



Submission CRPD Draft General Comment on Art. 27 – 6 December 2021

## Submission of BAG WfbM Germany on the future General Comment on Art. 27 of the UNCRPD

5 Bundesarbeitsgemeinschaft Werkstätten für behinderte Menschen e. V. (BAG WfbM) is the German association of sheltered workshops. BAG WfbM is providing its 700 members with services like expert advice on questions related to employment, vocational education, financing and legal issues.

10 In Germany, sheltered workshops are highly specialised facilities for vocational rehabilitation which enable persons with severe disabilities to participate in working life. They provide vocational education and training, work opportunities and support in personal development for over 320,000 persons with intellectual, psychological and severe and multiple disabilities.

### General remarks

15 BAG WfbM welcomes the Draft General Comment on Article 27 as it clearly will push state parties to further implement the right to work and employment for persons with disabilities. As a matter of fact, we share the vision of an inclusive and accessible labour market in which every person can choose and accept their work freely.

Nevertheless, we are very concerned about the remarks regarding sheltered workshops as they are not taking in account the huge variety of models of sheltered workshops as well as the importance of services of sheltered workshops as part of the world of work.

20 Sheltered workshops in Germany are part of a system of support services regulated in the German social system and ensure for a large number of persons with severe disabilities their legal claim to work. They are social enterprises and at the same time provide person-centered services which enable and support persons with disabilities to participate in working life. BAG WfbM considers the services that sheltered workshops provide to persons with disabilities being an important tool for the creation of an inclusive labour market. The services are of utmost importance to ensure that persons with high and ongoing support needs are not left behind and are able to fully participate in work life.

30 Currently, there are not enough job opportunities for persons with disabilities. The Coronavirus crisis has made this situation even worse and an already competitive labour market even more competitive.

We therefore again emphasize that the services provided by sheltered workshops bridge the gap for persons with severe disabilities and continuing support needs between their right to work enshrined in Art. 27 and their access to work in real life.

35 In the following part of this submission, we will again point out facts of the German system of sheltered workshops which we strongly advice the UN-Committee should take into consideration for the revision of the Draft General Comment on Article 27.



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### **What is meant by “sheltered employment”?**

40 The stereotypes of sheltered workshops of the past do no longer apply. The term “sheltered”  
is misleading and no longer used. Workshops for people with disabilities in Germany are  
constantly developing and refining their services. This is proved by the growing number of  
community-based services, integrated workplaces, job coaching, individual placement sup-  
port and many other services, they provide. The transformation demanded in the Draft Gen-  
45 eral Comment is a constant dynamic process going on for several years.

### **Co-Production**

In this context, Co-production with all relevant stakeholders is an important part of the further  
development of the high-quality services provided by sheltered workshops in Germany.

50 Following the principle “nothing about us without us” German sheltered workshops are  
obliged by law to implement a workshop council and a women representative elected from  
and by the workshop users. These representative organs are involved in the shaping of ser-  
vices of sheltered workshops. Through their regional and federal representative associations,  
the workshop councils and women representatives are also involved in further developing the  
services and political activities.

### **55 Sheltered workshops and ableism**

Sheltered workshops in Germany are not the consequence of ableism. The fact that there  
are not enough working opportunities on the open labour market surely might be the result of  
ableism. Sheltered workshops therefor are one of many support systems for people suffering  
from ableism coming from the existing open labour market.

### **60 Focus group**

The UN-Committee claims that in disability laws and policies the diversity of persons with dis-  
abilities must be taken into account. We strongly agree; but the Draft General Comment itself  
seems to forget an important group of people

65 . There is a group of people with continuing support needs both in private and in working life  
due to their disabilities. Their right to work seems to be the most far away. Their opportunities  
to participate in working life must be enhanced and not negated by - now anyway - unrealistic  
demands on companies in the general labor market that do not even want to hire well-trained  
people with disabilities without ongoing need for support.

70 The great diversity of persons with disabilities should also be considered when the huge vari-  
ety of concepts of so-called sheltered workshops is evaluated.

### **False choice**

There cannot be a choice if there are no real alternatives. We agree. However, phasing out  
sheltered workshops would limit the existing choices for persons with disabilities.

