



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

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

**Initial report submitted by Switzerland under  
article 35 of the Convention, due in 2016<sup>\*</sup>, <sup>\*\*</sup>**

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\* The present document is being issued without formal editing.  
\*\* The annexes may be consulted in the files of the secretariat.



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## Introduction

1. The Federal Council has the honour to submit to the Committee of the United Nations on the Rights of Persons with Disabilities the initial report of Switzerland, drawn up pursuant to article 35 of the 2006 Convention on the Rights of Persons with Disabilities. The present report should be read alongside the core document forming an integral part of the reports presented by Switzerland (HRI/CORE/1/Add.29/Rev.1). This core document, which gives background information on the territory, population, political structure and human rights protection in Switzerland, is currently under review and will be forwarded to the Committee as soon as the Federal Council has approved the new version. The report refers essentially to the legislation in force on 1 February 2016.

2. The present report describes the legislative, administrative, judicial and other measures applicable in Switzerland which relate to the rights guaranteed in the Convention. It thereby gives a picture of the real situation with regard to protection of the rights of persons with disabilities, representing more than just a description of the legal order and legislation. The measures relating to the provisions of the Convention are reported in detail, in terms of both content and form and structure, in accordance with the Guidelines of the Committee on the Rights of Persons with Disabilities concerning the reporting process.<sup>1</sup> Because of the federal structure of Switzerland, which confers extensive powers on the 26 sovereign cantons that together form the Federal State, some information in this report is presented in the form of general information, applicable to Swiss territory as a whole. Where considered relevant, references to the corresponding cantonal regulations have been included in the report.

3. This report takes account of the viewpoints of organizations of persons with disabilities. Represented by their umbrella body in the form of Inclusion Handicap, organizations of persons with disabilities in Switzerland have had the opportunity to express their main positions and requests, which have been included in the report.

4. The present report was adopted by the Federal Council on 29 June 2016. It is published in French, German and Italian on the Internet site of the Federal Department of Home Affairs in order to make it accessible to a wide public.

## I. General part

### 1.1 Disability policy in Switzerland

5. The Convention on the Rights of Persons with Disabilities is an international treaty guaranteeing the application of human rights to persons with disabilities and their situation. Its purpose is to promote equal opportunities for persons with disabilities and to prevent any form of discrimination in society. The Convention represents an important step towards strengthening the rights of persons with disabilities worldwide. It is the first universal legal instrument that gives concrete expression to existing human rights as they relate to the situation of persons with disabilities. The Convention promotes disability as a component of human diversity and distances itself from a conception of disability based on the notion of defect, still dominant in many countries. The elimination of inequalities that persons with disabilities continue to face in many fields is one of the aims of Swiss law.

6. Switzerland ratified the United Nations Convention on the Rights of Persons with Disabilities in 2014. In accordance with Swiss practice, accession took place after verification of the conformity of the legal order of the Confederation and the cantons with obligations under the Convention. The general orientation of the Convention is consistent with the elements of Swiss disability policy of particular importance for the rights of persons with disabilities:

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<sup>1</sup> Guidelines on the treaty-specific document to be submitted under article 35 (1) of the Convention on the Rights of Persons with Disabilities of 18 November 2009; CRPD/C/2/3.

- Switzerland has a law for the benefit of persons with disabilities supported by and consisting of various components. The basic prohibition of discrimination formulated in the Constitution (art. 8 (2)) and the legislative mandate given to the Confederation and the cantons (art. 8 (4)) are defined at federal level. These constitutional provisions are embodied in the Federal Act on the Elimination of Inequalities affecting Disabled Persons (hereinafter the Disabled Persons Act), in force since 1 January 2004, and in many provisions contained in special federal or cantonal laws;
- The Swiss social security system is a comprehensive system designed to protect those concerned against the harmful consequences of the realisation of an insured social risk. Social insurance schemes, particularly disability insurance (DI), thus contribute in large measure to implementing the principles of the Convention, including the full and effective participation and inclusion in society of persons with disabilities. They also propose various measures to strengthen the autonomy of persons with disabilities;
- Moreover, the cantonal legislation in question is applicable in fields that come within the remit of the cantons (buildings, social assistance and institutions working towards the inclusion of persons with disabilities);
- Switzerland has adopted important provisions to protect persons with disabilities, but existing Swiss law on persons with disabilities is fragmented. The Convention's comprehensive approach provides a sound basis for the interpretation, definition and implementation of the law on equal treatment for persons with disabilities. The Convention can give significant impetus to the implementation of existing legislation, including by specifying the practical scope for disabled persons of the various human rights guarantees already binding on Switzerland, thereby facilitating the search for better implementation measures and solutions in Switzerland.

7. Policy for the benefit of persons with disabilities is a joint responsibility of the Confederation, the cantons and private organizations:

- Equality and non-discrimination: article 8 (4) of the Constitution requires the Confederation and the cantons to take additional measures to eliminate inequalities affecting persons with disabilities;
- Adequate standard of living and social protection: the Confederation and the cantons must endeavour to ensure that every person is protected against the economic consequences of old-age, disability, illness, accident, unemployment, maternity and becoming an orphan or widow(er) (Constitution, art. 41 (2)). In particular, the Confederation is required to take measures to provide for an adequate old-age, survivors' and invalidity pension (art. 111 et seq.);
- Promotion of inclusion of the disabled: the Confederation and the cantons must promote the inclusion of persons with disabilities – the Confederation through cash and non-cash benefits (art. 112b (1)) and the cantons, inter alia, through contributions to the building and running of institutions that provide accommodation and work (ibid., art. 112b (2));
- Support for persons with disabilities: the cantons must provide for assistance and care in the home for the elderly and persons with disabilities (ibid., art. 112c (1)). The Confederation must support the efforts made at national level for the benefit of the elderly and persons with disabilities. To this end, it can use the financial resources of old-age, survivors' and disability insurance (ibid., 112c (2)).

8. Swiss policy for the benefit of persons with disabilities is based on the prohibition of discrimination embodied in the Federal Constitution as well as on the mandate given to the legislative organs of the Confederation and the cantons, which consists in taking measures to eliminate inequalities affecting persons with disabilities. Introduced in the framework of the complete revision of the Federal Constitution in 2000, these provisions have begun to strengthen and, in the process, reorient the policy for persons with disabilities. Implementation of the constitutional mandate rests on two pillars.

9. The "social" pillar seeks to improve and modify personal circumstances, for example by paying pensions to compensate for loss of earning capacity as a result of

disability, by providing for special schooling and by promoting reintegration in the labour market. This is the social security approach, in particular that of disability insurance, accident insurance and occupational, old-age, survivors' and disability pensions. It is essential to ensuring a life of dignity, independence and responsibility.

10. The second pillar consists in acting on the environment in order to reduce the contingencies and challenges confronting persons with disabilities. Under this second approach, it is society itself and the environment it creates that is the target of action by the State. It seeks to play a role in reshaping the overall social framework so that the needs of all members of the community are considered and persons who do not conform to recognized norms in all respects are not marginalized and excluded for that reason. In other words, the "environmental" approach places the emphasis on the framework conditions of life in society.

11. In recent years, the policy for the benefit of persons with disabilities in Switzerland has focused more on the promotion of inclusion and independence:

- With regard to equality, Switzerland, influenced in particular by the popular initiative "Equal rights for people with disabilities" launched by disabled persons organizations, set as its initial priority to establish the framework conditions enabling persons with disabilities to participate independently in the life of society.<sup>2</sup> A series of measures that came into force in 2004, centred around equal treatment for persons with disabilities, provided to that end for the elimination of inequality in law and in practice, with particular reference to improved access to buildings, public transport and services;
- This development also affects disability insurance (DI), which is focused on eliminating or mitigating, to the extent possible, the impact of damage to health on the earning capacity of insured persons. Following various revisions since 2004, disability insurance has been moving in a targeted way towards the promotion of inclusion; its first step has been to provide for rehabilitation measures furthering the reintegration of insured persons in the labour market. A pension is paid only when rehabilitation or reintegration in the workforce is not possible;
- Moreover, the focus on participation and autonomy has also been increased in other areas of the law of particular importance for persons with disabilities. One example is the revision of the law on the protection of the adult.<sup>3</sup> Important advances have moreover been made in other areas essential for the rights of persons with disabilities, such as education.

12. The objectives laid down in these measures have been realized in many fields:

- In 2015, an external evaluation of the Disabled Persons Act showed that it had brought about essential improvements within its scope of application, particularly in areas where it sets out precise requirements or defines clear fields of competence. This is notably the case with public transport and, with some exceptions, buildings and facilities, as well as the services of the Confederation in the fields of information and communication technology. However, the evaluation also identified a number of potential improvements in these fields (awareness raising and information, enhanced possibilities of application, filling the gaps in the provision of benefits for private persons or those relating to private labour relations);
- The initial results of the evaluations of the 4th and 5th revisions of disability insurance (DI), as well as the first part of the 6th revision (revision 6a), show a clear trend towards rehabilitation. Disability insurance could however do more in this regard for three groups of insured persons, namely children, young people and persons with mental health problems. In a new bill submitted for consultation at the end of 2015 ("Further development of disability insurance"), the Government put forward new measures to prevent disability and improve rehabilitation for children, young people and insured persons with mental health problems. The measures

<sup>2</sup> The federal popular initiative "Equal rights for people with disabilities", rejected by popular vote on 18 May 2003.

<sup>3</sup> Entry into force on 1 January 2013.

contemplated relate in particular to the transitions between school, vocational training and the world of work.

13. After consolidation and evaluation of these measures, the next step will consist in developing the policy for persons with disabilities and, thereby, implementing the Convention. Apart from the development of specific areas relevant to the policy for persons with disabilities, the main aim will be to improve coordination and the mainstreaming of persons with disabilities in all areas of life and the law.

14. At the end of 2015, the Federal Council defined the future direction of policy for persons with disabilities, which aims to increase equality and the participation of persons with disabilities in all areas of social life. The Disabled Persons Act, which came into force in 2004, is bearing fruit. Evaluation of the Act shows that it has helped to improve the accessibility of buildings and public transport. The Federal Council now intends to encourage equality and participation in other areas, such as the labour market. There is a particular need to offer persons with disabilities more support when they enter the labour market. The policy for persons with disabilities is aimed in particular at coordinating the different measures taken by the Confederation and the cantons, as well as mainstreaming equal opportunities for persons with disabilities in all areas of life and the law essential to them, such as the world of work and education. A report on the policy for persons with disabilities is currently being prepared by the Confederation in cooperation with the cantons and organizations representing persons with disabilities. It will define policies in these areas by the end of 2016.

## 1.2 General statistics<sup>4</sup>

15. Various sources put the number of persons with disabilities in Switzerland at about 1.6 million. Some 29 per cent of these can be considered severely disabled. Ninety-eight per cent of persons with disabilities live in private homes. In 2010, 25,400 adults (60 per cent men) lived in institutions for disabled persons, an increase of 4000 over the previous four years.<sup>5</sup> Thirty-five per cent of them had been living there for over 15 years.

16. The percentage of persons with disabilities increases very markedly with age. Only 10 per cent of young people aged 16 to 24 have disabilities compared with 45 per cent of persons aged 85 years and over. The increase is particularly noticeable after age 55 as well as after 75 years of age. Clearly, ageing plays an important role in this regard: it is responsible for the majority of disabilities among the elderly. Indeed, there are more persons who become disabled as they grow old than persons with disabilities who become aged.

17. Eight out of ten persons with disabilities living in private homes believe that the cause of their limitations is essentially physical, whereas fewer than one in ten considers the cause to be psychological. The ratio is broadly the opposite among those living in institutions, where psychological and above all mental disabilities largely predominate (77 per cent of the total). Persons who are deaf or hearing impaired, blind or sight impaired, who find it difficult or are unable to speak or walk, as well as those of short stature, represent only a few per cent of the resident population. The proportion is often lower than 1 per cent in the case of persons of working age (between 15–64 years). The most common disabilities – especially after retirement – concern the ability to perform basic day-to-day activities (eating, dressing, going to the toilet, washing) or instrumental activities (preparing meals, making telephone calls, shopping, doing the laundry, performing small and large household tasks, keeping accounts or using public transport).

18. Persons with disabilities are often confused with invalids, i.e. those receiving insurance benefits on grounds of invalidity (whether from disability insurance (DI), a provident institution and/or accident insurance, for example). Yet these two groups overlap only partially. At the end of 2013, the number of persons receiving a DI invalidity benefit

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<sup>4</sup> Source (unless otherwise indicated): Equality Statistics for Persons with Disabilities, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06.html>, Year 2012/2013.

<sup>5</sup> Federal Statistical Office: The situation of persons with disabilities in institutions, Neuchâtel, 2012.

in a personal capacity (excluding spouse or child allowances) totalled 230,341, representing 4.5 per cent of the insured population, whereas the number of persons with disabilities in Switzerland is estimated to be some 1.6 million (see above, para. 16).<sup>6</sup>

## II. General provisions of the Convention

### Articles 1 to 4 of the Convention

19. Under the Convention, persons with disabilities are to be understood as persons with long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on equal terms with others. This definition, in keeping with that found in the International Classification of Functioning, Disability and Health of the World Health Organization (WHO), is characterized by the interaction between personal circumstances and external factors. Swiss legislation concerning equal treatment for persons with disabilities is based on the same conception of disability as the interaction between personal and external factors. The Disabled Persons Act defines a “disabled person” as someone with physical, mental or psychological impairments, supposedly long-term, that prevent him or her from performing everyday acts, maintaining social contacts, moving about, pursuing training, developing skills or undertaking a professional activity, or that hinder him or her from performing these activities.<sup>7</sup> Two important notions are defined in social insurance legislation: disability, which is a total or partial loss of earning capacity, presumed permanent or long-term; and helplessness, which is a concept applicable to persons who, because of damage to their health, need permanent assistance from another person or personal supervision in order to perform the essential activities of everyday life.

20. Concerning statistics, the statistics on equal treatment for persons with disabilities refer to the definition in the Disabled Persons Act and operationalize it on the basis of the standard questions in the Minimum European Health Module. Thus, persons who claim to have a longstanding health problem and to be restricted (slightly or severely) in activities that people perform regularly are considered disabled. In 2004, the Federal Statistical Office established an equality statistic for persons with disabilities to provide information enabling progress in implementing the principle of equality embodied in the Federal Constitution to be measured. This statistic is based on a system of indicators that describes the population considered disabled and compares their living conditions with those of the rest of the population. The indicators are supplemented by in-depth analyses. The results have been available since 2007, being updated annually for the most part. They are systematically disaggregated by sex, and are restricted to the 15/16–64 age group.<sup>8</sup>

21. Discrimination is defined in Switzerland as treatment deemed unequal between persons in comparable situations which has the purpose or effect of disadvantaging another human being. The principle of non-discrimination prohibits the act of treating a person differently on the basis of certain criteria when those criteria are taken as the reasons for demeaning the person concerned.

22. Under article 2 of the Convention, reasonable accommodation aimed at preventing any form of discrimination means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms. This definition is consistent with the Swiss legal order: where discrimination exists under the terms of article 8 (2) of the Constitution,

<sup>6</sup> In parallel, 83,619 invalidity pensions were paid by accident insurance schemes, 131,708 by pension funds and 2,135 by military insurance. These figures cannot be aggregated since the same person may receive several pensions.

<sup>7</sup> So as not to overburden the text, full titles as well as references to the systematic collection of all the laws, ordinances and international conventions cited in this report will be found in the annexed “List of laws, federal ordinances and international conventions”.

<sup>8</sup> See article 31 of this report for details on Swiss statistics concerning persons with disabilities.

it must be eliminated. This may require “reasonable accommodation”, which the disabled person may claim provided it is not disproportionate. The obligation to prohibit or eliminate inequality, taking into account the principle of proportionality, is included and formulated in the Disabled Persons Act with reference to some areas (arts. 7 and 8 in association with arts. 11 and 12).

23. Under article 35 (3) of the Federal Constitution, the authorities must ensure that, where appropriate, fundamental rights also apply to relationships between private persons. The legislator must therefore ensure that there is no discriminatory disparagement, especially when a power imbalance exists between individuals (with regard to rental leases or work relationships, for example). The Disabled Persons Act also stipulates that individuals who provide services to the public must not treat a person with a disability in a discriminatory manner on the grounds of his or her disability (art. 6).

24. Like all international treaties, the Convention is an integral part of Swiss domestic law, in accordance with the monistic legal principle. According to article 35 of the Constitution, fundamental rights must be realized throughout the legal order; anyone who assumes a task on behalf of the State has a duty to respect fundamental rights and contribute to their realization.

25. In accordance with the Federal Supreme Court’s established practice regarding determination of the justiciability of an international legal norm, an individual may rely directly on a provision of international law before a court when the following criteria are met:

- The provision refers to the rights and obligations of individuals;
- The norm to be applied is sufficiently precise and clear to serve as the basis for a particular and, consequently, justiciable decision;
- The norm was written with law enforcement authorities in mind.

26. The Federal Tribunal has consistently recognized the justiciability of civil and political human rights, such as the substantive guarantees of the International Covenant on Civil and Political Rights or the European Convention on Human Rights. Conversely, the Federal Tribunal is reluctant to admit the possibility of the direct application of economic, social and cultural human rights. It takes the view that these rights, with a few exceptions, are not addressed to individuals but rather, because of their programmatic nature, to the legislator. They are in fact guidelines that do not establish subjective rights legally enforceable by individuals.

