



To: European Commission's Directorate-General for
Employment, Social Affairs and Inclusion

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1. Introduction

The Dutch section of the International Commission of Jurists, NJCM, appreciates the opportunity to join in the discussion on how to support the EU Social Pillar within all EU countries and regions. The corona pandemic only underscores the urgent need for an adequate implementation of this pillar. People are facing many uncertainties. The inequality is growing and the most vulnerable people are hit the hardest by the measures states are taking.¹ Therefore, NJCM believes that Member States should make extra effort to protect and ensure that the social rights of citizens are well implemented. We consider the Pillars Action Plan to be a useful tool that could support Member States in transforming social rights in real action to ensure an inclusive Europe.

This contribution addresses issues that are related to Principle 2 Gender Equality and Principle 3 Equal Opportunities. Since these principles are interrelated with the other principles of the Social Pillar the issues that are outlined in this document should not be read in isolation. NJCM is a Dutch organisation with expertise on human rights in the Netherlands. Therefore, this contribution focuses and elaborates on issues mainly in the Dutch context. However, the choices we have made in this document do also apply to other EU Member States.

The second part of this contribution focuses on Principle 2 Gender Equality and addresses the issues of paternity leave, gender pay gap and violence against women. The third and fourth section focus on Principle 3 Equal Opportunities. In the third part we address discrimination and inequality based on ethnic origin in the labour market. The fourth section discusses equal opportunities for persons with disabilities. The final section contains the conclusion of our contribution.

In every section we first describe the issue and subsequently propose concrete policy acts and/or legal initiatives that could contribute to the Pillar's Action Plan.

¹ See e.g. Juan C. Palomino, Juan G. Rodríguez, Raquel Sebastian, *Wage inequality and poverty effects of lockdown and social distancing in Europe* (2020) *European Economic Review*, Volume 129 and F. Fasani and J. Mazza, *Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response*, https://ec.europa.eu/knowledge4policy/publication/immigrant-key-workers-their-contribution-europes-covid-19-response_en.

2. Gender Equality

2.1. Paternity leave

Currently, 17 EU Member States have adopted regulations that meet the proposed minimum of two weeks of paternity leave at the time of the child's birth. Yet, just 13 of these Member States offer two weeks of *well-paid* paternity leave.² In the Netherlands, fathers receive one week of paternity leave on full pay. Since July 2020, Dutch law allows fathers to take up to five weeks of extra paternity leave, which can be taken within six months of the child's birth. However, during these extra weeks of paternity leave, the father will only receive a maximum of 70% of their usual income. This significant reduction of income could, especially for fathers in low-income families, become too big of an obstacle to take paternity leave. This is a strong disincentive for fathers to take paternity leave, which is worrisome as research shows that this adds to maintaining the traditional gender division.³ Besides, it is not possible in the Netherlands for self-employed fathers to appeal for the extra paternity leave. If these fathers wish to take leave after their child is born there is no insurance that would cover this leave.⁴ Therefore, self-employed fathers are required to pay for their own paternity leave, if they can.

Although the period of paternity leave has been extended in most EU Member States, the period is still very short. A longer period of paternity leave would contribute to more gender equality at home and at work, and it would change perceptions of paternity roles and stereotypes (also related to Principle 9). We suggest that the Pillar's Action Plan adopts a view that fathers, including those that are self-employed, receive full pay during the two weeks minimum of paternity leave. This approach ensures that all fathers will have an equal paternity leave without having to worry about loss of income, and traditional gender roles could be revised.

2.2. Pay gap between men and women

On average, the pay gap between men and women in the EU is at a 16% difference and this number has barely changed in the last decade.⁵ The height of the pay gap differs significantly between Member States.⁶ The existence of a pay gap may be due to lower participation of women in the labour market.⁷ Men often work full-time, have more experience, and, as a result, are more likely to obtain a management or board position contrary to women.⁸ Across all Member States, women are underrepresented in management positions and on the board of companies.⁹ Of all CEOs in the Netherlands, only 12% are women.¹⁰ The difference in the height of the wages of men and women is the highest among employees with children.¹¹ Women often spend less

² European Commission, *Paternity and parental leave policies across the European Union*, 2018, page 3.

³ European Commission, *Paternity and parental leave policies across the European Union*, 2018, page 5.

⁴ Willem Bisseling, *Gun ook zvp-vaders een goed ouderschapsverlof*, De volkskrant, 18 November 2019.

⁵ European Institute for Gender Equality, *What lies behind the gender pay gap*, 31 October 2019, <https://eige.europa.eu/gender-statistics/dqs/data-talks/what-lies-behind-gender-pay-gap>.

