



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

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

**Consideration of reports submitted by States  
parties under article 35 of the Convention**

**Initial report of States parties due in 2012**

**European Union\* \*\***

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\* The present document is being issued without formal editing.  
\*\* Annexes can be consulted in the files of the Secretariat.

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## List of acronyms and abbreviations

ANED	Academic Network of European Disability Experts
Charter	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
COM	Communication from the European Commission/Commission document
Commission	European Commission
COPEC	Joint Committee on Equal Opportunities ( <i>Comité paritaire de l'égalité des chances</i> )
Council	Council of the European Union
CPAS	Preparatory Committee for Social Affairs ( <i>Comité de Préparation pour les Affaires Sociales</i> )
CPR	Common Provision Regulation
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil society organisation
DG	Directorate-General of the European Commission
DHLG	Disability High-Level Group
Disability Strategy	European Disability Strategy 2010–2020
DOTCOM	Disability Online Tool of the European Commission
DPO	Disabled People's Organisation
EaSI	EU Programme for Employment and Social Innovation
EASNIE	European Agency for Special Needs and Inclusive Education
EASO	European Asylum Support Office
ECHO	Directorate-General for Humanitarian Aid and Civil Protection
ECI	European Citizens Initiative
ECR	European Court Reports
ECRIS	European Criminal Records Information System
EDF	European Disability Forum
EDPS	European Data Protection Supervisor
EEAS	European External Action Service
EEC	European Economic Community
EESC	European Economic and Social Committee
EO	European Ombudsman Office
EP	European Parliament
EPSO	European Personnel Selection Office
EQF	European Quality Framework for Social Services

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EQLS	European Quality of Life Survey
ERDF	European Regional Development Fund
ESF	European Social Fund
EHSIS	European Health and Social Integration Survey
ESI Funds	European Structural and Investment Funds
FRA	European Union Agency for Fundamental Rights
EU	European Union
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions
EUROSTAT	Statistical Office of the European Union
EU-SILC	European Union Statistics on Income and Living Conditions
GALI	Global Activity Limitation Indicator
GBER	General Block Exemption Regulation
IA	Impact Assessment
IAB	Impact Assessment Board
ICT	Information and Communications Technologies
IDDC	International Disability and Development Consortium
ISG	European Commission Disability Inter-service Group
JHA	Justice and Home Affairs
LFS-AHM	Labour Force Survey ad hoc module
MISSOC	Mutual Information System on Social Protection/Social Security Law
MoU	Memorandum of Understanding
OJ	Official Journal of the European Union
PETI	European Parliament Committee on Petitions
SAM	State aid modernisation
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

## I. Introduction

1. This report has been prepared by the focal point, in liaison with relevant departments in the European Commission and other European Union institutions, agencies and bodies. The report covers the period from the entry into force of the Convention on the Rights of Persons with Disabilities (CRPD) for the European Union (EU) in January 2011 to December 2013. Where relevant, it refers to previously adopted legislation and measures falling under the scope of the CRPD as well as to some key legislation proposed during the reporting period, and adopted in the first quarter of 2014. Its format and structure follow the guidelines issued by the Committee on the Rights of Persons with Disabilities (CRPD/C/23).

2. In preparing the report, the focal point held consultations with relevant parties and stakeholders, including Member States, through the Council Working Group on Human Rights, and the European Commission Disability Support Group concerning the implementation of the CRPD by the EU public administration. The Commission presented its preparatory work at the meetings of the Disability High-Level Group (DHLG) in 2012 and 2013 with participation of Member States' experts and EU-level civil society organisations (CSOs) and Disabled People's Organisations (DPOs), the meetings of the EU Framework to promote, protect and monitor the implementation of the CRPD ("EU Framework") in 2013 and 2014, the civil society meeting on implementation of the CRPD jointly organised by the European Disability Forum (EDF) and the European Economic and Social Committee (EESC) on 14 October 2013 and the EESC Public Hearing on Civil society perspectives on the implementation of the UN Convention on the Rights of Persons with Disabilities on 14 April 2014. Interviews with EU-level CSOs and DPOs were carried out in 2013 for the preparation of this report.

### A. The European Union as a party to the CRPD

3. The European Union (EU) concluded the CRPD on 22 January 2011 in its capacity as a regional integration organisation within the meaning of Article 44 of the CRPD. The EU is currently composed of 28 Member States, of which all have signed the CRPD and 25 have ratified it as of the date of this report.<sup>1</sup> Council Decision 2010/48/EC concerning the conclusion, by the European Community (now European Union), of the United Nations Convention on the Rights of Persons with Disabilities<sup>2</sup> contains in Annex III a reservation with respect to Article 27(1) of the CRPD.

4. According to Article 216(2) TFEU, agreements concluded by the Union are binding on its institutions and its Member States. A Code of Conduct between the Council, the Member States and the Commission sets out arrangements for the EU's implementation of the CRPD and how it will be represented in the CRPD context.<sup>3</sup> The limits of Union competences are governed by the principle of conferral, whereby the Union is to act only within the limits of the competences conferred on it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred on the Union in the Treaties remain with the Member States (Art 5(1) TEU). Annex II to Council Decision 2010/48/EC

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<sup>1</sup> The EU Member States which have ratified the CRPD are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. The three Member States which have not ratified the CRPD are: Ireland, Finland and the Netherlands.

<sup>2</sup> [2010] OJ L 23/35.

<sup>3</sup> 2010/C 340/08.

contains the declaration of competence required by Article 44 of the CRPD, which illustrates the extent of Union competence with respect to matters governed by the CRPD.<sup>4</sup>

## **B. The EU legal order**

### **(a) EU institutions and bodies**

5. The Union's institutions are the European Parliament (EP), the European Council or the Council of the European Union (Council), the European Commission, the Court of Justice of the European Union (CJEU), the European Central Bank and the Court of Auditors. Each acts within the limits of the powers conferred on it in the EU Treaties and in conformity with the procedures, conditions and objectives set out in them.

6. The European Council, led by its President and comprising national heads of state or government and the President of the Commission, defines the general political direction and priorities of the Union. The EP, the Council and the Commission are the main institutions involved in EU law-making. The EP represents the EU's citizens and is directly elected by them. The Council represents the governments of the Member States. The Presidency of the Council is held by the Member States on a rotating basis. The Council and the EP exercise jointly legislative and budgetary functions. In addition, the Council carries out policy-making and coordinating functions as laid down in the EU Treaties, while the EP exercises functions of political control and consultation. Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Treaties provide otherwise.

7. The Commission promotes the general interest of the Union. As guardian of the Treaties, it oversees the application of Union law under the control of the CJEU and monitors the Member States' application of EU law. It exercises programming, coordinating, executive and management functions. In particular, it executes the Union's budget and manages EU programmes. The three main institutions involved in law-making are assisted by the European Economic and Social Committee (EESC) and the Committee of the Regions acting in an advisory capacity. The CJEU interprets EU law to make sure it is applied in the same way in all Member States. It also settles legal disputes between Member States and EU institutions. Individuals, companies or organisations can also bring cases before the CJEU if they feel their rights have been infringed by an EU institution.

### **(b) Instruments of Union law and hierarchy of norms**

#### *European Union Treaties*

8. The EU is a community based on law: it is a creation of law and pursues its objectives by means of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU Member States. The Treaties set out the EU's objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its Member States.

#### *Charter of Fundamental Rights of the European Union*

9. The EU is based on the values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights. The Charter of Fundamental Rights of the European Union brings together in a single text all the personal, civic, political, economic and social rights that people enjoy within the EU. In particular, Article 21 of the Charter prohibits discrimination on various grounds, including disability, and Article 26 recognises

<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1401271474087&uri=CELEX:32010D0048>, Annex II.

the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

10. The Charter became legally binding across the EU with the entry into force of the Treaty of Lisbon on 1 December 2009. The provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity. They also apply to the Member States, but only when they are implementing Union law. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties. In cases where the Charter does not apply, the protection of fundamental rights is guaranteed under the constitutions or constitutional traditions of EU countries and international conventions they have ratified.

11. In 2010, the Commission adopted a strategy for the effective implementation of the Charter by the EU.<sup>5</sup> As a result, the Commission strengthened the arrangements whereby it assesses the impact of new legislative proposals on fundamental rights. In particular, it adopted operational guidance on taking account of fundamental rights in its impact assessments. As part of its monitoring activity, the Commission has since published an annual report on the application of the Charter.<sup>6</sup> In implementing fundamental rights policy, the Commission benefits from the data and information collected by the EU Agency for Fundamental Rights (FRA).

#### *Secondary legislation and other acts*

12. The aims set out in the EU Treaties are achieved by several types of legal act, including regulations, directives, decisions, recommendations and opinions. Regulations are binding legislative acts which must be applied in their entirety across the EU. Directives are legislative acts that set out a goal that all Member States must achieve. However, it is up to the individual countries to transpose a directive into national law. Decisions are binding on those to whom they are addressed (e.g. a Member State or an individual company) and are directly applicable.

13. Recommendations are not binding and allow the EU institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed. Opinions allow the institutions to make a non-binding statement without imposing legal obligations on those to whom it is addressed. Finally, there are other legal acts which the Union institutions can use to issue non-binding measures and statements or which regulate the internal workings of the EU or its institutions, such as agreements or arrangements between the institutions, or internal rules of procedure. Other acts include resolutions, declarations, action programmes or white and green papers.

#### *European Union international agreements*

14. The EU can conclude agreements in international law with non-member countries and other international organisations. Under Article 216(2) TFEU, agreements concluded by the Union are binding on its institutions and Member States. In accordance with CJEU case law, such agreements prevail over provisions of Union secondary legislation. This means that such provisions must be interpreted and applied in a manner that is consistent with those agreements.

15. In cases of “mixed” international agreements (such as the CRPD), where the EU and Member States are separate contracting parties, conclusion by the EU means that all provisions of the agreement falling within EU competence are binding on the EU

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<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:en:PDF>.

<sup>6</sup> [http://ec.europa.eu/justice/fundamental-rights/charter/application/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/application/index_en.htm).



institutions. In addition, EU law obliges the Member States to implement a “mixed” agreement insofar as its provisions are within the scope of Union competence.<sup>7</sup> When participating in “mixed” agreements and in fulfilling the obligations entered into, the Union and its Member States are subject to a duty of sincere cooperation.

### C. Key statistical information

16. In EU-SILC 2011,<sup>8</sup> about 26% of persons aged 16 and over declared an “activity limitation”, a term that does not expressly take into account any interaction with barriers typically addressed by the social model of disability. About 28% of women aged 16 and over declare an activity limitation, as compared with 23% of men aged 16 and over. The prevalence of disability is higher among women mainly because they live longer and tend to have higher morbidity rates at the end of life. However, other personal factors and socio-economic characteristics might contribute to this difference.

17. The prevalence of disability increases with age. Disability prevalence is much higher among people aged 65 or over than among younger people (54%, as compared with 18% among persons aged 16 to 64). At EU level, about 8% of persons aged 16 and over declare a severe disability (strongly limited) and about 18% declare a moderate disability.

## II. General provisions of the Convention

### Article 1

#### Purpose

18. The EU’s policy on disability is set out in the European Disability Strategy 2010–2020 (hereinafter referred to as “the Disability Strategy” or “the Strategy”).<sup>9</sup> The overall aim of the Strategy is to empower people with disabilities so that they can fully enjoy their rights and participate in society and in the economy on an equal basis with others. The Strategy marks the EU’s renewed commitment to a barrier-free Europe, with actions in eight priority areas: accessibility, participation, equality, employment, education and training, social protection, health and external action. The initial list of actions covers the period 2010-15. Their implementation is underpinned by instruments such as awareness-raising, financial support, statistics, data collection and monitoring as well as the governance mechanisms required by the CRPD. The Commission has been monitoring the implementation of the Strategy and its actions, in particular launching a study in 2013 to report on progress made and reflect on a possible review beyond 2015.

19. The Disability Strategy also aims to support the EU Member States in implementing the CRPD. For instance, the Commission promotes the exchange of good practice in the DHLG, where implementation of the Strategy and the CRPD are regularly discussed with Member State experts, some of whom are national focal points within the meaning of Article 33 CRPD, as well as DPOs, service providers and other stakeholders.

20. EU law does not provide for a harmonised definition of disability and persons with disabilities. The Strategy refers to the definition in Article 1 CRPD. In the cases *Ring* and *Skouboe Werge*,<sup>10</sup> the CJEU based its interpretation of the EU Employment Equality

<sup>7</sup> Case 104/81, *Hauptzollamt Mainz v. Kupferberg* [1982] ECR 3641, para. 13.

<sup>8</sup> Eurostat: EU-SILC UDB 2011 – version 1 of March 2012.

<sup>9</sup> COM(2010) 636 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1401271644100&uri=CELEX:52010DC0636>.

<sup>10</sup> Joined Cases C-335/11 and C-337/11, *Ring and Skouboe Werge*, judgment of 11 April 2013.

Directive on the CRPD's concept of disability. It held that the concept of disability must be interpreted as including a condition caused by an illness medically diagnosed as curable or incurable, where that illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one.<sup>11</sup>

21. More specific definitions of disability can be found in sectoral legislation. For example, in the context of passenger rights legislation for all modes of transport, the terms "disabled person" or "person with reduced mobility" are used meaning any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers.<sup>12</sup> The Recommendation on an EU format and mutual recognition of parking cards for disabled persons<sup>13</sup> explicitly allows the Member States to determine who should be regarded as having a disability for the purpose of the Recommendation.

## **Article 2**

### **Definitions**

#### **Discrimination**

22. Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the Employment Equality Directive)<sup>14</sup> prohibits discrimination *inter alia* on the grounds of disability in the field of employment and vocational training. It defines the principle of equal treatment as meaning that there should be no direct or indirect discrimination. Direct discrimination is considered to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation. Indirect discrimination is considered to occur where an apparently neutral provision, criterion or practice would put persons with a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage as compared with other persons, unless:

(a) That provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary; or

(b) The employer, or any person or organisation to whom the Directive applies, is obliged under national legislation to take appropriate measures in line with the principles of "reasonable accommodation for disabled persons" in order to eliminate disadvantages entailed by such provision, criterion or practice.

#### **Reasonable accommodation**

23. Article 5 of the Employment Equality Directive requires that "reasonable accommodation" be provided to guarantee compliance with the principle of equal treatment in relation to persons with disabilities. This means that employers and providers of vocational training must take appropriate measures, where needed in a particular case, to

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<sup>11</sup> HK Danmark (Ring and Skouboe Werge) (2013), para. 47.

<sup>12</sup> Regulation (EC) No. 1371/2007 of the European Parliament and Council of 23 October 2007 on rail passengers' rights and obligations, Article 3(15). See also passenger rights legislation for other modes of transport: [http://ec.europa.eu/transport/themes/passengers/index\\_en.htm](http://ec.europa.eu/transport/themes/passengers/index_en.htm).

<sup>13</sup> Council Recommendation 98/376/EC of 4 June 1998 on a parking card for people with disabilities, [1998] OJ L67/25, as amended.

<sup>14</sup> [2000] OJ L303/16.

enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden is not regarded as disproportionate when it is sufficiently remedied by existing measures under the disability policy of the Member State concerned.

24. The preamble to the Directive states that appropriate measures should be provided to adapt the workplace to the disability, for example by adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources. The preamble also states that, to determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.

### **Article 3**

#### **General principles**

25. As stated in Article 2 TEU, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. The Union's aim is to promote peace, its values and the well-being of its peoples. The Union is to combat social exclusion and discrimination, and promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. In its relations with the wider world, the Union is to contribute to the protection of human rights and to the strict observance and development of international law, including respect for the principles of the United Nations Charter.

26. The principle of non-discrimination is also enshrined in Article 10 TFEU, whereby in developing and implementing its policies and activities, the Union aims to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Equality of opportunities, non-discrimination and accessibility are at the heart of the EU Disability Strategy.

### **Article 4**

#### **General obligations**

27. The Commission promotes the rights of persons with disabilities in line with the CRPD in the development and implementation of EU policies and legislation. This is done through various instruments and processes. In particular, the Commission's Inter-Service Group on Disability (ISG), gathering different departments within the Commission, plays an important role in ensuring that the needs and rights of people with disabilities are taken into consideration in all relevant policy areas when formulating new legislative proposals and initiatives as well as in the implementation, monitoring and evaluation of EU policies and actions.

28. Before the Commission proposes new initiatives, it assesses their potential economic, social and environmental consequences. Through impact assessments (IAs), the Commission's departments gather evidence for political decision-makers on the advantages and disadvantages of possible policy options. IAs are necessary for most Commission initiatives. The social impacts of proposed initiatives on persons with disabilities are among the aspects to be assessed and the *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments* requires verification that Commission initiatives comply with the CRPD. Furthermore, the *Guidance for assessing social impacts within the*

*Commission Impact Assessment system*<sup>15</sup> mentions persons with disabilities as a target group when assessing social impacts. This system strives for full involvement of stakeholders, and consultation of interested parties is an essential element in the process.<sup>16</sup> IAs are reviewed by the Impact Assessment Board (IAB), a central quality control and support function working under the authority of the Commission President and independent from the policy-making departments. All IA reports and all IAB opinions are published once the Commission has adopted the relevant proposal.

29. The Commission is conscious of the need to analyse the extent to which current laws or policies are aligned to the CRPD. For this reason, it funded a study on challenges and good practices in the implementation of the CRPD<sup>17</sup> with the objective of analysing in detail the obligations set out therein.

30. The Commission promotes universal design or Design for All as defined in Article 2 CRPD as the approach to follow to ensure accessibility. This approach is reflected in the Disability Strategy as well as in the standardisation mandates issued by the Commission to the European standardisation organisations for the development of European standards. In particular, a mandate in 2010 called for the inclusion of Design for All in relevant standardisation initiatives in order to address the needs of people with disabilities and the elderly.<sup>18</sup>

31. Through various programmes, most recently the 7th Framework Programme for Research and Technological Development for 2007-13,<sup>19</sup> the Commission has funded research projects on new technologies, including information and communications technologies (ICT), mobility aids, devices and assistive technologies and transport, and on socio-economic issues addressing the daily needs of persons with disabilities and the elderly.

32. The Commission is particularly aware of the need to nurture greater understanding of the CRPD among relevant professionals. To this end, in 2011–13 it funded a series of training seminars on the CRPD and EU disability law for legal practitioners, judges and civil servants (delivered by the Academy of European Law),<sup>20</sup> and for standardisers.

33. The Commission strongly supports active dialogue and consultation with CSOs and DPOs, notably in the context of the Disability High-Level Group, which includes various EU-level NGOs and DPOs, and representatives of service providers. In the development of the Disability Strategy, the Commission consulted extensively with EU-level CSOs and DPOs, e.g. by organising an online public consultation to gather the views of the public and a consultative workshop with key stakeholders representing civil society, DPOs, industry, service providers and social partners. The EU also recognises the important role that persons with disabilities and their representative organisations play in promoting, protecting and monitoring the implementation of the CRPD in EU policy-making. This is reflected in the financial support given to a number of EU-level NGOs, including DPOs. Funding aims in particular to strengthen the advocacy capacity of EU-level umbrella organisations vis-à-

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<sup>15</sup> <http://ec.europa.eu/social/BlobServlet?docId=4215&langId=en>.

<sup>16</sup> European Commission (2009), Impact Assessment Guidelines, SEC(2009) 92. Available at: [http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf).

<sup>17</sup> European Foundation Centre (2010), Study on Challenges and Good Practices in the Implementation of the UN Convention on the Rights of Persons with Disabilities (VC/2008/1214). See: [http://www.efc.be/programmes\\_services/resources/Documents/UN\\_Convention\\_Summary\\_EN.pdf](http://www.efc.be/programmes_services/resources/Documents/UN_Convention_Summary_EN.pdf).

<sup>18</sup> Standardisation mandate to CEN, CENELEC and ETSI to include “Design for All” in relevant standardisation initiatives, M/473, 1 September 2010, available at: <http://www.etsi.org/images/files/ECMandates/m473.pdf>.

<sup>19</sup> [http://ec.europa.eu/research/fp7/index\\_en.cfm](http://ec.europa.eu/research/fp7/index_en.cfm).

<sup>20</sup> More information available at: <http://www.era-comm.eu/dalaw/>.

vis the EU institutions and their ability to voice the concerns of national member organisations at EU level.<sup>21</sup>

### III. Information relating to specific rights

#### Article 5 Equality and non-discrimination

34. Promoting equal treatment and combating discrimination against persons with disabilities have long been cornerstones of EU policy. The TFEU requires the Union to combat discrimination based on disability when developing and implementing its policies and activities (Article 10) and gives it the power to adopt legislation to combat such discrimination (Article 19). These goals and the double-track approach of mainstreaming and specific actions are firmly anchored in the Disability Strategy.<sup>22</sup> The equal participation of people with disabilities in society and the economy is also essential to success in stimulating smart, sustainable and inclusive growth in line with the objectives of the Europe 2020 Strategy, the ten-year growth strategy launched by the EU in 2010.<sup>23</sup>

35. The legal framework based on the Employment Equality Directive provides protection against discrimination on the grounds of disability in employment, occupation and vocation training. It covers both public and private bodies with respect to conditions for access to employment, vocational guidance and training, employment and working conditions. It requires Member States to prohibit direct discrimination, indirect discrimination, harassment, victimisation and instructions to discriminate on the grounds, *inter alia*, of disability. This approach has allowed the CJEU to interpret discrimination on the grounds of disability in line with the spirit of the CRPD. In particular, in Case C-303/06 *Coleman*, the CJEU ruled that, under certain circumstances, discrimination based on disability may include discrimination based on a plaintiff's association with a person who is disabled, even though the plaintiff may have no disability.<sup>24</sup>

36. The provision by employers of reasonable accommodation for disabled people is a key element of protection of persons with disabilities under the Employment Equality Directive. Employers must provide reasonable accommodation to enable a person with a disability to have access to employment and advance in it. Member States can decide whether to make exceptions as regards disability and age when it comes to employment in the armed forces. The EU reservation on Article 27 CRPD follows the logic of Article 3(4) of the Directive.

37. The Directive permits positive action in the form of specific measures to prevent or compensate for disadvantages linked to disability. It requires Member States to ensure the *availability* of judicial and/or administrative remedies for the enforcement of relevant rights. Individual cases must be brought before national courts or equality bodies. If a person considers a decision or act of the national authorities to be an infringement of their rights under Union law, he/she can bring a case before the courts of his/her country. If a national

<sup>21</sup> In the 2007-13 programming period, funding in this area has been provided mainly through the Community Programme for Employment and Social Solidarity – Progress.

<sup>22</sup> European Commission (2010), COM/2010/0636 final.

<sup>23</sup> [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm).

<sup>24</sup> Case C-303/06, *Coleman*, judgment of 17 July 2008 where the Court of Justice ruled that Directive 2000/78/EC protected a mother of a disabled child from harassment and discrimination in employment, when the problems were due to the fact that the mother needed extra time off to take care of her child.

court is in doubt about the interpretation or validity of an EU law, it can ask the CJEU for its correct interpretation via the “preliminary ruling” procedure.

38. The Commission has rigorously monitored the correct transposition of the Directive in national laws<sup>25</sup> and initiated several infringement procedures against Member States for incorrect implementation. A 2014 Commission report on the implementation of the Directive found that, while all Member States have now transposed EU rules in national law, further efforts are needed to apply them in practice, in particular through policy action, awareness-raising and training.<sup>26</sup>

39. To support the Commission in its monitoring role, the European Network of Experts in the Field of Non-Discrimination Law<sup>27</sup> produces annual and thematic reports on issues relating to the Directive. In 2011, the FRA issued a report on *The Legal Protection of Persons with Mental Health Problems under Non-Discrimination Law: A Comparative Study of the Definition of Disability and of the Duty to Provide Reasonable Accommodation in European Union Member States*.

40. In 2008, on the basis of Article 19 TFEU, the Commission proposed an additional equal treatment directive to extend the existing EU anti-discrimination legal framework to areas outside the field of employment.<sup>28</sup> The proposal is under negotiation in the Council, where the *unanimous* vote of the Member States is required for its adoption. The principle of equal treatment and non-discrimination on the grounds of disability is increasingly mainstreamed in EU secondary legislation. For example, Regulation (EU) No. 1177/2010 concerning the rights of passengers travelling by sea and inland waterways<sup>29</sup> requires carriers and terminal operators to establish, or have in place, non-discriminatory access conditions for disabled persons and persons with reduced mobility. An analogous obligation is contained in Regulation (EU) No. 181/2011 concerning the rights of passengers in bus and coach transport.<sup>30</sup> Further examples of mainstreaming non-discrimination clauses in EU secondary legislation are mentioned in relevant sections of this report.

41. The 2014-20 Rights and Citizenship Programme will finance actions to promote and protect the rights of persons with disabilities and the effective implementation of the principle of non-discrimination.<sup>31</sup> More specifically, this programme will support the effective implementation, monitoring and evaluation of Union law and policies in the Member States, promote cross-border cooperation among stakeholders and improve knowledge and understanding of potential obstacles to the exercise of rights guaranteed by Union law. Funding will be available for research, analytical activities, data collection, the development of common methodologies and indicators or benchmarks, seminars, experts’ meetings and conferences, training, mutual learning, cooperation, awareness-raising and dissemination activities. Support will be given to NGOs and European-level networks through grants for actions or operating costs.

<sup>25</sup> National provisions communicated by the Member States concerning Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1401876783757&uri=CELEX:32000L0078>.

<sup>26</sup> [http://ec.europa.eu/justice/discrimination/files/com\\_2014\\_2\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf).

<sup>27</sup> <http://www.non-discrimination.net/>.

<sup>28</sup> COM(2008) 426 final. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1401876828789&uri=CELEX:52008PC0426>.

<sup>29</sup> [2010] OJ L 334/16, Article 9(1).

<sup>30</sup> [2011] OJ L 55/1, Article 11(1).

<sup>31</sup> Regulation (EU) No. 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020, OJ L 354, 28.12.2013, p. 62.

