment mesurer le changement ? Absence criante d'indicateurs dans de nombreux États membres de l'Union européenne/États européens*
  - *Approches différentes du suivi de l'application de la CDPH conformément à son article 33 (nouveaux comités, comités relevant d'autres instances d'observation de la lutte contre la discrimination, comités de niveau fédéral ou régional, etc.)*
  - *Suivi par le Comité des Nations unies à Genève : les observations finales aboutissent-elles à une application durable ou s'arrêtent-elles aux discours politiques ?*
-

## Politiques européennes et nationales en matière de handicap et CDPH : imbrication entre les niveaux politiques (1)

*En ratifiant la CDPH (le 23 décembre 2010, sans le Protocole facultatif autorisant les plaintes individuelles), l'Union européenne a franchi une étape importante vers l'application d'une Convention des Nations unies en général, et de la CDPH en particulier*

*En marge de cet effet positif, l'application de la CDPH place les acteurs politiques face à un véritable défi :*

*Observations finales émises par le Comité des Nations unies à Genève sur les États membres de l'Union européenne et sur l'Union européenne en tant que telle : quelle est exactement la base de référence pour procéder à un changement ?*

---

## Politiques européennes et nationales en matière de handicap et CDPH : imbrication entre les niveaux politiques (2)

*Il est évidemment essentiel que l'Union européenne en tant que telle assume la responsabilité de la situation des personnes handicapées sur son territoire !*

*En revanche, en ce qui concerne les États membres, tout dépend en fin de compte*

*a) des observations finales respectives que leur adresse le Comité des Nations unies à Genève*

*b) et surtout, de la volonté des États membres de mettre en œuvre les politiques adoptées au niveau de l'Union européenne*

---

## La mise en œuvre des politiques européennes et nationales en matière de handicap : meilleures pratiques et défis

*D'un point de vue scientifique politique, mais aussi d'un point de vue pragmatique, les « meilleures pratiques » soulèvent une problématique épineuse :*

***Ce qui fonctionne dans le contexte A ne fonctionne pas nécessairement dans le contexte B !***

*Or le contexte est fondamental :*

*Il désigne la conjonction des facteurs sociaux, politiques, religieux, culturels, etc. qui déterminent la réussite ou l'échec de l'application de politiques données*

*Il faut tenir compte de la difficulté à transposer les politiques entre les régions et les périodes ! (cf. Prince 2010, McCann & Ward 2012)*

---



La mise en œuvre des politiques européennes et nationales en matière de handicap : meilleures pratiques – lien entre les lieux et les régions ?

*L'importance de l'élaboration des politiques dans un calendrier et un cadre géographique donnés :*

*Projet de loi en Autriche : « Erwachsenenenschutzgesetz » (loi sur la protection des adultes) fondée sur un procédé d'aide à la décision pour faciliter la prise de décision autonome et indépendante*

*Si cet exemple est retenu comme une meilleure pratique, il faut garder à l'esprit que l'Autriche a déjà une législation sophistiquée sur la tutelle (2006)*

*Alors, quels sont les enseignements de cette meilleure pratique pour la formulation des politiques à l'échelle européenne en dehors de l'évidence (la CDPH met l'accent sur l'aide à la décision) ?*

*Comment et sous quelle forme d'autres pays peuvent-ils suivre cet exemple ?*

---

La mise en œuvre des politiques européennes et nationales en matière de handicap : opposition aux exemples de meilleures pratiques

*Autre exemple, à nouveau en Autriche :*

*Les preuves abondent sur la réussite des écoles/de l'éducation favorisant l'inclusion dans les pays scandinaves (en complément à la tendance actuelle, motivée par des raisons financières, à diminuer le nombre d'étudiants dans les milieux inclusifs)*

*Pourtant, l'Autriche a décidé de ne pas imiter cette meilleure pratique, mais de créer ses propres « régions modèles pour l'éducation inclusive » et d'observer si ce système fonctionnait ou non en Autriche (à nouveau, cependant, problème pour transposer une région modèle d'un des neuf Länder à un autre...)*

---

# Mise en œuvre des politiques européennes et nationales en matière de handicap à la lumière de la CDPH :

## L'importance d'exemples de bonnes/meilleures pratiques

*En résumé, les exemples de meilleures pratiques - ou plutôt de bonnes pratiques - offrent une aide précieuse pour montrer **que** certaines politiques fonctionnent et que la CDPH peut réellement être appliquée, mais ils **ne disent pas** nécessairement **avec précision comment** appliquer certaines politiques dans le respect de la CDPH car cela dépend du contexte (période et lieu).*