⁶ Ibid.

⁷ Ibid.

⁸ European Institute for Gender Equality, *What lies behind the gender pay gap*, 31 October 2019, <https://eige.europa.eu/gender-statistics/dqs/data-talks/what-lies-behind-gender-pay-gap>; European Parliament Directorate-General for Internal policies, *The policy on gender equality in The Netherlands*, Brussels, September 2015, page 13.

⁹ European Parliament Directorate-General for Internal policies, *The policy on gender equality in The Netherlands*, Brussels, September 2015, page 13.

¹⁰ Prof. dr. Mijntje Lückcrath-Rovers, *The Dutch Female board Index 2020*, Tias School for Business and society, 2020, page 4.

¹¹ European Parliament Directorate-General for Internal policies, *The policy on gender equality in The Netherlands*, Brussels, September 2015, page 13.

time in paid work than men, while women spend more time in caring duties and on housework (interrelated with Principle 9).¹²

In its last concluding observations, on the situation of the Netherlands, the UN Committee on Economic, Social and Cultural rights expressed their concern with (1) the large number of women working part time, which is considerably higher than the European Union average, (2) the low number of women in decision-making positions, in particular female mayors, and (3) the low percentage of women on company boards of directors.¹³ The Committee is further concerned with the persistence of stereotypes regarding childcare and the roles of women and men in family and society.¹⁴ Another concern of the Committee relates to the significant gender pay gap, particularly in the private sector. Women's average gross hourly earnings are 14% lower than men's.¹⁵ Recently, the European Committee on Social Rights came to the conclusion in the case *University Women of Europe v. the Netherlands*¹⁶ that the Dutch government has to take more action to reduce the pay gap. The Netherlands Institute of Human Rights states that there should be laws about the transparency of wages.¹⁷ This will make it easier on the national level for women to ask for an equal wage. The ESCR Committee recommends the Dutch government to make campaigns about the gender pay gap.¹⁸

We suggest that in the Pillar's Action Plan the importance of awareness on the national level on stereotypes of men and women are underlined. We also suggest that on EU level a database will be developed where states and private actors can share their initiatives on how to close the gender pay gap and stimulate to hire women in decision-making positions. These positive examples could inspire states and private actors to create policies that stimulate gender equality.

2.3. Violence against women

Last year, a report published by the UN Special Rapporteur on violence against women concluded that, over the past 25 years, violence against women has been recognized as a violation of women's human rights and a form of gender-based discrimination.¹⁹ According to the UN, *every day* 137 women worldwide are killed by their family, their partner or ex-partner.²⁰ And not even all murders are being registered or counted. In the Netherlands alone, every 10 days a woman dies as a result of gender-based violence.²¹ The UN Committee on the Elimination of Discrimination against Women has also clearly outlined the relation between gender inequality and violence against women.²² Violence against women in EU Member States is a serious problem and during the recent COVID-19 lockdowns the numbers of incidents even have increased in Europe.²³ It remains an urgent issue in the Netherlands, too.²⁴ The Netherlands

¹² European Institute for Gender Equality, *What lies behind the gender pay gap*, 31 October 2019, <https://eige.europa.eu/gender-statistics/dqs/data-talks/what-lies-behind-gender-pay-gap>.

¹³ UN Committee on Economic, Social and cultural rights, *Concluding observations*, 6 July 2017, point 22.

¹⁴ UN Committee on Economic, Social and cultural rights, *Concluding observations*, 6 July 2017, point 22.

¹⁵ CBS, *Gender pay gap still narrowing*, 1 May 2020, <https://www.cbs.nl/en-gb/news/2020/18/gender-pay-gap-still-narrowing>.

¹⁶ ECSR 6 December 2019, *University Women of Europe v. The Netherlands*, Complaint No. 134/2016.

¹⁷ The Netherlands Institute for Human Rights, *Europese Toezichthouder tikt Nederland op de vingers vrouw verdient nog steeds minder dan man voor hetzelfde werk*, 19 August 2020, <https://mensenrechten.nl/nl/nieuws/europese-toezichthouder-tikt-nederland-op-de-vingers-vrouw-verdient-nog-steeds-minder-dan>.

¹⁸ UN Committee on Economic, Social and cultural rights, *Concluding observations*, 6 July 2017, point 23.

¹⁹ UN Special Rapporteur Violence against Women, *Violence against women, its causes and consequences*, 20 June 2019, page 6.