42. A 2012 Eurobarometer survey on discrimination provides insight into the changing perceptions, attitudes, knowledge and awareness of discrimination in the EU.<sup>32</sup> The survey shows that almost every second European (46%) still believes that discrimination on the grounds of disability is widespread, although this is seven percentage points less than in 2009. But respondents with a disability are far more likely (64% as compared with 46%) to believe that discrimination on the grounds of disability is widespread in their Member State. The 2012 survey indicates that 28% of Europeans with a disability say they have experienced such discrimination. Data show that in all Member States an absolute majority of respondents consider limited accessibility to be a form of discrimination.

## Article 8

### Awareness-raising

43. Awareness-raising plays an important role in the Disability Strategy, both as a general instrument underpinning its implementation and as a tool to support specific objectives in various thematic areas.<sup>33</sup> The EU also supports and supplements national public awareness campaigns on the rights of people with disabilities and on their capabilities and contribution to society and the economy. The Commission promotes diversity and non-discrimination through awareness-raising campaigns at EU and national level, and supports the work of EU-level NGOs active in the area. The EU promotes and highlights disability as a human rights issue in its external action, including by increasing awareness of disability issues in EU delegations in third countries.

44. Since 1993, the Commission has been hosting an annual conference on the International Day of Persons with Disabilities in December in Brussels. The conferences, organised in close cooperation with the EDF, stimulate the exchange of information and good practice in areas that are crucial as regards the equal participation of people with disabilities, and facilitate networking between key players in the field of disability policy. In 2010, the Commission initiated Access City,<sup>34</sup> an annual award that recognises and showcases European cities that have taken exemplary action to improve accessibility in the urban environment. The award is organised in cooperation with the EDF. National disability councils in the Member States take part in the pre-selections of cities at national level, while the EDF represents persons with disabilities on the European jury for the final selection stage. The award scheme addresses accessibility to the built environment, transport, ICT and public facilities and services.

45. In 2009, the Commission launched the “For Diversity: Against Discrimination” campaign to raise awareness of discrimination, including on the grounds of disability, and improve understanding of EU equality legislation.<sup>35</sup> The campaign included the organising of “diversity days” and a journalist award. Disability was also addressed in annual calls for proposals between 2010 and 2013 aimed at supporting national authorities in their fight against discrimination and the promotion of equality.<sup>36</sup>

<sup>32</sup> European Commission (2012), *Discrimination in the EU in 2012*, Special Eurobarometer 393 / Wave EB77.4 – TNS Opinion & Social. The Eurobarometer is a general population survey of EU citizens aged 15 and over. Available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_393\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf).

<sup>33</sup> (SEC(2010) 1232, 1234; COM(2010) 636 final).

<sup>34</sup> [http://ec.europa.eu/justice/discrimination/disabilities/award/index\\_en.htm](http://ec.europa.eu/justice/discrimination/disabilities/award/index_en.htm).

<sup>35</sup> More information available at: [http://ec.europa.eu/justice/discrimination/awareness/index\\_en.htm](http://ec.europa.eu/justice/discrimination/awareness/index_en.htm).

<sup>36</sup> For example, PROGRESS has supported the following projects, all with a disability focus: “YES – Equality is priority 4”, “Living fully in society”, “People with mental disabilities do have rights” and “Equal in diversity – getting there”. For more detail, see PROGRESS programme: Support to national activities aiming at the identification of good practices in combating discrimination and promoting equality Progress Awarded Grants. Available at: <http://ec.europa.eu/social/>

## Articles 9 and 21

### Accessibility, freedom of expression and opinion, access to information

46. The EU has an extensive record in promoting accessibility. Accessibility, as a precondition for persons with disabilities to participate in society and in the economy, is a main focus for action in the Disability Strategy. The Commission has used legislative and other instruments, such as standardisation, to optimise the accessibility of the physical environment, transport and ICT in particular.

47. The EU has adopted a number of legal acts harmonising accessibility requirements for goods and services to contribute to completing the EU internal market and opening up possibilities for economic operators to sell their products throughout the EU. Examples of such legislation are:

- Regulation (EC) No. 661/2009 concerns type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor;<sup>37</sup>
- Directive 95/16/EC on the approximation of the laws of the Member States relating to lifts refers to the accessibility of lifts;<sup>38</sup>
- Directive 2004/27/EC on the Community code relating to medicinal products for human use requires that the packaging of medicinal products include a label in braille and that the package information leaflet be available, on special request, in formats accessible to visually impaired users;
- Directive 2009/45/EC on safety rules and standards for passenger ships obliges Member States to ensure that appropriate measures are taken to enable safe access to passenger ships.<sup>39</sup>

48. Aspects of accessibility are also included in specific measures in the fields of consumer protection, currency and transactions, public procurement and the use of EU funds like the Structural and Investment Funds (ESI Funds). EU Directives on public procurement<sup>40</sup> allow contracting authorities to include accessibility requirements in their public tenders.<sup>41</sup> Two proposed directives reforming the current legal framework would make the inclusion of accessibility criteria in the technical specifications of procurement procedures obligatory.<sup>42</sup> The Commission has financed numerous research and development projects on the accessibility of ICT, transport and the (built) physical environment and on the development of assistive technologies.

49. The development of accessibility standards is an important priority under the Disability Strategy. In 2005, the Commission issued a standardisation mandate to the European standardisation organisations to draft an accessibility standard suitable for public procurement of ICT products and services in Europe.<sup>43</sup> The standard was formally adopted in February 2014. A mandate to draft accessibility standards in the built environment

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keyDocuments.jsp?type=0&policyArea=86&subCategory=632&country=0&year=0&advSearchKey=ProgressAwardedGrants&mode=advancedSubmit&langId=en.

<sup>37</sup> [2009] OJ L 200, 31.7.2009, p. 1.

<sup>38</sup> OJ L 213, 7.9.1995, p. 1–31.

<sup>39</sup> [2009] OJ L 163/1. This Directive repealed Directive 2003/23/EC, which is referred to in the Declaration of Competences annexed to the Council Decision to conclude the CRPD.

<sup>40</sup> Directive 2004/17/EC [2004], OJ L 134/1 and Directive 2004/18/EC [2004] OJ L134/114.

<sup>41</sup> Directive 2007/66/EC [2007], OJ L 335/31.

<sup>42</sup> COM(2011) 896 final, 20 December 2011 (Brussels, 20.12.2011).

<sup>43</sup> <http://www.mandate376.eu/>.



followed in 2007.<sup>44</sup> The latest mandate, on Design for All, was issued in 2010.<sup>45</sup> However standards on the basis of these two latest mandates are still to be developed.

50. The Regulation on European Standardisation, which became applicable in 2013, regulates cooperation between European standardisation organisations, national standardisation bodies, Member States and the Commission, and sets out rules for the establishment of European standards and European standardisation deliverables, identification of ICT technical specifications and stakeholder participation.<sup>46</sup> The preamble to the Regulation recognises the need to make the European standardisation process accessible to persons with disabilities.

51. In accordance with the Disability Strategy and following consultations with Member States and other stakeholders, the Commission is considering whether to propose a European Accessibility Act. A Eurobarometer survey on accessibility was carried out in 2012.<sup>47</sup>

### Physical environment

52. Some pieces of EU legislation address the accessibility of the (built) physical environment. Regulation (EU) No. 305/2011 laying down harmonised conditions for the marketing of construction products<sup>48</sup> introduced a reference to accessibility among the basic requirements for construction works. A directive on cableway installations designed to carry passengers mentions safety requirements for the use of the installations by persons with reduced mobility (implying they would need to be accessible to them).<sup>49</sup> Finally, the Lifts Directive (see above) requires that lifts intended for the transport of persons are constructed in such a way that its structural features do not obstruct or impede access, and use, by disabled persons.

### Transport

53. Several pieces of EU legislation specifically address the rights of persons with reduced mobility in different modes of transport. These are referred to in the section below on Article 20. In the area of rail transport, some legal instruments provide for the accessibility of the physical infrastructure.<sup>50</sup> Directive 1996/48 on the interoperability of the trans-European high speed rail system<sup>51</sup> allows for standards to be set with respect to characteristics linked to the carriage of disabled persons. The technical specifications on interoperability covering access needs of persons with reduced mobility (TSI PRM) is a set of technical rules aimed at improving accessibility for persons with reduced mobility when

<sup>44</sup> [http://ec.europa.eu/enterprise/standards\\_policy/mandates/database/index.cfm?fuseaction=search.detail&id=392](http://ec.europa.eu/enterprise/standards_policy/mandates/database/index.cfm?fuseaction=search.detail&id=392).

<sup>45</sup> [http://ec.europa.eu/enterprise/standards\\_policy/mandates/database/index.cfm?fuseaction=search.detail&id=461](http://ec.europa.eu/enterprise/standards_policy/mandates/database/index.cfm?fuseaction=search.detail&id=461).

<sup>46</sup> Regulation (EU) No. 1025/2012 of the European Parliament and of the Council on European Standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/1052/EC of the European Parliament and of the Council and repealing Decision 98/95/EEC and Decision No. 1673/2006/EC.

<sup>47</sup> European Commission (2012), Accessibility, Flash Eurobarometer 345 – TNS Political & Social, 2012. The survey covered persons aged 15 and older. Available at: [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm).

<sup>48</sup> [2011] OJ L 88/5.

<sup>49</sup> Directive 2000/9/EC; [2000] OJ L 106, 3 May 2000.

<sup>50</sup> Directive 96/48/EC [1996] OJ L 235/6, as amended.

<sup>51</sup> Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, [1996] OJ L 235, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1401877022170&uri=CELEX:01996L0048-20070602>.

travelling by rail. They apply to the trans-European conventional rail system<sup>52</sup> and cover issues such as width of doors, positioning of toilets and wheelchair-accessible seats and provision of information in accessible formats. In 2010, the Commission issued a new mandate to the European Railway Agency (ERA)<sup>53</sup> to develop and review the TSIs with a view to extending their scope to the whole EU rail system. The revision is expected to be completed by mid-2014 and to enter into force in January 2015. Other instruments encourage Member States to provide financial subsidies to transport providers to encourage them to grant reduced fares to persons with disabilities.<sup>54</sup> Passenger rights legislation for all modes of transport addresses matters such as non-discrimination, the right to transport, the provision of accessible information and free of charge assistance to disabled passengers and passengers with reduced mobility to enable them to use transport on an equal footing with other passengers.<sup>55</sup>

54. The new guidelines for the development of a Trans-European Transport Network (TEN-T) aim to strengthen the social, economic and territorial cohesion of the Union and contribute to the creation of a single European transport area which, among other things, increases the benefits for its users through accessibility for elderly people, persons of reduced mobility and disabled passengers. Accessibility is recognised as a general priority for the development of the comprehensive network.<sup>56</sup>

### **Information and communication including new technologies**

55. The Electronic Communications Framework Directive<sup>57</sup> aims to establish a harmonised framework for the regulation of electronic communications services, networks, associated facilities and services, and certain aspects of terminal equipment to facilitate access for disabled users. It contains measures to ensure that disabled users derive maximum benefit in terms of choice, price and quality of telecommunications, while addressing their specific needs.

56. The Framework Directive is part of a Telecommunications Package which also includes the Directive 2002/22/EC on universal services and users' rights relating to electronic communications networks and services (the Universal Service Directive).<sup>58</sup> This requires Member States, where appropriate, to take specific measures for disabled end-users in order to ensure access to, and the affordability of, publicly available telephone services,

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<sup>52</sup> Commission Decision 2008/164/EC of 21 December 2007 concerning the technical specification of interoperability relating to "persons with reduced mobility" in the trans-European conventional and high-speed rail system.

<sup>53</sup> <http://www.era.europa.eu/Document-Register/Documents/ERA-CON-2012-07-INT.pdf>.

<sup>54</sup> Regulation (EC) No. 1370/2007 [2007] OJ L 315/1.

<sup>55</sup> Regulation (EC) No. 1371/2007 [2007] OJ L 315/14, Regulation (EC) No. 1107/2006 [2006] OJ L 204/1, Regulation (EC) No. 1177/2010 [2010] OJ L334/1, Regulation (EC) No. 181/2011 [2011] OJ 55/1.

<sup>56</sup> Regulation (EU) No. 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No. 661/2010/EU Text with EEA relevance <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:348:0001:0128:EN:PDF>.

<sup>57</sup> Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

<sup>58</sup> Directive 2002/22/EC on universal services and users' rights relating to electronic communications networks and services as amended by Directive 2009/136/EC.

including access to emergency services, directory enquiry services and directories equivalent to that enjoyed by other end-users.<sup>59</sup>

57. The Telecommunications Package was amended in December 2009. The Better Law-making Directive<sup>60</sup> establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment to facilitate access for disabled users. The Universal Service Directive<sup>61</sup> makes numerous references to disabled end-users' rights to "equivalent access" (including choice and affordability) to services, as available to other end-users. The Directive imposes an obligation on the Member States to ensure the accessibility of the emergency services, including the "112" phone number. It also encourages the use of European standards to achieve e-accessibility of services, including through public procurement procedures, and maintains the accessibility obligation for directory services and public pay phones or other public voice telephony.

58. The Radio and Telecommunications Terminal Equipment (R&TTE) Directive<sup>62</sup> addresses the conformity of radio and telecommunications terminal equipment with certain essential requirements, including the requirement that equipment is designed in such a way as to enable people with disabilities to use it without, or with minimal, adaptations. The Directive empowers the Commission to decide what types of apparatus should be designed so as to support their use by disabled people.

59. Commission Decision 2005/928/EC on the harmonisation of the 169.4-169 8125 MHz frequency band in the Community<sup>63</sup> harmonises the spectrum for assistive listening devices and for social alarms across the EU. Lastly, in December 2012 the Commission published a proposal for a directive aimed at establishing harmonised rules on accessibility to some public sector bodies' websites.<sup>64</sup>

60. Various policy initiatives promote the accessibility of e-communications and digital technologies. These include the 2002 e-European Action Plan,<sup>65</sup> the *i2010 — A European*

<sup>59</sup> BEREC, the Body of European Regulators of Electronic Communications, published in February 2011 a report on Electronic communications services: Ensuring equivalence in access and choice for disabled end-users. Available at:

[http://www.erg.eu/streaming/BoR%20\(10\)%2047%20Rev1%20BEREC%](http://www.erg.eu/streaming/BoR%20(10)%2047%20Rev1%20BEREC%20report%20on%20accessibility_final.pdf?contentId=547132&field=ATTACHED_FILE)

[20report%20on%20accessibility\\_final.pdf?contentId=547132&field=ATTACHED\\_FILE.](http://www.erg.eu/streaming/BoR%20(10)%2047%20Rev1%20BEREC%20report%20on%20accessibility_final.pdf?contentId=547132&field=ATTACHED_FILE)

<sup>60</sup> Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

<sup>61</sup> Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

<sup>62</sup> Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity [1999] OJ L 091.

<sup>63</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1397822723217&uri=CELEX:02005D0928-20081031.](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1397822723217&uri=CELEX:02005D0928-20081031)

<sup>64</sup> COM(2012) 721 final.

<sup>65</sup> COM(2002) 0263.

*Information Society for growth and employment* strategic framework<sup>66</sup> and the Digital Agenda.<sup>67</sup> The latter includes actions to promote inclusive digital services and the systematic evaluation of accessibility in the revision of legislation, notably in the areas of e-commerce, e-identity and e-signature. In June 2012, the Commission proposed a regulation that would enable secure and seamless electronic transactions between businesses, citizens and authorities by regulating mutual recognition of e-signatures.<sup>68</sup> A dedicated article of the proposal contains an obligation to make the services covered by the regulation accessible to persons with disabilities.

61. The exchange of data relating to social security entitlements must be based on principles that include e-accessibility.<sup>69</sup> A directive relating to the free movement of information society services, particularly electronic commerce, between Member States obliges them to encourage the involvement of associations or organisations representing consumers, including consumers with disabilities, when drawing up codes of conduct.<sup>70</sup>

#### **Access to other goods and services**

62. Under Directive 2008/6/EC,<sup>71</sup> Member States are allowed to maintain or introduce free postal services for the use of blind and partially sighted persons. Euro coins must be designed to take into account the needs of people with visual impairments.<sup>72</sup>

### **Article 10 Right to life**

63. Article 2 of the Charter states that everyone has the right to life and no-one should be condemned to the death penalty, or executed. The abolition of the death penalty is a key objective for the Union's human rights policy and also a pre-condition for entry into the Union. The EU is the leading institutional actor and largest donor to the fight against the death penalty. This commitment is outlined in the EU Guidelines on the death penalty, the first ever human rights guidelines adopted by the Council in 1998 and revised in 2008.<sup>73</sup> Where capital punishment is still used, the EU calls for it to be progressively restricted and insists that it be carried out according to international minimum standards.

64. The EU intervenes both on individual cases and at a general policy level when a country's policy on the death penalty is in flux. In 2009 alone, the EU issued statements on over 30 individual cases and carried out more than 30 other actions in favour of individuals at risk of execution. EU funding also allows non-governmental organisations to campaign for the abolition of the death penalty. Projects may range from the monitoring of the use of

<sup>66</sup> COM(2005) 229. See also COM(2005) 425 and COM(2008) 804. The Digital Competitiveness Report measures the progress of the i2010 strategy: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0390:FIN:EN:HTML>.

<sup>67</sup> COM(2010) 0245.

<sup>68</sup> COM(2012) 238, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0238:FIN:EN:HTML>

<sup>69</sup> Regulation (EC) No. 987/2009 [2009] OJ L 284/1.

<sup>70</sup> Directive 2000/31/EC [2000] OJ L 178/1.

<sup>71</sup> Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services [2008] OJ L 52, p. 3–20 <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1397822868630&uri=CELEX:32008L0006>.

<sup>72</sup> Council Regulation (EC) No. 975/98 [1998] OJ L 139/6 and Council Regulation (EC) No. 423/1999 [1999] OJ L 52/2.

<sup>73</sup> <http://www.consilium.europa.eu/uedocs/cmsUpload/10015.en08.pdf>.

the death penalty to assistance to prisoners, support for constitutional reform, training, advocacy and awareness-raising campaigns.

## **Article 11**

### **Risk and humanitarian emergency**

65. The EU has competence to carry out activities and conduct a common policy in the area of humanitarian aid. The exercise of this competence is without prejudice to the competence of the Member States in this area. Under Article 214 TFEU, the Union's operations in the field of humanitarian aid are to be conducted in the framework of the principles and objectives of the Union's external action and in compliance with the principles of international law and impartiality, neutrality and non-discrimination. Such operations are intended to provide ad hoc assistance, relief and protection for people in third countries who are victims of natural or man-made disasters. The Union's measures and those of the Member States should complement and reinforce each other. In the field of civil protection, the EU has competences to carry out actions to support, coordinate or supplement Member States' actions.

66. The EU is the world's biggest donor of humanitarian aid. Together, Member States and EU institutions contribute more than half of official global humanitarian aid. Council Regulation 1257/96/EC concerning humanitarian aid<sup>74</sup> governs the implementation of all EU operations providing humanitarian assistance. Assistance is delivered in accordance with the European Consensus on Humanitarian Aid, a joint statement issued by the Council and the Representatives of the Governments of the Member States, the EP and the Commission in December 2007.<sup>75</sup> This provides a European framework with common humanitarian aid principles, and specifically states that in responding to humanitarian need, particular vulnerabilities must be taken into account and that the EU will pay special attention to women, children, the elderly, sick and disabled people, and to addressing their specific needs. Furthermore, the Disability Strategy commits the EU to raising awareness of the CRPD and the needs of people with disabilities, including accessibility, in the area of emergency and humanitarian aid.

67. The Commission's activities in the field of humanitarian aid are coordinated and carried out principally through its Directorate-General for Humanitarian Aid and Civil Protection (ECHO).<sup>76</sup> ECHO does not intervene directly on the ground, but provides assistance through its partners, namely NGOs, UN agencies and international organisations such as the International Committee of the Red Cross and the International Federation of the Red Cross and the Red Crescent Societies. Relations between ECHO and its partners are governed by framework partnership agreements which determine roles and responsibilities in the implementation of humanitarian operations financed by the EU. In the framework of the EU Civil Protection Mechanism, the Commission has co-financed a number of projects aiming at enhancing the protection of persons with disabilities in disaster situations.

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<sup>74</sup> [1996] OJ L 163 as amended by Regulations 1882/2003/EC<sup>74</sup> and 219/2009/EC).

<sup>75</sup> Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission (2008) The European Consensus on Humanitarian Aid [2008] OJ C 25, available at [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42008X0130\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42008X0130(01):EN:HTML).

<sup>76</sup> For more information, see: [http://ec.europa.eu/echo/index\\_en.htm](http://ec.europa.eu/echo/index_en.htm).

## Article 12

### Equal recognition before the law

68. The EU has no competence to regulate the question of legal capacity; this rests with the Member States. In affirming that everyone is equal before the law, Article 20 of the Charter is generally intended to guarantee equality and non-discrimination with respect to legislative enactments. The Commission has regularly addressed this issue in the DHLG and encouraged Member States to share good practice. In particular, the issue of legal capacity was highlighted in the 2008 and 2009 DHLG Reports as one of the common challenges for Member States in implementing the CRPD.

69. In 2013 the FRA has analysed the current international and European legal standards and compared EU Member States' laws in the area of legal capacity, set against the backdrop of the experiences of interviewees who have had their legal capacity removed or restricted.<sup>77</sup> country reports providing an overview of laws and practices relating to legal capacity in each Member State. FRA reports on the fundamental rights of persons with intellectual disabilities and persons with mental health problems,<sup>78</sup> and in particular the report on the right to political participation,<sup>79</sup> on involuntary placement and involuntary treatment of persons with mental health problems<sup>80</sup> and the right to independent living<sup>81</sup> have all touched on the issue of legal capacity.

70. The Commission supports EU-level DPOs which carry out activities related to Article 12 CRPD. For example, in 2009-11 it funded a project on active participation of people with disabilities in European elections.<sup>82</sup> The project, coordinated by Inclusion Europe, resulted in recommendations for the removal of accessibility barriers and restrictions to voting rights due to legislation on legal capacity. Under the Instrument for Pre-accession Assistance (IPA) to countries engaged in the accession process to the EU, and particularly through its Civil Society Facility, the Commission is currently funding the PERSON project (Partnership to Ensure Reforms of Supports in other Nations), which aims to increase the capacity of civil society organisations in several candidate countries (Serbia and Turkey) as well as in Bosnia and Herzegovina and Kosovo<sup>83</sup> to advocate for and monitor legal capacity law reforms affecting persons with psycho-social and intellectual disabilities.<sup>84</sup>

<sup>77</sup> FRA (European Union Agency for Fundamental Rights) (2013), Legal capacity of persons with intellectual disabilities and persons with mental health problems <http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf>.

<sup>78</sup> FRA (European Union Agency for Fundamental Rights) (2009), Country thematic reports on the fundamental rights of persons with intellectual disabilities and persons with mental health problems: <http://fra.europa.eu/en/country-report/2012/country-thematic-reports-fundamental-rights-persons-intellectual-disabilities>.

<sup>79</sup> FRA (European Union Agency for Fundamental Rights) (2011), The right to political participation of persons with mental health problems and persons with intellectual disabilities.

<sup>80</sup> FRA (European Union Agency for Fundamental Rights) (2012), Involuntary placement and involuntary treatment of persons with mental health problems. [http://fra.europa.eu/sites/default/files/fra\\_uploads/2130-FRA-2012-involuntary-placement-treatment\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/2130-FRA-2012-involuntary-placement-treatment_EN.pdf).

<sup>81</sup> FRA (European Union Agency for Fundamental Rights) (2012), Choice and control: the right to independent living. Experiences of persons with intellectual disabilities and persons with mental health problems in nine EU Member States, [http://fra.europa.eu/sites/default/files/fra\\_uploads/2129-FRA-2012-choice-and-control\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/2129-FRA-2012-choice-and-control_EN.pdf).

<sup>82</sup> [http://inclusion-europe.org/images/stories/documents/Project\\_ADAP/index.html](http://inclusion-europe.org/images/stories/documents/Project_ADAP/index.html).

<sup>83</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

<sup>84</sup> See: <http://www.eu-person.com>.

## Article 13

### Access to justice

71. The EU shares competences with the Member States in the area of freedom, security and justice which is relevant for the implementation of Articles 13 to 16 CRPD. The right of access to justice figures in Article 47 of the Charter (on the right to an effective remedy and to a fair trial).

72. Directive 2012/29/EU<sup>85</sup> establishes minimum standards on the rights, support and protection of victims of crime. The Member States have to comply with this Directive by 16 November 2015. The preamble to the Directive states that “factors that could be taken into account when assessing the vulnerability of a victim include, for example, gender, pregnancy, state of health and disability”. Recital 9 states that victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any grounds such as disability. In all contacts with a competent authority operating in the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Recital 15 further states that, in applying the Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out therein, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information.

73. Under Article 3(2) of the Directive, which deals with “the right to understand and be understood”, Member States are required to ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications must take into account the personal characteristics of the victim, including any disability that may affect the ability to understand or to be understood. Article 22 aims to ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs. In this context, particular attention must be paid to victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics, and victims with disabilities *inter alia* must be duly considered. Article 23 provides that special measures be made available to victims with specific protection needs during criminal proceedings.

74. Directive 2012/13/EU<sup>86</sup> on the right to information in criminal proceedings lays down rules concerning suspects’ or accused persons’ right to information relating to their rights in criminal proceedings and to the accusation against them. Under Article 3, suspects or accused persons should be provided promptly with information concerning certain procedural rights, such as the right of access to a lawyer, any entitlement to free legal advice, the right to remain silent and the right to interpretation and translation, which may include sign language interpretation or alternative communication mechanisms. Member States are also to ensure that the information provided for is given in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons. Recital 26 underlines that particular attention should be paid to persons who cannot understand the content or meaning of the information, for example because they are too young or due to their mental and physical condition.