*Il importe de remarquer que les discussions sur la CDPH qualifient parfois la Convention d'**utopie** - un état qui ne sera jamais atteint - et qu'il est donc d'autant plus important de montrer par le biais d'exemples de bonnes/meilleures pratiques qu'il est bel et bien possible d'appliquer la CDPH et ce que cela signifie concrètement.*

---

# La mise en œuvre des politiques européennes et nationales en matière de handicap : la stratégie européenne 2010-2020 en faveur des personnes handicapées (1)

*Mise en œuvre coordonnée des politiques dans le cadre de la stratégie européenne 2010-2020 en faveur des personnes handicapées : un engagement renouvelé pour une Europe sans entraves :*

*« La présente stratégie fournit un cadre permettant d'agir au niveau européen, mais aussi en association avec les mesures nationales, afin de répondre aux besoins disparates des hommes, des femmes et des enfants handicapés (...) Il est d'autant plus urgent d'agir que le ralentissement économique a eu des conséquences négatives sur la situation des personnes handicapées. La stratégie a pour but d'améliorer l'existence des personnes et d'apporter de plus grands bénéfices à la société et à l'économie, sans pour autant soumettre l'industrie et l'administration à des contraintes indues. »*

---

# La mise en œuvre des politiques européennes et nationales en matière de handicap : la stratégie européenne 2010-2020 en faveur des personnes handicapées (2)

*Stratégie européenne 2010-2020 en faveur des personnes handicapées : un engagement renouvelé pour une Europe sans entraves*

*« La stratégie met l'accent sur la suppression des entraves auxquelles se heurtent les personnes handicapées. La Commission a répertorié huit principaux domaines d'action : **l'accessibilité, la participation, l'égalité, l'emploi, l'éducation et la formation, la protection sociale, la santé ainsi que l'action extérieure.** »*

*→ Sujets transversaux – La stratégie européenne en faveur des personnes handicapées englobe donc littéralement tous les domaines politiques !*

---

# La mise en œuvre des politiques européennes et nationales en matière de handicap : évaluer l'application de la CDPH

*ANED (Réseau d'études européen d'experts dans le domaine du handicap),  
[www.disability-europe.net](http://www.disability-europe.net)*

*Créé par la Commission européenne en 2007 pour soutenir l'élaboration des politiques en collaboration avec l'unité « Handicap » de la Commission*

*Rapports nationaux et rapports de synthèse sur des sujets spécifiques –  
approche visant à lier les politiques nationales à celles de l'Union  
européenne et à procurer un aperçu des pratiques politiques*

*DOTCOM (Outil en ligne sur le handicap de la Commission), base de  
données publique*

---

# La mise en œuvre des politiques européennes et nationales en matière de handicap : fiche sur le handicap de l'ANED pour le semestre européen 2015/2016 – Aperçu de l'Union européenne (1)

*« Ce document synthétique européen s'appuie sur les fiches par pays préparées par les membres du Réseau d'études européen d'experts dans le domaine du handicap (ANED) en réponse aux programmes nationaux de réforme 2015 et aux recommandations spécifiques par pays relatives aux 28 États membres de l'Union européenne. Les principaux éléments de ces fiches par pays sont mis en relation avec les indicateurs statistiques pertinents à l'aide d'analyses des données et des politiques au niveau européen. Le rapport est présenté dans le cadre des priorités de l'examen annuel de la croissance afin d'alimenter la contribution de la Commission au processus révisé du semestre européen sous l'angle du handicap. »*

*Semestre européen : pas d'objectifs ou de mesures quantifiables spécifiques au handicap*

---

# La mise en œuvre des politiques européennes et nationales en matière de handicap : fiche sur le handicap de l'ANED pour le semestre européen 2015/2016 – Aperçu de l'Union européenne (2)

⊕ **Table 1: Europe 2020 and the significance of disability issues**

	<b>Europe 2020 targets</b>	<b>Headline issues</b>
<b>Employment</b>	75% of the 20-64 year-olds to be employed	People with disabilities continue to be disproportionately economically inactive, unemployed or under-employed. These inequalities persist across the life course but vary considerably between Member States.
<b>Education</b>	Reducing the rates of early school leaving below 10%	Young people with disabilities are consistently more likely to be early leavers than the general population and this begins a cumulative cycle of career disadvantage.
	At least 40% of 30-34-year-olds completing third level education	People with disabilities are less likely to complete a tertiary education
<b>Fighting poverty and social exclusion</b>	At least 20 million fewer people in or at risk of poverty and social exclusion	People with disabilities of working age are at high risk of household poverty and social exclusion across the EU and this is closely linked to low work intensity as well as the effectiveness of social protection measures.