²⁰ One World, *In Nederland sterft elke 10 dagen een vrouw als gevolg van huiselijk geweld*, <https://www.oneworld.nl/lezen/seks-gender/feminisme/nederland-heeft-een-femicide-probleem/>

²¹ Ibid.

²² UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 35.

²³ Amanda Taub, *How domestic abuse has risen worldwide since coronavirus*, 6 April 2020, The New York Times.

Institute on Human Rights has stated that the causes of violence against women are rooted, among other things, in the unequal power relationship of men and women.²⁵ Stereotypes of men and women play a big role in maintaining this situation.²⁶ Moreover, traditional and religious values are used as a justification²⁷ for gender inequality and a lack of economic independence increases women's vulnerability.²⁸

To reduce stereotypes of men and women, there needs to become more awareness of and active involvement in responding to various forms of stereotyping on a societal level. Counteracting stereotypes will help to reduce the imbalance in relationships that could avoid violence against women. The Commission on the Status of Women emphasizes that prevention should start in early life by educating young children and promoting respectful male female relationships and gender equality.²⁹ In addition, police should be trained in becoming more aware of signs of gender-based violence against women and provide information about available legal recourses to victims. Furthermore, the reporting of such violence and the intervention of bystanders should be encouraged, the stigma experienced by victims/survivors of such violence should be addressed and the commonly held victim-blaming beliefs under which women are responsible for their own safety and for the violence that they suffer should be dismantled.³⁰

We suggest that the Pillar's Action Plan incorporates more legislation that allows the eviction of the violent partner. In the statement by the UN Special Rapporteur on violence against women, she emphasized that the pre-existing legal shortcomings in law increased the risk of violence against women during the COVID-19 pandemic.³¹ The UN Special Rapporteur mentions as legal shortcomings the non-recognition of psychological violence as violence against women, the lack of criminalisation of marital rape or lack of laws or measures to address sexual violence, incest, forced early marriages, female genital mutilation, as well as other forms of sexual, psychological, physical and economic abuse.³² Currently, involuntary sex is only classified as rape when it is accompanied by violence and coercion in the Netherlands.³³ Amnesty International has written a report in which is stated that the relevant criterion for rape has to be the lack of assent of the victim and not the coercion.³⁴ The Dutch government has now proposed legislation that would expand the recognition of sexual offences as a criminal act by punishing all forms of involuntary sex as rape.³⁵

²⁴ Research and Documentation Centre, *De prevalentie van huiselijk geweld en kindermishandeling in Nederland*, <https://www.rijksoverheid.nl/documenten/rapporten/2019/02/05/de-prevalentie-van-huiselijk-geweld-en-kindermishandeling-in-nederland>, February 2020.

²⁵ The Netherlands Institute for Human Rights, *Geweld tegen vrouwen*, <https://mensenrechten.nl/nl/geweld-tegen-vrouwen>.

²⁶ *ibid.*

²⁷ Rosamund Shreeves and Martina Prpic, Briefing European Parliament, *Violence against women in the EU*, November 2019, page 2.

²⁸ Rosamund Shreeves and Martina Prpic, Briefing European Parliament, *Violence against women in the EU*, November 2019, page 2.

²⁹ UN Women, *What we do: Ending violence against women: Focusing on prevention to stop violence*, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/prevention>.

³⁰ UN Committee on the Elimination of Discrimination against Women, General Recommendation No 35, point 30.

³¹ UN Special Rapporteur on Violence against Women, *Its causes and consequences*, 9 Octobre 2020, page 4.

³² *Ibid.*

³³ Amnesty International, *Seksueel geweld in Nederland*, <https://www.amnesty.nl/seksueel-geweld-in-nederland#:~:text=Door%20slechte%20wetgeving%20gaan%20veel,gezegd%20of%20zich%20hebben%20verzet>.

³⁴ Amnesty International, *Let's talk about yes, Wetgeving schendt Internationale Verdragen*, <https://www.amnesty.nl/wat-we-doen/campagnes/letstalkaboutyes/dossier>.

³⁵ Rijksoverheid, *Nieuwe wet verlaagt drempel voor strafbaarheid verkrachting*, 5 November 2020, <https://www.rijksoverheid.nl/actueel/nieuws/2020/11/05/nieuwe-wet-verlaagt-drempel-voor-strafbaarheid-verkrachting>.