27. On the basis of this practice, the Federal Council has confirmed on several occasions in recent years before international bodies that, with certain exceptions, economic, social and cultural rights are not justiciable in Switzerland. However, in its message of 11 December 2015 ratifying the Optional Protocol of 19 December 2011 to the Convention on the Rights of the Child of 20 November 1989 establishing a communications procedure, the Federal Council indicated that it would essentially be for the enforcement authorities to consider the possible effects of the Protocol’s entry into force on their practice in this matter.

28. As regards the present Convention, the Federal Council in principle maintains its interpretation of the justiciability of economic, social and cultural rights. However, it will ultimately be for the courts to determine in each particular case the direct applicability of the provisions of the Convention. That said, even where the treaty provisions do not establish subjective rights, they are an integral part of the legal order. In other words, the international obligations remain, whether or not they can be invoked before the State authorities.

### III. Specific rights

#### Article 5 – Equality and non-discrimination

29. The principle of equality and the prohibition of discrimination are enshrined in article 8 of the Federal Constitution. This protection already existed in the old Constitution, in force until 31 December 1999, but the amended text has provided some clarification. Thus, the prohibition of discrimination on the grounds of physical, mental or psychological impairment is now explicitly mentioned in the Constitution (art. 8 (2)). Impairment designates a person's individual inadequacy, while disability is a broader notion. The latter term also includes an individual's difficulties resulting from his or her confrontation with social conditions. The prohibition of discrimination is moreover supplemented by the mandate given to legislators, at the federal and cantonal levels, to prescribe measures to eliminate inequalities affecting persons with disabilities (*ibid.*, art. 8 (4)). In addition, protection against discrimination is also found in a number of international treaties ratified by Switzerland, such as the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women.

30. Article 8 (2) of the Constitution provides that “no person may be discriminated against on grounds of origin, race, gender, age, language, social position, way of life, religious, philosophical or political convictions, or because of a physical, mental or psychological impairment”. This principle is also guaranteed in various cantonal constitutions. The principle of non-discrimination does not however prohibit any distinction based on one of the criteria listed in article 8 (2) of the Constitution, but rather gives rise to the suspicion of an inadmissible distinction. Such inequalities can only be justified on the basis of serious and convincing reasons.<sup>9</sup> Article 8 (2) of the Constitution prohibits not only direct discrimination but also indirect discrimination. Such discrimination exists when a regulation, which does not disadvantage a specific group directly, discriminates in particular, through its effects and without objective justification, against persons belonging to that group.<sup>10</sup>

31. Article 8 (2) of the Constitution offers protection against regulations and public-law measures that have discriminatory effects. The legislation also provides for protection against discrimination by individuals. Civil law provisions likewise offer protection against discrimination, mainly the protection of legal personality (Civil Code, art. 28). Any person who suffers an unlawful attack on his or her personality may invoke this provision in the courts. The person may ask for cessation of the violation as well as the finding that it is illegal. Redress for moral wrong and the payment of damages are also possible. Under labour law, the employer must safeguard the employee's personality rights, which can oblige him or her to take effective measures for the protection of his or her employee if the latter is a victim of discrimination by managers or other persons with whom the employee is in contact in his or her work (Code of Obligations, art. 328).

32. Apart from protection from discrimination, article 8 (4) of the Constitution obliges the legislator to take additional measures to eliminate inequalities affecting persons with disabilities. These include measures by the Confederation and the cantons to safeguard vital needs and promote the inclusion of persons with disabilities in accordance with article 112 et seq. of the Constitution.

33. The aim of the Disabled Persons Act is to prevent, reduce or eliminate inequalities affecting persons with disabilities. It also creates the conditions for facilitating the participation of persons with disabilities in society by helping them to be autonomous in establishing social contacts, completing training and pursuing a professional activity. The Act provides essentially for eliminating *de facto* inequalities. This includes improved access to buildings and facilities, to public transport and to benefits, including training and

<sup>9</sup> See Swiss Federal Court, Judgement 135 I 49 (4.1) with references.

<sup>10</sup> See Swiss Federal Court, Judgement 138 I 205 (5.4).

continuing education. These measures are accompanied by specific provisions relating to the Confederation (Confederation staff, technical standards, programmes, projects, information and advice) and the cantons (school). Furthermore, the Act requires that the Confederation and the cantons take further steps to eliminate inequalities affecting persons with disabilities. Promulgation of the Act has moreover triggered the inclusion of other measures to eliminate discrimination affecting persons with disabilities.

34. The Disabled Persons Act provides for subjective rights in the main regulatory fields as well as the right of organizations of persons with disabilities to act in *locus standi* and to submit appeals. The latter right will strengthen the application of substantive provisions (obligations).

35. On the basis of a study by the Swiss Centre of Expertise in Human Rights,<sup>11</sup> the Federal Council has stated in a report on the right to protection against discrimination that Swiss legislation as a whole offers sufficient protection against discrimination<sup>12</sup>. There were however gaps in the field of private law and with regard to the rights of lesbian, gay, transgender and intersex persons. A number of recommendations to improve protection against discrimination are being studied in detail. With regard to the equality of persons with disabilities, an audit is being carried out as part of a report on disability policy requested by the Federal Council, which is to be submitted at the end of 2016.

### **Article 8 – Awareness-raising**

36. The Disabled Persons Act also takes into account the importance of raising awareness with regard to the equality of persons with disabilities. The information and advice provided to the authorities and individuals is one of the key missions of the Federal Office for the Equality of Disabled Persons, established under the Act.

37. Article 18 of the Disabled Persons Act allows the Federal Government to institute awareness-raising campaigns to sensitize the population to inequalities and problems of inclusion and to present solutions to those concerned. The aim of all these instruments is to promote a better understanding of persons with disabilities and to improve “community life”. Between 2004 and 2014, Confederation funding managed by the Federal Office for the Equality of Disabled Persons financed 400 projects to promote equality for persons with disabilities. Eighty-six per cent of these funds was allocated to organizations of persons with disabilities and 14 per cent to the cantons (including the universities of applied sciences) and to the municipalities. The topics most frequently addressed were teacher training, culture and communication.

38. In order to integrate the theme of equality more broadly and enduringly in society, while using the available resources as efficiently as possible, the Federal Office is defining priority lines of action for the targeted promotion of equality. A clustering of the Confederation’s activities with those of third parties within priority programmes helps to strengthen efforts to inform and sensitize society, promote networking among key actors and facilitate the coordination of existing and future measures. Priority programmes implemented so far have dealt with culture, participation, political rights and sports.

39. Evaluation of the Disabled Persons Act has shown that the measures implemented so far have served to modify the concept of disability only partially. The Federal Council has therefore instructed the Department of Home Affairs to submit a report on policy for persons with disabilities and measures to improve public information and awareness, among other matters. The report is expected for the end of 2016.

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<sup>11</sup> CSDH, Der Zugang zur Justiz in Diskriminierungsfällen synthesebericht, Berne, 2015 (see <http://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2016/2016-05-25/synthesebericht-d.pdf>).

<sup>12</sup> The Right to Protection against Discrimination, Report of the Federal Council of 25 May 2016, in response to the Naef postulate (12.3543) of 14 June 2012.

## Article 9 – Accessibility

### Overview

40. Improved accessibility was one of the priorities with regard to fulfilment of the mandate given to legislators in article 8 (4) of the Constitution, namely to provide for measures to eliminate inequalities that affect persons with disabilities.

41. The topic of accessibility is covered in essence by the Disabled Persons Act. The Act was created to bring about improvements with particular reference to access to public buildings, public transport and services (benefits). The measures are aimed at improving accessibility in general, in conjunction with other measures focused on individual needs. Disability insurance (DI), for example, provides those concerned with auxiliary aids to enable them to continue to engage in gainful employment or to perform regular tasks, attend school, learn a trade or pursue functional rehabilitation. Auxiliary aids are also intended to help the beneficiaries to be mobile and develop their personal autonomy. The removal or modification of architectural barriers within or near places of residence, work, training or education are also considered a DI auxiliary aid.

### Buildings and facilities

42. At the cantonal level, provisions guaranteeing access to buildings and facilities already existed before the entry into force of the Disabled Persons Act. Since 2004, the Act has guaranteed a minimum standard at national level and has helped to strengthen the implementation of legal requirements by granting subjective rights.

43. The Act requires that buildings and facilities open to the public, whether public or private, should be adapted to meet the needs of persons with disabilities, whether in the case of new constructions or renovations requiring a building permit. The term “publicly accessible facilities” can mean any public areas, i.e. highways, roads, squares and parks. Accessibility for persons with disabilities must also be guaranteed in buildings containing more than eight housing units and those with more than 50 workstations.

44. The persons concerned may apply to the courts or the administrative authorities to request the elimination of inequality in access to buildings. Organizations of persons with disabilities are also entitled to appeal against a building permit. At the conclusion of the building authorization procedure, the persons concerned may bring an action before a civil court to request the elimination of inequality if legally required measures cannot be found to have been observed during the building authorization procedure.

45. Alongside the Disabled Persons Act, cantonal legislation is applicable to buildings coming within the remit of the cantons. Some cantons extend the scope of the guidelines on constructions suitable for persons with disabilities to include other types of buildings not affected by the Disabled Persons Act. Most cantons require adaptations, including in residential buildings with less than eight housing units and in buildings with less than 50 workstations. Some facilitate application of the law, for example by providing for a right of appeal by the authorities or by obliging the authorities responsible for the construction to seek the advice of accessible construction consultancies. The cantons have also undertaken a wide range of legislative adjustments, inspired in large part by the Disabled Persons Act: most of them have in this way updated their building legislation. The norms of professional organizations play an important role in implementing the legal provisions at the federal and cantonal levels. These include the SIA 500 (“Obstacle-free buildings”) and VSS SN 640075 (“Obstacle-free circulation space”) standards.

46. The evaluation of the Disabled Persons Act conducted in 2014/2015 highlighted the positive impact of the law on buildings and facilities, and the progress made over the last decade.<sup>13</sup> The Act has helped to raise awareness among stakeholders in the construction sector. The evaluation shows that the situation has improved overall since the Act came into force, particularly with regard to mobility in public spaces and buildings open to the public,

<sup>13</sup> See for this paragraph note 4 of the abridged version of the evaluation report (French or German) or the full evaluation report (in German only).

but less so in the case of buildings containing work stations or housing units. However, it emerges from the evaluation that the stipulations of the Act are not implemented uniformly by the competent authorities with regard to the granting of building permits, and that differences between cantons persist. The greatest difficulties arise less in the case of new constructions than in the renovation of existing buildings, where adjustments give rise to significant additional costs.

### **Public transport**

47. The Disabled Persons Act provides for the adaptation of public transport to ensure access for all by the end of 2023. In the sphere of public transport, the Act is applicable to communication and ticketing systems. These must be adapted to meet the needs of persons with disabilities by the end of 2013, while respecting the principle of proportionality. The Act also requires public transport vehicles and infrastructures to be adapted by the end of 2023. Implementation of the Act is based essentially on the detailed regulations contained in its implementing provisions (ordinance on accommodations to ensure access to public transport by persons with disabilities, and ordinance concerning the technical requirements governing accommodations to ensure access to public transport by persons with disabilities).

48. Where persons with disabilities cannot use public transport unaided, alternative measures exist. For example, people with reduced mobility can receive help in boarding trains by calling the Swiss Federal Railway Disability Call Centre one hour before travelling. In 2014, this service answered some 350 requests for assistance daily. Similar call centres exist in other transport enterprises. A wide range of specialized services for persons with reduced mobility are also organized by organizations of persons with disabilities.

49. Evaluation of the Disabled Persons Act, completed at the end of 2015, identified the most important improvements in public transport:

- By the end of 2014, some 50 per cent of stations, accounting for 70 per cent of the volume of clients, had been adapted. The ten main railway stations in Switzerland, with the exception of Berne, are all accessible. The “simplest” adaptations have already been completed (under the network’s regular maintenance programme); what remain are the most costly and technically complex ones.<sup>14</sup> The Federal Council has noted that the adaptation of facilities to meet the Act’s requirements should be accelerated. The Federal Transport Office has decided to reinforce the teams responsible for overseeing the infrastructure work throughout the network;
- Regarding rolling stock, the Federal Transport Office estimated that, at the end of 2014, 70 per cent of trains complied with the Act. The Swiss Federal Railway has carried out all the modifications required in regional traffic, but not in mainline traffic, which should however be complete by the end of 2023. With regard to public transport buses, the majority of vehicles have been adapted. The trams in Geneva and Bern are all accessible, and those in Zurich will be by 2016. The least accessible infrastructures are bus stops, especially those not located in cities;
- As regards the deadline for communication and ticketing devices (31 December 2013), this has not been met everywhere. According to the Federal Transport Office’s specialized service on mobility issues, the communication and ticketing systems are 80 to 90 per cent compliant with the provisions of the Disabled Persons Act (as of 2014). The remaining percentage concerns cases where the time allowed was disproportionate to the adaptation work.<sup>15</sup>

### **Services (benefits)**

50. The Disabled Persons Act requires public authorities and concessionary companies to prevent or eliminate unequal treatment (Disabled Persons Act, art. 5). Measures concerning communication by federal authorities with persons with speech, hearing or sight disabilities are regulated in a specific and detailed manner; other federal laws contain

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<sup>14</sup> Abridged version (in French) of the Disabled Persons Act evaluation report, p 23.

<sup>15</sup> Abridged version (in French) of the Disabled Persons Act evaluation report, p 23.

specific provisions to protect persons with disabilities against discrimination – for example, the Federal Act on Direct Federal Tax, the Federal Act on Radio and Television, the Federal Telecommunications Act, and the Federal Act on Vocational and Professional Education and Training. Cantonal law supplements the Disabled Persons Act and other federal laws. Since its entry into force in 2004, the Act has led to various legislative changes, either directly (the Confederation) or indirectly (primarily the cantons). At the federal level, this is the case in particular with new rules in the fields of telecommunications, taxation and radio and television, as well as services relating to communications and transactions. At the cantonal level, two cantons have incorporated in their constitutions a requirement to take account of persons with disabilities, which is also applicable to private providers.

51. Apart from these general provisions, the Act provides for specific measures in the field of information and communication services. Article 14 of the Act and the Ordinance on the Elimination of Inequalities affecting Persons with Disabilities formulates the general requirements regarding the services provided by the Confederation. They specify that, in their relations with the general public, the authorities must consider the special needs of disabled persons with speech, hearing and sight impairments (Ordinance on the Elimination of Discrimination against Persons with Disabilities, art. 11) and that access to the services offered on the Internet must be convenient for disabled persons with sight impairments (*ibid*, art. 10); see also art. 7 (3) of the Federal Act on Radio and Television and arts. 7 and 8 of the Ordinance on Radio and Television. In 2006 and 2012, the Federal Council adopted strategies for an information society that takes into account equal opportunities for access by persons with disabilities. In 2008 and 2012, the network “Digital inclusion in Switzerland” adopted action plans providing for measures and projects in various fields focused on the promotion of equality in the ICT field for persons with disabilities (*e-inclusion.ch*). The Swiss strategy for e-administration of the Confederation, adopted in 2007, includes access for all; persons with disabilities in particular must be able to benefit from electronic voting. In addition, electronic communication has acquired new standards on accessibility through administrative directives P028 and accessibility standard eCH-0059. The Federal Council also decided in 2014 to make further improvements with regard to Internet accessibility. To this end, it adopted the Action Plan on E-Accessibility 2015–2017.

52. In the case of services provided by individuals, protection is limited to prohibition of the forms of discrimination identified in the Disabled Persons Act. Any person who suffers discrimination in respect of services provided by individuals may take action in a civil court and may request that the service provider eliminate the unequal treatment, or refrain from pursuing it, but the compensation to which the person is entitled is limited to a maximum of CHF 5000. Action may also be taken by organizations assisting persons with disabilities (declaratory judgement action).

53. With regard to the services provided by public bodies, the evaluation of the Disabled Persons Act noted some improvement in accessibility since the Act came into force in 2004. However, there has been scarcely any change in the situation regarding services provided by individuals. Development of the policy for persons with disabilities initiated by the Federal Council will therefore also focus on studying the different options for improving the accessibility of services.

## **Article 10 – Right to life**

54. The right to life is guaranteed by the Federal Constitution (art. 10) and recognized as a right to which every human being is entitled. Switzerland is also party to various international conventions that recognize the right to life, such as the European Convention on Human Rights (ECHR) (art. 2), Protocol No. 6 to the ECHR concerning the abolition of the death penalty, Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, as well as the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

55. Abortion is permitted in Switzerland up to the twelfth weeks of pregnancy. It is possible beyond the twelfth week if medical advice shows that termination of pregnancy is necessary to avoid the danger of causing serious bodily harm or severe distress to the pregnant women. The prohibition of pre-implantation diagnosis in Switzerland in the case of in-vitro fertilization has been lifted. In June 2015, the people and the cantons accepted the amendment of article 119 of the Constitution, aimed at permitting the development of the number of embryos needed for medically assisted reproduction and pre-implantation diagnosis. The strict conditions imposed in the case of pre-implantation diagnosis are contained in the Act on Medically Assisted Reproduction. The Act, adopted by the people on 5 June 2016, provides for the selection of embryos that are not carrying a predisposition to serious illness, inherited from the parents, and that do not have specific characteristics that might prevent the success of pregnancy. The Act has not yet entered into force.