75. Directive 2010/64/EU<sup>87</sup> deals with the right to interpretation and translation in criminal proceedings with respect to suspected or accused persons who do not speak or understand the language of the proceedings. Article 2(3) states that the right to

<sup>85</sup> [2012] OJ L 315/57.

<sup>86</sup> [2012] OJ L 141/1.

<sup>87</sup> [2010] OJ L 280/1.

interpretation includes the provision of appropriate assistance for persons with hearing or speech impediments. Recital 27 refers to people who are in a potentially weak position, in particular because of any physical impairment which affects their ability to communicate effectively. Directive 2013/48/EU<sup>88</sup> deals with the right of access to a lawyer in criminal and European arrest warrant proceedings and the right to communicate with third persons and with consular authorities while deprived of liberty. Under Article 13, Member States are to ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of the Directive. Recital 51 underlines that the duty of care towards suspects and accused persons who are in a potentially weak position underpins a fair administration of justice.

76. Commission Recommendation C(2013) 8178/2<sup>89</sup> on procedural safeguards for vulnerable people suspected or accused in criminal proceedings aims to encourage Member States to strengthen the procedural rights of all suspects or accused persons who are not able to understand and effectively participate in criminal proceedings due to their age, mental or physical condition or disabilities (“vulnerable persons”). In particular, it aims to ensure that vulnerable persons are promptly identified and recognised as such. Member States should ensure that all competent authorities have recourse to a medical examination by an independent expert to identify vulnerable persons, and to determine the degree of their vulnerability and their specific needs. The preamble to the Recommendation indicates that references to appropriate measures to ensure effective access to justice for persons with disabilities should be understood in light of the objectives of the CRPD and in particular of Article 13 thereof. It also recommends that Member States provide for a presumption of vulnerability in particular for persons with serious psychological, intellectual, physical or sensory impairments, or mental illness or cognitive disorders, hindering their understanding of, and effective participation in, the proceedings. On request, persons with disabilities should also receive information concerning their procedural rights in an accessible format. Member States should ensure that deprivation of liberty before conviction is a measure of last resort and proportionate, and that it takes place under conditions suited to the needs of the vulnerable person. Appropriate measures should be taken to ensure that vulnerable persons have access to reasonable accommodation taking into account their particular needs when they are deprived of liberty.

77. In 2013, the Commission proposed a directive on procedural safeguards for children suspected or accused in criminal proceedings to make sure that they are able to understand and follow criminal proceedings, including by having access to a lawyer at all stages.<sup>90</sup> Children are also set to benefit from other safeguards such as being informed promptly about their rights, being assisted by their parents (or other appropriate persons), not being questioned in public hearings and the right to receive medical examination if deprived of liberty.

78. Under the Daphne Programme,<sup>91</sup> the Commission has funded a series of projects to prevent and combat violence against children, young people and women and to protect victims and groups at risk. Projects also targeted at people with disabilities included a campaign against violence and bullying of young people with learning disabilities.<sup>92</sup>

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<sup>88</sup> [2013] OJ L 294/1.

<sup>89</sup> [http://ec.europa.eu/justice/criminal/files/c\\_2013\\_8178\\_en.pdf](http://ec.europa.eu/justice/criminal/files/c_2013_8178_en.pdf).

<sup>90</sup> COM(2013) 822 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1401877327388&uri=CELEX:52013PC0822>.

<sup>91</sup> [http://ec.europa.eu/justice/grants/programmes/daphne/index\\_en.htm](http://ec.europa.eu/justice/grants/programmes/daphne/index_en.htm).

<sup>92</sup> ENABLE, FENACERCI and LEV (2000), A campaign by people with learning disabilities against violence and bullying of young people with learning disabilities in Europe. Available at: [http://ec.europa.eu/justice\\_home/daphnetoolkit/files/others/europe\\_violence/2.1.pdf](http://ec.europa.eu/justice_home/daphnetoolkit/files/others/europe_violence/2.1.pdf).



## **Article 14**

### **Liberty and security of person**

79. Article 6 of the Charter states that everyone has the right to liberty and security of person. The Commission's 2005 Green Paper on improving the mental health of the population<sup>93</sup> recognises that compulsory placement of patients in psychiatric institutions and involuntary treatment severely affects their rights and that such measures should be applied only as a last resort, where less restrictive alternatives have failed.

80. Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers<sup>94</sup> requires that the reception of groups with special needs should be specifically designed to meet those needs. Article 17 requires that Member States take into account the specific situation of vulnerable persons such as minors, unaccompanied minors and disabled people in the national legislation implementing the provisions relating to material reception conditions and healthcare. From 21 July 2015, a new Reception Conditions Directive<sup>95</sup> will require that, where vulnerable persons and applicants with special reception needs are detained, Member States ensure regular monitoring and adequate support taking into account their particular situation, including their health.

## **Article 15**

### **Freedom from torture or cruel, inhuman or degrading treatment**

81. The EU has supporting competence in the areas of research and technological activities. Article 4 of the Charter states that no-one should be subjected to torture, inhuman or degrading treatment or punishment. Under the Stockholm Programme, the Union has pledged to continue its efforts to abolish the death penalty in partner countries and to try to bring to an end torture and other inhuman and degrading treatment. In 2008, the EU adopted guidelines to support and strengthen efforts to prevent and eradicate torture and ill-treatment in all parts of the world.

82. Ethics is an integral part of research funded by the EU and the Commission recognises that ethical compliance, ensured in particular through an ethics review procedure integrated in the application and evaluation process, is pivotal to achieve real research excellence. The Commission has issued guidance on research ethics to help applicants in the preparation of proposals for EU funding to properly identify and address any ethics issues that may arise, including with regard to respect for the integrity and dignity of persons.<sup>96</sup>

## **Article 16**

### **Freedom from exploitation, violence and abuse**

83. The EU has shared competence in the area of freedom, justice and security, including judicial cooperation in criminal matters. Article 1 of the Charter states that human dignity is inviolable and must be respected and protected.

<sup>93</sup> European Commission (2005), Green Paper on Improving the mental health of the population: Towards a strategy on mental health for the European Union, COM(2005) 484.

<sup>94</sup> [2003] OJ L 31/18.

<sup>95</sup> Directive 2013/33/EU, OJ L 180, 29.6.2013, p. 96–116.

<sup>96</sup> European Commission, Directorate-General Research (2013), Ethics for researchers. Available at: [http://ec.europa.eu/research/participants/data/ref/fp7/89888/ethics-for-researchers\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/fp7/89888/ethics-for-researchers_en.pdf).

84. Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography<sup>97</sup> requires a minimum level of assistance for victims. Offences causing sexual abuse are defined taking into account, *inter alia*, the particularly vulnerable situation of the child, including physical or mental disability. The Directive specifically requires Member States to enact a criminal offence (if they have not already done so) dealing with engagement in sexual activities with a child whose particularly vulnerable situation is abused, in particular because of a mental or physical disability or a situation of dependence. Recital 10 states that disability, by itself, does not automatically rule out consent to sexual relations. Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims<sup>98</sup> requires Member States, when providing assistance and support to victims of trafficking, to attend to victims with “special needs”, which can include a disability or a mental or psychological disorder.

85. The EU Agenda for the Rights of the Child<sup>99</sup> includes a number of concrete actions in the areas of child-friendly justice, protecting children in vulnerable situations and fighting violence against children both inside and outside the EU. The Commission Recommendation on *Investing in Children: Breaking the Cycle of Disadvantage*<sup>100</sup> refers to the need to prevent violence and abuse by reducing children’s harmful exposure to a deteriorating living and social environment<sup>101</sup> and requires a focus on children who experience multiple disadvantage, including “children with special needs or disabilities”, as they face increased risks.

## **Article 17**

### **Protecting the integrity of the person**

86. The EU has shared competence on common safety concerns in public health matters, and supporting competence in health protection and research and technological activities. Article 3 of the Charter states that everyone has the right to respect for his or her physical and mental integrity. Action related to implementation of this Article of the CRPD is covered in the sections of this report on Articles 15 and 19.

87. In 2012, on the basis of research in all Member States, FRA published a report on the involuntary placement and treatment of people with mental health problems.<sup>102</sup> This included an analysis of human rights principles relating to involuntary treatment and drew attention to the impact of the CRPD. A recurring theme highlighted by the empirical research was the trauma and fear people associate with compulsory measures.

## **Article 18**

### **Liberty of movement and nationality**

88. Any person who holds the nationality of an EU Member State is automatically also an EU citizen. EU citizenship is additional to and does not replace the nationality of an EU Member State (Article 20 TFEU). EU citizenship gives every EU citizen a number of important rights, including the right to move freely around the EU and settle anywhere within its territory. Freedom of movement for all EU citizens implies freedom to travel, live,

<sup>97</sup> [2011] OJ L 335/1.

<sup>98</sup> [2011] OJ L 101/1.

<sup>99</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0060:FIN:EN:PDF>.

<sup>100</sup> European Commission (2013), Commission Recommendation of 20 February 2013, C(2013) 778 final.

<sup>101</sup> European Commission, C(2013) 778 final, p. 8.

<sup>102</sup> See note 76.

work, study and retire in another Member State. EU citizens are entitled to look for a job in another EU country, work there without needing a work permit, reside there for that purpose, stay there even after employment has finished, and enjoy equal treatment with nationals in terms of access to employment, working conditions and all other social and tax advantages.<sup>103</sup> In addition, EU nationals may have certain types of health and social security coverage transferred to another Member State, allowing them to exercise the right to move.

89. Directive 2004/38<sup>104</sup> provides that EU citizens who are resident in another Member State are entitled to equal treatment with nationals within the scope of the Treaty. A recital stipulates that Member States must implement the Directive without discrimination on grounds such as *inter alia* genetic characteristics and disability. As regards access to social assistance, under Article 24(2) of the Directive, Member States are not obliged to grant social assistance to non-economically active EU citizens during the first three months of residence in their territory. If they lawfully reside there for a period longer than three months, EU citizens are entitled to social assistance benefits on an equal footing with nationals of the Member State concerned. However, in specific cases where authorities have a reasonable doubt that the EU citizens concerned may become an unreasonable burden on their social assistance system, they may assess the individual situation taking into account all relevant circumstances and the principle of proportionality, and could, on this basis, terminate the right of residence of the persons concerned.<sup>105</sup> After five years of legal residence, EU citizens are entitled to social assistance in the same way as nationals of the host Member State.

90. The Disability Strategy has recognised that there are still many obstacles preventing people with disabilities from fully exercising their fundamental rights, including their right to free movement and residence within the EU. As part of the Strategy's list of actions for the period 2010 to 2015, the Commission asked the Academic Network of European Disability experts (ANED) to complete a study on *Disability Benefits and Entitlements in European Countries*.<sup>106</sup> Based on its findings, the Commission has promoted an exchange of information and mutual learning among Member States, notably within the DHLG. In its 2013 EU Citizenship Report,<sup>107</sup> the Commission put forward 12 actions in six key areas to lift obstacles EU citizens encounter in their daily life, in particular in cross-border situations. As part of Action 6, the Commission is supporting the development of a mutually recognised EU disability card with a view to tackling the problems related to intra-EU mobility and ensure equal access within the EU to certain benefits, mainly in the areas of transport, tourism culture and leisure. A Project Working Group convened by the Commission and gathering representatives of interested Member States and civil society has been dealing with the practical details of issuing and managing such a card.

91. As regards third-country nationals, Regulation (EC) No. 562/2006<sup>108</sup> establishes a code on the rules governing the movement of persons across borders and provides that, when conducting any checks of travel documents at internal or external EU border crossings, border guards must not discriminate against persons on grounds *inter alia* of

<sup>103</sup> <http://ec.europa.eu/social/main.jsp?catId=457>.

<sup>104</sup> [2004] OJ L 158/77.

<sup>105</sup> Articles 14(1) (3) and 15 of the Directive and Case C-140/12 Brey, paragraph 72.

<sup>106</sup> <http://www.disability-europe.net/content/aned/media/ANED%202010%20Task%207%20-%20Disability%20Benefits%20and%20Entitlements%20-%20Report%20-%20FINAL%20%282%29.pdf> and an annotated database of examples at <http://www.disability-europe.net/content/aned/media/ANED%202010%20Task%207%20-%20Report%20Annex%201%20-%20database%20summary%20FINAL.pdf>.

<sup>107</sup> [http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport\\_en.pdf](http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport_en.pdf).

<sup>108</sup> Regulation (EC) No. 562/2006 establishing a [EU] Code on the rules governing the movement of persons across borders [2006] OJ L 105/1, Article 6.

disability. Likewise, Regulation (EC) No. 810/2009<sup>109</sup> provides that “consular staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

92. Under Directive 2003/86/EC<sup>110</sup> dealing with the right to family reunification between third-country nationals, Member States are permitted to decline applications for entry and residence on “public health” grounds. However, Article 6(3) prohibits the withholding or removal of residence permits upon renewal “on the sole ground of illness or disability suffered after the issue of the residence permit.” If, for example, the disability is acquired through an industrial accident or if a member of the family acquires a disability during a lawful period of residence, a renewal of residence cannot be denied. Recital 5 to this Directive is to the effect that the rights afforded thereunder must be provided without discrimination based, *inter alia*, on disability. Council Directive 2003/109/EC dealing with the status of third country nationals who are long-term residents provides that Member States may refuse applications for residence if the applicant “constitutes a threat to public health” (Article 18(1)). The only basis on which this may be invoked is with reference to the listing of contagious diseases in the relevant WHO instruments (Article 7(2)). As it is the case for Directive 2003/86/EC, Recital 5 to the Long Term Residents Directive states that the rights afforded thereunder are to be provided without discrimination on the basis, *inter alia*, of disability. Other directives dealing with the long-term legal residence of non-EU nationals in the EU stipulate that Member States must give effect to their provisions without discrimination on the ground of disability.<sup>111</sup>

## Article 19

### Living independently and being included in the community

93. EU competence for the promotion of independent living and inclusion in the community is shared with the Member States. In the Disability Strategy, the Commission has undertaken to promote the use of EU Structural Funds to assist Member States in the transition from institutional to community-based services and to raise awareness of the situation of people with disabilities living in residential institutions, in particular children and elderly people. The Structural Funds are among the main tools of EU Cohesion Policy, which aims to reduce disparities between European regions.

94. Council Regulation (EC) No. 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund for the period 2007–2013<sup>112</sup> contains a non-discrimination provision, whereby, in particular, accessibility for disabled persons was identified as one of the criteria to be observed in defining operations co-financed by the Funds and taken into account during the various stages of implementation. In 2009, the Commission produced a “toolkit” to provide national managing authorities with information on how to understand the non-discrimination and accessibility requirements of the EU Structural and Cohesion funds.<sup>113</sup> The Commission has assessed the application of this provision and identified certain

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<sup>109</sup> Regulation (EC) No. 810/2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L 243/1.

<sup>110</sup> [2003] OJ L 251/12.

<sup>111</sup> Long-Term Residence Directive [2004] OJ L 16/44 and the Single Permit Directive (Directive 2011/98/EU) [2011] OJ L 343/1.

<sup>112</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1083:EN:NOT>.

<sup>113</sup> European Commission (2009), *Ensuring accessibility and non-discrimination of people with disabilities – Toolkit for using EU Structural and Cohesion Funds*. Available at <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=174&furtherPubs=yes>.

challenges.<sup>114</sup> As a result, for the 2014-20 programming period, the European Structural and Investment Funds (ESI Funds) Regulations contain new provisions that reflect the entry into force of the CRPD and enhance the promotion of equality, non-discrimination, inclusion and accessibility for persons with disabilities through actions under the Funds.

95. The new Common Provision Regulation (CPR)<sup>115</sup> requires that the Member States and the Commission take appropriate steps to prevent any discrimination based on disability during the preparation and implementation of programmes and that accessibility for persons with disabilities is taken into account throughout the preparation and implementation of programmes. Managing authorities must ensure that all products, goods, services and infrastructures that are open or provided to the public and are co-financed by the ESI Funds, in particular as regards the physical environment, transport and ICT, are accessible to all citizens, including those with disabilities in accordance with applicable law, thereby contributing to a barrier-free environment for persons with disabilities and the elderly. Actions may include investments to improve accessibility in existing buildings and established services. Equality, non-discrimination and accessibility are also mentioned under specific provisions as regards, for instance, monitoring, reporting and evaluation. Member States must also ensure the participation in the partnership of the relevant bodies responsible for promoting non-discrimination and ensure adequate structures in accordance with national practices to advise on gender equality, non-discrimination and accessibility in order to provide the necessary expertise in the preparation, monitoring and evaluation of the ESI Funds.

96. For the first time, the CPR sets out “*ex-ante* conditionalities”, pre-conditions to ensure that institutional and strategic policy arrangements are in place for effective investment. Member States are to self-assess whether they fulfil the *ex-ante* conditions. The Commission is to review Member States’ fulfilment of the conditions and may decide to suspend all or part of interim payments pending the satisfactory completion of actions to fulfil an *ex-ante* conditionality. There are general and thematic *ex-ante* conditionalities. Two of the general conditionalities applying to all sectors and policies supported by the ESI Funds are:

- The existence of administrative capacity for the implementation and application of the CRPD in the field of ESI Funds; and
- The existence of administrative capacity for the implementation and application of EU anti-discrimination law and policy in the field of ESI Funds.

97. There are also thematic *ex-ante* conditionalities concerning:

- The active inclusion of people excluded from the labour market – this may include measures for the shift from institutional to community-based care;
- The existence of a strategic policy framework for health, which may include elements that can reinforce the shift from hospital and institutional-based care to community-based care.

<sup>114</sup> European Commission (2009), Study on the Translation of Article 16 of Regulation (EC) No. 1083/2006 for Cohesion policy programmes 2007-13 co-financed by the ERDF and the Cohesion Fund (Public Policy and Management Institute (PPMI, Lithuania) in partnership with Net Effect (Finland) and Racine (France).

<sup>115</sup> Regulation (EU) No. 1303/2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006.

98. The new European Social Fund (ESF) Regulation states that the ESF should support the fulfilment of the Union's obligation under the CRPD with regard *inter alia* to education, work, employment and accessibility. Under Article 8 of the Regulation, actions must aim to combat all forms of discrimination and to improve accessibility for persons with disabilities, with a view to improving integration into employment, education and training, thereby enhancing social inclusion, reducing inequalities in terms of educational attainment and health status, and facilitating the transition from institutional to community-based care, in particular for those who face multiple discrimination. In the 2014-20 programming period, at least 20% of ESF funding will target social inclusion through:

- Employability measures such as individualised support, counselling, guidance, access to general and vocational education and training, as well as access to services, notably health and social services, childcare and internet services;
- Specific actions targeting people at risk of discrimination and people with disabilities and chronic disease with a view to increasing their labour market participation, enhancing their social inclusion, and reducing inequalities in terms of educational attainment and health status;
- Enhanced access to affordable, sustainable and high-quality social services such as employment and training services, services for the homeless, out-of-school care, childcare and long-term care services;
- Access to e-services to promote e-inclusion; and
- Support for the transition from institutional care to community-based care services for children, people with disabilities, including people with psycho-social disabilities, and the elderly, with a focus on integration between health and social services.

99. Promoting the transition from institutional to community-based services is one of the investment priorities of the European Regional Development Fund (ERDF).<sup>116</sup> The ERDF can support targeted investments in mainstream health and social infrastructure, education, housing and specialised services to enhance access to high-quality services in the community, with the aim of ensuring individualised care and support, social inclusion and respect for the rights of the service users. The ERDF should as a basic principle not be used for building new residential institutions or the renovation and modernisation of existing ones. Targeted investments in existing institutions can be justified in exceptional cases where urgent and life-threatening risks to residents linked to poor material conditions need to be addressed, but only as transitional measures within the context of a de-institutionalisation strategy.

100. According to the principle of shared management to which the Funds are subject, the Commission has the responsibility to ensure that the Member States' operational programmes comply with EU law, including EU legislation and the CRPD, and their strategies are in line with EU strategies and policies, including the Disability Strategy. Implementation, on the other hand, lies with the Member States. The Commission is committed to suspending or withdrawing payments in the event of this principle being breached. The Commission recognises the important role of stakeholders, such as NGOs, DPOs and service providers, in monitoring investments, raising awareness of the situation of persons with disabilities in residential settings, and providing guidance for compliance with the principles of the CRPD for an effective transition to community-based living. For

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<sup>116</sup> Proposal for a Regulation of the European Parliament and of the Council on specific provisions concerning the European Regional Development Fund and the Investment for growth and jobs goal and repealing Regulation (EC) No. 1080/2006, Brussels, 6.10.2011. COM(2011) 614 final 2011/0275 (COD), Article 5(9)(a).

the programming period 2014–2020, a Delegated Regulation on a European Code of Conduct on Partnership in the framework of the ESI Funds has been promulgated.<sup>117</sup>

101. In 2007, the Commission funded a study on progress towards community living across Europe.<sup>118</sup> The study provided evidence in support of transition from institutional care to community-based alternatives, as they can provide better results for users, their families and staff while the costs are comparable when based on comparable quality standards. It also found that institutional care for disabled people in Europe fell short of acceptable standards and recommended wider use of community-based services. The study called for standardised data to be collected on residential institutions across the EU to report on progress.

102. To support the transition to community living, in 2009 the Commissioner responsible for Employment and Social Affairs mandated an Ad Hoc Expert Group on Institutional Care Reform to deliver a stock-taking report.<sup>119</sup> The Group was composed of representatives of major pan-European CSOs that deal with deinstitutionalisation and the reform of institutional care, including the European Association of Service Providers for Persons with Disabilities (EASPD), the European Disability Forum (EDF), Inclusion Europe, Mental Health Europe, the European Older People's Platform (AGE), the Confederation of Family Organisations in the EU (COFACE), the European Coalition for Community Living (ECCL) and the Children's High-Level Group. The report drew up a set of common basic principles from existing good practice, including:

- Respecting users rights and involving them in decision-making;
- Prevention of institutionalisation;
- The creation of community-based services;
- The closure of institutions;
- Restriction on investment in existing institutions;
- Development of human resources;
- Efficient use of resources;
- Control of quality;
- The development of a holistic approach beyond independent living to cover related fields such as employment, social policy and transport; and
- Continuous awareness-raising.

103. The Commission has cooperated with the successor of the Ad Hoc Group in the organisation of national seminars in the Member States to support the programming of ESI Fund actions promoting effective transition to community-based living. Organised by a national authority and facilitated by the Group with the support of the Commission, each seminar has been primarily addressed to representatives of national, regional and local authorities from social affairs and welfare, regional development and finances, ESF and ERDF management authorities, and service providers and users representatives.

104. EU law does not directly address the issue of personal assistance schemes, which are a matter of national competence. Regulation (EC) No. 883/2004 provides for the

<sup>117</sup> OJ L74, 14.3.2014, p. 1.

<sup>118</sup> Mansell, J., Knapp, M., Beadle-Brown, J. & Beecham, J. (2007), *Deinstitutionalisation and community living – outcomes and costs: Report of a European Study*. Volume 1: Executive Summary and Volume 2: Main Report. (Report commissioned by the European Commission) (Canterbury, University of Kent).

<sup>119</sup> <http://ec.europa.eu/social/BlobServlet?docId=3992&langId=en>.

coordination of social security schemes and, in certain specific circumstances, for the entitlement to have a social security benefit “exported” to another Member State.<sup>120</sup> A benefit relating to independent living such as personal assistance would need to be regarded as a sickness benefit for it to be exportable under EU law. In all other cases, while there is nothing to prevent exportability, there is no obligation under EU law concerning the exportability of such benefits.<sup>121</sup>

105. The European Pact for Mental Health and Well-Being<sup>122</sup> launched in 2008 calls on the EU and the Member States to take action under five priority areas to promote good mental health and well-being in the population. In the area of Combating Stigma and Social Exclusion, the Pact called on policy makers and stakeholders to develop mental health services which are well integrated in society and which put the individual at the centre and avoid stigmatisation and exclusion.<sup>123</sup> The five priorities are implemented through conferences, studies and the development of an action plan. The EU Compass for Action on Mental Health and Well-being<sup>124</sup> is a means to implement the European Pact and is an online resource to facilitate the exchange of good practice and policies, allowing the dissemination of relevant documents and reports, and encouraging the expression of commitment to future action in the area of mental health by relevant actors and stakeholders. In its 2011 Conclusions on the Mental Health Pact<sup>125</sup> the Council invited the Member States to take measures against the stigmatisation and exclusion of people with mental health problems, to combat discrimination against them, to promote community-based, socially inclusive treatment and care models, and to support training programmes for professionals and managers in healthcare, social care, and workplaces on mental well-being and mental disorders.<sup>126</sup>

106. The Commission has also been active in promoting and supporting independent living through e-accessibility and the development of ICT, including by funding research, development and innovation in these areas. The 2007-13 Competitiveness and Innovation Framework Programme<sup>127</sup> encouraged the development of ICT-based solutions to improve the lives of persons with disabilities. The EU has also been participating in the Ambient Assisted Living Joint Programme (AAL JP) and has co-financed actions to enhance the quality of life of older people through solutions for independent living using ICT.<sup>128</sup>

107. In 2012, FRA published a report on the right to independent living and experiences of persons with intellectual disabilities and persons with mental health problems in nine Member States.<sup>129</sup> The report highlighted the need for further efforts on de-institutionalisation accompanied by reforms in the areas of education, healthcare, employment, culture and support services.

<sup>120</sup> Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 314, p. 37.

<sup>121</sup> Academic Network of European Disability experts (ANED) (2010), *Disability Benefits and Entitlements in European Countries: Mutual Recognition and Exportability of Benefits – A synthesis of evidence provided by ANED country reports and additional sources* (December 2010), p. 37.

<sup>122</sup> EU High-Level Conference – European Pact for Mental Health and Wellbeing, (Brussels, 2008). Available at: [http://ec.europa.eu/health/ph\\_determinants/life\\_style/mental/docs/pact\\_en.pdf](http://ec.europa.eu/health/ph_determinants/life_style/mental/docs/pact_en.pdf).

<sup>123</sup> EU High-Level Conference – European Pact for Mental Health and Wellbeing, (Brussels, 2008), p. 5–6.