3. Discrimination based on ethnic origin

Participation of ethnic minorities within the labour market is fundamental to a society that aims to foster inclusion. This is also stressed in Principle 3: “equal opportunities of underrepresented groups shall be fostered.” The EU has developed strong frameworks and laws that prohibit employment discrimination based on ethnic or racial origins, religion or beliefs (the Racial Equality Directive (2000/43/EC)). The EU Directive 2000/78/EC contains a general framework for equal treatment in employment and occupation, empowering it to combat discrimination based on religion or belief, age, disability and sexual orientation in the labour market. Moreover, there is a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008) 426 final). However, research has shown that there is still an evident polarity between law and practice in the labour market in almost every EU Member State.³⁶

The position and access of minorities and migrants to the European labour markets, in comparison to people who do not have a migration background, is one of less opportunities and minorities and migrants experience direct and/or indirect discrimination.³⁷ For instance, minorities persistently experience unfavourable treatment when applying for a job³⁸, ethnic minorities have fewer chances of getting through recruitment processes and tend to have jobs further down the hierarchy with lower incomes.³⁹ Not to mention the persistent disadvantages of women on the labour market (e.g. gender pay gap).⁴⁰

All Member States have taken anti-discrimination measures with regard to the labour market. These measures can only be effective if they include an intersectional approach that aims to understand this multifaceted issue. The multi-layered nature of discrimination can be explained through intersectionality in e.g. the discrimination of women wearing the hijab, which goes beyond gender discrimination, or discrimination on religious or racial grounds. Similarly, an intersectional approach helps to understand the discrimination faced by the LGBTQI community from an anti-racist perspective, instead of focusing solely on “homophobia”. In 2018, the European Network Against Racism (ENAR) and the Center for Intersectional Justice (CIJ) published a report on intersectionality in the context of discrimination and racism. The report stresses the need for an intersectional approach in combating discrimination and racism.⁴¹ Only with an intersectional approach it is possible to tackle the complexity of racism and discrimination to achieve an inclusive labour market.⁴²

³⁶ The European Network Against Racism, shadow report 2013-2017. <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/-/renewed-efforts-needed-to-eliminate-racial-discrimination-especially-in-the-workplace-say-heads-of-europe-s-human-rights-organisations>.

Ethnic Discrimination, the Structure of the Labour Market and Economic Conditions: Regional and International Comparisons, Edvard Nergård Larsen, University of Oslo.

³⁷ Ibid.

³⁸ Baert, S., De Meyer, A.-S., Moerman, Y., & Omeij, E. (2018). Does size matter? Hiring discrimination and firm size. *International Journal of Manpower*, 39(4).

Quilliam, L., Heath, A., Pager, D., Midtbøen, A., Fleischmann, F., & Hexel, O. (2019). Do some countries discriminate more than others? Evidence from 97 field experiments of racial discrimination in hiring. *Sociological Science*, 6, 467–496. doi:10.15195/v6.a18

³⁹ See: Research labour discrimination by Panteia (independent research organisation), 2020.

International perspectives on equality, diversity and inclusion. Volume 6. Race and discrimination and management of ethnic diversity and migration at work: European countries' perspectives. 2019.

⁴⁰ Article ‘analyzing the gender gap in European labour markets at the NUTS-1 level’, Rosalia Castellano, Antonella Rocca, 2019.

⁴¹ The European Network Against Racism and the Center for Intersectional Justice, *Intersectional discrimination in Europe: relevance, challenges and ways forward*, September 2020.

⁴² See <https://www.weforum.org/agenda/2020/07/diversity-inclusion-equality-intersectionality>

The Netherlands

In the Netherlands, recent research shows that particular ethnic groups that are already stigmatised in the Netherlands (i.a. citizens with a Moroccan, Turkish and Muslim background) perceive discrimination on the labour market. They often experience an additional burden in (entering) the labour market and in their subsequent future careers due to discriminatory practices.⁴³ A research conducted in Amsterdam showed that in 2019, 142 citizens made official complaints about labour discrimination to the complaint mechanism discrimination region Amsterdam ('Meldpunt Discriminatie Regio Amsterdam MDRA). This number demonstrates an increase with the 113 complaints in 2018. This research found simultaneously that 14% experience discrimination at work being subjected to micro level aggressions of racism, too.⁴⁴

In 2019 the Dutch Ministry of Social Affairs and Employment developed policies that made it obligatory for employers to implement measures to combat discrimination ('mystery calling-research'). This development is welcomed. However, these policies lack an intersectional approach. Also Dutch research has shown that no sustainable changes have been achieved: no decrease of ethnic and racial discrimination on the labour market is noted and the income gap has not been closed.⁴⁵ Hence, based on the unfortunate status quo that inequality on the labour market is still experienced by too many in the Netherlands, the Dutch government could benefit from further guidance from the European institutions to ensure equal treatment and opportunities regarding employment (Principle 3).