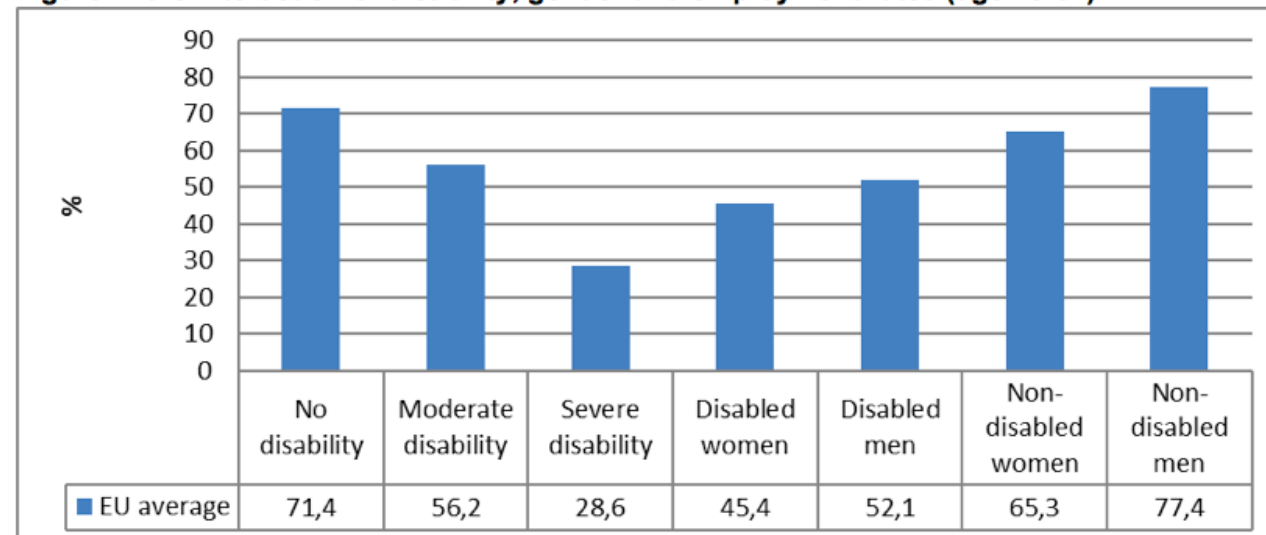
# La mise en œuvre des politiques européennes et nationales en matière de handicap : fiche sur le handicap de l'ANED pour le semestre européen 2015/2016 – Aperçu de l'Union européenne (3)

*Nécessité d'une approche d'intégration transversale des questions liées au handicap : exemple bref*

<p><a href="#">Employment rate</a></p>	<p>This headline target fiche should refer prominently to the employment gap experienced by disabled persons, providing evidence of this and identifying disability equality as a key challenge for Member States in meeting their overall employment target. It may be useful to refer to Article 27 CRPD and to the EU's Disability Strategy in this context.</p>
--	---

Tableau 3

Figure 1: the interaction of disability, gender and employment rates (age 20-64)



Source: EUSILC UDB 2013 – version 2 of August 2015

# La mise en œuvre des politiques européennes et nationales en matière de handicap : rapports par pays de l'ANED en vue du semestre européen (1)

*Autriche : aux prises avec les données*

- *Manque général de données spécifiques, les mesures du plan d'action national sur le handicap 2012-2020 sont vagues et il est donc difficile d'évaluer le statu quo et les changements*
  - *Les personnes handicapées ne sont pas visibles en tant que « groupe cible » distinct dans la formulation des politiques*
  - *Fragmentation du système politique autrichien, problème d'attribution des responsabilités eu égard à la structure fédérale du pays*
  
  - *Royaume-Uni : aux prises avec les politiques d'austérité*
  - *Excellentes statistiques officielles sur le handicap et l'emploi*
  - *Conséquences disproportionnées des politiques d'austérité sur les personnes handicapées*
-

## La mise en œuvre des politiques européennes et nationales en matière de handicap : rapports par pays de l'ANED en vue du semestre européen (2)

*Suède : niveau élevé de soutien, mais besoin de nouvelles initiatives*

- *Pas de changements importants dans les taux d'emploi et de chômage des personnes handicapées*
- *Augmentation progressive du niveau d'éducation des personnes handicapées*