<sup>124</sup> Available at: [http://ec.europa.eu/health/mental\\_health/eu\\_compass/index\\_en.htm](http://ec.europa.eu/health/mental_health/eu_compass/index_en.htm).

<sup>125</sup> Council Conclusions on the *European Pact for Mental Health and Well-being: results and future action*, Luxembourg, 6 June 2011. See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lsa/122389.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/122389.pdf).

<sup>126</sup> *European Pact for Mental Health and Well-being: results and future action*, para. 21.

<sup>127</sup> Decision No. 1639/2006 EC [2006] OJ L 310/15.

<sup>128</sup> <http://www.aal-europe.eu/>.

<sup>129</sup> See note 77.



108. Despite a heightened degree of sensitivity at policy level, people with disabilities across Europe still report that they are not included in the community and big challenges remain. Of severely disabled people 23% consider that they are not included in society (EQLS 2011–2012). Similarly, many people with disabilities consider that their life lacks opportunities for social engagement and other opportunities (SHARE 2011).<sup>130</sup> People with disabilities express a dissatisfaction concerning their social life: about 46% of persons with severe disabilities aged 18 or more declare a score between 1 to 5 (where 10 is the maximum satisfaction) compared to 14.6% of persons without disabilities (EQLS 2011–12).<sup>131</sup> About 45.8% of persons aged 50 or more with difficulties in everyday life receive help. Among those who receive help, about 8.8% consider that help received “sometimes” or “hardly ever” meets their needs (SHARE 2007). The 2011 SHARE survey provided similar results concerning the percentage who received help from others (44.5%).

## Article 20 Personal mobility

109. The EU has shared competence in matters relating to personal mobility. Various pieces of EU legislation impose obligations on operators to provide live (and trained) assistance to passengers with disabilities or reduced mobility. These include the 2006 Air Passengers Regulation,<sup>132</sup> the 2007 Rail Passengers Regulation,<sup>133</sup> the 2010 Sea and Inland Waterways Regulation<sup>134</sup> and the 2011 Bus and Coach Regulation.<sup>135</sup> At the end of 2011, the Commission adopted a Communication on passenger rights in all transport modes,<sup>136</sup> which sets out the vision for implementing ten main EU passenger rights, including the right to non-discrimination in access to transport, the obligation to provide assistance and the right to compensation. In June 2012, guidelines for the application of Regulation (EC) No. 1107/2006 on the rights of persons with disabilities and persons with reduced mobility when travelling by air were published in order to facilitate and improve the application of this Regulation.<sup>137</sup>

110. As for car travel, the recast Driving Licences Directive<sup>138</sup> contains a number of specific provisions regarding drivers with disabilities. All drivers must pass a test of skills and behaviour and meet medical standards which cover sight, hearing, locomotor disabilities, cardiovascular diseases, diabetes, neurological diseases, mental disorders, alcohol, drugs and renal disorders. Generally speaking, persons with these disabilities are allowed to drive if their condition is not such as to make driving dangerous and is medically monitored, and adjustments are made to the vehicle where needed. Exceptions include

<sup>130</sup> Survey on Health, Ageing and Retirement in Europe: SHARE “wave 4” (Release 1.1.1), as of 28 March 2013. <http://www.share-project.org/data-access-documentation/research-data-center-data-access.html>. The survey covers persons aged 50 or more.

<sup>131</sup> European Foundation for the Improvement of Living and Working Conditions – Economic and Social Data Service (ESDS), UK Data Archive; EQLS 2011–2012, [computer file]. Colchester, Essex: UK Data Archive [distributor], July 2013. SN: 7316. EQLS 2007–2008. Economic and Social Data Service (ESDS), UK Data Archive; <http://www.esds.ac.uk/aandp/access/login.asp>.

<sup>132</sup> [2006] OJ L 204/1.

<sup>133</sup> [2007] OJ L 315/14.

<sup>134</sup> [2010] OJ L 334/1.

<sup>135</sup> [2011] OJ L 55/1.

<sup>136</sup> European Commission (2011), Communication from the Commission to the European Parliament and the Council, *A European vision for Passengers: Communication on Passenger Rights in all transport modes* COM(2011) 0898 final.

<sup>137</sup> SWD(2012) 171 final. Available at: [http://ec.europa.eu/transport/themes/passengers/air/doc/prm/2012-06-11-swd-2012-171\\_en.pdf](http://ec.europa.eu/transport/themes/passengers/air/doc/prm/2012-06-11-swd-2012-171_en.pdf).

<sup>138</sup> [2006] OJ L 403/18.

persons with severe mental disturbance, severe mental retardation, severe behavioural problems and drivers with severe arrhythmia. Drivers with physical disabilities may have licences restricted to certain categories of vehicle.

111. The Community model (now “EU model”) of parking badge for people with disabilities was introduced by a Council Recommendation in 1998 and updated in 2008 to take account of the accession of new Member States.<sup>139</sup> This mutually recognised, standardised model allows its holders to use certain parking facilities under preferential conditions in their country of residence and in other EU countries. Applicable conditions are always those of the country of destination.

112. The EU has also taken action to make mobility more affordable and accessible to persons with disabilities. The EU system of customs duty exemptions for certain goods and services from outside the Union<sup>140</sup> covers “articles specially designed for the educational, scientific or cultural advancement” of blind people or other physically or mentally “handicapped” people, provided that they fulfil certain conditions.<sup>141</sup> Long canes for use by blind people are explicitly mentioned. Another directive allows the Member States to apply differentiated rates of taxation for energy products and electricity when they are used for or by people with disabilities.<sup>142</sup>

113. The Europe 2020 Innovation Union flagship initiative<sup>143</sup> recognises the need to develop responses to the ageing of the population, including through assistive equipment and technology. The “Accessibility” chapter of the Disability Strategy includes an undertaking by the Commission to foster an EU-wide market for assistive technology.

## Article 22

### Respect for privacy

114. Article 16 TFEU provides a specific legal basis for the adoption of rules on the protection of personal data processed by EU institutions, bodies, offices and agencies and by the Member States when carrying out activities that fall within the scope of Union law. Article 7 of the Charter states that everyone has the right to respect for his or her private and family life, home and correspondence. It is complemented by Article 8 of the Charter, which sets out a right to the protection of personal data. Under Article 8(2), data must be

<sup>139</sup> [1998] OJ L 67/25 and Council Recommendation of 3 March 2008 adapting Recommendation 98/376/EC on a parking card for people with disabilities, by reason of the accession of the Republic of Bulgaria, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, Romania, the Republic of Slovenia and the Slovak Republic [2008] OJ L 63/43.

<sup>140</sup> Amended many times. See [2009] OJ L 324/23, available at [http://europa.eu/legislation\\_summaries/customs/111002\\_en.htm#AMENDINGACT](http://europa.eu/legislation_summaries/customs/111002_en.htm#AMENDINGACT).

<sup>141</sup> [1983] OJ L 105/1.

<sup>142</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, [2003] OJ L 283/51.

<sup>143</sup> European Commission (2010), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Europe 2020 Flagship Initiative Innovation Union* SEC(2010) 1161 COM(2010) 0546 final. See also Commission Staff Working Document — Accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — *Ageing well in the Information Society — An i2010 Initiative — Action Plan on Information and Communication Technologies and Ageing* {SEC/2007/811} COM(2007) 0332 final and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — *Moving the ICT frontiers: a strategy for research on future and emerging technologies in Europe* COM(2009) 0184 final.

processed fairly for specified purposes and on the basis of the consent of the person concerned or other legitimate basis laid down by law. Everyone has the right of access to data that have been collected concerning him or her, and the right to have them rectified.

115. Directive 95/46/EC<sup>144</sup> and Regulation (EC) No. 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>145</sup> provide the framework for the protection of personal data. Under the Directive, the processing of personal data must be lawful and fair to the individuals concerned, the purposes of the processing should be explicit and legitimate and must be determined at the time the data are collected, and the data collected must be relevant and not excessive in relation to the purpose for which they are processed. Under Article 8(1), Member States must prohibit the processing of personal data concerning *inter alia* health. This prohibition does not apply when processing is necessary to protect the vital interests of the data subject or of another person where the data subject “is physically or legally incapable of giving his consent”.

116. Framework Decision 2008/977/JHA provides for data protection in the more specific areas of police cooperation and judicial cooperation in criminal matters.<sup>146</sup> This Decision aims to ensure a “high level of protection of the fundamental rights and freedoms of natural persons, and in particular their right to privacy” with respect to the processing of personal data for the purposes of preventing, investigating, detecting or prosecuting a criminal offence or of executing a criminal penalty (Article 1).

117. In 2012, the Commission proposed a major reform of the EU legal framework on the protection of personal data to strengthen individual rights and tackle the challenges of globalisation and new technologies. The proposed reform includes:

- A proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);<sup>147</sup> and
- A proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.<sup>148</sup>

118. The proposed General Data Protection Regulation extends the prohibition on the processing of certain kinds of data to genetic data and reinforces the protection of health data, i.e. any information which relates to the physical or mental health of an individual, including any information on a disease, disability, disease risk, medical history, clinical treatment. It also covers biometric data, including any data relating to the physical, physiological or behavioural characteristics of an individual which allow their unique identification, such as facial images, or dactyloscopic data.

<sup>144</sup> [1995] OJ L 281/31.

<sup>145</sup> Another important EU legislative measure is Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in electronic communications. This complements Directive 95/46/EC with respect to the processing of personal data of natural persons in the electronic communications sector ([2002] OJ L 201/37).

<sup>146</sup> [2008] OJ L350/60.

<sup>147</sup> COM(2012) 11 final. See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0010:FIN:EN:PDF>.

<sup>148</sup> [COM(2012) 10 final].

## Article 23

### Respect for home and the family

119. The EU has no direct competence with respect to the substance of family law, which remains largely the prerogative of the Member States. However, EU competence with respect to civil and criminal cooperation in judicial matters can have direct implications for families. Article 7 of the Charter states that everyone has the right to respect for his or her private and family life, home and correspondence. Article 9 provides that the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights. Article 33(1) provides that the family shall enjoy legal, economic and social protection. Article 33(2) deals with the reconciliation of family and professional life, and the right to protection against dismissal for a reason connected with maternity. And Article 24 deals with a child's right to maintain on a regular basis a personal relationship and direct contact with both of his or her parents.

120. A study published by the Commission in 2009 on the situation of women with disabilities in light of the CRPD<sup>149</sup> asserts, in particular, that they do not yet fully enjoy the right to marry and form a family, decide freely on the number and spacing of their children, have access to family planning information and retain their fertility on an equal basis with others.<sup>150</sup> *Discrimination Generated by the Intersection of Gender and Disability*,<sup>151</sup> a study conducted for the EP in 2013, asserts that the right of women with disabilities to decide on all aspects of sexual and reproductive matters is still violated in many Member States. The study recommended that the Commission should come forward with a legislative proposal on the basis of Article 19 TFEU (prohibition of discrimination) to ban forced sterilisation.<sup>152</sup>

121. As regards the statistics on marriage, family, parenthood and relationships, one important indicator concerns the type of household. According to the EU-SILC survey, 18.1% of persons with disabilities aged 16 to 64 in the EU lived in "one-person households" in 2011, as compared with 10.5% of persons without disabilities in the same age group (EU-SILC UDB 2011). This may indicate a reduced rate of family formation for persons with disabilities.

## Article 24

### Education

122. The EU has supporting competence in the field of education. Article 165 TFEU sets out its role in this area, which is to contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. Union action is aimed at developing the European dimension in education, particularly through:

- The teaching and dissemination of the languages of the Member States;

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<sup>149</sup> *Study on the situation of women with disabilities in light of the UN Convention for the Rights of Persons with Disabilities* (VC/2007/317, C3659/December 2009) available at <http://ec.europa.eu/social/BlobServlet?docId=4363&langId=en>.

<sup>150</sup> (VC/2007/317, C3659/December 2009), P. IV.

<sup>151</sup> DG for Internal Policies, *Discrimination Generated by the Intersection of Gender and Disability* study (2013) Available at <http://www.europarl.europa.eu/committees/en/studies.html>.

<sup>152</sup> DG for Internal Policies, *Discrimination Generated by the Intersection of Gender and Disability* study (2013), p. 59 *et seq.*

- Encouraging mobility of students and teachers; promoting cooperation between educational establishments;
- Developing exchanges of information and experience on issues common to the education systems of the Member States;
- Encouraging the development of youth exchanges and of exchanges of socio-educational instructors; and
- Encouraging the participation of young people in democratic life in Europe.

122. Article 14 of the Charter provides that everyone has the right to education and to have access to vocational and continuing training, including the possibility to receive free compulsory education. Paragraph 3 of Article 14 deals with the freedom to found education establishments and the right of parents to have their children educated in conformity with their religious, philosophical and pedagogical convictions.

123. EU discrimination law extends to the educational field at least to a limited extent. The Employment Equality Directive includes within its material scope the field of vocational training, which has been defined by the CJEU as “any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary training and skills for such a profession, trade or employment ... even if the training programme includes an element of general education.”<sup>153</sup>

124. “Education and training” is one of the eight priority areas under the Disability Strategy. The specific goal is to promote inclusive education and lifelong learning for pupils and students with disabilities. The Strategy lists a series of actions to ensure that people with disabilities receive the support required, within the general education system, to facilitate their education, and that effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion. The 2008 Commission Communication on *Improving Competences for the 21st Century: An Agenda for European Cooperation on Schools*<sup>154</sup> recognises that achieving inclusion while supporting those with specific needs involves re-thinking policies for organising learning support, improving collaboration between schools and other services, and implementing personalised learning. Youth on the Move, one of the Europe 2020 Strategy’s flagship initiatives, includes actions for the exchange of good practices on inclusive education and dissemination of guidance materials on the principle of reasonable accommodation in education.<sup>155</sup> The initiative, which includes a commitment to reducing school drop-out rates and increasing participation in tertiary education, is expected to have an impact on inclusive education and job placement schemes for young people with disabilities.<sup>156</sup> The Digital Agenda for Europe, one of seven flagship initiatives under Europe 2020, includes actions to enhance digital literacy, skills and inclusion and tackle the digital divide, especially as regards disabled persons, who face particular difficulties in benefiting fully from new electronic content and services. Promoting digital literacy and competences will be supported as one of the priorities for the ESF 2014-20.

125. Education and Training 2020 (ET 2020) is the updated (since 2009) strategic framework for European policy cooperation in education and training that succeeded the

<sup>153</sup> Case C-293/83, *Gravier v. City of Liège* [1985] ECR 593, para. 30.

<sup>154</sup> European Commission (2008), *Improving competences for the 21st Century: An Agenda for European Cooperation on Schools*, COM(2008) 425.

<sup>155</sup> Youth on the Move is a framework for improving Europe’s education and training systems: European Parliament resolution on *Youth on the Move: a framework for improving Europe’s education and training systems* (2010/2307(INI)) (resolution of 12 May 2011) [2006] OJ C 377 E/77.

<sup>156</sup> ANED has been working on indicators of disability equality around education and school drop-out rates: Grammenos, S. (2011), *Indicators of Disability Equality in Europe* ANED 2011 Task 4 – Update and extend the piloting of quantitative implementation indicators, ANED (October 2011).

Education and Training 2010 (ET 2010) Work Programme. It includes commonly agreed strategic objectives and benchmarks, peer learning opportunities and tools to monitor progress and guides the Commission's policy cooperation with the Member States in this field. One of its four strategic objectives is promoting equity, social cohesion and active citizenship. In the context of ET2010, already in 2008, Education Ministers agreed<sup>157</sup> to ensure timely and adequate learning support for all pupils with special needs, whether in mainstream or specialised schools, including by identifying learning difficulties early and finding solutions based on more personalised pedagogical approaches, tailored to the needs and abilities of each pupil. In the context of ET2020, the 2013 report "Supporting Teachers' Competence Development for Better Learning Outcomes"<sup>158</sup> produced by the (peer-learning) Thematic Working Group on teachers, which offers guidance to policymakers about the development of teachers' competences, also acknowledges the need for teachers to possess "the knowledge, skills and attitudes to deal with diversity and inclusion".

126. As part of its commitment to promoting evidence-based policy, the Commission occasionally makes available independent reviews of research on specific topics that are written specifically for policy makers. These summarise existing knowledge on key issues and provide policy guidance based on evidence. In this context, in 2012 the Commission published a report on *Education and Disability/Special Needs – policies and practices in education, training and employment for students with disabilities and special educational needs in the EU*. The report, compiled for the Commission by the NESSE network of experts, showed that, despite Member States' stated commitment to promote inclusive education, too many learners with special needs are still placed in segregated institutions or in mainstream settings with inadequate support. The report called on Member States to work harder to develop inclusive education systems and to remove the barriers faced by vulnerable groups when it comes to participation and success in education, training and employment. It also highlighted wide variation between Member States as to how children with special needs are identified, and whether, after identification, they are placed in mainstream or special schools.<sup>159</sup> The report also underlined the need to harmonise definitions in this field across the EU and to improve data gathering to enable Member States to compare their approaches more effectively and learn from each other's experience.

127. The EU promotes mobility, education exchanges and the acquisition of new skills through various funding programmes. The 2007-13 Lifelong Learning Programme provided funding opportunities for a range of actors working to support the participation of disabled learners in education and training. Among its aims was combating all forms of discrimination, including on the grounds of disability. The Programme recognised the need to widen access to lifelong learning to people from disadvantaged groups, including the need to cover the higher costs of participation for disabled people through the provision of higher grants. Under the ERASMUS Programme (2007-13), more than 230 000 students each year received funding to study in different Member States as part of their degree programme.<sup>160</sup> One of the priorities of the 2007-13 Youth in Action Programme<sup>161</sup> was

<sup>157</sup> Conclusions of the Council and the Representatives of the Governments of the Member States, meeting within the Council, on preparing young people for the 21st century: an agenda for European cooperation on schools; November 2008.

<sup>158</sup> [http://ec.europa.eu/education/policy/school/doc/teachercomp\\_en.pdf](http://ec.europa.eu/education/policy/school/doc/teachercomp_en.pdf).

<sup>159</sup> The report is available at: [http://ec.europa.eu/education/news/20120710\\_en.htm](http://ec.europa.eu/education/news/20120710_en.htm).

<sup>160</sup> Since the launch of ERASMUS in 1987, the programme has facilitated three million student exchanges and operates a budget of € 3.1 billion for 2007-13: European Commission Erasmus-Facts, Figures & Trends – European Union support for student and staff exchanges and university cooperation in 2011-12 available at: [http://issuu.com/iservice-europa/docs/erasmus\\_facts\\_figures\\_2011-12-en](http://issuu.com/iservice-europa/docs/erasmus_facts_figures_2011-12-en).

<sup>161</sup> Decision No. 1719/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing the Youth In Action programme for the period 2007 to 2013 (Independent Living, Social Inclusion, Work and Employment).

combating discrimination based on disability and promoting the participation of young people who are at a disadvantage as compared with their peers. In 2012 and 2013, the Youth in Action Programme supported about 1,775 projects involving young people with disabilities and 1,161 of the organisations involved in the programme emphasised disabilities as a topic relevant to their work. The fight against disability discrimination was one of the horizontal issues addressed by the Erasmus Mundus Programme (2009-13), a worldwide cooperation and mobility programme in the field of higher education. The Programme recognised the need to widen access to members of disadvantaged groups by taking into account the special learning needs of persons with disabilities.

128. Erasmus+, the EU's new funding programme for Education, Training, Youth and Sport for 2014-20,<sup>162</sup> will help citizens acquire more and better skills, enhance the quality of teaching in educational institutions both in the EU and beyond, support Member States and non-EU partner countries in modernising their education and training systems and making them more innovative, and promote youth participation in society and the creation of a European dimension to grassroots sports.<sup>163</sup> As with the previous programmes, grants can be topped up to cover extra needs associated with disability.<sup>164</sup> With its increased budget, *Erasmus+* will provide substantial opportunities to support a broad range of stakeholders who want to work in partnership to improve the educational situation of disabled people and for more inclusive education systems. Since 2013 the Member States are preparing their planning for the use of the European Structural and Investment Funds in 2014–2020 in dialogue with the Commission. In this context, Member States can plan to mobilise substantial resources from the new ESI Funds to support the education, training and skills development of people with disabilities and to promote inclusive education.

129. The EU works closely with and financially supports the European Agency for Special Needs and Inclusive Education (EASNIE,<sup>165</sup> an independent organisation established by member countries (EU Member States along with Iceland, Norway and Switzerland) to act as a platform for cooperation on the development of inclusive education. The Agency provides analysis, evidence and information on the real state of inclusive education across Europe, recommendations for policy and practice, and tools to evaluate and monitor progress. One example is European Patterns of Successful Practice in Vocational Education and Training – participation of learners with special educational needs/disabilities in VET, the Agency's three-year project carried out in 26 countries and completed in 2012 which investigated the extent to which VET programmes prepare learners with special needs/disabilities in the 14–25 age group to find a job in the open labour market.

130. According to the latest EU-level data from the Labour Force Survey *ad hoc* module on the employment of disabled people in 2011, around 25% of young disabled people (aged 18–24) are early school leavers, as compared with 12.4% of non-disabled young persons. The high rates of early school leavers among young disabled people may indicate problems relating to accessibility and a lack of adapted programmes. Also, of people with disabilities in the 30–34 age group, only around 24% have successfully completed tertiary-level education, as compared with 36% of non-disabled people. According to the Europe 2020 objectives, the proportion of 30–34 years old who have completed tertiary or equivalent

<sup>162</sup> European Commission (2011), Proposal for a Regulation of the European Parliament and of the Council establishing "ERASMUS FOR ALL" – The Union Programme for Education, Training, Youth and Sport. COM(2011) 788 final.

<sup>163</sup> European Commission (2011), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Erasmus For All: The EU Programme for Education, Training, Youth and Sport*. COM(2011) 787 final. p. 2.

<sup>164</sup> Erasmus, students or staff with special needs in ERASMUS mobility, available at: [http://ec.europa.eu/education/erasmus/special\\_en.htm](http://ec.europa.eu/education/erasmus/special_en.htm).

<sup>165</sup> See: <http://www.european-agency.org/>.

education should have reached at least 40% by 2020. EASNIE<sup>166</sup> makes available data on the numbers of compulsory school-age children with special needs and their placement. In the EU, pupils with special educational needs represented 4.1% of all school-aged pupils in the 2010-11 academic year. About 40% of them are in segregated special schools.

## Article 25

### Health

131. The EU has the competence to carry out actions to support, coordinate and/or supplement the actions of Member States with regard to the protection and improvement of human health. Under Article 9 TFEU, in defining and implementing its policies, the Union must take into account requirements linked *inter alia* to the protection of human health. Article 168 TFEU on public health provides that the definition and implementation of all Union policies and activities must ensure a high level of human health protection. Union action, which is to complement national policies, is to be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. Actions are to include research, health information and education, and monitoring, providing early warning of, and combating serious cross-border threats to health. The Union is also to encourage cooperation between Member States to improve the complementarity of their health services in cross-border areas (Article 168(2)). The Union may adopt legislation to meet common safety concerns with regard *inter alia* to setting high standards of quality and safety for medicinal products and devices for medical use (Article 168(4)(c)). Article 35 of the Charter provides that everyone has the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices.

132. “Health” constitutes one of the eight areas for action under the Disability Strategy. Particular emphasis is given to supporting Member States’ efforts to ensure equal access to healthcare for people with disabilities, by tackling discrimination and enhancing accessibility. EU action supports national measures to promote mental health services and the development of early intervention and needs assessment services. In addition, the Commission promotes action in the field of health and safety at work to reduce risks of disabilities developing during working life and to improve the reintegration of workers with disabilities. The 2009 Commission Communication on *Solidarity in Health — reducing health inequalities in the EU*<sup>167</sup> recognises disability as a factor which increases the risk of health inequality. The reduction of health inequalities and improvement of access to healthcare is part of the European Platform against Poverty, one of the seven Europe 2020 flagship initiatives.<sup>168</sup>

133. Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare<sup>169</sup> lays down the rules regarding access to healthcare in other Member States. It can also support people with disabilities to access medical care in other Member States. In addition, it provides for certain information rights focused on people with disabilities: any information that needs to be provided by Member States to patients in relation to cross-border healthcare must be available in formats accessible to people with disabilities. Such information includes, among others, accessibility of hospitals for persons with disabilities.

<sup>166</sup> <http://www.european-agency.org/>.

<sup>167</sup> European Commission (2009), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *Solidarity in health: reducing health inequalities in the EU* {SEC(2009) 1396} {SEC(2009) 1397} COM(2009) 0567 final.

<sup>168</sup> European Commission (2010), *The European Platform against Poverty and Social Exclusion: A European framework for social and territorial cohesion*, COM(2010) 758 final at, p. 19.

<sup>169</sup> OJ L 88, 4.4.2011, p. 45.



On 22 March 2014, and following a Commission's proposal, the third Health Programme entered into force for the period 2014-20. This programme complements, supports and adds value to the policies of Member States to improve the health of Union citizens and reduce health inequalities by promoting health, encouraging innovation in health, increasing the sustainability of health systems and protecting Union citizens from serious cross-border health threats. Actions will aim at increasing access to medical expertise and information by creating European reference networks for specific conditions and rare diseases; developing solutions and guidelines to improve the quality of healthcare and strengthening collaboration on patient safety through measures supporting, among other things, patients' rights in cross-border healthcare, including for patients affected by rare diseases.

134. The 2011 Council conclusions on the European Pact for Mental Health and Well-being<sup>170</sup> called on Member States to:

- Make mental health a priority in their health strategies;
- Include prevention and promotion as an essential component;
- Improve social determinants and infrastructure and access to them;
- Make use of e-Health and EU Structural Funds; and
- Take steps to involve the health and social sectors in the field of mental health and well-being at the workplace support holistic school approaches.