We suggest that the Pillar's Action Plan include recommendations and tools for Member States to take more preventive and proactive legal and enforcement measures from an intersectional point of view with regards to ethnic, racial and religious discrimination in the context of employment/labour market. The Pillar's Action Plan should include similar recommendations, as the one that were drafted by the European Human Rights organizations.⁴⁶ These recommendations include tougher sanctions, and amendments to working practices to promote a diverse and inclusive Europe. Moreover, we suggest that the Action Plan encourage states to adopt a national action plan against racism by using both soft (recommendations) and hard measures (i.a. enforcement actions) from an intersectional perspective.

4. The rights of persons with disabilities

Research shows that over 30% of disabled persons in the EU run the risk of experiencing social exclusion or poverty, whereas only 20% of persons without disabilities run that risk, which is a significant difference.⁴⁷ Concerns have been raised particularly with regard to the opportunities and protection of persons with disabilities in the labour market,⁴⁸ and the increased vulnerability

⁴³ See: Research 'Perceived discrimination in the Netherlands 2019', by SCP, Ministry of Social Affairs and Employment.

⁴⁴ News article by the Parool, 'Aantal meldingen van arbeidsdiscriminatie in Amsterdam neemt toe', september 2020.

⁴⁵ Lex Thijssen, Marcel Coenders en Bram Lancee: 'Etnische discriminatie op de Nederlandse arbeidsmarkt. Verschillen tussen etnische groepen en de rol van beschikbare informatie over sollicitanten', in: *Mens en Maatschappij* (juli 2019). (Research on ethnic discrimination on the Dutch labour market. Differences between ethnic groups and the role of available information about job applicants.)

Research 'Perceived discrimination in the Netherlands 2019', by SCP, Ministry of Social Affairs and Employment.

Research labour discrimination by Panteia (independent research organisation), 2020.

⁴⁶ See: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/-/renewed-efforts-needed-to-eliminate-racial-discrimination-especially-in-the-workplace-say-heads-of-europe-s-human-rights-organisations>

⁴⁷ European Commission. Thematic Factsheet European Semester - Social Inclusion. 30 October 2017, p. 4.

⁴⁸ United Nations, Conference of States Parties to the Convention on the Rights of Persons with Disabilities, 9-11 June 2015.

of women and children in that context.⁴⁹ Currently, merely 50% of EU citizens with disabilities that seek employment have a job.⁵⁰ In order to facilitate disabled persons' labour market entry, it is crucial that children of persons with disabilities have access to services such as childcare. In practice, however, it appears that children of parents with disabilities, as well as children with disabilities themselves are generally less able to make use of services such as childcare.⁵¹ This occurrence affects the position of disabled parents on the labour market, and can damage the extent to which children with a disability can enjoy social inclusion. Therefore, special attention is needed for people with disabilities.⁵²

Whereas this contribution focuses primarily on Principle 3: Equal Opportunities, it is necessary to consider this principle in relation to Principle 4 (stipulating that everyone has the right to tailor-made assistance to employment), and Principle 17 (providing for the inclusion of people with disabilities), as these principles taken together provide the basis for increasing the ability of persons with disabilities to participate in the labour market on an equal basis in real life, and not only formally.

4.1 *The regulatory framework*

The EU fundamental rights framework and in particular to the CRPD is meant to function as a 'driver of change' for the EU member states.⁵³ Yet, different approaches to disabilities exist throughout the European Union. Whereas several Member States have advanced the inclusion of person with disabilities, others have moved towards the medicalisation of disabilities.⁵⁴ Medicalisation of disabilities is an occurrence that can be identified across several EU member states and is used for medical assessments, which may be used to test a person's eligibility to receive benefits under legal provisions. A variety of approaches have formed the basis for strategies to combat discrimination and exclusion of persons with disabilities in the domain of employment.⁵⁵ Consequently, the rights of persons with disabilities are promoted through various initiatives on the national level, each with a specific focus.⁵⁶ For instance, Greece has launched a National Action Plan for Human Rights, specifically aimed at accessibility, social inclusion, as well as employment support.⁵⁷ Like the Greek action plan, the Polish National Action Plan for Equal Treatment is also rather socially constructed, and focuses on equal treatment for people with disabilities in the labour market, and aims at increasing disabled persons' accessibility to goods and services.⁵⁸ Both systems, moreover, account for improvement of disabilities' rights with regard to education and healthcare,⁵⁹ which is also an important objective of the Latvian strategy.⁶⁰ Belgium applies strategies per region, resulting in different approaches in Flanders

⁴⁹ European Union Agency for Fundamental Rights. Letter to the Office of the United Nations High Commissioner for Human Rights on the Human Rights Council Resolution 31/6 (Ref. 2016-outgoing-000919). 30 June 2016.