*Portugal : aux prises avec les ressources*

- *Taux d'emploi sensiblement plus faible chez les personnes handicapées que chez les personnes non handicapées*
- *Législation sur l'éducation inclusive (2008) sous pression (contraintes budgétaires)*

---

## La mise en œuvre des politiques européennes et nationales en matière de handicap : rapports par pays de l'ANED en vue du semestre européen (3)

### *Hongrie : stratégies conflictuelles*

- *Objectif fondamental du gouvernement d'augmenter le taux d'emploi*
- *Diminution des prestations de handicap*
- *Les revenus des personnes handicapées ont baissé et leur taux d'emploi n'a pas augmenté*

### *Croatie : début de la mise en œuvre de la CDPH*

- *Dispositions relativement récentes sur les transferts sociaux, les mesures d'incitation et les possibilités d'emploi*
  - *Les changements viennent de commencer dans les stratégies d'éducation*
-

## La mise en œuvre des politiques européennes et nationales en matière de handicap : rapports par pays de l'ANED en vue du semestre européen (4)

*Irlande (n'a pas encore ratifié la CDPH) :*

- *Peu de changements de fond susceptibles d'améliorer la situation des personnes handicapées (p. ex. dans le domaine de l'emploi)*
- *Récits de mauvais traitements graves de personnes âgées atteintes d'un handicap intellectuel dans des milieux de vie en collectivité*

*Islande (a seulement ratifié la CDPH le 23 septembre, pas membre de l'UE) :*

- *Le plan d'action pour les personnes handicapées ne contient pas d'objectifs quantifiés comme la stratégie UE2020, les procédures d'évaluation sont vagues et mal définies*
  - *Très peu de données sur l'éducation et le handicap*
-

La mise en œuvre des politiques européennes et nationales en matière de handicap :

Que nous apprend ce tour d'horizon d'une sélection de pays européens ? (1)

*L'histoire et les « traditions » sur la façon de traiter certains « groupes » de la société laissent leur marque !*

*Pratiquement partout, les personnes handicapées forment le premier « groupe » affecté par les mesures d'austérité (parce qu'historiquement, les personnes handicapées n'étaient pas défendues par un porte-parole ni perçues comme individus titulaires de droits)*

*Bons ou mauvais élèves : le classement dépend dans une large mesure de la situation du pays avant la CDPH...*

*Données et statistiques incomplètes ou inexistantes (pas de données → pas besoin d'actions politiques, Stone 2002)*

---

La mise en œuvre des politiques européennes et nationales en matière de handicap :

Que nous apprend ce tour d'horizon d'une sélection de pays européens ? (2)

*Un travail substantiel doit être mené à bien pour appliquer la CDPH et son approche à l'égard des questions liées au handicap !*

*Obligatoire :*

*Informer l'ensemble des citoyens que l'intégration nous concerne tous, et pas seulement certaines personnes qui doivent être intégrées*

*Former les acteurs politiques au sens le plus large (pour les sensibiliser aux changements requis dans la formulation des politiques) – retour aux bonnes/meilleures pratiques*

*Faire participer les « personnes affectées », c'est-à-dire les personnes handicapées*

---

# La mise en œuvre des politiques européennes et nationales en matière de handicap : meilleures pratiques - ou plutôt bonnes pratiques (1)

*Dans le contexte des situations nationales décrites ci-dessus :*

*Les exemples de meilleures/bonnes pratiques sont un moyen de montrer comment l'application de la CDPH **peut** fonctionner au niveau national*

*P. ex. cas de services ou de mesures, mais aussi de personnes spécifiques*

*Exemple 1 :*

*Autriche, arbeitundbehinderung.at, 70 personnes handicapées ont accédé pour la première fois au marché du travail*

---



## La mise en œuvre des politiques européennes et nationales en matière de handicap : meilleures pratiques - ou plutôt bonnes pratiques (2)

*Exemple 2 :*

*Finlande, zeroproject.org, services destinés à permettre aux personnes handicapées (atteintes de troubles d'apprentissage) de trouver un emploi durable*

*Exemple 3 :*

*Europe, zeroproject.org, coopération d'une multitude d'OPH/GEE (Groupe d'experts européen sur la transition des soins institutionnels aux soins basés dans la communauté), mesures pour la formation, orientations sur la nécessité de soins basés dans la communauté et les risques des soins institutionnels pour les personnes handicapées*

---

La mise en œuvre des politiques européennes et nationales en matière de handicap : meilleures pratiques - ou plutôt bonnes pratiques (3)