135. In 2013, the Commission launched a Joint Action on Mental Health and Well-being (2013-16) under the EU-Health Programme. The Joint Action has five thematic work packages which aim to strengthen and broaden health system capacity. One work package seeks to promote the transition to community-based, socially inclusive mental health approaches targeting severe mental disorders. Also in 2013, the Commission financed a study on mental health systems in EU Member States, with a particular focus on prevention and promotion of mental health.<sup>171</sup>

136. Through its 7th Framework Programme for Research, Technological Development and Demonstration Activities (2007-13) the Commission has supported research on areas such as ageing, mental health, access to medicines and healthcare, reduction of health inequalities, rare diseases, in order to collect evidence for the development of policies and practices improving the quality of life of persons with disabilities.<sup>172</sup> Horizon 2020, the EU's Framework Programme for Research and Innovation for 2014-20,<sup>173</sup> will offer further opportunities to support research on these areas. The Commission has also funded a range of studies and initiatives on telemedicine, including the *Telehealth Services Code of Practice for Europe* (TeleSCoPE) project, which aimed to develop a benchmark standard against which telehealth service providers could be accredited. The Code of Practice launched in October 2013<sup>174</sup> includes the concept of disability provided for in the CRPD and contains an appendix on "Users and Carers with Disabilities", with specific provisions on accessibility. It provides that when planning the service provision and the technologies they make available, services should give consideration to the principles of universal design, so that technologies and equipment are designed so as to be useful to and usable by people with diverse abilities. Services should endeavour to overcome any barriers to engagement with users.

<sup>170</sup> 2011/C 202/01.

<sup>171</sup> [http://ec.europa.eu/health/mental\\_health/docs/europopp\\_full\\_en.pdf](http://ec.europa.eu/health/mental_health/docs/europopp_full_en.pdf).

<sup>172</sup> [http://cordis.europa.eu/projects/rcn/110120\\_en.html](http://cordis.europa.eu/projects/rcn/110120_en.html), [http://cordis.europa.eu/fp7/health/home\\_en.html](http://cordis.europa.eu/fp7/health/home_en.html).

<sup>173</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0104:0173:EN:PDF>.

<sup>174</sup> TeleSCoPE (2013), *Telehealth Services Code of Practice for Europe*, available at: [http://www.telehealthcode.eu/images/stories/telehea/pdf/TELESCOPE\\_2014\\_CODE\\_FINAL\\_PDF\\_-\\_RELEASE\\_29\\_OCT\\_2013.pdf](http://www.telehealthcode.eu/images/stories/telehea/pdf/TELESCOPE_2014_CODE_FINAL_PDF_-_RELEASE_29_OCT_2013.pdf).

137. Healthcare services fall under the ambit of social services of general interest and therefore enjoy special conditions under EU state-aid law and are exempted from prior notification to the Commission. The Commission has created a European Quality Framework<sup>175</sup> to ensure even interpretation of the relevant rules and a basic level of access to such services. The 2009 and 2010 Joint Reports on Social Inclusion and Healthcare<sup>176</sup> contain significant sections on healthcare in the Member States and the different ways in which it has been affected by, and responded to, the economic crisis. The EU FRA has conducted an extensive research study on multiple discrimination and healthcare in 14 Member States<sup>177</sup> which revealed that the combination of disability with other characteristics (such as being a woman or a member of an ethnic minority group) frequently intensified disadvantage in access to and quality of healthcare. Multiple barriers were identified, including financial access, the right to consent (or withhold consent) and involuntary treatment.

138. EU-wide statistics indicate that, in 2011, 13.4% of persons with disabilities declared that they needed to consult a medical doctor but were unable to do so. By contrast, this percentage was only 4.4% for persons without disabilities. The rate was higher for women than for men (EU-SILC UDB 2011).

## Article 26 Habilitation and rehabilitation

139. EU competence in the field of habilitation and rehabilitation is based on its more general competences in the fields of health, employment and social services. In the “health” area of the Disability Strategy, the Commission’s commitment to support policy developments for equal access to healthcare includes quality health and rehabilitation services designed for people with disabilities and supporting efforts to improve the reintegration of workers with disabilities.<sup>178</sup>

140. The VAT Directive<sup>179</sup> allows (but does not require) Member States to apply a reduced VAT rate on certain goods and services, including “medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods” and to “domestic care services such as home help and care of the young, elderly, sick or disabled”.<sup>180</sup> Pursuant to the principle of subsidiarity, the application of reduced VAT rates is only an option and it is for each Member State, in line with its budgetary, social and other policy objectives, to decide whether or not to apply reduced VAT rates.

<sup>175</sup> European Commission (2011), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Quality Framework for Services of General Interest in Europe*, COM(2011) 0900 final.

<sup>176</sup> European Council (2009), *Joint Report on Social Protection and Social Inclusion*, (7503/09) and European Council (2010), *Joint Report on Social Protection and Social Inclusion*, (6500/10).

<sup>177</sup> FRA (European Union Agency for Fundamental Rights) (2013), *Inequalities and multiple discrimination in access to and quality of healthcare*, Luxembourg, Publications Office of the European Union. Available at: <http://fra.europa.eu/en/publication/2013/inequalities-discrimination-healthcare>.

<sup>178</sup> COM/2010/0636 final, p. 7.

<sup>179</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, [2006] OJ L 347/1.

<sup>180</sup> Categories (4) and (20) of Annex III to the VAT Directive – List of supplies of goods and services eligible to reduced VAT rates.

141. In 2013, the Commission issued a Communication *Towards social investment for growth and cohesion*,<sup>181</sup> accompanied by working documents on investing in health, active inclusion and long-term care. The staff working document on active inclusion examines the response to the Commission's 2008 Recommendation on the active inclusion of people excluded from the labour market.<sup>182</sup> This promoted the integration of three pillars of social policy – adequate income support, inclusive labour markets, and quality services to support active social participation, all very relevant for people with disabilities.

142. A 2013 Commission staff working paper on long-term care in ageing societies<sup>183</sup> explores a range of issues relating to the need for long-term care, one of which is rehabilitation. According to this paper, rehabilitation at an early stage is not yet common practice but has proved, where properly used, to be cost-effective in long-term care and highly beneficial for patients. In some Member States, rehabilitation is clearly identified as a specific service and is an integral part of comprehensive healthcare and health promotion programmes.<sup>184</sup> The paper also stresses the importance, in reducing the need for dependency and long-term care, of adapting homes and providing assistive devices, including ICT. In addition, through its EU Programme for Employment and Social Innovation (EaSI) (and up to the end of 2014 also through the PROGRESS Programme), the Commission provides financial support to the EU-level association of providers of services to persons with disabilities.<sup>185</sup>

## Article 27

### Work and employment

143. The EU has shared competence with respect to the implementation of the right to employment and exclusive competence as regards the compatibility of state aid with the common market and the Common Customs Tariff. Article 15 of the Charter deals with the freedom to choose an occupation and right to engage in work. It states that:

(a) Everyone has the right to engage in work and to pursue a freely chosen accepted occupation;

(b) Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State; and

(c) Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

The Charter also protects ancillary rights, such as the worker's right to information (Article 27), the right of collective bargaining (Article 28), the right of access to placement services

<sup>181</sup> European Commission (2013), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — *Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014-20*, COM(2013) 083 final.

<sup>182</sup> Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market (notified under document number C(2008) 5737) (2008/867/EC) [2008] OJ L 307/1.

<sup>183</sup> European Commission (2013), staff working document — *Long-term care in ageing societies — Challenges and policy options*, accompanying the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — *Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014–20*, SWD(2013) 041 final.

<sup>184</sup> European Commission (2013), SWD(2013) 041 final.at, para. 6.3.

<sup>185</sup> <http://ec.europa.eu/social/main.jsp?catId=1081>.

(Article 29), the right to protection in the event of unjustified dismissal and the right to just and favourable working conditions (Article 30).

144. The Employment Equality Directive, which requires Member States to prohibit discrimination on the grounds of disability in the fields of employment and occupation, is further addressed in the above sections dealing with Articles 2 and 5. EU health and safety legislation has been used as a means of requiring adaptations of the work environment for employees with disabilities. Thus, the 1989 Safety and Health Directive<sup>186</sup> requires that workplaces are organised to take account of disabled workers, if necessary, in particular as regards doors, passageways, staircases, washbasins, lavatories and workstations used or occupied directly by handicapped persons.<sup>187</sup>

145. The General Block Exemption Regulation (GBER) exempts from notification obligations aid for the recruitment of disadvantaged workers and aid for the employment of disabled workers totalling, respectively, up to EUR 5 million and EUR 10 million per undertaking per year.<sup>188</sup> In addition, it covers aid for additional costs of employing disabled workers, such as the costs of adapting premises and equipment to disabled workers' needs and the costs of employing staff to assist disabled workers.<sup>189</sup> Aid in the form of wage subsidies for employing disabled workers may cover up to 75% of the wage costs and aid for up to 100% of eligible additional costs of employing disabled workers. For the purposes of the GBER, a "disabled worker" is defined as a person who has "a recognised limitation which results from physical, mental or psychological impairment" or is recognised as a disabled worker by national law.<sup>190</sup> The GBER may apply to support for the habilitation and rehabilitation of workers with disabilities, where such support constitutes state aid. In 2012, with its Communication on *State aid Modernisation (SAM)*, the Commission launched a broad review of state aid rules. State aid enforcement should facilitate sustainable, smart and inclusive growth, focus on cases with the biggest impact on the single market, streamline the rules and provide for faster, better informed and more robust decisions. The review of the GBER is at the centre of the SAM reform and contributes to all these objectives, with a particular focus on simplification.<sup>191</sup> The draft proposal for the new GBER puts forward new ways of supporting the training and employment of workers with disabilities through the inclusion of new categories of eligible cost. It applies the term "worker with disabilities" and adapts its definition to that in the CRPD.

146. Another way in which Member States are permitted by EU law to favour disabled workers is through the use of disability considerations in public procurement processes. By virtue of Directive 2004/17/EC and Directive 2009/81/EC,<sup>192</sup> public authorities may reserve the right to participate in contract award procedures to sheltered workshops and specify that such contracts should be carried out in the sheltered employment context, where 50% of the workers have a disability.<sup>193</sup> The revised public procurement Directives, expected to be adopted in 2014, will broaden the possibility to reserve public contracts to certain economic operators. This will concern not only sheltered workshops, but also economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, and 30% of whose employees are disabled or disadvantaged.

<sup>186</sup> [1989] OJ L 393/1, annex 1, para. 20.

<sup>187</sup> Identical provisions are contained in [1992] OJ L 245/6, [1992] OJ L 245/6; [1992] OJ L 348/9, annex, para. 20 and (with "handicapped" replaced by "disabled") [1992] OJ L 404/10, annex, para. 18.

<sup>188</sup> [2008] OJ L 214/3, Article 40, 41.

<sup>189</sup> Article 42 GBER.

<sup>190</sup> [2008] OJ L 214/3, Article 2(20).

<sup>191</sup> European Commission (2012), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU State Aid Modernisation (SAM)*, COM(2012) 209 final.

<sup>192</sup> [2004] OJ L 134/1; [2004] OJ L 134/114 and [2009] OJ L 216/76.

<sup>193</sup> [2004] OJ L 134/1, Article 28; [2004] OJ L 134/114, Article 19 and [2009] OJ L 216/76, Article 14.

147. Employment is one of the areas of action in the Disability Strategy, with the key objective of promoting the employment of people with disabilities in the open labour market. A study on the supported employment of persons with disabilities in different countries, published in 2011,<sup>194</sup> makes various recommendations with particular emphasis on the establishment of integrated and coherent systems for the coordination of supported employment in Member States. The Agenda for new skills and jobs, one of the seven Europe 2020 flagship initiatives, is directly concerned with work and employment. The Youth on the Move initiative has a strong focus on facilitating the transition from education into employment and on tackling youth unemployment. In 2013, the Member States endorsed a Council Recommendation on establishing a “youth guarantee”<sup>195</sup> whereby young people are assured of a quality offer of employment, further education or training within four months of becoming unemployed or leaving formal education. This contains outreach strategies to ensure that young people with disabilities are included in the scheme and are registered with employment services.

148. The ESF aims to render the employment of workers easier, to increase their geographical and occupational mobility within the Union and to facilitate their adaptation to changes, in particular through vocational training and retraining. ESF funding is used to support a range of such schemes, including supported employment, work experience schemes, wage subsidies, temporary sheltered employment and other transitional labour market measures, and schemes promoting self-employment and cooperatives. Tailor-made training services and specific help to enter into employment will continue to be supported by the ESF in the current 2014-20 programming period (see above paragraph on Article 19).

149. In addition to the above measures, the EU has engaged in a wide range of awareness-raising events and supported associated publications in its efforts to improve the employment prospects of people with disabilities. These include the disability-related elements of the For Diversity, Against Discrimination campaign (see above sections on Articles 5 and 8). In 2011-13, at the request of the EP, the Commission funded four pilot projects on the employment of persons with autism spectrum disorders (ASD) in Bulgaria, Germany, Denmark, Poland and Italy. All projects were based on an individualised approach using in-depth interviews also with the families of persons with ASD. A report presenting the results of the four projects was published in 2014.<sup>196</sup>

150. The Disability Strategy acknowledges that there is a significant employment gap between persons with and without disabilities in all Member States. While in the majority of the Member States the employment rate for people without disabilities aged between 20 and 64 is higher than 70%, the employment rate of people with disabilities is lower than 50%. The Europe 2020 Strategy sets a target employment rate of 75% of people aged between 20 and 64 in the EU to be achieved by 2020. According to the latest EU-level data provided by EU-SILC 2011, the employment rate among people with disabilities is about 25 percentage points lower than that among people without disabilities (26 percentage points in 2010). These figures are very close to those provided by the Labour Force Survey *ad hoc* module on employment of disabled people in 2011, which indicate a difference of 24 percentage points. About 47% of persons with disabilities are employed, as compared with 72% of persons without disabilities. At EU level, the employment rate among women with disabilities is 44% and the rate for women without disabilities is 65%. National situations vary considerably. Countries with similar employment rates for people without disabilities present large differences in the employment rates for people with disabilities. This suggests that national interventions and policies make a difference and that there is

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<sup>194</sup> European Commission (2011), *Supported Employment for People with Disabilities in the EU and EFTA-EEA*, Luxembourg, Publications Office of the EU. Available at:

[http://ec.europa.eu/justice/discrimination/files/cowi.final\\_study\\_report\\_may\\_2011\\_final\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/cowi.final_study_report_may_2011_final_en.pdf).

<sup>195</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:120:0001:0006:EN:PDF>.

<sup>196</sup> [http://ec.europa.eu/justice/discrimination/disabilities/index\\_en.htm](http://ec.europa.eu/justice/discrimination/disabilities/index_en.htm).

scope for increasing the employment rate of people with disabilities. Unless the employment rate for people with disabilities increases, the target will not be reached. The 2011 High-Level Group report<sup>197</sup> focuses on the link between implementing the CRPD and achieving the Europe 2020 targets in the areas of employment, education and poverty reduction.

151. Work intensity within households is a component of the Europe 2020 headline indicator “population at risk of poverty or social exclusion”, which is linked to the EU-wide agreed objectives to reduce by at least 20 million the number of Europeans exposed to poverty and social exclusion by 2020. Households with “very low work intensity” are defined as those in which the adults worked less than 20% of their total work potential in the past year. In 2011, 25% of persons with disabilities lived in very low work intensity households, three times as often as the 8% of persons without disabilities (rounded data; EU-SILC 2011).

## **Article 28**

### **Adequate standard of living and social protection**

152. Article 34 of the Charter recognises and respects the right to social security and ensures for everyone residing and moving legally within the EU, an entitlement to social security benefits and social advantages in accordance with Community law and national laws and practices. Article 45 TFEU and Regulation (EU) No. 492/2011<sup>198</sup> specifically apply to the free movement of workers. Article 45 TFEU enshrines the right of EU citizens to move to another Member State for work purposes. It specifically includes the right not to be discriminated against on the grounds of nationality as regards access to employment, remuneration and other conditions of work. It also includes the removal of unjustified obstacles to the freedom of movement of workers within the EU.

153. One important factor determining the actual ability of workers and others to exercise their liberty of movement has to do with the recognition of social entitlements and the “exportability” of their social assistance within the EU. Regulation (EU) No. 492/2011 details the rights derived from the freedom of movement of workers enshrined in Article 45 TFEU and identifies the specific areas where discrimination on the grounds of nationality is prohibited for workers exercising their right to free movement and for their family members in particular as regards:

- Access to employment, employment and working conditions;
- Access to training;
- Membership of trade unions;
- Social and tax advantages;
- Housing; and
- Access to education for children.

154. In this context, all workers exercising their right to free movement, including persons with disabilities shall enjoy in the host Member State the same treatment as national workers and national persons with disabilities. This is particularly important in terms of access to disability-related benefits. The CJEU has interpreted the concept of

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<sup>197</sup> 4th Disability High-Level Group *Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities* (May 2011), section 2.3. Available at: [http://ec.europa.eu/justice/discrimination/files/dhlg\\_4th\\_report\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/dhlg_4th_report_en.pdf).

<sup>198</sup> Regulation (EU) No. 492/2011, 5 April 2011, on freedom of movement for workers within the Union [2011] OJ L 141/1.

“social advantages” to cover all rights or benefits granted to workers primarily because of their status as workers or by virtue of the mere fact of their residence in a Member State. This is intended to encourage/facilitate the free movement of workers within the EU.<sup>199</sup> Thus, for example, a disabled member of an EU worker’s family should be entitled to claim all the relevant disability benefits in the same way as a national who has a disability.

155. Under Article 5 of Regulation (EU) No. 492/2011 (employment offices’ assistance to EU migrant workers), workers with disabilities from other Member States must receive the same assistance as nationals. By virtue of Article 7(1), workers with disabilities from other Member States must enjoy the same treatment in relation to employment and working conditions in the host Member State, especially if there are specific work arrangements for national workers with disabilities. By virtue of Article 7(2), they should also enjoy the same treatment in relation to social advantages, in particular when the host Member State provides specific social assistance benefits to national workers with disabilities and/or to their family members (including specific social assistance benefits for disabled family members). By virtue of Article 9, the same treatment should also apply to access to housing and related benefits for disabled workers from other Member States, especially if there are specific facilities for national disabled people.

156. In April 2013, the Commission presented a proposal for a directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.<sup>200</sup> There was a political agreement on this proposal between the EP and the Council in December 2013 and the final adoption of the Directive is foreseen in April 2014. This Directive will contribute to the more effective exercise of the rights of workers and their family members, in particular through the provision of better information and support from national bodies and structures. In particular the new Directive will require Member States to ensure: (i) one or more bodies at national level to provide support and legal assistance to EU migrant workers with the enforcement of their rights; (ii) effective legal protection of rights (including for example protection from victimisation for EU migrant workers who seek to enforce their rights); and (iii) easily accessible information in more than one EU language on the rights enjoyed by EU migrant workers and jobseekers.

157. EU law in the field of social security provides for the coordination of Member States’ national social security systems. Each Member State is free to determine the details of its own social security system, including which benefits are provided, the conditions of eligibility, how benefits are calculated and how many contributions should be paid. The EU Mutual Information System on Social Protection (MISSOC) provides comparative information on the legal basis, scope, eligibility and amount of social protection benefits in 31 countries across a range of areas, including healthcare, sickness, maternity/paternity, invalidity, old age, survivors, accidents at work and occupational diseases, family, unemployment, guaranteed minimum resources and long-term care.<sup>201</sup>

158. Union law, in particular Regulation (EC) No. 883/2004 on the coordination of social security systems, establishes common rules and principles which must be observed by all national authorities when applying national law. These rules ensure that the application of

<sup>199</sup> Waddington, L. (2010), *Disability Benefits and Entitlements in European Countries: Mutual Recognition and Exportability of Benefits. A synthesis of evidence provided by ANED country reports and additional sources*, p. 14 and case law quoted there. Waddington also notes that the Court has defined numerous social security (-like) benefits (including benefits for people with disabilities), student financial aid and benefits to cover funeral expenses as social advantages. Virtually all socio-economic benefits are covered by the right to equal treatment.

<sup>200</sup> COM(2013) 236 final.

<sup>201</sup> Mutual Information System on Social Protection/Social Security (MISSOC) Comparative Tables Database [online]: <http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDATABASE/comparativeTableSearch.jsp>.

national legislation respects the basic principles of equality of treatment and non-discrimination and does not adversely affect persons exercising their right to free movement within the EU. For example, as regards invalidity benefits, the Regulation provides for rules for calculating invalidity pensions in cross-border situations. The Regulation also covers “long-term care benefits”. There is currently no definition of these benefits in Regulation (EC) No. 883/2004, but based on the case-law and the national definitions, the long-term care benefits can be defined as benefits for persons who, over an extended period of time, on account of old age, disease or incapacity, combined with a lack or loss of physical, mental, intellectual or sensorial autonomy, require assistance from (an)other person(s) or considerable help to carry out essential daily activities.<sup>202</sup> While long-term care benefits fall under the scope of the Regulation, there are no specific coordination arrangements in current EU law. In line with CJEU case law, they are to be regarded as “sickness benefits” within the meaning of the Regulation and coordinated as such. This means that in cross-border situations cash benefits are provided by the competent Member State (country of insurance), irrespective of the place of residence of the entitled person, and benefits in kind are provided by the Member States of residence on behalf of the competent Member State. Nevertheless, Member States tend to coordinate such benefits under different schemes (sickness, family allowance, old-age benefits, invalidity benefits, etc.) or consider them as social assistance. This may also affect the rights of migrant workers, other insured citizens and their family members who are mobile in the EU and can lead to the over-protection of, or on the other hand the loss of entitlements for, those dependent on care who exercise their right of free movement.

159. The importance of long-term care benefits is growing and Member States continue to develop special schemes for persons in need of care. To ensure that they continue to cater for cross-border situations, the EU social security coordination rules have to take account of these developments. Therefore, the Commission is currently preparing a legislative proposal amending Regulation (EC) No. 883/2004 in order to clarify the rules concerning the coordination of long-term care benefits and ensure better protection of people relying on care. The Regulation covers social security benefits relating to sickness, maternity, invalidity, pre-retirement, old age, accidents at work, occupational disease, unemployment, survivors’ benefits, death grants and family benefits, as well as special non-contributory benefits, but does not apply to medical or social assistance. The CJEU has defined a social security benefit as depending on an individual and discretionary assessment of personal needs and granted to recipients on the basis of a legally defined position that concerns one of the risks listed above. Many social protection entitlements used by people with disabilities, such as independent living budgets, specialised equipment grants or purely social assistance benefits, may therefore not be covered by this Regulation. In this case, they might be lost when the right to free movement is exercised. In the case of workers and their family members, however, these benefits could be considered as social advantages and therefore the principle of equal treatment in the host Member State would apply.

160. Directive 2006/54/EC<sup>203</sup> applies to equality of treatment between men and women with respect to social security. It seeks to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.<sup>204</sup> Chapter 2 of the Directive concerns equal treatment in occupational social security schemes, including schemes which provide protection against sickness, invalidity, old age (including early retirement), industrial accidents and occupational diseases, and

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<sup>202</sup> Definition proposed in the trESS network’s Think Tank Report 2011 “Coordination of Long-term Care Benefits – current situation and future prospects”.

<sup>203</sup> On the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2009] OJ L 204/23.

<sup>204</sup> [2009] OJ L 204/23, Article 1.



unemployment, and covers both cash payments and benefits in kind.<sup>205</sup> The Directive applies to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment, and to retired and disabled workers.<sup>206</sup>

161. The Europe 2020 Strategy introduced a general target of lifting at least 20 million people out of poverty and exclusion by 2020 and established a European Platform against Poverty and Social Exclusion.<sup>207</sup> The Disability Strategy includes a specific commitment to promote decent living conditions for people with disabilities. In line with Europe 2020, it identifies quality jobs as the best protection against poverty for disabled people while recognising their need to benefit from social protection and poverty reduction programmes, disability-related assistance, public housing programmes and other enabling services, and retirement and benefit programmes. The European Platform Against Poverty includes efforts at national level to develop and implement measures addressing the specific circumstances of groups at particular risk (such as one-parent families, elderly women, minorities, Roma, people with a disability and the homeless).

162. In 2011, about 12% (10.9% in 2010) of people with disabilities were severely materially deprived, as compared with 7.2% (6.8% in 2010) of people without disabilities (EU-SILC UDB 2011 and 2010). In 2011, at EU level, 31% of people with disabilities aged 16 and over lived in households at risk of poverty or social exclusion, as compared with 21% of persons without a disability in the same age group (EU-SILC UDB 2011). In 2011, about 4.7% of persons aged 16 to 64 received a disability-related benefit (i.e. a benefit providing an income to persons below standard retirement age whose ability to work and earn is impaired beyond a minimum level, laid down by legislation, by a physical or mental disability) (EU-SILC UDB 2011). At EU level, about 19.4% of persons with disabilities faced a risk of poverty in 2011, as compared with 18.8% in 2010. The deterioration of the situation for persons with disabilities as regards financial poverty is similar to that experienced by persons without disabilities: in both cases, a 0.5 and 0.4 percentage point increase in financial poverty can be observed.

## **Article 29**

### **Participation in political and public life**

163. Most competences with respect to the rights to participation in political and public life rest with the Member States. The procedures for electing national institutions are under the responsibility of the Member States, whilst the procedures for electing the EP are governed by EU legislation, defining rules common to all the Member States, and by specific national provisions. The common rules provide for the principle of proportional representation and cover incompatibilities with the mandate of the members of the EP (MEPs). All other aspects, including the right to stand for elections, are governed by national law.<sup>208</sup>

164. Article 20(2)(b) TFEU provides that citizens have the right to vote and stand as candidates in EP elections and in municipal elections in their Member State of residence, under the same conditions as nationals. Article 22(2) TFEU provides for citizens' right to vote and stand as a candidate in municipal elections in the Member State in which they

<sup>205</sup> [2009] OJ L 204/23, Article 7. However, see Article 8 for exclusions.

<sup>206</sup> [2009] OJ L 204/23, Article 6.

<sup>207</sup> European Commission, European platform against poverty and social exclusion [online]: <http://ec.europa.eu/social/main.jsp?catId=961&langId=en>.