⁵⁰ European Commission. A strong social Europe for just transitions. January 2020.

⁵¹ European Commission. Thematic Factsheet European Semester - Social Inclusion. 30 October 2017, p. 11-12.

⁵² European Commission. Thematic Factsheet European Semester - Social Inclusion. 30 October 2017, p. 11-12.

⁵³ European Union Agency for Fundamental Rights (FRA). Fundamental Rights Report 2016.

⁵⁴ Waddington, L & Priestley, M. (2020). A Human Rights Approach to Disability Assessment. *Journal of International and Comparative Social Policy*.

⁵⁵ European Union Agency for Fundamental Rights (FRA). Communication Human Rights Council Resolution 31/6, Ref: 2016-outgoing-000919 (30 June 2016).

⁵⁶ European Union Agency for Fundamental Rights (FRA). Implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD): An overview of legal reforms in EU Member States. May 2015.

⁵⁷ Greece, Ministry of Justice. Transparency and Human Rights (2014), National plan for Human Rights.

⁵⁸ Poland, National Action Plan for Equal Treatment 2013–2016. 10 December 2013.

⁵⁹ European Union Agency for Fundamental Rights (FRA). Implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD): An overview of legal reforms in EU Member States. May 2015, p. 3.

⁶⁰ Latvia, Decree on the Implementation plan 2014 of the Guidelines for the implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014-2020. 3 September 2014.

and Wallonia.⁶¹ Several Eastern European countries, such as Croatia,⁶² Estonia,⁶³ Lithuania⁶⁴ and Slovakia,⁶⁵ have developed action plans complementary to their general policies, for instance, by including specific plans for institutional care and care in the family. Similarly, Bulgaria's action plans focus on employment, as well as on combating poverty and increasing social inclusion,⁶⁶ and the Czech national plan covers a variety of policy areas, such as accessibility, equality and non-discrimination.⁶⁷ Furthermore, different approaches are taken when it comes to disabilities' rights in the labour market.⁶⁸ Some EU member states, such as Portugal⁶⁹ and Spain,⁷⁰ focus on employer incentives for hiring persons with disabilities. The Dutch government has adopted a similar approach, by including employers' organisations in the implementation strategy of the CRPD.⁷¹ However, in the Netherlands, the vulnerability of the social and economic position of disabled persons is evident by the fact that 23% of disabled people are at greater risk of being subjected to social exclusion and poverty.⁷² Persons with disabilities that cannot work fulltime due to their disability are still earning less than minimum wage⁷³ and unemployment rates for persons with disabilities are much higher than those for persons without disabilities.⁷⁴ Moreover, particularly women with disabilities experienced an increase of social exclusion as well as unemployment.⁷⁵ One of the developments to have caused more exclusion of disabled persons in the labour market concerns the alteration of social employment schemes in the Netherlands. Namely, in 2015, the Participation Act came into effect,⁷⁶ focusing on people's *abilities* rather than their *disabilities*. In other words, the Act aims to encourage everyone who is able to perform work to join the regular job market,⁷⁷ where they may have to compete with candidates who do not have a disability and who may need less guidance and therefore have an advantage. The implementation of the Participation Act is under local responsibility on the municipal level. Although this local approach should not make a difference with regard to the degree of services and support for disabled persons, it may lead to fragmentation of available facilities for disabled persons per region or city. Another policy change that occurred in the past years is the introduction of the Wajong: the Act providing for disability

⁶¹ Belgium, Action Plan concerning disability 2012- 2014 in the framework of the application of the Open Coordination Method in the Flemish equal opportunity policy.

⁶² Croatia, Plan for Deinstitutionalisation and Transformation of Social Welfare and Other Legal Entities Providing Social Care Services in the Republic of Croatia 2011 – 2016 (2018).

⁶³ Estonia, Special Care Development Plan 2014- 2020.

⁶⁴ Lithuania, Action Plan for 2014-2020 on transformation from institutional care to care in the family and the community for persons with disability and children without care of parents.

⁶⁵ Slovakia, National Programme for the Development of living conditions of persons with disabilities in 2014 – 2020.

⁶⁶ Bulgaria, Action Plan for 2012-2013 for the implementation of the long-term employment strategy for people with disabilities 2011-2020; National strategy for long-term care ; National strategy for combating poverty and promotion of social inclusion 2020 ; Long-term strategy for employment of people with disabilities 2011 – 2020 ; Vision of deinstitutionalisation of children.

