

# Reasonable Accommodation and Accessibility: Definition, Scope and Other Challenges

## Outline and Focus

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### Outline

1. Definitional Challenges
2. Scoping Challenges
3. Operational Challenges

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### Relevant Work of European Networks

Equinet reports  
European Academic Network of Experts on Disability – 2013-2015  
European Network of Legal Experts in Gender Equality and Non-Discrimination 2016 –  
reports on employment and on services

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## 1. Definitional Challenges

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### 1.1 Disentangling Reasonable Accommodation from Accessibility

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#### Partial Guidance

UN Convention on the Rights of Persons with Disabilities  
- Article 2  
- General Comment No 2 on Article 9

Employment Equality Directive 2000/78/EC  
- Article 5 and Recitals

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### 1.2 Understanding Reasonable Accommodation

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#### Part of the Discrimination Family

Civil and political right – immediate realisation  
Enforcement and remedies  
Addressing disadvantage – not conferring advantage

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Focus on the individual  
Dignity  
Dialogue

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Reactive/responsive/ex nunc

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Limited by disproportionate/undue burden

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### **1.3 Understanding Accessibility**

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Fundamental to equality  
Not itself part of the non-discrimination family

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Focus on removing barriers for disabled people generally

Consultation with groups

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Anticipatory  
Planning ahead  
Distinction between new services/facilities and existing ones  
Not limited by disproportionate/undue burden

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Underpinned and enforced by a range of obligations and systems including –  
Discrimination prohibitions - eg reasonable accommodation, indirect discrimination,  
anticipatory reasonable adjustment (see further Liisburg 2015)  
and  
Procurement, licencing and inspection (see further ANED 2013)

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## **2. Scoping Challenges**

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### **2.1 Personal Scope of Reasonable Accommodation Duties –**

Ensuring the duty is extended to all disabled People

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Standard laid out in CRPD Art 1 and EU legislation  
Not to a subset  
Not to a too narrowly defined 'disability' group  
-CJEU caselaw (eg Z v Government Department)?  
-UK exception for people with tendency to physical abuse?  
(see further, Legal Network reports 2009 and 2016)

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### **2.2 Personal Scope of Reasonable Accommodation Duties**

Assessing whether it extends to people (eg carers) because of their association with disabled people?

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Language of CRPD  
Language of Employment Equality Directive  
Caselaw – UK (*Hainsworth v Ministry of Defence* [2014] EWCA Civ 763)  
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## **2.3 Personal Scope of Reasonable Accommodation Duties**

Gauging when and how to extend reasonable accommodation duties beyond disability  
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Recognising risks of ‘reasonableness’ and ‘disproportionate/undue burden’ and developing more generic/certain approaches where appropriate.

Recognising risks of undifferentiated approach and potential need for eg disability-specific guidance  
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## **2.4 Material Scope of Reasonable Accommodation Duties**

Ensuring reasonable accommodation duties (and other non-discrimination duties) operate in the breadth of situations covered by the CRPD (Article 4).  
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Areas of life – beyond employment (EU proposal for an Equal Treatment Directive 2008)  
Types of impairment – beyond physical and sensory  
Nature of adjustments/accommodations – beyond accessibility-related  
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## **2.5 Material Scope of Accessibility Obligations**

Understanding the extent to which the CRPD’s accessibility obligations apply to ‘goods’  
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Article 9  
General Comment No 2  
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## **3. Operational Challenges**

### **3.1 Giving Clarity to the Articulation of Reasonable Accommodation Duties**

(See further Legal Network report 2016)  
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Express articulation in legal instruments – *European Commission v Italy*

Must there be a request for an accommodation or is the fact the duty-bearer knows or ought to know of the disability and the associated disadvantage sufficient?

Does the duty make dialogue compulsory or merely advisable?

Are landlords of duty-bearers under an obligation to agree to changes to premises that a duty-bearer wants to make as a reasonable accommodation?

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### **3.2 Giving Substance to Reasonableness and Disproportionate/Undue Burden – Maximising the Linkage with Accessibility**

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Including in cost arguments, the benefits to others of accessibility-enhancing accommodations

Using accessibility standards as guides

Influencing the arbiters of reasonableness and disproportionate/undue burden

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### **3.3 Giving Accessibility Standards Teeth**

Linkage to discrimination law - eg reasonable accommodation (eg Norway)

Procurement and funding

Licencing

Inspection

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### **3.4 Making Accessibility Standards Consistent**

European Accessibility Act proposal

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### **3.5 Enforcement and Remedies**

Individual/class/representative actions

Reasonable accommodations in judicial processes (see further Legal Network report 2016)

Injunctive relief (see further ANED report 2013)

Providing guidance and ensuring awareness amongst disabled people, duty-bearers and lawyers. (see further Equinet reports)

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## **4. Concluding Remarks**

Distinct concepts  
Mutually reinforcing  
Why they matter

## 5. Key References

(in addition to the Equinet reports)

European Disability Forum (2010), 'Ten years on: practical impact of the Employment Directive on persons with disabilities in employment – EDF analysis of Council Directive 2000/78/EC', Brussels, available at <<http://www.equineteurope.org/Ten-years-on-practical-impact-of>>

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Waddington L and Lawson A, Disability and Non-Discrimination Law in the European Union: An Analysis of Disability Discrimination Law Within and Beyond the Employment Field (European Network of Legal experts in the Non-discrimination Field, ), Publications Office of the European Union, Luxembourg, 2009) available at <<http://www.ec.europa.eu/social/BlobServlet?docId=6154&langId=en>>

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Waddington, L, 'Saying all the Right Things and Still Getting it Wrong: The Court of Justice's Definition of Disability and Non-Discrimination Law' (2015) 22 *Maastricht Law Journal* 576.