<sup>208</sup> [http://www.europarl.europa.eu/workingpapers/poli/w13/country\\_en.htm](http://www.europarl.europa.eu/workingpapers/poli/w13/country_en.htm). Currently, however, Article 223 TFEU provides a legal base for the adoption of a uniform procedure, requiring the consent of the European Parliament.

reside without being a national. Article 11(1) TEU stipulates that the EU institutions must give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. Article 11(2) TEU requires the institutions to maintain an open, transparent and regular dialogue with representative associations and civil society, while Article 11(3) recognises the role of public consultations in ensuring that the Union's actions are coherent and transparent.

165. The EU has enacted a number of measures dealing with electoral rules, systems for the funding of European political parties<sup>209</sup> and other aspects of the electoral process, but these do not harmonise election rules within Member States. The rules concerning the right to vote and stand as a candidate in elections to the EP have been laid down by Directive 93/109/EC,<sup>210</sup> which defines the requirements that an EU citizen must satisfy to vote or stand as a candidate when residing in a Member State of which he is not a national. With Directive 2013/1/EU, amending Directive 93/109/EC, the EU simplified the administrative procedures for non-national EU citizens standing as candidates in the EP elections.

166. Articles 15 and 16 TFEU require the Union institutions, bodies, offices and agencies to ensure participation and political debate on EU issues in civil society. Article 298 TFEU provides that the EU institutions, in carrying out their activities, will have the support of an open, efficient and independent European administration. The Commission's White Paper on European Governance<sup>211</sup> recognises participation as one of the general principles of good governance. The EU has promoted an environment conducive to participation in EU public affairs through the Europe for Citizens Programme,<sup>212</sup> which aimed to promote Europe's shared history and values and funded participatory schemes and activities run by local authorities, NGOs, think-tanks, trade unions, universities or others. In addition, organisations interested in active citizenship meet regularly with the Commission to discuss political issues. This is referred to as "structured dialogue", and involves approximately 50 European organisations, including some dealing with disability.<sup>213</sup>

167. In the context of EU communication policy, the Commission has emphasised European citizens' right to participate and express their views, be heard and have the opportunity for dialogue with decision-makers.<sup>214</sup> In its 2010 Digital Agenda Communication, the Commission highlighted that "e-government services offer a cost-effective route to better service for every citizen and business and participatory open and transparent government".<sup>215</sup> The Digital Agenda contains many explicit references to persons with disabilities and also refers to the CRPD. The Commission has highlighted that "public websites and online services in the EU that are important to take a full part in public life should be brought into line with international web accessibility standards."

168. The EP has enhanced participation by people with disabilities by creating, in 1980, an intergroup on disability formed of MEPs from any political group and any committee,

<sup>209</sup> However, the financial means for electoral campaigns remain feeble and continue to be subject to national regulation.

<sup>210</sup> [1993] OJ L 329/34.

<sup>211</sup> COM(2001) 428 final. In 2005, the Commission launched both Plan D for democracy, dialogue and debate, which involved all citizens in a wide-ranging discussion on the EU and aimed to stimulate participation, and the European Transparency Initiative (ETI), in view of enhancing the transparency of participatory processes inside the EU.

<sup>212</sup> See: [http://ec.europa.eu/citizenship/index\\_en.htm](http://ec.europa.eu/citizenship/index_en.htm).

<sup>213</sup> See: [http://ec.europa.eu/citizenship/about-the-europe-for-citizens-programme/dialogue-with-civil-society/structured-dialogue-members/index\\_en.htm](http://ec.europa.eu/citizenship/about-the-europe-for-citizens-programme/dialogue-with-civil-society/structured-dialogue-members/index_en.htm).

<sup>214</sup> White Paper on a *European Communication Policy*, COM(2006) 35 final Brussels, 1 February 2006. See also [http://ec.europa.eu/ipg/basics/policy/index\\_en.htm](http://ec.europa.eu/ipg/basics/policy/index_en.htm).

<sup>215</sup> European Commission (2010), Communication of 19 May 2010 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *A Digital Agenda for Europe*, COM(2010) 245 final.

which aims to promote informal exchanges of views on disability and contact between MEPs and civil society.<sup>216</sup>

169. Together with ANED, supported by the Commission, FRA developed indicators on the right to political participation of persons with disabilities. The collected data show that, given the opportunity, people with disabilities actively participate in politics. However, significant challenges to participation on an equal basis with others remain, including: legal obstacles; inaccessible environments, processes and information; a lack of awareness about the right to political participation; limited opportunities for participation; and an absence of reliable and comparable data. The findings were released in April and May 2014.<sup>217</sup> This followed previous research conducted by FRA, which highlighted that a large number of Member States link the right to political participation to the legal capacity of the individual, which results in an automatic or quasi-automatic exclusion from the right to vote for many people with intellectual and/or psychosocial disabilities.<sup>218</sup> This information is updated every year in the FRA's Annual Report. In its report *Choice and control: the right to independent living*, FRA emphasised that the ability to participate in public and political life, in terms of exercising the right to vote or through involvement in self-advocacy organisations, is a crucial aspect of independent living of people with disabilities.<sup>219</sup>

170. 18% of respondents to Eurobarometer 345<sup>220</sup> who said that they or a member of their household had a longstanding illness or health problem had experienced difficulties voting in an election. 8% of respondents experienced difficulty most of the time when voting, while one in ten said that this happened only from time to time. The number of persons with a severe disability who did not vote in the relevant last national election was 20.6%, as compared with 17.4% of persons without disabilities (EQLS 2007). The rate of people with disabilities who attended a meeting of a trade union, a political party or political action in the EU was 5.5% for persons with severe disabilities aged 18 and more, compared to 8.4% for persons without disabilities, in 2011–2012.<sup>221</sup>

## Article 30

### Participation in cultural life, recreation, leisure and sport

171. The EU has shared and supporting competences in the area of participation in cultural life, recreation, leisure, sport and tourism. Article 3 TEU provides that the EU must respect its rich cultural and linguistic diversity, and ensure that Europe's cultural heritage is safeguarded and enhanced. The Commission also recognises that sign languages are an important part of Europe's multilingual diversity.<sup>222</sup> Article 22 of the Charter states that the Union should respect cultural, religious and linguistic diversity. Under Article 165(1)

<sup>216</sup> <http://www.europarl.europa.eu/aboutparliament/en/00c9d93c87/Intergroups.html>.

<sup>217</sup> FRA (2014) *The right to political participation of persons with disabilities: Summary*, Luxembourg, Publications Office, available at: [http://fra.europa.eu/sites/default/files/fra-2014-political-participation-persons-disabilities-summary\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-political-participation-persons-disabilities-summary_en.pdf). The indicators are also available online at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/political-participation>.

<sup>218</sup> FRA (2010), *The right to political participation of persons with mental health problems and persons with intellectual disabilities*.

<sup>219</sup> FRA (2012), *Choice and control: the right to independent living*, Luxembourg, Publications Office of the European Union.

<sup>220</sup> European Commission (2012), Flash Eurobarometer 345 – *Accessibility*, p. 8. Available at: [http://ec.europa.eu/public\\_opinion/flash/fl\\_345\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_345_sum_en.pdf).

<sup>221</sup> European Foundation for the Improvement of Living and Working Conditions, European Quality of Life Survey, 2011-2012 [computer file]. Colchester, Essex: UK Data Archive [distributor], July 2013. SN: 7316.

<sup>222</sup> See: [http://ec.europa.eu/languages/languages-of-europe/sign-languages\\_en.htm](http://ec.europa.eu/languages/languages-of-europe/sign-languages_en.htm).

TFEU, the Union should contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

172. Accessibility of audiovisual media services for all EU citizens is one of the key objectives of the Audiovisual Media Services Directive (AVMSD).<sup>223</sup> Member States are to encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability. In 2012, the Commission published its first report on the application of the AVMSD, which describes how Member States have introduced rules to improve the accessibility of audiovisual media services for persons with visual or hearing impairments.<sup>224</sup> The second Application Report, due in the first half of 2015, will assess the current state of play as regards accessibility services for audiovisual media services, with special focus on on-demand services.

173. Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society<sup>225</sup> gives Member States the option of providing for certain copyright exceptions or limitations, *inter alia*, for educational and scientific purposes, and for uses by people with disabilities.<sup>226</sup> In addition, Recital 43 states that Member States should adopt all necessary measures to facilitate access to works by persons with disabilities, and to pay particular attention to accessible formats. Member States may impose exceptions and limitations to the reproduction right, the right of distribution, the right of communication to the public, including the right of making available to the public, for the benefit of people with a disability, with respect to uses which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability.<sup>227</sup>

174. A stakeholder dialogue with copyright-holders was set up in December 2009 on a recommendation from the Commission in its Communication on *Copyright in the Knowledge Economy*.<sup>228</sup> Further to this dialogue, a memorandum of understanding (MoU) on access to works by people with print disabilities was released. The MoU aims to increase the number of works published in special formats and facilitate their distribution across the EU.<sup>229</sup> It seeks to support publishers' efforts to produce accessible content, to develop a network of trusted intermediaries in all Member States and stimulate the creation of an online European accessible e-books service. The Commission also played an active part in the negotiations in the World Intellectual Property Organisation (WIPO) on an international treaty to improve access to published works for persons with print disabilities. The so-called Marrakech Treaty<sup>230</sup> was adopted in June 2013. On 30 April 2014 the Presidency of the Council of the EU signed, on behalf of the EU, the Treaty. The new Treaty creates a mandatory exception to copyright that allows organisations for blind people to produce and distribute accessible format copies to print-disabled persons without

<sup>223</sup> Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive- AVMSD), [2010] OJ L 95/1, 15.4.2010.

<sup>224</sup> COM(2012) 203 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0203:FIN:EN:PDF>.

<sup>225</sup> [2001] OJ L 167/10.

<sup>226</sup> Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L 167/10.

<sup>227</sup> Rekas, A. (2012), *Preparatory Committee of the Diplomatic Conference to conclude a Treaty to facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities*, Report of the Preparatory Committee, Geneva, 18 December 2012.

<sup>228</sup> Commission of the European Communities (2009), *Communication from the Commission – Copyright in the Knowledge Economy*, COM(2009) 532 final.

<sup>229</sup> [http://ec.europa.eu/internal\\_market/copyright/initiatives/access/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/initiatives/access/index_en.htm).

<sup>230</sup> <http://www.wipo.int/portal/index.html.en>.

the authorisation of the right-holder. It also allows for the cross-border exchange of these copies, subject to a three-step test requirement that ensures that the rights of right-holders are not unduly restricted.

175. The Culture Programme (2007-13)<sup>231</sup> encouraged and supported cultural cooperation and provided for funding opportunities to all cultural sections and categories of cultural operators. It mainly promoted the mobility of cultural players, the circulation of artistic and cultural works and products, intercultural dialogue and exchanges. Several projects involving people with disabilities were funded under the Programme.<sup>232</sup> The Commission also co-funded a three-year project promoting accessibility among European heritage management institutions. Europeana is a portal which brings together digitised content from Europe's museums, archives, libraries and audiovisual collections.<sup>233</sup> While it is not a disability-specific initiative, Europeana features and content have been designed to be universally accessible. In addition, a post-prototype version will be produced for blind people.<sup>234</sup> The Commission is also committed to ensuring that accessibility criteria are taken into account in the context of the European Capitals of Culture award.<sup>235</sup>

176. Sport is included in the Disability Strategy and the 2011 Communication on *Developing the European Dimension in Sport*<sup>236</sup> identifies sport for people with disabilities as a priority area to tackle. The Commission encourages Member States and sport organisations to adapt sport infrastructure to take into account the needs of people with disabilities. Specific criteria should be adopted for ensuring equal access to sport for all pupils, and specifically for children with disabilities. The training of monitors, volunteers and host staff of clubs and organisations for the purpose of welcoming people with disabilities will be promoted through the Erasmus+ Programme. In its consultations with sport stakeholders, the Commission takes special care to maintain a dialogue with representatives of sportspeople with disabilities. Since the recognition of the supplementary EU competence on sport in the TFEU in 2009, four projects have been funded in the framework of the preparatory actions for sport. Events such as the European and World Special Olympics Games and Youth Paralympic games received financial support and organisations representing sport for disabled were partners in other funded projects.<sup>237</sup> Disability was also mainstreamed in other activities such as the 2012 EU Guidelines on Dual Careers of Athletes.<sup>238</sup>

177. Also relevant are EU efforts to accelerate the integration of ICT tools and services into tourism activities<sup>239</sup> in order to increase accessibility. In this respect, the EU carries out various activities, such as:

- Raising awareness among stakeholders and economic operators in the tourism sector;

<sup>231</sup> [http://ec.europa.eu/culture/calls-for-proposals/culture-programme-guide\\_en.htm](http://ec.europa.eu/culture/calls-for-proposals/culture-programme-guide_en.htm).

<sup>232</sup> DG Education and Culture (2009), *Culture in Motion*, available at [http://ec.europa.eu/culture/documents/publications/cult\\_prog\\_2009\\_en.pdf](http://ec.europa.eu/culture/documents/publications/cult_prog_2009_en.pdf).

<sup>233</sup> See: <http://www.europeana.eu/portal/>.

<sup>234</sup> See: <http://www.europeana.eu/portal/rights/accessibility.html>.

<sup>235</sup> [http://ec.europa.eu/culture/our-programmes-and-actions/capitals/european-capitals-of-culture\\_en.htm](http://ec.europa.eu/culture/our-programmes-and-actions/capitals/european-capitals-of-culture_en.htm).

<sup>236</sup> European Commission (2011), Communication to the Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *Developing the European Dimension in Sport*, COM(2011) 12 final.

<sup>237</sup> [http://ec.europa.eu/sport/index\\_en.htm](http://ec.europa.eu/sport/index_en.htm). See also [http://ec.europa.eu/sport/preparatory\\_actions/introduction\\_en.htm](http://ec.europa.eu/sport/preparatory_actions/introduction_en.htm).

<sup>238</sup> [http://ec.europa.eu/sport/library/documents/dual-career-guidelines-final\\_en.pdf](http://ec.europa.eu/sport/library/documents/dual-career-guidelines-final_en.pdf).

<sup>239</sup> European Commission (2010), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Europe — *The world's No. 1 tourist destination — a new political framework for tourism in Europe*, COM(2010) 352 final, Brussels, 30 June 2010.

- Gathering knowledge about the demand and behavioural profile of travellers with special access needs, and assessing the economic impact of accessible tourism;
- Studying options for improving the range of accessible tourism services;
- Improving dedicated skills in the sector; and
- Improving information on accessible tourism for disabled people.<sup>240</sup>

178. In addition, the EU supports social tourism through the Calypso initiative,<sup>241</sup> designed to help disadvantaged people (including people with disabilities) go on holiday by promoting exchanges between different countries and areas, and off-season tourism.

#### **IV. Information on the specific situation of boys, girls and women with disabilities**

##### **Article 6 Women with disabilities**

179. Article 8 TEU establishes that in, all its activities, the Union should aim to eliminate inequalities and promote equality between men and women. Article 23 of the Charter provides that “equality between men and women must be ensured in all areas.” Article 157(3) TFEU confers specific competence to enact EU legislation relating to equal opportunities, equal treatment and equal pay for men and women in employment and occupation.

180. The EU has adopted a number of directives prohibiting gender discrimination.<sup>242</sup> The importance of addressing the particular situation of women with disabilities, especially the need to increase their participation in the labour market, figures both in the Strategy for Equality between Women and Men (2010-15)<sup>243</sup> and the Disability Strategy. In the latter, the Commission gave a commitment to pay attention to the cumulative impact of discrimination that people with disabilities may experience on other grounds, such as nationality, age, race or ethnicity, sex, religion or belief, and sexual orientation.

181. The EU Strategy for Equality between Women and Men sets out actions in five areas to advance gender equality:

- Equal economic independence;
- Equal pay for work of equal value;
- Equality in decision-making;
- Dignity;
- Integrity; and

<sup>240</sup> [http://ec.europa.eu/enterprise/sectors/tourism/accessibility/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/tourism/accessibility/index_en.htm).

<sup>241</sup> Calypso Study, released in 2010, available at: [http://ec.europa.eu/enterprise/sectors/tourism/files/docs/calypso/calypso\\_study\\_annexes\\_en.pdf](http://ec.europa.eu/enterprise/sectors/tourism/files/docs/calypso/calypso_study_annexes_en.pdf).

<sup>242</sup> For example, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), [2004] OJ L 373/37, and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), [2006] OJ L 204/23.

<sup>243</sup> European Commission (2010), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 21 September 2010 – *Strategy for equality between women and men 2010-15*, COM(2010) 491 final.

- Putting an end to gender-based violence and ensuring gender equality in external actions of the Union.

182. Particular attention is paid to multiple discrimination, which the Strategy defines as “any combination of discrimination on the grounds of sex, racial origin, religion or belief, disability, age or sexual orientation.” The Strategy notes that gender gaps tend to be much wider among disadvantaged groups (e.g. disabled people) and cause many problems for women.<sup>244</sup>

183. In the renewed European Pact for Gender Equality for 2011-20, adopted in 2011, the Council reaffirmed its commitment to:

- Eliminate gender stereotypes, ensure equal pay for work of equal value and promote the equal participation of women in decision-making;
- Improve the supply of affordable and high-quality childcare services and promote flexible working arrangements; and
- Strengthen the prevention of violence against women and the protection of victims, and focus on the role of men and boys in order to eradicate violence.

184. In 2009, the Commission funded a study on the situation of women with disabilities in light of the CRPD.<sup>245</sup> This study presents examples of promising practice in legislation, policies and programmes intended to help women with disabilities enjoy the rights and fundamental freedoms set out in the CRPD. The study offers a number of recommendations to further address the intersectionality of gender and disability. The Commission has also given priority to funding projects aimed at fighting violence against women with disabilities, through the Progress and Daphne Programmes.

185. In May 2013, the EP published a major study, *Discrimination Generated by the Intersection of Gender and Disability*,<sup>246</sup> which contains a series of recommendations to tackle intersectional discrimination on the grounds of gender and disability covering education, employment, poverty, health, violence, forced sterilisation and access to justice. The report also highlighted the need for more accurate qualitative and quantitative data collection to support evidence-based policy design to address intersectionality.<sup>247</sup>

186. Women with disabilities constitute the majority of persons with disabilities in the EU. The prevalence of disability among women (28%) is higher than among men (23%) (EU-SILC UDB 2011), mainly due to the higher life expectancy of women. About 57% of all persons with disabilities are women. Women with disabilities face a double disadvantage. In the EU, in 2011, the employment rate for women with disabilities was 44% and the employment rate for men with disabilities 51%. The gender gap amounted to 7 percentage points (EU-SILC UDB 2011). The employment rate for women with disabilities is lower than that for women without disabilities (65%), in the age group 20-64. At EU level, about 20% of women with disabilities live in households at risk of financial poverty,

<sup>244</sup> European Commission (2010), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *Strategy For Equality Between Women And Men 2010-15*, COM(2010) 491 final, p. 4. See also p. 5 (in relation to pensions).

<sup>245</sup> European Commission (2009), *Study on the situation of women with disabilities in light of the UN Convention for the Rights of Persons with Disabilities*, (VC/2007/317), December 2009 <http://ec.europa.eu/social/BlobServlet?docId=4363&langId=en>.

European Commission (2013), *Discrimination Generated by the Intersection of Gender and Disability*, available at <http://bookshop.europa.eu/en/discrimination-generated-by-the-intersection-of-gender-and-disability-pbBA0313048/>.

<sup>247</sup> European Commission (2013), *Discrimination Generated by the Intersection of Gender and Disability* (May 2013), p. 16.

as compared with 16% of women without disabilities. The corresponding percentages for men are 19% and 14%. There are significant differences across countries.

## Article 7 Children with disabilities

187. The promotion and protection of the rights of the child is a key objective of the EU (Article 3(3) TEU). The rights of the child are also enshrined in the Charter, where Article 24 recognises that children are independent and autonomous holders of rights. Children have the right to protection and care, they should be able to express their views freely and there is an obligation on duty-bearers to take their views into consideration in accordance with their age and maturity. Article 24 of the Charter also makes the child's best interests a primary consideration for public authorities and private institutions. Finally, it stipulates that the child should have the right to maintain on a regular basis a personal relationship and direct contact with both of his or her parents, unless that is contrary to his or her interests. Article 32 of the Charter enshrines the child's right to protection from child labour.

188. In 2011, the Commission adopted the EU Agenda on the Rights of the Child.<sup>248</sup> This sets out a number of actions in areas where the EU can bring added value, such as integrating a children's rights perspective as a core part of EU fundamental rights policy, building the basis for evidence-based policies, cooperation with stakeholders, child-friendly justice, protecting children in vulnerable situations and fighting violence against children in the EU and elsewhere.<sup>249</sup> The Agenda acknowledges that children with disabilities are more vulnerable to the violation of their rights and require and deserve special protection. It notes that all children must be given a chance to voice their opinions and participate in the making of decisions that affect them.

189. The European Forum on the rights of the child provides a platform for the exchange of information among stakeholders such as Member State authorities, ombudspersons, civil society, practitioners working for and with children, independent experts and academics. It convenes an annual conference with a particular thematic focus. The 7th Forum took place on 13-14 November 2012 and focused on child protection systems in the EU.<sup>250</sup> The conference included a specific workshop on the role of child protection systems in protecting children with disabilities. Early intervention was highlighted as key, as was inclusive education, ensuring children's participation in different settings. The workshop underlined the need to employ alternative communication tools, empower children and families when they are vulnerable, collect data and use them appropriately to inform policy choices and funding needs, support deinstitutionalisation efforts, especially through the proper use of the EU Structural Funds, and train professionals to include a child-centred and rights-based approach in their work.<sup>251</sup> The 2013 Forum focused again on integrated child protection systems, particularly in view of the development of EU guidelines on integrated child protection systems, and looked in particular at bullying in schools.

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<sup>248</sup> European Commission (2011), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *An EU Agenda for the Rights of the Child*, COM(2011) 0060 final.

<sup>249</sup> COM(2011) 0060 final, p. 4–5.

<sup>250</sup> European Forum on the Rights of the Child, Brussels 13-14 November 2012: [http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/seventh-meeting/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/seventh-meeting/index_en.htm).

<sup>251</sup> European Commission (2012), *Summary Report — 7th European Forum on the rights of the child — Supporting child protection systems (CPS) through the implementation of the EU Agenda for the rights of the child*, 13-14 November 2012, p. 8.



190. In February 2013, the Commission issued a comprehensive Recommendation, *Investing in children: breaking the cycle of disadvantage*,<sup>252</sup> for tackling and preventing disadvantage to children at risk of poverty and social exclusion. One of the guiding principles of the Recommendation is the need to ensure a focus on children who face an increased risk due to multiple disadvantages, such as those with special needs or disabilities. As regards the responsiveness of health systems to the needs of disadvantaged children, the Recommendation calls on Member States to “devote special attention to children with disabilities or mental health problems”. The Recommendation proposes the development of integrated strategies based on three pillars: access to adequate resources, access to affordable services and the child’s right to be heard and to participate.

191. EU legislation and policy documents with provisions on children<sup>253</sup> and specific mentions of vulnerable children include:

- Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography;
- Directive 2013/33/EU on reception of applicants for international protection;
- Directive 2012/13/EU on the right to information in criminal proceedings;
- Directive 2012/29/EU on the rights of victims of crime; and
- The Commission’s November 2013 proposal for procedural safeguards for children suspected or accused in criminal proceedings.

192. These instruments are mentioned in previous sections of this report. The Commission has funded projects for children with disabilities notably under the Daphne Programme and has also provided financial support to hotlines for missing children and child helplines.

193. The Youth in Action Programme (2007-13), which aimed to encourage the civic participation of disadvantaged people aged between 15 and 28 and to nurture their creative and entrepreneurial skills, put particular emphasis on including young people with disabilities in the Programme and to enhancing their opportunities.<sup>254</sup> A 2009 Communication from the Commission on an EU Strategy for Youth, *Investing and Empowering – A renewed open method of coordination to address youth challenges and opportunities*,<sup>255</sup> refers to disability in one of its fields of action dealing with social inclusion. Actions to combat the social exclusion of youth disadvantaged by factors such as disability include the optimised use of EU funds, addressing problems in social protection and inclusion policies, and the promotion of access to services.

194. In a study to map legislation, policy and practice on child participation, the Commission has put a particular focus on vulnerable groups of children, such as those with disabilities. The study seeks to showcase good practice in respect of the participation rights of children with disabilities. It is due to be published in the first half of 2014. FRA is conducting a research project on harassment of disabled children, the results of which are

<sup>252</sup> European Commission (2013), *Investing in children: breaking the cycle of disadvantage*, C(2013) 778 final (Brussels).

<sup>253</sup> Compilation of EU *acquis* and policy documents on the rights of the child [http://ec.europa.eu/justice/fundamental-rights/files/eu\\_acquis\\_2013\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/eu_acquis_2013_en.pdf).

<sup>254</sup> Decision No. 1719/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing the Youth in Action programme for the period 2007 to 2013, [2006] OJ L 327/30.

<sup>255</sup> European Commission (2009), *An EU Strategy For Youth – Investing And Empowering: A Renewed Open Method Of Coordination To Address Youth Challenges And Opportunities*, COM(2009) 200 final.

due in 2014.<sup>256</sup> FRA has also worked on the development of indicators to monitor progress in the implementation of children's rights in the EU.<sup>257</sup> In the context of work on EU guidelines on child protection systems, to be finalised in 2014, the Commission asked FRA to carry out a mapping of child protection systems in the Member States, and one area of focus will be children with disabilities.