⁶⁷ Czech Republic, Office of the Government of the Czech Republic, 1 June 2015.

⁶⁸ European Union Agency for Fundamental Rights (FRA). Implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD): An overview of legal reforms in EU Member States. May 2015, p. 12.

⁶⁹ Portugal, Decree Law 131/2013 as the second amendment to the Decree-Law 290/2009, of 12 October, modified by Law 24/2011 of 16 June, extending some funding to public entities targeting at the development of employment and qualifying policies for people with disabilities, 11 September 2013.

⁷⁰ Spain, Act No. 11/2013, on Measures to Support Entrepreneurs and Foster Economic Growth and Job Creation, BOE No 179, 27 June 2013.

⁷¹ Netherlands, Ministry of Health, Welfare and Sport (Ministerie van Volksgezondheid, Welzijn en Sport) (2015), Action Plan for the Implementation of the CRPD, 12 June 2015.

⁷² EU Social, tweet of 20 October 2020.

⁷³ Algemeen Dagblad, *Noortje (23) blijft strijden voor eerlijk loon werknemers met een beperking*, <https://www.ad.nl/ad-werkt/noortje-23-blijft-strijden-voor-eerlijk-loon-werknemers-met-een-beperking-a0229983/>

⁷⁴ Alliantie VN-verdrag Handicap. Schaduwrapportage Verdrag inzake de rechten van personen met een handicap in Nederland. 3 December 2019, p. 40.

⁷⁵ Alliantie VN-verdrag Handicap. Schaduwrapportage Verdrag inzake de rechten van personen met een handicap in Nederland. 3 December 2019, p. 15.

⁷⁶ Participatiewet, replacing the Work and Social Assistance Act (Wet Werk en Bijstand) and the Social Work Facilities Act (Wet Sociale Werkvoorzieningen).

⁷⁷ Belangenennetwerk Verstandelijk Gehandicaptten. Participatiewet. Accessed: 12 November 2020.

benefits and labour support for young people who are sustainably disabled.⁷⁸ Although the Act was meant to provide support for young handicapped persons, the conditions for eligibility for receiving financial benefits in case of inability to find suitable work were made stricter. As a result, a large group, including persons with Down's Syndrome or autism, fall between the cracks and no longer qualify for benefits.⁷⁹ The policy, therefore, works counterproductively, and practically excludes persons with disabilities.

The stricter application of eligibility criteria is done through disability assessments, in which the medicalisation of disabilities plays a role.⁸⁰ There is an increasing number of criteria that must be met in order to qualify for social security benefits.⁸¹ The shift that occurs across the EU from welfare programs that focus on social assistance to those that aim to provide disability insurance, has the effect of increasing (unintended) medicalisation of disability assessments,⁸² causing certain groups of people to fall between the cracks of the disability provisions. Yet, no guidance is provided by the CRPD with regard to shaping the disability assessments. It has therefore been suggested to look beyond the text of the CRPD.⁸³ Assessment criteria are currently not applied consistently throughout the EU. Some EU member states take a medicalised approach and therefore primarily focus on persons' deficiencies or impairments, rather than the social dimensions and the actual barriers people face in real life.⁸⁴ Moreover, disability assessments are accompanied with diagnostic criteria that have the effect of excluding groups of persons. Namely, failure to meet these strict eligibility requirements for benefits leads some people to fall in a gap, with consequences for their income and ability to take part in social life. This appears in particular for persons with psychological and intellectual impairments.⁸⁵ For that reason, NJCM calls for the development of a framework that provides more guidance to the EU member states with regard to the application and implementation of disabilities' rights.

4.2 The need for policy action within the context of the EU Pillars Action Plan

The definition of disability is formulated and applied differently across the EU.⁸⁶ The diagnosis and treatment of disabilities has long led to increased stigmatisation on the basis of the 'sick role',⁸⁷ suggesting that disability has a direct link to illness and subsequently excluding disabled persons.⁸⁸ Over the years, an increasing number of conditions have been interpreted in medical terms.⁸⁹ However, civil society organisations standing up for disability rights, therefore, often aim

⁷⁸ Wet arbeidsongeschiktheidsvoorziening jonggehandicapten (Wajong), replacing the Act on labour support for young handicapped persons (Wet werk en arbeidsondersteuning jonggehandicapten).

⁷⁹ Roerdink, Yvonne & Jorn Jonker (Nieuwsuur, 31 October 2020).

⁸⁰ Waddington, L & Priestley, M. (2020). A Human Rights Approach to Disability Assessment. *Journal of International and Comparative Social Policy*.