### **Medical approach**

75 Persons with disabilities working in sheltered workshops in Germany are legally considered  
fully incapacitated for work. This concept is the legal precondition for being entitled to support



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services and financial compensation. The intention to choose a less deficit-oriented and discriminatory language should not result in a situation, where people with high support needs are no longer eligible for support services and other compensatory claims.

80 However, even if the legal precondition in fact reflects ableism and often follows a medical approach, this does not apply to the actual services provided by sheltered workshops.

They are on the contrary strictly person-centered, following a human rights approach, focusing on the skills and competences of the persons with disabilities taking into consideration the self-determination of the individuals

### 85 **Reasonable accommodation**

Sheltered workshops are experts in providing reasonable accommodation for persons with disabilities. The adaptation of work processes implies for example that special and individual devices are built, that a specific workplace is structurally redesigned or that a certain environment is created. There is and will be a need for these services to guarantee participation in working life for persons with disabilities, especially for persons with high support needs. These services can be offered by sheltered workshops wherever a person works.

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### **Access to inclusive education and inclusive vocational training**

The services of German sheltered workshops in the field of vocational education are an important part of the German educational system. Many different skills are trained with the objective to individually develop, enhance, or recover the performance and ability to work for each person with disabilities. This is done by promoting the personal development of the participants, systematically developing their professional and life skills, and preparing them for working life either in the sheltered workshops department of work or on the open labour market. According to a holistic educational concept, the vocational action ability of each participant is built and developed in a person-centered way. This includes various measures as the spectrum of services offered must be as broad as possible to correspond with the individual skills but also respect the type and severity of the disability.

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To enable and simplify a transition from vocational education to work, sheltered workshops in Germany work together with regional Chambers of Crafts, Trade and Commerce in order to certificate the capacities and attainments on an equal basis with others.

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### **The right to equal remuneration for work of equal value**

While sheltered workshops develop and refine their services, the existing legislation in Germany also changes. Many legal innovations have been introduced to empower persons with disabilities, to facilitate individual reasonable accommodations, to provide alternatives and to give them new opportunities, such as the Budget for Work, the Budget for Vocational Training, the so-called Other Service Providers, inclusive enterprises, and others.

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The topic of remuneration in sheltered workshops has been discussed for years. The existing legislation does not enable sheltered workshops to provide persons with disabilities with an adequate remuneration. There is an urgent need to change the legislation. In 2019 the German government started a reform process to assess the existing legislation and improve the current financial situation of persons with disabilities in sheltered workshops. Sheltered

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workshops and representative organisations of persons with disabilities are involved in the reform process. Their common goal is to achieve that the right to the opportunity to gain a living by work will be implemented. As a result of the process, it is crucial that persons with disabilities won't lose their existing legal claims to services and additional financial subsidies.

### **The impact of new technologies**

In a more and more digitalised world, access to technologies and the enablement to use them is extremely important in supporting persons with severe disabilities and high support needs in the world of work. Not only can digitalisation lead to new possibilities such as performing previously impossible work tasks. Through the use of technologies as well as blended learning approaches new methods of vocational education and training are also accessible. Additionally, supported decision-making and self-determination of persons with disabilities are enhanced.

The coronavirus crisis has even more emphasized the need for digitalisation for persons with disabilities, service providers and services. Location-independent service provision will become an even more important and integral part of the services of sheltered workshops.

### **Conclusion**

There is a variety of models of so-called sheltered workshops. The models and concepts differ from country to country which makes it impossible to compare them. However, any attempt to compare the different systems must always start from the individual and not from the name of the facility. The result would be that German sheltered workshops offer a group of persons with particularly severe disabilities the opportunity to work, who in many other countries would not have access to work but would instead be in day structures or at home.

Additionally, sheltered workshops in Germany are in an ongoing process of transition towards the compliance with Article 27 UNCRPD. They are one of many services working seamlessly hand in hand to create a permeable system. Every offer is an important component of the system of vocational rehabilitation providing that each person with disabilities can decide freely, in a self-determined way.

The General Comment on Art. 27 UNCRPD should encourage state parties to change the existing legislation to enable and ensure that the services of sheltered workshops fully comply with the obligations regarding article 27 of the UNCRPD and that persons with disabilities have real choices. If Sheltered Workshops and therefore their services fully comply to the principles of article 27 of the UNCRPD they bridge the gap for persons with severe disabilities and continuing support needs between their right to work enshrined in Art. 27 and their access to work in real life.