56. With regard to the end of life, the guidelines of the Swiss Academy of Medical Sciences consider that a human being is dead when there has been an irreversible cessation of all the functions of the brain, including the brain stem. Assisted suicide is punishable in Switzerland only where a selfish motive is present (Criminal Code, art. 115). Several associations offer the possibility of assisted suicide to those requiring it, but additional conditions must be met in addition to the absence of a selfish motive. The guidelines of the Swiss Academy of Medical Sciences in principle authorize doctors to assist in suicide only if the patient's illness is incurable and at an advanced stage. Only persons capable of discernment may obtain the lethal substance and swallow it themselves. Some cantons have legislated on assisted suicide; this is the case in particular with the Canton of Vaud, which has legislated on assisted suicide in health institutions recognized to be of public interest.<sup>16</sup> The legislation of the Canton of Vaud makes it a condition in particular that the patient should be capable of discernment with regard to his or her decision to commit suicide and that he or she should be suffering from a serious and incurable illness or sequel to an accident. Persons with disabilities are subject to the same conditions. The Federal Supreme Court recognizes that incurable, long-term and severe mental suffering may lead the patient to consider that his or her life is no longer worth living, in the same way as with physical suffering. Assisted suicide in such a case cannot therefore be excluded. The aim is, however, to distinguish between the expression of a psychological disorder and a reasoned and independent decision by a person capable of discernment. Assisted suicide can also be granted in the case of a person suffering from a psychological disorder insofar as the desire to terminate his or her life is based on an independent decision by a person capable of discernment.<sup>17</sup> A specialized, in-depth psychiatric expertise is necessary to assess whether these conditions are met.<sup>18</sup>

## **Article 11 – Situations of risk and humanitarian emergencies**

57. The protection of the Swiss population in situations of risk and humanitarian emergencies is regulated by the Federal Act on the Protection of the Public and Civil Protection. The protection of civilians is principally the responsibility of the cantons, which organize it in collaboration with the municipalities, as appropriate. The Confederation also has tasks in this area. Protection of the public is organized through a system comprising a number of branches, in which five entities (police, fire service, health care, technical enterprises and civil protection) contribute to its effective functioning. The care of persons with disabilities in situations of risk and humanitarian emergencies comes within the remit of civil protection. The different services are well organized and equipped, and they are sensitive, by virtue of their functions, to the specific needs of persons with disabilities.

58. General provisions apart, specific measures are necessary, especially in the areas of alert, alarm and information, to ensure the protection of persons with disabilities. In these three areas, existing systems and processes are currently being developed and extended in a targeted manner under the leadership of the Federal Office for Civil Protection. Thus, in

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<sup>16</sup> Article 27d of the Act of the Canton of Vaud on public health, RSVD 800.01.

<sup>17</sup> ATF 133 I 58, preambular paragraph. 6.3.5.1, JdT 2008, I 349, p. 366.

<sup>18</sup> ATF 133 I 58, preambular paragraph. 6.3.5.2, JdT 2008, I 349, p. 366.

future, alarms will be transmitted to the population not only through acoustic systems, sirens in practice, but will also be disseminated through other channels, such as SMS, Twitter, and so forth. Similarly, other information directed towards the public by the authorities in the event of disasters and emergencies will in future be transmitted simultaneously through various electronic communication channels and no longer mainly through the radio. Implementation of these measures will pay special attention to the particular needs of persons with hearing impairments. The question remains as to when they will be implemented.

## **Article 12 – Equal recognition before the law**

59. In Switzerland, every person enjoys civil rights (Civil Code, art. 11), which means that, within the limits of the law, every person has an equal capacity to acquire rights and assume obligations. Every person who has attained the age of majority and is capable of discernment is free to exercise civil rights and is therefore capable of acquiring and assuming them (*ibid.*, arts. 12 and 13). A person attains the age of majority when he or she turns 18. A person is capable of discernment if he or she does not lack the capacity to act rationally by virtue of being under age or because of mental impairment, mental illness, intoxication or similar causes. A legal representative is assigned to persons incapable of discernment in order to ensure their exercise of civil rights, with the exception of the strictly personal rights of a person incapable of discernment, which may not be exercised by his or her legal representative (for example, contracting a marriage).

60. The exercise of civil rights may be restricted by a measure under the law on the protection of the adult. In this field, Swiss legislation has been entirely updated and a new law on the protection of the adult has been in force since 1 January 2013. Its provisions allow for flexibility and adaptation in accordance with the real needs of the person to be protected, while ensuring his or her maximum autonomy. Measures for the protection of the adult are subsidiary and are only ordered when support of the person concerned by his or her family and close associates or by private or public services is insufficient or appears insufficient. This system of tailored measures, which gives the relevant authority a margin of discretion, allows for an optimal and subtle response. Exercise of the civil rights of the persons concerned are restricted only to the extent really necessary.

61. The legal system for protection of the adult consists of various levels of guardianship, some of which may also be employed in combination (Civil Code, art. 397):

- Guardianship with a support function: this is established with the consent of the person in need of assistance, when he or she must be helped to perform certain acts (such as planning meals, making purchases or concluding contracts). Exercise of the civil rights of the person concerned is not restricted by guardianship with a support function;
- Guardianship with a representative function: this is established when the individual concerned can no longer perform certain acts and must be represented for that purpose. Administration of estates is one example of such guardianship. In this case, the adult protection authority determines the assets covered by the guardian's powers; these may include all or part of the income or capital, or all of the property, of the person in need of assistance. Exercise of the civil rights of the person concerned may be restricted in consequence or not restricted; the adult protection authority may in any case prohibit access to certain components of the estate;
- Guardianship based on cooperation: in order to safeguard the interests of a person in need of assistance, this enables certain of his or her acts to be subject to the guardian's consent, the aim being to protect the interests of the person placed under guardianship. Exercise of the civil rights of the person concerned is limited in comparison to acts covered by guardianship based on cooperation;
- Guardianship of general scope or last resort: this is established when a person is suffering from a long-term incapacity to exercise discernment and is particularly in need of assistance. All areas of personal assistance, estate management and legal

relations with third parties are covered by guardianship of general scope. The person is deprived of the full exercise of civil rights.

62. Guardianship can combine a support, representative and cooperative function. When the creation of a guardianship seems clearly disproportionate, the adult protection authority may itself assume the tasks to be performed (such as consenting to a legal act), give a mandate to a third party to perform specific tasks, or designate a qualified person or office to have a right of inspection and information in some domains.

63. In the case of certain acts, the guardian must also obtain the consent of the adult protection authority (Civil Code, art. 416). These acts are enumerated in the Civil Code and include termination of lease (art. 416 (I) (1)), acceptance or renunciation of an inheritance (art. 416 (I) (3)) or the acquisition, sale or pledging of property or the fact of encumbering it by usufruct (art. 416 (I) (4)). In addition, the person concerned or a relative can appeal to the adult protection authority against acts or omissions of the guardian, or those of third parties or the agency mandated by the adult protection authority. The same right also belongs to any person who has a legal interest in the annulment or modification of the contested decision (art. 450, (A) (2) (3)).

64. Other instruments aimed at promoting self-determination and strengthening the subsidiarity of official measures are the mandate on grounds of incapacity (*ibid.*, art. 360 et seq.) and advance care directives on the part of the patient (*ibid.*, 370 et seq.), which allow any person capable of discernment to take measures should he or she become incapable of discernment.

### **Article 13 – Access to justice**

65. Persons with disabilities can participate in administrative or judicial proceedings in the same way as non-disabled persons. Non-discriminatory access to proceedings is guaranteed to all individuals, including persons with disabilities. General procedural guarantees are enshrined in the Federal Constitution. Everyone has the right to have their case treated fairly and tried within a reasonable time. The right to be heard is also guaranteed, as well as the right to free legal aid for those who do not have sufficient resources or access to a judge. Switzerland is also a party to various international treaties that offer the same general procedural safeguards (in particular, article 14 of the International Covenant on Civil and Political Rights and article 6 of the European Convention on Human Rights).

66. Apart from these principles and procedural measures relating to protection against discrimination, measures specific to the various procedures and the free provision of certain procedures facilitate access to justice by persons with disabilities:

- Criminal procedure: if the accused, due to his/her physical or mental condition or for other reasons, is unable to defend his or her interests in the proceedings and if his or her legal representatives are unable to do so either, the person concerned should be represented by a lawyer (Code of Criminal Procedure, art. 130) During the hearing, persons with speech or hearing impairments should be questioned in writing or with the assistance of a suitably qualified person (*ibid.*, art. 143 (7)). Finally, hearings of persons with mental disorders should be limited to essential matters. A specialist social service may be called upon to conduct the hearing or request the assistance of family members, other persons or experts (*ibid.*, art. 155);
- Civil procedure: to be a party in civil proceedings, a person must enjoy civil rights, whereas the ability to exercise civil rights is needed to institute legal proceedings (Code of Civil Procedure, arts. 66 and 67). A person who has no legal capacity may exercise civil rights through his or her legal representative; if the person is capable of discernment, he or she may exercise strictly personal rights. If a party is manifestly unable to proceed unaided, the court may invite him or her to appoint a representative;
- Proceedings before the adult protection authorities: the adult protection authority must consult the person concerned, unless to do so appears inappropriate (art. 447 CC). Where necessary, it will order the person concerned to be represented in the

proceedings and will appoint as representative a person experienced in care-related and legal matters (ibid. art. 449a).

67. The Disabled Persons Act provides that proceedings shall be free of charge when brought under articles 7 or 8, that is, against unequal treatment encountered in the context of a construction or the renovation of a construction or facility, or in connection with the provision of a service. In the field of social insurance, the proceedings before the cantonal insurance court are regulated by cantonal law, but they must comply with certain requirements listed in the Federal Act on the General Aspects of Social Security Law: they must be simple, rapid, as a general rule public, and free of charge for the parties concerned (art. 61 (a)). There is an exception to this rule with regard to disputes over the granting or denial of invalidity benefits that are subject to legal costs.

68. Concerning children/minors, Swiss civil law does not distinguish between children with disabilities and others. The same is true of the right of children to participate in proceedings that concern them. The Code of Civil Procedure not only provides for special norms concerning the proceedings applicable to children in family law cases but also embodies the right for them to be heard personally, as appropriate, and to be represented (arts. 298 and 299). The new law on the protection of the adult and child, in force since 1 January 2013, contains provisions of the same nature (Civil Code, arts. 314a and 314bis). According to the jurisprudence of the Federal Court, children may in principle be heard as soon as they have reached the age of six. Several other civil law provisions explicitly emphasize the need to hear the child before taking a decision. Thus, for example, “Adoption may take place solely with the consent of the child, if he or she is capable of discernment” (Civil Code, art. 265) and “The child protection authority shall ensure that a child placed in a foster family or an institution ... be involved in all decisions that are crucial to his or her existence depending on age” (Child Placement Ordinance, art. 1a).

69. These measures are accompanied by measures providing for training and continuous learning for court personnel. The needs of persons with disabilities are addressed, for example, during the training of police officers under such topics such as “Human rights and ethics” and “Psychosocial skills”. These skills are tested for the federal police officer diploma.

## **Article 14 – Liberty and security of the person**

70. The right to personal freedom is guaranteed under article 10 (2) of the Constitution (“Every human being has the right to personal liberty, including physical and psychological integrity and freedom of movement”) as well as articles 5 and 8 of the European Convention on Human Rights. Some measures aimed at protection may limit this freedom but they are strictly regulated.

71. This is the case with placement for care purposes, likely to concern persons with disabilities. Provision is made for placement for care purposes in the law on the protection of the adult, under articles 426 to 439 of the Civil Code. The new rules introduced by the review of the law in question (entered into force on 1 January 2013) aim to respect the principle of proportionality and to adapt measures to the needs and capacities of the person concerned. His or her welfare is at the centre of these provisions. Thus, placement in an appropriate institution of a person as a result of mental illness, mental impairment or a serious state of neglect may only be carried out if the care or treatment required cannot be provided in another manner (Civil Code, art. 426 (1)). As with all actions of the State, placement for purposes of assistance must be proportional, necessary and appropriate. The objective must be achieved through the measure employed, which must be as unrestrictive as possible. In its message, the Federal Council considers placement for care purposes to be a last resort.

72. The adult protection authority is competent in principle to order the placement, or release, of a person. However, the cantons have the right to designate doctors who may order a placement for a period determined by cantonal law (six weeks). The doctor then examines and listens directly to the person concerned. Within six months of the placement, the adult protection authority examines whether maintaining the measure is still justified

and whether the institution is still appropriate. The authority conducts another review at the end of six months, then as often as necessary, but at least once a year (Civil Code, arts. 428–431).

73. The Swiss Academy of Medical Sciences has issued guidelines on coercive medical measures for doctors, nurses and other health professionals who apply or order such measures. These guidelines were completely revised in November 2015 and take into account all the changes that have occurred since the entry into force of the new law on the protection of the adult.<sup>19</sup> The guidelines set out the principles governing the application of coercive measures and specify how the measures should be applied in keeping with the person's circumstances (in particular, persons with mental disorders, somatic diseases or patients in long-term care facilities). They also offer an approach to follow in implementing measures restrictive of liberty, reviewing the points that need to be considered. The guidelines frame in this way the practice regarding placement for purposes of assistance, on the basis of existing legal provisions, and seek to ensure uniformity in their application.

74. Placement may only take place in an appropriate institution. The term "institution" is used in a broad sense according to the message of the Federal Council.<sup>20</sup> It includes, in addition to closed institutions, institutions for elderly persons, places of residence of family members, hostels for seniors and supervised community housing.<sup>21</sup>

75. The appropriateness of the measure is reviewed by the adult protection authority within six months of the placement. The person concerned by the placement or a relative may apply for release at any time. A person placed in an institution may call on a person of his or her choosing for assistance purposes during his or her stay and until the end of the procedures associated with it. Freedom of movement of the person to whom the measure applies may be restricted only if less intrusive measures are not sufficient or do not appear sufficient to avert a serious threat to the life or physical integrity of the person concerned or that of third parties. The restriction on freedom of movement is lifted as soon as possible and justification for it shall in any case be regularly examined (Civil Code, arts. 383 and 438).

76. The Federal Act on the Services of the Confederation concerning the Execution of Sentences and Measures guarantees the creation of the minimum architectural installations required by the Disabled Persons Act for persons serving a sentence or measure. Furthermore, in the context of the subsidised construction of buildings designed for the execution of sentences and measures, the requirements of international human rights conventions ratified by Switzerland, such as the European Convention on Human Rights and the Recommendations on the European Prison Rules, are respected. These provisions apply equally to persons with and without disability. With regard to application of the law, the authorities consider on a case-by-case basis the specific situation of persons with disabilities in order to safeguard their rights. When premises for the execution of sentences and measures are created having regard to the specific provisions regarding constructions suitable for persons with disabilities (a condition of the granting of Confederation subsidies), reference should be made to the SIA 500 standard (obstacle-free buildings) and the Disabled Persons Act. Several correctional establishments in the cantons have special programmes for prisoners who, due to medical reasons or disability for example, cannot meet the normal programme requirements (e.g. the self-development programme carried out in the Saxerriet penitentiary).

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<sup>19</sup> The guidelines of the Swiss Academy of Medical Sciences are available under the following link: <http://www.samw.ch/fr/Ethique/Directives/actualite.html> (consulted on 24.02.2016).

<sup>20</sup> Message concerning the review of the Swiss Civil Code (protection of adults, rights of the person and rights of filiation), FF 2006 6635, 6695.

<sup>21</sup> Kokes (Edit.), *Praxisanleitung Erwachsenenschutzrecht*, Zurich/St. Gallen 2012, Ch. 10.10; Geiser Thomas/Etzensberger Mario, in: Honsell Heinrich/Vogt Nedim Peter/Geiser Thomas (Edit.), *Kommentar Basler Zivilgesetzbuch I*, 5th edition, Basel 2014, article 426, Ch. 3; Rosch Daniel, *Die fürsorgliche Unterbringung im revidierten Kindes- und Erwachsenenschutzrecht*, AJP 2011 505, p. 507.

## **Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment**

77. While the Swiss Penal Code does not contain a specific norm or definition of torture, there is nevertheless a general prohibition of torture throughout the country. In the first place, this is because of the ratification on 2 December 1986 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, its Optional Protocol, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. The Federal Constitution also explicitly prohibits torture and other cruel, inhuman or degrading treatment or punishment (art. 10 (3)). Secondly, because the criminal law includes and punishes the various acts that can be characterized as acts of torture, such as offences against life, physical and mental integrity, freedom, sexual integrity and honour, and abuses of authority. Research on human beings is also highly regulated and specific provisions are made to protect persons with disabilities.