⁸¹ Reibling, Nadine (2019). Engine and Brakes: European Welfare States and the Medicalization of Social Problems. *Europe Now*, feature 'Public Health in Europe'.

⁸² Reibling, Nadine (2019). Engine and Brakes: European Welfare States and the Medicalization of Social Problems. *Europe Now*, feature 'Public Health in Europe'.

⁸³ Waddington, L & Priestley, M. (2020). A Human Rights Approach to Disability Assessment. *Journal of International and Comparative Social Policy*, p. 4.

⁸⁴ Waddington, L & Priestley, M. (2020). A Human Rights Approach to Disability Assessment. *Journal of International and Comparative Social Policy*, p. 6.

⁸⁵ Waddington, L & Priestley, M. (2020). A Human Rights Approach to Disability Assessment. *Journal of International and Comparative Social Policy*, p. 6-7.

⁸⁶ Waddington, L & Priestley, M. (2020). A Human Rights Approach to Disability Assessment. *Journal of International and Comparative Social Policy*.

⁸⁷ Hayes J, Hannold EL. The road to empowerment: a historical perspective on the medicalization of disability. *Journal of Health and Human Services Administration*. 2007; 30(3):352-377.

⁸⁸ Perju, Vlad. (2011). Impairment, Discrimination, and the Legal Construction of Disability in the European Union and the United States. *Cornell International Law Journal*. 44.

⁸⁹ Reibling, Nadine (2019). Engine and Brakes: European Welfare States and the Medicalization of Social Problems. *Europe Now*, feature 'Public Health in Europe'.

at de-linking disability from illness.⁹⁰ The CJEU has dealt with the concept of disability in several landmark rulings. Whereas the Court ruled on one occasion that the disability concept did not include 'sickness' as such,⁹¹ it held on another occasion that conditions following from long-term illnesses could fall within the concept of disability under certain circumstances.⁹² Thus, although disability assessments are drawn on the provisions of the CRPD,⁹³ their interpretation and practical effects do not equally protect disabled persons' rights, depending on the social context.⁹⁴ This affects the extent to which disabled persons in different member states can rely on social security benefits and can therefore cause inequality among disabled persons across the EU.

As we have seen, the great differences in the medicalisation of disabilities and subsequent differences in disability assessments prove to be problematic for the equal protection of disabilities' rights and pose a major challenge to the success of the Pillars Action Plan. We suggest the Pillars Action Plan to include an initiative to examine the various experiences from across the EU to see how practical solutions actually further the rights of persons with disabilities in each of the EU member states. As previously suggested, organisations representing people with disabilities should be at the centre of fine-tuning the implementation of disabilities' rights, such as by reviewing disability assessment systems.⁹⁵ In that line, NJCM encourages the development of a platform for the exchange of knowledge and best practices between national organisations across the EU that defend the interests of persons with disabilities. Such a platform could provide insight into the issues, which disabled persons across the EU are faced with, and could be used to identify common practices and common challenges to address in future EU policy. By bringing together ideas and by signalling the problems and challenges that occur in the different EU member states, the application of treaties and implementation of directives can be done in a more uniform manner. Currently, opportunities for organisations do exist to share their contributions, such as through EU consultations. However, a think tank where interest groups from different EU member states come together could prove to be a contribution to the success of the Pillars Action Plan.

5. Conclusion

The Pillars Action Plan is an opportunity for the EU and its Member States to bring the 20 Rights and Principles in action. Given the above discussed issues we believe that the core of the Plan should be focused on preventing discrimination and stimulating inclusion. The plan should include an intersectional approach of the Principles and it should not be reluctant in addressing structural underlying causes of discrimination and inequality. When the Pillars Action Plan is published in 2021, we are committed to make a contribution on the elements that directly contribute to the promotion and protection of human rights in the Netherlands.

⁹⁰ Perju, Vlad. (2011). Impairment, Discrimination, and the Legal Construction of Disability in the European Union and the United States. *Cornell International Law Journal*. 44.

⁹¹ Case C-13/05 Chacon Navas, judgment of 11 July 2006.

⁹² Joined Cases C-335/11 and C-337/11 Ring and Skouboe Werge, judgment of 11 April 2013.

⁹³ UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.

⁹⁴ Waddington, L & Priestley, M. (2020). A Human Rights Approach to Disability Assessment. *Journal of International and Comparative Social Policy*.

⁹⁵ Waddington, L & Priestley, M. (2020). A Human Rights Approach to Disability Assessment. *Journal of International and Comparative Social Policy*, p. 12.