195. The EP has played an active role in issues relating to children's rights. In March 2011, it created the EP Alliance for Children, an informal cross-party platform that aims to mainstream the rights of the child into the work of the EP.<sup>258</sup> The EP commissioned a comparative study of policy for children with disabilities in 18 Member States in relation to the obligations arising from the United Nations Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities. Published in June 2013, the research identified challenges in the practical implementation of legal provisions resulting in obstacles faced by children with disabilities in their day-to-day life.<sup>259</sup>

196. The EESC has also taken an active interest in the rights of children, including the disabled. In February 2012, it adopted an exploratory opinion on young persons with disabilities<sup>260</sup> which stressed the importance of mainstreaming the needs of young persons with disabilities in all EU youth policies and programmes.<sup>261</sup> The opinion recommended mainstreaming youth disability policies into all the relevant budget lines of the Multiannual Financial Framework and gathering evidence of the impact of mainstream policies and programmes on young people with disabilities.<sup>262</sup>

197. EU-level data on children with disabilities is not readily available. The EU-SILC survey covers persons aged 16 and over living in private households. About 6% of young people aged 16 to 19 declare an activity limitation (EU-SILC UDB 2011). About 1% of persons aged 16–20 receive a disability-related benefit. In 2013, a two-and-a-half-year research project began to assess the feasibility of a European longitudinal study for children and young people, focusing on their wellbeing, child and youth-related policies, childhood care, and access to education.<sup>263</sup>

<sup>256</sup> See Children with disabilities: targeted violence and hostility project. Available at:

<http://fra.europa.eu/en/project/2012/children-disabilities-targeted-violence-and-hostility>.

<sup>257</sup> Stalford, H., Sax, H. and Drywood, E. (2010), *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union* – updated Post-Lisbon Treaty Conference version (Vienna, European Union Agency for Fundamental Rights).

<sup>258</sup> Statement from the Vice-President of the European Parliament, Roberta Angelilli, European Parliament News Report, 20110328STO16533, 30 March 2011, available at:

<http://www.europarl.europa.eu/news/en/headlines/content/20110328STO16533/html/EP-alliance-to-protect-children-in-%20Europe-and-beyond>.

<sup>259</sup> [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474429/IPOL-LIBE\\_ET\(2013\)474429\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474429/IPOL-LIBE_ET(2013)474429_EN.pdf).

<sup>260</sup> Opinion of the European Economic and Social Committee on *Young persons with disabilities: employment, inclusion and participation in society* (exploratory opinion) [2012] OJ C 181/2, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012AE0826:EN:NOT>.

<sup>261</sup> Opinion of the European Economic and Social Committee on *Young persons with disabilities: employment, inclusion and participation in society* (exploratory opinion), [2012] OJ C 181/2, para. 1.1.20.

<sup>262</sup> [2012] OJ C 181/2, para. 2.1.8.

<sup>263</sup> Information on the MYWEB project is available at: [http://cordis.europa.eu/projects/rcn/111254\\_en.html](http://cordis.europa.eu/projects/rcn/111254_en.html).

## V. Information relating to specific obligations

### Article 31

#### Statistics and data collection

198. The EU has shared competence with its Member States to produce statistics. Article 338(1) TFEU empowers the Union to adopt measures for the production of statistics where necessary for the performance of the activities of the Union. The Disability Strategy commits the Commission to supporting and supplementing Member States' efforts to collect statistics and data that reflect the barriers preventing people with disabilities from exercising their rights.

199. Regulation (EC) No. 223/2009<sup>264</sup> provides the legal framework for the production of European statistics and identifies Eurostat as the statistical authority of the EU in cooperation with national statistical institutes in all Member States in a European Statistical System (ESS). The current, 2013-17 EU statistical programme is governed by Regulation (EU) No. 99/2013 of the Parliament and the Council.<sup>265</sup> This includes an objective of "[providing] statistics on key areas of social policy where the citizen is the centre of interest" (Objective 3.2.1); these statistics should be disaggregated by gender. Disability is identified as one such area within this objective.

200. In the Disability Strategy, the Commission has committed itself to:

- Streamlining information on disability collected through EU social surveys (EU Statistics on Income and Living Conditions, Labour Force Survey *ad hoc* module, European Health Interview Survey);
- Developing a specific survey on barriers to the social integration of disabled people; and
- Presenting a set of indicators to monitor their situation with reference to key Europe 2020 targets (education, employment and poverty reduction).

201. The European Labour Force Survey 2011 *ad hoc* module on employment of disabled people (LFS-AHM)<sup>266</sup> and the 2012 European Health and Social Integration Survey (EHSIS)<sup>267</sup> incorporate new concepts of disability according to the CRPD. The LFS-AHM collected information from working age population on longstanding health conditions and

<sup>264</sup> Regulation (EC) No. 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No. 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No. 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities, OJ L 87/164, 31.3.2009, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:087:0164:0173:en:PDF>.

<sup>265</sup> Regulation (EU) No. 99/2013 of the European Parliament and of the Council of 15 January 2013 on the European statistical programme 2013-17, [2013] OJ L 39/12, 9.2.2013, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:039:0012:0029:EN:PDF>.

<sup>266</sup> Commission Regulation (EU) No. 317/2010 of 16 April 2010 adopting the specifications of the 2011 *ad hoc* module on employment of disabled people for the labour force sample survey provided for by Council Regulation (EC) No. 577/98.

<sup>267</sup> Under the theme of "Health and safety" statistics, Eurostat's annual work programme for 2011 identified a need to develop technical guidelines for a disability survey (Action 104) and to collaborate with the Washington Group and the Budapest Initiative in proposing disability questions (Action 207). The 2013 work programme identifies validation and dissemination disability data relevant to the Convention, from the 2012 European Health and Social Integration Survey (EHSIS) (Action 227).

basic activity difficulties and limitations in the number of hours the interviewed person can work in a week, in the type of work that he/she can do and in getting to and from work. Also, it asked whether the person needs/uses personal assistance, special equipment or workplace adaptations and whether he/she needs/has special working arrangements to enable him/her to work. A question specified the main reason for limitation in work (number of hours, type, getting to and from work) that is not caused by the longstanding health conditions/diseases or basic activity difficulties. This refers to important issues such as lack of qualifications/experience, lack of appropriate job opportunities, lack of or poor transportation to and from workplace and employers' lack of flexibility.<sup>268</sup>

202. The EU Statistics on Income and Living Conditions (EU-SILC) is the reference source for comparative statistics on income distribution and social inclusion at European level. The reference population in EU-SILC includes all private households and their current members in the territory of the countries at the time of data collection. All household members are surveyed, but only those aged 16 and older are interviewed. Persons living in collective households and in institutions are generally excluded from the target population. As regards activity limitations, people are asked "For at least the past six months, to what extent have you been limited because of a health problem in activities people usually do?" On the basis of this proxy question, it is possible to develop indicators on the living conditions and income levels of person with disabilities. It is also used by ANED to develop annual indicators on the employment rate, educational level and poverty risk of persons with and without disabilities to help the Commission monitor progress towards the Europe 2020 headline targets in these areas. The indicators based on EU-SILC survey conducted in 2012 will become available towards the end of 2014.

203. The European Health Interview Survey (EHIS),<sup>269</sup> which covers some disability items, will be conducted in 2014. The European Quality of Life Survey (EQLS) identifies people who are "hampered in their daily activities by a physical or mental health problem, illness or disability".

204. Since 2008, the Commission has financed ANED, an expert network to provide scientific support and advice through thematic analysis of national and EU-level policy developments in disability-related fields. Every year, ANED produces reports on specific issues such as the impact of the national reform programmes, including measures on fiscal consolidation, welfare policies, employment and education, on the situation of persons with disabilities. In 2012, ANED launched the Commission's Disability Online Tool (DOTCOM), a web-based tool that provides an overview of the legislation and practical measures used to implement the CRPD.<sup>270</sup>

205. The Eurobarometer surveys examine public attitudes and opinions to support the EU institutions in decision-making and evaluation. A Eurobarometer survey on discrimination was published in 2009<sup>271</sup> and another in 2012,<sup>272</sup> including relevant questions on attitudes to disability. Data collection activities carried out by FRA are mentioned under the relevant thematic sections in the present report.

<sup>268</sup> Commission Regulation (EU) No. 317/2010 of 16 April 2010 adopting the specifications of the 2011 ad hoc module on employment of disabled people for the labour force sample survey provided for by Council Regulation (EC) No. 577/98.

<sup>269</sup> Commission Regulation (EU) No. 141/2013 as regards statistics based on the European Health Interview Survey (EHIS) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:047:0020:0048:EN:PDF>.

<sup>270</sup> <http://www.disability-europe.net/dotcom>.

<sup>271</sup> European Commission (2009), *Discrimination in the EU in 2009*, Special Eurobarometer 317/Wave 71.2. – TNS Opinion & Social, 2009. Available at: [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm).

<sup>272</sup> European Commission (2012), *Discrimination in the EU in 2012*, Special Eurobarometer 393/Wave EB77.4 – TNS Opinion & Social, 2012. Available at: [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm).

## Article 32

### International cooperation

206. The EU has shared competences with respect to the implementation of Article 32 as regards, *inter alia*, development cooperation, humanitarian aid and research and technological development (Article 4 TFEU).

207. The Disability Strategy lays out specific measures for the inclusion of persons with disabilities in EU external actions. Under “external action” it states that the “EU and the Member States should promote the rights of people with disabilities in their external action, including EU enlargement, neighbourhood and development programmes”. In particular, it gives commitments to:

- Working within a broader framework of non-discrimination to highlight disability as a human rights issue in the EU’s external action;
- Raising awareness of the CRPD and the needs of people with disabilities, including accessibility, in the area of emergency and humanitarian aid;
- Increasing awareness of disability issues in EU delegations; and
- Ensuring that candidate and potential candidate countries make progress in promoting the rights of people with disabilities and ensure that the financial instruments for pre-accession assistance are used to improve their situation.<sup>273</sup>

208. The EU Strategic Framework and Action Plan on Human Rights, adopted by the Council of the EU in June 2012, explicitly mentions advocating for the rights of persons with disabilities as one of the EU’s human rights priorities. Action 30 of the Action Plan undertakes to promote the rights of persons with disabilities, including in development programmes, in the framework of the Disability Strategy and implementation of the CRPD. The EU holds regular dialogues on human rights with more than 30 non-EU countries in order to discuss priority issues identified on a case-by-case basis. The EU is committed to addressing, in these dialogues, issues relating to discrimination on the grounds of disability, and to the signature, ratification and implementation of the CRPD. Disability has been raised in EU human rights dialogues with the African Union (May and October 2010), Argentina (April 2012), Brazil (September 2012), Chile (May 2012), Mexico (March 2014), Moldova (April 2013), New Zealand (March 2010), the Palestinian Authority (May 2012), Russia (November and May 2011, May 2013), Tajikistan (March 2013), the United States (February 2012) and Uzbekistan (November 2012).

29. The 2011 Commission Communication *Increasing the impact of EU Development Policy: An agenda for Change*<sup>274</sup> confirms that the primary objective of development policy is to support the efforts of developing countries to eradicate poverty. It recommends that the EU concentrates its development cooperation on support for:

- (a) Human rights, democracy and other key elements of good governance; and
- (b) Inclusive and sustainable growth for human development.

210. At least 20% of future aid should be set aside for human and social development, including social protection and social inclusion.

211. The subsequent regulations establishing the financing instruments for (i) development cooperation for the period 2014–2020;<sup>275</sup> (ii) democracy and human rights

<sup>273</sup> See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>.

<sup>274</sup> COM(2011) 637 final of 13.10.2011.

<sup>275</sup> Regulation (EU) No. 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014–2020.

worldwide;<sup>276</sup> and (iii) Pre-accession Assistance (IPA II)<sup>277</sup> include explicit provisions for supporting the social inclusion and the rights of persons with disabilities in accordance with the CRPD. Moreover, the regulation laying down common rules and procedures for the implementation of Union's instruments for financing external action,<sup>278</sup> which applies to all instruments, indicates that accessibility for persons with disabilities shall be duly taken into account in the design and implementation of programmes and projects.

212. The Commission Communication *A Decent life for All*<sup>279</sup> includes the mainstreaming of the social inclusion and the rights of persons with disabilities in its proposal for a common EU approach to a post-2015 overarching framework to respond to the universal challenges of poverty eradication and sustainable development. Subsequently, the Commission contributed to preparatory work for the UN High-Level Meeting on Disability (HLMDD) on 23 September 2013, which sought to ensure the mainstreaming of disability in the post-2015 development framework. The Commission hosted a European regional consultation meeting in April 2013.<sup>280</sup> The 6th DHLG Report (2013) includes a chapter on disability and development cooperation, and explores how the Member States and the EU are implementing Article 32 of the CRPD.<sup>281</sup>

213. There is strong political support for disability-inclusive development, as shown by a number of resolutions of the EP. The 2006 resolution on disability and development sets out a human rights approach to disability and calls for the inclusion of disability in all EU development cooperation projects.<sup>282</sup> In a resolution on 23 October 2012,<sup>283</sup> the Parliament calls for the implementation of Article 32 CRPD and for more inclusive international cooperation. The 2011 Resolution on the inclusion of persons with disabilities in developing countries,<sup>284</sup> as adopted by the ACP-EU Parliamentary Assembly, provides recommendations for both the ACP and the EU on how to ensure that persons with disabilities benefit from and contribute to their countries' development efforts.

214. The EU pursues a twin-track approach through disability-specific programmes and mainstreaming. Disability-specific programmes seek to enable the full inclusion and participation of persons with disabilities and are implemented both in partnership with civil society organisations (including DPOs) and in the EU's bilateral cooperation with partner countries. Between 2008 and 2012, the EU supported some 300 disability-specific projects run by civil society organisations in 87 developing countries, for a total of some EUR 140 million. These projects generally cover areas such as the promotion of the rights of persons with disabilities (e.g. the European Instrument for Human Rights and Democracy has strongly supported projects advocating for the signature, ratification and implementation of the CRPD) and social inclusion (e.g. through education, health and employment). In

<sup>276</sup> Regulation (EU) No. 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide.

<sup>277</sup> Regulation (EU) No. 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II).

<sup>278</sup> Regulation (EU) No. 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action.

<sup>279</sup> COM(2013) 92 final, 27 February 2013, available at: [http://ec.europa.eu/europeaid/documents/2013-02-22\\_communication\\_a\\_decent\\_life\\_for\\_all\\_post\\_2015\\_en.pdf](http://ec.europa.eu/europeaid/documents/2013-02-22_communication_a_decent_life_for_all_post_2015_en.pdf).

<sup>280</sup> See: [http://www.un.org/disabilities/documents/hlmdd/hlmdd\\_regional\\_report\\_europe.pdf](http://www.un.org/disabilities/documents/hlmdd/hlmdd_regional_report_europe.pdf).

<sup>281</sup> See: [http://ec.europa.eu/justice/discrimination/files/dhlg\\_6th\\_report\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/dhlg_6th_report_en.pdf).

<sup>282</sup> Resolution on disability and development, Brussels 19 January 2006. See also: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0033+0+DOC+XML+V0//EN>.

<sup>283</sup> Resolution on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic human rights policy, Brussels 18 April 2012.

<sup>284</sup> ACP-EU/100.954/11/fin.

parallel, the EU seeks to mainstream the concerns and specific needs of persons with disabilities in all its development programmes.

215. In order to progressively attain the objective of systematic disability mainstreaming, the Commission has taken a number of measures, such as the publication of the *Study of Disability in EC Development Cooperation* (2010), which provided recommendations for the EU to better align its development cooperation to the CRPD.<sup>285</sup> In 2012, the Commission revised the Practical Guide to Contract Procedures for EU External Action (PRAG),<sup>286</sup> which stipulates that all services, supplies, work and grants that relate to goods, services and infrastructures the subject of which is intended for the use of persons must include in their technical specifications accessibility requirements for person with disabilities following a design-for-all approach.

216. In 2012, the Commission also updated the Guidance Note for EU Staff on Disability-Inclusive Development Cooperation in order to raise awareness of disability among staff working on EU development cooperation at headquarters and in delegations and provide guidance, in line with the CRPD, on including people with disabilities in development processes. The establishment of a network of contact persons dealing with disability in EU delegations aims to further help address disability issues in the work of delegations. A training course for EU staff on the inclusion of persons with disabilities in development cooperation was organised in 2012 in collaboration with the International Disability and Development Consortium (IDDC).<sup>287</sup> A module on “Discrimination on the basis of disability” is also included in the “non-discrimination” training organised regularly by the European External Action Service. Another awareness raising and capacity building tool is the Capacity4Dev Group’s “Disability and Development Network”,<sup>288</sup> an internet platform available to EU staff and other partners wishing to share information and experience on the inclusion of persons with disabilities in development.

217. The Commission financed a number of projects involving members of the IDDC, to promote disability-inclusive development. Funding aimed to develop tools to support disability mainstreaming<sup>289</sup> and to build the capacity of the Consortium and other NGOs to support the implementation of the CRPD. It also aimed to support a global campaign to advocate for the inclusion of persons with disabilities in development processes through the “End Exclusion – Let’s enable the MDGs” project.<sup>290</sup>

## Article 33

### National implementation and monitoring

#### 1. Focal point

218. The Council Decision concerning the conclusion, by the European Union, of the CRPD designates the Commission as the focal point for the implementation of the Convention at EU level. Point 11 in the Code of Conduct between the Council, the Member States and the Commission setting out arrangements for the implementation by and representation of the European Union relating to the CRPD further elaborates on the role of

<sup>285</sup> See: [http://ec.europa.eu/europeaid/what/social-protection/documents/223185\\_disability\\_study\\_en.pdf](http://ec.europa.eu/europeaid/what/social-protection/documents/223185_disability_study_en.pdf).

<sup>286</sup> See: [http://ec.europa.eu/europeaid/work/procedures/implementation/documents/prag\\_2013\\_en.pdf](http://ec.europa.eu/europeaid/work/procedures/implementation/documents/prag_2013_en.pdf).

<sup>287</sup> See: <http://capacity4dev.ec.europa.eu/disability-and-development-network/minisite/training-inclusion-persons-disabilities-eu-development-cooperation-29-30-november-2012-0>.

<sup>288</sup> See: <http://capacity4dev.ec.europa.eu/disability-and-development-network/>.

<sup>289</sup> See for instance: <http://inclusive-development.org/>.

<sup>290</sup> <http://www.endexclusion.eu/>.

the EU focal point. As focal point, the Commission promotes cross-sectoral coordination between its departments, with the other EU institutions and bodies, and between the EU and the Member States.

219. The Commission ensures participation of persons with disabilities, their families, their European representative organisations and relevant stakeholders in the development and implementation of disability policies. People with disabilities are consulted through different channels and tools, such as communications, consultation documents or participation in expert groups. Representatives of civil society and in particular of EU-level disability organisations are members of the DHLG, where they can raise their concerns, contribute to discussions and co-draft policy documents.

## **2. Coordination mechanism**

220. Formal coordination with the Member States is ensured through the human rights working group (COHOM) of the Council. In this respect, the Code of Conduct sets out certain aspects of the coordination between the EU and the Member States, especially with regard to establishing positions relating to the CRPD (point 6), speaking and voting arrangements, and monitoring and reporting. With regard to reporting, point 12 of the Code of Conduct highlights the complementarity of EU and Member State reports and the need to work in a spirit of sincere cooperation.

221. Issues relating to the implementation of the CRPD are also regularly discussed at the DHLG with representatives of the Member States and their national focal points, the Commission and CSOs and DPOs. Since 2008, the Commission and the DHLG have published an annual joint report on the implementation of the CRPD. The DHLG reports include information on progress made in the setting-up of the governance structures and processes provided for in Article 33 CRPD and on the elaboration and implementation of national strategies and actions to effectively put in practice the Convention. Each year a chapter is devoted to specific thematic areas, for instance accessibility (in 2009 and 2012), or the interface between the implementation of the Convention and the Europe 2020 headline targets for education, employment and poverty (in 2011). The DHLG reports help to identify and exchange good practice, thus contributing to the implementation of the Disability Strategy.

222. The Commission's Inter-Service Group on Disability plays an important coordination role in ensuring that the needs and rights of people with disabilities are taken into consideration in the formulation and implementation of legislative proposals and policy initiatives. This role is further elaborated in the above section on Article 4.

223. To facilitate the exchange and mutual learning between the EU and the Member States on the governance of the CRPD, the Commission has since 2010 hosted a Work Forum on the Implementation of the UN Convention. The Forum gathers representatives of the governance mechanisms established under Article 33 CRPD, CSOs, DPOs, NHRIs, EU institutions and relevant international bodies. Civil society, in particular DPOs, is involved in the preparation of the conference, including the agenda setting. The Work Forum discusses issues relating to:

- The implementation of the CRPD, including coordination, disability strategies and action plans, and the implications of the CRPD for public administrations;
- Promotion, including through empowerment of civil society and DPOs;
- Protection, including through the individual communication procedure under the Optional Protocol;
- Monitoring, including data collection, statistics and indicators; and
- Reporting to the UN, including the preparation of shadow reports, the examination by the Committee and follow-up to its recommendations.



224. The involvement of civil society and DPOs, and coordination and complementarity between the EU and the Member States are cross-cutting issues under the various themes of the Forum.

### 3. EU Framework for promoting, protecting and monitoring the CRPD

225. Paragraph 13 of the Code of Conduct required the Commission to propose an appropriate framework for one or several independent mechanisms, taking into account all relevant EU institutions, bodies and agencies. In 2012, after careful analysis of the legal requirements and possible options, the Commission proposed that the following five members jointly form “the EU Framework”: the European Parliament (Petitions Committee (PETI)), the European Ombudsman (EO), the EU Agency for Fundamental Rights (FRA), the European Disability Forum (EDF) and the Commission.

226. In the preparatory process, persons with disabilities and their representative organisations were consulted through the EDF. The proposal was finally endorsed by the Council on 29 October 2012.<sup>291</sup> The five members of the EU Framework first met in a constituent meeting in January 2013, followed by meetings in May 2013 and February 2014. The Commission has been appointed to serve as secretariat and the EDF acts as chair of the Framework’s meetings, in both cases for a period of two years. In December 2013, the EP Conference of Presidents decided that the Committee on Employment and Social Affairs, in close association with the Committee on Civil Liberties, Justice and Home Affairs, will represent the EP in the EU Framework.

227. Given the specificity of the EU legal order, based as it is on conferral of powers, the EU’s *sui generis* status as a regional integration organisation and its limited competence under the CRPD, the EU Framework has a more limited scope than the Member States’. The EU Framework’s mandate covers areas of EU competence and complements the national frameworks and independent mechanisms which bear the main responsibility for promoting, protecting and monitoring the CPRD in the Member States. The EU Framework carries out CPRD promotion, protection and monitoring with respect to:

- EU legislation and policy; and
- Implementation of the CRPD by EU institutions and bodies as public administrations, e.g. in relation to their employees and in their interaction with the public (see section VI below).

228. In matters of EU competence, both the national frameworks and the EU framework play a role and are complementary.

#### (a) Promotion

229. The Commission promotes the Convention by encouraging mutual learning and exchange of good practices through events and stakeholder involvement, issuing reports, organising training and disseminating information.<sup>292</sup> The Commission also provides financial support to civil society organisations, in particular DPOs that promote and raise awareness of the CRPD.

<sup>291</sup> <http://register.consilium.europa.eu/pdf/en/12/st15/st15491.en12.pdf>; p. 20.

<sup>292</sup> The Commission organises training on the UNCRPD for legal practitioners and policy makers, arranges information sessions on the UNCRPD for staff, organises an annual Work Forum to promote mutual learning on the implementation of the Convention among all concerned actors at EU level, in the Member States and from civil society and DPOs. Stakeholders’ engagement and mutual learning are also promoted through the annual conference that celebrates European Day of Persons with Disabilities on the 3rd December.

230. The EO can receive complaints, undertake *ex officio* investigations and produce reports (Article 228 TFEU) on maladministration in the activities of the EU institutions, bodies, offices and agencies, including the Commission and the FRA. These responsibilities include carrying out promotional activities under the Convention, e.g. issuing an annual activity report with a dedicated section on disability and disseminating information via the Network of European Ombudsmen.

231. FRA can raise awareness of the CRPD in accordance with Regulation (EC) No. 168/2007<sup>293</sup> and the its Multi-annual Framework.<sup>294</sup> In particular, it can address disability as part of the thematic area of anti-discrimination, but also through other thematic areas following a cross-cutting approach.<sup>295</sup>

232. EDF independently promotes the Convention through awareness-raising campaigns and media activities, reports, the organisation of hearings and events, training, networking activities and the dissemination of relevant information to its European and national member organisations in order to improve their technical knowledge and advocacy capacity, and stakeholder involvement. Other strategic promotional activities are the scrutiny of EU legislation and policies for compliance and giving technical advice to public authorities on the application of the Convention.

**(b) Protection**

*Member States' compliance with the Convention when implementing EU law*

233. The protection of individuals against breaches of the Convention by the Member States when implementing EU law is primarily a matter for the national frameworks and courts. The EU framework's role in the protection of individuals' rights is complementary to the national frameworks.

234. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has the right to address, individually or in association with other citizens or persons, a petition to the EP on a matter which comes within the Union's fields of activity and which affects him, her or it directly (Article 227 TFEU).

235. The Commission can deal with citizens' complaints (Article 20(2)(d) TFEU), monitor Member States' compliance with the Convention when implementing EU law and start infringement proceedings in the event of non-compliance within areas of EU competence (Article 258 TFEU). In doing so, the Commission is independent of the Member States within the meaning of the Treaties.

*EU institutions' compliance with the Convention*

236. The monitoring of alleged breaches of the Convention in the form of maladministration in the activities of the EU institutions is primarily the task of the European Ombudsman (EO), who can hear and investigate complaints raising issues of law

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<sup>293</sup> Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, see especially Articles 3, 4.1 and 4.2.

<sup>294</sup> Council Decision (2008/203/EC) implementing Regulation (EC) No. 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-12, Article 4.1(a) to (h).

<sup>295</sup> Relevant activities are the presentation of the FRA annual report on fundamental rights issues covered by the areas of the Agency's activity, the publication of thematic reports, the organisation of training and educational activities, stakeholders' engagement as well as communication and events. The Agency can also raise the awareness of the general public about their fundamental rights, and about possibilities and different mechanisms for enforcing them in general, without, however, dealing itself with individual complaints.

and good administration, undertake *ex officio* investigations and produce reports (Article 228 TFEU). The EO can investigate and report on possible maladministration by the Commission in the administrative phases of its complaints-handling and monitoring activity. The EO is independent of all the other EU institutions and of any Government, institution, body or office.