78. The National Commission for the Prevention of Torture, established in 2009 as a result of Switzerland's ratification of the Optional Protocol to the Convention against Torture, is a body independent of the Confederation and the cantons responsible for respect for the rights of detainees. To this end, it maintains a continuous dialogue with the authorities and conducts regular visits to establishments. In particular, it makes annual reports to the Federal Council and submits an independent report to the Committee Against Torture under the procedure for the consideration of periodic reports. The Federal Act on the Commission for the Prevention of Torture defines deprivation of liberty in article 3: "For the purposes of the present law, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private institution from which he or she is not permitted to leave at will, on the order of a public authority, at its instigation or with its consent". According to this definition, deprivation of liberty includes all places where the State retains against their will persons who, hence, have a special status in relation to the State. Such places include all police stations, pre-trial detention facilities, establishments for sentenced prisoners, deportation centres, psychiatric clinics and detox centres as well as educational hostels and houses, institutions for elderly persons and various care facilities. The National Commission for the Prevention of Torture plans to concern itself more in future with institutions for persons with disabilities deprived of liberty.

79. Research on human beings is regulated by the Federal Act on Research involving Human Beings, which entered into force on 1 January 2014. Its purpose is to protect a person participating in a research project by ensuring respect for his or her dignity and personal liberty. Any person involved in a research project must have been sufficiently informed to enable him or her to give informed consent or exercise his or her right of opposition. This requires a capacity for discernment; if the person concerned lacks such discernment, the legal representative will decide for him or her, taking into account the interests of the latter. Article 11 of the Federal Act on Research involving Human Beings provides for the principle of subsidiarity, whereby a "research project can only be carried out on human beings if equivalent results cannot be achieved by other means". Thus, a research project cannot be carried out on particularly vulnerable persons (in particular, persons incapable of discernment) if results related to the research project are not otherwise obtainable. If persons incapable of discernment participate in the research project, it signifies that the research has a link with the element at the basis of "vulnerability", that is, an inability on the part of the person participating in the project to exercise discernment.

80. The Federal Act on Research involving Human Beings devotes a chapter to persons considered particularly vulnerable (arts. 21 to 31), whose special circumstances place them in a vulnerable position with respect to the research community. These include persons incapable of discernment, but also pregnant women, children and adolescents and likewise persons deprived of their liberty. Article 21 of the Federal Act on Research involving Human Beings provides that persons with disabilities must be involved in the consent procedures as far as possible and having regard to their capacities. The Act goes on to distinguish between research projects involving children capable or incapable of discernment, those involving adolescents capable or incapable of discernment, and those

involving adults incapable of discernment. These provisions concern consent, the legal representative and the type of research project in which they can participate (with or without the envisaged benefit, that is to say, whether or not the research project can improve their health). In order to carry out a research project, researchers must apply for a permit to the competent cantonal ethics committee; the committee verifies the project submitted to it, checking that the rights of those involved in the research project, whether incapable or capable of discernment, with or without disabilities, have been safeguarded. The review is thus carried out mainly by the cantonal ethics committees.

## **Article 16 – Freedom from violence, exploitation and abuse**

81. Protection against exploitation, violence and abuse is wide-ranging and involves a large number of fields. Great importance is attached to the protection of particularly vulnerable persons, notably those highly dependent on others, with regard for example to the protection of children and adults (see the comments concerning article 12) and in institutions for social inclusion. Measures to assist victims of crime serve to help these persons when a case of aggression or abuse nonetheless occurs.

82. The responsibility for granting authorisations and monitoring institutions charged with promoting the inclusion of disabled persons rests with the cantons (since the reform of financial equalization and division of tasks between the Confederation and the cantons on 1 January 2008). Persons with disabilities should only be housed in institutions recognized by the cantons. For an institution to be recognized, it must comply with the safety and quality standards of the canton in which it is located. It must for this reason regulate the prevention of sexual exploitation, abuse and violence. The canton of Bern has formulated standards for issuing authorizations to institutions, in force since 1 January 2015. They are applicable to establishments of this kind for children, adolescents and adults with disabilities. The cantons must ensure that inspections are carried out in the institutions concerned. They must also provide for an arbitration procedure in the case of disputes between the institution and a disabled resident. Following the entry into force on 1 January 2008 of the reform of the financial equalization and division of tasks between the Confederation and the cantons, the cantons had three years to draw up a strategic plan for approval by the Confederation. Before adopting these plans, the Federal Council examined whether the cantons guaranteed that the institutions possessed the necessary infrastructure, personnel and quality control facilities. Most cantons only grant institutions a permit to operate if they have addressed issues relating to acts of a sexual nature and to violence in their work processes and concepts. The institutions must also provide continuous training in this regard and are obliged to report cases of sexual acts to the cantonal supervisory authority.<sup>22</sup>

83. Following the disclosure in 2011 by the Bern criminal prosecution authorities of Switzerland's most serious case of abuse, organizations and the cantons decided to react. In the same year, twelve associations (including Pro Infirmis, Insos and Procap), organizations and institutions adopted a Charter for the prevention of sexual abuse, mistreatment and other forms of violation of integrity.<sup>23</sup> Demanding a zero-tolerance policy, signatory associations, institutions and organizations recognized various fundamental principles applicable to any person working or taken into care in institutions and organizations. In the last item of the Charter, the signatory organizations undertake to establish internal services to investigate complaints. Any person within an organization or an institution may also appeal to an external service. Organizations and institutions should ensure that the external service is known to all, for example through internal information, postings, contracts, etc.

84. Concerning assistance to victims of crime, the Federal Act on Assistance to Victims of Offences provides for various forms of assistance. This may take the form of advice, immediate assistance and longer-term assistance; consultation centres provide immediate assistance and longer-term assistance, either by themselves or through third parties

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<sup>22</sup> Reply by the Federal Council to question 11.5083 of Ms. Weber-Gobet (07.03.2011), available at the following link: <[http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch\\_id=20115083](http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20115083)> [accessed on 24.02.2016].

<sup>23</sup> Available at the following Internet address: [www.charte-prevention.ch](http://www.charte-prevention.ch) [accessed on 24.02.2016].

(psychologists, lawyers ...). Compensation or reparation for moral damage may also be awarded. Any person who has suffered, as the result of an offence committed in Switzerland, a direct attack on his or her physical, mental or sexual integrity is entitled to victim assistance under the Federal Act. Under certain conditions, the family or others close to the victim are also entitled to benefits under victim assistance (Federal Act on Assistance to Victims of Offences, arts. 1 and 2). The cantons are responsible for ensuring that there are public or private consultation centres operating independently in their sector of activity. They must take into account the specific needs of different categories of victims (*ibid.*, art. 9). Persons working for a consultation centre open to victims of offences may advise the child protection authority or report the crime to the criminal prosecution authority if the physical, mental or sexual integrity of an underage victim is seriously endangered (*ibid.*, art. 11 (3)).

## Article 17 – Protecting the integrity of the person

85. Article 10 (2) and (3) of the Constitution protects physical and mental integrity (see also European Convention on Human Rights, art.8). Protection of the integrity of the person is especially important in the context of medical treatment. In Switzerland, any medical treatment must be consensual, otherwise it is regarded as a violation of the physical integrity of the person. Some special laws regulate consent in relation to the medical measures concerned (for example, the law on transplantation or medically assisted reproduction). The cantonal health supervisory authorities are responsible for safeguarding those rights. The way that this independent body works is specific to each canton: in some cases, the cantonal doctor is in charge; in others, it may involve a health professions monitoring commission. If a patient believes that his or her rights have been violated, he or she may file a complaint to the supervisory authority designated by cantonal law. The cantonal adult protection authorities can also act to protect the rights of patients incapable of discernment. With regard to private bodies, the Swiss Patients Organization or the Patients Federation help patients to assert their rights, in particular by providing counselling.

86. In cases of an inability to discern, increased vigilance must be shown to avoid any attack on the integrity of the person. The civil law provides for advance directives by the patient (Civil Code, art. 370 et seq.) that enable a person capable of discernment to determine the medical treatment to which he or she consents in cases in which he or she becomes incapable of discernment. The patient can also give instructions and designate a person who will discuss with the doctor about the medical care to be administered and who will decide on the person's behalf when he or she has become incapable of discernment (known as the therapeutic representative). The patient lacking the capacity of discernment is involved as far as possible in making the decision (Civil Code, art. 378), but it is the person's authorized representative who formally takes the decision.

87. In the matter of organ donation, medically assisted reproduction or human DNA analysis, the different federal laws regulate consent in relation to the medical measures planned, such as organ donation during one's lifetime or after death, sperm donation or recourse to in vitro fertilization or participation in DNA analysis.<sup>24</sup> The independent body that ensures respect for these rights is in general the cantonal health monitoring authority. Each canton has its own system, which may involve the cantonal doctor or a health professions monitoring commission. It is in principle empowered to receive complaints from patients who consider their rights to have been violated. Some cantons have produced brochures to inform patients of their rights. The cantonal authorities responsible for adult protection can also act to protect the rights of patients with impaired discernment (Civil Code, art. 373). With regard to private bodies, the Swiss Patients Organization or the Patients Federation help patients to claim their entitlements, mainly by offering them advice.

88. The Sterilization Act prohibits the sterilization of persons under 18 years of age. Sterilization is also in principle prohibited for persons over 16 years of age who are

<sup>24</sup> See the Transplantation Act (arts. 8, 12, 13, 39 and 40), the Federal Act on Medically Assisted Procreation (arts. 7, 15, 16, 18 and 34) and the Federal Act on Human DNA Analysis (arts. 5, 18, 19, 20, 22, 30, 32, 33, 34 and 36).

permanently incapable of discernment, but may exceptionally be authorized under certain (cumulative) conditions. The conditions are in particular that sterilization should be practised in the interest of the person concerned, that there are no other means of preventing the conception and birth of a child (reversible methods), that separation from the child after birth is inevitable, or that the pregnancy would seriously endanger the health of women and that the person has no chance of acquiring the capacity for discernment. The wish of the person concerned must at all times be respected. Thus, if the person who had previously consented to sterilization opposes it, even just before the intervention, it cannot be carried out.

## **Article 18 – Liberty of movement and nationality**

89. Various elements are important with respect to this provision and they will be discussed below. Firstly, they concern freedom of settlement and movement throughout the country and also between the cantons, in particular for persons with disabilities living in institutions and who are able to travel to an establishment outside their canton of domicile. Next, they have to do with the acquisition and loss of Swiss nationality, on which subject the law contains some provisions specific to persons with disabilities. Finally, a description will be given of the practice of registry offices with regard to the registration of children at birth.

90. Provision is made in articles 24 and 25 of the Federal Constitution for freedom of settlement and protection against expulsion, extradition and refoulement. These provisions apply without discrimination to persons with disabilities. Swiss citizens have the right to settle in any part of the country, to leave Switzerland or to enter it. For persons with disabilities living in institutions, inter-cantonal mobility between different institutions is important. This matter is regulated in the Inter-Cantonal Convention on Social Institutions of 13 December 2002, which aims to ensure that people with specific needs in terms of care and management enjoy an untroubled stay in appropriate institutions outside their canton of domicile. However, the cantons have a limited number of available places for obvious reasons of logistics and cost. All cantons do not have the same type of institutions and, for lack of space, a person with disabilities may have difficulty in being cared for in the institution of his or her choice. The limitations that persons with disabilities may encounter in their choice of institution is the result of the lack of places rather than of cantonal boundaries.

91. The Federal Act on Swiss Citizenship regulates the acquisition and loss of Swiss nationality. There are two ways of acquiring and losing Swiss nationality: by law or by decision of the authorities. A person acquires Swiss nationality at birth provided at least one of the two married parents is Swiss or, where the parents are unmarried, if the mother is Swiss. If only the father of the child is Swiss, the child acquires Swiss nationality upon the establishment of filiation with the father. This is the acquisition of Swiss nationality by law. Swiss nationality can also be obtained by naturalization, which requires a decision by the authorities. There are three ways of acquiring Swiss nationality by decision of the authorities: ordinary naturalization, facilitated naturalization and reinstatement of nationality. Reflecting the federal structure of Switzerland, the procedure for ordinary naturalization is organized at three levels: every Swiss man and woman possesses, in addition to his or her federal right of citizenship, a cantonal and communal right of citizenship. This tripartite distribution is also found with regard to the responsibility for ordinary naturalization: the procedure involves the authorities of the Confederation, the canton and the commune.

92. The partial amendment of the Citizenship Act of 21 December 2007 introduced the requirement to justify any rejection of an application for naturalization and the right to appeal to a cantonal court against denials of naturalization.<sup>25</sup> Under the Federal Constitution, no one may be subject to discrimination on account of disability (art. 8 (2)). During the complete revision of the Citizenship Act (11.022), the special situation of persons with disabilities in the naturalization procedure was specifically addressed: the revised law

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<sup>25</sup> RO 2008 5911.

expressly provides that the evaluation of requests for integration (Citizenship Act, art. 12 (2)) should take appropriate account of the situation of persons with disabilities. This particularly concerns assessment of the requisite language skills and of financial independence, since in some cases persons with disabilities can ipso facto be unable to meet these specifications for naturalization. These new regulations incorporate the case law of the Federal Supreme Court and the constitutional prohibition of discrimination against persons with disabilities. The revision of the Citizenship Act was approved by the Federal Chambers on 20 June 2014;<sup>26</sup> the Act has not yet come into force.

93. Article 18 (2) of the Convention on the Rights of Persons with Disabilities corresponds to article 7 (1) of the Convention on the Rights of the Child. There is no difference as regards the registration of a child in the computerized register of civil status and name, whether he or she is disabled or not. New-born children are treated equally regardless of their health status. Most births are announced by the medical staff, since they take place in hospital, a birth centre or a similar institution (Ordinance on Civil Status, art. 34a). In the rare cases of births outside these institutions, those present have a duty to report the fact (*ibid.*, art. 34b). The declaration must be made within three days of the birth. The birth is registered in the district where it took place. Every new-born receives the first name or names chosen by the parents and a surname, which constitute his or her identity.

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

94. To promote independent living and inclusion in the community, various measures exist in Switzerland. These include social security benefits, the provision of places in institutions adapted to the needs of those concerned, mentoring services and measures to ensure access to services. Recent years have been essentially marked by the introduction of a new disability insurance benefit, namely the personal assistance allowance, and the increasing diversification of specific housing provision. In addition, several municipalities have created green spaces or recreational areas in recent years, enabling persons with and without disabilities to come together in urban areas.

95. People living in institutions: during 2009, a total of 37,553 people were cared for in institutions for persons with disabilities, a third as external patients and two thirds as residents. Nursing homes also accommodated 128,880 people, of whom a very large majority were elderly persons unable to live independently in their own homes. A majority of those accommodated in institutions for persons with disabilities suffered from a mental or psychological disability (56 per cent and 20 per cent respectively). On the other hand, physical disabilities, mostly found among the population living at home, concern only a minority of persons in institutions.

#### **Social security benefits**

96. Social security benefits are designed to maximize the financial and personal independence of insured persons. Pensions and daily allowances compensate for the loss of revenue in the event of partial or complete inability to earn and enable recipients to retain their financial independence. If the pension and daily allowance rates are insufficient to cover basic needs and ensure an adequate standard of living, supplementary benefits make up the difference. Several benefits are specifically designed to maximize the independence of insured persons:

- The helplessness allowance (a benefit provided by disability insurance, old-age insurance or accident insurance, as applicable): it is intended for any person who, due to a health problem, needs permanent assistance from another person or personal surveillance in order to carry out the essential activities of everyday life. Persons may use the helplessness allowance as they wish;
- Disability insurance (DI) supplementary aids should help insured persons to engage in gainful employment, carry out their usual tasks, maintain their earning capacity, study, learn a trade, develop their skills or practice functional habituation. Aids used

<sup>26</sup> FF 2014 5001.

for travel by insured persons are also provided, as well as those for communicating with the family (electrical and electronic communication devices and environmental control devices) or for developing their independence (installation of toilet-shower facilities, invalid lifts, electric beds, stair lifts and other devices for the insured person's home), regardless of earning capacity. Depending on the case, accident, old-age or health insurance may also serve to cover the cost of supplementary aids, each branch having its specific conditions;

- In accordance with article 112c of the Constitution, the Confederation supports the efforts at national level for the benefit of persons with disabilities. On the basis of article 74 of the Disability Insurance Act, disability insurance allocates grants to umbrella organizations active nationally or in a linguistic region that offer private assistance in the form of specialized aid and mutual assistance to persons with disabilities. About 70 per cent of the grants is used to pay for counselling and care or for courses for disabled persons and their families. The remainder of the funds is used for services from which persons with disabilities benefit indirectly, such as information and public relations campaigns or projects aimed at developing mutual assistance.

### **More specifically, the personal assistance allowance**

97. Special mention should be made of the DI personal assistance allowance (covered by old-age insurance when the recipients receive an old-age pension and when the relevant conditions continue to be met): it is paid to beneficiaries of a helplessness allowance living at home. The personal assistance allowance enables recipients to employ a personal assistance under a work contract in order to provide them with the regular help they require. This is a benefit introduced in 2012, with the specific aim of encouraging incapacitated persons to remain in their homes. The personal assistance allowance is subject to an evaluation, consisting of three interim reports (June 2014, June 2015 and Spring 2016) and a final report scheduled for Spring 2017.<sup>27</sup> The first interim evaluation shows that the objectives of increasing the autonomy of persons with disabilities, their quality of life and their freedom to organize their lives have been achieved, as well as that of relieving the burden on their relatives.<sup>28</sup> The introduction of the personal assistance allowance represents a considerable advance for persons with disabilities. It affords them greater independence and enables each of them to use the allowance according to his or her needs.