*La liste des exemples de meilleures/bonnes pratiques est longue et renvoie à toute une série de questions différentes sur le handicap (p. ex. transports, éducation ou développement)*

*Comme cela a déjà été évoqué ci-dessus, cela démontre que les politiques fonctionnent quand on veut appliquer les dispositions de la CDPH !*

*Les exemples de meilleures/bonnes pratiques ne doivent pas être copiés aveuglément, mais adaptés à la lumière du contexte (national) de transposition – Ils offrent alors une source importante d'informations/de connaissances en vue de la formulation des politiques*

---

La mise en œuvre des politiques européennes et nationales en matière de handicap : meilleures/bonnes pratiques et changement de perspective

*Les meilleures/bonnes pratiques mettent spécialement en lumière un aspect important de l'application de la CDPH, à savoir la participation :*

*L'insistance de la CDPH sur la participation active et l'implication des personnes handicapées se reflète dans les meilleures pratiques en ce que ces pratiques montrent comment l'existence des personnes handicapées peut être améliorée - avec certitude et de façon raisonnable aux yeux des personnes « affectées » par certaines politiques !*

*Mais cette remarque, alors que j'approche la fin de mon exposé, soulève plusieurs questions brûlantes...*

---

Questions brûlantes :

Pour quoi, pour qui ? Pourquoi faut-il appliquer la CDPH ?

*Ce ne sont pas les réponses à ces questions qui sont complexes, mais le raisonnement qui les sous-tend...*

*En effet :*

*Certaines personnes ne se sentent pas concernées par les droits de l'homme - ou à tout le moins, les relativisent (et la CDPH appartient précisément aux droits de l'homme !)*

*De plus :*

*Certaines personnes ne se sentent pas concernées par les effets économiques positifs dont profiterait la société si elle n'excluait pas en moyenne 15 à 20 % de sa population de l'éducation et, dans la foulée, du marché du travail (à l'opposé : arrivisme en période de crise ou d'après-crise...)*

---

## Conclusion : travail encore à accomplir : appliquer la CDPH au sein de l'Union européenne et au niveau national

- *Nécessité d'une approche d'intégration horizontale des questions liées au handicap*
- *Nécessité d'une collecte de données ventilées sur le handicap*
- *Élaboration d'indicateurs au niveau de l'Union européenne pour soutenir le processus UE2020*
- *Les tendances politiques telles que la restriction de l'éligibilité à des prestations de handicap doivent être étudiées en contrôlant la dimension impliquant le handicap*
- *Et surtout : il faut agir !*

*« À défaut d'une perspective de l'égalité par rapport au handicap dans le suivi et l'étude d'impact des politiques, le risque existe que les personnes handicapées continuent de subir dans une mesure disproportionnée les effets des politiques de consolidation et d'austérité, ainsi que cela a été constaté dans plusieurs États membres. »*

*(Cf. ANED/Priestley 2016)*

---

## Conclusion : pourquoi faut-il respecter la CDPH ? (1)

### **Approche personnelle** (relativement puissante...) :

*... parce que nous avons compris que le handicap est une question de barrières et que les barrières nous affectent littéralement tous à un stade ou l'autre de notre vie (du landau au fauteuil roulant)*

*... parce que nous avons compris que la prise en considération de la diversité dans toutes ses facettes est avantageuse (pas seulement sur le plan économique) pour nous tous et que les préjugés sur les personnes handicapées (handicap = incapacité) doivent être renversés*

### **Approche basée sur les droits :**

*... parce que nous avons décidé, en tant que sociétés, de nous doter de principes pour vivre ensemble - les droits (de l'homme)*

---

Conclusion : pourquoi faut-il respecter la CDPH ? (2)

***Défis sur le chemin d'une approche basée sur les droits (de l'homme) :***

*« (...) il y a loin des droits humains proclamés aux droits effectivement mis en œuvre (...) [Le plan d'action] s'attache à définir les moyens de combler le fossé entre la noble rhétorique sur les droits de l'homme qui prévaut dans les couloirs de l'ONU [note de l'auteur : et dans bien d'autres endroits...] et les dures réalités du terrain. » (59<sup>e</sup> session de l'Assemblée générale des Nations unies, 26 mai 2005, p. 6)*

*Il nous incombe donc d'ouvrir la voie des exigences normatives (ce qui est déclaré/écrit) à la pratique politique (ce qui est fait)*

---

Je vous remercie pour votre attention !

Pour plus d'informations, veuillez me contacter par courrier  
électronique :

[ursula.naue@univie.ac.at](mailto:ursula.naue@univie.ac.at)

---