237. EDF receives information and complaints from persons with disabilities about their individual experiences and brings these to the attention of the responsible administrations and the general public. EDF can write third party interventions to a number of national and European courts.

**(c) Monitoring**

238. EDF independently performs systematic monitoring of the EU's implementation of the Convention through law and policies, including by examining new legislative proposals, and receives complaints relating to implementation. It can therefore assess progress, stagnation or retrogression in the enjoyment of rights over a certain period of time.

239. The EO complements the monitoring of the institutions' implementation of the Convention, as he/she can launch own initiative inquiries and issue reports on instances of maladministration in the EU institutions and bodies, offices and agencies.<sup>296</sup>

240. As a complement to the national frameworks and in accordance with the EU Treaties, the Commission independently monitors how Member States implement and apply EU legislation falling within the scope of the Convention. It reports, for instance, on the application of directives and regulations. Ultimately, it can start infringement proceedings to ensure that EU legislation which puts the Convention into effect is correctly implemented.

**(d) Modus operandi**

241. The EU Framework operates as a simple, efficient and practical mechanism whose members, according to their respective competences and mandates, contribute collectively to the common goals of promoting, protecting and monitoring the Convention. Members share information and take account of each other's activities, while working with freedom and independence. They share information about their respective work programmes with a view to identifying relevant activities for a coordinated annual work programme. The complementarity of the EU Framework with Member States' frameworks and monitoring mechanisms is addressed in the work programme.

242. The Framework meets at least twice a year. Decisions are taken by consensus. It will promote clear communication with the public in particular through an accessible webpage and reporting activities. A review and assessment of its working methods and achievements will be carried out jointly by its members at the end of the second year of operation, and subsequently at the end of every second year.

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<sup>296</sup> The European Ombudsman can also act as a channel of communication with national and regional ombudsmen in the Member States, through the European Network of Ombudsmen.

## **VI. Information relating to the implementation of the Convention by the EU public administration**

### **Articles 1 and 2**

#### **Purpose and definitions**

243. EU institutions and agencies apply the definition of disability in Regulation (EU, Euratom) No. 1023/2013 amending the Staff Regulations of Officials of the EU and the Conditions of Employment of Other Servants of the EU (the Staff Regulations), which entered into force on 1 January 2014. Article 1d(4) of the Staff Regulations stipulates that a person is considered to have a disability if he or she has a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his or her full and effective participation in society on an equal basis with others. This definition is new to the Staff Regulations following their recent reform and reflects the social concept of disability enshrined in the CRPD.

244. The Staff Regulations provide for an obligation of reasonable accommodation, i.e. the provision of “appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer”.

### **Article 4**

#### **General obligations**

245. An inter-institutional ad hoc working group set up by the Preparatory Committee for Social Affairs (*Comité de Préparation pour les Affaires Sociales – CPAS*) was mandated in 2010 to examine the implications of the entry into force of the CRPD for the existing rules on personnel administration in the EU institutions and to carry out a conformity review. In particular, the group advised that the definition of disability be revised and this is now reflected in the new Article 1d(4) of the Staff Regulations.

246. The Commission also assessed its own internal rules and practices and concluded that they were in line with the letter and the spirit of the CRPD. However, the review highlighted the need to offer additional guidance to services on the application of reasonable accommodations. Some institutions have made plans to review their existing internal rules and procedures on personnel administration in light of the changes introduced by the entry into force of the new Staff Regulations. The institutions have set up committees for equal opportunities, jointly representative of staff and administration (*Comités paritaires pour l'Égalité des Chances — COPECs*), which are responsible for establishing an action plan and studying how to improve equality of opportunities especially as regards gender equality issues. Equal opportunities representatives from the various institutions meet in INTERCOPEC once a year to discuss policy and action.

247. Following an initiative by a number of staff concerned by disability, a Disability Support Group was set up in the EP in 2003. The Group is officially recognised by the administration, but it operates informally and is independent. In the absence of a formal representation of persons with disabilities, the Disability Support Group is regularly involved in the development of policies and practices. The Group gave its opinion on the reform of the Staff Regulations and was involved in discussions on the draft internal rules implementing their Article 1d. A representative of the Group sits on the EP Inter-service Working Group on Accessibility and regularly attends meetings of the EP High-Level Group on Gender Equality and Diversity.

248. A Disability Support Group was set up in the General Secretariat of the Council of the European Union (“the Council”) in May 2011 under the aegis of the Staff Committee.

Its composition and method of consultation are being discussed with the current Staff Committee. Persons with disabilities and carers were involved in organising an event on the European Day of Persons with Disabilities and in drawing up an internal guide on disability in 2012.

249. The Commission's Disability Support Group was founded in 2012 as a platform for staff from the Commission and other European institutions in charge of a person with a disability or a delay in development that hinders their daily activities. The Group currently has over 130 members, including staff from the Council, the EP, the EEAS, agencies and various EU delegations around the world. The Commission's social service has nominated a social worker as permanent interlocutor for the Group to discuss individual problems and the various aspects of Commission policy in favour of disabled persons.

250. In 2014, the European Personnel Selection Office (EPSO), which is responsible for selecting staff for EU institutions and agencies, will carry out an equality and diversity screening and audit of selection processes, procedures and tools, with a special focus on disability matters, including reasonable accommodation and accessibility. The review of existing rules and methods is expected to result in an action plan, which will include developing a formal reasonable accommodation policy and specific communication channels to attract more candidates with disabilities. In 2013, the EO launched a wide-ranging consultation among national and regional ombudsmen, equality bodies and national human rights institutions in order to identify possible future activities to promote and monitor the implementation of the CRPD within its mandate. The EO will develop a disability policy on the basis of this consultation.

## Articles 5 and 27

### Equality and non-discrimination, work and employment

251. Recruitment and employment conditions in the EU institutions are governed by the Staff Regulations. The principle of non-discrimination on the grounds of, *inter alia*, disability is enshrined in Article 1d of the Staff Regulations. Under Article 28(e), officials may be appointed only if, *inter alia*, they are physically fit to perform their duties. Article 1d(4) indicates that a person with a disability meets the conditions in point (e) in Article 28 if he/she can perform the essential functions of the job when reasonable accommodation is made. (For the definition of reasonable accommodation, see the section on Articles 1 and 2 above). The concept of "measures providing for specific advantages" to ensure equal treatment of persons with disabilities has been inserted in the new Staff Regulations. Since 2011, the EU general budget has made explicit reference to the CRPD and made specific financial provision for accommodating the needs of staff, trainees and visitors with disabilities, and for the provision of disability-friendly services.

252. Under Article 1d(5), the principle of equal treatment means the prohibition of direct and indirect discrimination. The Staff Regulations reverse the burden of proof for cases of direct or indirect discrimination: when staff members who consider themselves wronged with regard to the principle of equal treatment establish facts from which it may be presumed that there has been direct or indirect discrimination, it is for the institution to prove that there has been no breach of the principle of equal treatment.

253. With regard to positive action, the new Staff Regulations state that the principle of equal treatment does not prevent the institutions from maintaining or adopting measures providing for specific advantages in order to make it easier for persons with disabilities to pursue a vocational activity or in order to prevent or compensate for disadvantages in their professional careers. The possibility of positive action is provided for in the Council's equal opportunities strategy. The EP has set up two positive action schemes to foster the employment of persons with disabilities: a traineeship programme for persons with disabilities and specific budgetary provision for the targeted recruitment of contractual

agents with a disability. The EESC has organised a pilot project for the inclusion of disabled trainees in the traineeship programme and a seminar on diversity for heads of unit with the active participation of a disabled trainee.

254. Promoting equal opportunities and diversity are important aspects of the EU institutions' personnel policy. The Commission, EP, Council, EESC and ECA have a Code of Good Practice for the Employment of Persons with Disabilities. The Commission's equal opportunity policy is based on talent development and providing a flexible, respectful and inclusive working environment. The Commission is committed to ensuring that everyone reaches their potential and it makes reasonable accommodation, where necessary, to help staff do so.

255. Since 2005, the EP has had a Code of Good Practice for the Employment of People with Disabilities which stresses the right of staff to a working environment free from discrimination and contains a series of provisions to put this into practice. Regarding reasonable accommodation, the Code reinforces the right to reasonable accommodation as set out in the Staff Regulations, outlines the areas of employment to which it applies and defines reasonable accommodation as a way of changing the workplace that may include job redesign, purchasing or modifying equipment, or adopting flexible working arrangements. This commitment was reinforced by the EP Bureau in November 2006, when it adopted a statement of principles regarding the policy on promoting equality and diversity in the EP Secretariat stressing that it seeks to fully and completely apply the principles of non-discrimination and equality laid down in the Treaties and the Staff Regulations.

256. In March 2009, the EP Bureau adopted an action plan for the promotion of gender equality and diversity in the EP Secretariat for 2009-13. The plan sets out specific objectives and measures in order to guarantee full equality of opportunity for persons with disabilities and to favour their full participation and inclusion. One of the measures is to adopt and put in place internal rules regarding the concept of reasonable accommodation. The EP currently arranges reasonable accommodation for persons with disabilities according to their individual needs (i.e. technical devices, time organisation, task adaptation, etc.) on an *ad-hoc* basis. Internal rules implementing Article 1d(4) of the Staff Regulations have been prepared at service level and are undergoing internal consultation prior to adoption. The main elements of the rules are:

- An in-house procedure for establishing a disability;
- A fast-track and transparent procedure to request reasonable accommodation;
- The assessment of reasonable accommodation needs and best solutions by an advisory committee; and
- A formal decision of the Appointing Authority on the provision of reasonable accommodation.

257. The draft internal rules also include criteria to assess whether the provision of reasonable accommodation imposes an undue burden, e.g. as regards the type and cost of the accommodation, the impact of the accommodation, the expected length of the employment, the cost of making the accommodation (relative to the EP's financial and other resources) and the impact of the accommodation on improving the general accessibility of the institution.

258. As part of its Equal Opportunity Strategy (2013-16), the Council seeks to enhance the accessibility of its premises and create a more inclusive work environment for persons with disabilities. Positive action includes the purchase of an adapted vehicle for transporting persons with reduced mobility and the possibility for any staff member with a disability to telework without being subject to the standard restrictions. In 2009, the EESC drew up an action plan for equal opportunities and diversity. EPSO requires candidates to signal any special requirements for effective participation in selection procedures. EPSO

Accessibility is a central contact point for candidates with disabilities and candidates needing special arrangements to take part in selection procedures. It considers a condition to be a disability if the candidate indicates that they need special accommodation and if the disability is officially recognised at national level. In 2014, EPSO plans to develop specific training courses in diversity management and disability for both staff and selection board members, providing specific tools to help selection boards provide candidates with reasonable accommodation and ensure equal treatment of candidates with disabilities at all stages of the competition (e.g. how to conduct an interview with blind, deaf or autistic candidates).

259. Training programmes and career counselling services are available to all staff regardless of disability and reasonable accommodation is provided to enable staff with disabilities to participate in training courses. Guidance has been given to selection board members on how to prevent discrimination during job interviews and officials involved in staff development, recruitment or promotion are expected to participate in training on equal opportunities. The Code of Good Practice requires EU institutions to take steps to enable a staff member with a disability to remain in employment. The services responsible, including local HR departments and the medical service, closely follow the situation of workers with disabilities to facilitate a smooth return to work. This includes issuing medical opinions on adjustments to be made to a workstation or office.

## **Article 8**

### **Awareness-raising**

260. The institutions raise awareness of persons with disabilities and their rights through various tools and measures, including events, training, publications and internet content. Disability awareness has been mainstreamed into the in-house training course on selection techniques and inter-institutional management courses. The Commission intranet offers guidance for the reception of disabled visitors and guests and the organisation of events. The Commission has developed a dedicated equal opportunities website which includes information on disability policy and provides general guidance on disability for employees and managers in accessible format. A dedicated disability focal point within DG HR informs and assists Commission services and staff, and interacts with equal opportunities correspondents at DG and service levels. In 2013, the Commission launched disability training for front-office staff.

261. Over the past few years, the Council has held a variety of events and taken action to raise staff awareness about disability; these include:

- Equal opportunities training sessions for staff, covering disability;
- Specific training for staff assisting persons with a disability;
- An annual awareness-raising event on the European Day of Persons with Disabilities, including diversity theatre, screenings of films about disability and fund-raising for a disability organisation;
- Intranet articles about disability, including views of persons with disabilities;
- Information sessions for staff concerned by disability, including information on the CRPD;
- An internal Guide on Disabilities in the Workplace (2012); and
- A sign-language guided tour for visitors to the Open Day in 2013.

262. In 2012, the EO's annual activity report included for the first time a separate section on the promotion of the rights of persons with disabilities. The EO also cooperates with national and regional ombudsmen through a European network and plans to invite them for

an exchange of information about implementation of the CRPD, with a view to identifying and sharing good practices. EO staff have met representatives of the European Disability Forum and the European Group of National Human Rights Institutions to discuss the CRPD.

263. The EP regularly organises events to raise awareness of disability among staff and MEPs, in particular on the International Day of Persons with Disabilities. Since 2008, the EP has given Equality and Diversity Awards designed to showcase and reward best practice in this area within the EP Secretariat. On several occasions, disability-related projects or persons with a disability received awards. The most recent Award, in November 2011, went to the Directorates-General that had set up the Centre for Visually Impaired Persons, providing equipment for interpreters and other staff with visual impairments. Other awareness-raising activities include the screening of films on disability-related subjects, articles in the internal electronic newspaper and the publication and distribution of leaflets and brochures, such as a Disability Etiquette Guide for Staff or a brochure for staff members caring for a family member with a disability or long-term illness. Since November 2013, the EP's intranet has had a special section containing all information on disability issues (accessibility, reasonable accommodation, selection, career, training, etc.). A training course on disability awareness has been available since 2006. Specific courses have been organised, e.g. on the accessibility of buildings for staff from the DG for Infrastructure and Logistics and the Inter-Service Working Group on Accessibility, and a sign-language course for staff at the EP's Visitors' Centre.

## **Articles 9 and 21**

### **Accessibility, freedom of expression and opinion, access to information**

#### **The physical environment**

264. The EU institutions' buildings comply with Belgium's accessibility legislation. A report produced following an accessibility audit by the EP in 2003 contains recommendations for improving accessibility in the widest sense: infrastructure, social access, employment, information and communication. A multi-annual programme was put in place to improve the accessibility of the EP's buildings and to ensure compliance with the relevant legislation, according to the basic principle of "design for all". Numerous works have been carried out on existing buildings, such as adapting lifts, signposting, accessible toilets and setting up a work area for people with visual impairments. For all new projects, the "design for all" principle is integrated as from the preliminary study phase. An interservice working group on the accessibility at the EP is collecting information on progress towards greater accessibility, and has produced three major progress reports.

265. The Council has set up a system to assist persons with reduced mobility with access to and within its premises. Adjustable-height tables are available for wheelchair users, as are tray-bearing trolleys in the cafeterias and restaurants. Dedicated accessible parking spaces can be allocated to persons with reduced mobility (temporary or permanent), so that they have a safe and short route to their office. The Council intends to carry out an accessibility audit to better assess the needs of staff and visitors with disabilities.

#### **Access to information**

266. Article 15(3) TFEU stipulates that "any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium". Each institution, body, office or agency must ensure that its proceedings are transparent and elaborate specific provisions regarding access to its documents (Article 15(5) TFEU). Article 11 of the Charter provides that everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.



Article 10 of the Charter states that everyone has the right to freedom of thought, conscience and religion. Article 41 provides for the right to good administration, a term which embraces access to information affecting individuals.

267. Specific secondary pieces of EU legislation regulate the right of public access to documents. Regulation (EC) No. 1049/2001<sup>297</sup> specifically governs “public access to EP, Council and Commission documents” and aims to facilitate access to the documents of the EU institutions. The Regulation provides that citizens may access any type of documents. The institutions can refuse access to a document where disclosure would undermine the protection of the public interest, including public security, defence and military matters, international relations and financial policy. Access can also be denied where it would impinge on the privacy and integrity of an individual (Article 4(1)(b)), or for commercial reasons or if the relevant matters are *sub judice* (Article 4(2)). The mode of access and the accessibility needs of persons with disabilities is given explicit attention in the Regulation. Importantly, Article 10(3) requires documents to be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant’s preference.

268. Access is given to contemporary documents as well as to historical material. Council Regulation (EC, Euratom) No. 1700/2003 deals with the right of access to the historical archives of the European Economic Community and the European Atomic Energy Community. It aims to ensure that EC and Euratom documents of historical value are both preserved and also made available to the public. Article 9(1) requires that, wherever possible, the institutions make their archives available to the public by electronic means. They must also conserve documents which are available in forms meeting special needs (Braille, large text or recordings). Regulations require that documents of the EP, Council and Commission are supplied in a version and format with full regard to the applicant’s preference, including in formats such as Braille, large print or tape. As regards the EU’s historical archives, the institutions must conserve documents in forms meeting special needs, such as Braille, large text, or recordings.

269. Under its Disability Strategy, the EU explores ways of facilitating the use of sign language in contacts with the EU institutions. In December 2013, the Commission launched a pilot project to develop a web-based service platform that can be used by any deaf or hard-of-hearing citizen within the EU to communicate with the institutions.<sup>298</sup> The project is carried out by a consortium led by the European Union of the Deaf. One specific aim is to facilitate more active participation by deaf and hard-of-hearing people in the EP elections. The platform is due to be tested before the elections in May 2014.

270. The EU institutions have adopted an accessibility policy for their websites, including the Europa portal, and the W3C/WAI/WCAG 2.0 at level AA is the agreed common standard. The institutions meet within the Inter-Institutional Editorial Committee (CEIII) to coordinate the development of their websites, including as regards web accessibility. The Committee meets every two months and is chaired by the Commission department responsible for the EUROPA website. A number of institutions already comply with the standards or are currently redesigning their websites in order to do so. The Commission’s rules on website accessibility are set out in the Information Providers Guide (IPG). All new Commission websites have to comply with the afore-mentioned standard. The Council is redesigning its website to provide Level Two (AA) access by the end of 2014. The EP has already organised accessibility audits to improve access for people with disabilities and other organisations are planning to do so. Accessibility considerations are taken into

<sup>297</sup> [2001] OJ L 145/43.

<sup>298</sup> Call for tenders, JUST/2013/RTSL/PR/0015/A4. Available at: [http://ec.europa.eu/justice/newsroom/contracts/2013\\_198947\\_en.htm](http://ec.europa.eu/justice/newsroom/contracts/2013_198947_en.htm) and [http://europa.eu/rapid/press-release\\_IP-13-511\\_en.htm](http://europa.eu/rapid/press-release_IP-13-511_en.htm).

account in the development of new communication tools and the institutions cooperate with disabled persons in this process.

271. EPSO is currently planning an accessibility screening of its entire communication and information strategy and all its tools. The electronic application contains a tab allowing candidates to indicate special accommodations they require and the contact point subsequently gets in touch with them to make individual arrangements.

## **Article 11**

### **Protection in situations of risk**

272. In the case of emergencies or evacuation exercises, persons with reduced mobility should contact the 24-hour emergency number to enable professional fire officers to escort them out of the building using the quickest and safest route. Steps are being taken to improve staff awareness of this procedure.

## **Article 22**

### **Respect for privacy**

273. Regulation (EC) No. 45/2001 deals with the processing of personal data by EU institutions and bodies. It requires EU institutions and bodies to appoint at least one person as a data protection officer, to keep a register of processing operations and to notify systems with specific risks to the European Data Protection Supervisor (EDPS). The EDPS was established to monitor and ensure that EU institutions and bodies comply with legal safeguards whenever they process personal data and to advise EU institutions and bodies on all relevant matters.

274. The Article 29 Working Party has been set up under Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. It is composed of a representative of the supervisory authority(ies) designated by each EU country, a representative of the authority(ies) established for the EU institutions and bodies, and a representative of the EC. It has advisory status and acts independently. Both the EDPS and the Article 29 Working Party have been active in the disability context. The EDPS has issued guidelines for the processing by EU institutions and bodies of health data in the workplace, in which it highlighted that, when conducting pre-employment check-ups, it is of crucial importance to inform data subjects about the purpose of processing health data to ensure that the results of medical tests are used narrowly to assess a person's capacity to perform the essential functions of a job when reasonable accommodation is made, and not otherwise.

275. The EDPS has handled complaints raised by employees with disabilities in relation to the processing of their personal data and given opinions on issues relating to the processing of information on people with disabilities in the institutions. In its Opinion on the protection of information about children,<sup>299</sup> the Article 29 Working Party emphasised that some of the data contained in the application forms of schools (e.g. data relating to disabilities) can cause discrimination – thus, the criteria of “best interests” and strict adherence to the stated purpose should prevail.

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<sup>299</sup> Opinion 2/2009 on the protection of children's personal data (General Guidelines and the special case of schools) – WP 160, Brussels 11 February 2009 available at [http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2009/wp160\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2009/wp160_en.pdf).

## Article 24 Education

276. The European Schools (ES) provide multilingual and multicultural education for nursery, primary and secondary pupils. There are currently 14 European Schools in seven EU countries. At the end of their secondary studies, pupils sit the exams for the European Baccalaureate, which is recognised in all EU countries. The European School System is based on an intergovernmental agreement and is not part of the EU public administration. The Board of Governors is the decision-making body made up of all Member States, the Commission (on behalf of all EU institutions), the Parents' Associations and the ES directors.

277. The integration of pupils with special needs (SEN) in the European Schools is an issue of great importance for the Commission. Pupils who need educational support are integrated in classes where they receive appropriate support according to their needs. When requesting the enrolment of their child in a European School, parents must inform the school if their child has learning difficulties or specific needs in order to make sure that the school takes the appropriate measures and allows the pupil to start their schooling in the best possible conditions. However, in certain cases, the specific needs of the pupil may be such that, after discussion with the parents, the school concludes that it is not competent to respond and consequently guides the parents to find a better alternative solution. A specialised social worker can provide information on existing schools to help parents in their search for an alternative. If the child has to be enrolled in another school where a school fee has to be paid, parents may under certain conditions receive a school allowance. They may also benefit from supplementary help from the social service of their institution.

278. In 2012, an increase in the number of SEN pupils was observed in the European Schools (702 pupils in the 2012/13 school year, as compared with 640 in 2011/12 and 619 in 2010/11). This increase shows the considerable extent to which the SEN policy has developed.<sup>300</sup> In September 2013, a new Policy on the Provision of Educational Support in the European Schools approved by the Board of Governors entered into force.<sup>301</sup> It harmonises the objectives and principles of educational support across the schools.

279. The EU institutions' crèches have an inclusive admissions policy. Children with disabilities are admitted on the basis of a case-by-case decision by the Appointing Authority further to a joint opinion from a paediatrician and child psychologist. Appropriate measures are taken to accommodate them. Since 2010, around 90 educators and nurses from Commission nurseries and child-minding services have followed a three-to-four-day training course on working with children with disabilities.

## Articles 25 and 26 Health, habilitation and rehabilitation

280. Staff in the EU institutions and their families are covered by a joint sickness insurance scheme (JSIS). A medical check-up is carried out on entry into service and annual check-ups are available for all staff. Medical staff also inspects workstations to see whether there is a link between working conditions and health problems. If necessary, a request is made to the appropriate administrative department to adapt the workstation.

<sup>300</sup> Report from the Commission to the European Parliament and the Council of 13 October 2013, *The European Schools system in 2012*, COM(2013) 714 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0714:FIN:EN:PDF>.

<sup>301</sup> 2012-05-D-15-en-8, [http://www.eursc.org/fichiers/contenu\\_fichiers2/1887/2012-05-D-15-en-8.pdf](http://www.eursc.org/fichiers/contenu_fichiers2/1887/2012-05-D-15-en-8.pdf).

Health insurance entails regular health screening examinations for serious disease for all staff members, their spouses and children. Certain costs resulting from a disability which are not reimbursed by the health insurance, e.g. for education or specific training, care, transport, for adapting or equipping a home or car, and guide dogs for persons with a visual impairment, may be partially reimbursed through a supplementary aid for the disabled.

### **Article 31**

#### **Statistics and data collection**

281. Data on the numbers of staff with a disability are not collected in a systematic manner. Such data are considered sensitive and are subject to strict data protection rules. Data can be collected only on a voluntary basis, where justified by a legitimate aim and where the competent service has given notification that the personal data will be processed.

282. The Commission therefore collects data on disability among staff on a voluntary basis. The 2013 Commission-wide staff survey contained questions on disability and on limitations in daily activities that will be used to establish baseline data. This should give a fuller picture of disabilities among EC staff in view of the CRPD monitoring requirement. The EC also collected information on beneficiaries of supplementary aid for the disabled. The results of the staff survey will form the basis for a review of progress made in terms of equal opportunities and inclusion. Other institutions generally gather information based on different criteria, such as the number of persons receiving reasonable accommodation, the number of staff members with caring responsibilities for a dependant with a disability, and statistics on the beneficiaries of the supplementary aid for the disabled.

283. The EP is currently preparing a voluntary and anonymous staff survey in order to establish baseline data on persons with disabilities among its staff and to assess the effectiveness of actions aimed at removing physical and social barriers in the EP. The EP services also regularly collect information regarding progress achieved in the framework of its action plan on gender equality and diversity, which includes matters relevant to the CRPD.

284. The Council has statistics on the number of staff with caring responsibilities for a dependant with disabilities and obtained data on the number of staff with disabilities on the basis of a question in a general staff survey in late 2013. The Equal Opportunities Office is examining how best to seek further information about the prevalence and types of disability, possibly via a more specific online survey. It produces an annual activity report on action taken and will evaluate the effectiveness of the equal opportunities strategy in reaching its objectives on disability. EPSO collects anonymous statistics on the number of applicants with a disability and the number of reasonable accommodation measures.

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