98. In addition to the DI personal assistance allowance, some cantons (for example, Bern and Thurgau) provide for assistance benefits regulated by cantonal law.<sup>29</sup> In the canton of Bern, persons with disabilities, sometimes severe, wish increasingly to live at home despite their general need for personal assistance. The canton of Bern therefore supplements the DI personal assistance allowance with the help of the canton's own assistance budget. The adult recipients of a helplessness allowance must be able to choose freely between various service providers, regardless of the nature of their disability. In this way, Bern's pilot project assistance budget reinforces the compromise between professional support (nursing homes, home help and care services, workshops, etc.) and voluntary work.<sup>30</sup>

### **Home help and care**

99. Where neither accident insurance nor disability insurance are involved, compulsory health insurance comes into play. The benefits under this insurance derive from the

<sup>27</sup> Interim assessments are available on the website of the Federal Social Insurance Office (OFAS) under the following link: <http://www.bsv.admin.ch/dokumentation/publikationen/00098/index.html?lang=fr> [consulted on 24.02.2016].

<sup>28</sup> Federal Social Insurance Office, "Interim assessment: DI personal assistance allowance meets its objectives", Media Information, Berne, 18.08.2014 [accessed on 24.02.2016].

<sup>29</sup> Article 112b of the Federal Constitution requires the cantons to encourage "the inclusion of persons with disabilities, in particular through contributions to the construction and running of institutions that provide accommodation and work".

<sup>30</sup> See the following link: <http://www.assistenzbuerro.ch/de/assistenzbudget-kt-bern/default.aspx> (German only) [accessed on 24.02.2016].

catalogue of services in the Swiss Health Insurance Act. On this basis, the Act admits home help and care organizations as benefit providers. The licensing and the framework conditions under which they operate are the responsibility of the cantons. The organizations concerned pay the benefits included in the Health Insurance Act catalogue, which are the only ones for which the insurers are responsible.

100. The Swiss system of home help and care (non-profit) is organized on a federal basis. Home help and care services exist in the form of communal, regional and cantonal associations or of foundations.<sup>31</sup> Home help and care are co-financed by the contributions of the public authorities, insurance providers (compulsory health insurance, disability insurance, etc) and insured persons. The Swiss Association of Home Help and Care Services is the umbrella association of this branch of home help and care.<sup>32</sup> It establishes guidelines and standards for member cantonal associations and is responsible for coordination activities on behalf of the Confederation.

101. Few persons with disabilities living in a private household call upon the services of home help and care. In 2012, only 2 per cent made regular use of these services during the twelve months preceding the survey and 2 per cent did so intermittently. The corresponding proportions among persons without disabilities are appreciably lower and do not reach 1 per cent. As regards the total number of recipients of home help and care services, people with and without disabilities have almost equal recourse to nursing and person care and to other forms of assistance (meals service, transportation, etc). On the other hand, persons with disabilities call on home help more often (67 per cent compared with 41 per cent).<sup>33</sup>

102. Persons with disabilities have regular (18 per cent) or temporary (20 per cent) recourse to the assistance of family members or acquaintances in almost identical proportions, whereas persons with severe disabilities have significantly greater need of regular (46 per cent) rather than temporary (16 per cent) informal assistance. On the other hand, non-disabled people almost never have regular recourse to such assistance, while 8 per cent do so on a temporary basis. Most of the persons with disabilities who have received informal assistance over the past twelve months have done so in the form of home help (74 per cent) or other assistance such as moral support or help with transportation (60 per cent). These proportions are clearly higher than among persons without disabilities (59 per cent of whom received home help and 52 per cent other forms of assistance). Contrary to the assistance provided by home help and care services, the help of relatives and acquaintances is less focused on nursing and personal care and much more on other kinds of support. Among the persons with disabilities receiving no informal help, 22 per cent would like to receive it.

### **Institutions for the promotion of inclusion**

103. The Federal Act on Institutions for Promoting the Inclusion of Persons with Disabilities seeks to enable every disabled person who needs and desires it to have access to an institution, irrespective of his or her financial situation, personal circumstances and state of health. Each canton has to ensure that persons with disabilities domiciled in its territory have at their disposal in social institutions a supply of places adapted to their needs. A supply of places adapted “adapted to their needs” means that the supply of places should meet their needs in quantitative terms, but also that it should take into account the diverse forms of disability and other aspects such as preservation of the social network and language. It also means that the benefits should represent a reasonable cost for the public authorities in relation to the advantage they offer to persons with disabilities.

104. Life within institutions is undergoing fundamental changes. Apart from the forms of communal living in institutions, there is an increasing growth in types of housing that offer

<sup>31</sup> The Swiss Association of Home Help and Care Services, *How Is Non-Profit Home Help and Care Organized?* <<http://www.spitex.ch/Monde-ASD/Structure-financement/PAL3U/>> [accessed on 24.02.2016].

<sup>32</sup> <http://www.spitex.ch/>.

<sup>33</sup> Equality statistics for persons with disabilities: <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06.html>, year 2012/2013.

greater individuality and maximum independence, such as individual sheltered accommodation.

105. The canton of Bern is currently piloting a system based on individual needs (financing the subject rather than the object). On 1 January 2014, the canton of Bern launched a strategic plan to give persons with disabilities greater independence. The canton finances firstly the individual needs for assistance of adults with disabilities and only secondly the institutions providing the benefits. It is thereby gives effect to its strategic plan for persons with disabilities, which provides for more self-determination, autonomy and participation in social life. The new scheme has concerned 80 persons since 1 January 2016, the registration procedure for the other 500 places available from the following year has already been launched. From 2017, one thousand extra people will be able to benefit from the new arrangement.<sup>34</sup>

### **Accessibility of services**

106. In furtherance of independent living, the Disabled Persons Act aims to eliminate inequalities in access to services. The Act has already produced some improvements over the past ten years. However, access to services is still not reliable in many areas, as Federal Statistical Office data make clear.<sup>35</sup> The overall indicator of access to public services is based on five groups of services: general stores, postal services, banking, public transport and medical services. It indicates the greatest degree of difficulty. Access to the different services is considered easy or very easy by a majority of the population, but persons with disabilities indicate more often that access to such services is difficult or very difficult. Between 14 and 19 per cent reported difficulties of access depending on the service concerned (in 2012), compared with 8 to 11 per cent among the general population. Basic medical and banking services are regarded as the least accessible. In 2016, the Conference of Cantonal Ministers of Social Affairs adopted recommendations for policy development concerning children and young people in the cantons. The recommendations were aimed, inter alia, at improving the living conditions of children and young people in the cantons and ensuring that they have equal and appropriate access to the benefits to which they are entitled.

## **Article 20 – Personal mobility**

107. The personal mobility of persons with disabilities is facilitated, in particular, by the granting of DI aids. This topic thus overlaps with article 19 on living independently and article 9 on accessibility. Access to transport is an important factor of personal mobility. Some elements are based on the aforementioned articles.

108. A majority of persons with disabilities (88 per cent in 2012) claim to be able to use public transport independently without difficulty. Six per cent experience some difficulty, three per cent great difficulty and three per cent cannot use buses and trains at all without help. In the case of persons with severe disabilities, the proportions are higher: one in three experiences at least some difficulties in moving around in public transport, and one in ten cannot do so at all.<sup>36</sup>

### **Aids**

109. Various aids support people with disabilities in their daily lives and enable them to perform their everyday activities by themselves. The aids made available by the various social insurance schemes are intended to mitigate the loss of a limb or bodily function.

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<sup>34</sup> For more information, see the Report on the disability policy of the canton of Berne and the canton's strategic plan for the inclusion of persons with disabilities:

<http://www.gef.be.ch/gef/fr/index/direktion/organisation/alba/publikationen/behinderung.html> [accessed 06.06.2016].

<sup>35</sup> See the following link: <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06/blank/key/06/04.html> [accessed on 24.02.2016].

<sup>36</sup> See the following link: <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06/blank/key/06/04.html> [accessed on 24.02.2016].

Such technical aids enable disabled persons to perform an activity that the disability prevents them from doing normally. The insurer bears the cost if the insured person requires special training to use the aid concerned. The help provided by an able-bodied person to a disabled person may, in some cases, be considered an aid (third-party service).

### **Transport**

110. Persons with disabilities who receive a disability insurance pension have a “DI recipient identity card”. The same is true of those receiving a helplessness allowance. These cards enable persons with disabilities to obtain discounts from certain public transport bodies (including the Federal Railway).

111. Federal law stipulations regarding the accessibility of public transport concern not only the construction of buildings or facilities but also include requirements concerning the optical and acoustic aspects of information supplied to users. The Ordinance on the Technical Requirements for Engineering Public Transport to Meet the Needs of People with Disabilities provides that those who are in a position to frequent the public domain autonomously and freely should also have independent access to public transport services. If, for reasons of proportionality, this requirement cannot be met by technical means, public transport companies must provide the necessary assistance through their staff. Furthermore, travellers with disabilities enjoy preferential rates with public transport companies.

112. The Disabled Persons Act and related ordinances provide for equality of treatment between persons with and without disabilities. The norm of the Swiss Association of Road and Transportation Experts is likewise binding with regard to bus stops. At the end of 2014, the Association adopted standard SN 640075 on the Free Movement of Pedestrian Traffic. Travellers with disabilities are entitled to travel documents at reduced prices for journeys in Switzerland and international travel. In addition, they may be accompanied free of charge by an assisting person or a guide dog.

## **Article 21 – Freedom of expression and opinion, and access to information**

113. Apart from the general protection set out in article 16 of the Constitution, which guarantees freedom of opinion and information, the Act prohibits inequalities in all the services provided to the public, including information and communication services (see note 54 of this report).

114. In recent years, Switzerland has placed the emphasis on Internet accessibility. Different approaches have been and are being pursued in order to make all the information on the Web accessible. As indicated in the comments on article 9, this requirement has led to substantial improvements.

115. A very large majority of persons with disabilities have a computer for private use (94 per cent in 2013). In 2009, the proportion was 88 per cent and 86 per cent also had Internet access at home. Similarly, 88 per cent had a mobile telephone for their personal use. Among the young generation (aged 16 to 39), these rates were even higher, and no significant differences were observable between persons with and without disabilities. Among the succeeding generation (aged 40 to 64), persons with disabilities possessed such equipment a little less often than those without disabilities. The lowest rates of equipment were found among persons with severe disabilities, of whom only 81 per cent possessed a portable personal telephone. Finally, a gender impact was observable in the overall population as well as among persons with disabilities: women possessed a computer slightly less often and had less access to the Internet.<sup>37</sup>

116. The Swiss ordinance on radio and television makes it obligatory to provide benefits for persons with disabilities (Federal Act on Radio and Television, art. 7 (3); see also paragraph 4 of the amendment of 26 September 2014, FF 2014 7085, and the Federal Act

<sup>37</sup> See the following link: <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06/blank/key/06/02.html> [accessed on 17.03.2016].

on Radio and Television, art. 24 (3) in relation to the Swiss Broadcasting Corporation). A special feature of the Swiss television market is that about 60 per cent of market shares belong to foreign television stations, which do not have to comply with the obligations laid down in the Act. The most extensive obligations are those placed on the Swiss Broadcasting Corporation, which offers programmes in all the linguistic regions of Switzerland. The Corporation has market shares of between 35 and 40 per cent in each linguistic region. Its programmes offer subtitling, sign language and audio description. The aim of the Swiss Government is to increase continuously the scope of the obligations placed on the Corporation. It is very cooperative and has defined the benefits it provides for persons with disabilities in an agreement concluded with the main associations of the community concerned.

117. The ordinance on radio and television provides for a system in which the Corporation is required to conclude an agreement with associations so as to identify content that places the emphasis on measures to promote access (including subtitling). The present agreement was concluded on 13 June 2012 and will, in all likelihood, be renegotiated during 2017 with a view to closer alignment on the Convention on the Rights of Persons with Disabilities. This system has the advantage of encouraging the main associations representing persons with disabilities to engage in direct discussion with the Swiss Broadcasting Corporation to target the final benefits they seek.

118. The Corporation is required to increase gradually, up to one third of total transmission time, the proportion of subtitled television programmes broadcast in the context of editorial programmes in each language region. The Corporation should also broadcast daily in each official language at least one news programme in sign language and at least two films per month in each official language with an audio description for the visually impaired. Other broadcasters of national or regional linguistic television programmes should offer the visually or hearing impaired a broadcast adapted to their needs at least once a week, at peak viewing hours.

119. The Federal Constitution guarantees the freedom to use any language (art. 18); sign language is part of that freedom. The cantons of Zurich and Geneva moreover expressly guarantee the recognition of sign language in their respective constitutions.<sup>38</sup> Article 14 of the Disabled Persons Act requires the authorities to take account of the particular needs of persons with speech, hearing or sight impairments in their relations with the population.

120. With regard to access to information for persons with mental disabilities, language that is easy to read and understand is developing increasingly in Switzerland. Various projects to promote it have received support.

## **Article 22 – Respect for privacy**

121. Respect for privacy is guaranteed both by the international commitments assumed by Switzerland and by its Federal Constitution. Provision is made for respect for privacy in article 8 of the European Convention on Human Rights, and article 13 of the Federal Constitution affirms the right to respect for privacy and family life. A key element of privacy is data protection, particularly where the data is sensitive. Data protection is extensive in Switzerland, covering various domains.

122. Protection of the data of persons with and without disabilities is identical, no distinction being made between them. This protection is guaranteed in international conventions (Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, RS 0.235.1; European Convention on Human Rights, art. 8) and is regulated in several laws, the main one being the Federal Data Protection Act, the purpose of which is to protect the personality and fundamental human rights of persons whose data are subject to processing by federal bodies or private entities. The Act establishes, in particular, the federal official responsible for data protection and transparency, who is tasked in particular with supporting, advising and overseeing the

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<sup>38</sup> Article 12 of the Constitution of the Canton of Zurich and article 16 of the Constitution of the Canton of Geneva.

federal bodies and private individuals. The federal bodies and private persons are subject to the Federal Act on Data Protection, while the cantonal and communal authorities are subject to cantonal data protection laws.

123. The processing of personal data is also protected under civil law, particularly article 27 of the Civil Code, which governs protection of the personality. The unjustified processing of personal data is considered an unlawful infringement. Doctors, dentists and medical auxiliaries are prohibited, under the professional secrecy code, from disclosing information that they have obtained in the course of their professional activity. The professional secrecy code prohibits officials from disclosing information that they have obtained in the course of their duties. The cantonal health laws also provide for data protection under the professional secrecy code. More specifically, the provisions of the Federal Act on Research involving Human Beings (arts. 41 to 44), the Transplantation Act (arts. 57 to 60) and the Federal Act on Human DNA Testing (arts. 7, 19 and 23) contain provisions protecting private data in those specific areas.

124. In the case of unlawful data processing, the person affected may request that the data processing cease, that its unlawful character should be recognized and that its effects should be eliminated. The person may also request that data be destroyed or corrected or that communication to third parties should be blocked.

### **Article 23 – Respect for home and the family**

125. Respect for home and the family is guaranteed under the Federal Constitution (arts. 13 and 14), as well as in international treaties to which Switzerland is a party. Different aspects of respect for home and the family may be singled out, in particular the right to marry, access to parenthood and consideration of the welfare of the child.

#### **Marriage**

126. In order to marry, members of a couple must be over 18 years of age and capable of discernment. Swiss law does not permit marriage between relatives in direct line of descent, nor between brothers and sisters having the same parents, the same mother or the same father. The existence of a disability does not preclude access to marriage, so long as the person is capable of discernment. According to the Federal Court, the capacity of discernment required to contract a marriage is recognized when the fiancés are capable of understanding the existence of the couple, the rights and duties it entails, and are able to behave appropriately.

#### **Sexuality and right to have children**

127. Sexuality, as an elementary expression of the flowering of the personality, is protected by the right to privacy, as is the free choice of the form of married life (Constitution, arts. 13 and 14 (1)).

128. The central element in the right to family life is the right to have children and for one's parentage to be legally recognized. Persons with disabilities have access to medically assisted reproduction on the same terms as persons without disabilities. Medically assisted reproduction is reserved for couples who, in view of their age and personal circumstances, seem able to raise the child up to the age of majority. Medically assisted reproduction is also subordinate to the welfare of the child. If the couple with disabilities fulfils those conditions, recourse to medically assisted reproduction is possible. The written consent of the couple is required, so that it is necessary for the persons to be capable of discernment.

129. SEXUAL HEALTH Switzerland is an umbrella organization that brings together consultation and training centres for sexual health, as well as professional associations in these fields. It promotes information and counselling in the areas of contraception, pregnancy and sexual health, with special attention to vulnerable population groups. It coordinates in particular a platform of experts on sexuality and disabilities. Sexual assistance is recognized and permitted in Switzerland. Several private associations are engaged in grouping together certified sexual assistants (of both sexes) and organizing

contact between them and persons with disabilities. They also offer regulated sexual assistance training, for which applicants are subject to admission criteria.<sup>39</sup>

### **Welfare of the child**

130. The welfare of the child, that is, the child's best interests, is the cardinal principle of the rights of the child (Convention on the Rights of the Child, art. 3 (1)). The welfare of the child is assured when its basic needs are met in accordance with its age and circumstances. The child protection authority intervenes *ex officio* if it learns that the child's welfare is threatened and if persons who have parental authority or custody do not fulfil, or not sufficiently, their duty of protection (Civil Code, art. 307). The child protection authority has the same responsibility with regard to children placed with foster parents or otherwise living outside the family home (Civil Code, art. 307 (2)). Child protection measures must conform to the principle of proportionality. They are essentially intended to supplement the means available to the parents (subsidiarity; complementarity). The child protection authority has wide latitude to fulfil this mission, and it has various instruments that it may use in combination. It must, however, always choose the least intrusive of the means available to achieve a result (proportionality) and focus primarily on restoring the parents' ability to care for the child. If it is not sufficient to advise parents, to remind them of their duties or to issue instructions to them (Civil Code, art. 307 (3)), it may appoint a guardian to assist in the parental tasks (Civil Code, art. 308). If these measures are not adequate to avert the threat to the child's development, the protection authority may withdraw from the parents the right to determine the child's place of residence (Civil Code, art. 310) or, in the last resort, may revoke parental authority (Civil Code, arts. 311 and 312).

131. The child protection authority must place the child in a suitable location (Civil Code, art. 310). Placement in foster care (grandparents, foster families), in a supervised housing community or in an institution may be considered. The child protection authority must take its decision in line with the welfare of the child. A growing number of cantons possess a law on children and young people, in which socio-educational measures are described.<sup>40</sup> The cantonal laws on children and young people seek to protect all children and to apply measures in keeping with their situation. Article 2 of the Convention on the Rights of the Child emphasizes the principle of non-discrimination and calls on States parties to undertake to respect and ensure children's rights without discrimination of any kind and to take all appropriate measures to that end. Article 23 of the Convention specifies the conditions to be enjoyed by children with disabilities.

### **Article 24 – Education**

132. The right to adequate and free basic education, and the provision of quality training and continuing education for all individuals, including those with disabilities, are at the heart of the right to education in Switzerland. With regard to the skills and needs of persons with disabilities, the education system is evolving. In recent years, greater account has been taken of the specific needs of persons with disabilities in regular educational structures, both at the basic education level and in other forms of training and continuing education. More specifically, the foundations have been created, and these now need to be integrated in practice. Apart from taking due account of the specific needs of persons with disabilities at the different levels of the education system, a challenge to which more attention should be paid is that of coordination at the interfaces and at the level of the transition to professional activity.

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<sup>39</sup> See, *inter alia*, the Corps Solidaires associations < <http://corps-solidaires.ch/> > and Sexualité Handicaps Pluriels < [http://sehp.ch/index.php?option=com\\_content&view=featured&Itemid=131](http://sehp.ch/index.php?option=com_content&view=featured&Itemid=131) > [accessed 24.02.2016].

<sup>40</sup> See, for example, article 23 of the Freiburg law on children and youth of 12 May 2006 (LEJ), RSFR 835.5 [accessed 24.02.2016].

### Compulsory and post-compulsory education

133. All children, including children with disabilities, have the right to an education suited to their abilities and needs under article 19 of the Constitution. This right is guaranteed by the obligation of the cantons to provide a basic education that is adequate in both qualitative and also spatial and organizational terms and that is accessible to all children. In State schools, this education is free of charge. The goal of basic education is to offer every individual proper preparation to live in the community by encouraging individual responsibility.

134. In accordance with article 62 (3) of the Constitution, the cantons should ensure that special needs education is provided to all children and young people with disabilities, up to the age of 20. In Switzerland, special needs education for children and adolescents takes place either in specialized schools, in small classes with adapted curricula, or in mainstream schools (integrative schooling) with the help of specialized educators. The Disabled Persons Act contains a provision on adequate schooling for children and adolescents with disabilities (art. 20) It stipulates that the cantons should ensure that children and adolescents with disabilities receive a basic education adapted to their specific needs. They are also required to encourage the inclusion of disabled children in mainstream schools through appropriate forms of schooling. Cantons should ensure in particular that children and adolescents who have difficulties of perception or articulation, as well as their close family and associates, are able to learn a communication technique adapted to these difficulties. In this regard, it should be noted that, for the purposes of interpreting article 24 of the Convention, Switzerland has recourse to the Federal Act on the Elimination of Inequalities affecting Disabled Persons and to the legal bases of the cantons in the field of special education. According to the latter, preference should be given to integrative rather than separatist solutions, out of respect for the well-being and development possibilities of the child or young person and taking into account the school environment and organization. Switzerland considers that the requirements of the Convention in education are in this way met.

135. The number of students enrolled in special schools or classes rose until early 2000 before stabilizing, and even experiencing a significant decrease since the beginning of the 2006 school year as regards special classes. At the beginning of the 2008 school year, 24,000 pupils were enrolled in special education and 15,200 in special schools.

136. Up to 2013, statistics on early special needs education we gathered on the one hand by the cantons and on the other by the Swiss Association of Itinerant Education Services up to 2013. However, these statistics do not cover the whole country. The Association has gathered information on the nationality, age and sex of the child as well as on the persons reporting the child, the institutions coming after early education and the reasons for ending the therapeutic follow-up. Concerning the statistics of compulsory education, the Federal Statistical Office and the cantons have implemented the project “Modernization of statistical records in education” to better reflect the current situation in the field. This project is concerned with the statistics of students, diplomas, school staff and training institutions. Under the project, the Swiss Special Education Centre in 2010 established a working group entitled “Special Education Statistics”, aimed at defining new information needs in the field of special education and proposing approaches to implementation. The first census employing the new model was undertaken with respect to the 2014/15 school year.

137. Measures for the special education of children and young people aged 0–20 are coordinated in an inter-cantonal agreement on collaboration in the area of special education. The Concordat on Special Education establishes a framework valid throughout Switzerland for the most important measures in this field. The strategy is based on the following principles:

- Special education forms part of the public training mandate;
- Preference should be given to integrative rather than separatist solutions, out of respect for the well-being and development possibilities of the child or young person concerned and taking into account the school environment and organization;

- The principle of free schooling is applicable in the field of special education, although parents and guardians may be required to make a financial contribution towards the cost of meals and care;
- Parents and guardians are associated with decision-making procedures relating to the allocation of special education measures.

138. The Concordat contains a set of uniform instruments applicable to Switzerland as a whole in the areas of terminology, quality standards for the recognition of service providers, and a standardized assessment procedure for determining individual needs. The Concordat stipulates that all children and young people with special educational needs residing in Switzerland are entitled to benefit from special education measures. The provision of measures is established by the cantons and includes the following services: advice and support; early special education, speech therapy and psychomotor therapy; special education measures in regular or specialized schools; provision of care in special education day centres or residential institutions (as required).

139. Following compulsory education, young people are entitled to support in the framework of initial or general vocational training at secondary II level. These young people are also eligible for vocational guidance to support them in their choice of training (Disabled Persons Act, art. 15). Other measures may also be applicable in certain cases, such as those under the Vocational Training Act (e.g. individual professional coaching).

140. As a result of the direct applicability of the Disabled Persons Act in the area of competence of the Confederation (including vocational training) and the corresponding article of the Constitution, institutions and State educational authorities are required to prevent unequal access to training and continuing education. The use of auxiliary means specific to disabled persons or the personal assistance they require must therefore be granted to them, while the length and type of training opportunities offered to them and the examinations they must sit should be tailored to the specific needs of the persons concerned.

### **Vocational training**

141. Under article 1 of the Federal Act on Vocational and Professional Education and Training, the Confederation assumes responsibility in the field of vocational training, defined as the shared task of the Confederation, the cantons and organizations from the world of work, for encouraging to the best of its ability, through grants or other means, the initiatives of the cantons and organizations from the world of work. The implementation of initial vocational training opportunities is also the responsibility of the cantonal authorities and training enterprises. The Federal Act encourages and develops in particular the elimination of discrimination affecting disabled persons in vocational training (art. 3c). Initial vocational training opportunities at Certificate of Vocational Training level (two years) or Certificate of Higher Education and Training level (three or four years) are accessible to everyone. The initial two-year vocational training provides an opportunity for young people and adults whose skills are mainly practical; in this way they possess a recognized qualification and can enter directly into a life-long apprenticeship. The length of initial vocational training may be extended for persons who have learning difficulties or disabilities. The Federal Council issues specific provisions on specialized individual coaching for persons engaged in two-year initial vocational training who have difficulties. The extension of initial vocational training, as well as recourse to professional individual coaching, come within the remit of the cantonal authorities.

142. Evaluation of the Disabled Persons Act has pointed up a trend in the field of post-compulsory education at secondary II level. The actors concerned have taken important decisions, sometimes under the indirect influence of the Act: they have developed databases, for example to increase the practical possibilities of integrating persons with disabilities, have considered the idea of paying compensation for inequalities and have launched a number of interesting pilot projects, pooling experiences that add up to more than just particular cases. However, the organization of a vast integrated training scheme at the post-compulsory stage conceived as a natural task of regular educational structures remains at an early stage however. Resistance still has to be overcome. Moreover, there are problematic

gaps at Transition 1 (from compulsory to post-compulsory education) as well as for persons with limited opportunities in the labour market.

### **Higher education**

143. For a number of years, under the heading of “diversity”, the universities of applied sciences and arts (*hautes écoles spécialisées*) have developed policies, plans and activities, as well as specialized posts, to promote unimpeded access by persons with disabilities to tertiary education. Thus, in the framework of the 2013–2016 action plan, the university bodies concerned developed guidelines explaining the different dimensions of diversity, adapting their web pages for those with hearing or visual disabilities, creating networks and exchanging information on workshops, and signing charters promoting the inclusion of persons with disabilities in the labour market. Some of these universities have created specialized posts in order to provide advice and practical assistance. While this represents a promising start, equality of opportunity for persons with and without disabilities has yet to be achieved, and it will be further promoted under the Act on Encouraging and Coordinating the Universities of Applied Sciences and Arts, in force since 2015.

144. Indeed, article 59 of the Act provides for supporting cooperation projects in the area of equal opportunities. Swiss universities and the universities of applied sciences and arts have developed guidelines and established posts of delegates to students with disabilities. Officials in the universities of applied sciences and arts exchange information regularly on the implementation of measures. The universities concerned are in contact with umbrella organizations, practise effective communication to meet the needs of persons with disabilities, and organized a national conference at the University of Base in 2013.

### **Training of professionals**

145. The various types of training take place in the higher teacher education institutes, the universities of applied sciences and arts and the universities. Specialized teachers operate at all levels of regular schools and special schools. They identify the need for educational support as well as pupil strengths, and on that basis develop personalized educational projects. They support the students to enable them to acquire the necessary knowledge and skills to meet the learning objectives set and to manage their everyday lives as independently as possible. To achieve this, educational, personal, social and professional development is taken into account and the pupil’s environment is also involved in the process. In the years to come, the question must be asked whether the teaching staff of the regular schools and the specialized teachers in the integrative structures are well prepared to fulfil their tasks or whether their training should be adapted.

146. In general, the Swiss Special Education Centre advises and supports the authorities, professionals and members of the public interested in questions relating to the education, development and inclusion of persons with disabilities with special educational needs. It fosters exchanges between the scientific world, the authorities and the practical realm; it analyses and explains different issues in the special education environment and develops perspectives and concepts.

### **Disability insurance measures**

147. DI vocational measures (Disabled Persons Act, arts.15 to 18 (d)) are intended to help persons with disabilities to exercise a trade in order to earn a living. Depending on age, training and work status, disability insurance can provide various vocational measures, always with the aim of avoiding the adverse financial consequences of disability. In the field of education, these measures consist mainly in career counselling and initial vocational training for young people who have not yet entered paid employment. Disability insurance endeavours as far as possible to provide training in the primary labour market.

148. The Federal Council has formulated guidelines for the next stage in the development of disability insurance, beginning in 2015.<sup>41</sup> One of the major aims is for support to children and young people to be provided at an earlier date and for it to be more effective and better coordinated so as to improve their situation and boost their rehabilitation.

## Article 25 – Health

149. Access to health care is guaranteed to all in Switzerland. A right to basic health care derives from the right to dignity (Constitution, art. 7) and the right to assistance of persons in need (Constitution, art. 12). It entails the right to basic medical care, necessary to sustain life and respect for basic dignity. A right to health care is also generally enshrined in the cantonal constitutions. No distinction is made between persons with and without disabilities.

150. While the majority of non-disabled people (93 per cent in 2010) consider themselves in (very) good health, only half of those with disabilities (44 per cent) do so. On the contrary, 16 per cent of the latter describe their health as (very) bad, and this proportion rises to 37 per cent among severely disabled persons. It is not possible to gauge the extent to which disability constitutes the cause or the consequence of this poor health (nor even whether it contributes to it or not). This observed difference in health is not due to the fact that persons with disabilities are older: it is found among those aged 16 to 39 as well as those in the 40–64 age group.<sup>42</sup>

151. The Swiss health system is based primarily on health care insurance, which covers necessary health care, provided it is appropriate and meets the criteria of adequacy, economic efficiency and effectiveness. There is no discrimination in the area of compulsory health care insurance. The insurer cannot refuse anyone or enter reservations.<sup>43</sup> Health care insurance, regulated by the Health Insurance Act, constitutes what is called “basic” insurance; it is compulsory. Any person domiciled in Switzerland must obtain insurance cover within three months of taking up residence or being born in Switzerland. Insured persons may freely choose their insurer, who must accept anyone required to take out insurance.

152. In addition to compulsory health care insurance, persons may take out supplementary insurance offering coverage for benefits not included in the catalogue of health care insurance. This insurance is governed by private law; insurers can therefore enter reservations with regard to certain pathologies and/or refuse to insure certain persons.

153. Disability insurance covers the cost of two types of medical measures for insured persons under the age of 20. It applies firstly to measures aimed directly at vocational rehabilitation and which are likely to improve earning capacity in a sustained and significant manner or protect it from marked decline. Secondly, it includes measures necessary to treat congenital illnesses, regardless of future earning capacity. For insured persons over 20 years of age, treatment expenses are borne by health care insurance or accident insurance.

154. The “Health 2020” comprehensive strategy, adopted by the Federal Council in January 2013, defines four main fields of action: (1) ensuring the quality of life; (2) strengthening equal opportunities and individual responsibility; (3) ensuring and improving the quality of care; and (4) ensuring transparency and improving control and coordination. Measures in progress or planned to strengthen equality of opportunities for persons with disabilities include laying the strategic foundation for reducing inequalities in the health field, strengthening skills in this domain and increasing respect for the rights of patients. In the field of ‘quality of life’, particular attention is furthermore being paid to the promotion of mental health.

<sup>41</sup> Explanatory report on amendments to the Federal Act on Disability Insurance (Continued Development of Disability Insurance), see the following link:

[https://www.admin.ch/ch/f/gg/pc/documents/2667/Assurance-invalidite\\_Rapport-expl\\_fr.pdf](https://www.admin.ch/ch/f/gg/pc/documents/2667/Assurance-invalidite_Rapport-expl_fr.pdf).

<sup>42</sup> See the following link: <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06/blank/key/05/02>.

<sup>43</sup> See article 28 of this report for the general description of the social insurance system in Switzerland.

## **Palliative care**

155. Switzerland has a “National Palliative Care Strategy 2013–2015”, in which the Confederation, the cantons and relevant organizations and institutions participate; it aims to promote palliative care in Switzerland. A shared understanding of palliative care at the national level has been established on the basis of national guidelines drawn up in 2010.<sup>44</sup> They provide, inter alia, for specialized palliative care for patients with mental illness. Palliative care must be available for all, taking account of the gender-, age- and ethnicity-specific requirements of a disability or disease. The Federal Office of Public Health has also commissioned the Intercantonal University of Curative Education to draw up a report on “Actions to be taken in the field of palliative care for persons with intellectual disabilities living in homes for the disabled and to formulate possible measures”. These measures mainly concern institutions (e.g. continuous training in the provision of palliative care) as well as the cantons.<sup>45</sup>

## **Article 26 – Habilitation and rehabilitation**

156. Habilitation and rehabilitation programmes and measures fall almost exclusively within the remit of disability insurance. On the basis of the principle “rehabilitation before pension”, this scheme offers many aids and tools to enable participants to adjust or readjust to their private or professional environment. These different disability benefits are described below. The training of professionals is another essential component.

### **Habilitation and rehabilitation programmes and general services**

157. Disability insurance is based on the principle “rehabilitation before pension”. According to this principle, the disability insurance office must examine the possibilities of rehabilitation before considering the payment of a pension. A wide range of vocational rehabilitation measures, as well as related services and benefits, is available: job counselling, basic vocational training, professional development, reclassification, placement, capital grant or allocation of daily allowances and reimbursement of travel expenses. Person who find themselves unable to work and have the potential for rehabilitation are entitled to support in the search for employment suited to their circumstances. Disability insurance also offers support to the employer, who can receive a job training allowance and/or compensation for any increase in occupational pension contributions or in the cost of insurance against loss of income as a result of further work incapacity affecting the insured person.

158. For employed persons, rehabilitation measures are aimed at restoring, maintaining or improving the earning capacity of the insured person affected or threatened by disability. They are covered by disability insurance. Above all, disability insurance provides for early detection, making it possible to identify at the earliest possible moment persons showing signs that they could become disabled. Thus, workers who are unfit for work for 30 consecutive days or longer or who are absent repeatedly throughout the year can be declared to the disability insurance office with a view to early detection. Through early intervention, an initial series of measures can be taken rapidly and without difficulty so as to avoid persons partially or wholly unfit for work losing their job or so as to offer them new work. A rehabilitation plan is drawn up on the basis of a thorough analysis of the situation (evaluation) and specific measures are noted in a written performance contract. Measures that can be taken include adaptation of the workplace, training courses, placement, career guidance or socio-professional rehabilitation. Under certain conditions, insured persons have the right to a daily allowance if they are prevented by rehabilitation measures from being gainfully employed for at least two days (investigatory measures) or three days (rehabilitation measures) consecutively.

<sup>44</sup> OFSP/CDS, National Guidelines on Palliative Care, Berne 2010.

<sup>45</sup> M. Wicki, S. Meier, J. Adler, Soins palliatifs aux personnes en situation de handicap intellectuel, Zurich 2015.

159. Persons whose work capacity has been restricted by at least 50 per cent for a period of six months because of a psychological problem can qualify for reintegration measures. These measures are intended to create the conditions allowing for a vocational measure or a return to the job market. Reintegration measures either involve socio-professional rehabilitation or occupational activities.

### **Training of professionals**

160. Staff at disability insurance offices attend courses at the DI training centre, whose main function is to provide the offices with training and professional development adapted to their needs. The training centre offers them support in carrying out their work; the training and professional development it provides concerns job-related aspects as well as staff personal development. The Centre is also responsible for providing specific courses for the various partners of disability insurance offices in the fields of vocational rehabilitation, disability and disability insurance benefits.

161. In the field of initial vocational training, the State Secretariat for Vocational Training works closely with the cantons and organizations in the world of work. It offers financial support for the development of new professions and/or the review of existing professions. Development of the initial training of professionals working in the habilitation and rehabilitation services is thus furthered by training in the field of socio-educational assistant specializing in support for persons with disabilities. This profession is currently subject to a five-yearly review.

## **Article 27 – Work and employment**

162. According to the Federal Statistical Office, three out of every four disabled persons of working age (age 16–64 years) participated in the labour market in 2013: 72 per cent were employed and 4 per cent unemployed, making a total of 76 per cent of active participants.<sup>46</sup> Even among persons with severe disabilities, a majority was professionally active (57 per cent). The participation of persons with disabilities in the labour market is therefore substantial, even if it remains lower than for non-disabled persons (89 per cent).

163. Participation in the regular (or “primary”) labour market should not conceal the fact that many persons with disabilities are engaged in productive work in sheltered facilities adapted to their capabilities (or “secondary” market). This is particularly true of those living in institutions and participating in sheltered workshops linked to the institutions concerned. While some of these workshops have a mainly occupational function (which does not exclude a certain productivity), a growing number have moved in recent years towards a market-oriented approach, which presupposes a certain productive output and respect for the rules of business management. The work performed is therefore equivalent to a professional-level activity except for the fact that the workstations, supervision and wages are adapted to take account of the difficulties of the persons working there. This mode of functioning is also characteristic of independent sheltered workshops and other kinds of social enterprise, which are situated at the junction of the primary and secondary markets. In 2013, the number of sheltered workshops in establishments for persons with disabilities totalled 13,673. There were an additional 947 places in other types of medico-social establishments. There has been a sharp increase in these numbers since 2006 (start of the revised survey), especially in the field of substance dependency. Places in independent sheltered workshops or within enterprises are not recorded. During 2013, 18,122 people of all ages worked in workshops attached to institutions for persons with disabilities, with dependency problems or with psychosocial disorders (a majority as outside workers). They performed a total of 23.5 million working hours, or 27 hours per week per person. The number of workers has been rising since 2007. Fifty-one per cent of them had a mental disability and 90 per cent were receiving a disability insurance pension.

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<sup>46</sup> <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06/blank/key/03/05.html>.

### **Promoting inclusion in the world of work in the framework of disability insurance**

164. Disability insurance benefits are intended, inter alia, to prevent, reduce or eliminate disability through appropriate, simple and effective rehabilitation measures. The aim is to maintain or integrate the person affected or threatened by disability in the regular labour market. Over the last decade, the orientation of insurance towards reintegration has been reinforced, with the help of various measures in the context of three major reviews.

165. An early detection system was introduced in 2008. It consists in establishing contact, as early as possible, with persons whose work capacity is restricted for health reasons and whose illness threatens to become chronic. The aim is to maintain in their post insured persons unable to work or to retrain them to fill a new position in the same firm or elsewhere. The disability insurance office decides whether early intervention measures (adaptation of the work station, training courses, job placement, vocational guidance, socio-professional rehabilitation, occupational measures) are appropriate (Disabled Persons Act, art. 7d).

166. Measures specifically geared to remaining at or returning to work focus on vocational rehabilitation (*ibid.*, arts. 15 to 18d). They include:

- Vocational guidance for the insured persons whose disability makes choosing a profession or resuming a previous activity difficult;
- Basic vocational training for insured persons who have not yet been gainfully employed or whose basic vocational training, because of disability, has entailed much higher costs than for a person without disabilities;
- Redeployment to a new profession or rehabilitation in the same profession;
- Job placement, in the sense of active support in the search for suitable employment or advice with follow-up on keeping a job;
- Trial placement of 180 days maximum;
- Work induction allowance for 180 days maximum if the insured person has found the job as a result of the placement and if his or her productivity does not yet match the agreed wage; the allowance is paid to the employer;
- Compensation in the event of an increase in contributions: in other words, disability insurance provides compensation for an increase in contributions to mandatory occupational insurance or to the daily allowances insurance in the case of illness if the insured person is once again unable to work for health reasons within three years of the job placement and if the employment relationship has lasted over three months at the time when the new incapacity arises;
- Capital support to enable the insured person to undertake or develop a work activity independently and to finance the measures necessary for that purpose.

167. Insured persons are entitled to auxiliary aids for the purpose, among other things, of equipping a workstation and making the architectural alterations to help those concerned to get to work.

168. Evaluation of the measures taken in the context of the revisions carried out in recent years has shown that the movement from a pension-based insurance scheme to one focused on job inclusion is progressing well. The insurance could however do more for three groups of insured persons, namely children, young people and people with mental health problems. A draft law on the development of disability insurance is scheduled for submission to Parliament at the end of 2016. In order to improve the situation of these insured groups, it provides for expanding the existing rehabilitation measures and making them more flexible in order to ease the transitions between school, vocational training and the world of work.

### **Non-discrimination and equality**

169. Article 8 (2) of the Constitution provides for protection against discrimination on grounds of disability in public sector employment. In addition, the Disabled Persons Act applies to working relations between the Confederation and its employees. It is thus required to give the same opportunities to persons with and without disabilities. As regards

working relations at all levels, including at the time of appointment, the Confederation is obliged to use all means at its disposal to ensure equal opportunities for persons with disabilities (Disabled Persons Act, art. 13). In 2011, the Federal Council issued directives on access to employment and the inclusion of persons with disabilities in the federal administration, setting a target percentage for the recruitment of staff. Up to 2015, the percentage had risen from 1 to 2 per cent, the 1 per cent threshold having been reached in 2014. In 2013, the Confederation's Human Resources Conference moreover adopted a comprehensive strategy for the inclusion of persons with disabilities.

170. While work relations come under private law, the legal means to combat discrimination in recruitment come under civil law, i.e. under provisions on the protection of personality rights (Civil Code, art. 28) and the prohibition of abuse of rights (Civil Code, art. 2). This also derives from article 328 of the Code of Obligations on the protection of the personality of the worker. An infringement of personality rights is not unlawful if a justification can be invoked. It is for the employee to prove that the grounds for his or her non-recruitment are discriminatory (based on his or her disability for example), thereby constituting an infringement of his or her personality rights. In labour relations, article 328 of the Code of Obligations requires the employer to protect the personality of the worker and to safeguard his or her health. This provision thus entails the duty to make reasonable efforts to include workers with disabilities.

171. A recent study found that the protection against discrimination provided in public law is effective.<sup>47</sup> On the other hand, it found that provisions in private law have only a limited effect. The Federal Council therefore decided to study in detail the areas in which additional standards are needed, in particular with regard to employment.

172. Notice of termination is unlawful if, inter alia, it is given on account of an attribute pertaining to the personality of the other party (Code of Obligations, art. 336 (1) (a)). Code of Obligations). Thus, if a person with a disability is dismissed on account of his or her disability, the dismissal will be considered unlawful and the person dismissed will be entitled to compensation of up to six months' wages. An increase in this ceiling to 12 months of salary is currently under discussion. Employment relations in public law are generally subject to the laws governing Confederation and canton employees, which provide in principle that employment relations may only be terminated for objective reasons. The public employer has an increased duty of care as well as of role model. In the event of wrongful dismissal within the meaning of article 336 of the Code of Obligations and of an appeal against such a dismissal being granted, the Federal Employees Act provides for the reinstatement of the person concerned (Code of Obligations, art. 34c (1)).

173. With regard to the situation of women with disabilities in the labour market, Switzerland being a party to the Convention on the Elimination of All Forms of Discrimination against Women, article 11 of the Convention is wholly applicable in the country. In addition, the Gender Equality Act provides that the Confederation should make financial resources available for advancing equality in the workplace by supporting general promotion programmes and, up to 2016, advice services. The Federal Office for Gender Equality accordingly provides aid to projects for enhancing equality between women and men at work and in business, reconciling work and family life and promoting equality of career development. This aid can also help to reduce discrimination against women with disabilities in the world of work. From 2009 to 2016, a pilot project has also enabled the Federal Office for Gender Equality to grant financial aid to projects set up within companies with the aim of promoting equality. The budget for financial aid under the Gender Equality Act is fixed each year by Parliament. In 2015, it totalled 4.4 million francs (see article 6). In 2013, 69 per cent of women with disabilities and 78 per cent of men with disabilities were economically active, as understood by the International Labour Office. The gap between them is similar to that observed between men and women without disabilities (81 and 89 per cent). Women with disabilities are however less often unemployed and more often non-active than men with disabilities. This suggests that, when unemployed, they abandon looking for work more often than men. Part-time work is clearly a way for men with disabilities to remain active (17 per cent work less than 36 hours per

<sup>47</sup> See note 33 of this report.

week, compared with 9 per cent among men with no disabilities). Women with disabilities use that possibility also, but the difference between them and non-disabled women is less (59 per cent against 54 per cent) and, unlike men with disabilities, they more often invoke health reasons rather than family reasons to explain why they work part-time.<sup>48</sup>

### **Unemployment insurance**

174. Persons with disabilities who qualify for unemployment insurance are eligible for these benefits. They receive advice in the same way as non-disabled persons and can benefit, where necessary, from job market measures (courses, temporary employment programmes, etc). Work initiation allowances can in particular be very useful for persons with disabilities. They consist in support for hiring staff, provided unemployment insurance takes charge of part of the salary for a six-month period (in some cases twelve months) when induction to a particular work station is required.

## **Article 28 – Adequate standard of living and social protection**

175. The Federal Constitution guarantees to persons in need and unable to provide for themselves the right to care and assistance and to the financial means required for a decent standard of living (art. 12). It also prescribes that the law should provide for the elimination of inequalities that affect persons with disabilities (art. 8 (4)). Furthermore, in article 41, the Federal Constitution establishes a number of social goals (social security, health care, housing, etc). Various laws guarantee the implementation of this social dimension of the State. Social protection in Switzerland is based firstly on the social security system, under federal jurisdiction, and then, in complementary and subsidiary manner, by social assistance under the responsibility of the cantons.

176. The Swiss system of social protection is a comprehensive system designed to cover risks and guarantee persons in need sufficient means of livelihood and adequate participation in social life. It consists of social insurance provision at national level covering risks such as disability, accidents and sickness and offering old-age and survivors' insurance. It is supplemented by voluntary benefits and by cantonal and communal means-tested benefits (such as advances on maintenance payments, housing subsidies, supplementary benefits for families) that focus on specific cases of need and provide individual benefits adapted to particular circumstances. These assistance payments provide effective support to certain groups of vulnerable persons, such as persons with disabilities and single-parent families.

177. Access to the statutory social security schemes is guaranteed without discrimination on the basis of disability, and persons with disabilities are not subject to any particular additional condition. Compulsory health insurance and the basic pension scheme cover the whole population resident in Switzerland. All employees are covered by unemployment insurance and accident insurance. Benefits in kind for maternity are covered by compulsory health insurance, while maternity allowances are paid to female employees or self-employed workers under the system of allowances for loss of income. The family allowance scheme covers employees and self-employed persons as well as non-employed persons whose resources do not exceed SwF 42,300 per year. There are benefits that are specifically intended for persons with disabilities. These include measures and benefits under disability insurance, including all the measures in the employment field, the provision of additional aids, the disablement pension, the helplessness allowance and the personal assistance allowance. If the need for care, incapacity for work or disability are caused by an accident (work or non-work), accident insurance will also come into play (medical care, daily allowances, disability benefit, compensation for injury, helplessness allowance). In the last resort, a person who is not or is no longer eligible for social security benefits or whose social security benefits are insufficient can apply for social assistance benefits. Social assistance comes within the remit of the cantons, its implementation being generally delegated to the communes.

<sup>48</sup> For detailed results, see the following link:  
<http://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06/blank/key/03/01.html>.

## Housing

178. According to article 108 (1) of the Constitution, the Confederation should encourage the construction of housing, the acquisition of apartments and family homes for the personal use of individuals, as well as the activities of developers and organizations involved in the construction of social housing. Article 108 (4) provides that the Confederation should take particular account of the interests of families and of elderly, disabled or needy persons. The aim of the Federal Act on Affordable Housing of 21 March 2003 is to encourage the provision of housing for low-income households as well as home ownership. Particular account must be taken of the interests of persons with disabilities (art.1). The *Charter of Social Housing Developers in Switzerland* of 1 September 2004 brings together various actors and lays down principles for developers. They are required in particular to provide a living environment for all social groups and to pay special attention to persons with disabilities.

179. The Federal Housing Office has produced, in collaboration with the Swiss Centre for Disabled-Friendly Construction (*Centre suisse pour la construction adaptée aux handicapés*) and Procap (organization for persons with disabilities), an aide-memoire entitled “Age-Friendly Housing Design” (*Conception de bâtiments d’habitation adaptés aux personnes âgées*).<sup>49</sup>

## Article 29 – Participation in political and public life

180. All Swiss citizens over the age of eighteen, unless they lack legal capacity due to mental illness or mental incapacity, have the right to vote at federal level (Constitution, art. 136 (1)). Anyone who fulfils these conditions can vote. Since the entry into force of the new law on the protection of the adult, those deprived of the right to vote under article 136 (1) of the Constitution are persons who, because permanently incapable of discernment, are protected by a guardianship with full powers or by a mandate on grounds of incapacity.

181. The right to vote may be exercised in polling stations or by correspondence. The Federal Act on Political Rights provides for special arrangements for electors with disabilities. Article 6 specifies that the cantons shall ensure that the elector who, due to disability or any other reason, is permanently incapable of carrying out the procedures required for voting shall nevertheless be given the opportunity to vote. As for article 5 (Principles of voting), paragraph 6 stipulates that votes may be cast by proxy at the polling station provided cantonal law permits this procedure for cantonal votes and elections. Electors who are unable to write may have their ballot paper completed in accordance with their instructions by an elector of their choice. Basically, it is for the cantons to take the necessary measures to ensure that persons with disabilities are able to participate in elections and votes. In general, persons with disabilities should entrust their voting forms to a reliable person for completion, stating that he or she represents the person concerned. The same procedure exists for the signing of popular votes and referendums. Article 61 (1bis) of the Federal Act on Political Rights (in conjunction with article 70) provides that persons eligible to vote who are unable to write may have their name entered on a signature list by a person eligible to vote of their choice.

182. In addition to these measures, electronic voting is available. Electronic voting enables blind or partially sighted persons to vote without the help of others, thereby safeguarding the secrecy of the ballot. In this regard, a provision stipulating that the technical implementation of electronic voting should take into account the needs of persons with disabilities, in particular the visually impaired, provided it does not unduly compromise the safety and secrecy of the vote, entered into force on 1 January 2008. Cantons with their own electronic voting system have already implemented measures to facilitate access to the system by (visually) disabled voters. However, it should be recognized that certain technical difficulties related to security still need to be overcome

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<sup>49</sup> Available on the OFL website at the following address:  
<http://www.bwo.admin.ch/themen/00232/index.html?lang=fr>.

before we can speak of systems totally adapted to persons with disabilities. The cantons are aware of the issue and are working on solutions.

183. Official information on political rights should in principle be made available in a form that is equally accessible to persons with disabilities (see comments on article 9). At both federal and cantonal levels, information is therefore made available in various formats. A new entirely accessible platform was launched for the 2015 elections. The explanatory note on the voting procedure was available in video form in sign language and in three languages, the aim being to ensure equal participation by all citizens with the right to vote. The Federal Council's E-Accessibility Action Plan, aimed at a barrier-free access to the Internet, offers a framework for defining binding standards for the provision of official information in accessible formats.

184. Persons with disabilities are showing an interest in politics similar to that measured in the rest of the population. In 2013, persons entitled to vote, whether disabled or not, indicated that they would participate in 6.5 votes if 10 polls were organized in the year. Persons with disabilities describing themselves as severely restricted in their everyday activities showed an interest in politics and a degree of participation in voting scarcely weaker and not significantly different. No change in these findings has been observed since 2007.<sup>50</sup>

### **Article 30 – Participation in cultural life, recreation, leisure and sport<sup>51</sup>**

185. Cultural promotion is the responsibility of the cantons. However, the Confederation has subsidiary jurisdiction for cultural activities that are primarily a national concern. The promotion of culture by the Confederation is particularly aimed at strengthening cultural diversity and facilitating people's access to culture (Culture Promotion Act, art. 3). Nurturing cultural diversity and improving access to culture are fundamental goals pursued under the Confederation's cultural policy for the periods 2012–2015 and 2016–2020.

186. In the financial period 2012–2015, the Confederation promoted the cultural activities of disabled persons by supporting projects such as "Disabled Theater", the latest production of the Hora Theater company, staged with the Zurich choreographer Jérôme Bel, which is currently undertaking a major tour in Europe. The Confederation has also participated in the funding and design of thematic events such as the IntegrART symposia entitled "Bridges between disability and the living arts" and "All inclusive – Kunst auf neu". With regard to the promotion of artistic projects for young people (music training, promotion of reading), the development of combined projects for children with and without disabilities was demanded and promoted. The new Culture Message for 2016–2020 targets public participation in cultural life as a strategic focus of action by the Confederation in the cultural field. The Parliament has decided to introduce systematic support for initiatives and facilities to encourage amateur cultural activities (involving all age and population groups, including persons with disabilities, persons with an immigrant background and persons in precarious circumstances), cultural activities for children and young people, as well as improved physical, financial and intellectual access to culture.

187. The Confederation makes an essential contribution to access by disabled persons to cultural institutions in Switzerland: all museums managed by the Confederation are fully accessible to persons with disabilities and provide visits, for example, to persons with visual or hearing impairments. In this regard, the Confederation's museums are an example and a model for other public and private institutions in Switzerland. The Swiss Pro Helvetia cultural foundation, funded entirely by the Confederation, enters into partnerships to finance projects in the field of cultural promotion, one of its branches of activity. It supports in particular the programme "Cultural Mediation, Culture and Disability", which launched long-term projects on culture and disability during the Festival of Cultural Mediation Specialists, various workshops, a colloquium and research projects on various forms of

<sup>50</sup> <https://www.bfs.admin.ch/bfs/portal/fr/index/themen/20/06/blank/key/06/01.html>.

<sup>51</sup> The Federal Statistics Office is currently developing new tools to measure the access of persons with disabilities to culture and the obstacles they encounter.

disability and art. The Culture Message for 2016–2020 proposes various measures to improve the accessibility of cultural activities supported by the Confederation for persons with disabilities. For example, the Confederation intends to press for audio description of Swiss films under its financing of these works.

188. The access of persons with disabilities to protected works is facilitated through a new provision in the Copyright Act (art. 24c), which allows a work to be reproduced in a form accessible to persons with sensory disabilities (e.g. sound recordings, audio-visual documents, braille and e-books), as well as circulated and made available. At the international level, Switzerland is playing an active part in the work on the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or who have other difficulties in reading printed texts.<sup>52</sup>

## Sport

189. Switzerland offers a wide range of sports for persons with disabilities. Funded in part by the authorities, these activities are organized and made available by various organizations. In recent years, the range of sports activities on offer for persons with and without disabilities has expanded considerably.

190. Some of these projects have received financial assistance to promote the equality of persons with disabilities. In collaboration with the Federal Office of Sports, Swissolympic, Plusport Handicap, Procap Sport and the Swiss Paraplegics Association, the Federal Office for the Equality of Disabled Persons organized in 2011 a symposium on equality in sports and published a booklet to integrate the topic lastingly.<sup>53</sup>

191. The Federal Institute of Sport (*Haute école fédérale de sport*), which forms part of the Federal Office of Sports, is concerned with education, R&D and service delivery in the area of sport. The topic of disabled persons in sport is also addressed in the Federal Institute, which promotes equality and the participation of persons with disabilities in teaching, research and services. In the context of training and continuing education, physical education teachers and trainers are alerted to the topic, which is treated and discussed in class. In the research field, questions relating to equality and participation in sport by persons with disabilities are covered in a Federal Institute of Sport evaluation project and in bachelor degree courses.

192. The Federal Office of Sport has a unit called “Sport for Young People and Adults”, which supports the participation in sport of persons with disabilities through the sensitization and qualifications of its staff (Youth and Sports monitors, alternate trainers, experts and coaches). The unit advises and supports its staff as well as other persons involved in sport through various services (information, foundations, leaflets for practical work). Its staff receive continuous training to ensure the quality of the services provided.

193. With regard to the accessibility of sports facilities, any request for permission to build or renovate a facility accessible to the public must concern a construction that can be accessed and used by persons with disabilities (under the Disabled Persons Act). The regulation governing accessible sports facilities is contained in norm SIA 500 “Obstacle-Free Buildings”. Procap Construction, in collaboration with the “Sport and Disability” network, has drawn up guidelines for “Obstacle-Free Sports Facilities”, with the support of the Federal Office for the Equality of Disabled Persons and the Federal Office of Sport.<sup>54</sup>

194. The Confederation also finances sports infrastructure of national importance under the heading of “investment contributions” in the framework of the Design of Sports Facilities of National Importance (*Conception des installations sportives d'importance nationale*). A sports infrastructure can only be considered of national importance if it takes

<sup>52</sup> [https://www.wipo.int/treaties/fr/text.jsp?file\\_id=302577](https://www.wipo.int/treaties/fr/text.jsp?file_id=302577).

<sup>53</sup> BFEH, *L'égalité des personnes handicapées dans le sport*, Berne 2011 ([https://www.edi.admin.ch/dam/edi/fr/dokumente/themendossier\\_sport.pdf.download.pdf/dossier\\_the\\_matiquesport.pdf](https://www.edi.admin.ch/dam/edi/fr/dokumente/themendossier_sport.pdf.download.pdf/dossier_the_matiquesport.pdf)).

<sup>54</sup> Directives Installations de sport sans obstacles : [http://www.procap.ch/fileadmin/user\\_upload/customers/procap/3\\_Dienstleistungen/Sport/Sport\\_fuer\\_Alle/20141204\\_Directives\\_ISPSO.pdf](http://www.procap.ch/fileadmin/user_upload/customers/procap/3_Dienstleistungen/Sport/Sport_fuer_Alle/20141204_Directives_ISPSO.pdf).

account of the requirements of persons with disabilities. Compliance with this requirement is essential for the award of this grant.

## **IV. Special situation of children and women with disabilities**

### **Article 6 – Women with disabilities<sup>55</sup>**

195. Equality between women and men is guaranteed under article 8 (3) of the Constitution,<sup>56</sup> which mandates the legislator to act in particular in the family, in education and in the workplace. The Gender Equality Act entered into force on 1 July 1996. It makes no specific provision for women with disabilities. For its part, the Disabled Persons Act provides in article 5 that the Confederation and the cantons should take account of the specific needs of women with disabilities. The double discrimination problem faced by women with disabilities is also addressed in article 8 (2) of the Constitution, which prohibits discrimination on grounds of gender or because of a physical, mental or psychological disability. There is no general and inclusive standard that ensures equal rights for women with disabilities, but a number of provisions address either gender relations or the situation of persons with disabilities.

196. In 1988, the Federal Council established the Federal Office for Gender Equality to encourage the promotion of gender equality in all fields and to work to eliminate any form of direct or indirect discrimination. The Office is attached to the Federal Department of the Interior. The Federal Office for the Equality of Disabled Persons and the Federal Office for Gender Equality have developed a “Women” learning package, which provides an overview of the situation of women with disabilities in Switzerland. The “Avanti donne” network for women and girls with disabilities has also participated in assembling this learning package, which contains, apart from background information, the testimonies of women with disabilities. Specific recommendations are formulated, adopting an integrated approach to gender and disability.

197. The Gender Equality Act is intended to promote de facto equality between women and men. It prohibits any discrimination at work on grounds of gender and is applicable to work relationships in private and public law. The Act contains no specific provision applicable to women with disabilities. However, it is also applicable to women with disabilities when they experience discrimination compared with men in employment matters, including hiring, allocation of duties, setting of work conditions, pay, basic and continuing education and training, promotion and dismissal (Gender Equality Act, art. 3), or when they are victims of sexual harassment in the workplace (*ibid.*, art. 4).

198. Article 5 of the Disabled Persons Act signals the determination to eliminate the dual discrimination against women with disabilities. This problem arises particularly in relation to vocational training (geared to traditionally female occupations) and social insurance benefits (vocational reintegration measures for a woman with disabilities not in gainful employment).

### **Article 7 – Children with disabilities**

199. Article 11 of the Constitution provides for special protection for children and young people. Child and youth policy is the responsibility of the cantons; the Confederation’s responsibility for promotion is limited to the field of extra-curricular and subsidiary activities. In this context, the Confederation has adopted the Act on the Promotion of Children and Young People, which came into force in 2011. The Act provides, in particular, for a Federal Commission on Children and Young, which monitors the situation of children and young people in Switzerland and assesses the potential impact of proposed measures

<sup>55</sup> Online data tables containing equality statistics for persons with disabilities systematically display the results disaggregated by sex. This makes it possible to measure and compare the specific circumstances of women with disabilities.

<sup>56</sup> This guarantee has been part of the Federal Constitution since 14 June 1981.

and important legislative provisions on children and young people. Children with disabilities are included in Swiss policy on children and young people.

200. At the international level, Switzerland is a party to the Convention on the Rights of the Child. The objectives of the Convention are reflected in Swiss law. The Swiss Civil Code stipulates that it is the duty of parents to arrange for the child, “especially if he or she has physical or learning disabilities”, to receive an appropriate general and vocational education, corresponding as closely as possible to the child’s inclinations and abilities (Civil Code, art., 302 (2)). No distinction is made in civil law between a child with and without disabilities. All children can claim the same rights (including in the fields of family law and child protection), under the same conditions (for example, minors may exercise their strictly personal rights independently, provided they are capable of discernment (Civil Code, art. 19c).

201. Concerning children with disabilities, the goal is to promote their inclusion in society and school life. Two policy areas are important in that regard: disability insurance, which includes specific instruments for children and young people, and schooling and special education, which are in essence the responsibility of the cantons.

202. Disability insurance concerns not only adults, but also children and young people. The Federal Council has moreover decided to strengthen existing measures in that area as part of the ongoing development of disability insurance. The project “Continued development of disability insurance” was put out for consultation in December 2015. It proposes various measures, including improving the support for children and young people at preschool age as well as during training and working life. The aim is to prevent young people receiving a disablement pension at the start of their entry into adult life. Such measures are also intended to improve the transition from one phase to the next. Provision is made for targeted measures for young people suffering from mental illness, for whom entry into the labour market often poses greater problems. The reform of disability insurance is therefore intended in general to ensure better inclusion of young people in the world of work in order to give them greater autonomy and strengthen the protection of children and young people affected by disability.

## V. Specific provisions

### Article 31 – Statistics and data collection

203. The collection and provision of statistical data on the situation of persons with disabilities has been an official task of the Federal Statistics Office since 2004 (Federal Statistics Act, art. 3 (2 (d))). The equality statistics for persons with disabilities on the website of the Federal Statistical Office currently propose over 80 indicators and various ad hoc analyses.

204. The Office collects numerous data enabling the living conditions of persons with disabilities to be documented and compared. Most of the major national surveys of persons and private households include two questions making it possible to identify persons with disabilities according to the definition adopted for disability equality statistics and provide data that can be disaggregated by gender and age group. As for the “mini census on mobility and transport”, it includes a question identifying persons with reduced mobility. The statistics on medico-social institutions provides basic information (gender, age, type of disability, etc) on disabled persons cared for in these institutions. Swiss statistics on pupils and students identifies students with special study plans and will eventually make it possible to monitor these students accurately. This information is subject to a strict code of ethics, namely the *Charter of Swiss Official Statistics*, adopted in May 2002 by the Swiss Conference of Regional Statistical Offices and the Federal Statistical Office, whose current version is in line with the European Statistics Code of Practice. Information on recipients of social benefits for disability or health problems is also collected by the Federal Statistical Office or other federal agencies (in particular, the disability insurance statistics compiled by

the Federal Social Insurance Office.<sup>57</sup> The Confederation also supports scientific research on disability through subsidies granted by the Swiss National Science Foundation, certain national research programmes (including PNR 45 “Problems of the Social State”) and studies commissioned by federal offices (see, for example, the research activities of the Federal Social Insurance Office).

205. Equality statistics for persons with disabilities synthesize and disseminate much of the information collected in the form of tables of results disaggregated by degree of restriction in everyday life and by gender, as well as in the form of graphs or short publications. Dissemination in electronic form takes place systematically through the website of the Federal Statistical Office, which seeks to comply with the technical requirements regarding the accessibility of visually impaired persons issued by the Federal Administration in accordance with article 14 (2) of the Disabled Persons Act. Particular care is taken in the choice of colours to ensure good readability even for achromatic persons.

206. Most official population surveys are carried out by telephone, less often in printed form or online. To promote participation by persons unable to respond by telephone, some surveys offer the possibility of responding in another form (in writing or with the assistance of another person) or through a proxy interview (responses provided by a third person). Children (under 15) are questioned only exceptionally and those living in institutions or other collective households are very rarely included in these surveys. Concerning research, specific measures to ensure full participation by persons with disabilities are usually adopted only when this group shows a particular interest in the subject of research.

### **Article 32 – International cooperation**

207. The Swiss Agency for Development and Cooperation is the Confederation’s main body responsible for international cooperation, for development cooperation with the South and East, for multilateral cooperation and for Swiss humanitarian aid. To this end, the Agency works with both the States concerned and with international organizations and the United Nations. Other federal offices, as well as cantonal offices and communes, support projects and programmes in the developing countries. All these State actors contribute to Switzerland’s official development assistance.

208. The main objective of international cooperation remains poverty reduction. Switzerland’s international cooperation is based on two pillars: firstly, on bilateral cooperation with a selection of priority countries and regions, in other words, with State institutions, civil society, the private sector and research institutions; secondly, on multilateral cooperation with some fifteen international organizations (international funding institutes, United Nations organizations, networks and global funds), in the form of financial contributions and participation in policy and programme development. Switzerland concentrates on areas where it has comparative advantages and proven experience. It considers the needs of countries and regions in which it operates, the potential impact of projects, the readiness of partner countries to cooperate, as well as its own interests. The funds are utilized in an effective manner, having regard to the intended results. This includes keeping administrative costs as low as possible and carrying out internal and external audits, in particular to minimize risks such as corruption. Each year, up to 0.4 per cent of resources are devoted to assessing the relevance and effectiveness of the programmes. Political circles and the general public are regularly briefed on the results achieved through the preparation of impact reports.

### **Article 33 – National implementation and monitoring**

209. The Federal Office for the Equality of Disabled Persons is the focal point within the federal administration for implementing and monitoring application of the Convention. The Office is responsible for the preparation of reports, in collaboration with other relevant offices and the cantons. The Conference of Cantonal Social Services Directors is the main

<sup>57</sup> OFAS, Disability insurance statistics.

contact with the Federal Office at cantonal level. It ensures collaboration and interaction between the cantonal and federal authorities. With regards to social insurance, the Federal Social Insurance Office is responsible for the running and continuous adaptation of the Swiss social security system in its areas of competence, which include old-age and survivors' insurance, disability insurance, supplementary benefits, occupational pension benefits (pension funds), allowances for loss of earnings for persons serving in the army, civil service or civil defence and in maternity cases, as well as family allowances. The Federal Social Insurance Office is also responsible, at the federal level, for questions relating to the family, children, young people, the elderly and intergenerational relations, as well as for social policy issues generally.

210. In 2009, the Government decided to establish the Swiss Centre of Expertise in Human Rights for a five-year pilot period. The Centre consists of a network of university institutes. Currently associated with it are the Universities of Berne, Zurich, Neuchâtel and Fribourg, as well as the Kurt Bösch University Institute. Since its inception, the Centre has carried out numerous studies and organized events and seminars. The pilot phase was completed at the end of 2015, when the Centre was subject to an independent evaluation. Based on the results of the evaluation, the Government decided to extend for a further five years the mandate of the Swiss Centre of Expertise in Human Rights as a service centre responsible for promoting the implementation of human rights in Switzerland. At the same time, it instructed the Department of Foreign Affairs and the Department of Justice and Police to submit to it various options for long-term regulation of the Centre, one possibility being to regularise the solution adopted under the pilot project. These options are currently in preparation.

211. The evaluation of the Disabled Persons Act concluded that the existing mechanisms for enforcing the Act and the absence of an overall policy strategy for persons with disabilities hinder the implementation of the Act and the development of equal opportunities for persons with disabilities (see note 13 above). The Federal Council accordingly directed the Federal Department of Home Affairs to submit to it, by the end of 2016, a report containing proposals for improved coordination of the measures already taken by the Confederation and the cantons and for better integration of key policy issues, such as education and employment, in the strategy for promoting the equal treatment and inclusion of persons with disabilities. In this context, the Federal Department of Home Affairs will also consider the introduction of a system for monitoring the implementation of the Disabled Persons Act.

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